

New HEERF Guidance Adds Flexibility, Extends Time Period for Institutions' Costs and Lost Revenue

On March 19, 2021, the U.S. Department of Education (Department) issued new guidance to institutions of higher education (IHEs) regarding the use of funds received pursuant to the Higher Education Emergency Relief Fund (HEERF) grant programs. The Department's stated goal is to allow greater flexibility in the use of these funds to permit IHEs to better meet students' needs. The major points are: (1) allowing IHEs to charge pre-award costs back to March 13, 2020; (2) additional guidance on the use of funds for and calculation of lost revenue; and (3) including students who are qualified aliens to receive student aid funding. The [guidance documents](#) respond to many of the unanswered questions raised by higher education groups including ACE and NASFAA.

Extending the Time Period for Allowable Costs/Lost Revenue Retroactively to March 13, 2020

The Department has extended the period for all unspent HEERF grant funds, including unspent CARES Act funds, CRRSAA funds and American Rescue Plan (ARP) funds, back to March 13, 2020, the date of declaration of the national emergency for the COVID-19 pandemic. This has been done through publication of a [Notice of Interpretation](#) (NOI) in the Federal Register on March 22, 2021, and providing the Department's opinion that these changes are consistent with the intent of Congress and authorized by law, and that the NOI supersedes in part all previous guidance, agreements and grant award documents. The NOI and other guidance provide that grantees need not take any action to take advantage of this expanded timeframe, but are encouraged to maintain a copy of the NOI within their HEERF grant files as support for auditing purposes.

Lost Revenue

In addition to making pre-award costs and lost revenue eligible for Institutional Portion funds reimbursement back to March 13, 2020, the Department has provided extensive guidance on issues surrounding lost revenue through HEERF (HEERF I, II, and III) [Lost Revenue Frequently Asked Questions](#) (LR FAQs) and examples of calculations of HEERF lost revenue. The LR FAQs define lost revenue as those revenues of an IHE otherwise expected but reduced or eliminated as a result of the COVID-19 pandemic, and acknowledge that they can only be estimated. Reimbursement for lost revenue is only allowable for Institutional Portion program funds, not for Student Aid Portion funds.

The Department has clarified that lost revenue associated with the COVID-19 pandemic may include, but is not limited to, (1) academic sources such as tuition, fees and institutional charges including student account debt; room and board; reduced tuition, fees and institutional charges due to enrollment decline; supported research; summer terms and camps; and (2) auxiliary services sources such as cancelled ancillary events; disruption of food services, dormitory services or childcare services; use of facilities or venues, including external events such as weddings, receptions or conferences (other than facilities associated with sectarian instruction or religious worship); bookstore, parking or lease revenue; royalties; and other operating revenue.

Non-reimbursable lost revenues generally include revenues derived from activities and expenditures otherwise unallowable under HEERF, such as: student fees assessed for athletic facility construction; bond revenue derived from real property transactions; contributions or donations to the IHE; revenue related to sectarian instruction or religious

worship; alcohol sales; and investment income (including endowment and quasi-endowment revenue), among others. Lost revenue not associated with the pandemic is also non-reimbursable, including lost housing revenue due to previously planned dormitory remodeling; previously planned elimination of a degree program; research grant income ending; or one-time royalty payments.

An IHE may estimate lost revenue for the period from March 13, 2020 to the end of its HEERF grant performance period, which the LR FAQs note is generally a year from the date of the most recent HEERF grant award, and any no-cost extensions of up to 12 months received.

The Department has advised that IHEs have flexibility to reasonably calculate their estimated lost revenue, offering the following examples: a year-over-year comparison using the prior year; a semester-over-semester comparison using the prior year semester such as fall 2019 to fall 2020; a comparison using a 3- or 5-year combined average revenue as baseline revenue; a comparison to previously budgeted or projected revenue for the period; or a comparison with a baseline year of a fiscal year prior to March 13, 2020, such as FY July 1, 2018-June 30, 2019.

In accord with cost principles of the Uniform Guidance, the calculation of lost revenue must: be accorded consistent treatment between baseline and measurement, and between measurement of baseline revenue and lost revenue; be consistent with policies and procedures that apply uniformly to the institution's federally financed and other activities; not include estimated lost revenue for HEERF programs in the calculation of lost revenue for another Federal program, such as the CARES Act Provider Relief Fund; and not include refunds previously provided to students using HEERF grant funds.

An IHE must adequately document its lost revenue estimate, including rationale, calculations, methodology, underlying data; and budgets or projections used to determine lost revenue. It must retain financial records, supporting documents and all institutional records pertinent to lost revenue and the administration of HEERF grant programs generally for a period of three years from the date of submission of the final expenditure report.

Increased expenses due to COVID-19 should be charged as regular direct cost items to HEERF grant awards and not included as lost revenue.

Eligibility for Student Aid Grants

The Department also updated its Jan. 14, 2021 [HEERF II FAQs](#) on March 19, 2021, principally to extend the time period back to March 13, 2020 for allowable costs for both institutional and the student aid grants, and to address some pressing questions of eligibility for student aid grants. The Department clarified for the first time that students who are qualified aliens, including refugees and individuals granted asylum, are eligible for student aid grants. The Department also reiterated that IHEs can make financial aid grants (including any unspent CARES Act grant funds) to non-degree seeking, non-credit, dual enrollment and continuing education students. Notably, the guidance did not address whether DACA, undocumented and/or international students are now eligible for student aid grants. It has been reported, including by NASFAA, that the Education and Justice Departments are continuing to review and consider clarification of the eligibility of those non-citizen students.

The updated HEERF II FAQs remind IHEs that students have discretion about how they receive their grants and that IHEs must receive affirmative consent from students before using a financial aid grant to satisfy outstanding bills. They also reiterate recent guidance providing that IHEs may make financial aid grants to students who have left school for any reason from March 13, 2020 onward; and that IHEs may provide financial aid grants that remain unencumbered by the IHE as a "pass-through" directly to student accounts without receiving affirmative consent.

Additional Guidance

The revised HEERF II FAQs also reiterate recent guidance that IHEs may use CRRSAA funds and unspent CARES Act funds to pay for employee benefits as payroll costs if such costs are newly associated with COVID-19. The Department newly adds that this can be done for all such costs incurred on or after March 13, 2020.

The Department also confirmed its recent guidance that IHEs generally have one year to expend their HEERF funds from the date when the Department processed the most recent obligation of funds for each specific grant, meaning that IHEs that received a supplemental award under CRRSAA have one year to spend all remaining CARES funds and new CRRSAA funds for each grant. The Department further confirmed that no-cost extensions of up to one year are also available under certain circumstances, and that IHEs may contact their assigned grant program officer identified on their GAN for more details or to request an extension.

If you have any questions about the new HEERF Guidance, please contact [Jane Sovern](#), [Philip Zaccheo](#) or the attorney at the firm with whom you are most regularly in contact.



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