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The FUTURE Act (P.L. 116-91): Amendments to the Higher Education Act and Internal Revenue Code

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The FUTURE Act (P.L. 116-91): Amendments to the Higher Education Act and Internal Revenue Code

In December 2019, Congress enacted and the President signed the Fostering Undergraduate Talent by Unlocking Resources for Education Act (FUTURE Act; P.L. 116-91). The law primarily addresses three higher education issues:

Permanent authorization of grant funds for Historically Black Colleges and Universities (HBCUs) and Minority-Serving Institutions (MSIs). The law amends the Higher Education Act (HEA) to permanently authorize mandatory funding for grant programs to support HBCUs and MSIs. Authorization for this funding had expired after FY2019. Under the FUTURE Act, \$255 million in annual mandatory funding is authorized for “fiscal year 2020 and each fiscal year thereafter.”

Authorization of disclosure of Internal Revenue Service (IRS) data for the administration of specified federal student aid programs and other authorized purposes. The FUTURE Act amends the HEA and the Internal Revenue Code (IRC) to specify a process through which the IRS may be granted authorization to disclose limited information to specified *authorized persons* for the administration of certain federal student aid programs and other authorized purposes. Upon the Secretary of Education requesting and certifying that an individual and any applicable family members have approved the disclosure of their tax return information, the Secretary of the Treasury may provide their return information to any authorized person. The term *authorized person* is defined as any person who is a Department of Education (ED) officer, employee, or contractor and is specifically authorized and designated by the Secretary of Education to receive return information for the applicable permitted purpose under the law. Prior to this amendment, the IRS could not readily share return information directly with ED or associated parties. The law further amends the HEA to fully implement the disclosure process. The changes made by the FUTURE Act focus on three aspects of applying for and certifying eligibility for federal student aid benefits:

- *Applications and recertification for income-contingent or income-based repayment plans.* Student loan borrowers participating in income-contingent or income-based repayment plans for Direct Loans may authorize the IRS to disclose relevant return information to ED and other authorized persons for the purposes of applying for or recertifying eligibility to repay according to such plans. When a borrower authorizes disclosure, the authorization remains in effect in subsequent years unless the borrower withdraws authorization.
- *Post-discharge earnings monitoring under total and permanent disability (TPD) discharge.* Student loan borrowers who have had loans discharged on the basis of TPD may authorize the IRS to disclose relevant return information to ED and other authorized persons for the purposes of post-discharge earnings monitoring. When a borrower authorizes disclosure, the authorization remains in effect for the duration of the three-year post-discharge monitoring period or until the borrower withdraws authorization.
- *Completion of the Free Application for Federal Student Aid (FAFSA) and determination of eligibility for and the amount of federal student financial aid.* Students completing the FAFSA are required to authorize the IRS to disclose relevant return information to ED and other authorized persons for the purposes of establishing the student’s expected family contribution (EFC) and corresponding eligibility for federal student aid. In cases where determination of the student’s EFC considers the financial resources of the student’s parents or spouse, the applicable family members must also grant authorization to have their return information disclosed.

Increase in Pell Grant funding. The law increases mandatory appropriations for Pell Grants by \$25 million in FY2020 and each succeeding fiscal year.

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Overview and Policy Context

In December 2019, Congress enacted and the President signed the Fostering Undergraduate Talent by Unlocking Resources for Education Act (FUTURE Act; P.L. 116-91). The law primarily addresses three higher education issues:

- It amends the Higher Education Act (HEA) to permanently authorize grant funding for programs to support Historically Black Colleges and Universities (HBCUs) and Minority-Serving Institutions (MSIs). The law authorizes \$255 million in annual mandatory funding. Authorization for this funding had expired after FY2019.
- It amends the HEA and the Internal Revenue Code (IRC) to specify a process through which individuals and applicable family members may provide authorization for the Internal Revenue Service (IRS) to disclose certain federal income tax return information to the Department of Education (ED) and other authorized persons for the administration of financial aid programs. The law further amends the HEA to fully operationalize this process. Prior to this amendment, the IRS could not readily share return information directly with ED or associated parties.¹
- It increases mandatory appropriations for Pell Grants by \$25 million in FY2020 and each succeeding fiscal year.

