

PELL REINSTATEMENT: ENHANCING ACCESS OR PERPETUATING INEQUITY?

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On 1 July 2023, Pell Grant access will be restored to justice-involved individuals, bringing an end to a near thirty-year ban on federal financial aid for incarcerated students.¹ The U.S. Department of Education (USDE) mandates the creation of explicit prison education programs (PEPs) to serve these students. The USDE's PEP regulatory framework is designed to build on early successes in the 2015 Second Chance Pell (SCP) Experimental Sites initiative, which provided millions of need-based Pell dollars to over 28,000 incarcerated students across four academic years.² The USDE encourages active SCP sites and other institutions interested in expanding access to postsecondary education to apply for PEP authorization from the Department after July 1. Over 700,000 incarcerated adults will become eligible for Pell Grants in July, but access to funds does not guarantee similar access to an education program for every eligible student.³ While, in principle, Pell reinstatement is a victory for advocates of equity in higher education, there are a variety of factors institutions and accrediting bodies must consider when deciding whether to pursue carceral education. This essay provides an overview of the PEP regulatory framework, alongside an analysis of key equity concerns for institutions and accreditors to consider when designing new PEPs.

Institutional Requirements for Establishing a USDE-Authorized Prison Education Program

Revised Second Chance Pell Program

For the 200 institutions that already house a SCP site, official SCP designation ends 30 June 2023. SCP institutions interested in continuing programming using Pell dollars were invited to submit a notice of interest in the revised experiment to the USDE by 18 May 2023.⁴ Though it is unclear how many SCP sites will continue in the revised program at this time, those that will have effectively put themselves on a transition pathway to become USDE-authorized PEPs by 30 June 2026. Participation in the revised program will require current SCPs to adjust their existing policies to match the Department of Education's PEP regulatory framework. The number of SCP programs that indicate interest in the revised pathway may be a bellwether for overall participation in the PEP approval process. Any current SCP programs that did not submit a notice of interest will cease to be in compliance after 30 June 2023.

Expectations for New PEPs

All incarcerated adults, regardless of sentence length or conviction type, will be eligible to apply for Pell Grants after 1 July 2023. In order to receive Pell funding, these students must be enrolled in USDE-authorized PEPs. It should be noted that a variety of prison education programs operate in the U.S. today without drawing down Pell dollars. These programs can continue to operate outside of the USDE PEP regulatory framework, and students can continue to enroll in such programs after July 2023, but neither the students nor the programs will have access to Pell Grant funding to cover costs.

Though the word “prison” is in the name, USDE-authorized PEPs can include federal, state, or local penitentiaries, prisons, jails, reformatories, workfarms, juvenile justice facilities, or other correctional institutions. Postsecondary institutions that apply for PEP approval from the Department of Education must meet several eligibility requirements, aspects of which are unpacked below:

- The postsecondary institution offering a PEP must be a public or private non-profit institution.
- The PEP must be approved by the relevant Oversight Entity (i.e., the correctional facility that will house the PEP).
- The postsecondary institution offering a PEP must not have been subject to adverse accreditation, state, or Department of Education action in the previous five years.
- The PEP must be approved by the Oversight Entity as operating in the “best interest” of students.
- Accrediting bodies must conduct an on-site visit at the first two PEP locations established by an institution.
- The PEP must offer credit hours that are transferable to at least one institution within the state where the PEP is based (for state prisons), or to an institution in the state to which most of the PEP’s students will return after release (for federal prisons).
- The PEP must satisfy licensure or certification requirements for the relevant profession if such a credential is required for entry into the profession.
- The PEP cannot offer any programs that will lead to licensure or certification if the relevant profession prohibits criminal convictions in the hiring process.
- The PEP must establish a path to Pell restoration should the program cease operations.

These eligibility requirements likely stem from several lessons that emerged from the SCP experimental sites, including standards of transferability, credit-bearing status, and accreditation.⁵ The requirements offer a variety of protections for a vulnerable student population, particularly the prohibition on licensure or certificate programs in professions that will not hire individuals based on their criminal history. The teach-out clause also takes a significant step towards protecting incarcerated students from bad actors in the event that a PEP closes down.

Participation in the USDE PEP application process hinges on an institution's desire to draw down Pell dollars for their incarcerated students. That draw down cannot take place without formal authorization from the USDE. The USDE estimates that its PEP application process may take up to two years to complete for brand new PEP locations. For this reason, institutions that follow the PEP pathway to introduce prison education programming for the first time will need to identify revenue source(s) to cover program costs until official PEP designation is granted and access to Pell funds is authorized. The USDE's PEP application process contains several components. The pathway to authorization is articulated below, though it should be noted that an institution's progress through these steps may not reflect a linear trajectory. However, while various aspects of the process may occur simultaneously or out of the order presented, final USDE authorization depends on successful completion of all steps.

