



The Commonwealth of Massachusetts  
House of Representatives

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Dear Friends:

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West Campus,  
MIT*

Everyone should be able to have an education. Education is not only for personal fulfillment, it is a major contributor to societal well-being. I am not alone in acknowledging that providing educational opportunities to at-risk young people not only provides them with a chance to succeed, but that it also reduces rates of criminal activity. The Coalition for Higher Education Act Reform's (CHEAR) report on drug convictions and eligibility for state financial aid offers state legislators the information they need to ensure that students in their state are able to afford school, despite any past mistakes. As a Massachusetts state legislator since 1983, I have worked hard to ensure that students in Massachusetts are given the tools necessary, including the financial assistance, to attend postsecondary institutions in the Commonwealth of Massachusetts. This report summarizes the impact of the Higher Education Act (HEA) Drug Provision on all our state financial aid programs. And it goes on to provide creative solutions for state legislators and activists to ensure that students regain financial aid that is in jeopardy.

The Higher Education Act (HEA) Drug Provision is harmful on a number of levels and is particularly harmful to minority and low-income populations. The Higher Education Act, as signed by President Lyndon B. Johnson, was intended to help more low-income students achieve their goal of a higher education. Students from low- and middle-income backgrounds rely on financial aid to attend school and are unfairly targeted by this policy. Minority populations are also more likely to be affected by the Drug Provision because of the over-representation in the criminal justice system. In federal courts, 43% of those convicted of a drug offense are Hispanic and 29% are African American. In state courts, 53% of those convicted of a drug offense are African American. It is unfair to target those students who need our help the most after they have been adjudicated.

The Drug Provision explicitly applies only to federal financial aid. Unfortunately many states simply follow the federal eligibility guidelines out of convenience, when they could make state financial aid dollars available to persons with drug convictions. It is our responsibility as legislators to try and correct this inaccurate federal ban and reinstate state financial aid to these students. The information provided in this report details how each of the 50 states determine eligibility for state aid for students with drug convictions.

I strongly urge state legislators to read this report and to reinstate financial aid to students in their state. We must invest in our future and work towards more sensible education and drug policies so that we do not deny thousands of students the chance at a bright future.

Yours truly,

  
Byron Rushing  
State Representative

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# Executive Summary

Enacted in 1998, the Higher Education Act (HEA) drug provision<sup>1</sup> has since July 2000 delayed or denied federal financial aid for college to more than 180,000 persons convicted of drug offenses.<sup>2</sup> While states are not bound to mimic federal criteria in assessing an applicant's eligibility for state financial aid programs, many states make use of the U.S. Department of Education's Free Application for Federal Student Aid (FAFSA)<sup>3</sup> determinations to decide eligibility for state financial aid programs. As a result, a majority of states deny educational funding to some or all would-be students with drug convictions, even though their legislatures in most cases have not voted to do so. Many state agencies and administrators are unaware that their reliance on the FAFSA form has resulted in the denial of state aid to persons who could otherwise be eligible, and a growing number of states have taken or are considering steps to rectify the problem.

States fall into three categories with respect to how they handle financial aid applications from individuals affected by the HEA drug provision (Question 31 on the FAFSA):

**RED:** 24 states deny state-based resources to applicants who are ineligible for federal financial aid, meaning persons with drug convictions also lose state aid. Seven states have adopted laws explicitly denying aid to persons with prior drug or other criminal convictions; in other states it is solely a matter of administrative convenience or agency policy.

**YELLOW:** State financial aid offices in 11 states allow the determination of an applicant's eligibility to be decided by the individual school that the applicant wishes to attend. In this "decentralized" approach, each school determines on its own how it deals with drug convictions that trigger the federal ban – they either rely on federal eligibility determinations and deny state aid as well, or they ignore question 31 on the FAFSA and award state based aid based on other criteria.

**GREEN:** State financial aid offices in 15 states and the District of Columbia now or will soon ignore the drug conviction question when evaluating an applicant's eligibility by using a separate application or by ignoring responses to Question 31.

Legislatures, executive branches, state agencies, and postsecondary institutions wishing to act on this issue have the following measures available to them:

- Legislatures can mandate that state financial aid resources be made available to applicants irrespective of drug convictions.
- State agencies or schools making financial aid decisions can set up alternatives to the FAFSA in order to provide aid to financially eligible students with drug convictions, assuming state law does not mandate denial of aid because of drug convictions or strict adherence to federal financial aid determinations.
- Legislatures and institutions can adopt resolutions calling on the U.S. Congress to repeal the HEA drug provision.

# Purpose of This Report

The drug provision of the Higher Education Act expressly denies federal aid to persons convicted of state or federal drug offenses for specified periods of time.<sup>4</sup> However, the law offers no prescribed method by which states should determine eligibility for state financial aid. This has led to inconsistency and confusion among state financial aid offices, leaving many qualified applicants without the resources they need to go to college, and many financial aid officers believing, incorrectly, that they must deny aid to students who have been convicted of drug offenses simply because the federal government has done so.

This report details the findings of research conducted on how the 50 states and the District of Columbia determine eligibility for state-based financial aid for persons who have reported having drug convictions on Question 31 of the Free Application for Student Financial Aid (FAFSA). The report also makes recommendations for how states can clarify the situation so that students losing federal aid because of drug convictions can still receive state aid.

## Methodology

To compile the information provided in this report, researchers contacted the agencies in the 50 states and the District of Columbia that deal with financial aid at the state level. Interviews were conducted at the governmental and institutional levels. State financial aid administrators, typically employed by their state's financial aid agency, provided answers for how their state deals with drug convictions in determining eligibility for state financial aid. In states where the state agency lets individual institutions determine eligibility, researchers then contacted the largest universities in the state to see if they denied state aid to students with drug convictions. In states where agency level officials reported that students with drug convictions were eligible for state aid, researchers then contacted institutional financial aid administrators to see if it actually works the way agency officials reported. States were then organized into four different categories, described below. Statutes and written state agency policies relating to this question were extensively researched and are cited.

