

I am most grateful to be permitted an opportunity to provide comments regarding the 2nd draft of the 2024-2025 FAFSA dated September 1, 2023.

For more than three decades, I have been the author of The Princeton Review's "Paying for College" annually-updated guidebook. In the past, some of the suggested language I provided to employees of the Department have been implemented. Additionally, for one year's form – at the time when millions of paper copies of the form were printed and mailed to schools and libraries - I detected an error with an IRS line reference in the early part of the print run and before any printed were shipped. The Department was most appreciative to me for pointing out the problem with the form, thereby avoiding a problem with erroneous information on the FAFSA.

In my comments that follow, there are a number of items I wish to address:

Item 1. Various problems with the ambiguous and confusing language in the Notes on page 22 of the second draft of the 2024-2025 FAFSA regarding the treatment of certain investments i.e. Coverdells, 529 plans, etc. Additionally, the text in the 2nd draft does not follow the law.

I realize that in the prior 60 -day comment period for the first draft, the issue was raised about such accounts owned for the benefit of other individual (for example, siblings of the applicant) not being required to be reported as an asset. After the comment period ended, various employees of the Department in response to questions raised in webinars indicated that such accounts need not be reported.

But now with this 2nd draft of the 2024-2025, the instructions on page 22 seems to be saying the opposite in some of the text. That is, include the value of such accounts for beneficiaries other than the applicant, but not the applicant. Though there is conflicting text in another sentence mentioning to include the value of accounts for all members of the household (which always includes the applicant.)

I believe that both the earlier position of the Department over the summer as well as the wording on the 2nd draft of the FAFSA do not follow the law.

The commenter for the 1st draft, the National Association of Financial Aid Administrators ("NASFAA") was correct when citing there being a mention of the treatment of these accounts in Section 480 (f) (3) (B) of the legislation in their submitted comments. However I believe the flaw in NASFAA's interpretation of the law involves the language in Section 480 (f) (1) of the law. In that section of the law, the language states that "The term 'assets' means.....qualified education benefits (except as provided in paragraph (3))....".

The key word in that part of the Section (f) (1) is the word "*except*".

NASFAA's interpretation of the law in its comments would indeed have been correct if the wording was instead "... (as provided in paragraph (3)) ...". In that case, then Section 480 (f) (3)

(B) would be the rule. Comment: Though if that were the wording (which it is not), then it follows there would have been no need for the law to mention qualified education benefits in Section 480 (f) (1) at all.

But the word "except" in Section 480 (f) (1) of the FAFSA Simplification legislation means that Section 480 (f) (1) is the general rule and that Section 480 (f) (3) (B) only covers one situation that overrides the general rule.

As such due to the word "except" being included in Section 480 (f) (1): All qualified education benefits are to be reported if owned by an individual required to report information on the FAFSA (in which case they are to be considered as an investment of that individual regardless of the beneficiary) except that if a dependent student owns such a qualified education benefit, then such a student-owned qualified educational benefit is to be considered an investment of the parent (and not an investment of the student applying for aid).

Therefore, the FAFSA Simplification legislation has not really changed anything in terms of how the value of such Coverdells and 529 plans are to be reported on the FAFSA when compared to the regulations in place for many prior years.

The only change with Simplification relating to these qualified education benefits involves distributions in the PPY year from such plans owned by others not required to report financial information on the FAFSA (for example, an account owned by a grandparent) as such distributions will no longer be considered untaxed income of the applicant starting with the 2024-2025 version of the FAFSA.

Unfortunately the new language on page 22 of the second draft of the FAFSA regarding what to include and what to exclude is ambiguous and contradictory. And that new language seems to draw distinctions between Coverdells Education Savings Accounts (ESAs), 529 prepaid plans and 529 savings plans in their treatment.

This new language in the second draft of the FAFSA is all being promulgated even though the FAFSA Simplification legislation does not mention any of these carve-outs involving accounts to be excluded. For ease of reference: I have attached another PDF file with the relevant parts of page 22 of the FAFSA draft and the relevant part of the legislation involving the key parts of section 480 highlighted on both pages.

The FAFSA instructions on page 22 regarding these accounts have other problems as well, that include:

* The use of the abbreviation e.g. since e.g. is a Latin abbreviation for the words "exempli gratia" which mean "for example". This abbreviation is used that widens the description of the item. That is, some examples are given but the list is not complete. So an applicant could assume there are other types of accounts covered, when the legislation is very specific when defining those accounts that are qualified tuition benefits. The Latin abbreviation i.e. is an abbreviation of "id est" which translates to mean "in other words". I.e. narrows the description to better define only those items that meet the parameters of the term before the i.e.

abbreviation. Therefore, i.e. should be used and only the types of the accounts mentioned in the law should be included after the abbreviation.

* Mentioning accounts owned by the parents "for any member of the household" is another problem. Such wording means that accounts owned by a parent for someone not a member of the applicant's household are then to be excluded. The law does not provide for any such exclusion of these accounts for non-members of the household.

* The wording about not including 529 plans if the student is the beneficiary makes no sense in the next paragraph covered the various assets not to include, given the text at the end of the prior paragraph on page 22 of the draft.