HEA Programs for HBCUs and MSIs

Prior Status and FUTURE Act Provisions

Title III-F of the HEA authorizes \$255 million in mandatory appropriations for programs for HBCUs and MSIs.² The programs received this funding from FY2008 until the authority expired at the end FY2019. Section 2 of the FUTURE Act amends Title III-F of the HEA to permanently authorize mandatory appropriations for “fiscal year 2020 and each fiscal year thereafter.”

Program Overview

HBCUs and MSIs are institutions of higher education that tend to serve high concentrations of minority students and students with financial need. Many HBCUs and MSIs have faced challenges in obtaining financial support, affecting their ability to serve their students. Federal policy recognizes the role of such institutions and provides financial resources to them through several grant programs authorized under the HEA.³ These programs are supported by a combination of mandatory and discretionary appropriations.

¹ The Coronavirus Aid, Relief, and Economic Security Act, (CARES Act; P.L. 116-136), enacted March 27, 2020, made further amendments to certain provisions that had been amended by the FUTURE Act. Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-136, § 3516 (2020).

² These grants are nonexempt mandatory spending and are subject to sequestration under the Budget Control Act of 2011 (P.L. 112-25). In FY2019, grants were subject to a 6.2% reduction and the total post-sequestration funding level was approximately \$239 million. For example, see Department of Education, Fiscal Year 2019 Congressional Action Tables, pages 10-11, <https://www2.ed.gov/about/overview/budget/budget19/19action.pdf>.

³ For more information, see CRS Report R43237, *Programs for Minority-Serving Institutions Under the Higher Education Act*.

Table 1 presents the discretionary and mandatory appropriations for those HBCU and MSI programs that received mandatory funding in FY2019 and FY2020. The FY2019 appropriations were made prior to the enactment of the FUTURE Act and the FY2020 appropriations were made after its enactment.

Generally, the purpose of these programs is to assist institutions in strengthening their academic, administrative, and fiscal capabilities. Some examples of authorized uses of grant funds, which can vary across programs, are to support construction, maintenance, and improvement of instructional facilities; and the development and improvement of academic programs.

Table 1. Discretionary and Mandatory Appropriations for Select HBCU and MSI programs
(Dollars in thousands)

Program	FY2019 Appropriations		FY2020 Appropriations	
	Discretionary	Mandatory	Discretionary	Mandatory
Strengthening Tribally Controlled Colleges and Universities	\$31,584	\$28,140	\$36,633	\$28,230
Strengthening Alaska Native and Native Hawaiian Institutions	\$15,930	\$14,000	\$18,320	\$14,115
Strengthening Native American-Serving, Nontribal Institutions	\$3,864	\$4,690	\$4,444	\$4,705
Strengthening Asian American and Native American Pacific Islander-Serving Institutions	\$3,864	\$4,690	\$4,444	\$4,705
Strengthening Historically Black Colleges and Universities	\$282,420	\$79,730	\$324,792	\$79,885
Strengthening Predominantly Black Institutions (PBIs)	\$11,475	\$14,070	\$13,197	\$14,115
Hispanic Serving Institutions (HSIs) Science, Technology, Engineering, and Math (STEM) and Articulation ^a	N/A	\$93,800	N/A	\$94,100

Source: U.S. Department of Education, FY2019 Budget Tables, <https://www2.ed.gov/about/overview/budget/budget19/19action.pdf>; and FY2020 Budget Tables, <https://www2.ed.gov/about/overview/budget/budget20/20action.pdf>

Note: Mandatory funding levels are after sequestration under the Budget Control Act.

- a. The Developing HSIs program, a separate program for HSIs, received \$124,415,000 in discretionary appropriations in FY2019 and \$143,081,000 in discretionary appropriations in FY2020. Mandatory appropriations are not provided for the Developing HSIs program.

Historically, HBCU and MSI programs were funded only through discretionary appropriations. However, in 2007 the College Cost Reduction and Access Act (P.L. 110-84) provided mandatory appropriations for newly authorized and pre-existing MSI programs beginning in FY2008. Mandatory appropriations for the programs, totaling \$255 million annually, were extended through FY2019 under the SAFRA Act as part of the Health Care and Education Reconciliation Act (P.L. 111-152).⁴ For many MSI programs, mandatory funds are authorized for the same

⁴ In the House-passed version of H.R. 3221 in the 111th Congress, SAFRA was an acronym for the Student Aid and Fiscal Responsibility Act of 2009. In the final version, Title II of P.L. 111-152, the legislation was simply titled “SAFRA Act.”

purpose as discretionary funds. However, HSI STEM and Articulation and Strengthening PBI are not; these are mandatory programs authorized for unique purposes.

