COGR
Council On Governmental Relations

Higher Education Emergency Relief Fund (HEERF) and related topical FAQs
April 30, 2021 VERSION 2.0

NOTE: The FAQs are current as of April 30, 2021. To-date, COGR has released the following FAQs:

- ***FAQs 1 thru 6 were released on April 5.***
- ***FAQs 7 thru 12 were released on April 30.***

FAQ #1: ***What is the HEERF?***

The HEERF is emergency relief for higher education and related institutions. Three tranches of HEERF funds are available. The most recent, via the American Rescue Plan, was signed into law by President Biden on March 11, 2021 and includes $40 billion designated for the HEERF (now referred to as HEERF III). This is in addition to the HEERF I ($14 billion) directed to higher education under the Coronavirus Aid, Relief, and Economic Security (CARES) Act signed into law by President Trump on March 27, 2020 and the HEERF II ($23 billion) directed to higher education under the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act signed into law by President Trump on December 27, 2020.

In each of the three relief bills, a small percentage of HEERF funds have been carved out as additional funding for minority-serving institutions—however, the large share of funding has been designated to higher education institutions using an allocation formula based on various student population metrics.

Two HEERF tranches (I and III) require higher education institutions to allot at least 50 percent of the HEERF to student grants. HEERF II requires spending on student grants to at least equal the amount required in HEERF I—the remainder can be used for allowable institutional uses. A Chart developed by the National Association of Student Financial Aid Administrators (NASFAA) is detailed and helpful, and explains key features and requirements of HEERF I, II, and III.

FAQ #2: **How much HEERF II and HEERF III funding was allocated to my institution?**

The U.S. Department of Education (ED) has created a HEERF II allocable table, which contains the allocated amounts by state and institution. To-date, ED has not released HEERF III allocated amounts by institution. However, the NASFAA website includes an article, American Council on Education Estimates New HEERF Allocations, which estimates the distribution of HEERF III funds across approximately 3,500 colleges and universities. Note, those institutions that are required to pay the endowment excise tax per the statutory requirements will have their allocations automatically adjusted.

FAQ #3: **Are there any important deadlines to which my institution should be paying attention?**

Yes. Institutions should pay special attention to the January 15, 2021 Federal Register Notice regarding the 90-day requirement to begin drawing funds specific to HEERF II:

> *Recipient acknowledges that its failure to draw down any amount of its supplemental grant funds within 90 days of the date of this supplemental award will constitute nonacceptance of the terms, conditions, and requirements of this Supplemental Agreement and of these supplemental grant funds. In such event, the Department, in its sole discretion, may choose to deobligate these supplemental grant funds or take other appropriate administrative action, up to and including terminating the grant award pursuant to 2 CFR 200.340.*

Also note, for those institutions that did not apply for HEERF I funds under the CARES Act, you must apply by April 15th to be eligible to receive HEERF II funds under the CRRSA Act.

FAQ #4: What is the federal guidance governing the use of the HEERF?

The U.S. Department of Education (ED) is responsible for oversight and guidance for the HEERF. ED previously issued HEERF I guidance and HEERF II guidance. On March 19th, Education issued additional updates and guidance: 1) HEERF I, II, and III – Lost Revenue FAQs (e.g., see FAQs 3. and 5. and new flexibilities, including research), and 2) HEERF Update Letter ***(e.g., HEERF II funds can be retroactively charged back to March 13, 2020).***

In addition, the standard guidance applicable to grants administration and costing principles in 2 CFR Part 200 and Education Department Grant Administration Regulations (EDGAR) should be followed.

FAQ #5: Are there "grant flexibilities" available with the HEERF (and programs beyond HEERF)?