CHEAR also examined the education sections of the Codes of 24 states found to be denying state-based financial aid, in order to assess whether a given state has statutory obstacles to restoring state financial aid to students with drug convictions. We have not at this time studied state criminal justice codes to see how they might interact with eligibility for state-based educational aid, nor have we examined the education codes for states found not to be denying aid to students with drug convictions.

## Background

The Higher Education Act (HEA) of 1965, as reauthorized in 1998, delays or denies federal financial assistance for higher education (subsection (r) of section 484) to anyone who has been convicted of either sale or possession of illicit drugs in state or federal court.<sup>5</sup> The law explicitly applies only to Title IV federal financial aid. According to data from the U.S. Department of Education, the HEA drug provision, at the time of this writing, has affected more than 180,000 would-be students since taking effect in July 2000.<sup>6</sup> The law is estimated to have cost students between \$41 million and \$54 million in Pell Grants and between \$100 million and \$164 million in federal loans per year.<sup>7</sup>

The drug provision has proven controversial. Since 1998, when the law was enacted but before it took effect, a wide range of education, civil rights, religious, criminal justice and other organizations have criticized the policy.<sup>8</sup> At the time of this writing, more than 250 organizations nationwide as well as 115 student governments have called for its full repeal. The Advisory Committee on Student Financial Assistance, a congressionally-appointed body, identified the drug question as a factor making the financial aid process more cumbersome for applicants, and last year recommended it be removed from the FAFSA.<sup>9</sup> The law has also found an unlikely critic in its own author, Rep. Mark Souder (R-IN), who claims the law has been misinterpreted and was intended to apply only to people who were in school and receiving Title IV aid when they committed their offenses. Officials in both the Clinton and Bush administrations, however, have rejected this interpretation based on the statute’s actual wording. Language included in the Deficit Reduction Act of 2005, passed by the Senate and now pending a second time in the House of Representatives at the time of this writing, would limit the reach of the law in that way.<sup>10</sup>

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**Over 180,000 would-be students have been denied financial aid for college because of drug convictions since the fall 2000 semester**

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In order to enforce this law and determine whether students are eligible for aid, the Department of Education added a question to the 2000-2001 school year’s FAFSA application, which reads:

**Has the student ever been convicted of possessing or selling illegal drugs?**

Applicants who answer “yes” to this question are sent a supplemental worksheet to determine the length of time, if any, that they are ineligible to receive federal aid. There is no further explanation of the question on the initial form, though the supplemental worksheet explains that students should “Count only federal or state convictions. Do not count convictions that have been removed from the student’s record. Do not count convictions that occurred before the student turned 18, unless the student was tried as an adult.”<sup>11</sup>

Misconceptions about the law are commonplace, not only among potential applicants but even in some financial aid departments, with the result that many eligible would-be students have undoubtedly been unfairly deterred from seeking aid. For example, many people assume or believe that any drug conviction makes a would-be student permanently ineligible. In fact the duration of ineligibility depends both on the number and type of an individual’s drug convictions. The law as enacted provides a table outlining the periods of ineligibility as follows:

If convicted of an offense involving—

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

Additionally, the law provides for restoration of financial aid eligibility upon completion of a federally-recognized drug treatment program that fulfills certain requirements.<sup>12</sup>

# Drug Convictions and State Financial Aid

Neither federal law, the FAFSA form, nor the Department of Education provide rules or guidance to states in determining eligibility for state financial aid programs for persons with drug convictions – the HEA neither directs nor explicitly encourages states to follow the federal drug provision when making their own financial aid determinations. However, many states rely on the FAFSA form, results from which are sent to them by the federal government, in determining each applicant’s state financial aid package.

As a consequence, most states are denying aid to some or all would-be students affected by the drug provision, even though their legislatures have never voted to adopt that policy. Only seven states have laws on the books to explicitly deny state financial aid to persons convicted of drug or other criminal offenses. The other 17 that deny aid to students with drug convictions simply do so out of administrative convenience by putting applicants who are denied federal aid in the same pile with respect to state aid. Other states, by contrast, have taken extra steps to ensure that aid applicants are able to receive an education regardless of their prior offenses.

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**35 states exclude some or all persons with drug convictions from state financial aid programs, even though only seven of their legislatures have voted to adopt that policy.**

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There are four methods by which states are dealing with the HEA drug provision in terms of distributing state aid. States fall into one of the four following groups:

**GROUP A (red):** 17 states rely uniformly on the federal Department of Education’s FAFSA eligibility determinations. By not distinguishing between ineligibility for federal aid for financial reasons from ineligibility due to drug convictions, these states are in effect denying state financial aid to students with drug convictions, but without the legislature’s explicit authorization. Reliance on the FAFSA may be written into a state’s administrative rules or regulations, such as in Tennessee<sup>13</sup>, or may simply be a matter of an agency’s internal methods. Some states’ codes, such as Rhode Island<sup>14</sup> or Utah<sup>15</sup>, statutorily grant state agencies the authority to set standards of eligibility in regards to state financial aid. There is no specific reference in these statutes, however, to drug-related or other offenses.

**GROUP B (yellow):** 11 states use a decentralized method of determining state aid awards, meaning that they pass state financial aid decisions on to individual institutions. Some of these states technically allow state aid to students with prior convictions, but do not have a system in place to ensure this is done properly. Some may also have students sign a drug-free pledge when they receive state grants, but do not have strong enforcement mechanisms.

**GROUP C (green):** 15 states and the District of Columbia either separate applicants who have been denied aid by the federal government due to prior drug offenses from those who have been denied aid because they are financially ineligible and consider them for state aid packages irrespective of prior drug convictions, or simply do not use or require the federal financial aid application.

