

Consolidated Appropriations Act, 2021

Analysis of Coronavirus Relief under the Higher Education Emergency Relief Fund II

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Overview

On December 21, 2020, Congress passed the [Consolidated Appropriations Act of 2021](#) (CAA), which combines a \$1.4 trillion omnibus government spending bill with a \$900 billion COVID-19 relief package. It was signed into law by President Trump on December 27, 2020ⁱ.

Coronavirus Response and Relief Supplemental Appropriations Act, 2021

Division M, contained within the 5,500+ pages of the CAA, is the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSAA). CRRSAA includes a full slate of student-centered higher education policy reforms, including a new requirement simplifying the application process for federal student aid (FAFSA), a provision to forgive more than \$1 billion in federal loans to Historically Black Colleges and Universities (HBCUs), an expansion of the Pell Grant program to incarcerated individuals, and the restoration of Pell eligibility for students who were defrauded as part of the 2015 *United States ex rel. Washington et al. v. Education Management Corp., et al.*, Civ. No. 07-461 (WDPA) settlementⁱⁱ.

In addition to valuable policy reforms, over \$21 billion was allocated to higher education, including public, private nonprofit, and proprietary institutions and their students. Building on the structure of the Higher Education Emergency Relief Fund (HEERF) under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of March 2020, the U.S. Department of Education (ED) designated the additional higher education support funds under the CRRSAA as “HEERF II.”ⁱⁱⁱ

§314(a): Higher Education Emergency Relief Fund II (HEERF II)

Under the Higher Education Emergency Relief Fund II, §314. (a) provides for a second round of funding to institutions of higher education to fund activities in response to the coronavirus pandemic. Of the \$22.7 billion appropriated under HEERF II, 89 percent (\$20 billion) will be distributed to public and private, non-profit institutions of higher education (as defined in §101 or §102(c) of the HEA). The formula to determine funding levels provided to each institution is based on the percentages in the following table.

HEERF II Allocation Formula			
75%	Enrollment of Pell Grant recipients not enrolled exclusively in distance education courses prior to the qualifying emergency	Full-time equivalent	37.5%
		Headcount	37.5%
23%	Enrollment of non-Pell recipients not enrolled exclusively in distance education courses prior to the qualifying emergency	Full-time equivalent	11.5%
		Headcount	11.5%
2%	Enrollment of Pell Grant recipients exclusively enrolled in distance education courses prior to the qualifying emergency	Full-time equivalent	1%
		Headcount	1%

On January 14, 2021, the U.S. Department of Education (ED) announced the availability of HEERF II funds, as well as the application process and permitted uses for these grant awards. Although HEERF II is similar to the original HEERF under the CARES Act, it also includes some important differences, including additional flexibilities for the use of institutional aid funds, priorities by which student grant amounts are determined, and permission to apply student grant awards to an outstanding balance under specific conditions.

Key Findings

HEERF II Funding Formula

The new funding formula for all institutions accounts for part-time students in both calculations for Pell grant recipients and total enrollment. In contrast, the CARES Act formula only factored in full-time students. This will provide more money to community colleges and regional public institutions, which tend to enroll more part-time and Pell-eligible students. This formula also recognizes the higher administrative costs inherent in providing multiple emergency aid grants and related educational services to several part-time students rather than administering a single grant to one full-time student. Finally, the new formula provides for allocations to institutions based on their provision of 100% distance education programs to students at the time of the qualifying emergency.

HEERF II Use of Funds

HEERF II funds are encompassed in three primary categories: institutional portion, student aid portion, and Titles III, V, and Title VII portion. Title III parts A and B, Title V parts A and B, and subpart 4 of part A of Title VII refer to titles under the Higher Education Act of 1965 as amended in 2008 (HEA) and are only accessible to institutions eligible to receive funds under those titles. As noted, Title VII pertains to Historically Black Colleges and Universities and Predominantly Black Institutions.

- Title III Strengthening Institutions Programs
- Title V Hispanic Serving Institutions Programs
- Title VII, part A, subpart 4 Fund for the Improvement of Postsecondary Education, Graduate Programs, Masters Degree Programs at HBCUs and PBIs

Institutional allocations for the student aid minimum portion and institutional portion amount maximum are reflected in a table provided by the U.S. Department of Education at the following link.