Sharing of Tax Return Information for the Administration of Federal Student Aid Programs

The FUTURE Act amends the IRC to specify a process by which the IRS, with the consent of the taxpayer, is authorized to disclose specified return information to ED and other authorized persons for the purposes of administering certain federal student aid programs and other authorized purposes. The FUTURE Act further amends the HEA to establish procedures at ED to operationalize these disclosures.

Policy Overview Prior to the FUTURE Act

Title IV of the HEA establishes a group of federal student aid programs. Eligibility for many of these programs is informed in whole or in part by federal income tax return information of the student and applicable family members.

IRC Section 6103 governs when and how the Department of the Treasury (Treasury) may disclose returns and return information to other federal agencies for purposes other than tax administration. IRC Section 6103(a) prohibits federal, state, and local government employees and certain other persons having access to returns and return information from disclosure unless a specific exception for such disclosure applies. Immediately prior to the enactment of the FUTURE Act, no exception explicitly permitted disclosure for the purpose of administration of federal student aid programs.⁵

In some cases, applicants completing the Free Application for Federal Student Aid (FAFSA) or borrowers completing an application or recertification for income-contingent or income-based repayment plans could utilize the IRS Data Retrieval Tool (DRT) to streamline data entry. The DRT allows a student and applicable family members to access their tax return information and transfer such information to the FAFSA or income-contingent or income-based repayment application. By using the DRT, tax data “flow through the consumer before being transferred[.]”⁶ ED has described the DRT as “a solution the IRS and the Department developed to fit the legal constraints around sharing tax information without explicit consent.”⁷

⁵ Under the previous version of IRC Section 6103(l)(13), which expired on December 31, 2007, Treasury could disclose return information to ED for the administration of income contingent repayment of student loans. The prior version of IRC Section 6103(l)(13) permitted Treasury to disclose return information to ED regarding a taxpayer who received an applicable student loan and whose loan payments were contingent on the taxpayer’s income. Treasury was authorized to disclose a taxpayer’s identity, filing status, and adjusted gross income. This information could only be used for the purpose of establishing the appropriate income contingent repayment amount. Since the prior version of IRC Section 6103(l)(13) expired, ED has obtained taxpayer consents under IRC Section 6103(c) to allow it and its contractors to receive return information from Treasury. *See* I.R.M. 11.3.29.7 (Sept. 1, 2009).

⁶ See testimony of James W. Runcie before the House Committee on Oversight and Government Reform, May 3, 2017, <https://www.govinfo.gov/content/pkg/CHRG-115hrg28504/pdf/CHRG-115hrg28504.pdf>. Since the information flowed through the consumer, it may have been considered as the taxpayer providing information rather than agency-to-agency data sharing.

⁷ *Id.*

Changes Made by the FUTURE Act

The FUTURE Act amends IRC Section 6103(l)(13) to authorize Treasury to disclose return information to ED and ED contractors under specific circumstances to carry out the HEA.⁸ The FUTURE Act amends the HEA to establish procedures for ED to obtain authorization from students and applicable family members, utilize disclosed information in specified federal student aid programs and for related purposes, and otherwise conform to changes in the FUTURE Act.⁹

According to the FUTURE Act amendments, if the ED Secretary certifies that an individual and applicable family members (e.g., parent(s), spouse) have approved the disclosure of their return information, the ED Secretary can request, and the Treasury Secretary can provide, return information to any *authorized person*. The FUTURE Act defines *authorized person* as any person who is an ED officer, employee, or contractor and is specifically authorized and designated by the ED Secretary to receive return information for the applicable permitted purpose under the FUTURE Act.¹⁰ The FUTURE Act's amendments to the IRC permit disclosure for the following three purposes: (1) administration of income-contingent and income-based repayment plans for Direct Loans; (2) monitoring earnings and reinstating loans discharged based on total and permanent disability (TPD); and (3) FAFSA completion and determination of eligibility for and the amount of federal student financial aid to be awarded.¹¹

Generally, the FUTURE Act's amendments to the IRC are drafted to limit disclosure to only the return information that is necessary for the implementation of the specified policy. The FUTURE Act does not permit the IRS to disclose an individual's complete tax return.

