



NEA Collective Bargaining and Member Advocacy

Higher Education: Tax-Free Benefit and Availability of Federal Funds for Higher Education Employees’(including Graduate Student Assistants) Student Loans

Higher Education Institutions may use emergency federal funding from the recent stimulus bills to create and support educational assistance programs that pay off employees’ student loans tax-free.¹ The employee benefit can be funded from money HEER (Higher Education Emergency Relief) funds and GEER (Governor’s Emergency Education Relief) Programs.

Offering to cover an employee’s student loan payments can help Institutions recruit and retain educators in response to the pandemic, and these payments will not be treated like taxable income for the employee if distributed through an educational assistance program.

Here’s how it works:

Under section 127 of the Internal Revenue Code, an educational assistance program allows employers to contribute up to \$5,250 per year for an employee’s educational expenses, and the payments will not be considered taxable income for the employee. The CARES Act established that educational assistance programs may now be used to pay off federal or private student loans for an employee’s education (loans for a spouse or dependent’s education are not covered). The student loans can be for education received before employment or education the employee is currently pursuing while employed. The education does not have to be job-related or result in a degree. Payments can be made directly to the employee, to the lender, or to the student loan servicer that processes payments for the lender.

¹ U.S. Dep’t of Educ., *Frequently Asked Questions – Elementary and Secondary School Emergency Relief Programs, Governor’s Emergency Education Relief Programs*, 46 (May 2021), https://oese.ed.gov/files/2021/05/ESSER.GEER_FAQs_5.26.21_745AM_FINALb0cd6833f6f46e03ba2d97d30aff953260028045f9ef3b18ea602db4b32b1d99.pdf

Congress has extended this tax-free student loan benefit until at least **January 1, 2026**.

Affiliates should consider bargaining with employers to assist members burdened with student debt. With payments of \$5,250 per year, the benefit could add up to over \$25,000 in student debt relief by 2026. This can erase an educator's student debt or significantly reduce it. Educators who are also pursuing Public Service Loan Forgiveness may use the money to make the required monthly or lump-sum payments for that program.

Unions may collectively bargain the terms of the program, with a few caveats:

- The terms of the educational assistance program must be set forth in a separate, written document containing only the educational assistance program.
- If an employer adopts an educational assistance program (or amends a current one to include the new benefit), the employer must notify eligible employees of the benefit and the program's terms.
- If the employer makes the payments directly to the employee, then the employee must be able to provide proof to the employer that the payment is being used for the employee's student loans (like a receipt or student loan statement).
- Employers cannot offer this tax-free benefit as a choice in lieu of an employee's salary or other taxable benefits. And the educational assistance program cannot discriminate in favor of highly compensated employees making over \$130,000.

HOW TO TAKE ADVANTAGE OF THE BENEFIT:

CBA and MOU. Affiliates can collectively bargain for the creation of a tax-free employer-paid student loan benefit. Even if you're currently not in scheduled full negotiations, consider bargaining a Memorandum of Understanding (MOU) to create the benefit.

Model Collective Bargaining Language:

The employer and association shall create and adopt a separate written educational assistance plan, establishing an educational assistance program under Section 127 of the Internal Revenue Code. The program shall provide all eligible employees with student loans with \$5,250 per year in student loan payment assistance until the expiration of the tax-free benefit. The program shall cover any student loan incurred by the employee for education of the employee. Immediately after the jointly developed educational assistance plan is agreed to by the employer and the association, the employer will provide employees the terms and availability of the program. The employer will make payments directly to eligible employees, and employees will provide the employer with a

statement from their student loan servicer or lender showing the payment was used for their student loans.

Using HEER funds

Employees at Institutions of Higher Education (IHEs) who have outstanding debt owed from attending that *same* institution can bargain for the use of Higher Education Emergency Relief (HEER) funds for student debt relief.

Further, locals that already had some type of monetary allotment from the employer for employee's student debt or a tuition reimbursement provision in their *existing* collective bargaining agreements (CBAs) or MOUs could advocate for the use of HEER funds to fulfill those preexisting obligations, whether or not the employees are current or former students of the same institution.

Here's how it works:

HEER funds can only be used to: “(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.”² IHEs are also required to use at least 50% of their HEER funds for direct student aid.