First, a postsecondary institution must initiate a contract with a relevant Oversight Entity. The institution may begin offering coursework at the new prison location at any time after contract initiation. Once the Oversight Entity contract is generated, the institution should submit a substantive change request to its accrediting body. After the change request is submitted, the institution should complete and submit its initial USDE PEP application. Assuming the institution has applied to open one new PEP at one additional location, two activities must occur within the first two years of a new PEP's initial operations: the accrediting body must conduct a substantive change site visit at the new PEP location and the Oversight Entity must provide a best interest determination that assesses the new PEP's operational capacity. U.S. accrediting bodies will play an important role in assessing academic quality for new PEPs, which is addressed in a later section of this essay. Following successful completion of the site visit and best interest determination, the institution should provide its official PEP documentation to the USDE. At that point, the USDE chooses whether to authorize the institution to administer Pell Grants at a correctional facility.

Institutions who receive PEP authorization from the Department of Education will be expected to follow an ongoing cycle of review. Each PEP must be reviewed by its Oversight Entity and relevant stakeholders at least 120 days before the program's Eligibility and Certification Approval Report expires, which the Department of Education issues to all institutions who participate in federal student financial assistance programs. PEPs are required to keep their review documentation on file and should submit that documentation to the Department of Education within 30 days of a review's completion.

The Role of the "Oversight Entity"

As stated above, any postsecondary institution interested in establishing a new PEP must first initiate contact with its intended Oversight Entity. The Department of Education has granted Oversight Entities the ultimate authority in deciding whether or not to establish a PEP within its walls. This policy is significantly different from practices that led to the initial Second Chance Pell programs; under SCP, postsecondary institutions could initiate an SCP application without contacting the intended correctional facility or the college's accrediting body.⁶ After July 2023, colleges and universities must produce formal documentation of an agreement between the institution and correctional facility in order to begin the USDE PEP application process. To reach this agreement, Oversight Entities may require institutions to submit a formal application or produce a memorandum of understanding. Once a PEP is operational, the Oversight Entity may impose additional re-

porting or review requirements, beyond those required by the USDE, and may withdraw its determination of best interest designation at any time after the PEP's initial two-year review period.

The “Best Interest” Determination

The Oversight Entity determines if a new PEP operates in the best interest of students. A PEP program that operates in the best interest of students must meet a variety of criteria. According to the PEP regulatory framework, approved PEPs must provide a “substantially similar” educational experience that offers a transferability of credits comparable to the PEP institution’s main campus offerings.⁷ PEP programs must also provide comparable academic and career advising in advance of reentry, and students enrolled in PEPs must be able to continue their education at at least one of the institution’s campus locations post-release.

While the PEP regulatory framework requires the Oversight Entity to assess a program’s inputs, there is no mandate for Entities to assess program outcomes. Though the final PEP regulations include an outline for assessing both program inputs and outcomes, the PEP negotiated rulemaking process led the Department of Education to establish outcomes assessment as “permissive” instead of mandatory.⁸ Given the context driven nature of recidivism rates, rates of program completion or continuing education post-release, job placement, or average individual earnings, the Department argues that it cannot mandate specific program outcomes – this is a valid concern, but in taking this stance the Department has removed any explicit consideration of program outcomes as a required component of the Oversight Entity’s determination of best interest. Such a policy leaves much to be desired when attempting to determine a program’s effectiveness over time. Further ethical considerations regarding students’ best interest and the role of Oversight Entities are examined in a later section of this essay.

The Role of Accreditation in PEP Creation

Around the world, decisions about academic quality are typically driven by a nation’s ministry of education. In the U.S., however, standards for institutional effectiveness, student success, and academic quality are set by the nation’s postsecondary accreditation system. For this reason, the U.S. Department of Education does not proscribe any requirements related to academic quality within its PEP regulations, beyond the mandate that PEP programs offer an educational experience that is “substantially similar” to that seen on an institution’s main campus. As a result, though institutional and programmatic accreditors will not have the authority to approve new programs under the PEP regulatory framework, their involvement in the PEP approval process is critical to program success.

As previously stated, postsecondary institutions should initiate a substantive change request with their accrediting body when establishing a new PEP. “Substantive change” refers to any changes an institution undergoes that may impact its quality, mission, scope, operations, or control, which includes the establishment of a new PEP as an “additional location”.⁹ The accrediting body must conduct a substantive change site visit at the first two additional locations established by an institution’s PEP, within two years of initial PEP operation. A short list of change types is included below, accompanied by example questions accreditors might pose to site administrators when conducting a visit.

