

How Pell Grant Restoration Impacts Jails

By Amanda Nowak and Jamie Hin Hon Wong

Pell Grant restoration took effect on July 1, 2023, increasing college accessibility for people incarcerated in United States prisons, who are eligible for need-based federal postsecondary financial aid, for the first time in nearly 30 years.¹ Prior to the regulations taking effect, those incarcerated in jail settings were already eligible for federal Pell Grants.² The regulations now dictate that *any criminally sentenced person*—including those held in jails—must participate in a U.S. Department of Education (ED)–approved prison education program (PEP) in order to be eligible for Pell funding.³ This report summarizes and interprets key information from the federal regulations to help officials

from jails and colleges, as well as other relevant stakeholders, understand which processes they must follow when developing new or modifying existing postsecondary education programs in jail environments.

Digesting the Regulations

The Free Application for Federal Student Aid (FAFSA) Simplification Act, passed by Congress in 2020, restored access to Pell Grants to students incarcerated in state and federal prisons.⁴ In addition, it made changes to how people confined in jails qualify for these grants.

Twenty-six years before the FAFSA Simplification Act, Congress enacted the Violent Crime Control and Law Enforcement Act, otherwise known as the 1994 Crime Bill, which prohibited Pell Grants for “any individual who is incarcerated in any Federal or State penal institution.”⁵ However, since the 1994 Crime Bill’s prohibition was limited to “federal or state penal institution[s],” which does not include jails, students in jails remained eligible for Pell Grants.⁶

The FAFSA Simplification Act eliminated the 1994 Crime Bill’s prohibition entirely and established a new process by which colleges would become eligible to administer Pell Grants to students in prison by becoming authorized PEPs.⁷ The law and regulations took effect on July 1, 2023, and provide information on how students in jail can access Pell Grants.⁸

In the law, “confined or incarcerated individual[s]” enrolled in PEPs are eligible for Pell Grants.⁹ A “confined or incarcerated individual” is a person who is “serving a criminal sentence in a Federal, State, or local penal institution, prison, **jail**, reformatory, work farm, or other similar correctional institution.”¹⁰ Similarly, jails are included in the list of correctional institutions that count as an “additional location” of a college, alongside penitentiaries, prisons, reformatories, work farms, and juvenile justice facilities.¹¹ The same definitions for

Under new U.S. Department of Education regulations, colleges that enroll people serving criminal sentences in jail facilities will need to become approved prison education programs to administer Pell Grants to those students.

both are repeated in ED’s regulations.¹² Additionally, ED provided commentary that jails are not exempt or waived from statutory and regulatory requirements governing PEPs.¹³

However, not all people confined in jails are required to enroll in a PEP to be eligible for a Pell Grant. Jails, unlike prisons, may house a wide range of people caught up in the criminal legal system, including both people detained pretrial and people who are sentenced on the local or state level.¹⁴ Locally sentenced people may be serving sentences, typically a year or less in length, and state-sentenced people may be in jail awaiting transfer to a state prison or serving their sentences in a jail due to prison overcrowding.¹⁵

A note of caution

Jail populations tend to be transient in nature; jails have a faster turnover of people who are confined or incarcerated when compared to prisons. Therefore, jail administrators and college partners should offer programs in jails that accommodate shorter sentence lengths. (See “Different Approaches” on page 3.) However, transfers and releases can still occur mid-semester, planned or unplanned. PEPs must be aware of the academic and financial implications for students who are transferred or released mid-semester without a plan or reasonable means to continue their programs. For instance, if a student is released or transferred prior to completing a class, the instructor may have no choice but to issue a failing grade to the student. This can reflect poorly on the student’s transcript and will likely require them to repeat the class. Receiving a low or failing grade would also put the student at risk for not meeting “satisfactory academic progress” standards, which could limit future access to federal financial aid.^a Should a student withdraw before 60 percent of the semester is completed, the college must return to ED the unearned portion of the funds—otherwise known as “Return of Title IV Funds”^b—which could leave the student financially responsible for tuition and have further negative repercussions on their ability to continue their education, as well as their debt status and their future Pell eligibility. PEPs should be developed with the guidance of a financial aid representative from the postsecondary institution, with plans set in place that will cause the least harm to students should they be unable to continue their programs mid-semester.

