DEPARTMENT OF EDUCATION

34 CFR Parts 668 and 677

[Docket ID ED–2020–OPE–0078]

RIN 1840–AD62

Eligibility To Receive Emergency Financial Aid Grants to Students Under the Higher Education Emergency Relief Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Department of Education regulations so that an institution of higher education (IHE) may appropriately determine which individuals currently or previously enrolled at an institution are eligible to receive emergency financial aid grants to students under the Higher Education Emergency Relief programs, as originally enacted under the Coronavirus Aid, Relief, and Economic Security (CARES) Act (March 27, 2020).

DATES: This rule is effective on May 14, 2021.

FOR FURTHER INFORMATION CONTACT: Karen Epps, U.S. Department of Education, 400 Maryland Avenue SW, Room 2B133, Washington, DC 20202. Telephone: (202) 377–3711. Email: *HEERF@ed.gov.* 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:

Executive Summary

Purpose of This Regulatory Action

On March 27, 2020, Congress enacted the CARES Act, Public Law 116–136, to help the nation cope with the economic and health crises created by the novel coronavirus disease (COVID–19) outbreak. Section 18004 of the CARES Act establishes the Higher Education Emergency Relief Fund (HEERF) and instructs the Secretary to allocate funding to eligible IHEs in connection with the COVID–19 outbreak. Section 18004(c) states that institutions must use at least 50 percent of their allocations ''to provide emergency financial aid grants to students for expenses related to the disruption of campus operations due to coronavirus (including eligible expenses under a student's cost of attendance, such as food, housing, course materials, technology, health care, and child care).''

Neither section 18004(c) nor any other part of the CARES Act defines the term ''student'' or the phrases ''grants to students'' or ''emergency financial aid grants to students.''

On June 17, 2020, the Department published an interim final rule (IFR) in the **Federal Register** (85 FR 36494), in which, for purposes of the phrases ''grants to students'' and ''emergency grants to students'' in section 18004(a)(2), (a)(3), and (c) of the CARES Act, ''student'' was defined as an individual who is, or could be, eligible under section 484 of the Higher Education Act of 1965, as amended (HEA), to participate in programs under title IV of the HEA.

Upon further consideration and in response to public comments, the Department is removing the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarifying in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under the HEERF programs. Because an individual is no longer required to be eligible for title IV student aid (referred to herein as ''title IV eligible'') to receive a HEERF student grant, the Department removed the definition of ''student'' from the general provisions regulations that apply to student assistance under the title IV programs and relocated the revised definition to 34 CFR part 677, which governs the HEERF programs.

Summary of the Major Provisions of This Regulatory Action

The final regulations define ''student,'' for purposes of the phrases ''grants to students,'' ''emergency financial aid grants to students,'' and ''financial aid grants to students'' as used in the HEERF programs, as any individual who is or was enrolled (as defined in 34 CFR 668.2) at an eligible institution (as defined in 34 CFR 600.2) on or after March 13, 2020, the date of declaration of the national emergency concerning the novel coronavirus disease. This definition enables an IHE to appropriately determine which individuals currently or previously enrolled at an institution are eligible to receive emergency financial aid grants to students under the HEERF programs, as originally enacted under the CARES Act and continued through the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSAA) (Pub. L. 116–260) and American Rescue Plan Act of 2021 (ARP) (Pub. L. 117–2).

Costs and Benefits

The emergency funds available under CARES, CRRSAA, and ARP are provided to allow students and institutions to cope with expenses related to the COVID–19 pandemic. The broader definition of ''student'' adopted in these final regulations ensures those affected by COVID–19 expenses may access funding and continue their education and simplifies the administrative burden on institutions. The Department estimates that applying for the funds will cost students $22.4 million and administering the funds will cost institutions approximately $1.2 million. Transfers from the Federal Government total $76.2 billion, of which $31.5 billion must be used for emergency grants to students.

Background: On March 27, 2020, Congress enacted the CARES Act, Public Law 116–136, to help the nation cope with the economic and health crises created by the COVID–19 outbreak. Section 18004 of the CARES Act establishes the HEERF and instructs the Secretary to allocate funding to eligible IHEs in connection with the COVID–19 outbreak. Section 18004(c) states that institutions must use at least 50 percent of their allocations ''to provide emergency financial aid grants to students for expenses related to the disruption of campus operations due to coronavirus (including eligible expenses under a student's cost of attendance, such as food, housing, course materials, technology, health care, and child care),'' implicitly allowing institutions to use more than 50 percent of their funds for this purpose. Finally, section 18004(e) requires institutions to submit reports to the Secretary describing how the funds were used under the section and authorizes the Secretary to specify the time and manner of such reporting.

Neither section 18004(c) nor any other part of the CARES Act defines the term ''student'' or the phrases ''grants to students'' or ''emergency financial aid grants to students.'' In the IFR, the Department concluded that Congress intended the category of those students eligible for ''emergency financial aid grants to students'' in section 18004 of the CARES Act to be limited to those individuals eligible for title IV aid.

The Department considered a number of factors in reaching this conclusion. For one, the Department was concerned at the time it issued its IFR that an interpretation of ''student'' in ''emergency financial aid grants to students'' that was broad enough to cover anyone engaged in learning, or anyone enrolled in any way at an institution, or anyone enrolled full-time

at an institution in a program leading to a recognized postsecondary credential, would not be consistent with existing law independent of title IV status. Certain individuals without qualifying immigration statuses are already prohibited, under 8 U.S.C. 1611(a), from receiving any ''Federal public benefit,'' and this prohibition applies ''[n]otwithstanding any other provision of law[,]'' unless certain other exceptions are met under 8 U.S.C. 1611(b). Section 1611(c) defines ''Federal public benefit'' to include (a) ''any grant . . . provided by an agency of the United States or by appropriated funds of the United States,'' and (b) ''any . . . postsecondary education . . . benefit . . . for which payments or assistance are provided to an individual . . . by an agency of the United States or by appropriated funds of the United States.'' The Department originally stated in the IFR that this prohibition applies to the HEERF funds.

On the other hand, the Department concluded that a narrower interpretation of the term ''student'' in the phrase ''emergency financial aid grants to students''—for example, to cover only the group that received Federal Pell Grants as referenced in section 18004(a)(1)(A)—would be overly restrictive and less supportable under the language of the CARES Act. As such, the Department originally advanced within the IFR its belief that Congress intended that HEERF grants to students under the CARES Act be limited to those students who are eligible to participate in the title IV programs.

The Department's IFR was challenged in a series of lawsuits, where plaintiffs argued that the Department's position improperly excluded otherwise eligible students from crucial emergency aid amid the global pandemic. In each of these suits, plaintiffs prevailed on the title IV issue. In *Oakley* v. *DeVos,* No. 4:20–cv–03215–YGR, ECF No. 44, the U.S. District Court for the Northern District of California enjoined the Department from enforcing any eligibility requirement for students to receive HEERF emergency financial aid grant, including title IV's eligibility criteria and applicable restrictions under 8 U.S.C. 1611(a) ''with respect to any community college in California.'' Similarly, the U.S. District Court for the Eastern District of Washington enjoined the Department's title IV restrictions (though not the application of 8 U.S.C. 1611(a)) as to IHEs in the State of Washington. *Washington* v. *DeVos,* No. 2:20–cv–00182–TOR, ECF No. 31, 63. Decisions in *Noerand* v. *Devos,* Civil No. 20–11271–LTS (D. Mass. Jul. 24, 2020) and *Massachusetts* v. *DeVos,* No. 1:20–cv–11600–LTS, ECF No. 3, similarly found that limiting HEERF grant to ''students eligible under Title IV would lead to absurd results[,]'' and additionally concluded that the CARES Act ''constitutes a statutory exception to Section 1611's general denial of federal public benefits.'' These findings are consistent with the public comments received.

Along with taking stock of these legal decisions, the Department began the process of reviewing the substantial number of public comments it received on the IFR that requested the Department to amend its definition of ''student'' for the purposes of HEERF grants to students. Of the 4,149 public comments the Department received, less than 10 were written in support of the Department's restrictions on HEERF student grant eligibility, and even those limited public comments were more focused on support for the concept of ''emergency financial aid grants'' for students with costs associated with the coronavirus rather than the restrictions articulated in the IFR itself.

Subsequently, on December 27, 2020, former 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 approximately $22.7 billion for IHEs under HEERF programs (referred to herein as HEERF II or CRRSAA funding), with funding appropriated for the existing (a)(1), (a)(2) and (a)(3) programs previously authorized under Section 18004 of the CARES Act, as well as funding for a new (a)(4) program authorized under the CRRSAA. As with the CARES Act, the CRRSAA authorized, and in some cases required, institutions to use their HEERF award for ''financial aid grants to students,'' without defining the terms ''students'' or ''financial aid grants.'' *See* CRRSAA section 314(c)(3). However, unlike the CARES Act, CRRSAA directed that in ''making financial aid grants to students, an institution of higher education shall prioritize grants to students with exceptional need[.]'' *See id.* As a result of this new requirement of how institutions must distribute HEERF II financial aid grants to students, the Department announced in question 16 of the HEERF II Public and Private Nonprofit Institution (a)(1) Programs (CFDA 84.425E and 84.425F) Frequently Asked Questions published January 14, 2021, and updated March 19, 2021, (*https://www2.ed.gov/about/offices/list/ope/updatedfaqsfora1crrssaheerfii.pdf*) that the definition of student in the IFR would not apply to funds under the CRRSAA.

Finally, on March 11, 2021, President Biden signed into law the American Rescue Plan Act of 2021 (ARP) (Pub. L. 117–2). This bill provided an additional approximately $39.6 billion for the HEERF programs (HEERF III or ARP funding) and retained the same prioritization requirement for ''students with exceptional need'' as was contained in CRRSAA. Again, ARP did not define the term ''student'' or ''financial aid grants.''

In this final rule, we are revising the definition of ''student'' to make clear that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under HEERF program requirements. Because an individual is no longer required to be title IV eligible in order to receive a HEERF student grant, we are removing the definition of ''student'' from the general provisions regulations that apply to student assistance under the title IV programs and relocating the revised definition to 34 CFR part 677, which governs the HEERF programs.

The Department adopts this change for several reasons. Upon further review and in consideration of the comments received in response to the IFR, first we believe that adopting a definition of ''student'' that is not limited to title IV eligibility better reflects Congress's intent when it created the portion of the Higher Education Emergency Relief Fund that goes to students in the CARES Act. Congress created a program that was designed to award emergency financial aid grants in the most expedient way possible without the establishment of unnecessary roadblocks that would slow down the ability of institutions to help students address added expenses stemming from the COVID–19 national emergency. Defining ''student'' to mean anyone who is or was enrolled at an eligible institution gives institutions of higher education maximal flexibility to focus on identifying the students they think are most in need of help instead of getting tied down in checking eligibility criteria.

By contrast, a definition of ''student'' tied to eligibility for title IV financial aid would result in significant additional roadblocks and delays. It would require institutions to encourage students to complete the Free Application for Federal Student Aid (FAFSA) and then process those applications before being able to award aid. If an institution decided to create its own form, it would have to find ways to verify various eligibility requirements for title IV aid, which would also be

time consuming if not impossible to do without using the FAFSA. For instance, institutions would need to find ways to verify that students had valid Social Security numbers or were otherwise eligible noncitizens, which could mean checking with the Social Security Administration or the Department of Homeland Security. Institutions would also need to ensure male students had registered with the Selective Service. Students filling out the FAFSA, meanwhile, could face additional burdens, such as the verification process. These concerns could particularly be an added burden for veterans because they are less likely to complete the FAFSA because they receive benefits from other Federal agencies. Students may also be confused and think they need to qualify for need-based title IV aid to receive emergency grants and not apply when they do need the funds. Finally, because colleges are not required to award emergency grants to all students, there are some individuals who could end up taking on the burden of completing the FAFSA and ultimately not receive any further assistance.

Second, a simpler definition of ''student'' ensures that colleges can assist any student harmed by the COVID–19 national emergency. Data show that the past year has wrought disproportionate negative effects on low-income individuals, individuals of color, and the communities in which they reside.[1]

These funds are available to respond to the effects of an unexpected and once-in-a-century pandemic. No student could have reasonably foreseen or planned for the substantial added expenses he or she is facing because of the COVID–19 national emergency. For some, that may mean lost jobs or reduced wages. For others it could mean sudden and unexpected needs to travel home, while others may face added expenses by not being able to go home at all. Students who were once in stable financial situations could now find themselves in need of significant support. Those who were economically hurting before may be even worse off. The definition of ''student'' in this final rule allows an institution of higher education that knows its individual students better than the Department ever could to make the proper decisions about who needs the support. As institutions make these decisions, we note that the distribution of HEERF emergency financial aid grants must prioritize grants to students with exceptional need, such as students who receive Pell Grants, and must not be distributed in a manner that excludes individuals on the basis of race, color, national origin, disability, or sex. *See, e.g.,* 42 U.S.C. 2000(c)–(d) (Title IV and Title VI), 29 U.S.C. 701 *et seq.,* 20 U.S.C. 1681 (Title IX).

Third, the Department now recognizes it would be inappropriate to apply the definition of ''student'' originally articulated in the IFR because the Department no longer considers that a student would need to be eligible for Federal financial aid under title IV of the Higher Education Act. The Department is changing its position on this issue after being persuaded by commenters that the requirement in the CARES Act that the Department award funds using the same mechanisms used to distribute title IV aid as well as saying that funds could go to any portions of a student's cost of attendance do not provide compelling evidence that emergency grants should therefore only be limited to students eligible for title IV financial aid. When Congress created these funds, it indicated they should be awarded to institutions through the same mechanisms used to distribute title IV financial aid. We believe this decision indicated a Congressional preference for using a process that institutions are already familiar with, rather than an entirely new mechanism, in order to expedite the distribution of funds. We do not believe this procedural decision reflects an indication that fund distribution must be restricted only to those eligible for title IV financial aid. Congress created a special distribution formula for the funds instead of relying on existing ones used for campus-based aid. It gave institutions discretion over how to award funds instead of spelling out eligibility criteria. While Congress did ask that these funds be awarded through the same mechanisms used to distribute title IV financial aid, that language signaled intent that these funds should not go through a complicated new award process. Similarly, while the CARES Act does state that emergency financial aid grants can go to any part of a student's cost of attendance as defined under the Higher Education Act, this is a concept that is not limited to recipients of title IV aid. The cost of attendance is a commonly used way of disclosing the price of education to students and the public on institutional websites and is a broadly used term of art that Congress adopted to make the funds available for a wide array of purposes while also ensuring that they would cover expenses related to attending postsecondary education. Finally, the agreement that institutions of higher education must sign to receive their student portion of funding states that ''[t]he Secretary does not consider these individual emergency financial aid grants to constitute Federal financial aid under Title IV of the HEA.'' The Department thus no longer believes that these aspects of the statute support its prior narrow definition of ''student.''