In cases where an individual who has authorized disclosure has filed a joint return, the FUTURE Act amendments specify that authorization of disclosure "with respect to an individual shall be treated ... as applying with respect to the taxpayer."¹² This language indicates taxpayer authorization solely relates to an individual taxpayer and not his or her spouse.¹³

The FUTURE Act amends a number of provisions of the HEA to operationalize the disclosures authorized by the amendments to the IRC. These amendments to the HEA establish procedures by which individuals can grant (or, in some cases, decline to grant) approval to have their return information disclosed to ED and other authorized persons. They establish procedures by which ED and authorized persons may utilize a prior year's approval to recertify an application by disclosing return information in a subsequent year as well as procedures through which a borrower can revoke approval.

⁸ The amendments to IRC Section 6103 became effective on the date of the FUTURE Act's enactment. *Fostering Undergraduate Talent by Unlocking Resources for Education Act*, P.L. 116-91, § 3, 113 Stat. 1189, 1192 (2019). The CARES Act made technical amendments to IRC Section 6103 for the purposes of carrying out the HEA. *Coronavirus Aid, Relief, and Economic Security Act* § 3516(a). The CARES Act amendments to IRC Section 6103 apply as if included in the enactment of the FUTURE Act. *Id.* § 3516(b).

⁹ *Fostering Undergraduate Talent by Unlocking Resources for Education Act* § 4-6.

¹⁰ 26 U.S.C. § 6103(l)(13)(E).

¹¹ *Id.* § 6103(l)(13)(A), (B), (C).

¹² *Id.* § 6103(l)(13)(F).

¹³ *Id.* The IRC defines *taxpayer* as "any person subject to any internal revenue tax" and states "'person' shall be construed to mean and include an *individual*, a trust, estate, partnership, association, company or corporation." *Id.* § 7701(a)(1), (14) (emphasis added); see 26 U.S.C. §§ 66, 6013, 6015.

Income-Contingent or Income-Based Repayment Plans

The *FUTURE Act* authorizes the Treasury Secretary to disclose return information for individuals who have granted approval of such disclosure for the purpose of, and to the extent necessary in, determining eligibility for or repayment obligations under HEA Title IV income-contingent or income-based repayment plans.¹⁴ The ED Secretary can request return information for any taxable year the ED Secretary deems relevant for such purposes.¹⁵ Authorized disclosures include (1) taxpayer identity information, (2) filing status, (3) adjusted gross income, (4) the total number of claimed exemptions, (5) the number of dependents taken into account for determining the Child Tax Credit under IRC Section 24, and (6) the fact that no return was filed (if applicable).¹⁶

The *FUTURE Act* amends the HEA to establish procedures by which a borrower in an income-contingent or income-based repayment plan, and, if applicable, the borrower's spouse, may provide approval to have specified return information disclosed to ED and other authorized persons.¹⁷ The *FUTURE Act* also establishes an alternative option by which the borrower, and, if applicable, the borrower's spouse, may provide such information directly to ED.¹⁸ In cases where the borrower grants approval to the IRS to disclose return information, such approval shall be ongoing until the borrower or the borrower's spouse withdraws it.¹⁹ The *FUTURE Act* directs ED to establish procedures for using this ongoing approval to automatically recertify a borrower's income and family size.²⁰

The loan repayment provisions of the *FUTURE Act* only apply to Direct Loans.²¹ They do not apply to Family Federal Education Loan (FFEL) Program loans, which were the precursor to the current Direct Loan program and which may also be repaid according to income-based repayment plans.²² FFEL loans have not been issued since 2010, but, as of the fourth quarter of FY2019 there were approximately 12 million FFEL active borrowers with aggregate outstanding balances of about \$262 billion.²³

Total and Permanent Disability Discharge

The *FUTURE Act* authorizes the Treasury Secretary to disclose return information for the purpose of, and to the extent necessary in, monitoring a borrower's earnings and, if necessary, reinstating HEA Title IV loans that were discharged based on TPD.²⁴ Loans may be reinstated if

¹⁴ *Id.* § 6103(l)(13)(A).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 20 U.S.C. § 1098h(a)(2)(A)(ii)(I).

¹⁸ *Id.* § 1098h(a)(2)(A)(ii)(II).

¹⁹ *Id.* § 1098h(a)(2)(A)(ii)(I). Since the amended HEA provisions require authorization from each spouse, a borrower who had an ongoing individual authorization and got married may need to submit a new application with authorizations from each spouse.

