

34 CFR § 600.2 Definitions

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*Additional location:* A facility that is geographically apart from the main campus of the institution and at which the institution offers at least 50 percent of a program and may qualify as a branch campus.

A Federal, State, or local penitentiary, prison, jail, reformatory, work farm, juvenile justice facility or other similar correctional institution is considered to be an additional location as defined under 34 CFR 600.2 even if a student receives instruction primarily through distance education or correspondence courses at that location.

~~Confined or incarcerated student individual~~ means an individual: ~~A student~~ who is serving a criminal sentence in a Federal, State, or local penitentiary, prison, jail, reformatory, work farm, juvenile justice facility, or other similar correctional institution. ~~An individual-student~~ is not considered incarcerated if that ~~student-individual~~ is subject to or serving an involuntary civil commitment in a half-way house or home detention, or is sentenced to serve only weekends. ~~For purposes of Pell Grant eligibility under 34 CFR 668.32(e)(2)(ii), a student who is incarcerated in a juvenile justice facility, or in a local or county facility, is not considered to be incarcerated in a Federal or State penal institution, regardless of which governmental entity operates or has jurisdiction over the facility, including the Federal Government or a State, but is considered incarcerated for the purposes of determining costs of attendance under section 472 of the HEA in determining eligibility for and the amount of the Pell Grant.~~

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34 CFR § 600.7 Conditions of institutional ineligibility.

**(a) General rule.** For purposes of title IV of the HEA, an educational institution that otherwise satisfies the requirements contained in §§ 600.4, 600.5, or 600.6 nevertheless does not qualify as an eligible institution under this part if -

\* \* \* \* \*

**(iii)** More than twenty-five percent of the institution's regular enrolled students were incarcerated;

\* \* \* \* \*

**(c) Special provisions regarding incarcerated students -**

**(1) Exception.** The Secretary may waive the prohibition contained in paragraph (a)(1)(iii) of this section, upon the application of an institution, if the institution is a nonprofit

institution that provides four-year or two-year educational programs for which it awards a bachelor's degree, an associate degree, or a postsecondary diploma and has continuously provided an eligible prison education program approved by the Department under subpart P of 34 CFR part 668.8(e) for at least two years. The Secretary does not grant the waiver if -

(i) For a program described under paragraph (3)(ii) of this subsection, the program does not maintain a completion rate of 50 percent or greater; or

(ii) For an institution described under paragraphs (c)(2) or (3) of this subsection-  
(A) The institution provides one or more eligible prison education programs that are not compliant with the requirements of subpart P of 34 CFR part 668.8(e); or  
(B) The institution is not administratively capable under 34 CFR 668.16 or financially responsible under 34 CFR Subpart L.

**(2) Waiver for entire institution.** If the nonprofit institution that applies for a waiver consists solely of four-year or two-year educational programs for which it awards a bachelor's degree, an associate degree, or a postsecondary diploma, the Secretary waives may waive the prohibition contained in paragraph (a)(1)(iii) of this section for the entire institution.

**(3) Other waivers.** If the nonprofit institution that applies for a waiver does not consist solely of four-year or two-year educational programs for which it awards a bachelor's degree, an associate degree, or a postsecondary diploma, the Secretary waives may waive the prohibition contained in paragraph (a)(1)(iii) of this section on a program-by-program basis--

(i) For the four-year and two-year programs for which it awards a bachelor's degree, an associate degree or a postsecondary diploma; and

(ii) For the other programs the institution provides, if the incarcerated regular students enrolled in those other programs have a completion rate of 50 percent or greater.

**(4) The Secretary limits or terminates withdraws the waiver described in this subsection if the Secretary determines the institution no longer meets the requirements established under (c)(1) of this subsection.**

**(5) If the Secretary limits or terminates withdraws an institution's waiver under (c)(4) of this subsection, the institution ceases to be eligible for the title IV, HEA programs at the end of the award year that begins after the Secretary's action withdrawal of the waiver unless the institution, by that time -**

(i) Demonstrates to the satisfaction of the Secretary that it meets the requirements under (c)(1) of this subsection; and

(ii) The institution does not enroll any additional incarcerated students upon the limitation or termination of the waiver and ~~r~~Reduces its enrollment of incarcerated students to no more than 25 percent of its regular enrolled students.