Fourth, the time-limited and exceptional nature of these funds also justifies a more flexible approach to defining eligibility. Barring further Congressional action, funds for emergency financial aid will not be a recurring source of support. No student in the future could reasonably expect to be able to enroll in postsecondary education solely to receive this help, just as they could not have expected that such funds would have been available in the first place. This is a once-in-a-century pandemic, and the effects are clearly felt worse by low-income individuals as well as individuals of color and the communities in which they reside. The emergency financial aid grants are not a recurring source of support—they are a crucial response to an unprecedented time and are time limited in their use and not expected to recur.

Fifth, Congress was explicit in other parts of the CARES Act where it did want greater limitations placed on the availability of other forms of assistance, such as when it noted that nonresident aliens were ineligible for individual recovery rebates. The fact that it chose to specifically delineate eligibility in other parts of the CARES Act but did not do so for the emergency financial aid grants implies a desire for broad and unconditional eligibility.

Sixth, adopting a broad definition of student aligns the eligibility terms with the formula used to calculate allocations for institutions of higher education. Congress created an allocation formula that, while varying between the CARES Act, CRRSAA, and ARP, has always taken into consideration an institution's enrollment of full-time equivalent ''students'' without regard to their immigration status—including if they were undocumented or international students. *See* CARES Act section 18004(a)(1); CRRSAA section 314(a)(1); ARP section 2003. Adopting a more restrictive definition of ''student'' for eligibility that excludes those same students who Congress sought to include in the allocation formula would lead to establishing two different definitions of the term ''student'' and add to confusion. Moreover, the definition of student in this final rule

[1] *https://www.nber.org/system/files/working_papers/w27392/w27392.pdf.*

avoids the situation in which a student's attendance at a college would have affected the amount of money available to it through HEERF but they were then not eligible to receive any of those funds.

Seventh, while it is important the Department of Education (Department) be concerned with waste, fraud, and abuse, we no longer believe a definition of student tied to eligibility for title IV financial aid would be an effective way to address those issues. There are already requirements in place to prevent institutions of higher education from offering incentive-based compensation to recruiters as a way of dissuading overly aggressive attempts to bring in students. Private for-profit institutions are subject to a requirement in which they demonstrate that they obtain a certain share of their revenue from sources other than the Department's title IV programs. *See* 34 CFR 668.14(b)(16), 668.28. Institutions themselves, meanwhile, must administer a Satisfactory Academic Progress (SAP) policy to ensure students are moving toward completion of their programs. 34 CFR 668.34. This is in addition to the fact that the HEERF programs explicitly prohibit institutions of higher education from using the funds they receive for providing pre-enrollment recruitment activities. *See* CARES Act section 18004(c), CRRSAA section 314(d)(3).

In sum, Congress established a flexible, time-limited fund to respond to an unexpected and once-in-a-century national emergency. It passed emergency legislation to create a program for assisting students in a rapid manner by delegating significant discretion to colleges so they can get the funds to affected individuals right away. The novel coronavirus does not choose to limit its effects based upon whether a student qualifies for title IV aid. Instead, it has disproportionately brought devastation to individuals who were already in the most precarious places in American society, particularly low-income students and families, students and families of color across the country.[2] Adopting a broad and simple definition of a ''student'' allows the emergency grant funds for students to maximize their purpose and fully live up to Congressional intent.

Public Comment: In response to our invitation in the interim final rule (IFR), 4,149 parties submitted comments on the IFR. In this preamble, we respond to those comments, which we have grouped by subject. Generally, we do not address technical or other minor changes.

Analysis of Comments and Changes: An analysis of the public comments and of changes since publication of the IFR follows.

General Support

Comments: Some commenters supported the definition of ''student'' in the IFR that restricted individuals who qualify for HEERF grants to those that are eligible for title IV financial assistance. One commenter believed that the restrictive definition was appropriate and clearly explained, while another commenter stated that even with the restrictions placed in the definition, HEERF grants would still be able to help students.

Discussion: As discussed more thoroughly in this preamble, in view of the comments objecting to the definition of ''student'' in the IFR, and District Court rulings regarding the IFR, we have removed the prerequisite that a student must be eligible for title IV aid to receive funds under the HEERF programs.

Changes: We have removed the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarified in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under the HEERF programs. Because an individual is no longer required to be title IV eligible to receive a HEERF student grant, we have removed the definition of ''student'' from the general provisions regulations that apply to student assistance under the title IV programs and relocated the revised definition to 34 CFR part 677, which governs the HEERF programs.

General Opposition

Comments: Several commenters believed that limiting HEERF grants to title IV eligible students is contrary to the purposes of the CARES Act to provide emergency relief to institutions and students who need support during the pandemic. The commenters noted that students across the country need relief to overcome the financial devastation brought on by the coronavirus pandemic, and that Congress passed the CARES Act to provide wide-scale relief directly to students as quickly as possible. The commenters argued that requiring students to demonstrate eligibility for Federal financial aid will (1) disproportionately harm minority and immigrant communities, (2) impose additional burdens and hurdles on students to show they are title IV eligible, and (3) create unnecessary delays in providing needed assistance to desperate students. For these reasons, the commenters urged the Department to immediately withdraw the IFR.

Echoing these concerns, other commenters admonished the Department for using immigration status, instead of need, as a basis for establishing eligibility for HEERF grants. Some of those commenters noted that all individuals, including undocumented students with or without Deferred Action for Childhood Arrivals (DACA) status, have the right to basic levels of safety, health, and security, but argued the IFR ensures that those already shut out from these basic rights will fall further behind. In addition, commenters believed that the IFR (1) will exclude non-degree seeking students and students enrolled in short-term certificate programs, and (2) is a cruel, confusing, and counterproductive policy that will exclude large numbers of low-income, Black, and Latino students, as well as veterans and noncitizens. The commenters urged the Department to immediately withdraw the IFR.

Some commenters believed that Latino and immigrant students would be disproportionately affected by the IFR, citing *Oakley* v. *DeVos,* No. 20–cv–03215–YGR (N.D. Cal. June 17, 2020). The commenters argued that many immigrant students (Dreamers with or without DACA status, other students with undocumented status, and those with Temporary Protected Status, U-visas, or pending asylum applications) would not receive assistance to continue their education or cover necessities, such as food, housing, and healthcare. The commenters stated that these students: (1) Are experiencing the same economic hardship due to the pandemic as their peers, if not more; (2) come from communities that are among the most harmed by the COVID–19 pandemic; (3) may be much more susceptible to contracting and dying from COVID; and (4) are also excluded from many existing State and Federal assistance programs that could provide COVID–19 relief. The commenters urged the Department to immediately withdraw the IFR.

Some commenters believed that the IFR's restrictions will deprive many students, who otherwise demonstrate significant need during the COVID–19 crisis, from receiving assistance, thereby jeopardizing not only their health, safety, and education, but also the continuity of higher education

[2] *https://news.harvard.edu/gazette/story/2020/10/covid-carries-triple-risks-for-college-students-of-color/*; *https://www.insidehighered.com/news/2020/09/30/undocumented-college-students-report-heightened-anxieties-about-legal-status-and*

communities. The commenters noted that the definition of ''student'' should include students in default on a loan issued by the Department, students who are not making satisfactory progress, and certain noncitizens and students without Social Security numbers, including undocumented students.

Other commenters believed that the Department understated the number of individuals who would be excluded from receiving HEERF grants under the IFR. Whereas the Department estimated that the IFR would exclude more than 1.12 million noncitizens, the commenters stated there are many other students who are ineligible for title IV aid on different grounds, and that many of those students are experiencing urgent economic challenges stemming from the pandemic and need assistance. In addition, one commenter stated that the IFR would exclude as many as 800,000 students in one State's community college system, including veterans, citizens who have not completed a Federal financial aid application, and noncitizens, including undocumented students. According to the commenters, those 800,000 students would represent over half of the approximate 1.5 million students enrolled in the State community college system during the Spring 2020 semester.

Several commenters noted that institutions still have HEERF funds available and would distribute some of those funds to students who are otherwise ineligible under the IFR.

Another commenter believed that a more inclusive approach to eligibility would serve the educational policy goal of more diverse college educational learning environments, which was recognized by the Supreme Court as a compelling government interest in *Grutter* v. *Bollinger.* Similarly, other commenters argued that the IFR would undermine efforts to foster racial equity, diversity, and inclusion on college campuses, and make the playing field more uneven for undocumented students and more difficult for colleges and universities to meet their educational and moral obligations to students of color, students with low incomes, undocumented students, and otherwise marginalized students.

Discussion: We agree with the general sentiment of the commenters that, without financial assistance from HEERF grants, some students may be adversely affected or may not be able to continue their education. Part of the Department's core mission is to ensure equal access. In that regard, as a policy and ethical matter, and in light of other comments addressed below and the policy further explained earlier in this preamble, we are compelled to reverse a decision that denies financial assistance to our most needy and vulnerable students.

An institution that has HEERF funds available from the CARES, CRRSAA, or ARP, may, as of the effective date of this final rule, use those funds to provide financial assistance to any student who is enrolled at the institution or was enrolled at the institution during the COVID–19 emergency.

Changes: We have removed the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarified in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under the HEERF programs. Because an individual is no longer required to be title IV eligible to receive a HEERF student grant, we are removing the definition of ''student'' from the general provisions regulations that apply to student assistance under the title IV programs and relocating the revised definition to 34 CFR part 677, which governs the HEERF programs.

Comments: Several commenters objected to the IFR on moral grounds, arguing that, at this time of crisis, the Department should not be denying assistance to vulnerable individuals.

Some commenters noted that, prior to the IFR, the Department encouraged institutions to award emergency grant funds to students with the greatest need, but by subsequently changing course and narrowing the eligibility requirements for those funds in the IFR, the commenters opined the Department promulgated a cruel and ideologically motivated rule that will hurt some of our Nation's most vulnerable college students.

Other commenters asserted that for many students, receiving a few hundred dollars to purchase a laptop or help pay rent can make the difference between completing their coursework or dropping out. The commenters argued that by excluding students who are ineligible for title IV aid, the Department has denied assistance to many students who have the greatest financial need and are among the least likely to find help elsewhere.

Several commenters asserted that many students who are not eligible for title IV aid and their families are struggling financially from employment issues stemming from the COVID–19 emergency. One commenter stated that many undocumented students enrolled at a community college have lost jobs in industries affected the most by COVID–19—healthcare, food service, and hospitality—and without income from these positions, students are struggling to pay for basic needs. Similarly, other commenters noted that due to the COVID–19 pandemic, many undocumented students or their spouses and children who had lost jobs were ineligible for a Recovery Rebate check under the CARES Act. Other commenters stated that minority communities have disproportionately record levels of unemployment, noting that among Hispanic and Latino individuals, the unemployment rate jumped to 18.9 percent in April 2020, dropping only slightly to 17.6 percent in May 2020, and 14.5 percent in June 2020. In addition, the commenters stated that some of those students are the sole provider in their homes because of the COVID–19 pandemic, as family members have lost jobs.

Some commenters noted that many immigrant and other students who are not eligible for title IV aid face unique challenges, such as a lack of health insurance, and those students are also suffering disproportionate health effects from the pandemic. The commenters stated that as of 2017, 94 percent of DACA recipients were Hispanic and minority communities in the United States have been afflicted by COVID–19 at disproportionate rates. According to the commenters, these health concerns are especially pronounced because many students who are not eligible for title IV aid are on the front lines of the COVID–19. The commenters asserted that these students are more likely to fall through the cracks of our medical system and lack basic safety net protections, making it more untenable to withhold aid. Similarly, other commenters argued that many students who are not eligible for title IV aid and their families are uninsured, noting that, as of 2018, more than four in ten undocumented immigrants (45 percent) were uninsured.

Other commenters believed that undocumented students may help to mitigate shortages in the healthcare industry. The commenters stated that many undocumented graduate students hold degrees in STEM fields, with many having degrees in healthcare-related fields, which is critical to combat the nation's severe shortages resulting from the COVID–19 crisis.

One commenter believed that title IV ineligible students, such as undocumented students, facing dire economic circumstances stemming from the pandemic may have to postpone or forego their higher education, absent funding from the CARES Act.

Other commenters believed that undocumented students at community colleges are particularly disadvantaged. The commenters noted that over 80 percent of undocumented students attend two- and four-year public colleges and universities, but undocumented students at community colleges are more likely than undocumented students at four-year colleges to face extremely high levels of financial stress. The commenters stated that many of these students come from families in poverty and thus are unable to rely on their parents for financial assistance and those students may have to support their families financially. According to the commenters, community colleges receive disproportionately smaller shares of emergency grant funding compared to other institutions and are thus unable to meet the needs of undocumented students.

Discussion: Upon further review, we agree with the commenters that HEERF grants should be awarded based on need and should not consider title IV eligibility of students. As mentioned by the commenters, institutions may have awarded HEERF grants to students without qualification on a priority-need basis before the IFR was published. In the preamble to these final regulations, we fully explain our reasoning for taking a position aligned with the one taken in the Department's initial guidance by allowing institutions to award HEERF funds to any student who is enrolled or was enrolled at the institution during the COVID–19 emergency. In addition, as noted above, HEERF emergency financial aid grants must not be distributed in a manner that excludes individuals on the basis of race, color, national origin, disability, or sex. *See, e.g.,* 42 U.S.C. 2000(c)–(d) (Title IV and Title VI), 29 U.S.C. 701 *et seq.,* 20 U.S.C. 1681 (Title IX).

Changes: We have removed the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarified in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under the HEERF program. Because an individual is no longer required to be title IV eligible to receive a HEERF student grant, we have removed the definition of ''student'' from the general provisions regulations that apply to student assistance under the title IV programs and relocated the revised definition to 34 CFR part 677, which governs the HEERF programs.

Financial Burden on Students Ineligible for Title IV

Comments: Several commenters asserted that in issuing the IFR the Department failed to consider the economic effect of excluding 1.12 million undocumented students from eligibility for grants from HEERF funds. These commenters variously pointed to the lack of alternative funding available to such students resulting from the loss of campus jobs and internships, the collective ineligibility of undocumented immigrants to receive stimulus payments under the CARES Act's Recovery Rebate provision, the high levels of poverty among families headed by undocumented immigrants, and the disproportionate effect that the COVID–19 pandemic has had on these families as reasons for why the IFR is unfair in its effects.