²⁰ *Id.* § 1087e(e).

²¹ 26 U.S.C. 6103(l)(13)(A) specifies that it applies to loans under Part D of Title IV of the HEA.

²² *Id.* The *FUTURE Act* also does not apply to Perkins Loans, which are not eligible for income-contingent or income-based repayment plans.

²³ See Department of Education, Federal Student Aid Portfolio Summary, <https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/PortfolioSummary.xls>.

²⁴ 26 U.S.C. § 6103(l)(13)(B); see 20 U.S.C. § 1087 (defining *total or permanent disability*); 34 C.F.R. § 685.213. In some cases, earnings monitoring may not be necessary. See CRS Report R45931, *Federal Student Loans Made Through the William D. Ford Federal Direct Loan Program: Terms and Conditions for Borrowers*.

the borrower's earnings exceed 100% of the poverty guideline for a family of two.²⁵ Loans may not be reinstated on the basis of non-earnings forms of income or on the basis of the earnings or income of the spouse of a borrower whose loans were discharged under the TPD provisions.²⁶

The ED Secretary can request return information for any taxable year the ED Secretary deems relevant for such purposes.²⁷ Authorized disclosures include (1) taxpayer identity information; (2) filing status; (3) the fact that no return was filed (if applicable); and (4) the amount of net earnings from self-employment, wages, and taxable income from a farming business.²⁸

The FUTURE Act amends the HEA to establish a process by which an individual who has had a loan discharged under the TPD provisions may grant approval to have information necessary for earnings monitoring under the TPD provisions disclosed from the IRS to authorized persons. The FUTURE Act specifies that the approval serves as ongoing approval of disclosures until the individual opts out of such disclosures, or the first day after the three-year period in which a discharged loan may be reinstated.²⁹

FAFSA Completion

The FUTURE Act authorizes the Treasury Secretary to disclose return information for the purposes of, and to the extent necessary in, completing the FAFSA and calculating a student's expected family contribution (EFC) to determine eligibility for and the amount of federal student financial aid under specific programs authorized by Title IV of the HEA (FAFSA completion provision).³⁰ The FUTURE Act restricts the ED Secretary to requesting return information from the taxable year used for purposes of determining federal student financial aid eligibility.³¹

All of the disclosures that are permissible under the income-contingent and income-based repayment plans and TPD provisions are permissible under the FAFSA completion provision.³² However, the EFC formula used to determine federal student financial aid eligibility considers substantially more financial indicators than the formulas used to determine income-contingent and income-based loan repayment and to monitor post-discharge earnings under TPD. Therefore, the following additional disclosures are also authorized: (1) the amount of total income tax; (2) the amount of any American Opportunity and Lifetime Learning Credits under IRC Section 25A; (3) the amount of individual retirement account distributions not included in adjusted gross income; (4) the amount of contributions and payments to self-employed SEP, Keogh, and other qualified plans that were deducted from income; (5) the amount of tax-exempt interest received; (6) amounts from retirement pensions and annuities not included in adjusted gross income; (7) the fact that Schedule A (itemized deductions), Schedule B (interest and ordinary dividends), Schedule D (capital gains and losses), Schedule E (supplemental income and loss), Schedule F (profit or loss from farming), or Schedule H (household employment taxes) were filed (if

²⁵ 34 C.F.R. § 685.213(b)(7)(i)(A) (specifying the poverty guideline is "published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2)").

²⁶ See 20 U.S.C. § 1087(a)(1); 34 C.F.R. § 685.213(b)(7).

²⁷ 26 U.S.C. § 6103(l)(13)(B).

²⁸ 26 U.S.C. § 6103(l)(13)(B); *see id.* §§ 263A(e)(4) (taxable income from a farming business), 1402(a) (net earnings from self-employment), 3121(a) (wages); *see also* Coronavirus Aid, Relief, and Economic Security Act § 3516(a)(5) (striking out IRC Section 236A(e)(4) and inserting IRC Section 263A(e)(4)).

²⁹ See 20 U.S.C. §§ 1087(a)(3), 1098h(a)(3).

³⁰ See 26 U.S.C. § 6103(l)(13)(C).