For *student*-employees with outstanding debt, IHEs can use HEER Funds to discharge student debt or unpaid balances “by discharging the complete balance of the debt as lost revenue and reimbursing themselves through their HEER institutional grants or by providing additional emergency financial grants to students (with their permission).”³ In fact, ED (U.S. Department of Education) “strongly encourages institutions to discharge such debt”⁴ and a number of IHEs

² Office of Postsecondary Education, U.S. Dep't Educ., Notice of Interpretation Regarding Period of Allowable Expenses for Funds Administered Under the Higher Education Emergency Relief (HEERF) Program (Mar. 22, 2021), <https://www.federalregister.gov/documents/2021/03/22/2021-05849/notice-of-interpretation-regarding-period-of-allowable-expenses-for-funds-administered-under-the#footnote-2-p15208>.

³ U.S. Dep't Educ., Higher Education Emergency Relief Fund III Frequently Asked Questions (May 24, 2021), <https://www2.ed.gov/about/offices/list/ope/arpfaq.pdf>.

⁴ U.S. Dep't Educ., Higher Education Emergency Relief Fund III Frequently Asked Questions (May 24, 2021), <https://www2.ed.gov/about/offices/list/ope/arpfaq.pdf>.

have recently elected to use HEERF to forgive the debt of all or some of their students, including Oral Roberts University,⁵ Trinity Washington University,⁶ and Quinsigamond Community College.⁷

For employees who have preexisting obligations in CBAs or MOUs that their IHE employers are having trouble fulfilling because of the economic downturn caused by the coronavirus pandemic, unions can urge employers to use HEER funds to fill those gaps. ED advises that IHEs may use HEER funds “to pay for certain payroll costs, including employee benefits, if (1) such costs are newly associated with coronavirus and (2) the costs were incurred on or after March 13, 2020, the date of the declaration of the national emergency due to the coronavirus.”⁸

The deadline to apply for the latest appropriation of HEER (HEER III) funds for many IHEs was August 11, 2021. Some IHEs do not need to apply and others have extended deadlines. To see where your IHE fits, check [here](#).⁹

Using GEER funds

Another possible source for student debt relief from IHE employers come from the Governor’s Emergency Education Relief Fund (GEER).

How it works

Whereas HEER funds were directed to IHEs primarily for the benefit of *students*, GEER funds are more flexible, and were disbursed to state governors who have broad discretion to direct them to “education-related” entities. ED guidance specifically provides that IHEs may use GEER funds to support “a broad array of activities,” including “personnel” or “payroll” costs.¹⁰

⁵ Ryan Love, *Oral Roberts University cancels \$500,000 in student debt*, 2NEWS OKLAHOMA (Aug 23, 2021), <https://www.kjrh.com/news/local-news/oral-roberts-university-cancels-500-000-in-student-debt>.

⁶ Sarah Weissman, *Clearing Ledgers, Setting New Paths*, INSIDE HIGHER ED (Jul. 22, 2021), <https://www.insidehighered.com/news/2021/07/22/trinity-washington-university-forgives-18-million-student-debt>.

⁷ Quinsigamond Comm. Coll., *QCC Invests in Community By Eliminating Student Debt* (Jun. 9, 2021), <https://www.qcc.edu/news/2021/06/invets-community-eliminating-student-debt>.

⁸ U.S. Dep’t Educ., *Higher Education Emergency Relief Fund III Frequently Asked Questions 15* (May 24, 2021), <https://www2.ed.gov/about/offices/list/ope/arpfaq.pdf>.

⁹ U.S. Dep’t Educ., *Off. Postsecondary Ed., ARP: American Rescue Plan (HEERF III)*, <https://www2.ed.gov/about/offices/list/ope/arp.html>.

¹⁰ U.S. Dep’t Educ., *Frequently Asked Questions about the Governor’s Emergency Education Relief Fund (GEER Fund) 5*, <https://oese.ed.gov/files/2020/10/FAQs-GEER-Fund.pdf>.

As GEER funds were already disbursed to governors and are required to be used by the end of 2021,¹¹ availability of those funds will vary depending on state priorities and deadlines (some states invited applications for funds, while others directed funds without applications) and whether your IHE has already applied for GEER funds. Check your state and IHE websites.

Bargaining and Organizing Opportunity: Along with bargaining at the table or other labor-management discussions, locals looking to engage in securing any of the above mentioned concepts, may want to also consider initiating social justice unionism strategies such as Bargaining for the Common Good (social justice advocacy where the local uses the contract fight as an opportunity to organize with community partners around a set of demands that benefit not just the bargaining unit, but also the wider community as a whole).

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¹¹ See U.S. Dep't Educ., Certification and Agreement for Funding under the Education Stabilization Fund Program Governor's Emergency Education Relief Fund, <https://oese.ed.gov/files/2020/04/GEER-Certification-and-Agreement.pdf>.