

NASFAA Deep-Dive: Changes to Federal Methodology, Other Student Aid Changes From Spending Bill

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Several major student aid policy provisions were attached to the fiscal year 2021 Omnibus spending bill, through the **Consolidated Appropriations Act, 2021** (<https://docs.house.gov/billsthisweek/20201221/BILLS-116HR133SA-RCP-116-68.pdf>), including FAFSA simplification, expanding Pell Grant eligibility to incarcerated students and increasing the maximum award, and the repealing the limitation on lifetime subsidized loan eligibility, known as Subsidized Usage Limit Applies (SULA).

It is not unusual for spending bills to include policy items unrelated to the budget, and this marks a significant and welcomed piece of student aid legislation as lawmakers continue with sluggish progress toward the long overdue reauthorization of the Higher Education Act (HEA). Provisions of the bill generally take effect on July 1, 2023, for award year 2023-24. The 2023-24 FAFSA will be available for completion on Oct. 1, 2022.

“The financial aid community applauds the bipartisan work in Congress to simplify the federal student aid application process and improve financial aid predictability for students,” said NASFAA President Justin Draeger. “During this time of crisis, lawmakers showed up for students by expanding Pell Grant eligibility and lengthening students’ eligibility for subsidized loans.”

“Of course, passing last-minute bills of this magnitude is not our preferred way of tackling financial aid reform, and there are several provisions in this expansive bill that require closer scrutiny. But it has been 12 years since the last reauthorization of the Higher Education Act, and we should not, and cannot wait any longer on bills that will have such an overwhelmingly positive impact on students,” he continued. “After the bill’s passage, we look forward to working with federal, state, and private partners to ensure a smooth rollout for students.”

Need Analysis/Pell Grant Eligibility

After years of congressional effort to simplify the FAFSA, and multiple bills on the topic, the **Consolidated Appropriations Act, 2021** (<https://docs.house.gov/billsthisweek/20201221/BILLS-116HR133SA-RCP-116-68.pdf>) makes substantial changes to need analysis and thus, the overall application experience. The bill uses the concept, first introduced by Sens. Lamar Alexander (R-Tenn.) and Doug Jones (D-Ala.) in the **FAFSA Simplification Act of 2019** (<https://www.congress.gov/116/bills/s2667/BILLS-116s2667is.pdf>), of a Student Aid Index (SAI) to replace the expected family contribution (EFC). While the bill makes some changes to the calculation, the SAI is largely just a new name for the EFC, in an acknowledgment that the term doesn't properly characterize what is in fact an eligibility index for distributing funds, and not a reflection of what a family can or will pay for postsecondary expenses. The SAI would determine eligibility for all types of Title IV student aid except the maximum and minimum Pell Grant awards, which would be

based instead on the number of parents in the household, and family income as a percentage of the federal poverty level for the applicant's household size. Pell Grant awards in the middle ranges of eligibility would be determined by subtracting the SAI from the maximum Pell Grant amount.

The approach allows for more predictability of Pell Grant eligibility, with its roots in Alexander's original concept, introduced in 2014, of a two-question FAFSA — family size and adjusted gross income (AGI) — on a postcard. It would allow for the creation of a look-up table that families could use to anticipate future Pell Grant eligibility, potentially far in advance of applying to college.

Maximum Pell Grant awards would go to:

- Independent student (and spouse, if applicable) tax nonfilers
- Dependent children of nonfiling parent(s)
- Independent students who are single parents and whose student AGI is below 225% of the poverty level
- Dependent children of a single parent whose parent AGI is below 225% of the poverty level
- Independent students who are not single parents whose student AGI is below 175% of the poverty level
- Dependent students with parents who are not single parents whose parent AGI is below 175% of the poverty level
- Students under age 33 whose parent died serving in the armed forces after Sept. 11, 2001
- Students under age 33 whose parent died in the line of duty as a public safety officer

Those students not eligible to receive the maximum Pell award would receive a grant amount equal to the maximum award, less their SAI, rounded to the nearest \$5. Students not receiving Pell awards under either of these methods could receive the minimum Pell award amount if their incomes or parent incomes fell below a set percentage of the poverty line, ranging from 275% to 400% of the poverty line.

The SAI could be as low as -\$1,500, whereas the EFC currently cannot go below zero. While the bill includes provisions that Direct Loans and Pell Grants could not exceed the cost of attendance (COA), the negative SAI establishes a framework to allow the very neediest students to receive aid in excess of COA. Even absent additional federal aid for students with negative SAIs, the negative figure could prove helpful by breaking up the artificial cluster of zero-EFCs, further differentiating the neediest students. This could allow states and institutions to more accurately target need-based aid, including the Federal Supplemental Educational Opportunity Grant (FSEOG).

