



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

Amendatory Language
Session 1 October 18-20, 2021
Provided October 18, 2021

34 CFR 600.2

* * * * *

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 individual: An individual 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 is not considered incarcerated if that individual is in a half-way house or home detention or is sentenced to serve only weekends.

Juvenile justice facility: 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

* * * * *

34 CFR 600.7

(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 -

400 Maryland Avenue, S.W., Washington, DC 20202
www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global Competitiveness by fostering educational excellence and ensuring equal access.

* * * * *

(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 34 CFR 668.8(o) 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 34 CFR 668.8(o); 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 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 may waive the prohibition contained in paragraph (a)(1)(iii) of this section -

(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 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 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 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; or

(ii) Reduces its enrollment of incarcerated students to no more than 25 percent of its regular enrolled students.

* * * * *

34 CFR 600.10

* * * * *

(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;

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

(iii) 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](#)

(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 addition of an eligible prison education program at an additional location.

34 CFR 668.8 Prison Education Programs

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

(o) An *eligible prison education program* means an education or training program that—

(1) is an eligible program under this section 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;

(2) 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;

(3)

(i) 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 to be operating in the best interest of students.

(ii) An oversight entity's determination that a prison education program is operating in the best interest of students must be based on all of the following—

(A) rates of confined or incarcerated individuals continuing their education post-release;

(B) job placement rates for such individuals;

(C) earnings for such individuals;

(D) rates of recidivism for such individuals;

(E) whether the experience, credentials, and rates of turnover or departure of instructors for a prison education program is the same or substantially similar to the experience, credentials, and rates of turnover or departure of instructors for non-prison education eligible programs offered by the institution;

(F) the transferability of credits for courses available to confined or incarcerated individuals and the applicability of such credits toward related degree or certificate programs for a prison education program must be the same or substantially similar to the transferability of credits for non-prison education eligible programs offered by the institution

(G) whether the institution offers 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 substantially similar to the services provided to students enrolled in non-prison education eligible programs offered by the institution;

(H) the rates at which students complete their programs; and

(I) 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.

(iii) 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 made each determination under paragraphs (2) and (3)(ii) 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 public disclosure.

Amendatory Language PEP 4

(iv)(A) After its initial determination that a program is operating in the best interest of students under paragraph (3)(i), the institution must obtain subsequent evaluations of each eligible prison education program from the responsible oversight entity—

(1) Two years following the initial determination; and

(2) 90 calendar days prior to the expiration of each of the institution's Program Participation Agreements.

(B) Each subsequent evaluation must--

(1) Include the entire period since the prior determination and must be based on the factors described under paragraph (o)(3)(ii) for all students enrolled in the program since the prior determination; and

(2) Be submitted to the Secretary no later than 30 days following completion of the evaluation.

(5) offers transferability of credits to at least one institution of higher education (as defined in section 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;

(6) 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 by the institution's accrediting agency or association;

or

(iii) any action by the State to revoke a license or other authority to operate;

(7) 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.

(8) 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; and

(9) 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.

(i) 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

Amendatory Language PEP 5

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

(ii) 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

(10) A prison education program that is not consistent with the requirements of the institution's accrediting agency or State approval agency is not an eligible program as provided under [§ 668.8](#). In order for any prison education program to qualify as an eligible program, the accrediting agency must have -

(i) 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;

(ii) 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

(iii) 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 made the determination under (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.

(11) (i) An institution that wishes 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 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.

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

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

(B) 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;

(C) 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 that the prison education program has been approved to operate in the correctional facility;

(D) Documentation detailing the methodology including: thresholds, benchmarks, standards, metrics, data, or other information the Bureau of Prisons, State Departments of Corrections or other entity used

to in making the determination that the program is in the best interest of students for all indicators under (o)(3)(I) of this part and how all the information was collected;

(E) Information of about the types of services offered to admitted students including: orientation, tutoring and academic and reentry counseling;

(F) Affirmative acknowledgement that the Secretary can withdraw approval of an institution to provide a prison education program as described in paragraph (o)(12); and

(G) Affirmative agreement to submit the report to the Secretary as described in paragraph (o)(11).

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

(A) Documentation from the institution's accrediting agency noting that the institution complies with paragraph (o)(7) and has not had any final accrediting action that is an adverse action by the institution's accrediting agency or association; and

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

(12) REPORT.—

An institution must submit, in accordance with deadline dates established and published by the Secretary in the Federal Register, reports and information the Secretary requires and shall comply with procedures the Secretary finds necessary to ensure that the reports are correct

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

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

(1) 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 section may continue to receive a Federal Pell Grant until the earlier of:

(i) July 1, 2029;

(ii) the student reaches maximum timeframe for program completion as defined under 34 CFR 668.34; or

(iii) the student has exhausted Pell Grant eligibility as defined under Section 401(c)(5) of the HEA.

Amendatory Language PEP 7

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

34 CFR 668.32

* * * * *

(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

(ii)

(A) is not incarcerated; or

(B) is enrolled in an eligible prison education program as defined in 34 CFR 668.8(o)

* * * * *

34 CFR 668.43

* * * * *

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

(i) Upon request, provide any information available regarding whether completion of the prison education program meets 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—

(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 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 that is designed to lead to licensure or employment for a specific job or occupation does not typically involve Federal prohibitions on the licensure or employment of formerly incarcerated individuals; and

(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 is confined or incarcerated in such facility plans to reside upon release.

34 CFR 690.62

(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.

Amendatory Language PEP 8

(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.