NASFAA
NATIONAL ASSOCIATION OF STUDENT FINANCIAL AID ADMINISTRATORS

June 12, 2024

The Honorable Bernie Sanders
Chair, Senate Committee on Health, Education, Labor and Pensions

The Honorable Ron Wyden
Chair, Senate Committee on Finance

The Honorable Bill Cassidy
Ranking Member, Senate Committee on Health, Education, Labor and Pensions

The Honorable Mike Crapo
Ranking Member, Senate Committee on Finance

The Honorable Virginia Foxx
Chair, House Committee on Education and the Workforce

The Honorable Jason Smith
Chair, House Committee on Ways and Means

The Honorable Robert Scott
Ranking Member, House Committee on Education and the Workforce

The Honorable Richard Neal
Ranking Member, House Committee on Ways and Means

Dear Chairs Sanders, Foxx, Wyden, and Smith; and Ranking Members Cassidy, Scott, Crapo, and Neal,

On behalf of the National Association of Student Financial Aid Administrators (NASFAA) and our 3,000 member institutions, we write to offer our recommendations for technical amendments to the FAFSA Simplification Act, which was enacted in late 2020 as part of the Consolidated Appropriations Act of 2021, and the Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE) Act, which became law in 2019.

NASFAA represents nearly 29,000 financial aid professionals who serve 16 million students each year at colleges and universities in all sectors throughout the country. NASFAA member institutions serve nine out of every 10 undergraduates in the U.S.

Now that both laws have been fully implemented, we and our members have identified several areas we believe require technical amendments to fully realize the goals Congress intended to achieve through this legislation.

We note that, while we would like to see these changes enacted and implemented as soon as possible, we do not want to risk the timely opening of the 2025-26 FAFSA or future FAFSA cycles. Our recommendations below explicitly note areas we believe Congress could make changes that do not impact the application itself or the Student Aid Index (SAI) formula and, as such, would not impact the 2025-26 FAFSA release.

Higher Education Act (HEA) Requested Amendments

Change the Statutory Deadline for Opening the FAFSA Process to October 1

The statutory deadline in Section 483(d)(4) of the Higher Education Act of 1965 (HEA), as amended by the FAFSA Simplification Act, for the Department of Education (ED) to make the FAFSA available to federal student aid applicants is January 1 prior to the start of the award year for which the FAFSA will apply, with a provision that ED will provide the form by October 1 "to the maximum extent practicable."

In practice, the FAFSA has been released on October 1 and FAFSA data released to postsecondary education institutions within a few days following that for every year since 2016, excluding 2023 due to significant implementation delays related to FAFSA simplification. In short, October 1 is the date students, families, college counselors, and financial aid administrators have become accustomed to.

An October 1 FAFSA process opening gives more time for financial aid offices, high schools, and college access organizations to conduct financial aid nights and FAFSA completion events to increase the number of students who apply for financial aid and ultimately complete a postsecondary education.

When the FAFSA process opens on October 1 and schools receive that data shortly after, financial aid offices can provide actual, versus estimated, financial aid offers to early decision and early action applicants, and can provide earlier financial aid offers to regular decision students as well. The October 1 FAFSA process opening provides more time for students to comply with verification requirements, request professional judgment (PJ) adjustments, and compare aid offers from multiple schools. In short, it gives students the maximum amount of time to make informed financial decisions when it comes to attending college.

Continuing students benefit from the FAFSA process opening in October as well, because schools can turn their focus from incoming to continuing students earlier in the year.

Simply put, now that Congress has codified the use of prior-prior year income on the FAFSA, an October 1 FAFSA launch should be the norm, not a reach, and the law should require it.

It is important for the statute to reflect not only that the FAFSA should be released by October 1, but that the entire FAFSA process be operational by that date. This includes delivery of Institutional Student Information Records (ISIRs, the FAFSA output document sent to states and schools) and availability of the student and school corrections process. Having the form available without the ability for states and institutions to access the data or for students or schools to correct the data serves almost no purpose, as we learned this year when ISIRs were delayed until March and corrections until June.