Other commenters argued that denying undocumented students access to funding under the HEERF programs would have a negative impact on society and the economy. These commenters suggested that students lacking title IV aid who, by extension, would be ineligible for grants from HEERF funds, may be forced to curtail studies, decreasing their chances of ever obtaining a postsecondary credential. Reduced earnings, underemployment, greater demand on public assistance, potential defaults on student loan debt, and lack of civic engagement were cited as examples of the increased societal burden the commenters viewed as likely to result from students being unable to complete degree programs.

Finally, one commenter stressed the genuine desire of many institutions to do something for students who are not eligible to receive title IV funding and that it is unsound policy to prevent these students from accessing critical funding during a pandemic.

Discussion: Upon further consideration, we agree with the commenters that the better policy involves greater consideration of the significant negative effects on students of restricting eligibility for grants from HEERF funds to those students who are title IV eligible. Moreover, we are convinced of the overall benefit to society, as well as the economic health of the country, accruing from enabling as many students as possible (including undocumented students) to continue with their studies during this difficult period. Inasmuch as funding under the HEERF programs is intended to assist students who are attending eligible institutions of higher education and who have incurred expenses related to the COVID–19 pandemic, the Department believes that providing institutions with the latitude to offer such assistance to all students is an imperative. Accordingly, we have revised the interim final rule to state that a student is defined as any individual who is enrolled in an eligible institution of higher education.

Changes: We have removed the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarified in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under HEERF programs. Because an individual is no longer required to be title IV eligible to receive a HEERF student grant, we have removed the definition of ''student'' from the general provisions regulations that apply to student assistance under the title IV programs and relocated the revised definition to 34 CFR part 677, which governs the HEERF programs.

Confirming Title IV Eligibility

Comments: Several commenters offered that many students who are eligible for title IV aid will be unable to confirm that eligibility, and that the IFR failed to consider the effects of this on such students. The commenters cited the lack of necessary information, unfamiliarity with the financial aid process, and FAFSA complexity as reasons for which a student who is eligible for title IV HEA assistance may not be able to establish that status.

Other commenters asserted that the Department's proposed solutions for those who have not completed a FAFSA are flawed because the complexity of the FAFSA and lack of available information preclude such students from simply filing the form to establish eligibility. The commenters expressed particular concern that the burden of having to complete a FAFSA for the purpose of obtaining a grant under the HEERF programs will fall disproportionately on low-income, minority, and first-generation college students who are most in need of the funding.

Regarding the costs associated with establishing title IV eligibility, some commenters objected to the methodology used by the Department to estimate those costs. One of those commenters asserted that the Department did not consider the costs to students who are eligible but have yet to complete the FAFSA, which the commenter characterized as extensive based on data suggesting that requiring these students to demonstrate eligibility

by completing the FAFSA would result in an additional 1,057,500 to 1,305,000 hours of student labor and $18,918,675 to $23,346,350 in additional costs to those students. The same commenter expressed the belief that the costs associated with students completing an institution-provided certification form would be even higher because of the uncertainty and confusion they would experience in having to attest to their own eligibility upon penalty of law.

Another commenter opined that the added time for title IV eligible students to provide documentation confirming their eligibility (particularly during the pandemic) will lead to increased costs in the form of late or unpaid bills, missed meals, and even eviction. The same commenter's assessment was that the Department failed to consider how a lack of access to emergency financial aid might affect students facing unprecedented financial challenges and who are struggling with existing institutional hurdles.

Discussion: The Department acknowledges the difficulties many students face in completing the FAFSA. This difficulty is especially true for under-resourced students. We are persuaded that serious economic hardships being experienced by these students, which timely application of HEERF funding might ameliorate, would go unaddressed or even worsen during the time needed for them to confirm eligibility using the FAFSA. Furthermore, we appreciate the comment raising concerns about the cost of student labor associated with requiring students who are eligible for title IV aid but did not apply, to complete the FAFSA, or some other institutionally designated form, in order to establish eligibility for HEERF funding. We also note that it would be difficult if not impossible for institutions to create their own form to verify title IV financial aid eligibility. Institutions would need to find ways to verify items that the FAFSA already handles, such as whether students have valid Social Security numbers or are otherwise eligible noncitizens, which could mean checking with the Social Security Administration or the Department of Homeland Security. Institutions would also need to ensure male students had registered with the Selective Service. However, since these regulations remove the requirement that, in order to receive HEERF funding, a student who has not already done so must establish title IV eligibility, associating a cost with that burden is no longer necessary. The Department notes, however, that students who are potentially title IV eligible must continue to file a FAFSA to establish such eligibility, and that HEERF funding should supplement, rather than replace, title IV aid for those who qualify.

Changes: We have removed the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarified in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under the HEERF programs. Because an individual is no longer required to be title IV eligible to receive a HEERF student grant, we have removed the definition of ''student'' from the general provisions regulations that apply to student assistance under the title IV programs and relocated the revised definition to 34 CFR part 677, which governs the HEERF programs.

Harm to Historically Marginalized Students

Comments: Many commenters opposed the IFR's restriction of eligibility for grants under HEERF to title IV eligible students on the grounds that it would exclude large numbers of students, including historically marginalized and vulnerable students, such as those who are undocumented, have loans in default and are currently enrolled in school, and students who have not met institutional standards for satisfactory academic progress. The commenters stressed that these are students who are trying to improve their futures and who arguably need more help, not less, to complete their college education.

One commenter suggested that the use of the title IV eligibility standard would mean that students enrolled in noncredit, short term or dual enrollment programs, along with other students who do not have a high school diploma or equivalent, will not have access to much-needed grants from HEERF funds as they work to increase their skills and prepare for employment. The commenter noted that students enrolled in noncredit, short term, and adult education programs are more likely to be nontraditional students, such as adult learners, low-income students, and those for whom English is not their first language.

Discussion: We are persuaded that restricting eligibility for grants from HEERF funds to title IV eligible students is unnecessarily injurious to undocumented students as well as others who are not eligible for title IV aid, many of whom face economic and institutional obstacles that have only been compounded by the pandemic.

The Department believes the interests of postsecondary education, as well as the country as a whole, are best served by using every available resource to ensure all students, regardless of citizenship or immigration status, are able to continue their studies through the present crisis. Accordingly, we are revising the rule established in the IFR to clarify that a student is defined as any individual who is enrolled in an eligible IHE.

Regarding students enrolled in non-term, short-term, and dual enrollment programs, as well as students who do not have a high school diploma, we note that both short-term and dual enrollment programs frequently are title IV eligible programs. However, we acknowledge that many students enrolled in these types of programs and many students who do not have a high school diploma would not be eligible for grants from HEERF funds under the restrictions in the IFR.

Changes: We have removed the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarified in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under the HEERF programs. Because an individual is no longer required to be title IV eligible to receive a HEERF student grant, we have removed the definition of ''student'' from the general provisions regulations that apply to student assistance under the title IV programs and relocated the revised definition to 34 CFR part 677, which governs the HEERF programs.

Effect of the IFR on Veterans

Comments: One commenter expressed the belief that the eligibility restriction in the IFR will negatively affect veterans who have risked their lives for the country and implies that the Department does not believe their sacrifice merits access to educational opportunities.

Another commenter identified several problems with linking student eligibility for CARES Act emergency grants to FAFSA filing, especially for those students at schools not already using applications to distribute the aid; these were:

- Requiring a FAFSA to demonstrate title IV eligibility would exclude all non-FAFSA filing student veterans, service members, and their families and

survivors from receiving CARES Act grants unless they submit the FAFSA;

- Undergraduate student veterans are less likely than nonveterans to file a FAFSA and requiring them to do so is an impractical and unnecessary added step that would further complicate and/or seriously delay the receipt of grants from HEERF funds;
- Non-FAFSA-filing student veterans are more likely to mistakenly conclude they are ineligible for the grants when they are excluded from a school's wider automatic distribution of the aid;
- The amount of time these students may have to wait to receive their grants because institutions must first create and then make available a specific application form would be increased; and
- Additional, undue burden on military-connected students will result from requiring them to research their institution's application process, obtain, complete, and submit the application.

The commenter recommended returning to the Department's original April 9, 2020, guidance or making servicemembers, veterans, and their dependents automatically eligible as two potential solutions.

Discussion: We are persuaded that restricting eligibility for grants from HEERF funds to title IV eligible students is, for reasons including those identified by the commenters, potentially harmful to the educational interests of veterans. With respect to the commenter's proposed solutions, the revised definition of ''student'' in these final regulations, extending eligibility for grants from HEERF funding to all enrolled students, obviates the need for any regulatory action specific to veterans. In this final rule, we are fully explaining our reasoning for revising our position on title IV eligibility as a prerequisite for HEERF funds, as recommended by the commenter.

Changes: We have removed the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarified in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under the HEERF programs. Because an individual is no longer required to be title IV eligible to receive a HEERF student grant, we have removed the definition of ''student'' from the general provisions regulations that apply to student assistance under the title IV programs and relocated the revised definition to 34 CFR part 677, which governs the HEERF programs.

Undocumented Students Entitled to HEERF Funds

Comments: Several commenters expressed the opinion that undocumented students are as entitled to grants from HEERF funds as any other students. The commenters variously cited the taxes paid by undocumented students and their families, their passion for education, their overall contributions as members of society, including as health care providers and essential workers, and the reality that their need for assistance during the pandemic is no less than that of other students in support of the premise that all students should have access to HEERF funds without reference to citizenship or immigration status.

Some commenters asserted that undocumented students and their families have, in fact, been disproportionately affected by the pandemic and, therefore, merit the greatest assistance, especially since these students do not qualify for title IV Federal student aid.

Other commenters stressed the possibility that, denied this assistance, many undocumented students will be unable to complete their education, an outcome that, in addition to limiting the prospects of students forced to drop out, has negative implications for the economy.

A few commenters advocated for the inclusion of undocumented students on ethical grounds, arguing that it is unethical to exclude students from eligibility due to immigration status.

Finally, some commenters addressed the effects on institutions of excluding undocumented students from eligibility for grants from HEERF funds. The commenters stressed that that the operating deficits and risk of closure faced by institutions as a result of the COVID–19 pandemic will be increased as undocumented students are forced to withdraw due to lack of funding. Reduced diversity on campuses is another negative outcome the commenters suggested may occur as undocumented students leave institutions that they do not have the financial resources to continue attending.

Discussion: We agree with the commenters that students who are ineligible for title IV aid are no less deserving of HEERF funding than title IV eligible students. In the absence of any statutory provision specifically restricting the eligibility of students for HEERF funds on the basis of citizenship, immigration status, or other factors, we do not believe that such a restriction should be applied. In their capacity as students, undocumented persons, like all postsecondary students, pursue degrees, obtain employment commensurate with their educational attainment and in doing so contribute to the greater good of the economy and society as a whole. The Department has been persuaded, therefore, by the public comments received that there is no good policy reason to treat them differently for the purposes of eligibility for HEERF funding and, in fact, every reason to treat them the same.

Changes: We have removed the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarified in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under the HEERF programs. Because an individual is no longer required to be title IV eligible to receive a HEERF student grant, we have removed the definition of ''student'' from the general provisions regulations that apply to student assistance under the title IV programs and relocated the revised definition to 34 CFR part 677, which governs the HEERF programs.

Congressional Intent

Comments: Several commenters asserted that the absence of any language in the CARES Act restricting eligibility for HEERF funding to title IV eligible students is evidence that Congress had no intention of imposing such restrictions and that the IFR is, therefore, in violation of the intent and sprit of the CARES Act.

Several commenters offered that where Congress did mean to restrict relief funds made available through the CARES Act based on immigration status, they did so explicitly, *i.e.,* recovery rebates, and that this is not the case for the CARES Act relief grants.

Yet another commenter expressed the belief that the Department's interpretation is an arbitrary and capricious administrative action that fails to consider the real-world implications of denying critical relief funds to thousands of students during a global pandemic.

Discussion: We agree that a plain text reading of the CARES Act language indicates no intent on the part of Congress to restrict eligibility for grants from HEERF funds to title IV eligible students. Moreover, we find the argument that, where Congress intended to restrict funds authorized by the CARES Act it did so explicitly, supports that conclusion that the lack of such

restrictive language with respect to HEERF funding reflects that Congress intended all students to be eligible for HEERF funds. Finally, while disagreeing with the commenter who characterized the Department's actions as arbitrary and capricious, we are persuaded that restricting eligibility for grants from HEERF funds to title IV eligible students does not give proper consideration to the effect on undocumented students of denying them a source of funding during the pandemic, nor did it reflect Congress's decision not to place eligibility limits on HEERF funds that it placed on other funds.

Changes: We are removing the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarified in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under the HEERF programs. Because an individual is no longer required to be title IV eligible to receive a HEERF student grant, we have removed the definition of ''student'' from the general provisions regulations that apply to student assistance under the title IV programs and relocated the revised definition to 34 CFR part 677, which governs the HEERF programs.

Waste, Fraud, and Abuse

Comments: Several commenters were critical of what they characterized as the Department's assertion that the IFR was promulgated chiefly to prevent fraud, waste, and abuse. One commenter referenced the Department's citation of a *New York Times* article in support of its actions, observing that the Department quoted the article out of context and that, as the article concerned an overseas fraud ring using U.S. citizens' personally identifiable information to file unemployment claims, it was, in any case, not germane.

Another commenter averred there is no evidence that, without this rule, institutions will engage in rampant wasteful, fraudulent, or abusive distribution procedures, as the Department alleges.

Noting that none of the Department's prior communications related to the pandemic expressed concerns over fraud, one commenter expressed bemusement over the IFR's singular focus on that possibility. The commenter further offered that since, according to a National Association of Student Financial Aid Administrators survey as of June 12, 2020, 94 percent of institutions reported having made CARES Act emergency grants and more than three-fourths of those institutions had spent more than half of their allocations by that point, the impact of the Department's effort to limit fraud by restricting eligibility for HEERF funds would be negligible. Lastly, this commenter argued that institutional reporting requirements are intended to hold institutions accountable for how they spend these funds and to prevent fraud and abuse and make the imposition of new eligibility requirements unnecessary.

A few commenters took issue with the Department's assertion that institutions could use HEERF funds to:

- Incentivize the reenrollment of students who did not meet SAP requirements, for the purpose of enhancing revenue;
- Use HEERF funds for students who are enrolled at the institution but do not intend to receive a degree or certificate, thereby diverting funds from students who are pursuing a degree or certificate in an eligible program; and
- Create cheap classes and programming offering little or no educational value with the intention of using HEERF grant funding to incentivize the enrollment of students who are not eligible for title IV financial assistance.