^a U.S. Department of Justice, Federal Student Aid, “Satisfactory Academic Progress,” accessed October 31, 2024, <https://perma.cc/8MEU-VVTD>.

^b U.S. Department of Justice, Federal Student Aid, “Return of Title IV Funds (R2T4),” accessed October 31, 2024, <https://perma.cc/UH2G-9P2V>.

The definition of a “confined or incarcerated individual” in the law for PEPs only includes those “serving a criminal sentence.”¹⁶ People detained pretrial are not serving sentences. Accordingly, people detained pretrial in jail remain eligible for Pell Grants in the same way they did long before the 1994 Crime Bill and the FAFSA Simplification Act.¹⁷ They can enroll in programs that have not obtained PEP authorization from ED.

Different Approaches to Navigating the PEP Regulations in Jails

In Massachusetts, the Middlesex Jail and House of Correction is pursuing a PEP with its local community college, Middlesex Community College. The proposed PEP is an entrepreneurship certificate program, and it can be completed in one year. This program works well with the typical short length of stay for people residing in the Middlesex Jail. By offering a certificate program, students have a greater likelihood of earning their credential before being transferred or released. Most people released from Middlesex Jail also return to the area that Middlesex Community College serves, so students will be able to reconnect with the college after release if they choose. The planned program’s credits would be transferable so that students could continue on to an associate’s degree program upon release as well. The Middlesex Sheriff’s Office, the PEP’s oversight entity, has approved Middlesex Community College to become a PEP. The college has also obtained accreditor approval from the New England Commission for Higher Education, and is now seeking ED approval, after which it will be able to launch its Pell-eligible PEP.

In Louisiana, more than half the people residing in jails are serving state criminal sentences, making it necessary for colleges to obtain PEP approval to serve the majority of students in these facilities. Postsecondary education access in Louisiana’s jails has rapidly expanded over the last decade; today, more than 50 facilities have at least one postsecondary education program. The Louisiana Department of Public Safety and Corrections (LA DPSC) has developed a mechanism to place a state-sentenced person in a jail with a program that aligns with both their sentence length and their education and career goals. To adapt to the new regulations, LA DPSC has formed a committee made up of various stakeholders, including those on workforce boards and people who are currently incarcerated, to help develop the selection criteria for colleges that wish to become PEPs. LA DPSC requires applicant colleges to sit for an interview with the agency prior to submitting the application to promote the likelihood of thorough and successful applications. As of September 2024, LA DPSC had received approximately 13 PEP applications and approved two of them.

In New Jersey, Hudson County Community College (HCCC) has offered college programming in Hudson County Correctional Center, a jail, for the last three years. HCCC has decided not to pursue PEP approval at this time because it has funding streams in place that leave little need for federal funding. The college has successfully leveraged grant funding from Hudson County to establish the Academic and Workforce Pathway Program, a partnership between HCCC, the Hudson County Correctional Center, and the Hudson County Department of Housing and Community Reintegration. HCCC also has a partnership with the New Jersey Reentry Corporation, a nonprofit organization that offers resources and additional workforce pathways for people in jail. With the support of these partnerships, HCCC has been able to offer GED, vocational training, certificate, and associate’s degree programs under the college’s Office of Continuing Education, providing a seamless path into different education and workforce opportunities after release.

Recommended Steps

Jail administrators, college leaders, and other stakeholders should consider the following recommendations as they plan postsecondary education programs in jails:

