

■ 2. Section 422.62 is amended by revising paragraph (b)(18) to read as follows:

**§ 422.62 Election of coverage under an MA plan.**

\* \* \* \* \*

(b) \* \* \*

(18) Individuals affected by an emergency or major disaster declared by a Federal, state or local government entity are eligible for a SEP to make a MA enrollment or disenrollment election. The SEP starts as of the date the declaration is made, the incident start date or, if different, the start date identified in the declaration, whichever is earlier, and ends 2 full calendar months following the end date identified in the declaration or, if different, the date the end of the incident is announced, whichever is later. The individual is eligible for this SEP provided the individual—

(i) (A) Resides, or resided at the start of the SEP eligibility period described in this paragraph (b)(18), in an area for which a federal, state or local government entity has declared an emergency or major disaster; or

(B) Does not reside in an affected area but relies on help making healthcare decisions from one or more individuals who reside in an affected area; and

(ii) Was eligible for another election period at the time of the SEP eligibility period described in this paragraph (b)(18); and

(iii) Did not make an election during that other election period due to the emergency or major disaster.

\* \* \* \* \*

**Elizabeth J. Gramling,**

*Executive Secretary to the Department,  
Department of Health and Human Services.*

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**NATIONAL SCIENCE FOUNDATION**

**45 CFR Part 620**

**RIN 3145–AA–64**

**NSF Federal Cyber Scholarship-for-Service Program (CyberCorps® SFS)**

**AGENCY:** National Science Foundation (NSF).

**ACTION:** Final rule.

**SUMMARY:** The rule establishes repayment standards for CyberCorps® SFS scholarship recipients who fail to fulfill program requirements, and the process for requesting deferral or discharge of their service or repayment obligation, in whole or part. The rule

also requires that, during the period that they are performing their service obligation under the program, scholarship recipients must provide annual documentation of their service employment and their current contact information.

**DATES:** This rule is effective August 31, 2023.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** On July 15, 2022, NSF published proposed regulations for its CyberCorps® Scholarship for Service (SFS) program, pursuant to the Cybersecurity Enhancement Act of 2014 (Pub. L. 113–274, sec. 302, 15 U.S.C. 7442), as amended. *See* 87 FR 42431 (proposing new 45 CFR part 620). The goal of the program, which is led and managed by NSF in coordination with the U.S. Office of Personnel Management (OPM) and Department of Homeland Security (DHS), is to recruit and train the next generation of information technology professionals, industrial control system security professionals, and security managers to meet the needs of the cybersecurity mission for Federal, State, local, and tribal governments.<sup>1</sup>

Under the program, NSF makes grant awards to qualified institutions of higher education to provide scholarships to students pursuing degrees or specialized program certifications in the cybersecurity field and cybersecurity-related aspects of other related fields as appropriate, including artificial intelligence, quantum computing and aerospace, covering the student's tuition and fees for not more than three years, plus stipend.<sup>2</sup> In return, scholarship recipients must agree that, after receiving their degree, they will work for a period equal to the length of their

<sup>1</sup> *See* 15 U.S.C. 7442(a).

<sup>2</sup> *See id.* at 7442(b) (as amended by the CHIPS and Science Act, Public Law 117–167, sec. 10316 (2022)), (c). The program is also intended to provide summer internship opportunities or other meaningful temporary appointments in the Federal information technology and cybersecurity workforce, to prioritize the placement of scholarship recipients fulfilling their post-award employment obligation with executive agencies and other cybersecurity positions, and to provides award to promote cybersecurity education, such as awards for summer cybersecurity camps or teacher training, in each of the 50 states at the kindergarten through grade 12 level. *Id.* at 7442(b)(2), (4). A detailed summary of the program's activities and achievements can be found in the statement of basis and purpose (preamble) accompanying the proposed rule.

scholarship in the cybersecurity mission of a Federal executive agency or other qualifying entity (*i.e.*, Congress, interstate agency, State, local, or tribal government or affiliated critical infrastructure non-profit, or as a cybersecurity educator in a qualified institution of higher education that provides SFS scholarships to students).<sup>3</sup> Recipients must also agree to provide OPM (in coordination with NSF) and their qualified institution of higher education with “annual verifiable documentation of post-award employment” and “up-to-date contact information” while they are completing their service obligation.<sup>4</sup>

Scholarship recipients who fail to fulfill their service or reporting obligations, or other scholarship conditions required by the Cybersecurity Enhancement Act, become liable to the United States for repayment of the scholarship.<sup>5</sup> In these cases, the Act provides that the recipient's institution shall be responsible for: (1) determining the repayment amount, based on how much of the post-award employment obligation the recipient has completed, if any; (2) notifying the recipient, OPM, and NSF; and (3) collecting repayment within a time period determined by the Director of NSF.<sup>6</sup> The Act provides that such amounts “shall . . . be repaid” by the scholarship recipient “or[,]” if not repaid, the repayment obligation “shall be treated” as a Federal Direct

<sup>3</sup> *Id.* at 7442(d) (post-award employment obligation). The program is required to “prioritize the placement of scholarship recipients fulfilling the post-award employment obligation . . . to ensure that—(A) not less than 70 percent of such recipients are placed in an executive agency . . . ; (B) not more than 10 percent of such recipients are placed as educators in the field of cybersecurity at qualified institutions of higher education that provide scholarships under this section; and (C) not more than 20 percent of such recipients are placed” in other qualifying cybersecurity positions. *See* 15 U.S.C. 7442(b)(3).

<sup>4</sup> *Id.* at 7442(g)(1); *see also id.* at 7442(h) (requiring that SFS institutions monitor their scholarship recipients' compliance with this service obligation, and also provide NSF and OPM with documentation of such service until it is completed).

<sup>5</sup> *See id.* at 7442(g)(2) (imposing liability on a scholarship recipient who “(A) fails to maintain an acceptable level of academic standing at the applicable institution of higher education, as determined by the Director of the National Science Foundation; (B) is dismissed from the applicable institution of higher education for disciplinary reasons; (C) withdraws from the eligible degree program before completing the program; (D) declares that the individual does not intend to fulfill the post-award employment obligation under this section; (E) fails to maintain or fulfill any of the post-graduation or post-award obligations or requirements of the individual; or (F) fails to fulfill the requirements of paragraph (1) (*i.e.*, annual verifiable documentation of post-award employment and up-to-date contact information).”).

<sup>6</sup> *Id.* at 7442(i), (k).