Under the proposal, students eligible for the maximum Pell Grant would have an automatic SAI of \$0, and tax nonfilers would have an SAI of -\$1,500. Untaxed income items are streamlined to include only items that are delineated on the federal tax return, simplifying the FAFSA by making use of the Department of Education (ED) and IRS direct data sharing permitted by the **Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE) Act (/future_act)**. Child support received would be moved

from untaxed income to assets to allow for that data element to continue to be collected for those applicants required to provide asset information, but to limit income items to only those that can be provided through the IRS.

Divorced and separated parents would continue to have only one parent's information on the FAFSA, but which parent's information is required would be determined based on which parent provided the greater portion of the student's financial support, instead of which parent the student lived with more during the past 12 months.

Means-tested benefits recipients and students whose incomes are below \$60,000 or — in the case of dependent students — whose parents' incomes are below \$60,000 and who file simple tax returns would qualify for a simplified needs test and would not be required to provide asset information on the FAFSA. This is a more generous simplified needs test than what is in place currently, which caps income at \$49,999.

Drug Convictions and Selective Service Registration

The bill would eliminate the suspension of federal student aid eligibility for applicants with drug-related convictions, and would remove the requirement that male students must register with the Selective Service before the age of 26 in order to be eligible for federal aid. The questions on drug convictions and Selective Service eligibility would be removed from the FAFSA. Further, financial aid offices would no longer be required to monitor or resolve discrepancies over a student's Selective Service registration status.

Subsidized Usage Limit Applies (SULA)

The proposal would repeal the limitation on lifetime subsidized loan eligibility, known as the Subsidized Usage Limit Applies (SULA) requirement, which currently bars students from receiving subsidized Direct Loans for more than 150% of the published length of their program. The bill requires ED to implement the repeal by July 1, 2023 at the latest, but allows for the Secretary of Education to implement it early. ED would also be required to specify on what date and for what award years the implementation would be effective, and must post this decision in the Federal Register at least 60 days before the repeal takes place.

As a reminder, the SULA requirement went into effect in 2013 as a way to pay for a one-year extension of a lower interest rate for undergraduate students, prior to the move to the variable-fixed interest rate structure. NASFAA has advocated heavily to eliminate this onerous cost-saving requirement that has burdened institutions and negatively impacted students.

Pell for Incarcerated Students

The proposal would restore Pell Grant eligibility for incarcerated individuals, who were prohibited from accessing Pell Grants in the Violent Crime Control and Law Enforcement Act of 1994. By lifting this ban, the bill restores eligibility for incarcerated individuals, defined as those serving a criminal sentence in a federal, state, or local penal institution, prison, jail, reformatory, work farm, or other similar correctional institution, as long as they are enrolled in an eligible prison education program and meet the other Pell Grant eligibility requirements.

Proprietary institutions would not be eligible to award or receive Pell Grants on behalf of incarcerated students. The bill also includes a number of requirements to be satisfied by prison education programs, including that programs must be approved to operate in a correctional facility by the appropriate state

agency, offer transferability of credits to at least one institution of higher education in the state in which the correctional facility is located, and must satisfy applicable requirements for professional licensure or certification, among others. The bill also directs the Secretary of Education to, within one year of the enactment, conduct an external evaluation that assesses the ability of confined or incarcerated individuals to access and complete the FAFSA, among other related topics.

Professional Judgment

The bill imposes some limitations around professional judgment (PJ), including a new rule that would prohibit institutions from maintaining a policy of denying all professional judgment requests.

Additionally, a financial aid administrator would now have the option to offer a dependent student an unsubsidized loan without requiring the parents to fill out the FAFSA if the student does not qualify for, or does not choose to have a professional judgment review and the financial aid administrator determines that the parent or parents of the student ended support or would not fill out the form. While current law requires that a financial aid administrator determine that the student's parent initiated end of support and that the parent refused to fill out the FAFSA, this change would now only require financial aid administrators to document one of the two to award an unsubsidized loan.

The bill also stipulates that during a time of a qualifying emergency, financial aid administrators may use PJ to zero out income earned from work if the applicant can provide paper or electronic documentation of receipt of unemployment, or can provide proof that an application for unemployment benefits was submitted. Financial aid administrators are also given authority under the bill to adjust income earned from work for a student, parent, or spouse, based on the totality of a family's situation. Documentation will be considered acceptable if it is submitted not more than 90 days from when it was issued, unless the aid administrator is already aware that the student, spouse, or parent is employed again.

The bill also requires the Secretary to adjust the model used to determine program reviews so that it accounts for an increased number of professional judgments during the years associated with the national emergency. ED has implemented this practice during the current pandemic, and the bill would go further by mandating it by statute.

