
COVID-19 Pandemic Education Relief Act of 2020

Title IV HEA Return of Funds Waiver Provision

Under 20 U.S.C. § 1091b and 34 C.F.R. § 668.22, institutions participating in the programs authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV) are required to return unearned Title IV funds disbursed to students who withdraw before the end of their payment period or period of enrollment. Section 3508(a) of the “COVID-19 Pandemic Education Relief Act of 2020” waives the requirement for institutional return of funds for students who withdraw from the institution “during the payment period or period of enrollment as a result of a **qualifying emergency**.” See Section 3508(a)(2).

A “**qualifying emergency**” is:

1. a public health emergency related to the coronavirus declared by the Secretary of Health and Human Services pursuant to section 319 of the Public Health Service Act (42 U.S.C. 247d);
2. an event related to the coronavirus for which the President declared a major disaster or an emergency under section 401 or 501, respectively, of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170 and 5191); or
3. a national emergency related to the coronavirus declared by the President under section 201 of the National Emergencies Act (50 U.S.C. 1601 et seq.).

HHS Secretary Alex Azar declared a **public health emergency** under Section 319 of the Public Health Service Act as of **January 27, 2020**. President Trump **declared a major disaster** under the Robert T. Stafford Disaster Relief and Emergency Act on **March 13, 2020**. Finally, on the same day, March 13, President Trump **proclaimed** that the COVID 19 outbreak in the United States constituted a national emergency beginning **March 1, 2020**.

Consequently, institutions need not return Title IV funds for students who withdrew during a payment period or period of enrollment beginning January 27, 2020 and for the duration of these emergency declarations so long as the student withdrew “as a result of” COVID 19. The Act does not define what criteria an institution should consider in determining whether the student withdrew “as a result of” a COVID 19-related matter.

*As a result of
COVID-19*

However, in pre-CARES Act [guidance](#), the U.S. Department of Education (ED) addresses several scenarios of educational interruption, which it describes as student “activities [that] are impacted by Coronavirus (COVID-19).” These include:

- A student was enrolled or was supposed to begin a travel-abroad experience and either the student has been called back to the U.S. or was never able to begin the travel abroad experience;
- A student was enrolled in a program and met the requirements for full-time enrollment; however, due to the COVID-19, one or more classes – such as an internship, a clinical rotation, student teaching or fieldwork – have been cancelled and now the student has fallen below the 12 credit hour minimum and is no longer considered to be a full-time student;
- A student is quarantined and misses class or a student is incapacitated due to COVID-19 illness;
- A campus temporarily stops offering ground-based classes in order to prevent the spread of COVID-19;
- A foreign school that serves U.S. students who participate in title IV programs temporarily suspends operations due to COVID-19.

Because ED describes these activities as those that are “impacted by . . . COVID-19,” if they result in the student withdrawing from the institution, they are likely to be considered by ED as covered COVID-19-related withdrawals.

In addition, the Families First Coronavirus Response Act, which was passed days before the CARES Act, sets forth the circumstances when a covered employer must pay sick leave for matters related to COVID 19. See Section 5102. These circumstances include:

- Employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
- Employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- Employee is caring for an individual who is subject to an order as described in the first bullet above or has been advised as described in the second bullet above.
- Employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.
- Employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

See id.



Until ED issues guidance, I think it is fairly safe to assume that if a student withdrew **on or after January 27, 2020** (the date of the first “qualifying emergency”) for any of the reasons listed above, the institution need not return the student’s Title IV funds that it would otherwise be required to return under the return of funds provisions of 20 U.S.C. § 1091b and 34 C.F.R. § 668.22. **To be clear, the listed circumstances are borrowed from separate and unrelated COVID-19-related ED guidance and federal legislation and do not represent the position of either Congress or ED regarding which student withdrawals will ultimately be formally considered to be the “result of” a COVID-19 emergency. Nonetheless, I believe they can be used as a temporary good faith substitute for making these determinations until ED guidance is released.**

In addition, while institutions need not return Title IV funds for such students, they are well-advised to maintain documentation for each of these students showing the COVID 19-related reason why the student withdrew.

In addition, under Section 3508(a)(2) of the COVID-19 Pandemic Education Relief Act of 2020, even in cases where an institution is not required to return Title IV funds, it must still carry out a return of funds calculation and report to ED:

1. the number of student recipients for whom the institution applied the return of funds waiver and
2. the amount of Title IV funds for each such student that was not returned under this waiver provision.

Presumably, ED will be providing reporting protocols and other guidance and in the days and weeks ahead.

