



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

DEC - 8 2014

GEN-14-21

Subject: Federal Pell Grant Eligibility for Students Confined or Incarcerated in Locations That Are Not Federal or State Penal Institutions

Summary: This letter clarifies that students who are confined or incarcerated in locations that are not Federal or State penal institutions, such as juvenile justice facilities, and who otherwise meet applicable eligibility criteria, are eligible for Federal Pell Grants.

Dear Colleague:

We have received a number of questions concerning the eligibility for Federal Pell Grants of otherwise eligible students who are confined to juvenile justice facilities. We write to clarify that for purposes of Federal Pell Grant eligibility, juvenile justice facilities – like local and county jails, penitentiaries, and correctional facilities – are not considered to be Federal or State penal institutions under the Higher Education Act of 1965 as amended, (HEA) and corresponding regulations. Therefore, students who are confined or incarcerated in juvenile justice facilities and who otherwise meet applicable eligibility criteria, are eligible for Federal Pell Grants.

Background

The HEA and implementing regulations address student eligibility for Federal Pell Grants and student loans for students who are “incarcerated.” Section 401(b)(6) of the HEA makes ineligible for a Federal Pell Grant “any individual who is incarcerated in any Federal or State penal institution or who is subject to an involuntary civil commitment upon completion of a period of incarceration for a forcible or nonforcible sexual offense” The related regulatory provision is at 34 CFR §668.32(c)(2)(ii). Section 484(b)(5) of the HEA provides that no student who is “incarcerated” may receive Title IV student loan funds. The corresponding regulation for this provision is at 34 CFR §668.32(c)(3).

Regulations applicable to both the Federal Pell Grant and Title IV student loan eligibility provisions found at 34 CFR §600.2 define “incarcerated student” to mean any “student who is serving a criminal sentence in a Federal, State, or local penitentiary, prison, jail, reformatory, work farm, or other similar correctional institution.”¹ Section 472(6) of the HEA excludes living

¹ This definition of “incarcerated student” in 34 CFR §600.2 does not include individuals who are confined in any type of correctional facility prior to the imposition of any criminal sentence or juvenile disposition, such as individuals confined while awaiting trial. Similarly, this definition of “incarcerated student” in 34 CFR §600.2 does not include students confined or housed in less formal arrangements such as halfway houses, home detention, or sentenced to serve only weekends. Students who may be confined pretrial or in such less formal arrangements are therefore not barred from eligibility for either Federal Pell Grants or Title IV student loans.

expenses from the cost of attendance for incarcerated students and limits their cost of attendance to tuition, fees, and, if required, books and supplies.

Incarcerated Students in Locations That Are Not Federal or State Penal Institutions

Under these statutory and regulatory provisions, the U.S. Department of Education (Department) has previously explained that all incarcerated students are ineligible for Title IV student loans while incarcerated. Additionally, the Department has explained that incarcerated students who are incarcerated in locations that are not a Federal or State penal institution may be eligible for Federal Pell Grants, subject to the cost of attendance limitations for incarcerated students.

- ***Local or County Jails, Penitentiaries, and Correctional Facilities***

The Department has previously clarified that jails, penitentiaries, and correctional facilities under the jurisdiction of local or county governments are not Federal or State penal institutions. Therefore, the Department has clarified that, if they otherwise meet applicable eligibility criteria, students incarcerated in such local and county facilities are eligible for Federal Pell Grants, but not Title IV student loans. Such eligibility applies for these incarcerated students regardless of their age and whether it was a Federal, State, or juvenile court that convicted and sentenced them or adjudicated and committed them.

- ***Juvenile Justice Facilities***

Similarly, as explained below, students who are confined in juvenile justice facilities may be eligible for Federal Pell Grants because such facilities are not “penal institutions” under these statutory and regulatory provisions.

For purposes of this letter, we use the term “juvenile justice facilities” to refer to all public or private residential facilities that are 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. While as a matter of State law individuals confined in juvenile justice facilities are typically considered to be “detained” or “committed” to those facilities, for purposes of the applicable regulatory definitions found at 34 CFR §600.2, students confined in juvenile justice facilities after being adjudicated delinquent are considered to be “incarcerated students.” Therefore, for purposes of this letter we refer to students who are housed in juvenile justice facilities after being adjudicated delinquent as either “confined” or “incarcerated” to such facilities.

Juvenile justice facilities are not considered to be Federal or State penal institutions for purposes of the Federal Pell Grant Program, regardless of what governmental entity operates or has jurisdiction over the facility, including the Federal government or a State. Therefore, a student who is confined in a juvenile justice facility is eligible for a Federal Pell Grant so long as the student meets the other applicable eligibility criteria. This Federal Pell Grant eligibility applies for students who are confined in juvenile justice facilities regardless of the student’s age, the type

of sentence the student received (such as a blended sentence),² the length of the sentence the student is serving, and whether the student was adjudicated as a juvenile or convicted as an adult. Because, as discussed, students confined in juvenile justice facilities after being adjudicated delinquent are considered to be incarcerated under the applicable regulations, Federal Pell Grant eligibility for such students is subject to the cost of attendance limitations for incarcerated students, as is the case for adults who are incarcerated in local or county jails. Additionally, because they are incarcerated, students who are confined in juvenile justice facilities after being adjudicated delinquent are not eligible for Title IV student loans.

It is the responsibility of the Title IV-participating postsecondary educational institution to determine if the facility is a juvenile justice facility as described in this letter. We suggest that postsecondary educational institutions consult with their counsel and the appropriate State official or juvenile justice agency in the State where the student is confined to make those determinations. We also suggest that the postsecondary educational institution maintain a written record of the determination.

Additional Information and Resources

Attached to this letter is a series of questions and answers on *Federal Pell Grant Eligibility for Students in Juvenile Justice Facilities* that provides additional information for postsecondary educational institutions, and an updated factsheet on *Federal Student Aid Eligibility for Students Confined in Adult Correctional or Juvenile Justice Facilities* that provides information for students.

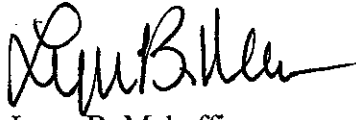
Comments and questions regarding the information in this letter or these materials may be sent to Federal Student Aid's Research and Customer Care Center (Care Center) staff. Staff is available Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. (Eastern Time) at 1-800-433-7327. After hours calls will be accepted by an automated voice response system. Callers leaving their names and phone numbers will receive a return call the next business day. Alternatively, you may e-mail the Care Center at fsa.customer.support@ed.gov.

Providing opportunities for youth who are confined in juvenile justice facilities to continue their education while they are confined can help to equip these youth with the education, training, and treatment that they need to successfully reenter our communities and the workforce while

² Blended sentencing laws typically authorize a juvenile court to impose a suspended criminal sentence along with a juvenile delinquency disposition.

avoiding further involvement with the justice system after their release. Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn B. Mahaffie". The signature is fluid and cursive, with a long horizontal stroke at the end.

Lynn B. Mahaffie
Acting Assistant Secretary

Attachments:

*Questions and Answers: Federal Pell Grant Eligibility for Students in Juvenile Justice Facilities
(new)*

*Factsheet: Federal Student Aid Eligibility for Students Confined in Adult Correctional or
Juvenile Justice Facilities (revised 12/14)*