If something is to be written in that paragraph about these accounts it would be to not include qualified education benefits if the student is the beneficiary of an account owned by someone not required to report their financial information on the FAFSA. underlined). And if such language is to be included in that paragraph regarding excluded assets, the text should be changed to refer to qualified education benefits (and not just 529 savings plans).

* Regarding Coverdell Education Savings Accounts ("ESAs"): the text on page 22 of the 2nd draft of the FAFSA is also problematic.

The Coverdell ESAs are different than 529 plans in terms of ownership. That is, with a 529 the owner retains ownership unless an election is made to change the ownership at a later date (or the ownership changes due to the death of the owner). With Coverdells, generally a parent or grandparent is the owner while the beneficiary is a minor. But then things get complicated once the beneficiary reaches the age of majority in their state of residence. Unless an election was made for the initial owner to retain ownership of the Coverdell after the beneficiary reaches the age of majority (with such election needing to be made when the Coverdell was established), the ownership of the Coverdell ESAs will then automatically pass to the student when the student reaches that age of majority defined by their state. The FAFSA instructions to exclude "educational savings accounts for other children" does not follow the law if any other said child is still a minor. For a minor child, the Coverdell would still be the asset of the parent (if the parent is the owner). Perhaps the Department was not aware of this quirk with Coverdell ownership (which is not well known).

And one has to also wonder what the words "education savings accounts" mean on page 22. Is it referring only to Coverdell Education Savings Accounts - given non-prepaid 529s are known as "savings plans" (and not "educational savings accounts" even though one's plan bears an account title e.g., Name of Owner FBO Name of Beneficiary. Or does the term "education savings accounts" include something else in addition to Coverdell ESA – though some other type of education savings account would not be a qualified education benefit.

Note: The term in the law is "qualified education benefit", so the word "educational" on page 22 of the draft is not the proper middle word to use.

Because the text on page 22 regarding qualified education benefits is so problematic - and more important, does not follow the law - here is some suggested text that follows the letter of the law for you to consider using instead:

Investments also include qualified education benefits [i.e. any Coverdell Education Savings Accounts (ESAs), 529 savings plans, 529 prepaid plans or other prepaid tuition plan offered by a State]. With one exception, the current value of any qualified education benefit owned by an individual required to report information on this application is to be reported as the asset of the current owner, regardless of the beneficiary. Exception: The value of any qualified education benefit owned by a dependent student required to report parent information on this form should be reported as a parental investment in questions 40 (and not reported in a student investment in question 22).

Item 2: An additional question to add. In the responses to the comments published by the Department in September 2023 “60 Day Comment Response Summary”, the Department’s response to the first comment cites “The Department is permitted to only ask questions that are required either a) aid in determining aid eligibility....”

The question I am proposing to be added is therefore permitted under the law because it aids in determining aid eligibility for SEOG, federal Work-study, and a subsidized Direct Loan, and possibly the amount of the Pell Grant if the student will not receive the minimum or maximum Pell Grant.

And indeed, the text in the middle of the left column on Page 3 in the section “How much student financial will I receive/” also clearly indicates that this question needs to be added as financial need is defined as the difference between the cost of attendance and one’s SAI. Then text in the first sentence alludes to the “information on the FAFSA>

Given the financial aid administrator needs to know the proper cost of attendance, a question needs to be asked about the housing option. In this way, “information on the FAFSA” can be used by a college’s financial aid office to determine the proper Cost of Attendance and therefore the financial need of the student. There is no doubt this would fit the criteria to be permissible to be asked as it would “aid (the financial aid office) in determining aid eligibility” for federal aid programs. Page 3 of the draft also mentions the student’s college will be responsible for determining the amount of aid. Therefore, the aid office clearly needs this information on the student’s FAFSA.

In summary, this question is permitted to be asked under the law and should be added.

Item 3: The response oval with the pre-printed minus sign involving the tax return information for the student, the student’s spouse, the parent, and the parent’s spouse /partner for the identical question involving the “Foreign earned income exclusion”. Unlike other questions in the income tax return information sections that have this oval with a minus sign to the left of the response area for one to list the dollar amount in which a response can be a positive or a negative number (and so needs to be designated if it is a negative number by filling in the oval), the

foreign earned income exclusion can only be a negative number on the tax return (which is why the IRS has printed parentheses for line 8d on Schedule 1).

The oval with the minus sign is therefore unnecessary – and its inclusion will only add to confusion. To clarify this item, it would be beneficial to add text such as: “List as a positive number” after the IRS line reference text on the FAFSA.

Item 4: Other miscellaneous issues.

* The text at the top of Page 1 regarding deadlines for the school having the information does not follow current Department policy in which the only requirement is for the FAFSA to be processed with an EFC appearing on the SAR. The information need not be correct, just true and complete to the best of one’s knowledge and the school need not be listed. The wording should be changed because of this. And the wording is also misleading because it implies one can drop of the completed aid form at the financial aid office of the school by the end of the enrollment period.

* In that same section, it would be better to add the comment about the online filing at the beginning of that text.

Submitted by Kalman Chany on October 15th with additional attachment