

## What Does the FAFSA Simplification Act Address for Incarcerated Applicants?

The 1994 Crime Bill barred incarcerated students from receiving Pell Grants. In 2015, the Second Chance Pell Experiment began allowing a select number of institutions of higher education to provide Pell Grants to eligible incarcerated students. The Research Collaborative on Higher Education in Prison conducted a three-year study with participants at select Second Chance Pell sites to learn about their experiences with implementation. Administrators, program leaders, as well as currently and formerly incarcerated students and alumni participating in our *Exploring the Experiences of Participants in Second Chance Pell* study identified numerous challenges that they face in completing the Free Application for Federal Student Aid (FAFSA) and accessing Pell Grants in their current form. The challenges that study participants articulated are listed in the first column of the chart below.

Passed in December of 2020, the FAFSA Simplification Act (FSA) amendments to the Higher Education Act of 1965 (HEA) eliminate the prohibition against eligible incarcerated students receiving Pell Grants, as long as they are enrolled in an approved Prison Education Program. The FSA amendments also seem to address many widespread challenges that administrators and students discovered during their participation in the federal Experiment and shared during the research. After the amendments passed, between October and December of 2021, the Department of Education convened the Affordability and Student Loans Committee and the Pell Grants for Prison Education Programs (PEP) Subcommittee to engage in a process called negotiated rulemaking to discuss implementation of the proposed regulations.

On July 26, 2022, the Department of Education released its Notice of Proposed Rulemaking (NPRM) detailing the updates to the FSA amendments based on the negotiated rulemaking process. Interested parties had one month to submit public comments with questions, concerns, and recommendations. Over fifty representatives of higher education in prison programs, nonprofits, government agencies, and departments of corrections submitted public comments. Among the most common concerns were 1) whether departments of corrections should serve as the “oversight entity” that determines if prison education programs are “operating in the best interest of students” and 2) whether the metrics proposed in the regulations are the optimal means to assess if prison education programs are of high quality.<sup>i</sup>

The Department expects to finalize the rules regarding Pell for incarcerated students later in 2022 in preparation for the July 1, 2023 implementation date.<sup>ii</sup> The ways that the Department will interpret and implement the amendments are still very much in flux; some sections of the FSA amendments do not specify how they will apply to incarcerated students in particular, for example. Experts and advocates are advocating to ensure that incarcerated students receive maximum benefits from the amendments.

Our research team read and analyzed the FSA amendments and related reports,<sup>iii</sup> the Notice of Proposed Rulemaking, and public comments in the context of our larger research study. In Table 1, we outline problems that participants in our study identified, and our analysis of how recent legislation, rulemaking, and executive decisions will affect incarcerated students. Because these legislative changes have not yet been implemented and research is ongoing, we view this analysis as a living document and welcome feedback and suggestions by email: [researchcollaborativeHEP@utah.edu](mailto:researchcollaborativeHEP@utah.edu).

Table 1

**WHAT PROBLEMS DOES THE FSA ADDRESS FOR INCARCERATED APPLICANTS?**

Problem	Legislative Developments	Interpretation & Remaining Questions
<p><b>Selective Service:</b> Many incarcerated students never registered for Selective Service and now face considerable barriers in registering.</p>	<p>As of the 2021-2022 financial aid year, students are no longer prohibited from receiving financial aid based on failure to register for Selective Service or having certain drug related convictions on their records.<sup>iv</sup></p>	
<p><b>Drug Convictions:</b> Some incarcerated people have drug related convictions on their records.</p>	<p>As of the 2021-2022 financial aid year, students are no longer prohibited from receiving financial aid for having certain drug related convictions on their records.</p>	
<p><b>Dependent Status:</b> Incarcerated students under 24 are often unable to access their parents’ financial information to receive federal student aid and enroll in postsecondary education.</p>	<p>The FSA amendments explicitly define student or parental incarceration as an “unusual circumstance” that financial aid administrators can use as the basis for a “dependency override.”</p>	<p>Such dependency overrides will still be offered on a case-by-case basis determined by financial aid administrator’s professional judgement. The public comment from the United States Senate urges the Department of Education to offer guidance to prison education programs about how to help incarcerated students “seeking a dependency override.”<sup>vi</sup></p>
<p><b>Defaulted Student Loans:</b> A significant portion of incarcerated people otherwise able to participate in postsecondary education have a student loan in default, making them ineligible for Pell.</p>	<p>In 2022, the Department of Education announced changes to policies to help incarcerated individuals with defaulted loans, including affirming that incarcerated individuals qualify for a “fresh start,” which returns borrowers with defaulted loans to repayment in good standing and allows them to access programs like the Second Chance Pell Experiment. After this “fresh start,” the Department states that it will also offer opportunities for incarcerated students to consolidate loans to get out of default.<sup>vii</sup></p>	<p>In a joint public comment, the Student Borrower Protection Center, the Student Loan Borrower Assistance National Consumer Law Center, and the Prison Policy Initiative argue that unless the Department automatically enrolls them in Fresh Start and income driven repayment plans, incarcerated borrowers will not have meaningful access to these opportunities due to severely limited phone and internet service. The joint statement also calls for cancelling federal student loans for borrowers incarcerated five years or more and “regularly cross-referencing borrowers with either governmental or private databases that compile incarceration information for the sole purpose of improving student loan servicing for borrowers who are incarcerated.” Finally, the Department of Education itself has also issued guidance urging schools to consider, “using Higher Education Emergency Relief Funds (HEERF) or their own funds to discharge unpaid institutional balances or consider policies that allow all students to enroll, access, or transfer their official academic records.”<sup>ix</sup></p>