We ask that Congress amend Section 483(d)(4) of the Higher Education Act of 1965 (HEA), as amended by the FAFSA Simplification Act to read, "The Secretary shall enable applicants to submit a Free Application for Federal Student Aid developed under this section and initiate the processing of such application not later than October 1 of the applicant's planned year of enrollment, and shall deliver the output documents of the processed Free Application for Federal Student Aid to postsecondary institutions and States within 5 business days of processing."

Reinstate the Student Housing Choice Question on the FAFSA

Congressional efforts to limit the number of questions on the FAFSA are commendable, and will contribute to a shorter and simpler application. However, some questions are still necessary but are not included in the list of FAFSA questions in section 483(a)(2)(B) of the HEA as amended by the FAFSA Simplification Act. One such question asks applicants' housing plans for the upcoming academic year.

Institutions need to know whether a student plans to live on- or off-campus in order to comply with provisions in section 472(a)(5) of the HEA, as amended by the FAFSA Simplification Act, which require them to provide different cost estimates to on-campus students based on whether they have dependents of their own. Institutions are left in an impossible situation because they are not allowed to require students to complete a separate application for federal student aid, but they cannot accurately determine a student's cost of attendance (COA) and hence, their eligibility for student aid, without knowing whether they plan to live on- or off-campus. We ask that Congress add this question to Section 483(a)(2)(B) so institutions can comply with the cost of attendance changes in the FAFSA Simplification Act.

Reinstate Option for Independent Students to Report Parent Data on the FAFSA

Prior to 2024-25, the FAFSA included a question allowing independent students to choose to report their parent(s)' information on the form. This allowed institutions that consider independent students' parental information when awarding their own institutional funds to use

the FAFSA without requiring an additional application to determine institutional aid eligibility. It also permitted health professions programs to comply with Department of Health and Human Services regulations for the health professions student aid programs under Title VII of the Public Health Service Act, which require that eligibility be based on an analysis of both the student's and their parent(s)' ability to pay.

ED has interpreted the FAFSA Simplification Act as prohibiting them from asking students if they wish to provide this optional information because it is not included in the list of FAFSA data elements in HEA section 483(a)(2)(B), as amended by the FAFSA Simplification Act. Forcing institutions to add supplemental applications to award certain types of federal student aid because the FAFSA doesn't provide the data they need is antithetical to simplification efforts, and we urge Congress to allow ED to provide independent students the option to include parental data on the FAFSA by including this as a data element in 483(a)(2)(B.)

Allow for Skip Logic on the FAFSA for Dependency Status Questions

Congress describes the list of data elements provided in the HEA, as amended by the FAFSA Simplification Act, section 483(a)(2)(B) as "information required by the applicant." ED has interpreted this language to mean that every data element listed here must be asked of every applicant, precluding them from using skip logic to allow students to circumvent certain questions, such as whether they are a veteran of the armed services, even when their independent student status has already been established by an answer to a previous question about their date of birth, marital status, or year in school.

Students whose independent student status has already been established should not be asked the remaining questions for determining independent student status since they must only answer "Yes" to one of the questions on the list to be considered independent. Forcing students to answer all seven dependency status questions when they have already been determined to be independent makes the form longer than it should be and contradicts the intent of the FAFSA Simplification Act. We ask that Congress explicitly permit the use of skip logic to skip certain questions in 483(a)(2)(B) when the question is unnecessary due to the student having already been determined by their response to another question to be independent.

Specifically, we recommend that Congress add language such as, "...unless independent student status has already been established by an answer to another question on the FAFSA" to HEA sections 483(a)(2)(B)(ii)(XVI)(bb) through (ii), as amended by the FAFSA Simplification Act. Note that we do not believe skip logic should be permitted to skip questions in section 483(a)(2)(B)(ii) asking the student's date of birth in (IV), marital status in (V), year in school

(XII), and homelessness status in (XVI) because the responses to those questions are necessary for purposes other than determining dependency status.

Discontinue Use of IRS Number of Dependents to Determine Family Size

In the past, families manually reported the number of individuals in their household on the FAFSA. The FAFSA Simplification Act removes this question from the list of information required by the applicant in section 483(a)(2)(B) because this information is now provided by the Internal Revenue Service (IRS) through authority granted in the FUTURE Act.