The commenters noted that, for students failing to meet SAP, an institution could always restore those students' eligibility by granting a SAP appeal based on extenuating circumstances or determining their failure to make SAP to be the result of COVID–19 related circumstances. They also noted that, while it is true institutions could award HEERF funds to non-degree seeking students, the Department failed to show how (in the absence of any requirement in the CARES Act for a student to be degree seeking) that constitutes fraud, waste, or abuse. As concerns cheap classes of little educational value offered with the sole intent of enrolling students who are not eligible for title IV, the commenters suggested that such students would be less likely to enroll in these types of classes than would title IV recipients due to the need for them to fund a greater share of the cost from their own resources.

Discussion: Upon further review, we agree with the commenters that any potential for fraud, waste, and abuse would not be affected by restricting eligibility for grants from HEERF funds to title IV eligible students. While the Department always has an obligation to distribute funds as appropriately as possible and continues to have an obligation to prevent waste, attention to which is monitored by the Department's Office of the Inspector General, a reconsideration of the entirety of the situation has led us to the conclusion that the title IV eligibility restriction on HEERF funds is not a necessary measure to prevent waste in this case, and that the importance of distributing these funds to eligible students who need them do not substantially affect any such concerns. In addition, earlier in this preamble, we note other requirements already in place to address such concerns. As has already been stated elsewhere in this document, the Department is persuaded that the sole eligibility consideration for grants made from HEERF funding is that a student be enrolled in an eligible institution. We believe this position is entirely consistent with the language of the CARES Act.

Changes: We have removed the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarified in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under the HEERF programs. Because an individual is no longer required to be title IV eligible to receive a HEERF student grant, we have removed the definition of ''student'' from the general provisions regulations that apply to student assistance under the title IV programs and relocated the revised definition to 34 CFR part 677, which governs the HEERF programs.

Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) 8 U.S.C. 1611 and HEERF Funding

Comments: Numerous commenters challenged the Department's assertion within the IFR that 8 U.S.C. 1611, which was enacted as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), ''clearly'' applies to restrict the HEERF Emergency Financial Aid grants to students as both wrong and ''irrelevant to the legality'' of the IFR. Commenters asserted that HEERF funds are not Federal public benefits under PRWORA and cited the decision in *Oakley* v. *DeVos*, No. 4:20–cv–03215–YGR, ECF No. 44, which rejected the Department's arguments that 8 U.S.C. 1611(a) prevented undocumented students from receiving this aid. In its decision granting a preliminary injunction, the *Oakley* court stated that grants under HEERF do not fit the description of a ''Federal public benefit'' as defined at 8

U.S.C. 1611, and thus, the associated restrictions should not prevent undocumented students from receiving aid. The commenters thus assert that all students should have access to HEERF funds regardless of whether they are a citizen, noncitizen, or ''qualified alien.''

Many commenters opined that Congress did not intend for 8 U.S.C. 1611's eligibility restrictions on nonqualified aliens to apply for financial assistance under the HEERF programs. Noting legislators' statements about giving schools discretion and flexibility, commenters believed that the legislative record demonstrates Congress's intention to grant educational institutions wide latitude in determining how to use HEERF to assist all students whose education was disrupted by the crisis and who were in need. Commenters stated that Congress was explicit in other sections of the CARES Act when it wanted to exclude certain classes of immigrants from receiving benefits even with the provisions of 8 U.S.C. 1611; underscoring that it is significant that Congress did not explicitly identify immigrant classes to exclude from receiving HEERF grants where it did elsewhere in the CARES Act.

Commenters argued that the canon of statutory construction where specific instructions from Congress override more general ones dictates that the CARES Act overrides 8 U.S.C. 1611. *See, e.g., RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank,* 566 U.S. 639, 645 (2012) (''[I]t is a commonplace of statutory construction that the specific governs the general.'') (quoting *Morales* v. *Trans World Airlines, Inc.,* 504 U.S. 374, 384 (1992)). Commenters stated that, in the CARES Act, Congress specifically provided for funding to IHEs based on a precise formula accounting for all non-distance learning students, including nonqualified alien students, which is evidence that Congress intended for nonqualified alien students to also be eligible to receive financial assistance under the HEERF programs. 134 Stat. at 567 (section 18004(a)). Commenters again cited the *Oakley* court ruling that it would defy common sense for certain students to be counted in the calculation of institutions' allocations under the HEERF and yet denied access to the emergency aid share of those allocations. Thus, since nothing in the CARES Act suggests that Congress intended section 1611's general provisions to apply to the ''narrow, precise, and specific subject'' of COVID–19 emergency relief, *Radzanower* v. *Touche Ross & Co.,* 426 U.S. 148, 153 (1976) (''Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment.'' (quoting *Morton* v. *Mancari,* 417 U.S. 535, 550–51 (1974))), the CARES Act overrides 8 U.S.C. 1611.

Commenters also argued that the purpose of the CARES Act is highly specific, responding to a once-in-a-century pandemic with a one-time infusion of cash. By contrast, section 1611 is part of PRWORA, which is a general statute written in general terms and the purpose of restricting immigrants' access to Federal public benefits under PRWORA was to ensure that ''aliens within the Nation's borders [would] not depend on public resources to meet their needs,'' prevent public benefits from constituting ''an incentive for immigration to the United States,'' and lessen the burden on the public benefits system. *See* Public Law 104–193, 110 Stat. 2260 (1996); *see also* H.R. Rep. No. 104–651, at 3 (1996) (PRWORA intended to ''limit lifetime welfare benefits''). Restricting nonqualified alien students' access to student grants provided under the HEERF programs does not achieve any of these goals because the HEERF programs are not welfare or continuous benefit programs. Rather, the HEERF programs are a one-time funding allocation that can be used to provide current college students with short-term relief for expenses already incurred due to a national emergency. Thus, allowing all full-time immigrant students not previously enrolled in distance education courses to be eligible for these funds does not increase these individuals' dependence on public benefits, encourage immigration to the United States, or burden the public benefits system.

Regarding 8 U.S.C. 1611(a)'s ''notwithstanding'' clause, commenters opined that notwithstanding clauses can be overridden by other statutory indicators and courts have long noted that when there is evidence that two statutes potentially conflict, a later-enacted, more specific provision governs, even if Congress did not explicitly identify it as an exception to the earlier statute. Commenters stated that the CARES Act's specific, comprehensive statutory scheme controls over a general ''notwithstanding'' of an earlier enacted law and that the CARES Act ''must govern because it is the most recent indication of Congress's intent,'' even though ''the earlier statute contained a 'notwithstanding' clause and the more recently enacted statute did not.'' *See GP–UHAB Hous. Dev. Fund Corp.* v. *Jackson,* No. 05 Civ. 4830, 2006 WL 297704, at *9 (E.D.N.Y. Feb. 7, 2006) (citing *In re Ionosphere Clubs, Inc.,* 922 F.2d 984, 991 (2d Cir. 1990) (''[W]hen two statutes are in irreconcilable conflict, we must give effect to the most recently enacted statute since it is the most recent indication of congressional intent.'')). Commenters also noted that the *Oakley* court rejected the Department's ''notwithstanding'' argument, finding that the specific, one-time disbursement of HEERF is not subject to the general prohibition in PRWORA.

Additional commenters stated that the nature of HEERF funds as a ''community benefit'' put them entirely outside the realm of Federal public benefits that Congress sought to control under PRWORA. These commenters note that section 18004 of the CARES Act did not restrict eligibility for any particular set of individuals, but rather gives discretion to colleges to decide which students are prioritized in receiving HEERF funds. Thus, although some benefits, specifically emergency financial aid grants, are redirected to students, the HEERF funds themselves are entirely provided directly to colleges to deal with the effects of the COVID–19 pandemic. The commenters contended that, therefore, the HEERF programs can be viewed as community funds under a Department of Health and Human Services (HHS) Interpretation of ''Federal Public Benefit,'' 63 FR 41658 (Aug. 4, 1998). In this interpretation, HHS stated that under 8 U.S.C. 1611(c)(1)(B), a Federal public benefit is a benefit provided to individuals under an ''authorizing statute [that] . . . mandate[s] ineligibility for individuals . . . that do not meet certain criteria.'' Thus, even if some benefits flow directly to individuals under the program, the benefits should not necessarily be considered ''Federal public benefits'' when the program as a whole is more readily categorized instead as community funds. A commenter made a related point that Congress created HEERF funding to serve as a community benefit rather than a Federal public benefit, as it recognized that colleges and universities would be best situated to understand and respond to the complex and localized needs of their educational communities.

Other commenters stated that, although certain classes of immigrants are excluded from receiving ''Federal public benefits,'' which generally include ''postsecondary education'' benefits, there are statutory exceptions and subsequent agency interpretations which indicate that short-term emergency aid of the sort that HEERF provides should not be treated as a

''Federal public benefit.'' *See* 8 U.S.C. 1611(b)(1)(B) (providing an exception for Federal Public Benefits considered to be ''[s]hort-term, non-cash, in-kind emergency disaster relief''). Thus, commenters believed that, since the HEERF programs were enacted in response to an emergency to deliver short-term assistance, as acknowledged by the *Oakley* court, HEERF aid should not be treated as a ''Federal public benefit.'' Another commenter stated that the Office of the Attorney General has previously clarified that ''programs, services, or assistance necessary for the protection of life or safety'' are not Federal public benefits for purposes of 8 U.S.C. 1611(a).

Some commenters argued that, although the Department asserted that the CARES Act funds constitute a ''postsecondary education . . . benefit,'' Congress did not intend that the CARES Act student grants be considered ''postsecondary education . . . benefit[s]'' under 8 U.S.C. 1611. Rather, by its own terms, the Act requires higher education institutions to provide ''emergency financial aid grants to students for expenses related to the disruption of campus operations due to coronavirus (including eligible expenses under a student's cost of attendance, such as food, housing, course materials, technology, health care, and child care).'' Commenters further argued that section 18004's use of ''cost of attendance,'' which has a technical meaning in the HEA, does not signal a legislative intent to limit aid to students eligible to receive Federal student aid and that the listing of non-education-related expenses, including food, housing, and child care suggests that lawmakers intended that the CARES Act provide aid to students to help them survive—a goal applicable to citizen and noncitizen students alike that goes beyond ''postsecondary education . . . benefit[s].''

Commenters further contended that the Department's argument that 8 U.S.C. 1611's applicability to HEERF funds justifies the further application of title IV eligibility restrictions to the HEERF funds conflicts with section 1611's purpose. Commenters said that even if HEERF funds are Federal public benefits that Congress intended to fall within 8 U.S.C. 1611(a)'s eligibility restrictions, section 1611's scope only reaches nonqualified aliens' access to Federal public benefits. Commenters stated that the rule goes much further than section 1611 and limits certain categories of U.S. citizen students from also receiving HEERF grants, including those with certain criminal convictions, unsatisfactory academic standing, or without a high school diploma. The commenters further believed that, although PRWORA provides no support for barring U.S. citizen students from receiving financial assistance the HEERF programs, the IFR also has the effect of barring citizens who did not fill out the FAFSA, including veterans who use the Montgomery GI bill, from receiving financial assistance under the HEERF programs.

Discussion: We now agree with the commenters' reasoning that Congress did not intend for PRWORA to apply to HEERF funds to students.

In issuing the IFR, the Department stated its assumption that 8 U.S.C. 1611 applied to the HEERF funds provided to students. Several courts disagreed with the Department's assumption that PRWORA applied to the CARES Act funds and, as noted within the comments section above, the Department received many public comments challenging this assumption as to the applicability of PRWORA. With the benefit of those decisions and the public comments, and upon further review, the Department now concludes that the term ''student'' in section 18004 of the CARES Act include undocumented immigrants. Congress used the term ''student'' in section 18004 to refer to all enrolled students at an institution when it set out the formula for allocating HEERF funds among schools. *See* Section 18004(a)(1)(B) (basing calculation of each institution's funding on ''full-time equivalent students''). And the Department has consistently recognized that nonqualified aliens are counted for purposes of allocating HEERF funds under the formula Congress established, because the plain meaning of the formula provided by Congress would be read to include all students, and there are no indicators that Congress intended the Department to exclude nonqualified aliens when arriving at these formula allocations. *See also* ''Methodology for Calculating Allocations per Section 18004(a)(1) of the CARES Act'' (*https://www2.ed.gov/about/offices/list/ope/heerf90percentformulaallocationexplanation.pdf*). Further, Congress used the term ''student'' in section 18002, section 18003, and section 18005 to refer to beneficiaries of ESEA programs, which may unquestionably benefit undocumented immigrants and other students without a qualifying immigration status for purposes of section 1611. See H.R. Conference Report No. 104–725 at 380 (1996) (PRWORA conference report, stating that it was ''[t]he intent of the conferees'' that ESEA programs ''not be affected by'' section 1611). As courts have noted, and as explained in greater detail below, there is a strong presumption that the statutory term ''student'' has the same meaning throughout the HEERF provision and the CARES Act, which means nonqualified aliens are included as students in the eligibility provision as well. Additionally, other aspects of the CARES Act reinforce the conclusion: Section 2201 expressly excluded non-qualified aliens (albeit in a different context), whereas there is no such exclusion in the HEERF provision. And interpreting ''students'' in the HEERF provision as including aliens furthers the purpose of the HEERF grants without impairing the objective of 1611, which is to avoid having Federal public benefits induce unlawful immigration.