Unsubsidized Loan, “subject to repayment, together with interest thereon accruing from the date of the scholarship award, in accordance with terms and conditions specified by the Director of the National Science Foundation (in consultation with the Secretary of Education) in regulations promulgated to carry out this subsection.”<sup>7</sup>

### Proposed Rule

In support of the above requirements, NSF’s proposed rule set forth repayment standards (terms and conditions) to be applied to recipients who fail to fulfill their service obligation. See proposed § 620.6 (obligation to repay). The proposed rule also set forth procedures by which scholarship recipients may request that the NSF Director defer or discharge their post-award employment or repayment obligation under the Director’s legal authority to suspend or waive such obligations. See proposed § 620.4 (deferral of obligation), § 620.5 (discharge of agreement to serve or pay).<sup>8</sup> In addition, the proposed rule included a provision reflecting the requirement that scholarship recipients provide annual post-award employment documentation and up-to-date contact information while completing their service obligation. See proposed § 620.3 (documenting the service obligation). The remaining provisions of the proposed rule explained the rule’s scope and purpose (proposed § 620.1), defined key terms used in the rule (proposed § 620.2), and included a severability clause (*i.e.*, if one provision of the rule is invalidated, its other provisions will remain in force) (proposed § 620.7).

### Public Comment

In response to the proposed rule, NSF received one anonymous public comment, suggesting that the agency more clearly define the circumstances in which enforcement of a student’s service obligation would be so “impossible,” “unconscionable,” or result in such “extreme hardship” that a partial or complete waiver of the obligation would be justified. The commenter suggested that such a

clarification would provide additional guidance to administrators advising students who might apply for a waiver, would allow agency decisionmakers to stand behind their waiver decisions more strongly, and would give students a level of confidence “that each application for a waiver will be treated [the same] as the last, as much as that is possible.”

The agency has determined that it is unnecessary to clarify these terms further. The rule (*see* §§ 620.4 and 620.5) already sets forth several specific examples that provide meaningful and substantial guidance to students (*i.e.*, scholarship recipients) potentially applying for a deferral (suspension) of the period to fulfill their service obligation or, if appropriate, a waiver (discharge) of the service or repayment obligation (*e.g.*, death, total or permanent disability, financial or economic burden, other medical situations). At the same time, the rule preserves flexibility for students to demonstrate, and for the agency to determine, the circumstances under which a deferral or waiver, in whole or part, may be justified.

Students will submit their waiver or deferral requests, for consideration by the Director (or other designated NSF official), through the program’s official online portal, <https://sfs.opm.gov/>. As explained in the proposed rule, this portal is maintained and used by OPM’s SFS program office to administer the scholarship program under reimbursable agreement with NSF.<sup>9</sup> Students already use the portal to register with the program, to ask questions and obtain information, including about qualifying cybersecurity employment opportunities, to provide and update their current contact information, and to submit documentation of their post-graduation employment.<sup>10</sup> As noted above, when requesting a waiver or deferral, students will have the opportunity to explain the specific reason or basis for their request, and to submit supporting information or documentation to justify the request, including why it would be impossible, unconscionable, or an extreme hardship for them to fulfill their service or repayment obligation.

### Final Rule Technical Amendments

In adopting the proposed rule as final, the agency has made other technical clarifications and corrections.

First, in § 620.2 (definitions), it has removed the definitions of “payment data” and “monitoring phase,” since these terms are not used in the rule and are not needed to interpret or apply it. In addition, the definition of “Scholarship Phase” has been revised to reflect the statutory requirement that the individual be enrolled in a full-time program of study, except individuals in community college, who must be enrolled at least half-time.

Second, in § 620.1 (scope and purpose) and § 620.2 (definitions), the agency has corrected language stating that scholarship recipients shall fulfill their service obligation “in a position related to cybersecurity” for a Federal, state, local, or Tribal government organization. These rule provisions have been revised to conform to the language of the Cybersecurity Enhancement Act, which states that the scholarship recipient shall be employed “in the cybersecurity mission” of a Federal executive agency, Congress (including any agency, entity, office, or commission established in the legislative branch), an interstate agency, a state, local or Tribal government or government-affiliated non-profit considered to be critical infrastructure (as defined in 42 U.S.C. 5195c(e)), or as an educator in the field of cybersecurity at a qualified institution of higher education (as defined in 15 U.S.C. 7442(b)(3)(B)).<sup>11</sup> Additionally, in § 620.2, the agency has revised the definition of “service obligation” by clarifying what employment may be credited towards that obligation,<sup>12</sup> and requiring that scholarship recipients obtain prior approval of their proposed cybersecurity positions from the SFS program office. Such approval is necessary to ensure that the individual will be employed in a position that qualifies under the statute, and to prioritize the placement of certain percentages of scholarship recipients in various positions in Government and other organizations, as discussed earlier. See note 3. The definition of “agreement

<sup>7</sup> *Id.* at 7442(k); *see also id.* at 7442(i), (j) (requiring the repayment obligation to be treated as a Federal Direct Unsubsidized Loan under part D of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a *et seq.*)).

<sup>8</sup> The Cybersecurity Enhancement Act permits “[t]he Director of the National Science Foundation [to] provide for the partial or total waiver or suspension of any service or payment obligation by an individual under this section whenever compliance by the individual with the obligation is impossible or would involve extreme hardship to the individual, or if enforcement of such obligation with respect to the individual would be unconscionable.” See 15 U.S.C. 4772(f).

<sup>9</sup> See 87 FR at 42432.

<sup>10</sup> Likewise, if a student has retained counsel or is deceased, the student’s authorized legal representative (*e.g.*, an attorney or relative serving as an executor of the student’s estate) may also use the portal to contact the program and seek a waiver or deferral on the student’s behalf. Alternatively, as discussed later in the “Paperwork Reduction Act” section of this document, NSF is also providing an email address where such requests may be directed.

<sup>11</sup> See 15 U.S.C. 7442(d) (defining post-award employment obligation).

<sup>12</sup> In proposed § 620.2, the definition of “service obligation” stated, “All time at the agency that the recipient is considered an employee of the agency counts toward the service obligation.” The final rule instead provides that, with respect to employment in the cybersecurity mission of a Federal executive agency, periods of employment in paid duty status will be credited towards the service obligation, while periods in unpaid nonduty status will not be credited.

to serve or repay” in § 620.2 has also been revised to make clear that a scholarship recipient who fails to fulfill the service obligation must repay the “scholarship or” the amount shall be treated as a Federal direct unsubsidized loan, and that the recipient must also comply with both the recipient’s service agreement “and these rules.” Further, the definition of “Commitment Phase” (*i.e.*, the five-year period within which the scholarship recipient must complete the service obligation and submit verifiable documentation of that service) has been revised to clarify that it begins immediately following the date when the Scholarship Phase ends, and not 18 months later, as the proposed rule might be read to suggest.<sup>13</sup> The revised definition also makes clear that the duration of the Commitment Phase is subject to any deferral (extension) granted by the NSF Director under § 620.4 (deferral of service obligation).