The FAFSA Simplification Act also includes a requirement that ED provide a process by which applicants can update their family size from what was shared by the IRS, which means there is still a family size question on the FAFSA despite it not being included in the list of required FAFSA data elements in 483(a)(2)(B.) Because the family size transferred by the IRS is masked to applicants when they complete the FAFSA, due to data privacy concerns, we presume most families use the option to update their family size, making the information transferred by the IRS largely irrelevant and potentially leading to conflicting information.

Adding family size to the list of data elements required by the applicant in HEA section 483(a)(2)(B,) as amended by the FAFSA Simplification Act, will not add a question to the FAFSA since it is already being asked, but it will eliminate confusion over the masked family size and eliminate the possibility of conflicting information.

For these reasons we ask that Congress add family size to HEA section 482(a)(2)(B), as amended by the FAFSA Simplification Act, remove the requirement that ED provide a process for applicants to update family size in 483(a)(2)(B)(iv), and remove family size from 6103(l)(13)(C)(i) of the Internal Revenue Code (IRC), as amended by the FUTURE Act.

Prohibit Use of Receipt of Free and Reduced-Price School Lunch as a Condition Under Which Families May Be Exempt From Reporting Assets on the FAFSA

HEA section 479(b)(2)(D), as amended by the FAFSA Simplification Act, allows recipients of means-tested benefits to qualify for an exemption to reporting assets on the FAFSA. Section 479(b)(4)(H) specifies the types of means-tested benefits that qualify for this exemption and includes in (vii), "Other means-tested programs determined by the Secretary to be approximately consistent with the income eligibility requirements of the means-tested programs under clauses (i) through (vi).''

Under this provision, ED has selected the free and reduced-price school lunch program as a qualifier for the asset exemption. In many states, the free and reduced-price lunch program is a suitable proxy for low-income status. However, in some states, especially since the COVID-19 pandemic, free and reduced-price lunch programs have been expanded to an extent that many — if not most of — the families that receive free and reduced-price lunch have earnings that exceed other means-tested benefits programs' income caps, as well as the income that qualifies students for an automatic maximum Pell Grant award under 401(b)(1)(A). While we applaud states that provide universal access to free meals for elementary and secondary school students, these policies cause the program to no longer serve as an adequate proxy for low-income status in those states.

If higher-earning families respond "Yes" to the FAFSA question asking whether they receive means-tested benefits, they could qualify for significantly more federal student aid than they would otherwise be eligible, which fundamentally undermines the integrity and intent of the student aid programs — to ensure that need-based aid is provided first and foremost to low- and middle-income students and families.

While ED does specify in the Application and Verification Guide that families should only indicate receipt of free or reduced-price lunch if they meet the USDA income guidelines, it is likely many will incorrectly answer the question considering the FAFSA instructions do not explain how to answer this question. Given the significant overlap of free lunch receipt with other means-tested benefits that qualify applicants for the asset exclusion (more than three-fourths of free and reduced price lunch recipients qualify for the Supplemental Nutrition Assistance Plan or the Special Supplemental Nutrition program for Women, Infants, and Children[1]), plus the new automatic maximum Pell Grant award for lower-income families, it is unlikely a family that should be exempt from reporting assets on the FAFSA would miss this opportunity if free lunch were no longer a qualifier for the asset exemption. We request that Congress explicitly prohibit ED from using the free and reduced-price lunch program from the exemption from reporting assets unless there was an automatic method ED could use during FAFSA processing to verify a family qualified for those benefits based on the USDA criteria and not through some other pathway.

Allow for Alternate SAIs for Periods of Enrollment Other Than Nine Months

Before the 2020 HEA amendments, Sections 475, 476, and 477 of the HEA provided for use of an alternate Expected Family Contribution (EFC) in cases where students are enrolled for periods other than nine months. This allows for a more accurate estimate of the student's

[1] https://www.census.gov/library/visualizations/interactive/social-safety-net-benefits.html

eligibility for aid by basing their eligibility on the number of months they are actually enrolled. It also matches Department of Education guidance that requires institutions to prorate the Cost of Attendance (COA) based on the time the student is enrolled.