Possibly. On March 19, 2021, OMB issued M-21-20, *Promoting Public Trust in the Federal Government through Effective Implementation of the American Rescue Plan Act and Stewardship of the Taxpayer Resources.* Included in M-21-20 is Appendix 3, *Disaster Relief Flexibilities to Reduce Burden for Financial Assistance* (pp. 10-11), which specifies:

> *OMB is allowing Federal awarding agencies the authority to grant the following exceptions to recipients affected by the pandemic as they deem appropriate and to the extent permitted by law. These exceptions apply not only to recipients with COVID-19 related Federal financial assistance awards,* ***but also to recipients with assistance awards not***

> ***related to COVID-19 {emphasis added}.*** *Federal awarding agencies must specifically consider exceptions that can advance racial equity and support for underserved communities.*

To-date, we do not have official word that the Department of Education will authorize the flexibilities in Appendix 3 to be applicable to the HEERF—however, to the extent that the flexibilities could be applied to the HEERF, it is possible ED will permit them to be applicable.

Note, the flexibilities mirror many of the flexibilities that were included in M-20-17, issued by OMB last year. And while application to the HEERF could be helpful in some situations, ***the larger value of M-21-20 may be in the application of flexibilities to assistance awards not related to COVID-19.*** In addition to following ED's approach to the flexibilities, COGR will reach out to other agencies to determine their approach to extending the flexibilities.

***FAQ #6:* Are there HEERF audit considerations?**

Yes, though it is still early to fully grasp what will be prioritized in any audit actions. On February 26, 2021, the Department of Education, Office of Inspector General (ED OIG) published Higher Education Emergency Relief Fund Reporting Requirements (ED-OIG/I20DC0013). The focus is on HEERF I directed to higher education ***(specifically, the Institutional Portion)*** under the CARES Act, and compliance with the CARES Act reporting requirements.

The ED OIG identified some situations of noncompliance—however, the report does not indicate any systematic issues. The report also shows how the Institutional Portion was expended across the sampled institutions—Figure 2 on page 6 shows results for Section 18004(a)(1) funds (portion allocated to all institutions) and Figure 3 on page 10 shows results for 18004(a)(2) funds (additional portion available only to HBCUs, Tribal colleges and universities, and other Minority Serving Institutions). Results for the Section 18004(a)(1) funds, Institutional Portion, show the leading categories as: Campus Safety, Additional Distance Learning Equipment, Tuition Reimbursement, Technology Hardware, and Other Uses.

For FY2020 Single Audits, HEERF I under the CARES Act have been (or currently are being) audited. Auditors are required to follow guidance in the 2020 Compliance Supplement Addendum (see pp. 66-76) to audit HEERF I. Note, in many situations the HEERF I funds will exceed the threshold for Type A programs, and thus will be audited as a major program in its first year.

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FAQ #7: ***Per FAQ #3 above, institutions should pay special attention to the January 15, 2021 Federal Register Notice and the 90-day requirement to begin drawing funds specific to HEERF II. However, ED's G5 system may not allow me to draw funds until all of our HEERF I (CARES) funds have been drawn down. Can you please provide a solution to the higher education community?***

This is the response from ED, to COGR (dated April 26, 2021):

> *HEERF II is a supplement to HEERF I. Since the CRRSAA funds were processed as supplements and you were not required to sign a new Certification and Agreement Form, your drawdown of the CARES/CRRSAA funds constitutes your acceptance of the terms and conditions of these funds as outlined in your GAN. As long as your institution continues to draw down as they have been, there should not be a concern. Remember also that you should not draw down all funds at once, rather as needed based on your expenses. For your reference, we have attached the Department's memo on excessive drawdowns.*

FAQ #8: ***Have HEERF III (ARP) funds been awarded? My institution has not yet received these funds.***

This is the response from ED, to COGR (dated April 26, 2021): *No, HEERF III has not begun to be awarded. Please continue to check the Office of Postsecondary Education website for the most up to date information (also note, questions can be emailed to HEERF@ed.gov).*

FAQ #9: ***Have updated HEERF III (ARP) FAQs been issued?***

This is the response from ED, to COGR (dated April 26, 2021): *We are currently awaiting guidance on the American Rescue Plan. Please continue to visit the Office of Postsecondary Education website for the most current information (also note, questions can be emailed to HEERF@ed.gov).*