Third, § 620.6 (obligation to repay) has been revised in paragraph (a) to make clear that a scholarship recipient’s obligation to repay may result not only from failure to fulfill the recipient’s service obligation, but also failure to provide annual verifiable post-award employment documentation and up-to-date contact information, or to fulfill any of the other terms and conditions of support imposed by the Cybersecurity Enhancement Act, as discussed earlier.<sup>14</sup>

Fourth, § 620.6 (obligation to repay) has been further revised in paragraph (a) to clarify that the amount of the scholarship for which the recipient shall be liable will be calculated in accordance with the formula set forth in the Cybersecurity Enhancement Act, at 15 U.S.C. 7442(i), which depends on whether the recipient has completed less than one year of service, or one or more years of service.

Fifth, in § 620.4 (deferral of obligation) and § 620.5 (discharge of agreement to serve or repay), the agency has added language permitting a scholarship recipient to seek reconsideration if the NSF Director denies the recipient’s request for a

deferral or discharge under those sections. Although the Cybersecurity Enhancement Act does not provide for a right of appeal or any right to an oral hearing, the rule will provide an opportunity for a scholarship recipient to request reconsideration in written form where there may be new or additional facts or applicable law that the recipient believes should be considered. If reconsideration is requested, the Director’s decision on that request shall be considered final, with no further reconsideration. Furthermore, the agency has revised §§ 620.4 and 620.5 to clarify the deadline for requesting a deferral or discharge. Specifically, a request for a deferral of the service obligation must be received before the period for completing that service has expired (*i.e.*, Commitment Phase). Furthermore, NSF will not consider any request to defer or discharge any scholarship amounts that have already been repaid or referred to the Department of the Treasury for collection. In addition, the heading of § 620.4 is amended to refer to deferral of the “service” obligation, in contrast to § 620.5, which pertains to the partial or total discharge (waiver) of either the service or repayment obligation.

Sixth, in § 620.6 (obligation to repay), the agency has deleted language from paragraph (c) that stated that, when a CyberCorps SFS scholarship is treated for repayment purposes as a Direct Unsubsidized Loan, it “is not counted against the scholarship recipient’s annual or aggregate loan limits under 34 CFR 685.203 [Department of Education loan limits].” This language, which NSF included in consultation with the Department of Education, was intended to allow the full amount of a SFS scholarship to be treated as a Direct Unsubsidized Loan under NSF’s regulations,<sup>15</sup> regardless whether the total amount would exceed the limits normally applicable to such loans under the Department’s loan regulations. To better reflect that intent, the final rule, now in paragraph (b), rather than paragraph (c), of § 620.6, states that an SFS scholarship shall be repaid or treated as a Direct Unsubsidized Loan under NSF’s rule, “without regard to” the annual or aggregate loan limits set forth in the Department of Education’s loan regulations. Whether SFS scholarship amounts treated as a Direct Unsubsidized Loan will be “counted” or not against the Department’s loan limits

(*i.e.*, if and when the individual applies for other Federal student loans) is a separate issue that falls outside the scope of these regulations and NSF’s authority.<sup>16</sup> In addition, paragraphs (b) and (c) have been revised to clarify that the interest rate applicable to SFS scholarship amounts treated as Direct Unsubsidized Loans is determined by the statute governing the terms and conditions of such loans (*i.e.*, 20 U.S.C. 1078e), that such interest accrues from the date of the scholarship award, as specified in the Cybersecurity Enhancement Act (*see supra* note 7), and that, if the loan goes into default, the individual will also be liable for reasonable collection fees and costs (plus court costs and attorney fees, if the Government has to sue the individual to collect).<sup>17</sup>

Seventh, other clarifications have been made to § 620.6 (obligation to repay), aside from those already discussed above. Paragraph (a) no longer contains a sentence stating that SFS scholarships treated as Direct Unsubsidized Loans will be repaid in accordance with terms and conditions prescribed by the Director of NSF. That sentence has been rendered unnecessary in light of paragraphs (b) and (g), which directly address such repayment terms and conditions. Paragraph (b), as proposed, allowed individuals to avoid repayment by submitting documentation showing that they have actually completed their service obligation. Additional language has been added to that paragraph in the final rule, to explain that individuals who have violated other scholarship terms and conditions and become liable for repayment may similarly submit documentation, if any, demonstrating that they have not in fact violated those terms and conditions, to avoid repayment. Paragraph (d) informs scholarship recipients that they will be sent notices during the Commitment Phase, prior to the deadlines for

<sup>16</sup> NSF nonetheless notes that, when the Department of Education converts other Federal grants into Direct Unsubsidized Loans for repayment purposes, it expressly exempts those amounts from the annual and aggregate limits applicable to such loans. *See* 34 CFR 685.203(k) (“Any TEACH Grants that have been converted to Direct Unsubsidized Loans are not counted against any annual or aggregate loan limits under this section.”). NSF believes it would be appropriate, as a matter of consistency and fairness, for the Department to provide the same exemption for any CyberCorps SFS scholarship amounts treated as Direct Unsubsidized Loans under this rule.

<sup>17</sup> *Cf.* <https://fsapartners.ed.gov/sites/default/files/attachments/2020-04/SubUnsubMPN.pdf> (master promissory note for Direct Unsubsidized Loans) at 11 (§ 17) (indicating that the individual will be required to pay reasonable collection fees and costs, plus court costs and attorney fees, if the individual defaults on the loan).

<sup>13</sup> Scholarship recipients will have 18 months to submit documentation that they have begun the required post-award employment, as under current program practice and policy, which will not change and was the intent of the proposed rule language.

<sup>14</sup> *See* 15 U.S.C. 7442(g)(2) (conditions of support), discussed *supra* note 5. In these cases, the NSF Director has the authority to suspend or waive the repayment obligation on the condition that the scholarship recipient complete some or all of the service obligation, even if the individual has not received a degree, as ordinarily contemplated under the program statute. *See id.* at 7442(d) (requiring that a scholarship recipient agree to serve for a period equal to the length of the scholarship “following receipt of the student’s degree”).

<sup>15</sup> The statutory provision governing scholarship repayment contains no dollar limit on the amount that shall be repaid or treated as a Direct Unsubsidized Loan. *See* 15 U.S.C. 7442(i) (amount of repayment).

beginning and completing their service obligation, reminding them that they must timely submit verifiable documentation of such service; the proposed rule mentioned only the latter notice. Paragraph (f) is revised to explicitly warn individuals that failure to receive these notices, or the annual notices described in paragraph (e), will not relieve them from liability for scholarship repayment. Paragraph (g) now emphasizes that all benefits and terms and conditions normally applicable to a borrower under the Direct Unsubsidized Loan program (e.g., interest rate, repayment schedule) will apply when a CyberCorps scholarship is treated as a Direct Unsubsidized Loan for repayment purposes, *i.e.*, not only the initial six-month grace period mentioned in the proposed rule. Finally, paragraph (h) of § 620.6 has been revised to make clear that, when an individual's repayment obligation is treated as a Direct Unsubsidized Loan, NSF cannot convert it back into a scholarship once it has been referred to the Department of the Treasury for debt collection.<sup>18</sup>

Eighth, § 620.3 (documenting the service obligation) and paragraph (e)(2) of § 620.6 (obligation to repay) are revised to clarify that the recipient must provide the required post-award employment documentation and up-to-date contact information annually to both OPM and NSF in a "form and manner" (rather than a "form") approved by the SFS program office, to allow that office flexibility in determining the specific format in which such information shall be provided. For consistency, § 620.3 and § 620.6(e)(2) are revised to state that this documentation is to be provided to OPM and NSF via the "SFS program office," rather than sent directly to the "Director," or the "Director and OPM," as had been stated in the proposed rule.

