C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect 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. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only three hours that will prohibit entry within certain navigable waters of San Diego Bay in the vicinity of the General Dynamics NASSCO shipyard. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–024 to read as follows:

§ 165.T11–024 Safety Zone; San Diego Bay, San Diego, CA.

(a) *Location.* The following area is a safety zone. All waters of San Diego Bay, from surface to bottom, encompassed by a line connecting the following points beginning at 32°41′23.4″ N, 117°8′39.6″ W (Point A); thence running northwesterly to 32°41′14.4″ N, 117°9′3″ W (Point B); thence running southeasterly to 32°41′3″ N, 117°8′43.8″ W (Point C); thence running east to 32°41′12″ N, 117°8′20.4″ W (NAD 83) (Point D); thence running north to the beginning point.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port San Diego (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF Channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 6 p.m. through 9 p.m. on July 2, 2020.

Dated: May 29, 2020.

T. J. Barelli,

Captain, U.S. Coast Guard, Captain of the Port Sector San Diego.

[FR Doc. 2020–12089 Filed 6–16–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Part 668

[Docket ID ED–2020–OPE–0078]

RIN 1840–ZA04

Eligibility of Students at Institutions of Higher Education for Funds Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Interim final rule.

SUMMARY: The Department of Education (Department) issues this interim final rule so that institutions of higher education may appropriately determine which individuals attending their institution are eligible to receive emergency financial aid grants to students under the Coronavirus Aid, Relief, and Economic Security (CARES) Act (March 27, 2020).

DATES: These regulations are effective June 17, 2020. We must receive your comments on or before July 17, 2020.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

If you are submitting comments electronically, we strongly encourage you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Document Format (PDF), we strongly encourage you to convert the

PDF to print-to-PDF format or to use some other commonly used searchable text format. Please do not submit the PDF in a scanned format. Using a print-to-PDF format allows the Department to electronically search and copy certain portions of your submissions.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Help.''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments about the interim final rule, address them to Gaby Watts, U.S. Department of Education, 400 Maryland Ave. SW, Room 258–02, Washington, DC 20202.

Privacy Note: The Department's policy is to make comments received from members of the public available for public viewing on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For further information contact Gaby Watts, U.S. Department of Education, 400 Maryland Ave. SW, Room 258–02, Washington, DC 20202. Telephone: 202–453–7195. Email: *Gaby.Watts@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 (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: Although the Department has decided to issue this final rule without first publishing a proposed rule for public comment, we are interested in whether you think we should make any changes to this rule. We invite your comments. We will consider these comments in determining whether to revise the rule.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from this final rule. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about this interim final rule by accessing *Regulations.gov*. Due to the current COVID–19 pandemic, the Department's buildings are currently not open. However, upon reopening, you may also inspect the comments in person at 400 Maryland Ave. SW, Washington, DC 20202, between 8:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays. To schedule a time to inspect comments, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this interim final rule. To schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background:

On March 27, 2020, Congress enacted the CARES Act, Public Law 116–136, to help Americans 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 institutions of higher education in connection with the COVID–19 outbreak. Section 18004(c) specifically allows institutions to use their HEERF allocation under § 18004(a)(1) for ''any costs associated with significant changes to the delivery of instruction due to the coronavirus,'' while adding the restriction that funds cannot be used for ''payment to contractors for the provision of pre-enrollment recruitment activities; endowments; or capital outlays associated with facilities related to athletics, sectarian instruction, or religious worship.'' Section 18004(c) also 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. Thus, the first sentence of section 18004(c) generally allows an institution to use its allocated HEERF funds under section 18004(a)(1) to cover certain coronavirus-related costs, while the second sentence requires an institution to give at least half of its allocated HEERF funds as grants to students. 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.

Although the second sentence of section 18004(c) states that the emergency financial aid grants are to be given to students, the CARES Act does not define the term ''student'' or the phrases ''grants to students'' or ''emergency financial aid grants to students.'' In addition to leaving these terms undefined, Congress also included an implicit reference to title IV terms immediately after the phrase ''emergency financial aid grants to students,'' 18004(c) (''including eligible expenses under a student's cost of attendance''), and explicit references to that same title IV standard following the phrase ''grants to students'' in two of the preceding subsections, 18004(a)(2) and (a)(3) (''the student's cost of attendance (as defined under section 472 of the Higher Education Act''). In determining who constitutes a ''student'' for purposes of ''emergency financial aid grants to students'' in section 18004 of the CARES Act, the Department is mindful that ''[s]tatutory construction . . . is a holistic endeavor.'' *United Sav. Ass'n of Texas* v. *Timbers of Inwood Forest Assocs., Ltd.,* 484 U.S. 365, 371 (1988). In the appropriate circumstances, the Department's construction of the CARES Act must be informed or even controlled by other relevant law. (''We assume that Congress is aware of existing law when it passes legislation,'' *Hall* v. *United States,* 566 U.S. 506, 516 (2012) *quoting Miles* v. *Apex Marine Corp.,* 498 U.S. 19, 32 (1990).) In context the category of ''student'' recipients eligible for ''emergency financial aid grants'' is therefore at a minimum ambiguous.