\* \* \* \* \*

34 CFR § 600.10 Date, extent, duration, and consequence of eligibility.

**Commented [A2]:** Waiver draft language sent to subcommittee 11-8.

Re-stated here:

**RECOMMENDATION:** up to a maximum of 49% of an institution's "traditional" student body for an initial probationary period of 5 years. If an institution shows clear evidence to ED, their accreditation agency, and corrections that they are continuing to serve students' best interests they can apply for an expansion of their waiver to a maximum of 75% of an institution's "traditional" student body. That expansion would also be probationary and would have to show evidence that students' best interests are being served. At this time, it does not appear warranted that an educational institution should go above the 49%-75% (non-traditional) student population.

Additional note: ^^ Personally, I could see value in stopping expansion at the 49% cap, but I see potential value in providing some scaffolding for institutions who may want to expand fairly and equitably in this space.

\* \* \* \* \*

(c) *Educational programs.*

(1) An eligible institution that seeks to establish the eligibility of an educational program must obtain the Secretary's approval -

(i) Pursuant to a requirement regarding additional programs included in the institution's program participation agreement under 34 CFR § 668.14, ~~obtain the Secretary's approval;~~

(ii) For the ~~a~~ first direct assessment program under 34 CFR § 668.10, the first direct assessment program offered at each credential level, ~~for~~ a comprehensive transition and postsecondary program under 34 CFR § 668.232, ~~and for the first eligible prison education program under 34 CFR 668.8(o) offered at the first two additional locations,~~ obtain the Secretary's approval; ~~and~~

(iii) For the first eligible prison education program under subpart P of 34 CFR part 668.8(o) offered at the first two additional locations as defined under 34 CFR § 600.2 at a Federal, State, or local penitentiary, prison, jail, reformatory, work farm, juvenile justice facility or other similar correctional institution; and

(iv) For an undergraduate program that is at least 300 clock hours but less than 600 clock hours and does not admit as regular students only persons who have completed the equivalent of an associate degree under 34 CFR § 668.8(d)(3).

\* \* \* \* \*

34 CFR § 600.21 Updating application information.

(a) *Reporting requirements.* Except as provided in paragraph (b) of this section, an eligible institution must report to the Secretary in a manner prescribed by the Secretary no later than 10 days after the change occurs, of any change in the following:

\* \* \*

(12) Its addition of a second or subsequent direct assessment program.

(13) Its establishment of a written arrangement for an ineligible institution or organization to provide more than 25 percent of a program pursuant to 34 CFR § 668.5(c).

(14) Its establishment or addition of an eligible prison education program at an additional location as defined under 34 CFR § 600.2 at a Federal, State, or local penitentiary, prison, jail, reformatory, work farm, juvenile justice facility or other similar correctional institution that was not previously included in the institution's application for approval under as described under 34 CFR § 600.10.

\* \* \* \* \*

### 34 CFR 668.8 Eligible Program

(n) For Title IV, HEA program purposes, *eligible program* includes a direct assessment program approved by the Secretary under § 668.10 ~~and~~ a comprehensive transition and postsecondary program approved by the Secretary under § 668.232, and an eligible prison education program under subpart P paragraph (e) of this part.

\* \* \* \* \*

### 34 CFR § 668.32 Student eligibility - general.

\* \* \* \* \*

(c)(2) For purposes of the Federal Pell Grant Program -

(i)

- (A) Does not have a baccalaureate or first professional degree; or
- (B) Is enrolled in a postbaccalaureate teacher certificate or licensing program as described in 34 CFR § 690.6(c); and
- ~~(C) Is not incarcerated in a Federal or State penal institution;~~

(ii)

- ~~(A) is not a confined or incarcerated individual as defined in 34 CFR § 668.235;~~
- or
- ~~(B) is enrolled in an eligible prison education program as defined in 34 CFR § 668.8(e)236.~~

\* \* \* \* \*

### 34 CFR § 668.43 Institutional information.

\* \* \* \* \*

(6) An institution that offers an eligible prison education program, as defined in 34 CFR § 668.8(e) 668.236, must:

(i) Upon request, if applicable, provide any all available information regarding whether completion of the prison education program meets educational requirements for professional licensure or certification, including requirements for licensure or certification examinations needed to practice or find employment in the sectors or occupations for which the program prepares the individual—

- (A) In the State in which the correctional facility is located; or,
- (B) In the case of a Federal correctional facility, in the State in which the individual who is confined or incarcerated in such facility plans to reside upon release.

