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# Professional Judgment and Emergency Fund Programs: An Opportunity to Improve

By Nancy Conneely, LeAndra Ross, and Aaron N. Taylor, AccessLex Institute

*In Spring 2020, during the onset of the COVID-19 pandemic, the number of students facing financial hardships increased as job losses mounted and schools closed their campuses. Schools, the federal government, and other organizations stepped in to help students deal with emergencies; but there are often hurdles to quickly getting emergency aid into the hands of students. While Title IV of the Higher Education Act provides a viable response mechanism through its emergency aid provisions, these provisions are underutilized. In this paper, we discuss ways in which schools can more effectively use professional judgment authority to quickly get emergency aid to students when they need it. We also discuss ways in which Congress can improve federal policy by removing needless restrictions.*

Keywords: COVID-19, emergency aid, estimated financial assistance, professional judgment, student financial aid

The COVID-19 pandemic has been a source of immense distress for higher education students. The number of students facing financial hardships, including food and housing insecurity, increased as the pandemic impacted the job market and forced schools to close their campuses. These challenges have increased the need for schools to support students dealing with emergencies; but there are often hurdles to getting emergency aid into the hands of students quickly, if at all.

The last two years have seen an accumulation of research literature documenting ways the pandemic has impacted the financial, academic and mental well-being of students. The overarching theme is both clear and unsurprising: students are facing interwoven and largely unprecedented threats to their ability to undertake their studies. These threats often manifest in financial terms.

A 2020 study of undergraduates at a large public university found that the pandemic reduced wages by 31 percent among working students (Aucejo et al., 2020). About 40 percent of students lost a job or internship, or an offer of one and 61 percent of students had a family member that experienced a reduction in their income. Impacts were also seen among graduate and professional school students. In a spring 2021 survey of more than 13,000 law students, more than half reported that the pandemic negatively impacted their ability to cover their school and living expenses (Law School Survey of Student Engagement, 2021).

One of the most salient findings of both studies was the uneven nature of the pandemic's impacts. The undergraduate study found "substantial variation" based on student socioeconomic status. Lower income students were 55 percent more likely than their more affluent peers to report delaying graduation because of the pandemic. The study concluded that disparities in economic and health impacts accounted for 40 percent of this gap. In a different survey of more than 195,000 students at two-year and four-year institutions, students of color were more likely than White students to report having contracted the virus themselves or having had a friend or family member contract or die from the virus (The Hope Center, 2021).

The law student survey cited earlier also yielded pronounced racial, ethnic, and socioeconomic disparities in impacts. Latino/a students were almost twice as likely as White students to report that the pandemic interfered with their ability to cover their school and living expenses (45 percent versus 24 percent), with Black students also being more likely (35 percent). Law students who were first-generation college graduates were also more likely than their peers to report such difficulty (21 percent versus 11 percent).

These findings highlight how the pandemic threatens notions of diversity, equity, and inclusion. Institutions have been forced to adapt to new and enduring realities of more frequent student financial emergencies, particularly among underrepresented and vulnerable student populations. The *Coronavirus Aid, Relief, and Economic Security (CARES) Act* and the *American Rescue Plan Act* provided colleges and universities with funds to directly support students facing pandemic-related financial emergencies. There have been many recent reports of institutions using these funds to clear student account balances and put money directly in students' pockets (Farmer, 2021; Vera, 2021). But this is only temporary relief. The enduring effects of the pandemic require an enduring response.

Title IV of the Higher Education Act (HEA) already provides a viable response mechanism through its emergency aid provisions. Unfortunately, these provisions are underutilized. In this paper, we discuss ways in which Title IV “professional judgement” provisions can be used to support students during these challenging times. We also discuss ways in which Congress can improve the provisions by removing needless restrictions.