This is a critical ambiguity, requiring the Department to exercise its narrow interpretative authority under *Chevron U.S.A., Inc.* v. *Natural Res. Def. Council, Inc.,* 467 U.S. 837, 843–44 (1984). (' 'The power of an administrative agency to administer a congressionally created . . . program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress.' *quoting Morton* v. *Ruiz,* 415 U.S. 199, 231 (1974). . . . Sometimes the legislative delegation to an agency on a particular question is implicit rather than explicit.'') Here the Secretary

exercises her authority under 20 U.S.C. 1221e–3 and 20 U.S.C. 3474. Relying on statutory language and context to develop a harmonious construction faithful to the entire statutory scheme, *see Food and Drug Admin.* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 132–33 (2000) (''In determining whether Congress has specifically addressed the question at issue, a reviewing court should not confine itself to examining a particular statutory provision in isolation. The meaning—or ambiguity—of certain words or phrases may only become evident when placed in context.''), we have concluded that Congress intended the category of those 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 assistance.

The Department considered a number of factors in reaching this conclusion. For one, an interpretation of the term ''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 be significantly curtailed at the outset by existing law independent of title IV with regard to certain immigration statuses. 8 U.S.C. 1611(a) already prohibits certain individuals from receiving any ''Federal public benefit'' and applies ''[n]otwithstanding any other provision of law.'' This prohibition clearly applies to the HEERF funds. 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,'' as well as (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.'' [1] To the extent an institution uses HEERF funds, which qualify as ''appropriated funds of the United States,'' to provide ''emergency financial aid grants to students,'' the grants would qualify as a Federal public benefit under both Section 1611(c)(1)(A) and (B) because they would be ''grant[s] . . . by appropriated funds,'' as well as ''postsecondary education'' benefits to individuals. To the extent an institution otherwise uses the funds to make payments to students for purposes of, for example, ''costs associated with significant changes to the delivery of instruction due to the coronavirus,'' these payments would also qualify as ''postsecondary education'' benefits to individuals. The Department has not identified any specific language in Section 18004, or elsewhere in the CARES Act, that suggests Congress intended to include aliens who are not ''qualified'' for purposes of Section 1611 among the recipients of HEERF funds, notwithstanding the preexisting general prohibition in Section 1611.

On the other extreme, the Department concludes that a more narrow 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.

Earlier in the CARES Act, in section 3504 entitled ''Use of Supplemental Educational Opportunity Grants for Emergency Aid,'' Congress expressly authorizes institutions to use money allocated to them under the Federal Supplemental Educational Opportunity Grant (FSEOG) program, 20 U.S.C. 1070b *et seq.,* for ''emergency financial aid grants to students,'' which is the identical phrase Congress used in section 18004. Although Congress did not expressly state that these emergency financial aid grants to students must be limited to those students who are eligible for participation in programs under title IV of the HEA, the context indicates that Congress intended that restriction as a general rule. Not only was the previously planned use of the funds conditioned upon title IV eligibility (since the FSEOG program is part of title IV of the HEA) but also because the text of the CARES Act allows institutions to ''waive the amount of need calculation under section 471'' of the HEA, which is a calculation that applies to title IV aid.

Because ''identical words and phrases within the same statute should normally be given the same meaning,'' *Powerex Corp.* v. *Reliant Energy Services, Inc.,* 551 U.S. 224, 232 (2007), the implicit title IV eligibility requirement associated with ''emergency financial aid grants to students'' in section 3504 should apply to the distribution of ''emergency financial aid grants to students'' in section 18004. Congress did not previously choose to provide emergency financial aid grants through the HEA, and thus these grants, by definition, do not constitute Federal financial student aid under the HEA, including title IV of the HEA. However, even though it is true that all title IV aid is subject to title IV eligibility requirements, it does not follow that all non-title IV aid is exempt from title IV eligibility requirements. Rather, non-title IV aid can be subject to title IV eligibility requirements. For example, scholarships distributed under the Fund for the Improvement of Postsecondary Education, a non-title IV program, require that recipients meet certain title IV eligibility requirements, as noted below. 20 U.S.C. 1138(d).

In providing emergency financial aid grants through section 18004 of the CARES Act, Congress also used the framework under title IV of the HEA for the distribution of these emergency financial aid grants to students, implying that the Department and institutions adhere to the requirements under title IV, such as using the definition of ''cost of attendance'' under title IV of the HEA and the same systems for distributing Federal financial student aid to institutions under title IV of the HEA.