The FAFSA Simplification Act eliminates Student Aid Index (SAI) proration. Because of this, if a student enrolled in only a single term — for instance, the fall term spanning September through December — the school would be required to use a Cost of Attendance based on a three-month enrollment, but use the full SAI, which reflects a nine-month enrollment. This may cause students to lose eligibility for need-based federal student aid like the Federal Supplemental Educational Opportunity Grant, Subsidized Direct Loans, and Federal Work-Study they would have qualified for had they enrolled for the full year if their SAI exceeds the prorated COA. A higher SAI indicates *less* eligibility for need-based aid, while a lower — or negative — SAI indicates greater financial need. Students enrolled at the lowest-cost institutions like community colleges will be the most harmed by the elimination of proration because the low Cost of Attendance makes it more likely that a student's nine-month SAIs will exceed the COA, leaving them without eligibility for need-based aid.

Understanding that the SAI is an index that is not intended to reflect a family's ability to pay, it functions as such in the need analysis formula. For that reason, the COA and the SAI should reflect the same period of time to ensure an accurate determination of the applicant's need.

Students may enroll in only a single term of an academic year for many reasons, but a common reason is to complete a final term of study to earn a degree or credential. Denying students need-based aid just as they reach the finish line of their postsecondary education is at odds with the purpose of the federal student aid programs.

Students may also enroll for longer than nine months if they choose (or if their program requires them) to enroll in the summer. In those cases, not prorating the SAI means they will qualify for more need-based aid than they should because the COA will be based on 12 months of expenses, but the SAI will only reflect nine months.

Prorating the SAI ensures students' eligibility for need-based aid is based only on their ability to pay and not on the number of terms they choose to enroll in. We ask that Congress reinstate SAI proration in the HEA.

This change could be implemented immediately without impacting the 2025-26 FAFSA cycle since ED is already calculating alternate SAIs and transmitting them to schools on Institutional Student Information Records (ISIRs).

Close Loophole on Reporting Qualified Education Benefits for Parents of Dependent Students

The Department of Education has interpreted Section 480(f)(3) of the HEA, as amended by the FAFSA Simplification Act to mean that parents who are owners of qualified education benefits — like Section 529 college savings plans — for more than one dependent student should report only the value of the asset for the dependent student for whom the parent is completing the FAFSA, and not to report the asset values for other dependents for whom the parent(s) hold qualified education benefit plans.

We do not believe this interpretation is correct because section 480(f)(1) defines assets as including "qualified education benefits (except as provided in paragraph (3))." This appears to include all qualified education benefits as the assets of the account holder, and the exception in 480(f)(3) appears to specify only how to report those assets specifically when the student is the owner of the qualified education benefit.

Considering the fact that qualified education account holders are permitted to switch beneficiaries, ED's interpretation appears to create a loophole by which parents can temporarily change the beneficiary to a student's sibling when they file the FAFSA to avoid that asset being considered in the SAI calculation.

Further, the new roles-based FAFSA completion process makes it impossible to report these parental assets for only the dependent student for whom the FAFSA is being completed in cases where a family has more than one student enrolled in college because parent(s) enter their information only one time for multiple aid applicants.

We do not believe this new loophole was intentional, nor does it align with the concepts underpinning the SAI formula. We ask Congress to take the steps necessary to clarify its intent to ensure ED is providing correct instructions to applicants that match the spirit of the law.

Amend Treatment of the Foreign Income Exclusion in Determination of Amount of Pell Grant

The FAFSA Simplification Act creates a new pathway for applicants to receive a Federal Pell Grant based solely on their Adjusted Gross Income (AGI) and family size, as opposed to relying on the EFC and Pell Grant eligibility tables, as was the case before 2024-25.

The AGI for taxpayers with foreign income is frequently artificially low as compared to their actual income because of the foreign income exclusion, which reduces AGI by the amount of foreign income received. This could cause some applicants from families with foreign income sources to receive the maximum Pell Grant despite significant income, which goes against the intent of the Pell Grant as a source of aid for lower-resourced families.