Subsequent to the comment closing period for the IFR on July 17, 2020, the Department received two decisions regarding the applicability of 8 U.S.C. 1611 to HEERF program funds. In *Noerand* v. *Devos,* Civil No. 20–11271–LTS (D. Mass. Jul. 24, 2020), plaintiff-student Noerand challenged the Department's exclusion of certain non-citizens such as Noerand from receiving any benefits under the CARES Act. The *Noerand* court found that the HEERF programs, as originally enacted through the CARES Act, ''constitutes a statutory exception to Section 1611's general denial of federal public benefits.'' As such, that court granted the preliminary injunction sought by *Noerand,* which enjoined the Department from excluding *Noerand* from receiving benefits under the CARES Act. This decision was expanded upon through *Massachusetts* v. *Dept of Education,* Civ Action # 1:20–1600 (D. Mass., Sept. 3, 2020), which adopted the reasoning of the *Noerand* court and enjoined the Department's IFR as to ''any institution of higher education in the Commonwealth of Massachusetts and as to any student attending a school that is located within the Commonwealth of Massachusetts.'' While the *Noerand* and *Massachusetts* decisions were not able to contribute to the comments the Department received in the IFR as a result of the time at which these decisions were issued, we are persuaded by the joint reasoning of the courts in *Oakley, Noerand,* and *Massachusetts* that the CARES Act's relationship to 8 U.S.C. 1611 represents an instance where specific instructions from Congress override more general ones. *See, e.g., United States* v. *Estate of Romani,* 523 U.S. 517, 532 (1998) (holding that more specific statute governs). As noted in *Noerand,* as the Supreme Court has explained, ''it is a commonplace of statutory construction

that the specific governs the general.'' *Noerand* v. *Devos,* 474 F. Supp. 3d 394, 403 (D. Mass. 2020) (quoting *Morales* v. *TWA,* 504 U.S. 374, 384 (1992)). In this case, Congress's provision of financial aid grants to all students in response to the coronavirus pandemic represents a specific policy goal. Upon further consideration, we believe that the comprehensive, specific object of the CARES Act represents a clear intent to override other, more general statutes, such as 8 U.S.C. 1611's more general goal of providing for a long-term limit on Federal public benefits. This specific intent is made clearer by the fact that Congress was clear in other parts of the CARES Act where it did not intend for noncitizens to share in this emergency funding. *Compare* CARES Act section 2201 (''Recovery Rebates for Individuals'') (explicitly noting nonresident aliens ineligible for recovery rebates for individuals) *with* section 18003(d)(8) (explicitly specifying subset of elementary and secondary school emergency relief funds could be used to ''provide meals to *eligible students*'' or ''technology for online learning to *all students*'') (*emphasis* added).

We are also persuaded that the ''notwithstanding'' clause in 8 U.S.C. 1611 is overridden by the clear and manifest intent in the CARES Act. We note that the *Oakley* court highlighted the long-standing Supreme Court and Ninth Circuit precedent holding that a later, more specific statement may take priority over an earlier, broader statutory provision, even if it is prefaced by a ''notwithstanding any other laws'' clause. See *RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank,* 566 U.S. 639, 645 (2012) (relying on long-standing canon of construction that a more specific provision is construed as an exception to a general one); *Oregon Nat. Res. Council* v. *Thomas,* 92 F.3d 792, 796 (9th Cir. 1996) (limiting ''notwithstanding any other law'' clause to relevant categories of other law, stating ''[w]e have repeatedly held that the phrase 'notwithstanding any other law' is not always construed literally.'') The Department now agrees that the specific, one-time emergency disbursement of HEERF assistance in the CARES Act is not subject to the more general prohibition in the earlier statute and is properly governed by this precedent. Section 18004 of the CARES Act is a specific statutory enactment in which Congress unambiguously directed certain aid to a plainly described group of people, ''students,'' without qualification. Thus, in these circumstances, it would constitute a statutory exception to section 1611's general denial of Federal public benefits.

In addition, as noted elsewhere, the Department is particularly compelled by the fact that Congress was explicit in other provisions of the CARES Act as to which categories of individuals should be ineligible to participate in various relief programs. *See, e.g.,* CARES Act section 2102(a)(3)(B) (specifically excluding two categories of workers from Pandemic Unemployment Assistance); section 2107(a)(2) (establishing eligibility criteria for the 13 additional weeks of Unemployment Insurance); and section 2201(a) (specifically excluding) nonresident aliens from Recovery Rebates for Individuals). ''[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'' *Gozlon-Peretz* v. *United States,* 498 U.S. 395, 404 (1991) (citation omitted). As mentioned *supra,* we note that the CARES Act section 2201(a), authorizing $1,200 payments to individuals, specifically excluded ''nonresident alien individuals'' from eligibility. That Congress specifically included language to exclude noncitizens from eligibility for individual rebate funds, but did not include specific language to exclude noncitizens from eligibility for student grants provided under the HEERF programs, indicates that the omission was intentional. *Gozlon-Peretz,* 498 U.S. at 404.

We also heed the *Oakley, Noerand,* and *Massachusetts* courts' individual findings that under the Department's initial interpretation of the CARES Act, subsections (a) and (c) of section 18004 would give two different meanings to the term ''students,'' where subsection (a) would include all students for purposes of funding allocation and subsection (c) would exclude non-title IV eligible students for purposes of student distributions. The Department now agrees that such an interpretation is not the best reading of the statute in light of fundamental tenants of statutory interpretation. See *Los Angeles* v. *Barr,* 941 F.3d 931, 941 (9th Cir. 2019) (''Under the normal rule of statutory construction, we presume that identical words used in different parts of the same act are intended to have the same meaning.'') (internal quotation marks omitted). Based on these principles, we agree that the term ''students'' in section 18004(c) governing HEERF Student Assistance must have the same meaning as the term ''students'' in section 18004(a)(1)(B) governing the HEERF funding formula. This view is buttressed by the decision in *Noerand,* which noted that ''Congress's use of the word 'students' in section 18004 unambiguously evinces an intent to encompass all students without regard to their immigration status or eligibility for Title IV funding.'' Additionally, we note that Congress directed IHEs within CRRSAA and ARP to prioritize making ''grants to students with exceptional need[.]'' *See* CRRSAA section 314(c)(3); ARP section 2003. As noted elsewhere within this final rule, students who are ineligible for title IV aid, are among those with exceptional needs. This later in time directive that institutions use CRRSAA and ARP funds to prioritize students with exceptional needs is further evidence that Congress sought to carve out an exception to 8 U.S.C. 1611 for the purposes of the HEERF programs.

While the Department believes that the CARES Act student grants are ''postsecondary education . . . benefit[s]'' under 8 U.S.C. 1611 within the basic sense of those words, as noted elsewhere, we now believe the better reading of the statute is that Congress's direction to higher education institutions to provide ''emergency financial aid grants to *students* for expenses related to the disruption of campus operations due to coronavirus'' within the CARES Act represents a later in time exception to the general rule that nonqualified aliens may not receive Federal postsecondary benefits under PRWORA (*emphasis* added). In reaching this conclusion, the Department distinguishes the court's decision in *Washington* as being the only decision to find that PRWORA applied to HEERF grants to students and having not provided a detailed analysis of the other places within the CARES Act where noncitizens were specifically excluded from eligibility for emergency relief, as noted elsewhere within this discussion. Upon further consideration, we agree with the commenters' argument that the PRWORA's purpose does not conflict with that of the CARES Act student grants, as the purpose of restricting immigrants' access to Federal public benefits under PRWORA was to ensure that ''aliens within the Nation's borders [would] not depend on public resources to meet their needs,'' prevent public benefits from constituting ''an incentive for immigration to the United States,'' and lessen the burden on the public benefits system. We further agree that interpreting section 1611 as an implied bar to who can access relief designed to help communities and individuals

prevent, prepare for, respond to, and recover from an unprecedented public health crisis that has affected every sector of society would undermine the very purpose of the CARES Act and the HEERF programs.

Changes: We have removed the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarified in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under the HEERF programs. Because an individual is no longer required to be title IV eligible to receive a HEERF student grant, we are removing the definition of ''student'' from the general provisions regulations that apply to student assistance under the title IV programs and relocating the revised definition to 34 CFR part 677, which governs the HEERF programs.

The Imposition of Title IV Eligibility Restrictions on Grants to Students Is Contrary to Congressional Intent

Comments: Many commenters asserted that Congress intended all students to have access to pandemic aid relief, irrespective of title IV or immigration status. These commenters note that no provision within section 18004 of the CARES Act either *explicitly* or *implicitly* incorporates title IV eligibility restrictions. They stated that the only explicit reference to title IV occurs in section 18004(b), which requires the Secretary to use the ''same systems'' to distribute funding under the HEERF programs as are used to distribute title IV funds. However, these commenters suggested that Congress included section 18004(b) only for purposes of efficiency and expediency in administering funds to colleges.

Some commenters acknowledged that certain provisions of the CARES Act reference title IV eligibility, but argued that the lack of incorporation of those requirements into CARES Act section 18004(c) compels the inference that Congress did not intend CARES Act emergency relief grants to be limited in the same way. One commenter challenged the Department's assertion in the IFR that emergency grants should be tied to the definition of the cost of attendance in section 472 of the HEA, noting that this definition applies to all students, not just title IV recipients. Another commenter stated that the consumer information requirements in section 485 of the HEA require campuses to disclose ''the cost of attending the institution,'' again without distinguishing between title IV-aided students and non-recipients.

Several commenters challenged the IFR's assertion that section 18004(c) of the CARES Act contains a ''critical ambiguity'' by not adequately defining the word ''students.'' These commenters argued that no dictionary has defined the word ''students'' to mean only those with a title IV eligibility requirement; neither is the common usage of the word ''students'' restricted to those eligible for title IV aid. Other commenters noted that the second component of the section 18004(a)(1) allocation formula encompasses all students, including the millions of students who do not qualify for Pell Grant support. As such, those commenters argued that the Department's inclusion of just one part of the institutional allocation formula as justification for its interpretation of student eligibility for emergency grants makes no sense.

One commenter argued that another internal inconsistency is that the IFR applies title IV's eligibility restrictions while recognizing that the CARES Act emergency assistance grants ''by definition, do not constitute Federal financial student aid under the HEA, *including title IV of the HEA*.'' An additional commenter stated that the IFR as drafted would effectively create a new title IV program. Other commenters noted that the IFR would effectively create multiple definitions of ''student'' within the CARES Act by first defining it broadly when calculating funding amounts for each IHE, *see* 134 Stat. at 567 (section 18004(a)), and then defining it narrowly for which ''students'' are ultimately eligible to receive HEERF grants, *see id.* at 568 (section 18004(c)). Still other commenters noted an internal inconsistency in the IFR disavowing title IV's requirements with respect to certain procedural requirements under sections 482 and 492 of HEA because ''the rule does not relate to the delivery of student aid under title IV.'' As such, several commenters argued that the Department was not entitled to *Chevron* deference in its interpretation.

Some commenters stated that the Department's conclusion that it would not be logical for Congress to require students to be eligible under section 484 of title IV of the HEA for grants under section 18004(a)(3) of the CARES Act, where part B of title VII of the HEA is expressly referenced, but not for grants under sections 18004(a)(1) and (2) of the CARES Act. Commenters believed this confuses means and ends given that Congress in section 18004(d) directs the Secretary to prioritize funds under section 18004(a)(3) for institutions that did not receive sufficient funding under section 18004(a)(1) and (2). In section 18004(a)(3) of the CARES Act, lawmakers directed the Secretary to make awards to institutions of higher education that the Secretary determines have the greatest unmet needs related to coronavirus, which could be used for ''grants to students,'' among other uses. In section 18004(c), commenters noted that lawmakers went a different route, allowing for provision of funds to students by institutions in the form of ''emergency financial aid grants'' independent of a Federal financial aid program. Commenters concluded that it is far more logical to read these as programs complementing each other and intended to support students both eligible to participate in title IV aid programs and those not.

Discussion: Upon further review, we believe the aforementioned principles of statutory construction counsel against reading any title IV restrictions into ''student.'' The definition of ''student'' we adopt in this final rule will avoid the potentially inconsistent interpretations of that term within the same statute pointed out by commenters. The Department is especially persuaded that, given that the allocation for institutions under CARES Act section 18004(a)(1) takes into account all students, it would be incongruous to read section 18004(c) to bar emergency financial aid grants to a subset of those very same students. This position is supported by the legislative history of the CARES Act. *See, e.g.,* 166 Cong. Rec. H1856 (daily ed. Mar. 27, 2020) (statement of Rep. Underwood) (remarking that the grants would ''support college *students* whose semesters were disrupted due to COVID–19''); *id.* at H1823 (daily ed. Mar. 27, 2020) (statement of Rep. Scott) (stating that the CARES Act would ''support grants to displaced *students*'') (*emphasis* added).

After careful reconsideration, the Department is also persuaded that Congress did not intend to incorporate title IV's eligibility restrictions by implication. The Department acknowledges that, ''[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'' *Gozlon-Peretz* v. *United States,* 498 U.S. 395, 404 (1991) (citation omitted). While the term ''cost of attendance'' does appear within the CARES Act and has continued into CRRSAA and the American Rescue Plan (ARP), the

Department agrees that this term is not limited to the title IV context. Similarly, the phrase ''emergency financial aid grants to students,'' while appearing in both the Federal Supplemental Educational Opportunity Grant (FSEOG) title IV program and HEERF section 18004(c), speaks to different activities under distinct programs. We acknowledge those commenters who noted that *Powerex Corp* speaks to ''identical words and phrases *within the same statute,*'' and does not apply when two related statutes play different roles in a common goal. *Powerex Corp.* v. *Reliant Energy Servs., Inc.,* 551 U.S. 224, 232 (2007). In this instance, the Department has concluded that Congress did not intend for FSEOG and HEERF programs to play the same role.

Additionally, the Department believes that this final rule is in keeping with the changes to the HEERF program made under CRRSAA and ARP, which direct institutions to ''prioritize grants to students with exceptional need.'' See CRRSAA section 314(c)(3); ARP section 2003. The Department agrees with the numerous commenters who provided evidence to support that students who are ineligible for title IV aid are among those with exceptional needs. For example, undocumented students and their families are more likely to have lower median incomes, limited access to health insurance and care, and jobs that do not allow them to work from home, increasing their risk of infection.[3] While the term ''exceptional need'' does appear within certain parts of the HEA (as in the case of FSEOG, *see* HEA section 413C(c)(2), and in school Program Participation Agreement requirements, *see* HEA section 463(a)(8)), the Department agrees that Congress did not explicitly cross reference either of those sources, and neither have a unique definition that could be readily imported into the HEERF context. Rather, the language in CRRSAA and ARP directing schools to prioritize students with exceptional need re-emphasizes that Congress intended that schools have discretion to determine who should receive funds, including whether such grants should go to title IV eligible students or not.

We also concur with the commenters that the distribution of awards under section 18004(a)(3) of the CARES Act through ''part B of title VII of the Higher Education Act'' that may be used ''for grants to students for any component of the student's cost of attendance (as defined under section 472 of the Higher Education Act)'' was intended to complement the distribution of ''emergency financial aid grants'' under section 18004(c). As such, we find that the overarching intent of these two provisions was to support students, whether or not they are eligible to participate in title IV aid programs, and that a more plain text reading of the CARES Act leads to the conclusion that the term ''students,'' means all students.