³¹ *Id.*

³² *Id.*

applicable); and (8) the amount reported on Schedule C (profit or loss from business) as net profit or loss (if applicable).³³

The FUTURE Act further amends the IRC to provide authorized persons with the power to re-disclose return information received for the purposes of determining federal student financial aid eligibility to (1) certain HEA Title IV-eligible institutions of higher education (IHEs), (2) state higher education agencies, and (3) scholarship organizations designated by the ED Secretary prior to enactment of the FUTURE Act.³⁴ ED is required to obtain the written consent of the taxpayer whose return information is being disclosed prior to re-disclosure to these third parties.³⁵ Re-disclosed information under this provision may only be used for the application for, awarding of, and administration of financial aid provided by the federal government or the designated third party.³⁶

The authorization for re-disclosure in the FUTURE Act mirrors established provisions in the HEA that specify that state agencies, IHEs, and other ED-designated entities may receive FAFSA information for the purposes of determining eligibility and awarding financial aid.³⁷

The FUTURE Act amends the HEA to require that students and “any parent or spouse whose financial information is required” provide approval for specified return information to be disclosed to persons authorized by ED for the purposes of applying for federal student financial aid.³⁸ The “any parent or spouse” language in the HEA suggests that for married couples, each spouse needs to provide authorization. Unlike the policy for borrowers in income-contingent and income-based loan repayment plans, granting approval is a condition of eligibility for federal student financial aid.³⁹

Additional Uses and Limitations

The FUTURE Act permits authorized persons to use return information disclosed for income-contingent and income-based loan repayment programs, TPD post-discharge monitoring of earnings, and FAFSA completion to be used for three additional purposes:

1. reducing the net cost of improper payments under income-contingent and income-based repayment plans, relating to certain federal student financial aid award programs under HEA Title IV, and relating to TPD discharges;
2. oversight activities at the ED Office of the Inspector General, as authorized by the Inspector General Act of 1978; and
3. conducting analyses and forecasts for estimating cost related to income-contingent and income-based repayment plans, certain federal student financial aid award programs under HEA Title IV, and TPD discharges.⁴⁰

³³ *Id.*

³⁴ *Id.* § 6103(l)(13)(D)(iii).

³⁵ *Id.* § 6103(l)(13)(D).

³⁶ *Id.* § 6103(l)(13)(D)(iii).

³⁷ *See* 20 U.S.C. § 1090(a)(3)(E).

³⁸ *Id.* § 1098h(a)(1).

³⁹ *Id.* § 1098h(a)(1), (2).

⁴⁰ 26 U.S.C. § 6103(l)(13)(D)(i).

The *FUTURE Act* further clarifies that this does not permit authorized persons to use return information for criminal investigations or prosecutions.⁴¹

The *FUTURE Act* amends other subsections in IRC Section 6103 to provide that the amendments to IRC Section 6103(l) are subject to existing general provisions that prohibit disclosure and specify recordkeeping and safeguard requirements to protect the confidentiality of disclosed information.⁴² In March 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136) made technical amendments to these provisions to address the responsibilities of third parties.⁴³

Changes to Pell Grant Funding

The Pell Grant program provides need-based financial grants primarily to low-income undergraduate students to help them cover the cost of higher education.⁴⁴ Pell Grants are the largest single source of federal grant aid for undergraduate students; they are projected to provide approximately \$30.4 billion in aid to roughly 7.1 million undergraduate students in the 2021-2022 award year.⁴⁵ The Pell Grant program is often referred to as a quasi-entitlement because, for the most part, students who meet the eligibility criteria receive payments, but the majority of funding is discretionary appropriations controlled through the annual appropriations process.

Each Pell Grant award that a student receives is comprised of a mandatory add-on award amount and a discretionary award amount. The mandatory add-on award costs are funded by a permanent, indefinite mandatory appropriation. The discretionary award costs are funded by (1) annual

⁴¹ *Id.* § 6103(l)(13)(D)(ii).

⁴² Fostering Undergraduate Talent by Unlocking Resources for Education Act § 3(b)-(c).