<sup>18</sup> For example, such a loan may be referred to Treasury's Bureau of Fiscal Service (BFS) Centralized Receivables Service (CRS), which collects current non-delinquent, non-tax accounts receivable on behalf of federal agencies. See <https://www.fiscal.treasury.gov/crs/>. Furthermore, if the loan (debt) becomes delinquent, it normally must be transferred no later than 120 days to Treasury BFS's cross-servicing program, which will also submit the debt to the offset program. See <https://fiscal.treasury.gov/cross-servicing/>; <https://fiscal.treasury.gov/top/how-top-works.html>.

Furthermore, a sentence is added at the end of § 620.3 to reflect the Act's requirement that the recipient also provide this information to the recipient's SFS institution.<sup>19</sup> Additionally, proposed § 620.3 could be read to imply that this documentation must be submitted only "if" the individual is completing the service obligation. In the final rule, § 620.3 states that this documentation must be submitted "[t]o demonstrate" that the individual is completing that obligation.

Ninth, the authority for the rule (following the table of contents) has been revised to include the Cybersecurity Enhancement Act, 15 U.S.C. 7442, as authority and basis for the rule's requirements, in addition to the agency's general rulemaking authority under the NSF Act of 1950, 42 U.S.C. 1870.

Tenth, the final rule has been revised throughout to remove references to SFS scholarships being "converted" into Direct Unsubsidized Loans for repayment purposes. The final rule reverts to the statutory language, which states that, when an individual fails to serve or otherwise violates the SFS scholarship's conditions of support, it must be repaid or "shall be treated as" a Direct Unsubsidized Loan. See 15 U.S.C. 7442(g), (i)–(k). For example, SFS scholarship repayment plans, agreements, or promissory notes shall be "treated [*i.e.*, *the same*] as" a Direct Unsubsidized Loan, and subject to repayment under the same terms and conditions that would apply to such loans, as NSF has stated in § 620.6(g). By using the language expressly prescribed by Congress, the final rule conforms to the statute's requirements, without suggesting that SFS scholarships will be routinely "converted" into Direct Unsubsidized Loans (*i.e.*, payable to the Department of Education). At the same time, the rule does not foreclose SFS institutions from utilizing that option, if it becomes available and feasible to do so.

### Regulatory Analysis

Consistent with requirements applicable to significant regulatory actions within the meaning of Executive

<sup>19</sup> See 15 U.S.C. 7442(g)(1).

Order 12866,<sup>20</sup> the notice of the proposed rule included a regulatory analysis explaining the expected impact of the rule, including its impact on Federal agencies. See 87 FR at 42433. Although no public comments were received on the impact analysis, certain changes have been made to that analysis to reflect more accurately the anticipated impact of the revised rule.

There are three main reasons that the rule is needed. First, under the law, a scholarship recipient's obligation to repay "shall be treated as" a Direct Unsubsidized Loan in accordance with terms and conditions that the Director of the National Science Foundation (in consultation with the Secretary of Education) is required by law to be set forth in regulations promulgated to carry out subsection (j) of 15 U.S.C. 7442. Second, without these regulations, current practice creates limited options for OPM, NSF, and SFS institutions, as well as potential hardship for students. In many cases, the participating CyberCorps® SFS institution is neither able to collect a repayment nor convert it to a loan due to lack of cooperation from a scholarship recipient, closing an NSF award at an institution, or the amounts exceeding annual or aggregate loan limits under 34 CFR 685.203. Thus, if the individual does not submit a one-time payment to the SFS institution or NSF, the matter has typically been referred to Treasury as a delinquent debt for collection purposes. Third, under current practice, students are not afforded the terms and conditions of a Direct Unsubsidized Loan if the scholarship is not treated as such a loan.

Three groups will be affected by the final rule: Students (SFS scholars), universities (SFS institutions), and certain Federal agencies (OPM, NSF, and Treasury). Table 1, Table 2, and Table 3 summarize expected impacts on those three groups.

<sup>20</sup> See section 3(f) of Exec. Order 12866 (defining significant regulatory action to include any regulatory action that is likely to result in a rule that may, among other things, "(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof"). Accordingly, pursuant to that Executive Order, NSF submitted the rule to OMB for its pre-publication review. See 87 FR at 42435 (also citing Executive Order 13563).

TABLE 1—EXPECTED IMPACT OF THE PROPOSED RULE ON STUDENTS

	Number per year	Current practice	Expected impact of proposed rule
Students fulfilling obligation through service.	300	Students report completion to OPM.	None.
Students fulfilling their repayment obligation through lump-sum payment.	5	Repay to SFS institution or NSF.	Participants could pay a lump sum or the amount shall be treated as a Direct Unsubsidized Loan.
Students cooperating with the SFS institution and OPM, but not paying lump sum.	8	Converted to a loan by SFS Institution if possible, but if not possible, transferred to Treasury for collection action.	Student's obligation shall be treated as a Direct Unsubsidized Loan, subject to repayment in accordance with terms and conditions prescribed by the NSF Director in this rule.
Students not cooperating and not paying lump sum.	5	Transferred to Treasury for collection action.	See above. Transferred to Treasury for collection if student defaults on repayment or their request for deferral or discharge is denied. May also be transferred for collection pre-delinquency.

TABLE 2—EXPECTED IMPACT OF THE PROPOSED RULE ON UNIVERSITIES  
[SFS institutions]

	Number per year	Current practice	Expected impact of proposed rule
Universities .....	15	SFS institutions may attempt to convert the scholarship to a loan, which may be impossible due to loan limits, lack of student cooperation.	The scholarship shall be treated as a Direct Unsubsidized Loan, without converting it to such a loan, under repayment terms and conditions established by the NSF Director in the final rule.