Indeed, Congress specifically references title IV of the HEA in various provisions in section 18004 of the CARES Act, including the following provisions:

- Section 18004(a)(1) links a component of the institutional allocation for HEERF to enrollment of Pell Grant recipients, and a student must be eligible for Federal financial student aid under section 484 of title IV of the HEA to receive Pell Grants. 20 U.S.C. 1070a(a) (stating Pell Grants are only for an ''eligible student (defined in accordance with [S]ection 484 [of the HEA])''); 20 U.S.C. 1091.
- Sections 18004(a)(2) and (3) require institutions to use funds ''for grants to students for any component of the student's cost of attendance (as defined under § 472 of [title IV of] the Higher Education Act), including food, housing, course materials, technology, healthcare, and child care.'' (Emphasis added.)
- Section 18004(a)(3) specifically references ''part B of title VII of the HEA,'' and section 741(d)(1) of part B of title VII of the HEA expressly requires students to be eligible under section 484(a) of the HEA to receive grants or scholarships. 20 U.S.C. 1138(d).
- Section 18004(b) expressly requires the Secretary to use the same systems that are used to distribute funding to each institution under title IV of the HEA in order to distribute funds to each institution under section 18004(a)(1) of the CARES Act.

[1] Because title IV also contains an eligibility requirement based on immigration status which is similar in most respects to the requirement in 8 U.S.C. 1611, there is little remaining application for the prohibition in 8 U.S.C. 1611 once title IV eligibility requirements have been applied.

• Section 18004(c) again expressly refers to ''a student's cost of attendance,'' which is a defined term in section 472 of the HEA. 20 U.S.C. 1087ll.

The most congruent definition of ''student'' for purposes of ''emergency financial aid grants to students'' in section 18004 is a person who is or would be eligible under section 484 of the HEA for title IV aid. Indeed, it would be an illogical result 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, which expressly references part B of title VII of the HEA, but not for grants under sections 18004(a)(1) and (2) of the CARES Act, especially when 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). ''Interpretations of statute which would produce absurd results are to be avoided.'' *Griffin* v. *Ocean Contractors, Inc.,* 458 U.S. 564, 576 (1982). To interpret section 18004 in a holistic manner, it appears that the best interpretation of ''student'' where section 18004 references ''emergency financial aid grants to students'' is to mean a person who is eligible under section 484 of the HEA to receive title IV aid.[2]

Final Rule:

For purposes of the phrases ''grants to students'' and ''emergency financial aid grants to students'' in sections 18004(a)(2), (a)(3), and (c) of the CARES Act, ''student'' is defined as an individual who is, or could be, eligible under section 484 of the HEA, to participate in programs under title IV of the HEA. We add this definition to 34 CFR 668.2.

An important policy goal for the Department is to make emergency financial aid grants available to students in the most efficient, effective, and expedient way possible and consistent with Congressional intent. At the same time, the Department has an obligation to taxpayers to prevent waste, fraud, and abuse. The potential for waste, fraud, and abuse is significant when institutions of higher education are given the opportunity to quickly make cash awards to students, particularly when institutions are rightfully concerned about declining enrollments and the loss of ancillary revenue as a result of COVID–19. In addition, there have been reports that the unusual circumstances caused by COVID–19 have given rise to new efforts to defraud government programs in other contexts.[3]

The Department has considered these issues in reaching its interpretation of the category of those eligible for ''emergency financial aid grants to students'' in section 18004(a)(2), (a)(3), and (c). The Department has concluded that the best approach to interpreting ''student'' in ''emergency financial aid grants to students'' is 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 elsewhere in section 18004. This approach uses a clear, existing standard that is familiar to the Department and to institutions and will allow both the Department and institutions to implement the HEERF provisions in an efficient, effective, and expedient way. The Department has placed a high priority on getting assistance to institutions and individuals as quickly and efficiently as possible in light of the national emergency and the immediate needs resulting therefrom, and the use of an existing standard here achieves that same important goal. The title IV eligibility standard has already been specified in great detail by the Department in its practice and its communications with institutions with regard to title IV programs over the years. In contrast, using a generic, broad standard would require the Department and institutions to wade through a litany of specific questions about which groups of potential students do or do not qualify for ''grants to students.''[4]

For the majority of students, active participation in title IV programs will clearly demonstrate to the institution and the Department that they are qualified as a student to receive emergency financial aid grants. For example, with regard to the title IV eligibility requirement related to citizenship or appropriate immigration status in the United States, the majority of students' statuses can be verified by the fact of their participation in title IV.[5] And this verification also ensures that the disbursement of grants to those individuals occurs in compliance with the independent statutory restriction found in 8 U.S.C. 1611.