(ii) If applicable, make available information upon request that confirms that the education is designed to lead to licensure or employment for a specific job or occupation

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does not typically involve Federal prohibitions on the licensure or employment of formerly incarcerated individuals—

- (A) In the State in which the correctional facility is located; or
- (B) In the case of a Federal correctional facility, in the State in which the individual who is confined or incarcerated in such facility plans to reside upon release.

\* \* \* \* \*

### 34 CFR 668 Subpart P – Prison Education Programs

#### 34 CFR § 668.234 Scope and Purpose

This subpart establishes regulations that apply to an institution that offers prison education programs to confined or incarcerated individuals. A confined or incarcerated individual enrolled in an eligible prison education program is eligible for Federal financial assistance under the Federal Pell Grant program. Unless provided in this subpart, confined or incarcerated individuals and institutions that offer prison education programs are subject to the same regulations and procedures that otherwise apply to Title IV, HEA program participants.

#### 34 CFR § 668.235 Definitions

The following definitions apply to this subpart:

Additional location has the meaning given in 34 CFR § 600.2.

Confined or incarcerated individual has the meaning given in 34 CFR § 600.2.

*Juvenile justice facility* means a public or private residential facility that is operated primarily for the care and rehabilitation of youth who, under State juvenile justice laws—

- (1) Are accused of committing a delinquent act;
- (2) Have been adjudicated delinquent; or
- (3) Are determined to be in need of supervision.

Oversight entity means—

- (1) The appropriate State department of corrections or other entity that is responsible for overseeing correctional facilities; or
- (2) The Federal Bureau of Prisons.

#### 34 CFR § 668.236 Eligible Prison Education Program

~~(a)~~ An eligible prison education program means an education or training program that—

(a)(1) is an eligible program under this subpartsection offered by an institution of higher education as defined under 34 CFR § 600.4, or a postsecondary vocational institution as defined under 34 CFR § 600.6;

**Commented [A3]:** For subcommittee members: The Department has reworked the structure of these proposed regulations to appear in their own subpart, rather than falling within the definition of an eligible program at 34 CFR 668.8.

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(b2) is offered by an eligible institution that has been approved to operate in a correctional facility by the appropriate State department of corrections or other entity that is responsible for overseeing correctional facilities, or by the Federal Bureau of Prisons oversight entity;

(3c) After the 2 years of approval under (2) has been determined by the Bureau of Prisons, the appropriate State department of corrections, or another entity that is responsible for overseeing correctional facilities an initial two-year approval is determined by the oversight entity to be operating in the best interest of students as described by § 668.241 appropriate State department of corrections or other entity that is responsible for overseeing correctional facilities, or by the Federal Bureau of Prisons;

(d5) Offers transferability of credits to at least one institution of higher education (as defined in sections 34 CFR §§ 600.4 and 600.6) in the State in which the correctional facility is located, or, in the case of a Federal correctional facility, in the State in which most of the individuals confined or incarcerated in such facility will reside upon release, as determined by the institution based on information provided by the oversight entity;

(e6) Is offered by an institution that has not been subject, during the five years preceding the date of the determination, to—

- (i) any suspension, emergency action, or termination of programs under this title;
- (ii) any final accrediting action that is an adverse action as defined in 34 CFR § 602.3 by the institution's accrediting agency or association; or
- (iii) any action by the State to revoke a license or other authority to operate;

(f7) Is offered by an institution that is not subject to a current initiated adverse action—

- (i) If an accrediting agency initiates an adverse action, the institution cannot begin its first or a subsequent prison education program unless and until the initiated adverse action has been rescinded; and
- (ii) If the institution currently offers one or more prison education programs and is subject to an initiated adverse action the institution must submit a teach-out plan, as defined under 34 CFR § 600.2, to the institution's accrediting agency.

