

## Publications

### U.S. Dept. of Education Issues Interim Final Rule Governing Eligibility for CARES Act Emergency Financial Aid Grants, Effective Immediately

#### Related Professionals

Natalie M. McLaughlin

Erin D. French

#### Related Industries

Colleges and Universities

**CLIENT ALERT** | 6.17.2020

Today, June 17, 2020, the U.S. Department of Education (DOE) published in the Federal Register an interim final rule giving the force of law<sup>[1]</sup> to its interpretation of the term “student” as used in Section 18004 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (the IFR). Effective immediately, the IFR confirms that “students” eligible for emergency financial aid grants under this section will be limited to those eligible for assistance under title IV of the Higher Education Act of 1965 (HEA).

### Background: Higher Education Emergency Relief Fund

Section 18004 of the CARES Act established a \$12.5 billion Higher Education Emergency Relief Fund (HEERF), from which the DOE is charged with distributing funds to eligible institutions through existing title IV systems. Under the statute, at least half of these funds must be used to provide emergency financial aid grants to students for expenses related to the disruption of campus operations due to coronavirus, including costs of attendance such as food, housing, course materials, technology, health care, and child care.

### The New IFR

The CARES Act, however, does not define the term “student” for purposes of these provisions, and the DOE has taken the position that such term is ambiguous in context. In promulgating today’s IFR, the agency is exercising its interpretive authority under the Supreme Court’s holding in *Chevron U.S.A., Inc. v. Natural Resource Defense Council, Inc.*, defining a “student” as “an individual who is, or could be, eligible...to participate in programs under title IV of the HEA.”

Because the title IV eligibility standard has already been well defined (and permits use of the existing Free Application for Financial Student Aid (FAFSA) to verify eligibility), the DOE believes its interpretation will maximize efficiency in distributing the funds. Further, the DOE states that use of the title IV eligibility standard will promote effective

oversight, suggesting that “[t]he potential for waste, fraud, and abuse is significant when institutions of higher education are given the opportunity to quickly make cash awards to students.”

### Submitting Comments

As noted above, the IFR is effective immediately; however, the agency will consider making changes in response to public comments. Interested parties may submit comments for up to 30 days following publication in the Federal Register, or through July 17, 2020.

The text of the IFR is available in full at [this link](#).

If you have questions about the IFR, the Higher Education Emergency Relief Fund, or the CARES Act more generally, please contact your Vorys attorney or a member of the Vorys higher education team.

--

### VORYS COVID-19 TASK FORCE

Vorys attorneys and professionals are counseling our clients in the myriad issues related to the coronavirus (COVID-19) outbreak. We have also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at [vorys.com/coronavirus](https://www.vorys.com/coronavirus).

--

[1] Although the DOE previously indicated its position on this point in FAQ guidance, the DOE will not “enforce the title IV eligibility interpretation...against distribution of HEERF funds that occurred prior to the publication of [the IFR].”