TABLE 3—EXPECTED IMPACT OF THE PROPOSED RULE ON FEDERAL AGENCIES

	Number of cases per year	Current practice	Expected impact of proposed rule
NSF .....	18	Work with institutions to find a way to create payments or loan conversion. If impossible, refer to Treasury for collection action.	NSF should see fewer cases and higher likelihood of repayment, because student repayment obligations shall be treated as Direct Unsubsidized Loans under the rule, without the need to convert them to such loans. This should reduce cases in which scholarship recipients seek repayment relief from NSF (e.g., requests to suspend or waive (discharge) their obligation when they are unable to pay in a lump sum).
OPM .....	18	Work with institutions to find a way to create payments or loan conversion. If impossible, work with NSF to transfer to Treasury for collection action.	See above. Scholarship amounts are to be treated as a loan, subject to repayment terms and conditions set forth by the NSF Director in the final rule, resulting in fewer collection issues or requests for relief from repayment.
Treasury .....	5	Handle repayment or collection; appeals; requests for additional evidence, etc.	No automatic transfers to Treasury, and NSF will handle requests for deferral or discharge of the service or repayment obligation, including reconsideration requests.
Education .....	20	Not involved .....	No change. Not involved, since SFS institutions will treat repayment obligations as Direct Unsubsidized Loans without necessarily converting them to such loans, which would require coordination with Education.

**Costs**

The vast majority of students who enroll in the CyberCorps® SFS program will complete their studies and will

move into Federal, state, local, tribal government or other qualifying service, where the vast majority will complete their service obligations. Table 4 below

summarizes the number of students released from obligations (granted a waiver or have a request pending) as of November 1, 2021.

TABLE 4—THE NUMBER OF SFS SCHOLARS RELEASED FROM THE SERVICE OBLIGATIONS FROM 2001–2021

	Scholarships awarded	Full waiver: academic phase	Partial waiver: academic phase	Full waiver: employment phase	Partial waiver: employment phase	Waiver request pending decision	Total waivers
2001 .....	31	0	0	6	0	0	6
2002 .....	115	2	0	16	0	0	18
2003 .....	219	1	0	16	0	0	17
2004 .....	185	0	0	3	0	0	3
2005 .....	182	4	0	2	0	0	6
2006 .....	133	1	0	0	0	0	1
2007 .....	111	1	0	0	0	0	1
2008 .....	94	0	0	0	0	0	0
2009 .....	133	4	0	1	0	0	5
2010 .....	181	2	0	1	0	0	3
2011 .....	195	2	0	1	0	1	4
2012 .....	186	2	0	0	0	0	2
2013 .....	268	1	0	1	0	0	2
2014 .....	277	0	0	2	0	1	3
2015 .....	277	0	0	0	0	0	0
2016 .....	313	0	0	0	0	3	3
2017 .....	357	0	0	0	2	0	2
2018 .....	339	0	0	0	1	1	2
2019 .....	384	1	0	0	0	1	2
2020 .....	375	0	0	0	0	0	0
2021 .....	354	0	0	0	0	0	0
Total .....	4,709	21	0	49	3	7	80

The costs resulting from the rule include one-time costs and recurring costs. The one-time costs consist of time needed for universities and affected students to read and understand the rule and time for students to learn about, decide, and complete paperwork to have the scholarship treated as a Direct Unsubsidized Loan if scholarship repayment is required. The recurring costs consist of the time needed by the university and the student to complete any additional paperwork or tasks associated with the repayment of such a loan.

SFS scholars (students), SFS institutions (universities), and three Federal agencies (NSF, OPM, and Treasury) will benefit from the NPRM. First, SFS institutions will save their time from responding to SFS scholars seeking information about their repayment options when they are not completing the service obligation. This information will be provided in the rule and in the SFS scholarship agreement, which specifically includes the option to repay an SFS scholarship by having it treated as a Direct Unsubsidized Loan. The estimated saving will be 20 hours per year. The total estimated saving will be \$24,000 if the estimated number of cases is 20 per year with \$60 per hour as a wage rate.<sup>21</sup> Second, SFS scholars

who do not fulfill their obligation by service will save time from communicating with SFS institutions and OPM about options before being transferred to Treasury. The estimated time saving is 30 hours per case per year. The SFS scholars who do not fulfill their service obligation will be eligible for benefits available to Direct Unsubsidized Loan borrowers when their repayment obligation is treated as such a loan. The benefits include: (1) Entering a six-month grace period prior to entering repayment, and (2) Eligibility for all the benefits of the Direct Unsubsidized Loan program. These benefits are not currently available to individuals whose debts have been referred to Treasury. Three Federal agencies will save time from handling repayment cases, since the final rule makes clear that SFS institutions will be able to treat and manage an individual's repayment obligation as a Direct Unsubsidized Loan, without referring it to NSF, OPM, or Treasury for collection (or a request for a waiver or discharge) if the individual is unable or unwilling to make a lump-sum payment. The

scholarship and for collecting such payment with a time period specified by NSF. See 15 U.S.C. 7442(k). That existing burden remains unchanged, although the collection burden may be reduced if individuals become more willing to cooperate with the institution on repayment if their scholarship is treated as a Direct Unsubsidized Loan, rather than being referred to Treasury for debt collection as under current practice, when a scholarship cannot be converted to such a loan.

estimated time saving for NSF is 30 hours per case for about 20 cases per year for personnel whose wage rate is estimated at \$84.48<sup>22</sup> per hour, based on OPM 2022 salary and wages. The estimated saving for NSF is \$50,688. The estimated time savings for OPM is 15 hours per case for about 20 cases per year for personnel whose wage rate is estimated at \$56.30 per hour, based on OPM 2022 salary and wages.<sup>23</sup> Treasury will save time for handling at least five cases per year because they will not handle payment agreement or student information, other than cases where the student is liable for repayment and their case is referred to Treasury for collection. There remains no direct benefit for or burden upon the Department of Education.

Alternatives to this rule could be continuing with the current practice of an ad-hoc payment plan between the scholarship recipient and their SFS institutions, or referral of the case to Treasury for collection if the individual is unwilling or unable to pay in a lump sum, without treating the repayment amount as a Direct Unsubsidized Loan. This alternative would not provide the benefits to scholarship recipients, SFS institutions, and agencies that the rule is intended to address. Another alternative is to extend the window for individuals to complete their service

<sup>21</sup> Computer Science Professor Salary (June 2022)—Zippia | Average Computer Science Professor Salaries Hourly And Annual. SFS institutions remain responsible for notifying individuals if they become liable for repaying the

<sup>22</sup> GS–15 Step 10: Pay & Leave: Salaries & Wages—OPM.gov.

<sup>23</sup> GS–13 Step 4: Pay & Leave: Salaries & Wages—OPM.gov.

obligation, which might result in a larger share of SFS scholars fulfilling their service obligations and avoiding repayment. However, this action would not eliminate the need to improve the efficiency and fairness of the process for SFS scholars who do not fulfill their service obligations, and some SFS scholars might use the extra time to delay the start or completion of their service obligation, thereby undercutting the purpose of the program, which was to increase the cybersecurity workforce as quickly as possible. As a result, we believe the chosen proposal, which enables individuals who fail to fulfill their service obligation or who violate other scholarship terms and conditions to have the scholarship treated as a Direct Unsubsidized Loan for repayment purposes, to be the most appropriate approach. In addition, the rule is necessary for NSF to comply with the requirements of the program statute, as the General Accountability Office has noted in previously examining the program.