(g8) Satisfies any applicable educational requirements for professional licensure or certification, including licensure or certification examinations needed to practice or find employment in the sectors or occupations for which the program prepares the individual, in the State in which the correctional facility is located or, in the case of a Federal correctional facility, in the State in which most of the individuals confined or incarcerated in such facility will reside upon release, as determined by the institution not less than annually based on information provided by the oversight entity; and

(h9) Does not offer education that is designed to lead to licensure or employment for a specific job or occupation in the State if such job or occupation typically involves prohibitions on the licensure or employment of formerly incarcerated individuals in the State in which the correctional facility is located, or, in the case of a Federal correctional facility, in the State in which most of the individuals confined or incarcerated in such facility will reside upon release.

**Commented [A4]:** It is important to have an appeals process in place (not unlike the accreditation appeals process, perhaps) for educational institutions that may be considered "ineligible" by an oversight entity. For example, "if an institution is not approved to operate in a correctional facility by State [...]" an appeals process needs to be available for due process. <-- It is strongly encouraged that the "due process" include "an Advisory Committee" of diverse stakeholders who are experts in their respective fields.

**Commented [A5]:** For subcommittee members: This language has simply been moved up and restructured slightly to clarify the application of the oversight entity's determination.

**Commented [A6]:** RECOMMENDATION: After an initial approval (comparable to the highest academic credential being offered by the eligible institution e.g., 2 years for a certificate, 3 years for an associate's degree, 5 years for a bachelor's degree, [i.e. credential + 1 year for data purposes.]) <-- Kim and others please weigh-in on this recommendation.

**Commented [A7]:** Is there language we can include here that is inclusive for individual students? Say, for example, a student with a felony conviction wants to be a barber, but the current state they are imprisoned does not allow him/her/them to seek that credential. There are, however, 5 other states would allow the student to obtain a barber's license... Can there be an opportunity for that student to take barber classes knowing that it is in that student's "best interests" to seek licensure in one of those 5 states post-incarceration?

**Commented [A8R7]:** Additional language provided by ED via email re: clarification point 4: For Federal facilities, the prohibition is tied to the state where most of the incarcerated individuals will reside upon release. This is a determination the institution must make when deciding whether a program can be offered at a particular location, and it is a determination that the Department would evaluate. Within that framework, the subcommittee could consider whether recommendations should be made about how an institution would make those determinations of what a "typical" prohibition on the licensure or employment might be. The subcommittee may also have recommendations on programs ensure they are keeping track of rapidly changing laws in this space.

**Commented [A9R7]:** RECOMMENDATION: a) In the case where a person who is currently incarcerated is planning to return to a state (post-release) where there are no licensure restrictions, the student, working with the educational partner, should not be restricted from taking classes in that discipline. (The previous recommendation about students having programming and/or licensure information at least 5 business days before the institution's "drop-add" period would be highly beneficial here.) b) Educational institution ...

**Commented [A10]:** As above.

as determined by the institution not less than annually based on information provided by the oversight entity.

(1) In the case of state and local correctional facilities, the postsecondary institution does not enroll any student in a prison education program that any Federal law or State law in which the correctional facility is located, bans, bars, or prohibits licensure or employment based on any criminal conviction or specific types of criminal convictions, for that specific prison education program; or

(2) In the case of a Federal correctional facility, the postsecondary institution does not enroll any student in a prison education program that any Federal law or State law in which more than half of the individuals confined or incarcerated in such facility will reside upon release bans, bars, or prohibits licensure or employment based on any criminal conviction or specific types of criminal convictions, for that specific program; and

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Commented [A11]: As above

#### 34 CFR § 668.237 Accreditation Requirements

(10a) A prison education program that is not consistent with must meet the requirements of the institution's accrediting agency or State approval agency is not an eligible program as provided under § 668.8.

(b) In order for any prison education program to qualify as an eligible program, the accrediting agency must have -

(1) Evaluated at least the first prison education program at the first two additional locations to ensure the institution's ability to offer and implement the program based on the agency's accreditation standards, and included it in the institution's grant of accreditation or pre-accreditation;

(2) Evaluated the first additional prison education program offered by a new method of delivery to ensure the institution's ability to offer and implement the program based on the agency's standards, and included it in the institution's grant of accreditation or pre-accreditation;

(3) Performed a site visit as soon as practicable but no later than one year after initiating the prison education program at the first two additional locations; and

(4) Reviewed and approved the methodology for how the Bureau of Prisons, State Departments of Correction or other entity that is responsible for overseeing correctional facilities oversight entity made the determination under § 668.241(a)(5-7) (E-G) to ensure that the prison education program meets the same standards as the same or substantially similar programs that are not prison education programs at the institution.