The Department also acknowledges the efficiency of leveraging existing processes and procedures to minimize burden on institutions implementing this IFR. For example, institutions could encourage students who currently do not receive title IV aid to submit the Free Application for Federal Student Aid (FAFSA) in order to determine title IV eligibility.

In addition, this approach to interpreting ''student'' within the phrase ''emergency financial aid grants to students'' also allows the Department to prevent potential waste, fraud, and abuse. For example, without the title IV eligibility standard, the existence of HEERF funding could incentivize individuals who are not qualified and cannot qualify under the title IV

[2] To calculate the HEERF allocation under section 18004(a)(1)(B), the Department ''approximated the factors using the best available data'' by multiplying the 2017/2018 full-time enrollment number by the fall 2018 percentage of undergraduate, graduate, and professional students not enrolled exclusively in distance education, as self-reported by institutions and compiled in the Department's Integrated Postsecondary Education Data System (IPEDS). *See* Methodology for Calculating Allocations per Section 18004(a)(1) of the CARES Act, *https://www2.ed.gov/about/offices/list/ope/heerf90percentformulaallocationexplanation.pdf.*

Thus, the approach taken in calculating the ''full-time equivalent enrollment of students'' in section 18004(a)(1)(B) differs from the approach taken in this rule in interpreting and applying ''grants to students'' elsewhere in section 18004. The Department intends to interpret the term ''student'' in the same way throughout section 18004, but did not have data available on the number of individuals enrolled at each institution who are or could be eligible for title IV aid, so the Department had to use a different measure based on available data. As between the available options, the Department believed that using a broader number for part of the baseline in establishing each institution's share under 18004(a)(1) made sense because funds used toward the first allowed purpose in 18004(c) (to cover any costs associated with significant changes to the delivery of instruction due to the coronavirus) apply to the entire institution regardless of the definition of ''student.'' The Department also deemed it more important to move expeditiously to calculate the HEERF allocation despite the acknowledged ''limitations of th[e] data,'' rather than stopping the HEERF process in order to gather additional data solely for purposes of calculating the HEERF allocation.

[3] *See, e.g.,* Mike Baker, *Feds Suspect Vast Fraud Network Is Targeting U.S. Unemployment Systems,* New York Times, *www.nytimes.com/2020/05/16/us/coronavirus-unemployment-fraud-secret-service-washington.html* (last visited May 19, 2020).

[4] For example, there would need to be consideration and a determination made regarding whether to include or exclude individuals based on whether they are enrolled for credit, enrolled in an off-campus program, simultaneously finishing a high school degree, taking remedial courses, taking only zero-credit thesis courses, enrolled exclusively in courses not applied towards a recognized credential, enrolled only in English as a Second Language programs or Continuing Education Units, auditing classes only, participating residents or interns in a medical doctor practice program after receiving their degree, studying abroad at a foreign university, enrolled in a branch campus in a foreign country, or participating in Experimental Sites.

[5] For the rest of students, qualification can be confirmed by the method described in the May 1, 2015 Dear Colleague Letter, entitled ''Citizenship and Immigration Status Documentation'' (DCL ID: GEN–15–08), the Federal Student Aid Handbook (*https://ifap.ed.gov/sites/default/files/attachments/2019-08/1920FSAHbkVol1Ch2.pdf*), or by employing the electronic document submission flexibilities provided in the Department's April 3, 2020, ''UPDATED Guidance for Interruptions of Study Related to COVID–19'' (*https://ifap.ed.gov/sites/default/files/attachments/2020-04/040320UPDATEDGuidanceInterruptStudyRelCOVID19Attach.pdf*).

standard to enroll as students, and it could incentivize institutions to take advantage of this dynamic to further their bottom lines. If a broad definition of ''student'' were employed for purposes of emergency financial aid grants to students, unscrupulous institutions could create cheap classes and programming that provides little or no educational value and then use the HEERF grant funding to incentivize individuals not qualified under title IV to enroll as paying students in those classes and programs, thereby qualifying for a grant. Alternatively, institutions could use the HEERF grant funding to incentivize the re-enrollment of students cannot maintain Satisfactory Academic Progress (SAP) due to reasons beyond the qualifying emergency, solely for the purpose of increasing revenues via the tuition such students would pay. Without restriction, institutions could also 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.

Instead, interpreting ''student'' to track title IV eligibility for purposes of emergency financial aid grants to students will ensure that institutions are only providing funds to students who are enrolled in an eligible program at an institution and are maintaining SAP in their program, among other requirements. Each of these requirements exists because it focuses the use of Federal resources on valuable educational activities and excludes areas that are more open to waste, fraud, and abuse. This approach will thereby allow the Department to reduce the likelihood and amount of waste, fraud, and abuse in the administration of the HEERF allocations under the CARES Act.