**GROUP D (red):** The following states have their own statutes explicitly denying financial aid to students with drug convictions:

**Delaware:** One of the state’s financial aid programs, the Delaware Student Excellence

Equals Degree (SEED) Act, makes any person convicted of a felony offense ineligible.<sup>16</sup>

**Florida:** The Florida Bright Futures Scholarship, which is the largest in-state financial aid program, is not available to persons with a felony conviction on their record.<sup>17</sup>

**Georgia:** The Drug-Free Postsecondary Education Act of 1990 not only denies aid to students convicted of felony drug offenses at all higher education institutions in the state, but also suspends students from attending public postsecondary institutions, following such a conviction.<sup>18</sup>

**Louisiana:** The Revised Statutes of 1950, Title 17 section 3048.1(f), as relating to the Louisiana Tuition Opportunity Program for Students (TOPS) requires that a student “Has no criminal conviction, except for misdemeanor traffic violations and, if the student has been in the United States Armed Forces and has separated from such service, has received an honorable discharge or general discharge under honorable conditions.”<sup>19</sup>

**South Carolina:** The largest state higher education grant in South Carolina denies aid to all persons with drug and alcohol convictions, no matter how serious the offense, as well as all persons with felony convictions.<sup>20</sup>

**South Dakota:** According to a 1997 statute, students convicted of drug offenses that would constitute a felony under South Dakota law are denied access to state sponsored scholarships.<sup>21</sup>

**Texas:** A 1999 statute blocks aid from three grant programs administered by the State of Texas (including two of the state’s largest programs) from going to any person with a criminal conviction until two years after they have completed their sentence.<sup>22</sup>

## State Reform Efforts

In addition to the states already allowing persons with drug convictions to receive state aid, a number of states have measures currently underway or under consideration.

## State Legislative Measures

**Rhode Island – De-Linking State and Federal Aid:** In 2005, a bill, HB 6134, was introduced by Rep. Joseph Almeida (D) and two cosponsors in the 2005 session of the Rhode Island House of Representatives that would ensure that students are able to receive state financial aid even if they have been convicted of a drug offense and are ineligible for federal aid.<sup>23</sup> The bill would not only restore state aid to such students, but would also provide state funding to make up for an applicant’s lost federal aid. The bill is expected to be reintroduced this legislative session.

**South Carolina – Restoring State Aid:** During the 114th Session of the South Carolina General Assembly, a bill to amend the LIFE Scholarship and Tuition Tax Credit eligibility requirements, H. 4750, was introduced by Reps. R. Brown, Moody-Lawrence and F.N. Smith. H. 4750 would have amended sections 12-6-3385 and 59-149-90 of the South Carolina Code

of Laws to allow students with alcohol or drug-related convictions to be eligible for the LIFE Scholarship and the Tuition Tax Credit programs.

**Delaware and Arizona – Concurrent Resolutions:** The 142nd General Assembly of Delaware passed a resolution, HCR 78, calling on Congress to repeal the federal ban on financial aid that exists in the Higher Education Act.<sup>24</sup> The resolution was bipartisan and passed the state House unanimously and the Senate almost unanimously. A similar resolution was introduced in the Arizona State Legislature, HCM 2004 by Rep. David Bradley (D), during this past legislative session, and was approved in committee, but did not make it to a vote on the floor.<sup>25</sup>

While such resolutions are helpful in drawing attention to the HEA Drug Provision and encouraging Congress to reform or repeal it, they do not change the situation for potentially thousands of students in each state who may be denied both federal and state aid. For example, in Delaware, would-be students are still losing state financial aid because of drug convictions, as the Delaware Higher Education Commission still uses federal aid determinations in deciding state aid awards.<sup>26</sup>

Legislators in several other states are considering offering legislation at the time of this writing.

## Executive Measures

**New Mexico** - At the encouragement of Governor Bill Richardson, the New Mexico Higher Education Department is currently working to create an alternate aid application form for applicants whose FAFSA would be rejected because of a prior drug conviction or other non-need based factor.

Prior to this revision, students were not banned outright from receiving state aid if they had a prior drug offense, but applications from students who were denied federal aid were not making it to institutions, indicating that many applicants were falling through the cracks. When this was brought to the attention of Gov. Richardson and the New Mexico Commission on Higher Education, officials were concerned to discover that students were being denied their right to state aid simply because of the federal law.

Though the New Mexico Higher Education Department is still in the process of developing a waiver form that students with drug convictions may complete instead of the FAFSA, it is expected that the alternate form will result in many more students attending institutions of higher learning in New Mexico. The state Lottery Scholarship offers full funding to students with a diploma from a New Mexico high school or a GED, but until this waiver form was discussed, students were forced to apply for federal aid in order to receive the state scholarship, and were thereby indirectly losing eligibility for it.<sup>27</sup>

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**15 states and the District of Columbia provide aid to students irrespective of drug convictions. Creating their own application forms and analyzing tax returns are among the methods being used to assess financial need**

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# Policy Recommendations

There are several different methods policymakers can use to ensure would-be students with drug convictions receive state financial aid to assist them in the positive life steps of beginning and completing their education.

## Recommendations to State Legislatures:

- Legislatures should mandate that executive branches provide state financial aid for college to all financially eligible applicants irrespective of drug convictions.
- Legislatures should either repeal laws that tie state financial aid eligibility to federal eligibility requirements, or enact exceptions to permit state aid to go to persons affected by the HEA drug provision.
- Legislatures should repeal any laws that explicitly bar state college aid to persons with drug convictions.
- Legislatures should adopt resolutions calling on Congress to fully repeal the HEA drug provision.