(c) A prison education program that does not meet the requirements of the institution's accrediting agency or State approval agency is not an eligible program under § 668.236.

#### 34 CFR § 668.238 Application Requirements

(11)(a) An institution that wishes seeks to offer a prison education program must apply to the Secretary to have its first prison education program at the first two additional locations determined to be eligible programs for title IV, HEA program purposes. Following the Secretary's initial approval of a prison education program, additional prison education programs

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at the same location may be determined to be eligible without further approvals from the Secretary except as required by 34 CFR §§ 600.7, 600.10, 600.20(c)(1), or 600.21(a), as applicable, if such programs are consistent with the institution's accreditation or its State approval agency.

(bii) The institution's prison education program application must provide information satisfactory to the Secretary that includes -

(1A) A description of the educational program, including the educational credential offered (degree level or certificate) and the field of study;

(2B) Documentation from the institution's accrediting agency or State approval agency indicating that the agency has evaluated the institution's offering of prison education program(s) and has included the program(s) in the institution's grant of accreditation and approval documentation from the accrediting agency or State approval agency;

(3C) The name of the correctional facility and documentation from the Bureau of Prisons, State Department of Corrections or other entity that is responsible for overseeing correctional facilities, oversight entity that the prison education program has been approved to operate in the correctional facility;

(4D) Documentation detailing the methodology including thresholds, benchmarks, standards, metrics, data, or other information the Bureau of Prisons, State Departments of Corrections or other entity oversight entity used to in making the determination that the program is in the best interest of students for all indicators under § 668.241 (e)(3)(4) of this part and how all the information was collected;

(5E) Information of about the types of services offered to admitted students including: orientation, tutoring and academic and reentry counseling. If reentry counseling is provided by a community-based organization that has partnered with the eligible prison education program, institution, or correctional facility to provide reentry services, information about the types of services that the community-based organization offers;

(6F) Affirmative acknowledgement that the Secretary can withdraw limit or terminate approval of an institution to provide a prison education program as described in § 668.237; paragraph (e)(12); and

(7G) Affirmative agreement to submit the report to the Secretary as described in § 668.239 paragraph (e)(11); and

(8) Such other information as the Secretary deems necessary.

(ciii) For the second or subsequent eligible prison education program at a location, to fulfill requirements under § 600.21, an institution submits:

(1A) Documentation from the institution's accrediting agency noting that the institution complies with § 668.236(f) paragraph (e)(7) and has not had was not subject to any final accrediting action that is an adverse action by the institution's accrediting agency or association in the last five years; and

(2B) Documentation from the institution noting that the institution was not subject to any action by the State to revoke a license or other authority to operate.

34 CFR § 668.239 Reporting Requirements

(a) (12) REPORT. — An institution must submit reports, in accordance with deadlines dates established and published by the Secretary in the Federal Register.

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(b) The institution reports such information as the Secretary requires, in compliance and shall comply with procedures the Secretary describes finds necessary to ensure that the reports are correct.

#### 34 CFR § 668.240 Limit or Termination of Approval

(a)(1) The Secretary limits or terminates/withdraws approval of an institution to provide an eligible prison education program if the Secretary determines that the institution violated any terms of this subpart section or that the information that the institution submitted as a basis for approval to the Secretary, accrediting agency, state agency, State agency, or oversight Department of Corrections or the Bureau of Prisons, or other entity that is responsible for overseeing correctional facilities process was materially inaccurate.

(b) If the Secretary limits or terminates an institution's approval to operate an eligible prison education program, the institution must submit a teach-out plan and, if practicable, a teach-out agreement(s) (as defined in § 600.2) to its accrediting agency upon occurrence of the event.