HEERF II Allocation Table

- <https://www2.ed.gov/about/offices/list/ope/314a1allocationtableheerfii.pdf>

Institutional Portion

Colleges have more flexibility in how they can expend new HEERF II funds than allowed under the CARES Act. These expanded uses apply both to new funds distributed under HEERF II and any CARES Act funds unspent as of December 27, 2020. Based on information from the U.S. Department of Education, institutions have one calendar year from the date of award to expend HEERF II funds. However, a no cost-extension may be requested. Additionally, HEERF II funds can be used to cover allowable expenditures incurred on or after the date the bill was enacted, December 27, 2020. It is also important to note that institutions may charge indirect costs to the institutional portion for both the new and supplemental relief funding, but indirect costs may not be charged to the student aid portion.^{iv}

Institutional Portion: Allowable Expenditures

- To defray expenses associated with the coronavirus
 - Lost revenue
 - Reimbursement for expenses already incurred
 - Technology costs associated with a transition to distance education
 - Faculty and staff trainings
 - Payroll
- To provide financial aid grants to students
 - **NEW:** Including students exclusively enrolled in distance education
- **NEW:** To carry out student support activities authorized by the HEA that address needs related to coronavirus
 - Transition to virtual activities
 - Purchase PPE

- Authorization for grantees to use CRRSAA funds to carry out activities under TRIO and Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) to the extent that those activities address needs related to the coronavirus

Institutional Portion: Unallowable Expenditures

- Contractors for the provision of pre-enrollment or recruitment
- Endowments
- Capital outlays associated with facilities related to athletics, sectarian instruction, or religious worship
- Senior administrator or executive salaries, benefits, bonuses, contracts, incentives
- Stock buybacks, shareholder dividends, capital distributions, and stock options
- Any other cash or other benefit for a senior administrator or executive

Student Aid Portion

New in HEERFF II is the inclusion of a “high-need student priority.” The new law states that, in making emergency grants, institutions “shall prioritize” students with *exceptional need*, such as those who are Pell-eligible. Also new, students receiving emergency grants under HEERF II do not need to be eligible for Title IV student financial aid under Section 484 of the Higher Education Act, as previous guidance under the CARES Act had determined. However, student emergency aid recipients must not be ineligible for the receipt of federal public benefits. Students enrolled in exclusively distance education programs are also eligible for HEERF II emergency grants. Out of the new funds, institutions must provide at least the same amount (not percentage) in grants to students as they were required to provide under Sections 18004(a)(1) and (c) of division B of the CARES Act (the amount commonly referred to as “student share” of CARES Act funds).

Of interest under this portion is that the consolidated bill allows for a new Pell grant calculation and the expansion of Pell eligibility. The bill creates different formulas based on the applicant’s single-parent or two-parent household status. The number of household members in college no longer factors into an applicant’s Pell Grant eligibility. The bill expands student eligibility for the maximum Pell Grant award based on their income (or their parent’s/parents’ income), looking at either tax filing status or the national poverty line. Additionally, incarcerated students enrolled in qualifying prison education programs (excluding those offered by for-profit institutions) are now eligible for Pell funding.

Portion under Title III, V, and Title VII

Titles III and V

Institutions must be designated as eligible to receive funds under Title III Strengthening Institutions Programs and/or Title V Hispanic Serving Institutions Programs under the HEA. Eligibility for these programs is determined by ED based on IPEDS data for two eligibility criteria: percentage of needy students served (typically based on Pell eligibility), and core expenses per student full time equivalency. Under Title III part A, Strengthening Institutions programs there are six program categories, five of which are for Minority Serving Institutions (MSI) and require a minimum student enrollment of a specific underserved population. Title III part A subpart 4 focuses on strengthening HBCUs and Historically Black Graduate and Professional Institutions.

Eligibility for Title V Hispanic Serving Institutions programs requires institutions meet the needy student and core expenses criteria and have an enrollment of undergraduate students that is at least 25% Hispanic students. Part A of Title V supports Developing Hispanic Serving Institutions, and part B supports graduate programs under Promoting Postbaccalaureate Opportunities for Hispanic Americans.

