

- Individuals who are recipients of student financial assistance under title IV are not placed in a worse position financially in relation to that student financial assistance because they are affected individuals;

- Affected individuals who are recipients of student financial assistance are not unduly subject to administrative burden or inadvertent, technical violations or defaults;

- Affected individuals are not penalized when a determination of need for student financial assistance is calculated;

- Affected individuals are not required to return or repay an overpayment of grant funds based on the HEA's Return of Title IV Funds provision; and

- Entities that participate in the student financial assistance programs under title IV of the HEA and that are located in areas that are declared disaster areas by any Federal, State, or local official in connection with a national emergency, or whose operations are significantly affected by such a disaster, receive temporary relief from administrative requirements.

Section 2(b)(1) of the HEROES Act further provides that section 437 of the General Education Provisions Act (20 U.S.C. 1232) and Section 553 of the Administrative Procedure Act (5 U.S.C. 553) do not apply to the contents of this notice.

Section 5 of the HEROES Act defines the following terms used in this notice:

Active duty—The term “active duty” has the meaning given that term in 10 U.S.C. section 101(d)(1), but does not include active duty for training or attendance at a service school (e.g., the U.S. Military Academy or U.S. Naval Academy).

Military operation—The term “military operation” means a contingency operation as that term is defined in 10 U.S.C. section 101(a)(13).

National emergency—The term “national emergency” means a national emergency declared by the President of the United States.

Serving on active duty—The term “serving on active duty during a war or other military operation or national emergency” includes service by an individual who is—

- (A) a Reserve member of an Armed Force ordered to active duty under 10 U.S.C. 12301(a), 12301(g), 12302, 12304, or 12306, or any retired member of an Armed Force ordered to active duty under 10 U.S.C. 688, for service in connection with a war or other military operation or national emergency, regardless of the location at which that active duty service is performed; and

- (B) any other member of an Armed Force on active duty in connection with any war, operation, or emergency or subsequent actions or conditions who has been assigned to a duty station at a location other than the location at which the individual is normally assigned.

Qualifying National Guard duty—The term “qualifying National Guard duty during a war or other military operation or national emergency” means service as a member of the National Guard on full-time National Guard duty (as defined in 10 U.S.C. 101(d)(5)) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 U.S.C. 502(f), in connection with a war, another military operation, or a national emergency declared by the President and supported by Federal funds.

Section 2(c) of the HEROES Act requires the Secretary to provide an impact report to the Committee on Education and the Workforce of the U.S. House of Representatives and the Committee on Health, Education, Labor, and Pensions of the U.S. Senate not later than 15 months after first exercising the authority to issue a waiver or modification under section 2(a) of the HEROES Act. The report will describe the impact of any waivers or modifications on affected individuals and the programs under title IV of the HEA, and the basis for that determination, and will include the Secretary's recommendations for changes to the statutory or regulatory provisions that were the subject of the waivers or modifications. Therefore, a guaranty agency, lender, or institution must document its application of a waiver or modification made in accordance with this notice in such a manner that the institution can, upon request, report to the Secretary on the effect of the waivers and modifications.

EFFECTIVE DATE: December 12, 2003. The provisions of Pub. L. 108–76, and the waivers and modifications in this document, expire on September 30, 2005.

FOR FURTHER INFORMATION CONTACT: For provisions related to the title IV loan programs (Federal Perkins Loan Program, Federal Family Education Loan (FFEL) Program, and Federal Direct Loan (Direct Loan) Program): Ms. Gail McLarnon or Mr. George Harris, Office of Postsecondary Education, U.S. Department of Education, 1990 K Street, NW., (8th Floor), Washington, DC 20006. Internet and Telephone: Gail.McLarnon@ed.gov and (202) 219–

7048 or GeorgeOPE.Harris@ed.gov and (202) 502–7521.

For other provisions: Ms. Wendy Macias, U.S. Department of Education, 1990 K Street, NW. (8th Floor), Washington, DC 20006. Internet and Telephone: Wendy.Macias@ed.gov and (202) 502–7526.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Category 1: The Secretary is waiving or modifying the following provisions of title IV of the HEA and the Department's regulations for ALL affected individuals specified in the **SUMMARY** section of this notice:

Need Analysis

Section 480 of the HEA provides that, in the calculation of an applicant's expected family contribution (EFC), the term “total income,” which is used in the determination of “annual adjusted family income” and “available income,” is equal to adjusted gross income plus untaxed income and benefits for the preceding tax year minus excludable income. The HEROES Act allows an institution to substitute adjusted gross income plus untaxed income and benefits received in the first calendar year of the award year for which such determination is made for any affected individual, and for his or her spouse and dependents, if applicable, in order to reflect more accurately the financial condition of an affected individual and his or her family. The Secretary has determined that an institution has the option of using the applicant's original EFC or the EFC based on the data from the first calendar year of the award year.

If an institution chooses to use the alternate EFC, it should use the administrative Professional Judgment procedures established by the Secretary as discussed in the following section on “Professional Judgement.”

Professional Judgment

Section 479A of the HEA specifically gives the financial aid administrator (FAA) the authority to use professional judgment to make adjustments on a case-by-case basis to the cost of attendance or to the values of the items used in calculating the EFC to reflect a student's special circumstances. The