## **Background on Professional Judgment and Title IV Emergency Aid Rules**

### **Professional Judgment**

Section 479A of HEA grants Financial Aid Administrators (FAAs) the authority to make professional judgment (PJ) adjustments on a case-by-case basis for special and unusual circumstances not reflected on a student’s Free Application for Federal Student Aid (FAFSA). That discretion includes the ability to adjust the Cost of Attendance (COA) components and/or the data elements used in calculating the Expected Family Contribution (EFC) based on adequate documentation of the circumstances. Such circumstances may include unemployment, changes to the student’s or family’s income/assets, and medical expenses not covered by insurance. Data on the frequency of professional judgment adjustments vary across institutions; however, in May 2021, the National Association of Student Financial Aid Administrators (NASFAA) found in a survey of FAAs at member institutions that 56 percent of respondents reported an increase in professional judgment requests from the previous year. Additionally, 64 percent of respondents anticipated an additional increase in requests for the 2021-2022 academic year (National Association of Student Financial Aid Administrators, 2021).

The professional judgment process is one that demonstrates the importance of not applying a one-size-fits-all approach when working with students. Circumstances change, and it is important to have a process in place that accounts for a more accurate assessment of the student’s and/or family's ability to contribute to the cost of education. As such, FAAs are given the latitude to assist in creating a more level playing field where students with limiting financial circumstances can have access to higher education. Over the years, however, that latitude has caused FAAs to feel uncertain and, in some cases, constrained by the ambiguity in guidance and level of discretion the Department of Education (ED) extends to administrators. A quick search of ‘professional judgment’ or ‘cost of attendance’ on NASFAA’s AskRegs knowledgebase reveals the complex questions FAAs have sought guidance around in the management of these processes. Questions such as “What are the guidelines for using professional judgment related to high medical expenses?” or “Can Title IV aid be used to pay late fees, finance charges, or overtime charges?” are just two examples of the vast questions FAAs ask when needing reliable and knowledgeable answers in the intricate world of financial aid regulation. Insert a global pandemic and that further exacerbates the circumstances and processes around professional judgment adjustments.

### **Emergency Aid**

Students facing financial hardship due to unexpected life events is not surprising to the higher education world. Pre-COVID, some colleges and universities already had institutional emergency funding programs in place to assist their students through hardships, such as housing or food insecurities and uninsured medical costs. Based on a 2016 National Association of Student Personnel Administrators (NASPA) survey on the landscape of emergency aid programs, 523 campuses reported providing emergency aid programs with 82 percent of those campuses offering their programs for three or more years (Kruger et al., 2016).

While emergency aid opportunities are often viewed as a benefit to students in need, under 34 CFR 685.102(b) and 673.5(c), monies received from these types of institutional programs must be counted within the student’s financial aid package as they are considered Estimated Financial Assistance (EFA) for the purposes of Title IV of the HEA. As a result, this regulation poses a challenge for students who receive financial aid in the academic year that fulfills their unmet need and/or maximum COA. In this scenario, the

student is unable to receive additional financial aid resources thereby preventing them from receiving emergency aid. This often creates an unforeseen barrier that goes against the spirit of emergency aid for students in extreme need.

### **Administrative Burdens and Relief**

Professional judgment and emergency aid processes have been an administrative burden on financial aid offices prior to the pandemic. On a federal level, complex and/or ambiguous regulations, increased compliance standards, and federal student aid programmatic changes contribute to those burdens. On an institutional level, colleges and universities can experience insufficient funding levels for the number of students in financial need, significant training gaps for staff involved in these process, labor shortages, and inadequate policies and procedures. Undoubtedly, these burdens have intensified as a result of COVID-19 and the pandemic.

However, there have been silver linings for institutions in the pandemic. First, in an effort to assuage the concerns of administrators around the use of professional judgment, in their August 2021 Dear Colleague Letter, ED reminded FAAs (and encouraged the use) of their authority to perform these adjustments (U.S. Department of Education, 2021a). Furthermore, ED reassured administrators of the Department's anticipation and expectation of increased appeals during the COVID-19 pandemic in hopes of empowering FAAs to feel more secure in using their discretion.