At the time this analysis was completed, ED had not yet released the list of eligible institutions for 2021. Once ED opens the 2021 eligibility process, institutions may check their eligibility status at <https://hepis.ed.gov/>. Institutions that are not designated eligible based on IPEDS data may elect to submit a manual application for designation as an eligible institution, which may also require a narrative waiver or description as to why the institution should be eligible.

It is likely that ED will wait until after the 2021 Titles III and V eligibility process to develop the allocation under these titles. Institutions eligible for the related parts of Title VII are predetermined, and there is no opportunity to apply for eligibility under the Title VII programs.

HBCUs, MSIs, Tribal Colleges and Universities, and FIPSE Beneficiaries

As was true under the CARES Act, the CRRSAA appropriates HEERF II funding for these eligible institutions, specifically under Sections 314(a)(2) and (a)(3). Many of these institutions received allocations through Section 314(a)(1) and are eligible to obtain and disburse these funds as described above. Additional guidance from the U.S. Department of Education regarding release of this funding is pending at the time of the development of the analysis document.

CRRSAA also enables flexibility for HBCUs and MSIs to use prior awards under Titles III, V, and VII (FIPSE) for coronavirus related expenses. Specifically, the bill states the following in 314(d)(1).

A Historically Black College and University or a Minority Serving Institution may use prior awards provided under Titles III, V, and VII of the Higher Education Act to prevent, prepare for, and respond to coronavirus.

Additional guidance and appropriate approvals should be solicited from the cognizant ED program officer before prior awards are used for this purpose.

Accessing HEERF II Funds

Institutions that received funding under the CARES Act HEERF I are not required to submit an application to receive funds under HEERF II. An application is needed only for any portion—the student aid portion or institutional portion—for which CARES Act HEERF I funds were not received. Institutions that did not receive funding under the CARES Act must submit an application by April 15, 2021. Additional information is available on the ED website at the links below.

Institutional Portion for Public and Non-Profit Institutions

- <https://www2.ed.gov/about/offices/list/ope/heerfiiinstitutional.html>

Student Aid Portion for Public and Nonprofit Institutions

- <https://www2.ed.gov/about/offices/list/ope/heerfiistudent.html>

Reporting

Guidance is forthcoming from ED on the specific reporting requirements for HEERF II funding. It is anticipated to be similar to reporting requirements under the CARES Act, which at a minimum required publicly presenting information on use of funds on primary websites for both the student portion and institutional portions.

It is important to note that awards under CRRSAA HEERFII “*may be delayed or subject to drawdown restrictions* for institutions that have failed to meet CARES Act reporting requirements.”^v

ⁱ Cochrane, Emily. “Congress Passes Huge Coronavirus Relief Bill.” The New York Times, December 22, 2020, sec. U.S. <https://www.nytimes.com/2020/12/21/us/politics/coronavirus-stimulus-deal.html>.

ⁱⁱ Kelderman, Eric. “Congress Will Give Colleges \$20 Billion in Relief and — Surprise! — Some Long-Awaited Policy Reforms.” Chronicle of Higher Education. December 21, 2020, sec. Pandemic Aid. <https://www.chronicle.com/article/congress-will-give-colleges-20-billion-in-relief-and-surprise-some-long-awaited-policy-reforms>.

ⁱⁱⁱ Tarnow, Jonathan D., John R. Przepyszny, and Sarah L. Pheasant. “Over \$21 Billion in Emergency Grant Aid Available to Higher Education Institutions and Students through HEERF II Funding Under the Coronavirus Response and Relief Supplemental Appropriations Act.” The National Law Review XI, no. 28. Accessed January 28, 2021. <https://www.natlawreview.com/article/over-21-billion-emergency-grant-aid-available-to-higher-education-institutions-and>.

^{iv} U.S. Department of Education. “Higher Education Emergency Relief Fund (HEERF) II Frequently Asked Questions1,” January 14, 2021. <https://www2.ed.gov/about/offices/list/ope/faqsfora1crrsaaheerfii.pdf>.

^v Ibid.