



Background on the Higher Education Act Drug Provision

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Issue

Added in 1998 as an amendment to the Higher Education Act (HEA), the drug provision (section 484(r), also known as the “Aid Elimination Penalty”) excludes students with drug convictions from receiving federal financial aid to attend institutions of higher learning. The provision has, in effect, disqualified a large number of low- to middle-income students -- all of whom have already been punished by the criminal justice system -- from receiving federal aid to attend college for what are often relatively minor drug offenses, including misdemeanor possession of marijuana. To date, more than 180,000 financial aid applicants have been denied aid as a result of the Drug Provision.

Background on HEA

The Higher Education Act (HEA) was a measure originally enacted by Congress in 1965 under President Lyndon Johnson with the goal of “... expand[ing] postsecondary education opportunities, particularly for low-income individuals, and to increase the affordability of postsecondary education for moderate-income families.” Last reauthorized in 1998, the HEA continues to fund educational aid for students in the form of Pell Grants, Federal Work-Study Programs, Stafford and PLUS loans, loan forgiveness programs, and other programs that improve educational opportunities for historically underserved populations.

The Drug Provision

The 1998 reauthorization of the HEA included a new provision that blocked college opportunities to students revealing drug convictions on their Free Application for Federal Student Aid (FAFSA). It provides that a student’s eligibility for aid is suspended or revoked according to the schedule specified in the following table:

If convicted of an offense involving—

The possession of a controlled substance	Ineligibility period is:
First offense	1 year
Second offense	2 years
Third offense	Indefinite
The sale of a controlled substance	Ineligibility period is:
First offense	2 years
Second offense	Indefinite

In January 2006, the provision was scaled back to apply only to offenses committed while the individual was in school and receiving federal Title IV aid. The provision also provides that a student may resume eligibility for aid if that student satisfactorily completes a drug rehabilitation program that meets *certain requirements* prescribed by regulation.

When filling out the FAFSA, Question 31 asks applicants to indicate if they have ever been convicted of “possessing or selling illegal drugs.” If an applicant’s answer is anything other than “no,” the applicant is then required to fill out a worksheet to determine if and when the applicant will resume eligibility for federal student financial aid.

Harms caused by the HEA Drug Provision

It punishes students twice for the same crime.

Students being denied aid have already paid their price to the criminal justice system. It doesn’t make sense to continually punish young people in such a way that limits their ability to get an education and improve their lives. Additionally, judges handling drug cases already have the power to deny drug offenders federal benefits, and school administrators have the power to expel problem students. These are the people who know the students best, and they should be the ones who decide their educational futures – not the federal government.

It hurts lower-income families.

Denying financial aid to students hurts only those students who need the aid, namely, children of lower-income families. Children of the well-to-do need not worry about losing their college opportunities—they can afford the quality legal representation necessary to avoid drug convictions as well as the price of tuition without financial aid. Young previous offenders are likely to be adversely affected by setbacks like the inability to raise money for tuition, and may be sent into a downward spiral toward failure.

It has a discriminatory impact.

In New York State, almost 95% of those in prison for drug offenses are people of color, despite the fact that whites constitute both the racial majority and the majority of drug users. According to The Sentencing Project, African Americans—who comprise approximately 13% of the population and 13% of all drug users—account for more than 55% of those convicted for drug offenses. There is no reason to believe that the disproportionate racial impact of drug law enforcement won’t spread into the realm of higher education via this law.

It steers at-risk students away from education and into a cycle of failure and recidivism.

Forcing students to leave college as a result of having lost their financial aid discourages them from returning to finish their degrees. According to statistics released by the U.S. Department of Education, 36% of those who left four-year institutions after their first year *did not* return within five years; 50% leaving two-year institutions did not return within five years.

Further, college enrollment reduces the likelihood that an individual will return to engaging in illegal activity. According to the Federal Bureau of Prisons, there is an inverse relationship between recidivism rates and education. The Correctional Education Association also reports that prisoners who receive at least two years of higher education have a 10% arrest rate, compared with a national re-arrest rate of about 60%. Denying education to low-income and at-risk students only dooms them to a life without the financial opportunities bestowed by a college degree and makes them more likely to repeat the poor choices they may have made in the past.

It does not support the drug abuse treatment programs in which it purportedly seeks to enroll students.

Studies reported by the White House Office of National Drug Control Policy (ONDCP) show that for every \$1 spent on treatment, \$7 is saved in criminal justice, health care, or welfare costs that otherwise would be borne by society. However, treatment accounts for less than 15%

of the drug control budget; consequently, most of those who need it don't get it. While financial aid can be restored after successful completion of a qualifying treatment program, the provision does not allocate any money for such treatment. The same students who can't afford college without public aid are also likely to not be able to afford private treatment, much less to afford the cost in time off from work or school necessary to participate in such programs.

It will not solve our nation's drug problem.

The goal of the Higher Education Act is to make it easier, not more difficult, for all students to obtain a full education. To limit the number of deserving students eligible for federal aid is counterproductive. Denying students the opportunity for a college education brings us no closer to solving the nation's drug problem. The Drug Provision is neither a deterrent to drug use nor a measure which provides for the rehabilitation of those with addictions.

It ignores the major drug problems on college campuses.

The major drug problem in this country—on campuses and elsewhere—is alcohol abuse. However, no one seriously suggests that revoking eligibility for financial aid would be a sensible approach to that very serious problem, even though drinking is also an illegal activity for the great majority of college students – those under 21 years of age. Additionally, the treatment provision is overly-broad and fails to distinguish between casual use and serious abuse. That a student has been caught smoking a joint, for example, is no more an indicator of addiction than underage drinking is an indicator of alcoholism.

Join us in calling on Congress to repeal the harmful and unjust HEA drug provision. Hundreds of thousands of students should not have to wait any longer to continue their education and become productive and successful members of society after graduation.



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