Because of this possibility, HEA section 401(b)(1)(D,) as amended by the FAFSA Simplification Act, requires financial aid administrators (FAAs) to determine as to whether it is appropriate for them to use professional judgment (PJ) to disallow the foreign income exclusion for such applicants to prevent them from receiving a Pell Grant.

Clearly, Congress had concerns that high-income applicants would receive Pell Grants they should not qualify for due to the foreign income exclusion, so they created a process to prevent that from happening. However, we believe a better solution is for the default treatment of such applicants to be not to receive the maximum Pell Grant. FAAs would still have the authority to use their professional judgment on a case-by-case basis to allow the foreign income exclusion in the AGI to permit the maximum Pell Grant, as opposed to now where they have to use PJ to keep a student from receiving it.

To achieve this, Congress would have to amend HEA sections 401(b)(1)(A)(ii) and (iii) to change the reference to "Adjusted Gross Income" to "the sum of Adjusted Gross Income plus the amount of the foreign income exclusion," and to remove 401(b)(1)(D) entirely since the use of professional judgment would no longer be necessary but, rather, an option that is already permitted under the law as written in section 479A.

If Congress is not amenable to the change requested, we recommend that Congress, at minimum, clarify its intent in 401(b)(1)(D.) The statute indicates that FAAs should add the foreign income exclusion to the AGI for purposes of determining whether the student would qualify for a Pell Grant under 401(b)(1)(A), which is the pathway to maximum Pell Grant eligibility based solely on AGI and family size. ED has interpreted this as requiring FAAs to update the AGI for purposes of calculating a new SAI and determining Pell Grant eligibility based on the SAI, which is a separate calculation in section 401(b)(1)(B.) We do not believe the extra step of recalculating Pell Grant eligibility based on the SAI is required per the statute, and we ask for clarification.

We also ask, again only if Congress is not amenable to our preferred amendment, that Congress require ED to conduct a study of how many applicants were initially determined to qualify for the maximum Pell Grant per 401(b)(1)(A)(ii) or (iii), have a valid value in the "Foreign Earned

Income Exclusion" data field on the ISIR, and have a professional judgment (PJ) flag set by an FAA. This would serve as a proxy for how common it is for FAAs to have determined this group of applicants should not receive Pell Grants. If the figure is high, it would provide the data necessary to justify the change we recommend above because it would show it is more appropriate to assume by default that this population should not receive a Pell Grant and to only permit such eligibility via PJ versus assuming by default that this population should receive a Pell Grant and requiring PJ to confirm that fact.

Make Incarceration an Automatic Determinant of Independent Student Status

The reinstatement of Pell Grant eligibility for students enrolled in Prison Education Programs in the FAFSA Simplification Act will greatly increase the number of incarcerated individuals applying for federal student aid.

Significant limitations placed on incarcerated individuals' ability to communicate with individuals outside the correctional facility will make it especially difficult for these individuals to obtain parental information for the FAFSA or to request a dependency override from their financial aid office.

Even when these students could request a dependency override, changes to the HEA from the FAFSA Simplification Act add incarcerated student status as a consideration for case-by-case determination of unusual circumstances for a dependency override. However, the criteria for approving a request for a dependency override in section 479A(c)(1)(A) requires that a financial aid administrator determine that the applicant's circumstances represent conditions that differentiate them from a group of students.

It is not clear how incarcerated status alone would differentiate an individual student from a group of students versus a condition that exists across a group of students (all incarcerated students), making it seemingly impossible to consider a student experiencing incarceration to be independent on a case-by-case basis since their circumstances are unlikely to differ from those of other incarcerated students.

For these reasons, we believe a simpler and more equitable solution is to add incarceration as a condition for automatic consideration as independent in HEA section 480(d).

Update the Asset Protection Allowance

The Asset Protection Allowance (APA) protects a portion of a family's assets to account for the need to set aside a portion of their assets to supplement their anticipated Social Security retirement income after they retire to support some moderate standard of living.