FAQ #10 (LOST REVENUE): ***Are there special considerations for how my institution documents and charges "lost revenue" to our HEERF awards?***

These links from the Department of Education are helpful: HEERF I, II, and III – Lost Revenue FAQs, and 2) HEERF Update Letter (***e.g., HEERF II funds can be retroactively charged back to March 13, 2020***). In particular, per the Lost Revenue FAQs, FAQs 3. and 5. have raised thoughtful discussions. FAQ 3. states that "*supported research*" is an allowable source of lost revenue. FAQ 5. states that the event of "research grant income ending" is not an allowable source of lost revenue "*if the lost revenue is directly attributable to a cause other than the*

COVID-19 pandemic" (i.e., it may be allowable if the event is directly attributable to the COVID-19 pandemic).

Consequently, both FAQs 3. and 5. seem to provide flexibility. However, until updated FAQs are provided (see FAQ #9 above), COGR suggests that institutions take a cautious approach on using "lost revenue" associated with research support and activities as the justification for charges made to HEERF awards.

For institutions that are NACUBO members, COGR recommends consulting NACUBO's Navigating COVID-19 webpage, including NACUBO's COVID-19 Accounting Tutorials—these are excellent resource for additional information on lost revenue, revenue recognition, and other COVID-19-related topics.

FAQ #11 (F&A): Can F&A be charged to our HEERF awards?

Department of Education, HEERF II FAQs, updated on March 19, 2021, include the following response to this question (FAQ 18.):

> *Indirect costs may be charged only to Institutional Portion awards, both new and supplemental, and may not be charged to any Student Portion grant awards because the student allocation represents an amount of funds that must be distributed to students.*
>
> *Generally, this indirect cost rate will be the on-campus rate specified in an institution's negotiated indirect cost rate agreement. If an institution does not have a current negotiated indirect cost rate with its cognizant agency for indirect costs, it may appropriately charge the de minimis rate of ten percent of Modified Total Direct Costs (MTDC).*
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> *Please note that as described in 2 CFR § 200.403, costs must be consistently charged as either indirect or direct costs, but they may not be double-charged or inconsistently charged as both. For more information, please see the Department's Indirect Cost website.*

The portion of HEERF expenditures made on student grants are an MTDC exclusion and will not impact the F&A cost rate calculation. The portions made for allowable institutional uses may have to be incorporated in the F&A cost rate calculation. The CARES Act was the most restrictive on allowable uses for the institutional portion, while the CRRSA and ARP Acts provided expansions of allowable uses.

According to the Department of Education, Office of Inspector General (see FAQ #6), the most common use of the institutional portion of HEERF funds has been: campus safety, distance learning, tuition reimbursement, and technology hardware. F&A could be applicable to campus safety and distance learning expenditures. F&A would not be applicable to tuition reimbursement and technology hardware (assuming this is a capitalized expenditure). The

HEERF II FAQ above allows for the on-campus F&A cost rate to be used—it should be at the discretion of the institutions if the on-campus F&A cost rate is most appropriate, or if another F&A cost rate per the institution's F&A cost rate agreement is more appropriate.

FAQ #12 (Provider Relief Fund): Are there other COVID-19 relief programs that require attention?

Yes. In addition to the Higher Education Emergency Relief Fund (CFDA 84.425), the Provider Relief Fund (CFDA 93.498) may be applicable to research institutions that are affiliated with Academic Medical Centers. This program is administered by the U.S. Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA). Program guidance, including reporting requirements and audit, and available on the HHS CARES Act Provider Relief Fund webpage.

For FY2020 Single Audits, Provider Relief Funds under the CARES Act have been (or currently are being) audited. Auditors are required to follow guidance in the 2020 Compliance Supplement Addendum (see pp. 86-92) to audit the Provider Relief Fund. In addition, other programs that may require attention are FEMA reimbursement, federal money that may have flowed from your state, as well as COVID-19-specific research awards that were authorized under the CARES Act at the beginning of the pandemic.