#### 34 CFR § 668.241 Best Interest Determination

(a) An oversight entity's determination that a prison education program is operating in the best interest of students must include an assessment of all of the following—

(A1) rates of confined or incarcerated individuals continuing their education post-release; whether the rate of confined or incarcerated individuals continuing their education post-release, as determined by the percentage of students who reenroll in higher education reported by the Department of Education, meets thresholds established by the oversight entity with input from relevant stakeholders, which must include, among others, incarcerated students, organizations representing incarcerated individuals, and accrediting agencies;

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**Commented [A12]:** For subcommittee members: We continue to invite research and input about these metrics to ensure a "floor" that ensures a program is operating in the best interests of students. Where research exists about the typical outcomes of prison education programs, or appropriate levels of quality, we would appreciate submissions of that information from subcommittee members, particularly as it relates to the metrics we propose to allow DOCs to define with stakeholder input.

**Commented [A13]:** "MAY" "MUST."

**Commented [A14]:** For subcommittee members: We hope to remove the burden of calculating this element from institutions and instead calculate it within the Education Department and provide it back to institutions and oversight entities. The Department proposes to allow oversight entities, in consultation with incarcerated individuals and their advocates and accrediting agencies, to determine what an appropriate reenrollment level is to ensure the program meets the best interests of students.

**Commented [A15]:** RECOMMENDATION: Can the percentage of students include racial/ethnic, gender, and disability data for enrollments, completions, and outcomes to ensure equity and inclusion in prison education programming and post-release programming?

**Commented [A16]:** For subcommittee members: The Department is currently exploring the feasibility of ensuring that ED calculate these data. One challenge would be the need for additional reporting of data on Pell Grant recipients who are later released from a facility. We invite feedback from the subcommittee on this.

(B2) job placement rates for such individuals; whether job placement rates for such individuals meet any applicable standards required by the accrediting agency of the institution or program or a State in which the institution is authorized. If no job placement rate standard applies to prison education programs offered by the institution, the oversight entity must define, and the institution must report, a job placement rate, with input from relevant stakeholders, which must include, among others, incarcerated students, organizations representing incarcerated individuals, and accrediting agencies;

(C3) earnings for such individuals; whether the earnings for such individuals, or the median earnings for graduates of the same or similar programs at the institution, as measured by the Department of Education, exceed those of a typical high school graduate in the state;

(D4) rates of recidivism for such individuals; whether the rates of recidivism, which do not include any recidivism by the student within a reasonable number of years of release and which only include new felony convictions as defined by United States Sentencing Guideline § 4A1.1(a) as “each sentence of imprisonment exceeding one year and one month,” meet thresholds set by the oversight entity with input from relevant stakeholders, which must include incarcerated students, organizations representing incarcerated students, and accrediting agencies;

**Commented [A17]:** For subcommittee members: We recognize that job placement rates are particularly hard to calculate, and the Department does not have good data on the field of study of graduates. Thus, we propose to instead rely on the definition set by accrediting agencies and/states, if applicable; state DOCs may find an institution to be operating in the best interests of students if the institution meets those accreditor/state standards. If no accreditor or state JPR exists, the oversight entity may wish to establish a job placement rate requirement, in consultation with incarcerated individuals and their advocates and accrediting agencies.

**Commented [A18]:** [RECOMMENDATION: Overall job placement rates and job placement rates for “in-demand” careers should also be recorded to provide stronger benchmarks for programming.]

**Commented [A19]:** For subcommittee members: The Department does have the ability to calculate earnings of program graduates. For instance, the College Scorecard (collegescorecard.ed.gov) reports data on program earnings by field of study and credential level. Similarly, the Department has historically calculated and published via the Scorecard the percentage of program graduates who earned above the typical earnings of a high school graduate (aged 25-34) to measure how consistently the education pays off for students.

We propose to provide these earnings data back to institutions and oversight entities to inform their determination of whether the program is operating in the best interests of students. Rather than only relying on the measure as it pertains to prison education program, institutions may provide metrics on similar programs at the institution to demonstrate their ability to provide a program in the best interest of students.

**Commented [A20]:** For subcommittee members: We recognize that recidivism rates are particularly hard to calculate, and the Department does not have good data on the field of study of graduates. Thus, we propose to instead allow the oversight entity to establish a recidivism rate requirement, in consultation with incarcerated individuals and their advocates and accrediting agencies. We also explicitly disallow certain types of students from being included in that calculation to ensure that institutions are not unfairly judged by a poorly designed recidivism rate.