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

The Department believes its interim final rulemaking authority must be narrowly construed and exercised only when there is a sound basis for doing so. However, Congress enacted the CARES Act to help Americans cope with the urgent economic and health crises created by the COVID–19 outbreak and created the HEERF to provide emergency financial aid grants to students. 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 interim final rulemaking and that such action is in the public interest. In the absence of this interim final rule, the terms defined herein will remain undefined and indefinite, and the potential for waste, fraud, and abuse described above will not have been unaddressed in any legally binding manner.[6]

Under the Administrative Procedure Act (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)). 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 as quickly as possible, the normal rulemaking process would be impracticable and contrary to the public interest, so good cause exists for waiving the notice and comment requirements of the APA. Although the Department has issued guidance to this effect already, that guidance is not legally binding, the Department understands that certain institutions have refrained from distributing some or all of their HEERF funds until a final rule is issued clarifying this point in a legally binding manner.

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. The CRA requires 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 id.* § 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, 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 notice and comment rulemaking and thus we are not including the 60-day delayed effective date in this rule.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (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);

[6] Nor will the Department enforce the title IV eligibility interpretation announced in this rule against distribution of HEERF funds that occurred prior to the publication of this 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.

OMB has determined that this regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2020, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. This rule's designation under Executive Order 13771 will be informed by public comment.

We have also reviewed these regulations 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.''

We are issuing this interim final rule only on a reasoned determination that its benefits would justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that these regulations are consistent with the principles in Executive Order 13563.

We have also determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

Elsewhere in this section under *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with the information collection requirements.

Need for Regulatory Action

The Department is issuing this interim final rule to clarify which students are eligible for emergency financial aid grants under section 18004 of the CARES Act. This final rule is meant to balance flexibility and clarify administration for institutions so the funds can be provided to eligible students as efficiently as possible with eligibility requirements consistent with congressional intent and designed to prevent waste, fraud, and abuse. The emergency financial aid grants are meant to assist students with expenses related to the disruption of on-campus activities, so this final rule is meant to clarify any questions about eligibility so the funds can be disbursed in a timely manner.

As detailed in the preamble of this IFR, in light of the current national emergency and the importance of institutions 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, the normal rulemaking process would be impracticable and contrary to the public interest. With the definition of ''student'' in ''emergency financial aid grants to students'' uncertain, institutions may be reluctant to award the full allocation for grants to students in time to assist with the COVID–19 related expenses the funds are intended to alleviate.

Costs, Benefits, and Transfers

The emergency financial aid grants under section 18004 of the CARES Act are intended to assist eligible students with expenses related to the disruption of campus activities. In accordance with OMB Circular A–4, we are evaluating the costs and benefits of the IFR compared to a pre-statutory baseline. This IFR defines which students are eligible for the grants but does not change the amount available or the allocation formula for providing the funds to institutions. The amount of transfers available to eligible students in 2020 is a minimum of $6.25 billion and up to $12.5 billion, 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 in the current year.

As described in this preamble, the eligibility requirements clarified in this final rule allow students to know if they are eligible to receive such funds from their institution. Limiting eligibility to title IV-eligible students who were enrolled and making P SAP in on-campus programs during the time of coronavirus-related disruptions to campus operations should allow the grants to be targeted for the purpose they were established. By aligning requirements with title-IV eligibility,[7] those individuals who do not meet one or more of the title IV eligibility requirements will be unable to receive HEERF grants.

As institutions will determine how they will distribute funds to their

[7] An exhaustive list of student eligibility requirements can be found in Section 484 of the Higher Education Act of 1965, as amended [20 U.S.C. 1091]. They are as follows (1) enroll or be accepted for enrollment in a program leading to a recognized credential at an eligible IHE and not enrolled in elementary or secondary school (2) if presently enrolled, be maintaining satisfactory academic progress (3) not owe a refund on a Federal student grant or be in default on any Federal student loan (4) submit a Statement of Educational Purpose (5) are a U.S. citizen, National or eligible noncitizen (6) not have been convicted of, or plead nolo contendere or guilty to, a crime involving fraud in obtaining federal student aid (7) have a high school diploma or its equivalent (8) have a valid social security number (9) register with the Selective Service (if required) (10) not been convicted of any offense under any Federal or State law involving the possession or sale of a controlled substance for conduct that occurred during a period of enrollment for which the student was receiving Federal student aid. For more information visit: *https://uscode.house.gov/view.xhtml?req=(title:20%20section:1091%20edition:prelim)* and here *https://ifap.ed.gov/federal-student-aid-handbook/08-05-2019-2019-2020-federal-student-aid-handbook-student-eligibility.*

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 IPEDS data 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 primary eligibility limitations reflected in the table are the exclusion of non-resident aliens and the use of the percent of students whose programs were exclusively through distance education to estimate eligible on-campus enrollment.