#### **Executive Order 13132, Federalism**

Executive Order 13132, Federalism, prohibits an agency from publishing any rule that has federalism implications if the rule imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. The final rule, like the proposed rule, does not have any federalism implications, as described above.

#### **Congressional Review Act**

A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The final rule is not a major rule under 5 U.S.C. 801.

#### **Paperwork Reduction Act**

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

As discussed earlier in this document, pursuant to a reimbursable agreement with NSF, OPM operates a Web portal to administer the CyberCorps® SFS program, through which registration and other required information (including the annual contact and employment required by the Cybersecurity

Enhancement Act and this rule) is collected from and maintained on scholarship recipients. See OMB Control No. 3260–0246, Scholarship For Service (SFS) Program internet Site, <https://omb.report/omb/3206-0246>. In addition, NSF also has OMB Control Number 3145–0058, National Science Foundation Proposal and Award Policies and Procedures Guide for information collected from institutions that seek or receive NSF CyberCorps® funding pursuant to a formal NSF solicitation, including information collected by such institutions on behalf of NSF. See <https://omb.report/omb/3145-0058>.

In its proposed rule, NSF had indicated that it was seeking PRA clearance for additional information collection activities contained in the rule. For example, clearance would be required for NSF to use a standardized form, questionnaire, or other set of identical questions to collect relevant information from scholarship recipients requesting the deferral or discharge of their service or repayment obligations under § 620.4 and § 620.5 of the rule, respectively. Instead, at this time, scholarship recipients who fail to fulfill the terms of their scholarship regarding scholarship repayment or conversion, may elect to submit at request to NSF by sending an email to [sfs@nsf.gov](mailto:sfs@nsf.gov). No specific form or format is required. Upon receipt of the request, NSF may request additional information related to the discharge or deferral of the obligation, including supporting documentation. As discussed earlier (*see note 10*), an authorized representative may make a request on your behalf if you are deceased or incapacitated. NSF will acknowledge receipt of your request via the contact information provided in your request. If you have an attorney, you need to include in your request an affidavit confirming that you have authorized the attorney to represent you. If NSF or the SFS program office, in the future, develops and intends as part of the deferral or discharge process to use an information collection instrument that is subject to PRA requirements, additional public comment shall be solicited and OMB clearance shall be requested, as required by the PRA.

#### **Regulatory Flexibility Act**

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), to the extent, if any, that it applies to this rulemaking (see “Administrative Procedure Act” below), NSF certifies that this final rule is not expected to have a significant economic impact on a substantial number of small entities.

The rule applies to individual scholarship recipients who, by definition, do not constitute “small entities” (*e.g.*, businesses).

#### **Unfunded Mandates**

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any Federal mandate that may result in increased expenditures in either Federal, state, local, or tribal governments in the aggregate, or impose an annual burden exceeding \$100 million on the private sector.

#### **Administrative Procedure Act**

As noted earlier, the amendments reflected in the final rule are technical, in the nature of clarifications and corrections, to conform the rule to the language and authority of Cybersecurity Enhancement Act, as needed, or to further explain the meaning or effect of the rule. They do not alter the proposed intent or operation of the rule. Furthermore, to the extent that this rule involves a matter relating to loans, grants, benefits, or contracts, it is exempt from notice-and-comment requirements. See Administrative Procedure Act (APA), 5 U.S.C. 553(a)(2). In accordance with the APA, this rule shall be final and effective 30 days following its publication in the **Federal Register**. See 5 U.S.C. 553(d) (publication of a substantive rule shall not be less than 30 days before its effective date).

#### **Executive Order 12866**

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). See “Regulatory Analysis” section earlier in this document. In accordance with the provisions of Executive Order 12866, this rule was reviewed by the Office of Management and Budget as a significant rule. See *supra* note 20.

#### **List of Subjects in 45 CFR Part 620**

Administrative practice and procedure; Colleges and universities; Grant programs; Reporting and recordkeeping; Scholarships and fellowships.

■ For the reasons stated above, NSF adds part 620 to 45 CFR chapter VI, to read as follows:

**PART 620—CYBERCORPS®  
SCHOLARSHIP FOR SERVICE (SFS)  
PROGRAM**

Sec.

- 620.1 Scope and purpose.  
620.2 Definitions.  
620.3 Documenting the service obligation.  
620.4 Deferral of service obligation.  
620.5 Discharge of agreement to serve or repay.  
620.6 Obligation to repay the CyberCorps SFS scholarship.  
620.7 Severability.

**Authority:** 15 U.S.C. 7442; 42 U.S.C. 1870.

**§ 620.1 Scope and purpose.**

The CyberCorps SFS Scholarship for Service (SFS) program provides funds to institutions of higher education that award scholarships to students who agree to work after graduation in the cybersecurity mission of a Federal executive agency, Congress (including any agency, entity, office, or commission established in the legislative branch), an interstate agency, a state, local or Tribal government or government-affiliated non-profit considered to be critical infrastructure, or as an educator in the field of cybersecurity at a qualified institution of higher education, as defined in 15 U.S.C. 7442(b)(3)(B). The employment will be for a period equal to the duration of the scholarship and to be started within 18 months and to be completed within five years of entering the Commitment Phase of the SFS program. Failure to satisfy the academic requirements of the program or to complete the service obligation results in forfeiture of the scholarship award, which must either be repaid or shall be treated as a Direct Unsubsidized Loan subject to repayment under the terms and conditions described in § 620.6 of this part.

**§ 620.2 Definitions.**

*Agreement to serve or repay* means an agreement under which the individual receiving a CyberCorps SFS scholarship commits to meet the service requirement or to repay the scholarship or the loan as described in § 620.6, and to comply with notification and other provisions of the agreement and these rules.

*Commitment Phase* means the period, immediately following the date on which the Scholarship Phase ends, within which SFS recipients must complete their service obligation (employment). The SFS recipient must begin such employment within 18 months and it must be completed, including submission of all required verifiable employment documentation, within 5 years from the date that the

Commitment Phase begins. The Commitment Phase is limited to a maximum of five years, unless extended by the Director under § 620.4 of this part.

*CyberCorps SFS scholarship recipient (scholarship recipient)* means a student who is selected by an SFS institution for a CyberCorps SFS scholarship and agrees to work after graduation in the cybersecurity mission of a Federal executive agency, Congress (including any agency, entity, office, or commission established in the legislative branch), an interstate agency, a state, local or Tribal government or government-affiliated non-profit considered to be critical infrastructure (as defined in 42 U.S.C. 5195c(e)), or as an educator in the field of cybersecurity at a qualified institution of higher education (as defined in 15 U.S.C. 7442(b)(3)(B)).