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<b>Verification:</b> Incarcerated applicants are more likely to be selected for verification and find it difficult to obtain documentation necessary to complete the process.	“The FSA amendments establish several new statutory provisions related to verification. It directs that ED, ‘to the maximum extent practicable, streamline and simplify the process of verification for applicants’ and requires ED to publish data annually on verification activities.” <sup>x</sup>	It is unclear exactly what a streamlined and simplified verification process will look like or whether it will address issues incarcerated students face with regard to verification.
<b>Sentence Length:</b> The Second Chance Pell Experiment requires participating institutions to, “Only disburse Pell Grant funding to otherwise eligible students who will eventually be eligible for release from the correctional facility, while giving priority to those who are likely to be released within five years of enrollment in the educational program” <sup>xi</sup> Our research found that all but one of the participating programs adhere to this guidance.	The FSA amendments strike the subsections of the Higher Education Act that prohibit incarcerated students from receiving Pell grants; there is no specific language restricting incarcerated student eligibility based on sentence length or crime of conviction.” <sup>xii</sup>	The FSA instructs oversight committees to determine whether programs are operating “in the best interest of students” by using metrics that favor people who will be released from prison soon. Several public comments submitted during negotiated rulemaking call for more explicit statements that prison education programs cannot impose sentence or conviction restrictions in determining admission. <sup>xiii</sup>
<b>“Bad credit loads”:</b> Incarcerated students enrolled in the top range of current award tiers may not have enough Pell dollars to cover the cost of per credit hour tuition (e.g. the award for the 6-8 credit hour tier may be enough to cover the cost of 6 hours but not 8 hours).	Financial aid awards for students who are enrolled less than full time will be calculated based on the exact number of credit hours for which they are enrolled rather than a tiered system of credit ranges. <sup>xiv</sup>	It is unclear whether the new per credit hour calculations will be commensurate with schools’ tuition rates; the lesser amount of funding that students at the lower end of the current tiers (e.g. 6 vs. 8 hours) will receive may or may not cover current tuition rates.
<b>Data Collection:</b> Institutions of higher learning are uneven in their practices of collecting and maintaining data on incarcerated students.	The FSA amendments require the Department of Education to collect race and ethnicity data through the FAFSA and “annually and publicly report on the prison education programs, Pell Grant recipients and expenditures, and academic and post-release outcomes.” <sup>xv</sup>	The FSA amendments include no funding to improve data collection infrastructure, and several public comments suggest that increased reporting requirements will deter institutions of higher education and departments of corrections from establishing prison education programs. <sup>xvi</sup>
<b>Tax Information:</b> Incarcerated students encounter obstacles to obtaining their own historical tax information while incarcerated.	The FSA amendments “modify the criteria to exempt certain applicants from asset reporting” - the hope is that this will allow more incarcerated people to be exempt from reporting. The FSA amendments are also to be integrated with the Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE) Act, which will allow students to give authorization to disclose information from their tax returns rather than having to provide that information themselves. <sup>xvii</sup>	As with Fresh Start and income driven repayment plans, severely limited phone and internet service could prevent incarcerated students from accessing this benefit.