## Recommendations to Executive Branches:

- State financial aid agencies, where permitted by state law, should implement systems (such as alternate forms to the FAFSA) to ensure that persons with drug convictions can be eligible and processed for state financial aid. Such forms should not include questions about prior drug convictions; should be readily available in all financial aid offices along with the FAFSA; and should be accepted as a valid application for all state financial aid programs.
- State financial aid agencies should examine the feasibility of making up for lost federal aid for students affected by the HEA drug provision.

## Recommendations to Educational Institutions:

- Educational institutions in states that delegate financial aid decisions should establish systems to ensure that persons with drug convictions can receive state and institutional financial aid.
- Educational institutions in all states should proactively educate their student bodies and applicant pools on the details of the HEA drug provision; encourage all would-be students to complete the financial aid application process even if they have a drug conviction; and advise them that their drug convictions may not make them ineligible for all financial aid.
- Educational institutions should carefully review their financial aid publications and web sites to ensure that they are not disseminating inaccurate information about drug convictions and financial aid that could dissuade eligible applicants from applying.

## Recommendations to the U.S. Department of Education:

- The Department of Education should complete processing of the FAFSA for applicants affected by the drug provision and provide information to them and their schools and states on the financial aid awards they would have received if the drug provision had not made them ineligible. This would facilitate the work of states and schools wishing to provide their own financial aid to those students.
- The Department should also release state-by-state breakdowns on the number of applicants, and amounts of aid denied under the drug provision, and other available related data including socioeconomic status.

# Conclusion

The federal Higher Education Act drug provision affects each state’s financial aid system differently, depending on how the various state agencies and institutions involved utilize the Free Application for Federal Student Aid (FAFSA) form in determining eligibility for state aid. These findings indicate that while most states are similarly denying state aid to persons with drug convictions, this is an oversight or matter of administrative convenience more often than deliberate policy. There is interest at both the executive and legislative level in de-linking state financial aid systems from the federal FAFSA form so that would-be students with drug convictions can still receive state-based financial aid. A growing number of states have taken or are considering steps to accomplish this.



## State-by-State Summaries

Note: The following state-by-state summaries are the result of CHEAR’s research contacting state education agencies and institutions, and examining the education codes of “red states” – states reported by them to deny aid across the board to people affected by the federal drug provision. CHEAR recommends that interested parties take care to adapt any legislation and administrative or political strategies to their own state’s individual situations. CHEAR is available to provide additional research upon request.

[\(State-by-state summaries begin on the next page.\)](#)

## Alabama

The Alabama Commission on Higher Education (ACHE) follows federal eligibility guidelines in determining eligibility for state financial aid programs. Applicants with drug convictions in Alabama are therefore being denied state financial aid. Alabama does not appear to have statutory obstacles to restoring financial aid to people with drug convictions.



Alabama's legislature can act by mandating that the Commission award aid to financially eligible applicants irrespective of drug convictions; and by passing a resolution calling on Congress to repeal the drug provision. Alabama law appears to allow the Commission to act with or without such a mandate, by providing an alternate form to the FAFSA or through other means.

## Alaska

This is the first year of state grants for Alaska and there are very little funds available. For reasons of simplicity, the Alaska Commission on Postsecondary Education has decided to follow the federal guidelines. Students with drug convictions in Alaska are therefore being denied state financial aid. Alaska does not appear to have statutory obstacles to restoring financial aid to people with drug convictions.



Alaska's legislature can act by mandating that the Commission award aid to financially eligible applicants irrespective of drug convictions; and by passing a resolution calling on Congress to repeal the drug provision. Alaska law appears to allow the Commission to act with or without such a mandate, by providing an alternate form to the FAFSA or through other means.

## Arizona

According to the Arizona Council on Postsecondary Education, Arizona is a decentralized state. Individual institutions dole out Arizona's state financial aid. The two major universities, Arizona State University (ASU) and the University of Arizona (U of A), deal with the Drug Provision in different ways. According to its Office of Financial Aid, the University of Arizona deals with



the drug convictions on a case-by-case basis and attempts to award some form of institutional aid to affected students. Arizona State University's financial aid web site, however, states that students who have "been convicted of any offense involving the sale or possession of a controlled substance" are not eligible for "most federal, state and institutional aid."<sup>28</sup>

Arizona's legislature can act by mandating that the Council and Arizona schools award aid to financially eligible applicants irrespective of drug convictions; and by passing a resolution calling on Congress to repeal the drug provision. The Council and individual schools can act with or without such a mandate, by providing an alternate form to the FAFSA or through other means.

## Arkansas

Arkansas does not use the FAFSA to determine state financial aid eligibility. The Arkansas Department of Higher Education collects federal tax returns to determine eligibility. For academic challenge scholarships, students are required to sign a pledge to remain drug-free. A scholarship program for teachers does not allow the applicant to have a felony or drug offense, according to the Department.



Arkansas's legislature can act by mandating that the Department award all types of aid to financially eligible applicants irrespective of drug convictions; and by passing a resolution calling on Congress to repeal the drug provision.

## California

The California Student Assistance Commission met with attorneys in 2000 and decided that it would be in the state's best interest to ignore the drug conviction question on the FAFSA when determining eligibility for state financial aid. Students with drug convictions are receiving aid in California.



California's legislature can act by passing a resolution calling on Congress to repeal the drug provision.

## Colorado

The Colorado Commission on Higher Education follows the federal guidelines for determining state financial aid eligibility. Students with drug convictions are therefore being denied aid in Colorado. Colorado does not appear to have statutory obstacles to restoring financial aid to people with drug convictions.

Colorado's legislature can act by mandating that the Commission award aid to financially eligible applicants irrespective of drug convictions; and by passing a resolution calling on Congress to repeal the drug provision. Colorado law appears to allow the Commission to act with or without such a mandate, by providing an alternate form to the FAFSA or through other means.