- **Become familiar with the PEP regulations.**
Should a jail and college partner seek PEP status, the regulations dictate three levels of approval before the program can launch, and the regulations have several requirements to ensure programs are operating in the best interest of students. The regulations also require program reviews two years after approval and every six years going forward to ensure programs continue to operate in the best interest of students. ED's website contains the regulations, guidance, materials, and a questions and answers page.¹⁸ Vera also created a PEP Toolkit with an explanation of the process, along with templates and examples that postsecondary institutions can use to develop and obtain approval for PEPs.¹⁹
- **Develop a plan based on the sentencing status of people confined in the jail.**
Colleges must understand the sentencing status of the residents they seek to serve when deciding whether to establish a PEP. Colleges that established programs in jails prior to the new law taking effect may have to apply for PEP approval if they want their sentenced students to remain Pell-eligible. Colleges serving with both criminally sentenced and non-criminally sentenced students in jail could pursue college programming through two different paths simultaneously—a PEP route and a non-PEP route—which could mean that some people have access to college before others. Jails and their college partners should work together to determine which route(s) they will pursue based on the jail demographics and develop a plan accordingly.
- **Explore alternative funding opportunities.**
PEP regulations apply only in contexts in which students pursue *federal* financial aid for postsecondary education. Some corrections agencies use alternative funding sources to cover the cost of student tuition. These sources may include state, philanthropic, and/or workforce development funds that do not have the same stipulations as Pell Grants. It is also possible for colleges to use an alternative funding source to continue or launch new programming while waiting for PEP approval.
- **Determine the program(s) that would best support the people confined in the jail.**
Colleges and jails should consider a variety of factors when determining which programs would be the best fit for people confined in jails. For instance, if the facility houses populations with shorter sentence lengths or who are more transient, then a Pell-eligible certificate program may be most practical to increase the likelihood that a person can earn a credential during their stay. Offering stackable credentials and ensuring transferability of credits will also help people use their credits toward progressive credentials when additional programs become accessible. Another important consideration is local workforce needs. Programs ideally should lead to credentials applicable to in-demand fields that can offer a living wage upon release in the community to which the students will return.²⁰
- **Connect with stakeholders pursuing or operating PEPs in the state prison system.**
A conversation with prison education counterparts in state systems and their affiliated postsecondary institutions can provide further insight and recommendations with local factors in mind.²¹ In addition, ED maintains an updated list of approved PEPs, which can be used as a networking tool to learn from additional colleagues in the field.²²

With new regulations designed to improve access to postsecondary education for people who are incarcerated—including those sentenced to jail—administrators must make decisions about how they will modify or develop educational opportunities. During this period of transition, key stakeholders must become knowledgeable about the new PEP regulations and how their work and the people they serve will be affected. By forging the paths that best serve the circumstances of students in jails, those in the field can unlock new potential for postsecondary education programs at the local level.