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<p><b>Online Access:</b> Most students complete paper FAFSAs, resulting in extra administrative work and/or delays in processing aid and enrollment.</p>	<p>The FSA amendments do not specifically require prisons to allow students online access to the FAFSA.</p>	<p>In general, the amendments do require the Secretary of Education to make the FAFSA “available through prevalent technology,” which must, “at a minimum, enable applicants to save data and submit the application under this title to the Secretary through such technology.” The Secretary must also assess “the ability of confined or incarcerated individuals to access and complete the [FAFSA]”; evaluation metrics may or may not include online access.<sup>xix</sup></p>
<p><b>Staffing:</b> Many prison higher education programs rely on overburdened staff without financial aid expertise to guide students through the FAFSA, resulting in errors and misunderstandings among students.</p>	<p>The FSA amendments do not address staffing.</p>	<p>A staff person at the Department of Education suggested during a May 2022 webinar that the Department does not restrict the ways that programs use the funding they collect through fees, implying that hiring staff with these funds is possible.<sup>xix</sup></p>
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<p><b>Lifetime eligibility used (LEU):</b> Students may expend their lifetime eligibility on programming that does not contribute to their ultimate goals because they do not recognize that there are limits on how much Pell monies they can use.</p>	<p>The FSA amendments restore students’ LEU awarded through institutions that have closed and from which they did not graduate.<sup>xxi</sup></p>	<p>The NPRM indicates that the Department of Education has interpreted the statute to mean that if an institution of higher education offering a prison education program ultimately closes, the students in that program “may be eligible for Pell LEU restoration.” The notice further suggests that students’ lifetime eligibility could be restored if, “the institution ceases to operate in the correctional facility.”<sup>xxii</sup> The author of an anonymous public comment asked if “there are any conditions other than entire institutional closure” that would allow incarcerated students to restore lifetime eligibility; the Department of Education responses to this comment might offer more clarity regarding LEU restoration.</p>

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<p><b>Cost of Attendance:</b> While the cost of attendance for non-incarcerated students can include a variety of expenses associated with their postsecondary education, the cost of attendance for incarcerated students can only include tuition, fees, books, and supplies. Incarcerated students incur a variety of other expenses as a result of attending college, including supplementing inadequate supplies, procuring transcripts, losing institutional wages to enroll in courses, and forfeiting Pell funding due to disciplinary transfers.</p>	<p>Cost of attendance for incarcerated students will soon include the cost of obtaining a license, certification, or a first professional credential.<sup>xiii</sup></p>	<p>The FSA does not allow other items to be added to incarcerated students' cost of attendance.</p>
<p><b>Student Refunds:</b> Incarcerated students may be awarded in excess of their actual tuition and fees, but we are unaware of any institutions of higher education institutions that issue refunds.</p>	<p>The FSA amendments do not provide any new regulations regarding refunds.</p>	<p>The August 2022 version of the Department of Education's Second Chance Pell FAQs indicate that schools can issue refunds (with the cooperation of the local corrections authority) if the schools in question do not provide books and supplies to students. The NPRM, however, proposes that for prison education programs, "the postsecondary institution must reduce the Pell Grant award if the amount exceeds cost of attendance so that it does not result in a credit balance."<sup>xiv</sup></p>

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## Endnotes

<sup>i</sup>Per the Notice of Proposed Rulemaking, required metrics include percentage of students continuing education post release; job placement rates; student earnings; experience, credentials, and turnover rate of instructors; transferability of credits; availability of academic and career advising; and students' ability to transfer to campus upon release. Optional metrics include recidivism, rates of completion, other indicators. See Institutional Eligibility, Student Assistance General Provisions, and Federal Pell Grant Program. 87 Fed. Reg. 45432 (proposed July 28, 2022).

<sup>ii</sup>U.S. Department of Education. (2022, July 26). Education Department Releases Proposed Regulations to Protect Veterans and Service Members, Increase College Oversight, and Increase College Access for Incarcerated Individuals. <https://www.ed.gov/news/press-releases/education-department-releases-proposed-regulations-protect-veterans-and-service-members-increase-college-oversight-and-increase-college-access-incarcerated-individuals>.