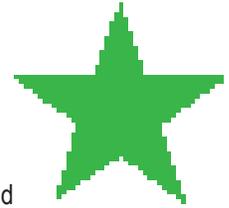


calling on Congress to repeal the drug provision. Delaware law may allow the Commission to act with or without such a mandate, by providing an alternate form to the FAFSA or through other means.

## District of Columbia

According to the DC State Education Office, the District of Columbia does not use the FAFSA for all of their financial aid programs. The applications for District-based aid do not ask about past drug convictions. Students with drug convictions in the District of Columbia are receiving financial aid.

DC's City Council can act by passing a resolution calling on Congress to repeal the drug provision.



## Connecticut

The Connecticut Department of Higher Education says that 90% of state financial aid is administered by individual colleges. The Capitol scholars program, however, a need-based, academically screened scholarship, does require that students do not have past drug convictions.

Connecticut's legislature can act by mandating that the Department and schools award all forms of aid to financially eligible applicants irrespective of drug convictions; and by passing a resolution calling on Congress to repeal the drug provision. Connecticut law appears to allow the Commission to act with or without such a mandate, by providing an alternate form to the FAFSA or through other means.



## Florida

The Florida Office of Student Financial Assistance follows the federal guidelines when distributing state financial aid. Students with drug convictions in Florida are therefore being denied state financial aid. Additionally, applicants convicted of a felony offense are not eligible for the Florida Bright Futures Scholarship Program, the major state financial aid program.<sup>30</sup> Florida does not appear to have statutory obstacles to restoring financial aid to people with misdemeanor drug convictions.

Florida's legislature can act by repealing or modifying language in the 2005 Florida Statutes, Title XLVIII 1009.531(e) that bans people with felony convictions from receiving Bright Futures scholarships; by mandating that the Office award aid to financially eligible applicants irrespective of drug convictions; and by passing a resolution calling on Congress to repeal the drug provision. Florida law appears to allow the Office to act with or without such a mandate to restore aid to students with misdemeanor drug convictions, by providing an alternate form to the FAFSA or through other means.



## Delaware

According to the Delaware Higher Education Commission, Delaware state law mandates that the FAFSA be used to determine eligibility for state financial aid. However, our examination of the state's education code suggests otherwise, and the question merits scrutiny.<sup>29</sup> Students with drug convictions are currently being denied state financial aid.

Delaware's legislature can act by mandating that the Commission award aid to financially eligible applicants irrespective of drug convictions; and by passing a resolution



## Georgia

The Georgia Drug-Free Postsecondary Education Act of 1990 (see O.C.G.A. 20-1-20) prohibits students with past drug or alcohol



violations from receiving state financial aid or attending a Georgia public university.<sup>31</sup>

Georgia's legislature can act by repealing or modifying the Drug-Free Postsecondary Education Act; by mandating that the Georgia Higher Education Assistance Corporation and the Georgia Student Finance Authority Office award aid to financially eligible applicants irrespective of drug convictions and provide alternatives to the FAFSA form to enable students with drug convictions to apply for aid; and by passing a resolution calling on Congress to repeal the drug provision.

## Hawaii

According to the Hawaii University System Department of Financial Aid Services, Hawaii does not have money for state financial aid but the Hawaii University school system does offer tuition waivers. The majority of tuition waivers are need-based and the FAFSA is used to determine a student's eligibility. The merit based tuition waivers do not account for a student's past drug conviction(s). In most cases it appears that Hawaii students with drug convictions are not receiving state financial aid. Hawaii does not appear to have statutory obstacles to restoring financial aid to people with drug convictions.

Hawaii advocates have recommended that reform be pursued at the institutional level, e.g. the University of Hawaii, by providing an alternate form to the FAFSA or through other means. Hawaii's legislature can also act by passing a resolution calling on Congress to repeal the HEA drug provision.

## Idaho

The Idaho State Board of Education follows the FAFSA when determining eligibility for state financial aid. Students in Idaho with drug convictions are therefore being denied state financial aid. Idaho does not appear to have statutory obstacles to restoring financial aid to people with drug convictions.

Idaho's legislature can act by mandating that the Board award aid to financially eligible applicants irrespective of drug convictions; and by passing a resolution calling on Congress to repeal the drug provision. Idaho law appears to allow the Board to act with or without such a mandate, by providing an

alternate form to the FAFSA or through other means.

## Illinois

The Illinois State Board of Higher Education does not pay attention to the drug conviction question and there is no state law mandating that they deny these students financial aid. Students with drug convictions are receiving aid in Illinois.

Illinois's legislature can act by passing a resolution calling on Congress to repeal the drug provision.

## Indiana

According to the Indiana Council on Higher Education, there are multiple educational grants available through the Indiana Commission for Higher Education. The largest grant available, the Frank O'Bannon Grant, does not consider a student's past drug offenses, but other grants, such as the 21st Century Grant, require the student sign a pledge to not commit any criminal offense. The FAFSA is used to collect information but only the portions relevant to need are used. Students with drug convictions in Indiana are eligible for state financial aid.

Indiana's legislature can act by passing a resolution calling on Congress to repeal the drug provision.

## Iowa

The Iowa College Student Aid Commission disregards the drug conviction question on the FAFSA when determining eligibility for state financial aid. Students with drug convictions in Iowa are eligible for state aid.

Iowa's legislature can act by passing a resolution calling on Congress to repeal the drug provision.

## Kansas

Kansas is a decentralized state with the Kansas Board of Regents overseeing the state's financial aid programs. The Board of Regents awards aid packages to individual institutions while also advising each school to follow the federal guidelines for

eligibility. Several major universities in Kansas appear to disqualify students with drug convictions for state aid. Kansas does not appear to have statutory obstacles to restoring financial aid to people with drug convictions.

