

NOTE: The official version of this document is the document published in the Federal Register. This document has been sent to the Office of the Federal Register but has not yet been scheduled for publication.

4000-01-U

DEPARTMENT OF EDUCATION

Notice of Interpretation Regarding Period of Allowable Expenses
for Funds Administered under the Higher Education Emergency
Relief (HEERF) Program

AGENCY: Office of Postsecondary Education, Department of
Education.

ACTION: Notice of interpretation.

SUMMARY: The Department of Education (Department) is issuing
this notice of interpretation regarding the allowable time
period for which grantees may charge costs and lost revenue to
their HEERF grant. That period is from March 13, 2020 onward.

DATES: This interpretation is effective [INSERT DATE OF
PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Karen Epps, U.S. Department of
Education, 400 Maryland Avenue, SW, room 250-64, Washington, DC
20202. Telephone: The Department of Education HEERF Call
Center at (202) 377-3711. Email: HEERF@ed.gov. Please also
visit our HEERF II website at:
www2.ed.gov/about/offices/list/opecrrsaa.html.

If you use a telecommunications device for the deaf (TDD)
or a text telephone (TTY), call the Federal Relay Service (FRS),

toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

On March 13, 2020, President Trump declared a national emergency to respond to the novel coronavirus (COVID-19) outbreak, under section 501(b) of the Stafford Act. Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19), 85 FR 15337. Soon thereafter, on March 27, 2020, Congress enacted the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136, to help Americans during the economic and health crises created by the COVID-19 outbreak. Among its many provisions, the CARES Act provided the Department with a \$14.2 billion appropriation designated as the Higher Education Emergency Relief Fund (HEERF) to be distributed to eligible institutions of higher education (IHEs) to "prevent, prepare for, and respond to coronavirus."

In the midst of this continued crisis, on December 27, 2020, President Trump signed into law the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSAA) (Pub. L. 116-260). This law made available an additional \$22.7 billion for IHEs under the HEERF programs, with funding appropriated for the existing (a) (1), (a) (2), and (a) (3) programs previously authorized under the CARES Act, as well as funding for a new (a) (4) program authorized under the CRRSAA.

Section 314(c) of the CRRSAA provides the following allowable uses for funds made available through that appropriation:

(1) Defray expenses associated with coronavirus (including lost revenue, reimbursement for expenses already incurred, technology costs associated with a transition to distance education, faculty and staff trainings, and payroll);

(2) Carry out student support activities authorized by the Higher Education Act of 1965, as amended, that address needs related to coronavirus; or

(3) Provide financial aid grants to students.

Additionally, section 314(d)(2) of the CRRSAA extended the allowable use provisions listed above to any of an IHE's unspent CARES Act funds.

In its initial analysis regarding the allowability of pre-award costs for grants made newly available under the CRRSAA, the Department took the position that obligations under CRRSAA grants needed to have been incurred on or after December 27, 2020, the date of the enactment of the CRRSAA. For new or supplemental funding awarded under CRRSAA, this position was memorialized in the IHE's Certification and Agreement or Supplemental Agreement, respectively, as well as the Grant Award Notification document connected with the obligation of such funds.

The Department is committed to extending all available flexibilities that may be authorized by law to grantees under the HEERF programs as IHEs continue to grapple with the financial consequences of COVID-19. Many IHEs are facing severe budget shortfalls as a result of decreased enrollment, tuition discounting, declining international student enrollment, and the loss of revenue from food service and dormitories.¹ These shortfalls are forcing IHEs to consider hiring freezes, layoffs, operating budget cuts, and suspending certain degree programs.²

In recognition of the considerable financial strain faced by the higher education community, the Department is issuing this notice of interpretation to allow IHEs to charge pre-award costs for their unspent CARES Act and CRRSAA funds back to March 13, 2020, for expenses associated with COVID-19. The Department finds textual support for revisiting its position within the allowable uses enumerated within CRRSAA section 314(c)(1), which explicitly include "lost revenue" and "reimbursement for expenses already incurred." The Department believes that allowing grantees to recover pre-award costs back to March 13, 2020, is consistent with the intent of Congress and authorized by the law, and this will allow IHEs to target their areas of

¹ www.insidehighered.com/quicktakes/2021/02/09/colleges-could-lose-183-billion-during-pandemic

² www.cbpp.org/research/state-budget-and-tax/states-can-choose-better-path-for-higher-education-funding-in-covid;
www.nytimes.com/2020/10/26/us/colleges-coronavirus-budget-cuts.html

financial need more directly with HEERF program funding.

This notice of interpretation supersedes in part all previous guidance, agreements, and grant award documents to provide IHEs with the expanded flexibility to charge pre-award costs back to March 13, 2020. To further provide flexibility to IHEs, the Department also concurrently waives the requirement for prior written approval of pre-award costs, in accordance with 2 CFR 200.407. We will also issue letters through our G5 system to directly notify grantees of this change of interpretation. Grantees are not required to take any action to take advantage of this expanded period of expenditures flexibility but are encouraged to maintain a copy of this notice within your HEERF grant files as additional support for auditing purposes. The Department will make publicly available any additional guidance on this topic on its CRRSAA: Higher Education Emergency Relief Fund (HEERF II) website (<https://www2.ed.gov/about/offices/list/ope/crrsaa.html>).

The Department continues to encourage IHEs to focus on the needs of their students in assessing how best to utilize HEERF funding. While some IHEs may need to use their HEERF grant to pay for expenses incurred earlier in the pandemic, other IHEs may look forward and focus on how best to provide student support to keep their students enrolled and academically engaged throughout the pandemic. The Department hopes that the expanded

flexibilities announced in this notice will help all IHEs to best serve the needs of their students, faculty, and staff.

Accessible Format: On request to the program contact person listed under FOR FURTHER INFORMATION CONTACT, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the *Federal Register*. You may access the official edition of the *Federal Register* and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the *Federal Register*, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the *Federal Register* by using the article search feature at www.federalregister.gov. Specifically, through the advanced

search feature at this site, you can limit your search to documents published by the Department.

Dated:

Tiwanda Burse,
*Deputy Assistant Secretary for Management & Planning, Office of Postsecondary Education.
Delegated authority to perform functions and duties of the Assistant Secretary for the Office of Postsecondary Education.*