While as described below the Department maintains that rulemaking is warranted in this context, it now agrees that imposing title IV eligibility onto the HEERF grants to students would contravene the statute's purpose. The Department recognizes that the CARES Act was enacted to provide rapid relief to students in order for them to respond to their educational needs in the wake of an unprecedented global pandemic. The Department now agrees that required verification of title IV eligibility could impose unnecessary delays in distributing funds to students, which would run directly counter to the overriding legislative purpose of this funding.

Changes: We have removed the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarified in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under HEERF programs. Because an individual is no longer required to be title IV eligible to receive a HEERF student grant, we are removing the definition of ''student'' from the general provisions regulations that apply to student assistance under the title IV programs and relocating the revised definition to 34 CFR part 677, which governs the HEERF programs.

Constitutional Challenges to the Application of Student Eligibility Requirements

Comments: Some commenters challenged the imposition of eligibility requirements on the distribution of CARES Act emergency relief grants as being in violation of separation of powers principles and the Spending Clause. These commenters noted that Federal funding to States may only carry conditions that Congress has explicitly imposed. *Pennhurst State Sch. & Hosp.* v. *Halderman,* 451 U.S. 1, 17–18 (1981). As such, these commenters advanced the argument that ''legislation enacted pursuant to the spending power is much in the nature of a contract'' and that ''[t]he legitimacy of Congress's power to legislate under the spending power thus rests on whether the State voluntarily and knowingly accepts the terms of the 'contract.'" *Id.* In this respect, the commenters noted that IHEs were required to sign a certification and agreement in order to receive HEERF money, but they were not given the ''clear notice'' required for exercises of the spending power. *Arlington Cent. Sch. Dist. Bd. of Educ.* v. *Murphy,* 548 U.S. 291, 296 (2006).

Discussion: The Department maintains that the definition of ''student'' as revised in this final rule does not exceed the Department's regulatory authority or otherwise violate the Spending Clause or separations of powers principles. While acknowledging the restrictions inherent in the Spending Clause, ''Congress is not required to list every factual instance in which a state will fail to comply with a condition. Such specificity would prove too onerous, and perhaps, impossible.'' *Mayweathers* v. *Newland,* 314 F.3d 1062, 1067 (9th Cir. 2002). Here, the Department's rulemaking is ''reasonably related to the purpose'' of the HEERF programs in providing much needed direction to institutions regarding which individuals may receive financial aid grants under the HEERF programs. *New York* v. *United States,* 505 U.S. 144, 172 (1992). We note that, while the definition of the term ''student'' set forth in this final rule is less restrictive than the one set forth in the IFR, the Secretary has broad authority to ''make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operation of, and governing the applicable programs administered by, the Department.'' 20 U.S.C. 1221e–3; *see id.* section 3474 (''The Secretary is authorized to prescribe such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department.''). The way in which this final rule aligns with this rulemaking authority also is discussed in further detail below.

Changes: We have removed the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarified in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under the HEERF programs. Because an individual is no longer required to be title IV eligible to receive a HEERF student grant, we are removing the definition of ''student'' from the general provisions

[3] *https://www.oecd.org/coronavirus/policy-responses/what-is-the-impact-of-the-covid-19-pandemic-on-immigrants-and-their-children-e7cbb7de/.*

regulations that apply to student assistance under the title IV programs and relocating the revised definition to 34 CFR part 677, which governs the HEERF programs.

No Delegation of Authority to the Department

Comments: Several commenters challenged the Department's IFR as being in excess of the rulemaking authority delegated to the Department. These commenters argued that section 18004 contains no evidence that Congress intended to delegate rulemaking authority to the Department. Thus, these commenters stated that, while Congress could have chosen to delegate authority to the Department to set eligibility criteria for the receipt of grant funds, it did not. Other commenters acknowledged that the Department does hold general authority to promulgate regulations governing the programs it administers, 20 U.S.C. 1221e–3, but that the Department lacks express authority in the context of the CARES Act and that, ''[s]uch a broad interpretation would be antithetical to the concept of a formula grant.'' *City of Los Angeles* v. *Barr,* 941 F.3d 931, 942 (9th Cir. 2019). Another commenter stated that the Supreme Court has also noted that a ''clear basis'' for delegation is particularly important when the rule directly concerns matters of ''vast economic . . . significance.'' The CARES Act ostensibly includes no ''clear basis'' for the delegation of the authority that the Department assumes through the promulgation of this rule. As a result, these comments also argued that the IFR would fail at ''Chevron step zero'' for lacking a delegation of authority to act in this manner.

Discussion: The Department maintains its position that it has the necessary authority to engage in rulemaking with respect to the programs that it administers, including the HEERF programs. Specifically, as acknowledged by some commenters, 20 U.S.C. 1221e–3 confers on the Secretary the authority to ''make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operation of, and governing the applicable programs administered by, the Department.'' The HEERF programs were clearly given to the Department to administer, as originally enacted in the CARES Act, and continued through the additional monies appropriated for these programs within CRRSAA and ARP. For example, the CARES Act appropriated funding ''to *carry out* the Education Stabilization Fund'' (*emphasis* added), of which the HEERF funds are a part. The primary funding stream under section 18004(a)(1) of the HEERF program more broadly provides that ''the Secretary [of Education] shall allocate funding,'' thus indicating that all funds in HEERF are within the purview of the Department.

The final rule clarifies ambiguity as to the administrative scope of coverage of HEERF programs (*i.e.,* timing of student enrollment), so that institutions may manage HEERF program funds effectively and efficiently. In specifying the administrative scope of that coverage, the Department is guided by the purpose of the HEERF grants to students, which are to cover ''expenses related to the disruption of campus operations due to coronavirus'' under the CARES Act and ''for any component of the student's cost of attendance or for emergency costs that arise due to coronavirus'' under CRRSAA and ARP. This text provides the necessary framework for the expenses for which HEERF grants to students may be used while leaving ambiguity as to what point in time students must have been enrolled in order to receive HEERF funding. The Department is mindful that many students who were enrolled during the pandemic have been forced to pause their education by withdrawing, and that institutional debt is one of the primary barriers to students re-enrolling and finishing their education.[4] By adopting a definition of ''student'' that allows students who were enrolled since the declaration of the national emergency to receive HEERF grants, the Department seeks to provide clarity as to which students may receive HEERF funding consistent with Congressional intent.

The Department has authority to interpret ambiguity in the statute. The Supreme Court has emphasized that ''[i]f Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority. . . . Sometimes the legislative delegation to an agency on a particular question is implicit rather than explicit.'' See *Chevron,* 467 U.S. at 843–44, 104 S. Ct. at 2781–82. In this instance, the Department's use of notice-and-comment rulemaking procedures required by the Administrative Procedure Act (APA), 5 U.S.C. 551, *et seq.,* has allowed the Department to receive important public input on the burden that results from an overly restrictive definition of ''student'' and has informed the Department's changes within this final rule. The Department received several comments as part of its notice and comment process indicating that commenters desired additional clarity on the eligibility of students for HEERF grants based on their enrollment status, while some commenters advocated for an expansive interpretation of which students could be considered ''enrolled.'' These comments informed and underpinned our regulating on the relationship between eligibility and student timing of enrollment.

Additionally, the revised definition of ''student'' in this final rule reflects our current position that the text of the statute (which uses ''students'' without any qualification), viewed in context, clearly speaks to all students, regardless of immigration status. And although the Department now believes Congress's intent is clear on this issue, it has explained its position in this final rule in light of the Department's previous assumption about the application of section 1611 to HEERF funds, as well as to address comments on the applicability of section 1611. This final rule thus clarifies that the unqualified statutory term ''students'' means just what it says—it encompasses all students, regardless of immigration status. And, because the statutory term ''students'' is clear on that issue, the use of that term—as explained more fully above—indicates that section 1611 does not apply.

Therefore, the Department believes that this final rule is consistent with the APA and its rulemaking authority granted by Congress.

Changes: None.

Notice and Comment; Delay of Effective Date

Comments: Some commenters argued that the Department's grounds for waiving notice and comment rulemaking in the IFR were insufficient, and therefore that the Department did not fulfill its obligations under the APA.

Commenters disputed that the waiver served the public interest. One commenter claimed that the Department did not explain how issuance of the IFR, which made previous guidance enforceable, would lead to quicker distribution of HEERF funds, or how the waiver was in the public interest. They also pointed out that the Department's desire to make previous guidance on the use of HEERF funds legally binding cannot establish good cause, specifically citing *United States* v. *Reynolds,* 710 F.3d 498 (3d Cir. 2013), for this purpose. Commenters also noted that the IFR was issued during pending litigation, which one commenter pointed out called into question the level of certainty it would provide.

Commenters stated that the importance of institutions properly distributing the HEERF allocations and

[4] *https://www.newamerica.org/education-policy/reports/comeback-story/recommendations/.*

prevention of waste, fraud, and abuse were insufficient causes for waiving notice and comment rulemaking. They said that grounds for the waiver were undermined by the three-month period between enactment of the CARES Act and issuance of the IFR, and that the Department could make such an argument with respect to any funding it administers. Commenters also pointed to case law stating that a desire to provide immediate guidance does not constitute good cause. One commenter said the Department failed to provide evidence that the one-time emergency HEERF funds would be subject to fraud or waste.

Several commenters stated that the current national emergency was also an insufficient basis for the waiver. They said that the length of time between the CARES Act's enactment and issuance of the IFR, and the fact that guidance on this topic was issued in April 2020, also undermined this argument. They said that any emergency was now of the Department's own making, which case law holds is not justification for a waiver of notice and comment rulemaking. In fact, one commenter pointed out that the need for public comment was great, given the expansiveness of the IFR and its effect of denying emergency relief to students during a pandemic and economic recession.

In addition, commenters argued that, for the same reasons they asserted the Department did not have good cause to waive notice and comment rulemaking, it also did not have good cause to waive the 30-day delayed effective date required by the APA and Congressional Review Act.

Finally, one commenter contrasted the process for the associated information collection with the process for this IFR. They noted that, despite the Department's claims that it was acting for reasons of urgency, it issued an information collection request in relation to its distribution of the HEERF funds that was subject to a longer notice and comment period (60 days) than the IFR (30 days), which they claimed suggested it treated the same set of facts with different levels of urgency.

Discussion: We appreciate the concerns raised by commenters on these topics, including good cause to waive notice and comment rulemaking and delays of effective dates. However, whether or not the IFR met the standard for good cause to waive notice and comment rulemaking, the Department has now considered the comments received in response to the IFR, and is issuing this final rule which responds to them. We greatly value those comments and appreciate the value that public comment provides, especially with respect to a rule of this nature. As explained elsewhere throughout this preamble, the Department is now, with the benefit of comments received, revising the rule set forth in the IFR to better effectuate the purposes of the CARES Act, as well as CRRSAA and ARP. *See Little Sisters of the Poor Saints Peter & Paul Home* v. *Pennsylvania,* 140 S. Ct. 2367, 2385 (2020).

With respect to the Department's information collection request, notice and comment rulemaking under the APA (5 U.S.C. 553) and information collection approval process under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) are separate processes. The Department requested an emergency clearance under the Paperwork Reduction Act to allow for the immediate collection of this information. Following that, the public was then provided the ability to comment on the proposed burden assessment through the standard information collection process with notice requesting comment being published in the **Federal Register**. However, in both instances, the Department pursued the accelerated procedures provided for in applicable law, due to the exigency of the situation.

Changes: None.

Change in Policy; Arbitrary and Capricious

Comments: Commenters argued that the IFR was arbitrary and capricious because it changed the Department's policy position without acknowledgment or explanation, and did not examine relevant data, consider effects on students, or provide a satisfactory explanation for the choices it made. Commenters pointed out what they viewed as various inconsistencies between the IFR and previous Department statements, including an April 9, 2020, letter sent by Secretary DeVos to college and university presidents. They also referenced a television appearance by Secretary DeVos. More specifically, commenters stated that the April 9, 2020, letter indicated that each institution may develop its own system and process for determining how to allocate CARES Act funds. Commenters pointed to the Funding Certification and Agreement issued by the Department, which they said initially characterized individual emergency financial aid grants as not constituting Federal financial aid under title IV of the HEA. According to one commenter, this position was more logical and consistent with the CARES Act and other funding, but it was reversed by the IFR without displaying awareness of the change or explaining it. Another commenter pointed to what they said were other inconsistencies in the way the Department interpreted or applied different statutory sections, including interpretations of section 18004(c), the application of 8 U.S.C. 1611, and the way funds were allocated when compared with the eligibility criteria.

Discussion: In these final regulations, we are fully explaining our revision of the position taken in the IFR. To the extent this is a departure from our prior policy, all changes are fully explained as required by applicable case law, including cases cited by commenters, such as *F.C.C.* v. *Fox Television Stations, Inc.,* 556 U.S. 502 (2009), and *Encino Motorcars, LLC* v. *Navarro,* 136 S. Ct. 2117 (2016). In addition, we believe that the revisions and explanations throughout this document address the points raised by commenters. As discussed above, the revised definition of ''student'' also resolves the disparity the commenter referenced with respect to funding allocation.

Changes: Changes are discussed in applicable sections throughout this preamble.

Comments: None.

Discussion: With respect to student program eligibility, the current definition of ''student'' in section 668.2 solely refers to the CARES Act. Given the passage of CRRSAA and ARP, which also allocate funds for the HEERF programs, the Department believes that this revised definition of ''student'' should encompass student eligibility for these programs as well. Thus, the new definition of ''student'' refers to student eligibility for the CARES Act, CRRSAA, and ARP under the umbrella of the HEERF programs. We also have added the phrase ''financial aid grants to students'' as one of the specific purposes for which ''student'' is defined because that language was introduced in section 314(c) of CRRSAA.

Changes: We have removed the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarified in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under the HEERF programs. Because an individual is no longer required to be title IV eligible to receive a HEERF student grant, we are removing the definition of ''student'' from the general provisions regulations that apply to student

assistance under the title IV programs and relocating the revised definition to 34 CFR part 677, which governs the HEERF programs.