Kansas's legislature can act by mandating that the Board and schools award aid to financially eligible applicants irrespective of drug convictions; and by passing a resolution calling on Congress to repeal the drug provision. Kansas law allows the Board and schools to act with or without such a mandate, by providing an alternate form to the FAFSA or through other means.

## Kentucky

The Kentucky Higher Education Assistance Administration disregards the drug conviction question when administering financial aid. Students with drug convictions in Kentucky are able to receive state financial aid.



Kentucky's legislature can act by passing a resolution calling on Congress to repeal the drug provision.

## Louisiana

The Louisiana Office of Student Financial Assistance awards financial aid through the TOPS program, a merit based scholarship. In 1997, a provision was passed that denies TOPS financial assistance and the "GO-Youth Challenge Program" to students with any criminal conviction.<sup>32</sup>



Louisiana's legislature can act by repealing or modifying Louisiana Revised Statute of 1950 17: 3048.1(f); and by passing a resolution calling on Congress to repeal the drug provision.

## Maine

According to the Financial Authority of Maine, the state agency dealing with financial aid, students must fill out the FAFSA form and be eligible to receive federal aid in order to be eligible for state education grants. Students with drug convictions in Maine are therefore losing state financial aid. Maine does not appear to have statutory obstacles to restoring financial aid to people with drug convictions.



Maine's legislature can act by mandating that the Authority award aid to financially eligible applicants irrespective of drug convictions; and by passing a resolution calling on Congress to repeal the drug provision. Maine law appears to allow the Board to act with or without such a mandate, by providing an alternate form to the FAFSA or through other means.

## Maryland

According to the Maryland Higher Education Commission, Maryland is a decentralized state. Students who are awarded grants must sign a pledge to remain drug free, but there is no enforcement mechanism. The University of Maryland Office of Financial Aid follows the federal guidelines when determining eligibility for state financial aid. Though there is no clear policy, many students with drug convictions in Maryland are being denied state aid. Maryland does not appear to have statutory obstacles to restoring financial aid to people with drug convictions.



Maryland's legislature can act by mandating that the Commission and schools award aid to financially eligible applicants irrespective of drug convictions; and by passing a resolution calling on Congress to repeal the drug provision. Maryland law appears to allow the Commission to act with or without such a mandate, by providing an alternate form to the FAFSA or through other means.

## Massachusetts

The Massachusetts Office of Student Financial Assistance requires that students be eligible for Title IV funds in order to receive state financial assistance. This policy decision is said to streamline and simplify the financial aid process for administrators. Students in Massachusetts with drug convictions are therefore being denied state financial aid.<sup>33</sup> Massachusetts does not appear to have statutory obstacles to restoring financial aid to people with drug convictions.



Massachusetts's legislature can act by mandating that the Office award aid to financially eligible applicants irrespective of drug convictions; and by passing a resolution calling on Congress to repeal the drug provision. Massachusetts law appears to allow the Office to act with or without such a mandate, by providing an alternate form to the FAFSA or through other means.

## Michigan

According to the Michigan Higher Education Assistance Authority, the state does not rely on federal eligibility requirements and students with past drug convictions are receiving state financial aid.



Michigan's legislature can act by passing a resolution calling on Congress to repeal the drug provision.

## Minnesota

According to the Minnesota Higher Education Services Office, the state does not rely on federal eligibility requirements and students with drug convictions are awarded financial aid from the state.



Minnesota's legislature can act by passing a resolution calling on Congress to repeal the drug provision.

## Mississippi

The Mississippi Postsecondary Education Financial Assistance Board said that the FAFSA is not required when applying for financial aid. Most of Mississippi's financial aid programs are merit-based, and they do not consider a student's past criminal record. However, the policy for people who disclose a drug conviction is to deny aid. Students in Mississippi are eligible for state financial assistance as long as they do not disclose a past drug conviction while applying for aid. Mississippi does not appear to have statutory obstacles to changing this policy.



Mississippi's legislature can act by mandating that the Board award aid to financially eligible applicants irrespective of drug convictions; and by passing a resolution calling on Congress to repeal the drug provision. Mississippi law appears to allow the Board to act with or without such a mandate.

## Missouri

The Missouri Department of Higher Education said that on April 12, 2001 they considered copying the federal system, but when attorneys advised them of possible lawsuits that may result,



the agency decided to ignore the drug conviction question. Students in Missouri are eligible for state financial aid.

Missouri's legislature can act by passing a resolution calling on Congress to repeal the drug provision.

## Montana

According to the Office of Higher Education, Montana has only one state grant program and that program uses FAFSA eligibility requirements to determine in-state eligibility. Students in Montana with drug convictions are therefore being denied state and federal financial aid. Montana does not appear to have statutory obstacles to restoring financial aid to people with drug convictions.



Montana's legislature can act by mandating that the Office award aid to financially eligible applicants irrespective of drug convictions; and by passing a resolution calling on Congress to repeal the drug provision. Montana law appears to allow the Office to act with or without such a mandate, by providing an alternate form to the FAFSA or through other means.

## Nebraska

According to the Nebraska Commission for Postsecondary Education, Nebraska is a decentralized state. The University of Nebraska's Office of Scholarships and Financial Aid reports that it follows federal guidelines when awarding state and institutional aid. Students in Nebraska are at risk for losing their financial aid.



Nebraska's legislature can act by mandating that the Commission and schools award aid to financially eligible applicants irrespective of drug convictions; and by passing a resolution calling on Congress to repeal the drug provision. Nebraska law appears to allow the Commission and schools to act with or without such a mandate, by providing an alternate form to the FAFSA or through other means.

## Nevada

According to the Nevada Commission on Postsecondary Education, Nevada has the Millennium Scholarship program which is a merit based scholarship. This scholarship does not take into account a student's past drug



conviction(s). Students in Nevada are being awarded state financial aid.