TABLE 1—ESTIMATED POTENTIAL GRANT RECIPIENTS BY CONTROL OF INSTITUTION

	Public	Private	Proprietary	Total
Total Enrollment[8]	18,527,813	4,778,403	1,053,455	24,359,671
Undergraduate	16,872,158	3,208,336	916,722	20,997,216
Graduate	1,655,655	1,570,067	136,733	3,362,455
Non-Resident Alien	692,123	408,696	25,903	1,126,722
Percent All-Distance[9]	11.40	19.20	59.90	
Estimated Potentially Eligible On-Campus Enrollment	15,802,421	3,530,723	412,048	19,745,193

It will be easier for students who have successfully completed a FAFSA and received a valid student aid report (SAR) or institutional student information record (ISIR) for the 2019–20 or 2020–21 award years to receive an emergency financial aid grant because they have already demonstrated their eligibility under title IV. While some students may choose not to fill out a FAFSA because they have other sources of funding for their education, others may lack the necessary information or familiarity with the financial aid process to have information in place already. A number of studies have examined the issue of barriers to FAFSA completion including complexity and lack of counseling. These barriers are particularly challenging for low-income, minority, and first-generation students.[10] Another limitation that will restrict title IV eligible students' access to the emergency financial aid grants is their program's participation in title IV aid. Some programs at title-IV eligible institutions, primarily shorter training courses such as first responder training certificate programs, do not participate. Students enrolled in such programs will not be eligible for the emergency financial aid grants. Students who choose not to fill out a FAFSA but otherwise meet the title IV eligibility criteria may verify their eligibility by completing an application designed by the institution in which the student attests under the penalty of perjury to meeting the requirements of section 484 of the HEA.

In developing this IFR, the Department considered waiving some title IV eligibility requirements related to drug offenses, fraud related to title IV funds, or default. Ultimately, it was determined that eliminating some eligibility criteria and not others would not be fair across groups of students and would not allow institutions to maximize the use of their existing eligibility confirmation processes.

It is unclear how institutions will interpret the language of the CARES Act as they continue distributing emergency financial aid grants to students in the absence of the clarification contained in this rule. Some institutions may choose to continue to follow the guidance the Department has already issued on this subject, while others may adopt their own broader definition of ''student.'' At a minimum, the Department has already brought to the attention of institutions that the restrictions in 8 U.S.C. 1611 apply with regard to the distribution of grants to non-qualifying aliens as defined therein, so those individuals would not qualify for such grants under any interpretation of ''students.'' On the other hand, within the boundaries established by the terms of the CARES Act and other applicable statutes, institutions have discretion in distributing emergency financial aid grants to students, so even if an institution decided to use a broad definition of ''students'' in the absence of this rule, the institution might not exercise its discretion to award grants to everyone who meets that broader definition. It is therefore difficult to estimate with any degree of certainty how institutions would use their HEERF allocations differently for distribution of emergency financial aid grants to students in the absence of this rule.

Students will 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 whatever process the institution establishes to award the relief. As described in the Paperwork Reduction Act section of this preamble, students are expected to take 263,138 hours for a total of $4.71 million at a wage rate of $17.89[11] to apply for emergency relief in 2020.

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 of other title IV aid, but there will be some burden 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. This could involve developing an application that includes student attestation under the penalty of

[8] Analysis of IPEDS 2017–18 12-month enrollment file, effy2018 available at *https://nces.ed.gov/ipeds/datacenter/DataFiles.aspx?goToReportId=7*.

[9] 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 2017 share of students taking exclusively distance education courses. Available at *https://nces.ed.gov/programs/digest/d19/tables/dt19_311.15.asp*.

[10] Owen, Laura and Westlund, Erik (2016) ''Increasing College Opportunity: School Counselors and FAFSA Completion,'' Journal of College Access: Vol. 2: Iss. 1, Article 3. Available at: *http://scholarworks.wmich.edu/jca/vol2/iss1/3*. Literature review discusses barriers and interventions.

[11] Students' hourly rate estimated using Bureau of Labor Statistics (BLS) for Sales and Related Workers, All Other, available at: *https://data.bls.gov/cgi-bin/print.pl/oes/current/oes_nat.htm*. Last accessed May 20, 2020.

perjury to meeting the requirements of section 484 of the HEA. For students who knowingly misrepresent the truth in their attestation, the school may take disciplinary action against the student or require repayment of the emergency grant. As described in the Paperwork Reduction Act section of this preamble, burden on institutions is estimated to increase by 25,680 hours and $1,177,941 at a wage rate of $45.87 for postsecondary education administrators [12] in 2020.

