

Public Law 108–76
108th Congress

An Act

Aug. 18, 2003
[H.R. 1412]

To provide the Secretary of Education with specific waiver authority to respond to a war or other military operation or national emergency.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Higher Education
Relief
Opportunities for
Students Act of
2003.
20 USC 1070
note.

SECTION 1. SHORT TITLE; FINDINGS; REFERENCE.

(a) **SHORT TITLE.**—This Act may be cited as the “Higher Education Relief Opportunities for Students Act of 2003”.

(b) **FINDINGS.**—The Congress finds the following:

(1) There is no more important cause than that of our nation’s defense.

(2) The United States will protect the freedom and secure the safety of its citizens.

(3) The United States military is the finest in the world and its personnel are determined to lead the world in pursuit of peace.

(4) Hundreds of thousands of Army, Air Force, Marine Corps, Navy, and Coast Guard reservists and members of the National Guard have been called to active duty or active service.

(5) The men and women of the United States military put their lives on hold, leave their families, jobs, and postsecondary education in order to serve their country and do so with distinction.

(6) There is no more important cause for this Congress than to support the members of the United States military and provide assistance with their transition into and out of active duty and active service.

(c) **REFERENCE.**—References in this Act to “the Act” are references to the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.).

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SEC. 2. WAIVER AUTHORITY FOR RESPONSE TO MILITARY CONTINGENCIES AND NATIONAL EMERGENCIES.

(a) **WAIVERS AND MODIFICATIONS.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of law, unless enacted with specific reference to this section, the Secretary of Education (referred to in this Act as the “Secretary”) may waive or modify any statutory or regulatory provision applicable to the student financial assistance programs under title IV of the Act as the Secretary deems necessary in connection with a war or other military operation or national emergency to provide the waivers or modifications authorized by paragraph (2).

(2) **ACTIONS AUTHORIZED.**—The Secretary is authorized to waive or modify any provision described in paragraph (1) as may be necessary to ensure that—

(A) recipients of student financial assistance under title IV of the Act who are affected individuals are not placed in a worse position financially in relation to that financial assistance because of their status as affected individuals;

(B) administrative requirements placed on affected individuals who are recipients of student financial assistance are minimized, to the extent possible without impairing the integrity of the student financial assistance programs, to ease the burden on such students and avoid inadvertent, technical violations or defaults;

(C) the calculation of “annual adjusted family income” and “available income”, as used in the determination of need for student financial assistance under title IV of the Act for any such affected individual (and the determination of such need for his or her spouse and dependents, if applicable), may be modified to mean the sums received in the first calendar year of the award year for which such determination is made, in order to reflect more accurately the financial condition of such affected individual and his or her family;

(D) the calculation under section 484B(b)(2) of the Act (20 U.S.C. 1091b(b)(2)) of the amount a student is required to return in the case of an affected individual may be modified so that no overpayment will be required to be returned or repaid if the institution has documented (i) the student’s status as an affected individual in the student’s file, and (ii) the amount of any overpayment discharged; and

(E) institutions of higher education, eligible lenders, guaranty agencies, and other entities participating in the student assistance programs under title IV of the Act 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, may be granted temporary relief from requirements that are rendered infeasible or unreasonable by a national emergency, including due diligence requirements and reporting deadlines.

(b) **NOTICE OF WAIVERS OR MODIFICATIONS.**—

(1) **IN GENERAL.**—Notwithstanding section 437 of the General Education Provisions Act (20 U.S.C. 1232) and section 553 of title 5, United States Code, the Secretary shall, by notice in the Federal Register, publish the waivers or modifications of statutory and regulatory provisions the Secretary deems necessary to achieve the purposes of this section.

Federal Register,
publication.

(2) **TERMS AND CONDITIONS.**—The notice under paragraph (1) shall include the terms and conditions to be applied in lieu of such statutory and regulatory provisions.

(3) **CASE-BY-CASE BASIS.**—The Secretary is not required to exercise the waiver or modification authority under this section on a case-by-case basis.