Nevada's legislature can act by passing a resolution calling on Congress to repeal the drug provision.

## New Hampshire

According to the New Hampshire Postsecondary Education Commission, students must be eligible for federal financial aid in order to receive state financial aid. This policy has been in place since 1976. Students in New Hampshire with drug convictions are therefore not receiving financial aid. New Hampshire does not appear to have statutory obstacles to restoring financial aid to people with drug convictions.



New Hampshire's legislature can act by mandating that the Commission award aid to financially eligible applicants irrespective of drug convictions; and by passing a resolution calling on Congress to repeal the drug provision. New Hampshire law appears to allow the Commission to act with or without such a mandate, by providing an alternate form to the FAFSA or through other means.

## New Jersey

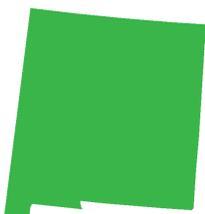
The New Jersey Higher Education Assistance Authority follows the federal guidelines when awarding state financial aid. Students with drug convictions in New Jersey are being denied state financial aid. New Jersey does not appear to have statutory obstacles to restoring financial aid to people with drug convictions.



New Jersey's legislature can act by mandating that the Authority award aid to financially eligible applicants irrespective of drug convictions; and by passing a resolution calling on Congress to repeal the drug provision. New Jersey law appears to allow the Authority to act with or without such a mandate, by providing an alternate form to the FAFSA or through other means.

## New Mexico

According to the New Mexico Commission on Higher Education, New Mexico has previously denied students state financial aid, but they are working



to eliminate this problem administratively. The Governor has authorized the creation of an additional application that can be filled out for students who cannot fill out the FAFSA. This form will ensure that students with drug convictions in New Mexico will receive state financial aid.

New Mexico's legislature can act by passing a resolution calling on Congress to repeal the drug provision.

## New York

According to the New York State Higher Education Services Corporation, the state of New York does not use the FAFSA to determine eligibility for state financial aid. Instead, the Corporation uses a student's taxable income to determine if a student is eligible for state aid. Students with drug convictions in New York are receiving state financial aid.



New York's legislature can act by passing a resolution calling on Congress to repeal the drug provision.

## North Carolina

According to the North Carolina Community College System – Department of Student Services, North Carolina is a decentralized state. Each individual institution determines a student's eligibility for state financial aid.



North Carolina's legislature can act by mandating that the North Carolina State Education Assistance Authority and schools award aid to financially eligible applicants irrespective of drug convictions; and by passing a resolution calling on Congress to repeal the drug provision. North Carolina law appears to allow the Authority and schools to act with or without such a mandate, by providing an alternate form to the FAFSA or through other means.

## North Dakota

According to the North Dakota University System – Department of Financial Aid, North Dakota is a decentralized state. Each individual institution determines a student's eligibility for state financial aid. The North Dakota University System's Department of Financial Aid believes that most schools in the state are similarly denying state aid to



students with drug convictions.

North Dakota's legislature can act by mandating that the North Dakota State Board of Higher Education and schools award aid to financially eligible applicants irrespective of drug convictions; and by passing a resolution calling on Congress to repeal the drug provision. North Dakota law appears to allow the Board and schools to act with or without such a mandate, by providing an alternate form to the FAFSA or through other means.

## Ohio

According to the Ohio Board of Regents, Ohio is a decentralized state but there are state programs that students with drug offenses are eligible to receive. The Ohio Instructional Grant uses the FAFSA to determine eligibility but most other grants are available as long as the applicant is eligible for parole within five years.



Ohio's legislature can act by mandating that the Ohio Board of Regents and schools award aid to financially eligible applicants irrespective of drug convictions; and by passing a resolution calling on Congress to repeal the drug provision. Ohio law appears to allow the Board and schools to act with or without such a mandate, by providing an alternate form to the FAFSA or through other means.

## Oklahoma

According to the Oklahoma State Regents for Higher Education, students must be eligible for federal financial aid in order to receive state financial aid. Oklahoma is denying state financial aid to people with drug convictions.



Oklahoma's legislature can act by mandating that the Regents award aid to financially eligible applicants irrespective of drug convictions; and by passing a resolution calling on Congress to repeal the drug provision. Oklahoma does not appear to have statutory obstacles to restoring financial aid to people with drug convictions, but may have to alter published regulations.

## Oregon

According to the Oregon Student Assistance Commission's (OSAC) policy



handbook, students with drug convictions in Oregon are not eligible for state financial aid.<sup>34</sup> Oregon does not appear to have statutory obstacles to restoring financial aid to people with drug convictions.

Oregon's legislature can act by mandating that the Commission award aid to financially eligible applicants irrespective of drug convictions; and by passing a resolution calling on Congress to repeal the drug provision. Oregon law appears to allow the Commission to act with or without such a mandate, by providing an alternate form to the FAFSA or through other means.

## Pennsylvania

According to the Pennsylvania Higher Education Assistance Agency, students with past drug convictions are eligible for state financial aid and the agency does not take Question 31 from the FAFSA into account when determining eligibility.



Pennsylvania's legislature can act by passing a resolution calling on Congress to repeal the drug provision.

## Rhode Island

According to the Rhode Island Higher Education Assistance Authority, students are being denied state financial aid because of their past drug convictions because the office strictly follows the federal guidelines when making determinations on state financial aid eligibility.<sup>35</sup> Rhode Island does not appear to have statutory obstacles to restoring financial aid to people with drug convictions.



Rhode Island's legislature can act by mandating that the Authority award aid to financially eligible applicants irrespective of drug convictions; and by passing a resolution calling on Congress to repeal the drug provision. Rhode Island law appears to allow the Authority to act with or without such a mandate, by providing an alternate form to the FAFSA or through other means.