The PJ language includes a piece of **GEN-09-05** (<https://ifap.ed.gov/dear-colleague-letters/05-08-2009-gen-09-05-subject-update-use-professional-judgment-financial-aid>), the PJ guidance issued on the heels of the Great Recession, and NASFAA has advocated heavily for similar provisions to be included in legislation. **NASFAA members indicated** (/uploads/documents/Survey_Professional_Judgment_COVID.pdf) in a September 2020 survey that they would be more likely to zero out income earned from work with proof of unemployment insurance if given explicit permission to do so.

Provisional Independent Status

The bill also includes a section that allows otherwise dependent students to complete the FAFSA as a "provisional" independent student if they believe they may qualify for independent student status due to unusual situations such as parental abandonment, abuse, neglect, legally granted asylum, or student or parental incarceration, and would likely meet the criteria for a dependency override. After completing the FAFSA, the student would receive an estimate of their federal Pell Grant award and other information based on an independent status. In turn, aid administrators would be required to notify these students of the institution's process, requirements, and timeline for an adjustment to be completed under a PJ review. The aid office would also be required to provide a final status determination for the student as soon as practicable after all requested documentation is received.

Institutions would also be required to presume that any student who received a dependency adjustment for any preceding award year to be independent for each subsequent academic year at the same institution unless they are informed by the student of changes to their circumstances, or the institution has conflicting information.

Unaccompanied Homeless Youth

In making a determination of independence for unaccompanied homeless youth, this bill requires that institutions allow a financial aid administrator to accept documentation of a financial aid administrator at another institution who documented the student's circumstance in a prior award year. This is a change from current practices, which allow the use of another institution's determination during the current academic year.

Cost of Attendance (COA)

The bill makes several modifications to COA. The most notable is that the Secretary of Education would now have authority to regulate all COA components except tuition and fees. Currently, ED is statutorily prohibited from regulating COA.

The bill also includes changes to living expense allowances, including new language that would require the food allowance for on-campus plans or off-campus meals to provide the equivalent of at least three meals per day. Currently food allowances are based on normally assessed or reasonably incurred costs, without specification on number of meals. On-campus housing allowances would be determined separately for students with and without dependents, with each allowance required to be determined using the greater of the average or median amount assessed for housing charges for each respective group.

The allowance for loan fees is changed to permit only the actual cost of any loan fee, origination fee, or insurance premium charged to a student or the parent on federal student loans, whereas currently, institutions are permitted to use average amounts to estimate loan fees. Private loan fees would no longer be permitted in the allowance for loan fees.

The bill also removes existing language that the inclusion of the one-time cost of obtaining the first professional licensure is at the discretion of the institution. It is now a required component of COA for affected students. Language was also expanded that includes this expense as a COA item for incarcerated students, whereas currently only tuition and fees and, if required, books and supplies were encompassed.

Under the bill, institutions will also be required to make publicly available a list of all the elements of the COA and to also disclose those figures on any portion of the website describing tuition and fees. A school is currently required to post the COA budgets, but it is not tied to a requirement to list in every location on the website that displays tuition and fees.

HBCU Capital Financing

This proposal also offers relief to recipients of the Historically Black College and University (HBCU) Capital Financing Program who, affected by the coronavirus pandemic, were left unable to repay the loan. The bill would require that 90 days after its enactment the Secretary must repay the outstanding balance of principal, interest, fees, and cost on the disbursed loan amounts for each applicable closed loan agreement. This provision is estimated to forgive more than \$1.3 billion in outstanding loans for over 40 HBCUs.

The program was created in 1996 to provide low-cost capital to finance improvements to infrastructure on the campuses of HBCUs, by providing the institutions with access to capital financing or refinancing for the repair, renovation, and construction of classrooms, libraries, laboratories, etc.

Pell Grant Eligibility Restoration

The bill provides for restoration of Pell Grant lifetime eligibility for students who were unable to complete their program of study due to the institution closing, who were falsely certified as eligible to receive federal financial aid, or whose loans were discharged in a successful borrower defense claim.

Data Sharing

The bill adds questions to the FAFSA where the applicant and others whose information is provided on the FAFSA provide consent for the data sharing between the IRS and ED that was authorized by the **FUTURE Act in 2019 (/future_act)**. Applicants are also permitted, but not required, to authorize ED to share information provided on the FAFSA, excluding IRS information, with agencies that administer public benefits. Other consent provisions are included to allow the applicant to authorize the school to disclose tax information, which are needed to comply with IRS requirements to implement the FUTURE Act.

Section **483(a)(3)(E) (/data_sharing)**, which governs use of FAFSA data, is changed to refer more narrowly to institutions using "information provided to them," rather than "FAFSA data," which ED has interpreted more broadly to mean any information on the FAFSA or derived from the FAFSA, to include award and disbursement data. The new section would allow the use of FAFSA information, but not tax information, for research that doesn't release personally-identifiable information for purposes of promoting college attendance, persistence, and completion.

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