



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

**Issue Paper: Prison Education Programs**  
**Session 1: October 4-8, 2021**

**Issue:** Establishing in regulation a framework that an institution must follow to initiate and maintain a prison education program

**Statutory cites:** §484(t) of the Higher Education Act of 1965, as amended (HEA)

**Regulatory cites:** N/A

**Summary of issues:** In December 2020, Congress passed the Consolidated Appropriations Act, 2021, that made permanent a change to allow incarcerated individuals to access Federal Pell Grant funds for qualifying prison education programs. This change codifies much of the Second Chance Pell experiment created by the Obama Administration and expanded by the Biden Administration. Research show that high-quality prison education programs increase learning and skills among incarcerated students, increase the likelihood of stable employment, and reduce the likelihood of recidivism. The Department seeks input from the subcommittee on implementation of the new statute, which will take effect on July 1, 2023. In particular, we hope to gain input from the subcommittee regarding:

*Student Eligibility* - Congress amended section 484(t) of the HEA to allow a confined or incarcerated individual to access Federal Pell Grant funds (Pell Grants) to enroll in a prison education program (PEP).

*Institutional Eligibility* - The statute states that public, private nonprofit, or vocational postsecondary institutions may offer a PEP. The postsecondary institution cannot have been subject in the last five years to various adverse actions by the Department of Education (ED), the institution's accrediting agency, or the State.

*Program Eligibility* - In addition to fulfilling all other applicable program eligibility requirements, the Federal Bureau of Prisons (BOP), the applicable State Department of Corrections (DOC), or other entity that is responsible for overseeing correctional facilities (other entity) must determine that the PEP is operating in the best interest of students. Credits earned in the program must be transferable to at least one postsecondary institution. A confined or incarcerated individual receiving a Pell Grant cannot be enrolled in a PEP that is designed to lead to licensure or employment for an occupation if that occupation typically prohibits licensure or employment of formerly incarcerated individuals.

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*Reports* - The statute generally requires annual reporting from participating postsecondary institutions, as well as evaluation by ED.

The Department has identified the following potential regulatory changes to implement parts of the statute:

**Codify additional location status.** The current regulatory definition of an additional location is "geographically apart from the main campus and at which the institution offers at least 50 percent of a program and may qualify as a branch campus." The Department proposes to codify that a correctional facility at which a PEP is offered is an additional location. This also applies if the primary mode of instruction is distance education or correspondence courses. This will ensure proper reporting under §600.21 and will provide clarity that the locations are subject to applicable substantive change rules for accrediting agencies under §602.22.

**Provide conditions of institutional eligibility.** Currently, a postsecondary institution is not eligible to participate in Title IV programs if more than 25 percent of its regularly enrolled students are incarcerated. Institutions may apply for a waiver from ED, as outlined in regulation, to exceed the 25 percent limit. The Department proposes to provide additional clarity as to how postsecondary institutions may access that waiver. We also propose to explain the circumstances under which the Department can withdraw the waiver when an institution violates the conditions of the waiver.

**Clarify the date, extent, and duration of eligibility and eligibility removal procedures.** Currently, certain types of programs must be approved by the Department (e.g., the first direct assessment program) in order to be considered eligible for Federal Title IV aid. We propose that postsecondary institutions similarly apply for eligibility for the institution's first PEP at the first two additional locations. This will ensure that postsecondary institutions offering PEPs have fulfilled each component of the statute and regulations before offering a PEP. We propose creating a clear application process and delineating the conditions under which ED can withdraw an institution's eligibility to offer a PEP using Title IV financial aid if the postsecondary institution fails to comply with the requirements of the regulations.

**Ensure institutions report additional PEPs at additional locations.** Currently, eligible postsecondary institutions are required to report the addition of certain types of program offerings to ED within 10 days of adding such programs. We propose to add to the list that the addition of a PEP at each additional location must be reported so that ED can ensure that postsecondary institutions are meeting reporting obligations.

**Codify the definition of quality indicators for eligible programs.** Define the quality indicators that a BOP, DOC, or another correctional authority with oversight will use to determine if a PEP will serve in the "best interest of students," as required by the statute. ED proposes to clarify in regulation what the "best interest of students" means; the BOP, DOC, or other entity will determine whether schools meet that definition.

We propose to consider the BOP, DOC, or other entity to have determined that PEPs serve in the best interests of students if:

- They determine that, for indicators that are “inputs” from schools, such as those in (B)(iii)(V)-(VII), the PEPs match at least the same standards of programs offered by those institutions outside of prison facilities. This will ensure that incarcerated students have the same educational opportunities and support services as non-incarcerated students.
- They determine that “outcome” indicators listed in the statute, such as job placement rates and earnings indicators (B)(iii)(II)-(III), meet the standards described below.