Waiver of Notice and Comment Rulemaking and Delayed Effective Date Under the Administrative Procedure Act

This final rule defines ''student'' for purposes of the HEERF programs, which include funding from the CARES Act, CRRSAA and ARP. Congress enacted the CARES Act, as well as CRRSAA and ARP, to help the nation cope with the urgent economic and health crises created by the COVID–19 pandemic and created the HEERF programs to provide emergency financial aid grants to students. CRRSAA and ARP build on the framework for HEERF programs originally created by the CARES Act by allocating money into the same programs, and it is logical to apply the same definition of ''student'' for provisions in those two statutes as for the CARES Act. We believe that the public would reasonably have anticipated that this final rule would apply to all HEERF funding. In addition, the purpose of notice and comment has been fulfilled in this case. Here, the IFR ''adequately frame[d] the subjects for discussion.'' *Nat'l Rest. Ass'n* v. *Solis,* 870 F. Supp. 2d 42, 51 (D.D.C. 2012) (quoting *Conn. Light & Power Co.* v. *Nuclear Reg. Comm'n,* 673 F.2d 525, 533 (D.C. Cir. 1982)). Application of these rules to CRRSAA and ARP funding was a reasonable development of the original proposal. *See id.* Further, the Department has responded to the public comments received in response to the IFR in this final rule, and the position taken in this final rule with respect to CRRSAA and ARP funding is consistent with the position many commenters advocated with respect to the CARES Act.

Nevertheless, out of an abundance of caution and because CRRSAA and ARP were enacted after the closing of the public comment period for the IFR, we are including this waiver of rulemaking in this final rule. We believe that, in the event the inclusion of CRRSAA and ARP is not a logical outgrowth, such waiver is both justified and necessary, based on the circumstances.

In light of the urgent economic challenges facing many students as a result of the crisis, the Department has determined that there is good cause for promulgating this final rule without additional notice and comment and that it would be contrary to the public interest to engage in notice and comment rulemaking. The public comments summarized throughout this preamble underscore the importance of this aid to students. For example, as noted earlier in this preamble, the Department now agrees with the numerous commenters who provided evidence to support the conclusion that students who are ineligible for title IV aid are among those with the most exceptional needs. This final rule will enable institutions to distribute these emergency funds to all eligible students in an expedient manner. Delay of these critical funds to engage in notice and comment rulemaking would be directly contrary to the public interest at issue, addressing exigent need due to the national pandemic.

Under the APA (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed rules. However, the APA provides that an agency is not required to conduct notice and comment rulemaking when the agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(B)). While we are responding to public comments received in response to the IFR in this final rule, we also believe that, if needed, a waiver of notice and comment rulemaking with respect to this final rule is warranted by the circumstances and is appropriate to encompass the full scope of the final rule. In light of the current national emergency and the importance of institutions distributing as quickly as possible the HEERF allocations, including those from CRRSAA and ARP, via emergency financial aid grants to students to help with their expenses related to the disruption of campus operations due to COVID–19, the normal rulemaking process would be impracticable and contrary to the public interest. Therefore, we believe that good cause exists for waiving the notice and comment requirements of the APA.

The Department is not required to conduct negotiated rulemaking for this rule. The requirement in HEA section 492 that requires the Department to obtain public involvement in the development of proposed regulations for title IV of the HEA does not apply to this final rule, because it implements the CARES Act, not title IV. Moreover, even if it did apply, section 492(b)(2) of the HEA provides that negotiated rulemaking may be waived for good cause when doing so would be ''impracticable, unnecessary, or contrary to the public interest.'' Section 492(b)(2) of the HEA also requires the Secretary to publish the basis for waiving negotiations in the **Federal Register** at the same time as the regulations in question are first published. Even if section 492 applied to this rule, good cause would exist to waive the negotiated rulemaking requirement, since, as explained above, notice and comment rulemaking is not practicable or in the public interest in this case.

The master calendar requirement in section 482 of the HEA likewise does not apply to this rule, because the rule does not relate to the delivery of student aid funds under title IV.

Additionally, the APA generally requires that regulations be published at least 30 days before their effective date, except as otherwise provided by the agency for good cause found and published with the rule (5 U.S.C. 553(d)(3)). As described above, good cause exists for this rule to be effective upon publication in light of the current national emergency and the importance of institutions properly distributing the HEERF allocations via emergency financial aid grants to students to help with their expenses related to the disruption of campus operations due to COVID–19. Under the CRA, a major rule may take effect no sooner than 60 calendar days after an agency submits a CRA report to Congress or the rule is published in the **Federal Register**, whichever is later. 5 U.S.C. 801(a)(3)(A). However, the CRA creates limited exceptions to this requirement. See 5 U.S.C. 801 (c), 808. An agency may invoke the ''good cause'' exception under section 808(2) in the case of rules for which the agency has found ''good cause'' under the APA standard in section 553(b)(B), to issue the rule without providing the public with an advance opportunity to comment. As stated above, the Department has found good cause to issue this rule without additional notice and comment rulemaking, and thus we are not including the 60-day delayed effective date in this rule.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is ''significant'' and, if so, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or

communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action will have an annual effect on the economy of more than $100 million. Therefore, this regulatory action is an economically significant regulatory action subject to review by OMB under section 3(f)(1) of Executive Order 12866. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as a ''major rule,'' as defined by 5 U.S.C. 804(2).

We have also reviewed this action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

Need for Regulatory Action

The Department is issuing this final rule to remove the requirement that a student must be eligible for title IV aid to receive financial assistance under the HEERF programs and clarify in the definition of ''student'' that any individual who is or was enrolled at an eligible institution on or after the date the national emergency was declared for COVID–19 may qualify for assistance under the HEERF programs. The final rule also applies the revised definition of ''student'' to funds to be distributed under CRRSAA and ARP, as well as the CARES Act. This final rule is meant to provide flexibility and clarify administrative processes for institutions so the funds can be provided to eligible students as efficiently as possible, with an emphasis on providing funds to students with exceptional need as directed by the changes to the HEERF programs made under the CRRSAA and the ARP. The final rule also describes the expansion of access to all students enrolled at institutions, not just title IV eligible students. The financial aid grants under the HEERF programs are meant to assist students with expenses related to the pandemic to reduce disruption to their education, so this final rule revises the Department's interpretation of an eligible ''student'' so the funds can be disbursed in a timely manner and to those students with exceptional need. Adopting a broad and simple definition of a ''student'' allows the emergency grant funds for students to maximize their purpose and fully live up to Congressional intent in time to assist with the COVID–19 related expenses the funds are intended to alleviate.

Costs and Benefits

The emergency financial aid grants under section 18004 of the CARES Act are intended to assist eligible students with expenses related to the COVID–19 pandemic to limit disruption of their educational activities. In accordance with OMB Circular A–4 (available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), we are evaluating the costs and benefits of the final rule compared to a pre-statutory baseline. The Department acknowledges that many of the emergency financial aid grants under section 18004 of the CARES Act have already been awarded to students under the previous definition of ''student.'' However, there are still significant funds available for students under section 314 of CRRSAA and section 2003 of ARP, so students affected by the revised definition of student can benefit from those funds. Therefore, where applicable in this section, the Department discusses not only the costs and benefits of the final rule compared to a pre-statutory baseline, but also the costs and benefits relative to institutions having already made many emergency financial aid grant awards using the previous definition of ''student.'' This final rule revises which students are eligible for the grants but does not change the amount available or the allocation formulas for providing the funds to institutions. The dollar amount of transfers available to eligible students is a minimum of $6.25 billion and up to $12.5 billion from the initial HEERF funding, depending on the amount institutions retain for institutional expenses. We have not discounted or annualized this amount because it is meant to be disbursed to students as efficiently as possible. Much of the initial HEERF funding for students from the CARES Act has been distributed, so the revised definition of student will not affect much of those funds. However, the additional funding provided by CRRSAA and ARP makes at least $6.46 billion and $18.37 billion, respectively, in transfers available to students and the benefits of those funds are available to all the students based on the revised definition.

As described in this preamble, the Department now agrees with the majority of commenters that aligning the eligibility requirements for the HEERF grants to title IV is not the best policy to effectuate the goal of helping students and institutions respond to circumstances created by the current pandemic. As commenters noted, students excluded from receiving grants because of the eligibility requirements in the IFR would include some of those most affected by the COVID–19 pandemic and the lack of emergency relief funds could significantly disrupt their educations and economic prospects. The emergency relief available under the CARES Act, CRRSAA, and ARP could help these students continue their educations. The Department now agrees that the funding should be distributed regardless of title IV eligibility, so the potential costs noted by the commenters are not applicable under this final rule. This final rule explains the expanded eligibility and allows students to know if they are eligible to receive such funds

from their institution. This change from the IFR will allow institutions to award grants to their students with the most need, including students with significant unmet need that may not otherwise be eligible for Federal funding.

Because institutions will determine how they will distribute funds to their students, the Department does not know the exact distribution of who will receive the grants. Table 1 shows the estimated pool of potential recipients as derived from data from the Integrated Postsecondary Education Data System (IPEDS) for institutions that received an allocation. It is not specific to Spring 2020 enrollment but does provide an indication of the number of students who could receive funds. The change from the IFR is reflected in the 1.2 million non-resident alien and 3.3 million students involved exclusively in distance education programs who are potentially eligible for grants under the final rule.

TABLE 1—ESTIMATED POTENTIAL GRANT RECIPIENTS BY CONTROL OF INSTITUTION [5] [6]

	Public	Private	Proprietary	Total
Total Enrollment [1]	19,335,244	5,271,445	2,078,903	26,685,592
Undergraduate	17,493,764	3,533,450	1,695,833	22,723,047
Graduate	1,841,480	1,737,995	383,070	3,962,545
Non-Resident Alien	729,367	420,550	34,221	1,184,138
% All-Distance [2]	12.40	28.40	62.50	.....
Distance Education eligible under final rule	1,806,382	837,479	614,126	3,257,987

Studentswill benefit from assistance in paying additional expenses associated with elements included in their cost of attendance, such as room and board, that changed with the disruption of campus activities. As confirmed by the Internal Revenue Service, the relief provided under section 18004 of the CARES Act will not be considered gross income, so students have no Federal tax consequences to deter them from accepting this assistance. Students will have to work with their institutions to access the funds according to the process the institution establishes for awarding the relief. As described in the Paperwork Reduction Act section of this preamble, the estimated number of students applying for relief is increased compared to the IFR published June 17, 2020, but the time per application is reduced because students would not have to submit paperwork to prove title-IV eligibility. Students are expected to take 1,280,908 hours for a total of $22.4 million at a wage rate of $17.50 [7] to apply for emergency relief.

Institutions are also affected by this final rule. They have some flexibility in determining how they will distribute the funds they were allocated for this emergency relief. They will incur some costs in setting criteria or establishing an application process for their students. We assume the distribution of the funds can largely rely on existing processes and information involved in the disbursement financial aid. Several commenters noted that there would be a significant burden on institutions in confirming students' eligibility for the emergency relief, including for students who do not have an existing valid SAR or ISIR for the 2019–20 or 2020–21 award years. One commenter estimated that it would take an institution approximately 148.5 hours to administer HEERF funds. However, with the change in the final rule, the burden on institutions should be reduced because they do not have to confirm students' title IV eligibility.

As described in the Paperwork Reduction Act section of this preamble, the burden on institutions may be reduced compared to the IFR that involved checking title IV eligibility, but we do not incorporate that possibility into the estimated25,680 hours and $1,203,622 at a wage rate of $46.87 for postsecondary education administrators.[8]

To the extent that students use emergency financial aid grants to pay for expenses related to their cost of attendance, institutions will benefit from the revenue stemming from payments that students would otherwise not be able to make. Table 2 summarizes the amounts to be allocated to institutions by sector. The full breakout of amounts allocated to individual institutions, including the maximum that can be allocated to institutional costs, is available in the Allocations for section 18004(a)(1) of the CARES Act document [9] on the Department's CARES Act website.[10] These allocations were made according to the formula described in the Methodology for Calculating Allocations document [11] on the Department's CARES Act website. The allocation formula emphasizes institutions' share of Pell Grant recipients with 75 percent of the allocation based on each IHE's share of full-time equivalent (FTE) enrollment of Pell Grant recipients who were not enrolled in exclusively distance education prior to the coronavirus emergency, relative to the share of such individuals in all institutions. The remaining 25 percent is based on the institution's share of FTE enrollment of students who were not Pell Grant recipients and who were not enrolled exclusively in distance education prior to the coronavirus emergency. This formula helps direct relief to institutions that serve lower income students as part of their on-campus operations. Table 2–A summarizes the

[5] Analysis of IPEDS 2018–19 12-month enrollment file, effy2019 available at *https://nces.ed.gov/ipeds/datacenter/DataFiles.aspx?goToReportId=7.*

[6] National Center for Education Statistics, Digest of Education Statistics 2019, Table 311.15. Number and percentage of students enrolled in degree-granting postsecondary institutions, by distance education participation, location of student, level of enrollment, and control and level of institution: Fall 2017 and Fall 2018. Fall 2018 share of students taking exclusively distance education courses. Available at *https://nces.ed.gov/programs/digest/d19/tables/dt19lowbar;311.15.asp.*

[6] Students hourly rate estimated using national median hourly wage for all occupations. Bureau of Labor Statistics, May 2020 Occupational Employment Statistics Data. Available at *https://www.bls.gov/oes/current/oes_nat.htm#00-0000.* Last accessed March 31, 2021.

[7] Students' hourly rate estimated using national median weekly wage for 16–24 year-olds. Bureau of Labor Statistics, Labor Force Statistics, Table 3: Median usual weekly earnings of full-time wage and salary workers by age, race, Hispanic or Latino ethnicity, and sex, not seasonally adjusted. Available at *https://www.bls.gov/webapps/legacy/cpswktab3.htm.* Last accessed April 13, 2021.

[8] Bureau of Labor Statistics, Occupational Employment and Wage Statistics, May 2020 National Occupational Employment and Wage Estimates Outlook Handbook—Management Occupations—Postsecondary Administrators, 201920 median hourly wage. Available at *https://https://www.bls.gov/oes/current/oes_nat.htm#11-0000.* Last accessed April 13, 2021.

[9] Available at *www2.ed.gov/about/offices/list/ope/allocationstableinstitutionalportion.pdf.*

[10] *www2.ed.gov/about/offices/list/ope/caresact.html.*

[11] Available at *www2.ed.gov/about/offices/list/ope/heerf90percentformulaallocationexplanation.pdf.*

initial section 18004(a)(1) allocations that were posted in April 2020 prior to the allocation of the $1.86 million that was originally held in reserve.

TABLE 2–A—SUMMARY OF CARES ACT HEERF (a)(1) ALLOCATIONS

Type of institution	Total award allocation	Minimum amount for student aid	Maximum amount for institutional portion
Public	8,904,536,829	4,452,268,877	4,452,267,952
Private, Non-Profit	2,484,027,454	1,242,014,126	1,242,013,328
Proprietary	1,118,690,220	559,345,530	559,344,690
Total	12,507,254,503	6,253,628,533	6,253,625,970

As indicated earlier in this preamble, under CRRSAA, approximately $22.7 billion in additional funding was made available for institutions of higher education under HEERF. Funding was appropriated for the existing (a)(1), (a)(2) and (a)(3) programs previously authorized under the CARES Act, as well as for a new (a)(4) program authorized under CRRSAA that provides funds for proprietary institutions for exclusive use as financial grants to students. Proprietary institutions are no longer eligible to receive awards under the (a)(1) program.