The APA has been slowly disappearing for the past decade due to the HEA's use of the Bureau of Labor Statistics (BLS) moderate family income as the basis for determining whether a family must save additional funds for retirement to supplement their anticipated Social Security retirement benefits. As the moderate family income figure has remained stagnant and Social Security benefits have increased without any changes to the APA in the FAFSA Simplification Act, we have reached a point where APAs are now zero in the SAI formula.

Congress clearly intends for the Student Aid Index (SAI) to account for rising costs since it provides for inflation adjustments to all of its allowance tables in the SAI formula in the HEA. Continuing to use BLS moderate family income figures, which do not appear to reflect inflation, appears to be at odds with congressional intent. We ask Congress to amend the HEA to use a different baseline for the APA calculation than the BLS moderate family income. The new baseline should accurately represent realistic living costs for retired individuals and include regular updates for inflation.

Add Resolution of Conflicting Information to the Conditions Under Which Institutions May Request Additional Forms or Information Beyond the FAFSA

Section 483(d)(6) of the HEA, as amended by the FAFSA Simplification Act, prohibits institutions of higher education from requiring additional forms or information beyond the FAFSA, except as is necessary for the institution to complete verification, to document a professional judgment, or to determine independent student status.

Institutions are also required to resolve conflicting information, which may require collecting additional information before the institution can award or disburse aid. Longstanding ED guidance has always included resolution of conflicting information as a reason institutions can require additional information from students beyond the FAFSA. We ask that Congress add resolving conflicting information to 483(d)(6) as an additional circumstance under which institutions may require students to submit additional forms or information.

This change could be implemented immediately without impacting the 2025-26 FAFSA cycle.

Clarify Deadline for Unusual Circumstances Adjustments

Sections 479A and 479D of the FAFSA Simplification Act impose new deadlines for financial aid administrators to use discretion granted them in the law to complete overrides of an applicant's dependency status to treat them as independent students.

Section 479A(c)(2)(B)(i) refers specifically to dependency overrides under the new provisional independent student status whereby a student can complete the FAFSA without parental information pending a financial aid administrator's (FAA) determination of their eligibility for a dependency override. There, it specifies that FAAs must notify the student of the process by which they can complete a dependency override request within a reasonable time after the student completes the FAFSA and to make a determination of the student's dependency status as soon as practicable after the student has provided the necessary documentation to support their request to be considered independent for student aid purposes.

Section 479D requires that determinations of independence based on a student's unusual circumstances be made as quickly as practicable, and not later than 60 days after the date of the student's enrollment for the applicable aid year.

ED has interpreted these two provisions to mean that all dependency override requests, whether stemming from a request for provisional independent student status on the FAFSA or a separate request for a dependency override based on unusual circumstances, must be decided within 60 days of the student's enrollment. This is because provisional independent student status falls under the broader "unusual circumstances" umbrella for which the 60-day deadline is explicit in 479D(c)(3).

It is, at minimum, confusing to have the deadline for processing dependency overrides be stated differently in different sections of the same law. At worst, ED may be misinterpreting congressional intent for timing related to provisional independent student status.

We ask that Congress revisit the deadlines in sections 479A and 479D to ensure the intent is clear. We also ask that Congress clarify what appears to be a circular reference in 479A(c)(1)(B). This subsection refers to "unusual circumstances, pursuant to section 480(d)(9)," but section 480(d)(9) then refers back to "unusual circumstances pursuant to section 479A(c)."

Finally, we note that if Congress retains any language in either section that sets deadlines based on when the student completes the Free Application for Federal Student Aid (FAFSA), they amend such language to be based instead on when the institution receives the FAFSA data. This year, institutions received FAFSA data more than three months after the FAFSA became available to student applicants, meaning institutions were unable to do anything within a reasonable time of students' submission of the FAFSA. While we hope this was a one-time event, tying deadlines to institutions' receipt of FAFSA data rather than FAFSA filing dates ensures institutions' ability to comply with the law.

We also recommend that Congress not tie any such deadlines to the student's enrollment, and base them instead on when the student submitted the necessary documentation to enable the institution to process an unusual circumstances request. Because there is an additional documentation step required in the dependency override process, institutions have little control over when they make a determination of independence until they have the necessary documentation in hand.

This change could be implemented immediately without impacting the 2025-26 FAFSA cycle.