~~(E5)~~ whether the experience, credentials, and rates of turnover or departure of instructors for a prison education program ~~is the same or~~ are substantially similar to the experience, credentials, and rates of turnover or departure of instructors for the non-prison education eligible programs offered by the institution ~~other programs at the institution, accounting for the unique geographic and other constraints of prison education programs:~~

~~(F6)~~ whether the transferability of credits for courses available to confined or incarcerated individuals and the applicability of such credits toward related degree or certificate programs is ~~the same or~~ substantially similar to the transferability of credits for non-prison education eligible programs offered by the institution ~~those at other similar programs at the institution, accounting for the unique geographic and other constraints of prison education programs:~~

**Commented [A21]:** For subcommittee members: We invite feedback on whether the adjustments for geographic and other constraints of PEPs that we propose in (5) through (7) are appropriate, and whether the "other constraints" should be further explained.

**Commented [A22]:** For subcommittee members: We believe that the faculty credentials/experience and turnover rates of instructors are important measures of educational quality to ensure that incarcerated individuals have a comparable experience to on-campus students. However, we propose to require that the oversight entity account for the unique constraints present in prison education programs to ensure that institutions are not unfairly judged.

**Commented [A23]:** I appreciate ED's latitude here, but I wonder if the new language is maintaining the standard most accreditation agencies expect: **RECOMMENDATION:** Although some flexibility regarding instructor turnover might be necessary as a prison education program begins, the instructor's teaching experience and credentials must remain the same or substantially similar as instructors for non-prison education eligible programs offered by the institution, as required by accreditors.

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**Commented [A24]:** For subcommittee members: We believe that credit transfer is an important measure of equitable educational experiences, and a critical protection to ensure that students are able to continue their educational experiences after being released. However, we propose to require that the oversight entity account for the unique constraints present in prison education programs to ensure that institutions are not unfairly judged.

**Commented [A25R24]:** I appreciate ED's comments above. I wonder if we could also add more protections for students. For example, **RECOMMENDATION:** An institutional agreement includes language that students who wish to continue their studies post-release on the institution's main campus will be able to do so with no barriers related to their former carceral status.

**(G7)** whether the institution offers prison education program's offering of relevant academic and career advising services to participating confined or incarcerated individuals while they are confined or incarcerated, in advance of reentry, and upon release, that is the same or is substantially similar to offerings to the services provided to students enrolled in non-prison education eligible programs offered by the institution a student who is not a confined or incarcerated individual and who is enrolled in, and may be preparing to transfer from, the same institution, accounting for the unique geographic and other constraints of prison education programs;

**(H8)** the rates at which students complete their programs whether the rates of completion reported by the Department of Education, which does not include any students who were transferred across facilities and which accounts for the status of part-time students, meet thresholds set by the oversight entity with input from relevant stakeholders, which must include incarcerated students, organizations representing incarcerated students, and accrediting agencies; and

**(I9)** if applicable, other indicators pertinent to program success, as determined by the Bureau of Prison, State Departments of corrections or other entity that is responsible for overseeing correctional facilities oversight entity.

**(b)** After the two years of initial approval under § 668.236, the institution must be determined by the oversight entity to be operating in the best interest of students, as defined in paragraph (a).

**(c) Subsequent Evaluations**

**(1)** After its initial determination that a program is operating in the best interest of students under paragraph (b) of this section, the institution must obtain subsequent final evaluations of each eligible prison education program from the responsible oversight entity

**(i4)** Two years following the initial determination; and

**Commented [A26]:** For subcommittee members: We believe that high-quality academic and career advising are important services that institutions must provide to their incarcerated students, comparable to their campus-based students. However, we propose to require that the oversight entity account for the unique constraints present in prison education programs to ensure that institutions are not unfairly judged.

**Commented [A27]:** I am concerned about the latitude being offered here by ED. RECOMMENDATION: The same or substantially similar academic and career advising services to students who are not incarcerated must be offered to students who are currently confined or incarcerated. If an educational institution needs additional resources for students, in advance of reentry and upon release, the institution is strongly encouraged to create a partnership with their applicable corrections agency and community partner/s to provide comprehensive programming to this student body. (i.e., through documented collaborations the educational institution would not be responsible for support in areas they may not have existing expertise. That, of course, should not prevent them from expanding their own programming in the future; but at least in the short term students are 100% covered.)