<sup>iii</sup>The Congressional Research Service analysis of the FSA amendments is especially instructive. See Collins, B. & Dortch, C. (2022, January 19). *The FAFSA Simplification Act*, Congressional Research Service. Retrieved from <https://crsreports.congress.gov/product/pdf/R/R46909#:~:text=The%20FSA%20amends%20the%20indicator's,a%20federal%20income%20tax%20return>. See also Wachendorfer, A. and Budke, M. (2020, April; Updated 2022, March). *Lessons from Second Chance Pell: A toolkit for helping incarcerated students complete the free application for federal student aid*. Retrieved from [https://www.vera.org/downloads/publications/lessons-from-second-chance-pell-toolkit\\_2022-03-07-215713\\_ibs2.pdf](https://www.vera.org/downloads/publications/lessons-from-second-chance-pell-toolkit_2022-03-07-215713_ibs2.pdf).

<sup>iv</sup>Collins & Dortch, 2022, p. 21. See also Wachendorfer, A. (2022, March). *Important FAFSA Updates That Impact Incarcerated Students*. Vera Institute. <https://www.vera.org/downloads/publications/lessons-from-second-chance-pell-fact-sheet.pdf>.

<sup>v</sup>Collins & Dortch, 2022, p. 11. Financial aid administrators are already able to make such exceptions based on their professional judgment (PJ), but it has been up to the student to explicitly request such consideration. Under the FSA amendments, institutions of higher learning must actively publicize the availability of this avenue.

<sup>vii</sup>Murray, P. Baldwin, T., Durbin, R., & Padilla, A. (2022, August 26). Public Comment: ED-2022-OPE-0062-0101. Institutional Eligibility, Student Assistance General Provisions, and Federal Pell Grant Program: Docket ID ED-2021-OPE-0062, <https://www.regulations.gov/comment/ED-2022-OPE-0062-0101>.

<sup>viii</sup>U.S. Department of Education (2022, April 6). Biden-Harris Administration Extends Student Loan Pause Through August 31. [Press Release]. <https://www.ed.gov/news/press-releases/biden-harris-administration-extends-student-loan-pause-through-august-31>; Dorsey, B. (2022, May 26). Pell Reinstatement Eligibility for Incarcerated Students [Webinar]. Federal Student Aid: Training and Information Services Group. <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2022-05-10/live-internet-webinar-pell-grant-eligibility-incarcerated-students>.

<sup>viii</sup>Student Borrower Protection Center, National Consumer Law Center, & Prison Policy Initiative (2022, August 26). Public Comment: ED-2022-OPE-0062-0098. Institutional Eligibility, Student Assistance General Provisions, and Federal Pell Grant Program: Docket ID ED-2021-OPE-0062, <https://www.regulations.gov/comment/ED-2022-OPE-0062-0098>. See also Loonin, D., Saddler, A., Shafroth, A., Smith, R. (2022, July). Collection at All Costs: Examining the Intersection of Mass Incarceration and the Student Debt Crisis, p. 5. [https://protectborrowers.org/wp-content/uploads/2022/08/Collection-at-All-Costs\\_Final.pdf](https://protectborrowers.org/wp-content/uploads/2022/08/Collection-at-All-Costs_Final.pdf). Public comments from New America and the U.S. Congress express similar sentiments. See New America. Public Comment: ED-2022-OPE-0062-0109. Institutional Eligibility, Student Assistance General Provisions, and Federal Pell Grant Program: Docket ID ED-2021-OPE-0062, <https://www.regulations.gov/comment/ED-2022-OPE-0062-0109>; Davis, D. & Lee, B. Public Comment: ED-2022-OPE-0062-0091. Institutional Eligibility, Student Assistance General Provisions, and Federal Pell Grant Program: Docket ID ED-2021-OPE-0062, <https://www.regulations.gov/comment/ED-2022-OPE-0062-0091>.

<sup>ix</sup>Cordray, R. (2022, August 17). Dear Colleague Letter: Federal Student Aid Eligibility for Borrowers with Defaulted Loans. Federal Student Aid. <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2022-08-17/federal-student-aid-eligibility-borrowers-defaulted-loans>.

<sup>x</sup>Collins & Dortch, 2022, p. 23.

<sup>x</sup>Notice Inviting Postsecondary Institutions to Participate in Experiments under the Experimental Site Initiative; Federal Student Financial Assistance Programs Under Title IV of the Higher Education Act of 1965, As Amended. 80 Fed.Reg. 148 (August 3, 2015). <https://www.govinfo.gov/content/pkg/FR-2015-08-03/html/2015-18994.htm>.