Require ED to Study Impact of Changes to Treatment of Families With Multiple Family Members Enrolled in College and to Small Business and Family Farm Owners

The FAFSA Simplification Act makes several significant changes to the federal methodology SAI formula. Some notable changes reverse long-standing, favorable treatment of applicants in two specific circumstances: families with multiple family members enrolled contemporaneously in college, and small business and family farm owners.

These changes have been met with mixed responses from the postsecondary education community and several organizations have lobbied Congress to revert to the previous treatment of these two groups of applicants on the premise that the changes unfairly harm them.

We ask Congress to require ED to conduct a study and publish results demonstrating how these two changes have impacted applicants as compared to the historical treatment, especially whether and how the changes disproportionately impact students by state, family income, institution type, and other distinguishing factors.

Results from this study could inform future amendments to the SAI formula based on data rather than perception.

Balance FAFSA and FTI Data Use and Data Sharing Privacy and Access Concerns

The introduction of Federal Tax Information (FTI) to the FAFSA and other changes to the FAFSA data sharing provisions in the HEA add new layers of complexity for institutions trying to determine what uses and disclosure of student data are now permitted.

Applicant data privacy is of utmost importance and protecting that data is critical if applicants are to trust the financial aid system. However, many essential institutional activities rely on access to FAFSA and FTI data, including awarding of non-federal student aid, providing student support services, and conducting research to evaluate and improve the student aid programs. Data use and data sharing rules must balance privacy and access.

Unfortunately, ED has yet to issue guidance interpreting the new data use and data sharing rules. Without such guidance, we are unable to make specific recommendations on whether and how data use and data sharing provisions in the FAFSA Simplification Act and the FUTURE Act should be changed. If such a need is identified after ED releases guidance, we will make a request in a separate communication.

Any such changes could be implemented immediately without impacting the 2025-26 FAFSA cycle.

FUTURE Act Requested Amendments

Add Authorization for IRS to Disclose Amount of Foreign Tax Credit Claimed to ED

The foreign earned income exclusion is part of the Pell Grant eligibility formula, but is excluded from the list of tax return information the IRS can disclose to ED in Internal Revenue Code (IRC) section 6103(l)(13)(C), as amended by the FUTURE Act. As such, applicants must manually enter this information from their federal tax return, adding an unnecessary question to the FAFSA when the goal of FAFSA simplification was to reduce the number of required data elements.

We ask that Congress amend IRC section 6103(l)(13)(C) to authorize disclosure of this data element to ED for purposes of determining federal student aid eligibility.

Add Authorization for IRS to Disclose Amount of Earned Income Tax Credit Claimed to ED

The Earned Income Tax Credit (EITC) is part of the new automatic maximum and automatic minimum Pell Grant eligibility determination (to establish single parent status), but must currently be self-reported by the applicant because authorization for the IRS to disclose this information to ED is not provided in the FUTURE Act amendments to the Internal Revenue Code.

Requiring manual entry of a data element that is available from the IRS when the IRS is already disclosing other tax information for student aid eligibility purposes both goes against the intent and limits the full potential of the FAFSA Simplification Act. We ask Congress to amend IRC section 6103(l)(13)(C) to add the amount of the EITC to the existing list of tax return information the IRS can disclose to ED for the purpose of determining eligibility for federal student aid.

Conclusion

The amendments to the IRC and HEA made in the FUTURE and FAFSA Simplification Acts, respectively, have transformed the federal student aid application process and have the potential to reframe the historically negative narrative about the complexity of applying for financial aid, providing access to postsecondary education to potentially millions more Americans.

It is practically inevitable that even the most carefully crafted legislation may experience unforeseen implementation issues whenever changes impact so many areas, especially in this case where two separate laws are involved.

To fully harness the potential of the FUTURE Act and the FAFSA Simplification Act, we must ensure that the issues identified here don't undermine the intent of these two important laws. We appreciate the opportunity to share this feedback and welcome further discussion. Please contact Jill Desjean, Director of Policy Analysis, with questions at desjeanj@nasfaa.org.

Regards,

Justin Draeger, President & CEO