**Commented [A28]:** For subcommittee members: The Department is currently exploring the feasibility of ensuring that ED calculate these data. One challenge would be the need for additional reporting of data on Pell Grant recipients who are later released from a facility. We invite feedback from the subcommittee on this.

**Commented [A29]:** RECOMMENDATION: This seems a little too general, but I understand the Department's need to provide some flexibility. Could we, however, offer some language that provides protections to program administrators? E.g., "if applicable," and with advance notification of at least six months to all parties involved, "other indicators..."

**Commented [A30]:** See earlier recommendation about highest credential offered by an institution + one year for data collection, etc.

~~(ii2)~~ 1290 calendar days prior to the expiration of each of the institution's Program Participation Agreements.

(2) Each subsequent evaluation must—

- (i) Include the entire period following the prior determination and be based on the factors described under paragraph ~~(e)(3)(ii)(a)~~ of this section for all students enrolled in the program since the prior determination; and
- (ii) Be submitted to the Secretary no later than 30 days following completion of the evaluation.

(d) Records

- (1) The institution must obtain and maintain documentation of the methodology by which the Bureau of Prison, State Department of Corrections, or another entity that is responsible for overseeing correctional facilities oversight entity made each determination under paragraphs (2) and (3)(ii) paragraph (a) of this section and § 668.236(b) for review by the institution's accrediting agency, submission of the application to the Department for the approval of the first program at the first two additional locations, reporting to the Department, and for public disclosure.
- (2) The institution must maintain the documentation described in (1) for as long as the program is active or, if the program is discontinued, for three years following the date of discontinuance.

34 CFR § 668.241 Transition to Prison Education Program

~~(p)~~ For institutions operating eligible prison education programs in a correctional facility that is not a Federal or State penal institution:

~~(a1)~~ A confined or incarcerated student who otherwise meets the eligibility requirements to receive a Federal Pell Grant and is enrolled in an eligible program that does not meet the requirements under paragraph o of this subpart section may continue to receive a Federal Pell Grant until the earlier of:

- ~~(11)~~ July 1, 2029;
- ~~(211)~~ the student reaches the maximum timeframe for program completion as defined under 34 CFR § 668.34; or
- ~~(311)~~ the student has exhausted Pell Grant eligibility as defined under 34 CFR § 690.6(e), Section 401(e)(5) of the HEA.

~~(b2)~~ An institution is not permitted to enroll a confined or incarcerated student on or after July 1, 2023, who that was not enrolled in an eligible program prior to July 1, 2023, unless the institution first converts the eligible program into an eligible prison education program as defined in § 668.236 paragraph o of this section.

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34 CFR § 690.62 Calculation of a Federal Pell Grant.

(a) The amount of a student's Pell Grant for an academic year is based upon the payment and disbursement schedules published by the Secretary for each award year.

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(b) No payment may be made to a student if the student's annual award is less than \$200. However, a student who is eligible for an annual award that is equal to or greater than \$200, but less than or equal to \$400, shall be awarded a Federal Pell Grant of \$400.

(c)(1)(i) For a confined or incarcerated individual enrolled in an eligible prison education program, no Federal Pell Grant shall exceed the cost of attendance (as defined in section 472 of the HEA) at the institution at which that student is in attendance.

(ii) If an institution determines that the amount of a Federal Pell Grant for that student exceeds the cost of attendance for that year, the amount of the Federal Pell Grant shall be reduced until the Federal Pell Grant does not exceed the cost of attendance at such institution and does not result in a Title IV credit balance under 34 CFR § 668.164(h).

(2)(i) If a confined or incarcerated student's Pell Grant, combined with any other financial assistance, exceeds the student's cost of attendance, the financial assistance other than the Pell Grant must be reduced by the amount that the total financial assistance exceeds the student's cost of attendance.

(ii) If the student's other financial assistance cannot be reduced, the student's Pell Grant must be reduced by the amount that the student's total financial assistance exceeds the student's cost of attendance.