<sup>xii</sup>Collins & Dortch, 2022, p.i.

<sup>xiii</sup>Center for American Progress. (2022, August 26). Public Comment: ED-2022-OPE-0062-0101. Institutional Eligibility, Student Assistance General Provisions, and Federal Pell Grant Program: Docket ID ED-2021-OPE-0062, <https://www.regulations.gov/comment/ED-2022-OPE-0062-0018>; College and Community Fellowship. (2022, August 26). Public Comment: ED-2022-OPE-0062-0101. Institutional Eligibility, Student Assistance General Provisions, and Federal Pell Grant Program: Docket ID ED-2021-OPE-0062, <https://www.regulations.gov/comment/ED-2022-OPE-0062-0042>; New America. (2022, August 26). Public Comment: ED-2022-OPE-0062-0101. Institutional Eligibility, Student Assistance General Provisions, and Federal Pell Grant Program: Docket ID ED-2021-OPE-0062, <https://www.regulations.gov/comment/ED-2022-OPE-0062-0109>.

<sup>xiv</sup>Collins & Dortch, 2022, p. 16.

<sup>xv</sup>Collins & Dortch, 2022, p. 17.

<sup>xvi</sup>Ashland University. (2022, August 26). Public Comment: ED-2022-OPE-0062-0101. Institutional Eligibility, Student Assistance General Provisions, and Federal Pell Grant Program: Docket ID ED-2021-OPE-0062, <https://www.regulations.gov/comment/ED-2022-OPE-0062-0122>; National Association of Student Financial Aid Administrators. (2022, August 26). Public Comment: ED-2022-OPE-0062-0101. Institutional Eligibility, Student Assistance General Provisions, and Federal Pell Grant Program: Docket ID ED-2021-OPE-0062, <https://www.regulations.gov/comment/ED-2022-OPE-0062>; New Jersey Scholarship and Transformative Education in Prison. (2022, August 26). Public Comment: ED-2022-OPE-0062-0101. Institutional Eligibility, Student Assistance General Provisions, and Federal Pell Grant Program: Docket ID ED-2021-OPE-0062, <https://www.regulations.gov/comment/ED-2022-OPE-0116>; and American Association of Community Colleges. (2022, August 26). Public Comment: ED-2022-OPE-0062-0101. Institutional Eligibility, Student Assistance General Provisions, and Federal Pell Grant Program: Docket ID ED-2021-OPE-0062, <https://www.regulations.gov/comment/ED-2022-OPE-0062-0095>.

<sup>xvii</sup>Collins & Dortch, 2022, p. 22. The FUTURE Act passed in December of 2019 and still has not been implemented. The Department of Education announced in September 2020 that it would change the 2023-2024 FAFSA to reflect FUTURE Act changes, but the Department might shift to a 2024-2025 rollout to coincide with the phased implementation of certain parts of the FSA amendments.

<sup>xviii</sup>FAFSA Simplification Act Amendments to HEA. Pub. L. No. 116-120 § 483, 134 Stat 3138.

<sup>xix</sup>FAFSA Simplification Act Amendments to HEA. Pub. L. No. 116-120 § 484, 134 Stat 3138.

<sup>xx</sup>U.S. Department of Education (May 26, 2022). "Pell Reinstatement Eligibility for Incarcerated Students." Retrieved from <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2022-05-10/live-internet-webinar-pell-grant-eligibility-incarcerated-students>.

<sup>xxi</sup>Collins & Dortch, p. 18-19.

<sup>xxii</sup>Dorsey, B. (2022, May 26). Pell Reinstatement Eligibility for Incarcerated Students [Webinar]. Federal Student Aid: Training and Information Services Group. <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2022-05-10/live-internet-webinar-pell-grant-eligibility-incarcerated-students>.

<sup>xxiii</sup>FAFSA Simplification Act Amendments to HEA. Pub. L. No. 116-120 § 472, 134 Stat 3138.

<sup>xxiv</sup>Federal Student Aid. (2022, August 5). U.S. Department of Education's Experimental Sites Initiative Second Chance Pell Experiment Frequently Asked Questions. <https://experimentalsites.ed.gov/exp/pdf/SecondChancePellFAQ.pdf>. See Q and A 21.

<sup>xxv</sup>Institutional Eligibility, Student Assistance General Provisions, and Federal Pell Grant Program. 87 Fed. Reg. 45432 (proposed July 28, 2022).