To the extent that students use their emergency financial aid grants for expenses related to elements of their cost of attendance provided by institutions, those institutions will receive some revenue students may otherwise have been unable to pay at this time. 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 [13] on the Department's CARES Act website.[14] These allocations were made according to the formula described in the Methodology for Calculating Allocations document [15] 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 exclusively in 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—SUMMARY OF HEERF ALLOCATIONS

Row labels	Sum of total allocation	Sum of minimum allocation to be awarded for emergency financial aid grants to students
Private Non-Profit <2 Yrs	11,121,217	5,560,619
Private Non-Profit 2–3 Yrs	31,469,853	15,734,951
Private Non-Profit 4 Yrs or More	2,441,436,384	1,220,718,556
Proprietary <2 Yrs	314,169,982	157,085,261
Proprietary 2–3 Yrs	415,718,070	207,859,135
Proprietary 4 Yrs or More	388,802,168	194,401,134
Public <2 Yrs	40,318,527	20,159,318
Public 2–3 Yrs	2,655,311,849	1,327,656,148
Public 4 Yrs or More	6,208,906,453	3,104,453,411
Grand Total	12,507,254,503	6,253,628,533

Net Budget Impact

We estimate that the definition of student eligibility for the emergency 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 final rule does not impact the Federal budget because it clarifies which students are eligible to receive emergency relief provided by the CARES Act but do not change the amount available for such grants. As described in the Costs, Benefits, and Transfers section related to institutions, allocations have been determined and $11.1 billion of the funding has been disbursed to institutions already, with $50 million held in reserve to account for data limitations in allocating the initial amounts to eligible institutions. We anticipate that $12.5 billion will ultimately be disbursed in 2020, and therefore estimate $12.5 billion in transfers in 2020 relative to a pre-statutory baseline.

Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), 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, using 3% and 7% discount rates. This table provides our best estimate of the changes in monetized transfers in 2020 as a result of these final regulations. We note that transfers below flow from the Federal Government to eligible students and are processed through institutions.

[12] Based on BLS 2019 median hourly wage rate for postsecondary education administrators in the BLS Occupational Outlook Handbook. Available at *www.bls.gov/ooh/management/postsecondary-education-administrators.htm*. Last accessed May 20, 2020.

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

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

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

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

[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% $5.9	3% $5.9
Category	Transfers	
Relief for eligible students and institutions to help with additional expenses due to disruption of campus activities	7% $12,500	3% $12,500

Regulatory Flexibility Act Certification

The Regulatory Flexibility Act does not apply to this rulemaking because there is good cause to waive notice and comment under the Administrative Procedure Act (5 U.S.C. 553).

The Secretary certifies that this final rule will not have a significant 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

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

This rule will benefit those institutions of higher education that are small entities by allowing them to use a familiar existing eligibility framework to determine who should receive emergency financial aid grants under HEERF. As described in the Regulatory Impact Analysis, institutions may benefit from applying no more than 50 percent of their allocation of HEERF funds to institutional costs, so some small entities will benefit from those revenues. They will also have to establish a process for determining which of their students should receive and disburse the funds accordingly. We expect that the 2,586 estimated small entities allocated funds for this purpose under the CARES Act will spend a total of 5,172 hours totaling $237,240 at a wage rate of $45.87 [11] 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 is available on the Department's CARES website.[12]

TABLE 5—SUMMARY OF ALLOCATIONS TO SMALL ENTITIES BY SECTOR

Sector	Sum of total allocation	Sum of minimum allocation to be awarded for emergency financial aid grants to students
Private Non-Profit <2 Yrs	8,274,977	4,137,498
Private Non-Profit 2–3 Yrs	20,417,294	10,208,669

TABLE 5—SUMMARY OF ALLOCATIONS TO SMALL ENTITIES BY SECTOR—Continued

Sector	Sum of total allocation	Sum of minimum allocation to be awarded for emergency financial aid grants to students
Private Non-Profit 4 Yrs or More	266,608,121	133,304,213
Proprietary <2 Yrs	239,330,457	119,665,488
Proprietary 2–3 Yrs	177,306,399	88,653,273
Proprietary 4 Yrs or More	84,269,294	42,134,681
Public <2 Yrs	29,196,455	14,598,279
Public 2–3 Yrs	28,278,395	14,139,221
Public 4 Yrs or More	56,909,101	28,454,561
Grand Total	910,590,493	455,295,883

As 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 determining eligibility for these funds, IHEs are being directed to use the Department's interpretation of ''student,'' meaning 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.