*Deferral* means an approved extension of the Commitment Phase.

*Director* means the Director of the National Science Foundation (NSF) or an NSF official or employee acting for the Director under a delegation of authority.

*Scholarship Phase* means a period when scholarship recipients are enrolled full-time (or, if enrolled in community college, at least half-time) in an approved SFS academic program in cybersecurity.

*Service obligation* means the time period the recipient is required to work in the cybersecurity mission of a Federal executive agency, Congress (including any agency, entity, office, or commission established in the legislative branch), an interstate agency, a state, local or Tribal government or government-affiliated non-profit considered to be critical infrastructure (as defined in 42 U.S.C. 5195c(e)), or as an educator in the field of cybersecurity at a qualified institution of higher education (as defined in 15 U.S.C. 7442(b)(3)(B)). The recipient must also obtain prior approval of such employment from the SFS program office. Under this definition, as applied to employment in the cybersecurity mission of a Federal executive agency, creditable service includes periods of employment in paid duty status and excludes periods in unpaid nonduty status.

*SFS institution* means a higher education institution that receives an SFS grant from NSF to recruit, train, and graduate scholarship recipients.

*SFS program office* means an office managing the SFS program through partnership between NSF and the Office of Personnel Management (OPM).

**§ 620.3 Documenting the service obligation.**

To demonstrate that a scholarship recipient is performing service in accordance with the agreement to serve or repay, the scholarship recipient must, within 30 days of the beginning of the service and upon completion of each year of such service, provide to the SFS program office documentation of that service in a form and manner approved by the SFS program office with all required information, including up-to-date contact information, and certifications. The scholarship recipient must also provide the recipient's SFS institution with this annual verifiable documentation of post-award employment and up-to-date contact information.

**§ 620.4 Deferral of service obligation.**

(a) A scholarship recipient whose CyberCorps SFS Scholarship Phase has ended may request, from the Director, a deferral of the five-year Commitment Phase for completion of the service obligation based on—

(1) Enrollment in a program of study or engagement in approved professional activity that would contribute to further professional development and/or cybersecurity workforce readiness for the scholarship recipient;

(2) A condition that is a qualifying reason for leave under the Family and Medical Leave Act (FMLA);

(3) A call to order to Federal or state active duty or active service as a member of a Reserve Component of the Armed Forces named in 10 U.S.C. 10101, or service as a member of the National Guard on full-time National Guard duty, as defined in 10 U.S.C. 101(d)(5); or

(4) Other exceptional circumstances significantly affecting the scholarship recipient's ability to serve as determined by the Director.

(b) A scholarship recipient must apply for a deferral, by submitting a written request via the SFS program office, before the scholarship recipient's Commitment Phase has expired.

(c) A scholarship recipient who applies for deferral must provide documentation supporting the request as well as current contact information including home address, email address, and telephone number.

(d) The Director, or other official designated by the Director, will notify the scholarship recipient on the outcome of the application for deferral. If the deferral is denied, the scholarship recipient may submit a written request for reconsideration to the SFS program office. The request must be received no later than 30 calendar days after NSF



sent notice of the denial to the recipient. The request must explain why the recipient believes the denial is based on an error or mistake of fact or law, or if there are any new facts or law that should be considered. The Director's determination on the request shall be final, with no further reconsideration.

**§ 620.5 Discharge of agreement to serve or repay.**

(a) *Discharge conditions.* The Director may provide for the partial or total waiver or suspension of any service or repayment obligation by a scholarship recipient under the SFS program, including but not limited to the following circumstances:

(1) *Death.* If a scholarship recipient dies, the Director discharges the obligation to complete the agreement to serve or repay based on a certified copy of the death certificate or verification of the scholarship recipient's death through an authoritative Federal or state electronic database approved for use by the Director.

(2) *Total and permanent disability.* A scholarship recipient's agreement to serve or repay is discharged if the scholarship recipient becomes totally and permanently disabled. This is the condition of an individual who:

(i) Is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that—

(A) Can be expected to result in death;

(B) Has lasted for a continuous period of not less than 60 months; or

(C) Can be expected to last for a continuous period of not less than 60 months; or

(ii) Has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability.

(3) *Extreme hardship.* Whenever compliance by the scholarship recipient with the obligation is impossible or would involve extreme hardship to the scholarship recipient, or if enforcement of such obligation with respect to the scholarship recipient would be unconscionable. Extreme hardship could include but is not limited to financial or economic burden, medical situations, or other situations as determined by the Director of NSF.

(b) *Written request.* (1) A scholarship recipient must submit a written application to the SFS program office, requesting a discharge from the Director of NSF in accordance with this section. Requests to discharge and refund amounts already repaid or referred to Treasury will not be considered or granted.

(2) A scholarship recipient who applies for discharge must provide the Director with documentation supporting the request as well as current contact information including home address, email address, and telephone number.

(3) The Director, or other official designated by the Director, will notify the scholarship recipient on the outcome of the application for discharge. If the discharge is denied, the scholarship recipient may submit a written request for reconsideration to the SFS program office. The request must be received no later than 30 calendar days after NSF sent notice of the denial to the recipient. The request must explain why the recipient believes the denial is based on an error or mistake of fact or law, or if there are any new facts or law that should be considered. The Director's determination on the request shall be final, with no further reconsideration.

**§ 620.6 Obligation to repay the CyberCorps SFS scholarship.**

(a) A scholarship recipient who fails to complete the service obligation, as evidenced by documentation of that service with all required information and certifications, or fails to comply with any other conditions of support set forth in 15 U.S.C. 7442(g), must repay the scholarship to the United States in an amount calculated in accordance with 15 U.S.C. 7442(i).

(b) If not repaid, the CyberCorps SFS scholarship amounts paid to the scholarship recipient, together with interest accruing from the date of the scholarship award, at the interest rate determined under 20 U.S.C. 1087e, shall be treated as a Direct Unsubsidized Loan, without regard to any annual or aggregate loan limits under 34 CFR 685.203, and subject to the repayment terms and conditions set forth in paragraph (g) of this section, unless the scholarship recipient submits required documentation to prove the qualified employment within the timeframe required by the agreement to serve or repay (or, if the recipient has violated any other conditions of support, verifiable documentation demonstrating that the recipient has not violated such conditions).

(c) The scholarship recipient remains liable for any amounts calculated in accordance with paragraph (a) that are not repaid, including any amounts treated a Direct Unsubsidized Loan as described in paragraph (b) of this section. Such amounts, if not repaid, shall be referred to the United States Department of the Treasury for collection, and, if the individual defaults on the loan, shall also include

reasonable collection fees and costs (plus court costs and attorney fees, if any).