⁴³ IRC Section 6103(a) prohibits federal, state, and local government employees and certain *other persons* from disclosing returns and return information. Under IRC Section 6103(a)(3), other persons are prohibited from disclosing returns and return information if they had or have access to information pursuant to a designated provision. The Act amended IRC Section 6103(a) to make IRC Section 6103(l)(13) a designated provision. Fostering Undergraduate Talent by Unlocking Resources for Education Act § 3(b). The CARES Act removed IRC Section (l)(13) as a designated provision and made IRC Section 6103(l)(13)(A), (B), (C), and (D)(i) designated provisions instead. Coronavirus Aid, Relief, and Economic Security Act § 3516(a)(1). As a result, other persons having access to returns and return information under (D)(iii), the provision relating to re-disclosure to third parties, are not prohibited from disclosing returns and return information under IRC Section 6103(a). IRC Section 6103(p) imposes recordkeeping and safeguard requirements on the Treasury Secretary to protect the confidentiality of returns and return information. The CARES Act amends IRC Section 6103(p)(3) to require the Treasury Secretary to include IRC Section 6103(l)(13)(D)(iii) disclosure requests and disclosures in the Treasury Secretary's standardized system of permanent records on use and disclosure of returns and return information. Coronavirus Aid, Relief, and Economic Security Act § 3516(a)(2). Previously, the Act amended IRC Section 6103(p)(3) to require the Treasury Secretary to include all IRC Section 6103(l)(13) disclosure requests and disclosures in the standardized system. Fostering Undergraduate Talent by Unlocking Resources for Education Act § 3(c). Additionally, the CARES Act amends IRC Section 6103(p)(4) to require any other person described in IRC Section 6103(l)(13)(A), (B), (C), and (D)(i) to satisfy the Treasury Secretary's data safeguards as a condition for receiving returns or return information. Coronavirus Aid, Relief, and Economic Security Act § 3516(a)(4). Previously, the Act amended IRC Section 6103(p)(4) to require any other person described in IRC Section 6103(l)(13) to satisfy the Treasury Secretary's data safeguards as a condition for receiving returns or return information, including any person described in IRC Section 6103(l)(13)(D)(iii). Fostering Undergraduate Talent by Unlocking Resources for Education Act § 3(b)-(c).

⁴⁴ For more information on Pell Grants, see CRS Report R45418, *Federal Pell Grant Program of the Higher Education Act: Primer*.

⁴⁵ U.S. Department of Education, Department of Education Budget Tables, *FY 2021 President's Budget Request* (last updated February 10, 2020), available at <https://www2.ed.gov/about/overview/budget/tables.html?src=ct>.

discretionary appropriations; (2) permanent, definite mandatory appropriations; and (3) any accumulated Pell Grant discretionary funding surplus.

The FUTURE Act increases the Pell Grant permanent, definite mandatory appropriations by \$25 million in FY2020 and each succeeding fiscal year. The FY2020 appropriation increases from \$1,430,000,000 to \$1,455,000,000, and the permanent appropriation for FY2021 and each subsequent fiscal year increases from \$1,145,000,000 to \$1,170,000,000.⁴⁶ The FUTURE Act does not affect Pell Grant eligibility or award levels for students; it increases overall funding resources in future fiscal years.

Prior Versions of the FUTURE Act

Prior to the version of the FUTURE Act that was enacted (H.R. 5363), the House and the Senate independently passed different bills that would have extended HBCU and MSI funding and made other changes. Each bill shared a title with the FUTURE Act and used H.R. 2486 as the legislative vehicle.

House Version of H.R. 2486⁴⁷

On September 17, 2019, under suspension of the rules, the House passed H.R. 2486, which would have authorized \$255 million in mandatory appropriations for HBCUs and MSIs for each of FY2020 and FY2021. The House bill would have offset these costs by eliminating the authority to pay account maintenance fees to guaranty agencies under the curtailed FFEL program. The House bill would have rescinded a portion of mandatory appropriations for the Pell Grant program in FY2020 and increased Pell Grant funding in FY2025.

Senate Version of H.R. 2486

On December 5, 2019, via voice vote, the Senate passed an amended version of H.R. 2486, which would have authorized \$255 million annually in permanent mandatory funding for HBCUs and MSIs. The Senate bill would have made changes to the IRC that would have allowed the IRS to disclose information to ED and other specified parties for the purposes of administering specified federal student aid programs. The IRC provisions of the Senate bill were somewhat different from the IRC provisions in the enacted version of the FUTURE Act. The Senate bill would also have increased funding for Pell Grants in FY2020 and permanently thereafter.

⁴⁶ See 20 U.S.C. § 1070a(b)(7)(A)(iv).

⁴⁷ For more information on the House bill, see CRS Insight IN11172, *H.R. 2486, the Fostering Undergraduate Talent by Unlocking Resources for Education Act (the "FUTURE Act")*.

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