

Dated: March 17, 2021.

**Kate Mullan,**

*PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

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## 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 March 22, 2021.

#### 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](mailto:HEERF@ed.gov). Please also visit our HEERF II website at: [www2.ed.gov/about/offices/list/ope/crrsaa.html](http://www2.ed.gov/about/offices/list/ope/crrsaa.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.<sup>1</sup> These shortfalls are forcing IHEs to consider hiring freezes,

layoffs, operating budget cuts, and suspending certain degree programs.<sup>2</sup>

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 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

<sup>1</sup> [www.insidehighered.com/quicktakes/2021/02/09/colleges-could-lose-183-billion-during-pandemic](http://www.insidehighered.com/quicktakes/2021/02/09/colleges-could-lose-183-billion-during-pandemic).

<sup>2</sup> [www.cbpp.org/research/state-budget-and-tax/states-can-choose-better-path-for-higher-education-funding-in-covid](http://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](http://www.nytimes.com/2020/10/26/us/colleges-coronavirus-budget-cuts.html).

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](http://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](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Tiawanda 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.*

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## DEPARTMENT OF EDUCATION

[Docket No.: ED-2021-SCC-0043]

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and approval; Comment Request; National Assessment of Educational Progress (NAEP) 2021 Update #2

**AGENCY:** Institute of Education Sciences (IES), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved information collection.

**DATES:** Interested persons are invited to submit comments on or before **APRIL 21, 2021**.

**ADDRESSES:** Written comments and recommendations for proposed

information collection requests should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this information collection request by selecting "Department of Education" under "Currently Under Review," then check "Only Show ICR for Public Comment" checkbox. Comments may also be sent to [ICDocketmgr@ed.gov](mailto:ICDocketmgr@ed.gov).

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Carrie Clarady, (202) 245-6347.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

**Title of Collection:** National Assessment of Educational Progress (NAEP) 2021 Update #2.

**OMB Control Number:** 1850-0928.

**Type of Review:** Revision of a currently approved collection.

**Respondents/Affected Public:** Individuals or Households *Total Estimated Number of Annual Responses:* 673,355.

*Total Estimated Number of Annual Burden Hours:* 401,495.

**Abstract:** The National Assessment of Educational Progress (NAEP), conducted by the National Center for Education Statistics (NCES), is a federally authorized survey of student achievement at grades 4, 8, and 12 in

various subject areas, such as mathematics, reading, writing, science, U.S. history, civics, geography, economics, technology and engineering literacy (TEL), and the arts. The National Assessment of Educational Progress Authorization Act (Public Law 107-279 Title III, section 303) requires the assessment to collect data on specified student groups and characteristics, including information organized by race/ethnicity, gender, socio-economic status, disability, and limited English proficiency. It requires fair and accurate presentation of achievement data and permits the collection of background, noncognitive, or descriptive information that is related to academic achievement and aids in fair reporting of results. The intent of the law is to provide representative sample data on student achievement for the nation, the states, and subpopulations of students and to monitor progress over time. NAEP consists of two assessment programs: the NAEP long-term trend (LTT) assessment and the main NAEP assessment. The LTT assessments are given at the national level only and are administered to students at ages 9, 13, and 17 in a manner that is very different from that used for the main NAEP assessments. LTT reports mathematics and reading results that present trend data since the 1970s.

The request to conduct NAEP 2021, including operational assessments and pilot tests: operational national/state/TUDA Digitally Based Assessments (DBA) in mathematics and reading at grades 4 and 8, and Puerto Rico in mathematics at grades 4 and 8; and operational national DBA in U.S. history and civics at grade 8 was approved in April 2020, with further updates to the materials approved in July and November 2020. Throughout 2020 NCES worked with its contractors and with OMB to find the best way to plan for a data collection in schools in 2021, and as the coronavirus pandemic progressed over the course of the year, plans for NAEP 2020 data collection changed multiple times. In November 2020, the NCES Commissioner announced the delay of NAEP 2021 by one year to early 2022.

Since then, NAEP has continued to work to salvage any pieces of their data collection plans for 2021 and begin planning for NAEP 2022. NCES has used the drawn and notified sample from 2021 for two data collections that don't include the student assessment that is central to the NAEP program, instead using that sample to collect information about basic school operations during the coronavirus