The Department is considering two ways to allow a BOP, DOC, and any other entity that is responsible for overseeing correctional facilities to assess “outcome” indicators:

- Compare wages and job placement rates to those of students with only a high school diploma/high school equivalency to create a baseline standard for institutions.
- Compare to a reasonable expected increase in wages or job placement as compared with someone who was incarcerated but did not enroll in an institution of higher education, assuming adequate data is available to make this determination. For the wage metric, a similar approach for which data would be more easily obtainable would require oversight entities to establish a reasonable wage premium expectation, based on existing research on the overall effects of college in prison programs.

We seek input on the indicators listed in (B)(iii-iv)(I) describing rates of students seeking education post-release and rates of recidivism. We also propose to add an additional completion rate indicator and seek input on that indicator.

The proposed definition of “outcome” quality indicators would need to exclude students who will be incarcerated longer than the relevant period during which, for example, earnings would be evaluated. This will allow PEPs to enroll these students without worrying that they will count against their outcome indicator measurements.

We also propose that the BOP, DOC, or other entity regularly assess whether the PEP is continuing to operate in the best interest of students; we propose that such reviews shall occur prior to the initial certification and at each of the postsecondary institution's applications for recertification.

Under the law, correctional authorities must consider a variety of data points in determining whether to approve a program. However, postsecondary institutions that are offering their first PEP or that have not previously been asked to collect the necessary data may not have access to such data. To ensure that postsecondary institutions are able to offer programs while collecting the necessary data, particularly for institutions that are not already a Second Chance Pell site or an educational program operating in a correctional facility that does not participate in the Title IV programs, the Department proposes to provide the BOP, DOC or other entity with flexibility in the initial two-year period of approval during which data collection may occur. The Department seeks comment as to whether

programs without relevant data in the first two years and receiving this preliminary approval should face other restrictions, such as enrollment growth or expansion to additional locations.

**Define prohibitions in licensure.** The statute requires that an eligible PEP "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." ED seeks to ensure that postsecondary institutions do not offer programs to students if State or Federal laws would ban, exempt, or prohibit formerly incarcerated students from licensure or employment. A student who attends a program full-time for the full academic year, six years in a row will reach their lifetime limit on Pell Grants and no longer be eligible to receive additional Pell Grant funds, and we seek to limit the chance that a student exhausts their Pell Grant funds on a PEP that would not benefit them. In addition, the Department invites the subcommittee to discuss whether to expand the scope of exclusions to include de facto barriers to employment that exist in many fields, but do not rise to the level of a State or Federal legal requirement, such as employment restrictions for those with a criminal record, or requirements for professional licensure standards.

**Clarify how existing accreditation procedures apply to PEPs.** The Department proposes requiring that a postsecondary institution's accrediting agency review and approve at least the first PEP at each of the first two additional locations, including a site visit, and review the data that the institution provides to the BOP, DOC, or other entity to confirm that the institution meets accrediting agency standards. In addition, the Department invites the subcommittee to discuss whether more than two additional locations should be subject to this requirement.

Our proposal would also prevent postsecondary institutions subject to accreditor adverse actions that are not yet final from initiating any new PEPs, and require a teach-out plan for existing PEPs facing adverse actions in the event that the institution loses accreditation.

**Create a smooth transition from Second Chance Pell.** Determine the need to clarify the transition and/or wind-down process for postsecondary institutions currently operating eligible programs at Second Chance Pell sites in Federal or State correctional facilities and that may choose to convert their programs to the proposed PEP definition.

**Provide disclosures to help students understand their options.** Ensure that programs enrolling students in PEPs provide those students with information about:

- Educational requirements, to inform students that the PEP satisfies applicable educational requirements for professional licensure or certification;
- Prohibitions on licensure and employment, if there are prohibitions in the occupation for which the program will prepare students;

- Portions of a program begun in prison that cannot be completed while incarcerated, if applicable, including their options to continue the program; and
- Opportunities for students to continue their education post-release, including information about transferring their credits.

**Describe the process for reporting.** Ensure the accurate reporting of data items in the required report to ED through annual instructions established by the Secretary.

**Provide technical changes to conform with the statute.** The Department will include technical changes to conform with the statute relating to the calculation of a Federal Pell Grant, student eligibility, and the definition of an incarcerated student.

Prior to the first day of the subcommittee on October 18, 2021, we will provide proposed amendatory language to both committee and subcommittee members.