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Endnotes

- ¹ 34 C.F.R. §§ 668.234 et seq. (last amended April 29, 2024), <https://www.ecfr.gov/current/title-34/subtitle-B/chapter-VI/part-668/subpart-P?toc=1>.
- ² Congressional Research Service, *The FAFSA Simplification Act* (Washington, DC: Congressional Research Service, 2022), 17 (“Students in local penal institutions and juvenile detention may be eligible [for Pell Grants].”), <https://crsreports.congress.gov/product/pdf/R/R46909>.
- ³ FAFSA Simplification Act, Pub. L. No. 116–260, 134 Stat. 3182–3183 (2020), <https://www.congress.gov/116/plaws/publ260/PLAW-116publ260.pdf>.
- ⁴ Juan Martinez-Hill, *A Monumental Shift: Restoring Access to Pell Grants for Incarcerated Students* (New York: Vera Institute of Justice, 2021), <https://www.vera.org/publications/restoring-access-to-pell-grants-for-incarcerated-students>; and Myra Hyder, *Accessing Pell Grants for College Programs in Correctional Settings* (New York: Vera Institute of Justice, 2023), 1, <https://www.vera.org/publications/accessing-pell-grants-for-college-programs-in-correctional-settings>.
- ⁵ Violent Crime Control and Law Enforcement Act of 1994, Pub. Law 103–322 (103rd Cong.), 108 Stat. 1828 (“No basic grant shall be awarded under this subpart to any individual who is incarcerated in any Federal or State penal institution.”), <https://www.congress.gov/bill/103rd-congress/house-bill/3355/text>.
- ⁶ U.S. Department of Education, Federal Student Aid, “(GEN-14-21) (GEN-14-21) Subject: Federal Pell Grant Eligibility for Students Confined or Incarcerated in Locations That Are Not Federal or State Penal Institutions,” December 8, 2014, <https://perma.cc/57TR-GWAY>; and Congressional Research Service, *The FAFSA Simplification Act*, 2022, 17 (“Students in local penal institutions and juvenile detention may be eligible [for Pell Grants].”).
- ⁷ Congressional Research Service, *The FAFSA Simplification Act*, 2022, 17; and FAFSA Simplification Act, Pub. L. No. 116–260, 134 Stat. 3182–3186 (2020).
- ⁸ 34 C.F.R. §§ 668.234 et seq. (last amended April 29, 2024).
- ⁹ Congressional Research Service, *The FAFSA Simplification Act*, 2022, 17; and FAFSA Simplification Act, Pub. L. No. 116–260, 134 Stat. 3182–3186 (2020).
- ¹⁰ FAFSA Simplification Act, 20 U.S.C. § 1091(t)(1)(A)(i) (emphasis added).
- ¹¹ 34 C.F.R. § 600.2 (2023), 78, <https://www.govinfo.gov/content/pkg/CFR-2023-title34-vol3/pdf/CFR-2023-title34-vol3-sec600-2.pdf>.
- ¹² U.S. Department of Education, “Pell Grants for Prison Education Programs; Determining the Amount of Federal Education Funds Received by Institutions of Higher Education (90/10); Change in Ownership and Change in Control,” 87 Fed. Reg. 65426, 65485, <https://www.govinfo.gov/content/pkg/FR-2022-10-28/pdf/2022-23078.pdf>.
- ¹³ ED explicitly declined requests from commenters to remove jails from the definitions of “confined or incarcerated individual[s]” or “additional locations,” which would exempt programs offered at jails from requiring authorization as PEPs. In doing so, ED extended the student protections in the regulations to programs in jails. *Ibid.*, 65431.
- ¹⁴ Vera Institute of Justice, *The Human Toll of Jail: What Is Jail?* (New York, Vera Institute of Justice, 2016), <https://www.vera.org/the-human-toll-of-jail-2016/what-is-jail>.
- ¹⁵ *Ibid.*
- ¹⁶ FAFSA Simplification Act, Pub. L. No. 116–260, 134 Stat. 3182–3183 (2020).
- ¹⁷ U.S. Department of Education, Federal Student Aid, “Federal Pell Grant Eligibility for Students Confined or Incarcerated in Locations That Are Not Federal or State Penal Institutions,” 2014.

- ¹⁸ U.S. Department of Education, Federal Student Aid, “Prison Education Programs,” accessed October 31, 2024, <https://perma.cc/TPR2-R8PK>; and U.S. Department of Education, Federal Student Aid, “Prison Education Programs Questions and Answers,” accessed October 31, 2024, <https://perma.cc/Z7HJ-B2FY>.
- ¹⁹ Corrections Leadership Academy and Vera Institute of Justice, *The Prison Education Program Toolkit: Guidance for Corrections Agencies* (New York: Vera Institute of Justice, 2023), <https://drive.google.com/drive/folders/1NyANcVGbfEfxLmr2i1vV6BIKrk9bSCj5>.
- ²⁰ For an analysis of which economic sectors to target for skill development based on demand for labor, accessibility to people with conviction histories, and earnings potential, see generally Kelsie Chesnut, Ruth Delaney, Eurielle Kiki, and Niloufer Taber, *The Labor Market for People with Conviction Histories: An Examination of Access to Good Jobs* (New York: Vera Institute of Justice, forthcoming).
- ²¹ For trends in stakeholder collaboration and a guide to building stakeholder coalitions in the field of postsecondary education in prison, see generally Faiza Chappell, *Stakeholder Collaboration for Postsecondary Education in Prison* (New York: Vera Institute of Justice, 2024), <https://www.vera.org/publications/stakeholder-collaboration-for-postsecondary-education-in-prison>.
- ²² U.S. Department of Education, Federal Student Aid, “Approved Prison Education Programs,” accessed October 31, 2024, <https://studentaid.gov/data-center/school/pep>.