(c) **IMPACT REPORT.**—The Secretary shall, not later than 15 months after first exercising any authority to issue a waiver or

Deadline.

modification under subsection (a), report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor and Pensions of the Senate on the impact of any waivers or modifications issued pursuant to subsection (a) on affected individuals and the programs under title IV of the Act, and the basis for such determination, and include in such report the Secretary's recommendations for changes to the statutory or regulatory provisions that were the subject of such waiver or modification.

(d) **NO DELAY IN WAIVERS AND MODIFICATIONS.**—Sections 482(c) and 492 of the Higher Education Act of 1965 (20 U.S.C. 1089(c), 1098a) shall not apply to the waivers and modifications authorized or required by this Act.

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SEC. 3. TUITION REFUNDS OR CREDITS FOR MEMBERS OF ARMED FORCES.

(a) **SENSE OF CONGRESS.**—It is the sense of Congress that—

(1) all institutions offering postsecondary education should provide a full refund to students who are affected individuals for that portion of a period of instruction such student was unable to complete, or for which such individual did not receive academic credit, because he or she was called up for active duty or active service; and

(2) if affected individuals withdraw from a course of study as a result of such active duty or active service, such institutions should make every effort to minimize deferral of enrollment or reapplication requirements and should provide the greatest flexibility possible with administrative deadlines related to those applications.

(b) **DEFINITION OF FULL REFUND.**—For purposes of this section, a full refund includes a refund of required tuition and fees, or a credit in a comparable amount against future tuition and fees.

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SEC. 4. USE OF PROFESSIONAL JUDGMENT.

A financial aid administrator shall be considered to be making a necessary adjustment in accordance with section 479A(a) of the Act if the administrator makes adjustments with respect to the calculation of the expected student or parent contribution (or both) of an affected individual, and adequately documents the need for the adjustment.

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SEC. 5. DEFINITIONS.

In this Act:

(1) **ACTIVE DUTY.**—The term “active duty” has the meaning given such term in section 101(d)(1) of title 10, United States Code, except that such term does not include active duty for training or attendance at a service school.

(2) **AFFECTED INDIVIDUAL.**—The term “affected individual” means an individual who—

(A) is serving on active duty during a war or other military operation or national emergency;

(B) is performing qualifying National Guard duty during a war or other military operation or national emergency;

(C) resides or is employed in an area that is declared a disaster area by any Federal, State, or local official in connection with a national emergency; or

(D) suffered direct economic hardship as a direct result of a war or other military operation or national emergency, as determined by the Secretary.

(3) MILITARY OPERATION.—The term “military operation” means a contingency operation as such term is defined in section 101(a)(13) of title 10, United States Code.

(4) NATIONAL EMERGENCY.—The term “national emergency” means a national emergency declared by the President of the United States.

(5) SERVING ON ACTIVE DUTY.—The term “serving on active duty during a war or other military operation or national emergency” shall include service by an individual who is—

(A) a Reserve of an Armed Force ordered to active duty under section 12301(a), 12301(g), 12302, 12304, or 12306 of title 10, United States Code, or any retired member of an Armed Force ordered to active duty under section 688 of such title, for service in connection with a war or other military operation or national emergency, regardless of the location at which such active duty service is performed; and

(B) any other member of an Armed Force on active duty in connection with such 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 such member is normally assigned.

(6) 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 section 101(d)(5) of title 10, United States Code) 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 section 502(f) of title 32, United States Code, in connection with a war, another military operation, or a national emergency declared by the President and supported by Federal funds.

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SEC. 6. TERMINATION OF AUTHORITY.

The provisions of this Act shall cease to be effective at the close of September 30, 2005.

Approved August 18, 2003.

LEGISLATIVE HISTORY—H.R. 1412:

CONGRESSIONAL RECORD, Vol. 149 (2003):

Apr. 1, considered and passed House.

July 31, considered and passed Senate.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 39 (2003):

Aug. 18, Presidential statement.