- *Academic programs:* How is the college offering the program to meet the unique needs of students who are incarcerated while ensuring that the student learning outcomes are comparable to those articulated for students enrolled in the identical program on campus?

- *Mission:* Does serving students who are incarcerated affect or change the college's mission?
- *Distance Education:* If a college is approved to offer distance education, how does the institution adapt to additional considerations for students who are incarcerated while preserving the hallmarks of academic quality in distance education?¹⁰

Ten accrediting bodies currently operate in the Second Chance Pell landscape, including seven institutional accreditors (Higher Learning Commission, Southern Association of Colleges and Schools Commission on Colleges, Middle States Commission on Higher Education, New England Commission of Higher Education, Northwest Commission on Colleges and Universities, WASC Senior College and University Commission, and the Accrediting Commission for Community and Junior Colleges). Several of these accrediting bodies have already published guidance materials for institutions interested in submitting an application for a new PEP after 1 July 2023.

Equity Considerations for Institutions and Accreditors

Pell reinstatement for justice-involved individuals represents a monumental victory for advocates of access to higher education in the U.S. The policy update allows us, as a society, to reinvigorate efforts to view prison sentences as an opportunity for rehabilitation, regardless of an inmate's conviction type or sentence length. Communities of color are directly affected by policies of mass incarceration in the U.S., and in many states the prison population is generally both Black and low-income, which brings credence to the argument that Pell reinstatement represents a racial justice issue.¹¹ Without access to Pell funding, thousands of justice-involved individuals have been prohibited from obtaining a postsecondary education across the U.S. for nearly thirty years.

Individuals involved in the U.S. correctional system typically enter prison with lower levels of educational attainment and lower median earnings.¹² They also encounter numerous barriers to social reentry upon release. For justice-involved individuals, incarceration has the potential to reduce hourly wages by 11 percent, decrease annual employment by 9 weeks, and lower annual earnings by 40 percent.¹³ These "collateral consequences" have been shown to have established effects on life after prison.¹⁴ Extensive research demonstrates that access to postsecondary programming in prison may help ameliorate these consequences by improving employment rates and reducing recidivism, the traditional metric of success in prison education programming.¹⁵ Participation in prison education programming while incarcerated is associated with a 43 percent reduction in recidivism rates (without distinguishing outcomes between high school, GED, vocational, or postsecondary attainment), while individuals who specifically enroll in postsecondary programming while in prison are 28 percent less likely to recidivate than those who did not.¹⁶ Beyond recidivism rates and concerns about public safety post-release, incarcerated students have reported that the prison education experience is "life-giving", offers a renewed sense of self-worth and empowerment, and provides sustained and engaged contact with the outside world.¹⁷

In theory, the PEP regulatory framework should open new vistas for prison education programming in the U.S. However, the Department of Education's application of the regulatory framework has the potential to exacerbate existing inequities in the U.S. postsecondary landscape. This final section of the essay reviews key equity considerations for institutions and accreditors who may seek to engage in the PEP approval process.

The Impact of Cost in Producing a “Substantially Similar” Experience

As noted at the start of this essay, over 700,000 students will be newly eligible for Pell dollars in July 2023. Despite such a triumph in expanding access to federal financial aid, however, the annual Pell appropriations process has not expanded the overall amount of funding available to the Pell Grant program. This means that, because substantially more students will compete for the maximum Pell Grant award in academic year 2023-2024, individuals may stand to receive less than the full \$7395.¹⁸ Given the variety of commitments on an incarcerated person’s time within the U.S. prison system, incarcerated adults will likely enroll in available PEPs as part-time students, which makes their likelihood of receiving the full Pell amount even more tenuous. And, while the FAFSA Simplification Act mandated Pell reinstatement, it did not expand the time limit on receipt of Pell funds.¹⁹ The Federal Pell Grant Lifetime Eligibility Use limits receipt of Pell funds to twelve terms, or roughly six years (which represents the standard amount of time it might take a traditional, full-time student to complete their college education).²⁰ For incarcerated students enrolled part-time, their Pell eligibility may run out long before they complete their PEP coursework. Who goes on to foot that bill?