(d) During the Commitment Phase, approximately 90 days before the date that the scholarship recipient must begin performing the service obligation (employment) and approximately 90 days before the Commitment Phase is scheduled to expire, the scholarship recipient will be notified of the date by which they must submit verifiable documentation showing that they are satisfying the service obligation.

(e) At least annually during the service obligation period, the scholarship recipient shall be notified of—

(1) The terms and conditions that the scholarship recipient must meet to satisfy the service obligation;

(2) The requirement for the scholarship recipient to provide to the SFS program office, upon completion of each of the required service year, verifiable documentation of that service in a form and manner approved by that office and the need for scholarship recipients to keep copies of this information and copies of their own employment documentation; and

(3) The conditions under which the scholarship recipient may request a deferral of the period for completing the service obligation or the discharge of the service obligation.

(f) A scholarship recipient remains obligated to meet all requirements of the service obligation, even if the recipient does not receive the notices described in paragraphs (d) and (e) of this section.

(g) A scholarship recipient whose CyberCorps SFS scholarship is treated as a Direct Unsubsidized Loan—

(1) Enters a six-month grace period prior to entering repayment, and

(2) Is eligible for all other benefits of and subject to all other terms and conditions of the Direct Unsubsidized Loan Program.

(h) If a scholarship recipient's repayment obligation is treated as a Direct Unsubsidized Loan under this part, the loan may not be converted back to a CyberCorps SFS scholarship if it has been referred to the United States Department of the Treasury for collection.

**§ 620.7 Severability.**

If any provision of this part or its application to any person, act, or practice is held invalid, the remainder of the part or the application of its provisions to any person, act, or practice shall not be affected thereby.

Dated: July 24, 2023.

**Suzanne H. Plimpton,**

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2023-16009 Filed 7-31-23; 8:45 am]

BILLING CODE 7555-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 14

[CG Docket Nos. 23-161, 10-213, 03-123; FCC 23-50; FR ID 156546]

### Access to Video Conferencing

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (FCC or Commission) revisits the interpretation of a statutory term, *interoperable video conferencing service (IVCS)*. Finding no persuasive reason to modify or limit the scope of the statutory definition of this term, the Commission declines to revise its definition of IVCS, and concludes that its accessibility rules for advanced communications services and equipment apply to all services and equipment that meet the statutory definition of IVCS.

**DATES:**

*Effective date:* This ruling is effective August 31, 2023.

*Compliance date:* The Commission sets the date for compliance with IVCS rules in part 14 of the Commission's rules as initially adopted at 76 FR 82354 (Dec. 30, 2011) and 77 FR 24632 (April 25, 2012) as September 3, 2024.

**FOR FURTHER INFORMATION CONTACT:** Ike Ofobike, Disability Rights Office, Consumer and Governmental Affairs Bureau, at 202-418-1028, or [Ike.Ofobike@fcc.gov](mailto:Ike.Ofobike@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, document FCC 23-50, adopted on June 8, 2023, released on June 12, 2023, in CG Docket Nos. 23-161, 10-213, and 03-123. The Commission previously sought comment on the issue in a Further Notice of Proposed Rulemaking, published at 76 FR 82240, December 30, 2011, and a Public Notice, published at 87 FR 30442, May 19, 2022. The full text of document FCC 23-50 is available for public inspection and copying via the Commission's Electronic Comment Filing System (ECFS). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format),

send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

### Synopsis

#### Background

1. Since the March 2020 outbreak of the COVID-19 pandemic in the United States, video conferencing has grown from a niche product to a central pillar of our communications infrastructure. The new social interaction paradigm occasioned by the pandemic appears to have permanently altered the norms of modern communication in the workplace, healthcare, education, social interaction, civic life, and more. For millions of Americans, video conferencing has become a mainstay of their business and personal lives. With the growing use of video conferencing has come heightened concern about accessibility. In recent years, various accessibility features have been introduced by a number of video conferencing providers. However, the accessibility of video conferencing services remains limited for many users.

2. Under the Twenty-First Century Communications and Video Accessibility Act (CVAA), enacted in 2010, providers of advanced communications services (ACS) and manufacturers of equipment used for ACS must make such services and equipment accessible to and usable by people with disabilities, unless these requirements are not achievable. 47 U.S.C. 617(a)(1), (b)(1). Service providers and manufacturers may comply with section 716 of the Act either by building accessibility features into their services and equipment or by using third-party applications, peripheral devices, software, hardware, or customer premises equipment (CPE) that are available to individuals with disabilities at nominal cost. 47 U.S.C. 617(a)(2), (b)(2). If accessibility is not achievable through either of these means, then manufacturers and service providers must make their products and services compatible with existing peripheral devices or specialized CPE commonly used by people with disabilities to achieve access, subject to the achievability standard. 47 U.S.C. 617(c).

3. The Act defines *advanced communications services* as: (1) interconnected VoIP service; (2) non-interconnected VoIP service; (3) electronic messaging service; (4) interoperable video conferencing service; and (5) any audio or video communications service used by inmates for the purpose of communicating with individuals

outside the correctional institution where the inmate is held, regardless of technology used. 47 U.S.C. 153(1). *Interoperable video conferencing service*, in turn, is defined as a service that provides real-time video communications, including audio, to enable users to share information of the user's choosing. 47 U.S.C. 153(27).

4. In adopting rules to implement section 716 of the Act, the Commission incorporated without change the statutory definitions of ACS and the four then-existing types of ACS, including interoperable video conferencing service. 47 CFR 14.10(m). However, in that 2011 rulemaking a question was raised as to what Congress meant by including the word *interoperable* as part of the term *interoperable video conferencing service*. Agreeing with some commenters that the word "cannot be read out of the statute," the Commission found that the record before it was insufficient to decide the correct interpretation, and sought further comment on the issue. *Implementing the Provisions of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, Final Rule, published at 76 FR 82353, 82358, December 30, 2011; Proposed Rule, published at 76 FR 82240, 82245-46, December 30, 2011.

5. Based on the record at that time, the Commission specifically invited comment on the following three possible definitions of the word *interoperable* as used in this context: able to function inter-platform, inter-network, and inter-provider; having published or otherwise agreed-upon standards that allow for manufacturers or service providers to develop products or services that operate with other equipment or services operating pursuant to the standards; or able to connect users among different video conferencing services, including video relay service (VRS). Commenters did not reach consensus on any of the three suggested alternatives.

6. Recently, the Commission refreshed the record on this matter. First, in April 2021, the Consumer and Governmental Affairs, Media, and Wireless Telecommunications Bureaus issued a joint Public Notice seeking comment generally on whether any updates were needed to the Commission's rules implementing the CVAA and inviting stakeholders to provide input on aspects of the Commission's CVAA implementation that are working well, on specific areas in which commenters believe improvements are needed, and on requirements that may not be serving