These funds were allocated according to a slightly revised formula, but institutions were required to use at least the same amount for student grants as they did under the original HEERF allocation. CRRSAA appropriates more funding (approximately $22.7 billion instead of $12.6 billion) for supplemental and new awards under CRRSAA section 314(a)(1), so, on average, a larger share of (a)(1) allocations will be available for institutional support than under the CARES Act. The allocation methodology is described in the Methodology for Calculating Allocations Under Section 314(a)(1) document posted January 14, 2021.[12] Students enrolled in exclusively distance education courses are included in the CRRSAA section 314(a)(1) allocation formula. Institutions will now receive allocations that factor in such students under the formula, and the formula also allows exclusively online institutions that were ineligible for funding under section 18004(a)(1) of the CARES Act to apply for grant funds. Amounts apportioned for students enrolled in exclusively distance education courses may be used only for financial aid grants to students. Table 2B summarizes the allocations to institutions of CRRSAA funds.

TABLE 2–B—SUMMARY OF CRRSAA (a)(1) AND (a)(4) ALLOCATIONS

Type of institution	Total award allocation	Minimum amount for student aid	Maximum amount for institutional portion
Public	16,440,482,886	4,475,143,071	11,965,339,815
Private, Non-Profit	4,077,819,283	1,308,911,589	2,768,907,694
Proprietary	680,914,080	680,914,0800	.....
Total	21,199,216,249	6,464,968,740	14,734,247,509

TABLE 2–C—SUMMARY OF ARP (a)(1) AND (a)(4) ALLOCATIONS

Type of institution	Total award allocation	Minimum amount for student aid	Maximum amount for institutional portion
Public	28,830,604,105	14,657,490,881	14,173,113,224
Private, Non-Profit	7,191,354,595	3,713,709,802	3,477,644,793
Proprietary	395,845,7000	395,845,7000	.....
Total	36,417,804,400	18,767,046,383	17,650,758,017

We estimate that the definition of student eligibility for the financial aid grants to students will not have an impact on the Federal budget. The CARES Act provided a maximum of $12.5 billion, with a minimum of $6.25 billion required to be spent on emergency financial aid grants to students and not spent on institutional expenses. The definition of student eligibility also applies to the $22.7 billion in additional funding appropriated under CRRSAA and $39.6 billion under ARP. These totals include amounts available under sections (a)(2) and (a)(3) of CARES, CRRSAA, and ARP that provide funds to minority-serving institutions and as supplemental assistance to private, non-profit, and public institutions to be awarded competitively. The final rule does not impact the Federal budget because it expands which students are eligible to receive emergency relief provided by the CARES Act, CRRSAA, and ARP but does not change the amount available for such grants. As described in the

[12] *https://www2.ed.gov/about/offices/list/ope/314a1methodologyheerfii.pdf.*

Costs, Benefits, and Transfers section related to institutions, allocations were determined in April 2020 for the CARES Act funds with $50 million held in reserve to account for data limitations in allocating the initial amounts to eligible institutions. When issuing the interim final rule, we anticipated that $12.5 billion would ultimately be disbursed in 2020, and therefore estimated $12.5 billion in transfers in 2020 relative to a pre-statutory baseline. Reserve allocations of $1.86 million went out but the full $50 million was not needed, and all unobligated CARES (a)(1) funding was transferred to CRRSAA (a)(1) funding. The definition of student also applies to $22.7 billion in CRRSAA funds allocated in January 2021 and $39.6 billion in ARP funds which will be allocated to institutions in April 2021.

Accounting Statement

As required by OMB Circular A–4, in the following table we have prepared an accounting statement showing the classification of the impacts associated with the provisions of these final regulations in 2020–2021, using 3 percent and 7 percent discount rates. This table provides our best estimate of the changes in monetized transfers in 2020–2021 as a result of this final rule. We note that transfers below flow from the Federal Government to eligible students and are processed through institutions.

TABLE 3—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED IMPACTS IN 2020–2021

[In millions]

Category	Benefits	
Assistance may support students continuing in their programs	Not quantified	
	Costs	
Paperwork burden on institutions to administer funds and on students to apply	7% $23.6	3% $23.6
Category	**Transfers**	
Minimum relief for eligible students to help with additional expenses due to covid–19 pandemic (HEERF from CARES Act, CRRSAA, and ARP)	7% $31,486	3% $31,486
Maximum assistance to institutions for COVID–19 pandemic related expenses from CARES Act, CRRSAA, and ARP	$38,639	$38,639
Funding available to HBCUs, TTCUs, MSIs, and SIPs under CARES, CRRSAA and ARP (a)(2)	$5,718	$5,718
Competitively awarded supplemental assistance to private, non-profit and public institutions under CARES, CRRSAA and ARP (a)(3)	$660.2	$660.2

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant negative economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

However, as noted in several of the Department's recent regulations, we believe that an enrollment-based standard for small entity status is more applicable to institutions of higher education. The Department recently proposed a size classification based on enrollment using IPEDS data that established the percentage of institutions in various sectors considered to be small entities, as shown in Table 4. We described this size classification in the NPRM published in the **Federal Register** on July 31, 2018 for the proposed borrower defense rule (83 FR 37242, 37302). The Department discussed the proposed standard with the Chief Counsel for Advocacy of the Small Business Administration, and while no change has been finalized, the Department continues to believe this approach better reflects a common basis for determining size categories that is linked to the provision of educational services.

TABLE 4—SMALL ENTITIES UNDER ENROLLMENT BASED DEFINITION

Sector	Small	Total	Percent
2-year Public	342	1,240	28
2-year Private, Non-Profit	219	259	85
2-year Proprietary	2,147	2,463	87
4-year Public	64	759	8
4-year Private, Non-Profit	799	1,672	48
4-year Proprietary	425	558	76
Total	3,996	6,951	57

As described in the Regulatory Impact Analysis, institutions may benefit from applying no more than 50 percent of their allocation of CARES Act HEERF funds to institutional costs, so some small entities will benefit from those revenues. Public and private, non-profit institutions can use allocated funds from CRRSAA and ARP above the amount they received under the CARES Act for institutional expenses. They will also have to establish a process for

administering and disbursing the funds. We expect that the 2,586 estimated small entities allocated funds for this purpose under the CARES Act, CRRSAA, and ARP will spend a total of 5,172 hours totaling $242,412 at a wage rate of $46.87 [13] for postsecondary administrators to administer the distribution of the relief.

Table 5 shows the allocations of funds to small entities by sector, with any institution for which there was no small business indicator available considered a small entity. As for all institutions, the allocations of funds to specific small institutions are available on the Department's CARES website,[14] CRRSAA website,[15] and ARP website.

TABLE 5—SUMMARY OF ALLOCATIONS OF (a)(1) AND (a)(4) FUNDS TO SMALL ENTITIES BY SECTOR

Sector	Source	Sum of total allocation	Sum of minimum award to students	Sum of maximum award to institutions
Private	Non-Profit	1,696,561,228	248,701,847	675,401,095
	CARES Act	295,300,392	14,346,167	280,954,225
	CRRSAA	512,382,528	166,085,661	346,296,867
	ARP	888,878,308	68,270,019	48,150,003
Public		1,243,353,304	602,193,954	641,159,350
	CARES Act	266,608,121	133,304,213	133,303,908
	CRRSAA	204,286,897	68,130,854	136,156,043
	ARP	772,458,286	400,758,887	371,699,399
Proprietary		554,759,869	431,554,396	123,205,473
	CARES Act	57,474,850	28,737,500	28,737,350
	CRRSAA	307,916,595	307,916,595	0
	ARP	189,368,424	94,900,301	94,468,123
Total		3,494,674,401	1,282,450,197	1,439,765,918
	CARES Act	619,383,363	176,387,880	442,995,483
	CRRSAA	1,024,586,020	542,133,110	482,452,910
	ARP	1,850,705,018	563,929,207	514,317,525

Because institutions control the distribution of the funds to eligible students and have flexibility to establish a process suitable to their circumstances, no alternatives were considered specifically for small entities.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

In the IFR, the Department interpreted, for purposes of determining eligibility for the CARES Act funds, the term ''student,'' to mean a person who is eligible under section 484 of the HEA to receive title IV aid, as suggested by the references to title IV in the context of section 18004.

Based on comments received on the IFR and further review of the CARES Act, including in light of legal challenges, the Department has been persuaded that this definition was too prescriptive. In this final rule the Department has modified the definition of a student, for the purposes of receiving emergency financial aid grants under the Higher Education Emergency Relief Fund programs as originally enacted under the CARES Act, to be an individual who is or was enrolled at an eligible institution on or after the date of declaration of the national emergency concerning the novel coronavirus disease. The change in the definition of a student for these purposes is also supported in subsequent passage of the CRRSAA and ARP. Please refer to the supplementary information and Analysis of Comments and Changes earlier in this preamble for further information.

Some commenters challenged the estimates of hours and costs from the IFR, mostly on the basis that they were too low or did not account for necessary steps. Because the revised definition of ''student'' in this final rule no longer necessitates a more detailed review of student eligibility for funding, there has been no change to the estimated burden on institutions from the IFR. We continue to believe that many institutions expanded their current financial aid appeals process and utilize that framework to receive requests for COVID–19 assistance from eligible students. We maintain the estimate that each institution that received an allocation required five hours to set up any new form for students to complete and establish review and recordkeeping processes. The estimated burden for the 1,651 private institutions remains 8,255 hours (1,651 × 5 hours). The estimated burden for the 1,641 proprietary institutions remains 8,205 hours (1,641 × 5 hours). The estimated burden for the 1,844 public institutions remains 9,220 (1,844 × 5 hours). The total burden to all institutions receiving an allocation of funds remains 25,680 hours (5,136 institutions × 5 hours).

Because the definition of ''student'' has been broadened in this final rule, the universe of students eligible to receive funds has been recalculated. Using the unduplicated head count for 2018–2019 as reported by IPEDS, the number of enrolled students is calculated at 26,685,592. We estimate that 60 percent, or 16,011,355 of those eligible students may request additional aid from their institution based on

[13] Bureau of Labor Statistics, Occupational Employment and Wage Statistics, May 2020 National Occupational Employment and Wage Estimates Outlook Handbook—Management Occupations–Postsecondary Administrators, 201920 median hourly wage. Available at *https://https://www.bls.gov/oes/current/oes_nat.htm#11-0000.* Last accessed April 13, 2021.

[14] Available at *https://www2.ed.gov/about/offices/list/ope/allocationstableinstitutionalportion.pdf.*

[15] Available at *https://www2.ed.gov/about/offices/list/ope/crrsaa.html.*

changed circumstances due to the coronavirus. As students are no longer required to show title IV eligibility to receive this additional aid, we are adjusting the time for students to make a request for additional funds from their institution. We estimate that it would take approximately 5 minutes per student to complete a request for additional aid for a total student burden of 1,280,908 hours (.08 hours × 16,011,355 students).

An emergency collection, 1840–0844, was previously approved by OMB on June 17, 2020 for the burden assessed to both institutions and students as noted in the IFR and ICR supporting statement. The emergency collection had an expiration date of December 31, 2020. The comment period for the ICR closed August 18, 2020. Of the four comments received for the ICR two were substantive comments that echoed comments filed for the IFR. The emergency clearance lapsed without filing either a 30-day public comment period request for the ICR or a request to discontinue the ICR.

The Department received emergency approval under OMB control number 1840–0857 in order to allow institutions to utilize the revised student definition for purposes of disbursing funds to students as soon as possible. The Department will publish 60-day and 30-day **Federal Register** notices as required by 5 CFR 1320.8(d), soliciting comments on the information collection.

1840–XXXX—ELIGIBILITY OF STUDENTS AT INSTITUTIONS OF HIGHER EDUCATION FOR FUNDS UNDER THE HEERF PROGRAMS

Affected entity	Number of respondents	Number of responses	Hours per response	Total burden	Estimate costs student $17.50 institutions $46.87
Individual Student	16,011,355	16,011,355	.08	1,280,908	$22,415,890
Private Institution	1,651	1,651	5	8,255	386,912
Proprietary Institution	1,641	1,641	5	8,205	384,568
Public Institution	1,844	1,844	5	9,220	432,141
Total	16,016,491	16,016,491		1,306,588	23,619,511

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. ''Federalism implications'' means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

In the IFR, we solicited comments on whether the rule may have federalism implications and encouraged State and local elected officials to review and provide comments. In the Public Comment section of this preamble, we discuss any comments we received on this subject.

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List of Subjects

34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Part 677

Colleges and universities, Grant programs—education, Reporting and recordkeeping requirements.

Michelle Asha Cooper,

Acting Assistant Secretary for Postsecondary Education.

For the reasons discussed in the preamble, the Secretary amends parts 668 and 677 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 1. The general authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001–1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, 1099c–1, 1221–3, and 1231a, unless otherwise noted.

* * * * *

§ 668.2 [Amended]

■ 2. In § 668.2, amend paragraph (b) by removing the definition of ''Student'' and the authority citation following the definition.

PART 677—HIGHER EDUCATION EMERGENCY RELIEF FUND PROGRAMS

■ 3. The authority citation for part 677 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3; section 314(a)(2), Pub. L. 116–260, Division M, 134 Stat. 1182, unless otherwise noted.

■ 4. Add subpart B to read as follows:

Subpart B—Student Eligibility

Sec.
677.3 Student eligibility.
677.4 [Reserved]

Authority: 20 U.S.C. 1221e–3, 3474; Section 18004, Pub. L. 116–136, 134 Stat. 281, as amended through Section 314, Pub. L. 116–260, Division M, 134 Stat. 1182, and Section 2003, Pub. L. 117–2, 135 Stat. 4.

§ 677.3 Student eligibility.

Student, for purposes of the phrases ''grants to students'', ''emergency

financial aid grants to students'' or ''financial aid grants to students'' as used in the Higher Education Emergency Relief (HEERF) programs, is defined as any individual who is or was enrolled (as defined in 34 CFR 668.2) at an eligible institution (as defined in 34 CFR 600.2) on or after March 13, 2020, the date of declaration of the national emergency concerning the novel coronavirus disease.

§ 677.4 [Reserved]

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