We believe that most institutions will expand their current financial aid appeals process and utilize that framework to receive requests for COVID–19 assistance from eligible students. We estimate that each institution that received an allocation would require five hours to set up any new form for students to complete and establish review and recordkeeping procedures to be able to comply with the separate reporting requirements in the Certification and Agreement between the institutions and the Secretary. The estimated burden for the 1,651 private institutions is 8,255 hours (1,651 × 5 hours). The estimated burden for the 1,641 proprietary institutions is 8,205 hours (1,641 × 5 hours). The estimated burden for the 1,844 public institutions is 9,220 (1,844 × 5 hours). The total new burden to all institutions receiving an allocation of funds is 25,680 hours (5,136 institutions × 5 hours).

Using the unique number of title IV aid recipients 10,319,154 (both Federal grant and Federal student loan) for the Award Year 2019–2020 we estimate that 15 percent, or 1,547,873, of those recipients will request additional aid from their institution based on changed circumstances due to the coronavirus. We estimate approximately 20 minutes per students to complete the request for additional aid for a total new burden of 510,798 hours (.33 hours × 1,547,873).

This is a new information collection with a total burden assessment of 536,478 hours for 1,553,009 respondents with a single response. The Department has requested an emergency clearance to allow for the immediate collection of this information. The public will be 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**.

1840–NEW—ELIGIBILITY OF STUDENTS AT INSTITUTIONS OF HIGHER EDUCATION FOR FUNDS UNDER THE CARES ACT

Affected entity	Number of respondents	Number of responses	Hours per response	Total burden	Estimate costs student $17.89 institutions $45.87
Individual Student	1,547,873	1,547,873	.33	510,798	$9,138,176
Private Institution	1,651	1,651	5	8,255	378,657
Proprietary Institution	1,641	1,641	5	8,205	376,363
Public Institution	1,844	1,844	5	9,220	422,921
Total	1,553,009	1,553,009		536,478	10,316,117

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

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. This interim final regulation may have federalism implications. We encourage State and local elected officials to review and provide comments on this interim final regulation.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or portable document format PDF. To use PDF, you must have Adobe Acrobat Reader, which is available for free on the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

List of Subjects in 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.

Betsy DeVos,

Secretary of Education.

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

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

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

Authority: 20 U.S.C. 1001–1003, 1070a, 1070g, 1085, 1087b, 1087d, 1087e, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, 1221e–3, and 3474; Pub. L. 111–256, 124 Stat. 2643; unless otherwise noted.

■ 2. Section 668.2 is amended by adding the definition ''Student,'' in alphabetical order to read as follows:

§ 668.2 General definitions.

* * * * *

Student, for purposes of the phrases ''grants to students'' and ''emergency financial aid grants to students'' in sections 18004(a)(2), (a)(3), and (c) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, is defined as an individual who is, or could be, eligible under section 484 of the HEA, to participate in programs under title IV of the HEA.

(Authority: 20 U.S.C. 1221e–3 3474)

* * * * *

[FR Doc. 2020–12965 Filed 6–15–20; 4:15 pm]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2020–0229; FRL 10009–40–Region 6]

Air Plan Approval; Texas; Approval of Substitution for Dallas-Fort Worth Area Transportation Control Measures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: The Environmental Protection Agency (EPA) is making an administrative change to update the Code of Federal Regulations (CFR) to reflect a change made to the Texas State Implementation Plan (SIP) on February 21, 2020, as a result of EPA's concurrence on substitute transportation control measures (TCMs) for the Dallas-Fort Worth (DFW) 8-hour ozone nonattainment area portion of the Texas SIP. EPA has determined that the substitution of the TCMs is consistent with the Clean Air Act and EPA's national guidance on such substitutions, and therefore falls within the ''good cause'' exemption in the Administrative Procedure Act (APA) which, upon finding ''good cause,'' authorizes an agency to make an action effective immediately.

DATES: This action is effective *June 17, 2020.*

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2020–0229. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jeff Riley, 214–665–8542, *riley.jeffrey@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID–19. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Under Clean Air Act (CAA) section 176(c)(8), States are allowed to substitute TCMs in approved SIPs for replacement TCMs which achieve equivalent or greater emissions reductions without having to undertake the standard SIP revision process.[1] The DFW area metropolitan planning organization, the North Central Texas Council of Governments (NCTCOG),[2] identified for substitution three TCMs originally approved as High-Occupancy Vehicle (HOV) lanes into the DFW SIP as follows:

[1] The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) transportation funding and authorization bill, which was signed into law on August 10, 2005, revised the CAA's section 176(c) transportation conformity provisions to allow states to substitute or add TCMs into approved SIPs without the standard SIP revision process. These revisions facilitate compliance with the transportation conformity rule's requirements for timely implementation of TCMs (40 CFR 93.113) by expediting the TCM substitution process.

[2] As the Metropolitan Planning Organization for the DFW area, NCTCOG is delegated authority under 30 Texas Administrative Code § 114.270 to implement SIP-approved TCMs for the DFW ozone nonattainment area.