Secondly, ED issued student emergency grants to higher education institutions via the *CARES Act*, a \$2.2 trillion economic relief package provided to Americans in March 2020 in response to COVID-19 (Coronavirus Aid, Relief, and Economic Security Act, 2020). Referred to as the Higher Education Emergency Relief Fund (HEERF), these grants require institutions to give at least half of the money directly to students in the form of emergency grants for COVID-related expenses, while the remainder may be used by the school (U.S. Department of Education, 2021b). Perhaps one of the most significant burdens this funding has alleviated from institutions, administrators and students is that it is **not** considered EFA and, thus, should not be included in or counted against a student's financial aid package and COA.

### **AccessLex COVID Grant to Law Schools**

In addition to federal relief, institutions of higher education, charities, individual donors and community partners have also come together throughout the pandemic to create various emergency relief funds for postsecondary students. For example, AccessLex Institute made available \$5 million through a Law Student Emergency Relief Program to its approximately 200 member law schools (AccessLex Institute, 2020). With grants of \$25,000 each, law schools were able to create new or add to existing emergency funds to aid students suddenly dealing with myriad crises.

Law schools reported to us that the majority of grants were used by students for basic needs such as housing costs, like rent (36 percent) and food (15 percent). Law students also used the emergency grant money for technology as classes moved online, to cover the loss of income after losing their job, and for medical expenses. Without access to emergency grants such as these, many students across the country would not have been able to pay for these sudden expenses.

But as welcome as this and other grant money has been to students and schools, distributing it has not always been easy. For example, we heard from some law schools that due to the challenges described above, such as time-intensive professional judgment processes and the limitations of Title IV estimated financial assistance rules, they could not always distribute money in a timely way or sometimes at all. While this has been a problem throughout the pandemic, it should serve as an opportunity for policymakers, advocates and schools to create a system that works better for students. We should all heed the lessons learned and let them guide us as we move forward.

## Recommendations

To ensure that emergency grant funds flow quickly and seamlessly (and in many cases, at all) to students who have urgent needs, schools should improve communication and streamline its processes and procedures to get money into the hands of students when they need it, and Congress must remove unnecessary restrictions related to financial aid awards.

### Institutional Processes

1. *Dedicated, streamlined procedures to get money into students' hands more quickly*

Timing matters in emergent situations. The speed with which students in precarious and, in some cases, dire circumstances need financial resources to take care of an emergency may be paramount to their mental and academic well-being. Institutional structures can have a deeply bureaucratic approach to processes which often complicates and slows down the system. In turn, this can make it harder to serve students, and particularly those who need the most immediate assistance. While some of the reasoning for this can be attributed to federal and/or state regulations to which institutions must adhere, administrators should make honest observations about their internal emergency funding and professional judgment processes with the intention of developing a system that facilitates getting money quickly into the hands of their students who need it the most.

In response to the challenges faced by colleges in getting emergency funding to their students in the wake of COVID-19, NASFAA, NASPA and MDRC released a report in July 2021 evaluating the CARES Act funding received at postsecondary institutions (National Association for Student Financial Aid Administrators, National Association of Student Personnel Administrators, MDRC, 2021). The report offered five ways colleges can ensure more effective emergency aid outcomes including providing clear direction to students and perfecting the processes currently in place. Additionally, they concluded there are valuable lessons to learn from the creation and implementation of the HEERF emergency grants that institutions can replicate in the development or improvement of their institutional aid programs. While these recommendations and processes may not be universally applied, institutions can still assess whether all or parts of these practices can produce a more effective and timely response that leads to improved outcomes for their students.