When estimating the amount of federal financial aid their students might receive, postsecondary institutions must also consider the cost of providing education within a carceral context, especially given the PEP requirement to provide an educational experience that is “substantially similar” to what students would encounter on the institution’s main campus. Price per credit hour is in question here. In academic year 2021, the average in-state per credit hour charge for part-time students was roughly \$551.²¹ This means that incarcerated students enrolled in PEPs tied to institutions with higher per credit hour fees will likely face a tuition bill after their Pell dollars have been applied. Who covers that remaining cost? Is it feasible to ask institutions to charge lower tuition fees for students enrolled in PEPs? What implications might lower tuition fees have for the quality of education being offered in these programs? Institutions will have to respond to these questions on a case-by-case basis.

In a conversation about cost, it is also important to note that the Department of Education’s regulatory impact analysis of the PEP application process makes it clear that the U.S. government will not provide additional funding (beyond explicit Pell dollars) to institutions who create new PEPs, or the accrediting bodies who will oversee PEP quality assurance.²² This means that the potential administrative overhead tied to a PEP may discourage a variety of institutions from submitting a PEP application, especially during the start-up phase prior to official USDE-authorization. While large, public flagship institutions may be able to request additional appropriations to cover these costs from their state legislatures, smaller schools may not have the leverage to access similar resources. And while private colleges may be able to rely on philanthropic donations to support their prison education programs, public institutions may be more hard-pressed to identify or initiate that kind of partnership. Given the variety of vocational programming offered by proprietary institutions in the U.S., for-profit institutions could provide an outlet to incarcerated students seeking an education, but the PEP regulatory framework is clear: proprietary institutions are ineligible to apply for PEP approval, which only further narrows the field of institutions that will be able to meet students where they are located with Pell funding.

Cost, in all its forms, is a crucial factor for any institution considering an expansion in programming. The PEP regulatory framework could impose additional hurdles that make the prospect of enhancing access to higher education less financially appealing to a variety of stakeholders.

Academic Quality and the “Best Interest” Designation

The Council for Higher Education Accreditation (CHEA) establishes standards for U.S. accrediting organizations related to academic quality. Accrediting organizations demonstrate their commitment to academic quality by setting expectations at the institutional level to meet similar standards, which are implemented by the thousands of postsecondary institutions currently active in the U.S. today. In essence, an institution must prove its academic bona fides before it can offer students financial aid, and recognition by an accrediting body is typically considered the final stamp of approval when establishing new institutions and programs. The PEP regulatory framework, however, adds another layer to this process. Under the framework, a PEP’s final authorization rests with the U.S. Department of Education, which means that the Department could theoretically reject an institution’s PEP application, even if it has met all requirements from its Oversight Entity and accrediting body. The reason for this extra hurdle is unclear, but nuanced observers might point to the Department’s prohibition on proprietary PEPs as possible justification for such a policy. In an effort to keep bad actors out of the PEP process, the Department may have extended its regulatory reach beyond its typical boundaries.

The expanded role of the Oversight Entity and the Entity’s centrality in “best interest” determinations presents another hurdle for academic quality in prison education. The Department acknowledges that many Oversight Entities may not have had previous experience assessing any of the “best interest” indicators outlined in the PEP regulatory framework. However, the Department argues that the outline it provides regarding the assessment of program inputs and outputs offers enough clarification for Oversight Entities to conduct this work.²³ As an Oversight Entity, a correctional facility may decline to partner with a postsecondary institution for any number of reasons. A chief concern is that a correctional facility may decline to participate in a PEP, not because the potential PEP might offer programming that violates policies regarding the type of equipment allowed within a prison (e.g., welding equipment or surgical tools), but because prison administrators may consider liberal arts programming anathema to a carceral landscape that prefers to punish prisoners rather than rehabilitate them.

Such fears may yet be unfounded, but they highlight a central concern in U.S. society: who gets to decide the standards for student growth and success? Public comments made during the PEP negotiated rulemaking process suggest that some stakeholders believe that, by establishing Oversight Entities as the ultimate authority in PEP design, the Department of Education has overstepped its bounds and proposes to regulate beyond congressional intent.²⁴ Only time will tell the true impact of the Department’s regulatory framework on PEP creation and success.

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Reversing the ban on Pell funding for incarcerated students represents a foundational first step in removing barriers for reentry that impact justice-involved individuals, their families, and the communities they call home. The hope is that thousands, perhaps hundreds of thousands, of previously overlooked students may now have the opportunity to seek higher education, in whatever form that may take. Despite such a victory, however, many challenges remain for students and institutions who are interested in applying for Pell funding tied to prison education programs. By pairing an overview of the PEP regulatory framework with a consideration of key equity concerns, this essay hopes to provide a critical introductory resource to the students, institutions, and accreditors who may one day participate in these programs.

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