2. *Better communication and collaboration between schools, departments, and aid offices*

Along with ensuring more streamlined procedures, where appropriate, institutions should strategize on how interoffice communication and collaboration can improve their processes. The higher education system can be a siloed culture with deep disconnection across departments. These disconnects are often felt by students. Given the nature and depth of the industry, this is expected to some extent. Yet, if the shared mission of faculty and administrators within the institution is to ensure students successfully cross the finish line to graduation, cross-functional collaboration and understanding are critical. This is especially true during times of crisis and unexpected changes.

Creating interoffice committees and/or communication plans can be a strategic way to collaborate on institutional procedure development and considerations. It can also keep essential departments informed on the emergent financial trends among students on campus, provide systemic training to administrators who are involved (or should be involved) in the process and gather feedback on equitable ways to determine eligibility and/or allocate funding. While emergency fund programs and professional judgment are heavily regulated processes that require specific knowledge and expertise, parts of the process, particularly for emergency fund management, can operate more effectively with coordinated efforts across departments. In the aforementioned 2016 NASPA report,

the authors emphasize this point by stating, “Successful administration of emergency aid programs is likely the result of high levels of collaboration across departments.”

3. *Build in consistent and purposeful assessments to monitor and evaluate program efficacy*

If you desire to understand how a program is operating, intentional program evaluation is vital to assessing its effectiveness. For the professional judgment process, it is imperative to have comprehensive institutional policies and procedures in place that will guide all parties through understanding the circumstances to be considered, appropriate documentation for the circumstance(s), processing timeline expectations and key administrators involved in the process. Additionally, implementation of a consistent quality control review process of completed appeals ensures there is an assessment in place by which to evaluate administrators’ understanding and accuracy in the process.

Similarly, emergency aid programs also need to have robust policies and procedures around the administration and methodology of the program. Metrics on evaluating efficacy may entail obtaining feedback from student aid recipients or other campus partners on the emergency aid process. It can also include collecting and assessing data on the student and/or academic success outcomes of those receiving emergency aid. In any case, strategic and consistent implementation of metrics, benchmarks and data should be established to examine, track and analyze program outcomes.

## **Federal Policy**

1. *Dedicated federal emergency aid not subject to EFA rules*

As stated above, one key aspect of the student portion of the federal HEERF grants is that the money is not considered estimated financial assistance under Title IV of the HEA. This means that schools have been able to quickly and seamlessly get money into the hands of students when they need it. While this is good news for students facing emergencies during the ongoing pandemic, that money will eventually run out. And when it does, students will once again be in a position to have to wait needlessly for money that they need immediately.

To mitigate this issue, Congress could continue to appropriate money for HEERF even when the COVID-19 pandemic is over and student emergencies are not as prevalent as they have been over the last two years. Because even though the number of student emergencies will shrink, they are not going away.

2. *Exempt all sources of emergency aid from Title IV rules*

While exempting certain federal funding from HEA Title IV rules has been beneficial for students, it doesn’t go far enough. Schools’ emergency funds are often made up of money from a number of other sources—alumni, charities, donors, and schools themselves. These sources of funds are considered estimated financial assistance and count as aid under Title IV, which can result in the neediest students being unable to access those grants in an emergency because they have already received the maximum amount of aid allowed.

Congress could alleviate this problem by exempting all sources of emergency aid from Title IV estimated financial assistance rules. This would require Congress to define “emergency aid” in a narrow way that would make such a change clear and workable in practice for financial aid administrators. Doing so would mean that financial aid administrators would not have to use the professional judgement process to increase a student’s aid amount, which can be time-consuming and

requires strict documentation. Making this change just for emergency aid would ensure that when time is of the essence, students will get money when they need it, regardless of where the money comes from.

## Conclusion

The pandemic has undoubtedly created challenges that institutions, administrators and students are continuing to navigate. Professional judgment appeals and emergency aid programs are vital to the financial, academic and mental well-being of students, particularly those from underrepresented and vulnerable backgrounds. The above recommendations will help to simplify and streamline these processes so more effective, proactive practices are in place to make it easier and quicker for students to access the resources they need.

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