## South Carolina

The South Carolina Code of Laws (Section 59-149-90) states that students with alcohol- or drug-related offenses are



not eligible for state financial aid.

South Carolina's legislature can act by repealing or modifying section 59-149-90 of the Code of Laws; by mandating that the SC Commission on Higher Education award aid to financially eligible applicants irrespective of drug convictions; and by passing a resolution calling on Congress to repeal the drug provision.

## South Dakota

According to the South Dakota Board of Regents and South Dakota statute (SL 1997, ch 102, § 2), the state denies students with past drug-or alcohol-related convictions from receiving state financial aid.

South Dakota's legislature can act by repealing or modifying SL 1997, ch 102, § 2; by mandating that the Board of Regents award aid to financially eligible applicants irrespective of drug convictions; and by passing a resolution calling on Congress to repeal the drug provision.

## Tennessee

Tennessee Rules for the Student Assistance Corporation, section 1640-1-19-.03, require that the FAFSA be used as the sole application for the TN Education Lottery Scholarship (TELS) Award, and requires students "maintain satisfactory progress in a course of study in accordance with the standards and practices used for federal Title IV programs" to be eligible for the state's HOPE scholarship. Tennessee is denying state financial aid to people with drug convictions.

Tennessee's legislature can act by mandating that the Corporation award aid to financially eligible applicants irrespective of drug convictions and modify its rules accordingly; and by passing a resolution calling on Congress to repeal the drug provision. Tennessee law appears to allow the Corporation to act with or without such a mandate and alter its published rules to provide an alternate form to the FAFSA or through other means.

## Texas

According to the Texas Higher Education Coordinating Board, Texas is a decentralized state, but according to Texas

state law there are three financial aid programs, including the state's major ones, in which students cannot receive financial aid for two years after they have served their sentence, including the Texas Grant Program, Be On-Time Student Loan, and the Texas Education Opportunity Grant.<sup>36</sup> In order to remain eligible for the Texas B-On-Time Loan, an applicant must "be eligible for federal financial aid."<sup>37</sup>

Texas's legislature can act by modifying chapters 779 and 1590 of the state code; by mandating that the Coordinating Board award aid to financially eligible applicants irrespective of drug convictions; and by passing a resolution calling on Congress to repeal the drug provision.

## Utah

The Utah State Board of Regents' policy is that all students must be Title IV eligible in order to receive state financial aid.<sup>38</sup> Students in Utah with drug convictions are therefore being denied state financial aid. Utah does not appear to have statutory obstacles to restoring financial aid to people with drug convictions.

Utah's legislature can act by mandating that the Board of Regents award aid to financially eligible applicants irrespective of drug convictions; and by passing a resolution calling on Congress to repeal the drug provision. Utah law appears to allow the Board to act with or without such a mandate, by providing an alternate form to the FAFSA or through other means.

## Vermont

According to the Vermont Student Assistance Commission, the FAFSA is not used when applying for state grant programs. Students with drug convictions on their record in Vermont are eligible for state financial aid.

Vermont's legislature can act by passing a resolution calling on Congress to repeal the drug provision.

## Virginia

According to the State Council on Higher Education, Virginia is a decentralized state. State financial aid programs do not prohibit students with past convictions from

receiving financial aid, but implementation varies from school to school. For example, Virginia Tech's Office of Financial Aid denies state and institutional aid to students with past drug convictions. Students in VA are at risk of losing their financial aid. Virginia does not appear to have statutory obstacles to restoring financial aid to people with drug convictions.

Virginia's legislature can act by mandating that the Council and schools award aid to financially eligible applicants irrespective of drug convictions; and by passing a resolution calling on Congress to repeal the drug provision. Virginia law allows the Council and schools to act with or without such a mandate, by providing an alternate form to the FAFSA or through other means.

## Washington

According to the Washington Higher Education Coordinating Board, Washington is a decentralized state, but students do lose their state financial aid if they have a prior drug conviction. For example, three of the larger universities in Washington (University of Washington, Washington State University, and Centralia Community College) all deny students with past drug convictions state financial aid. Washington does not appear to have statutory obstacles to restoring financial aid to people with drug convictions.

Washington's legislature can act by mandating that the Coordinating Board and schools award aid to financially eligible applicants irrespective of drug convictions; and by passing a resolution calling on Congress to repeal the drug provision. Washington law appears to allow the Board to act with or without such a mandate, by providing an alternate form to the FAFSA or through other means.

## West Virginia

According to the West Virginia Department of Student and Education Services, West Virginia follows the federal



guidelines when awarding state financial aid. Students with drug convictions are therefore losing financial aid in West Virginia. West Virginia does not appear to have statutory obstacles to restoring financial aid to people with drug convictions.

West Virginia's legislature can act by mandating that the Department award aid to financially eligible applicants irrespective of drug convictions; and by passing a resolution calling on Congress to repeal the drug provision. West Virginia law appears to allow the Department to act with or without such a mandate, by providing an alternate form to the FAFSA or through other means.

## Wisconsin

According to the Wisconsin Higher Educational Aids Board, students in Wisconsin cannot be denied state financial aid due to a past drug conviction. The Higher Educational Aids Board receives the FAFSA and processes the information without the drug conviction question and then determines the appropriate award. Students with drug convictions in Wisconsin are receiving financial aid.

Wisconsin's legislature can act by passing a resolution calling on Congress to repeal the drug provision.



## Wyoming

According to the Wyoming Association of Student Financial Aid Administrators, Wyoming does not have a state grant program, only a scholarship program. Because the state scholarship program does not use the FAFSA to determine eligibility, students in Wyoming with drug convictions are receiving state financial aid.

Wyoming's legislature can act by passing a resolution calling on Congress to repeal the drug provision.



# Sample Legislation

Note: Legislators wishing to address the problem of state financial aid ineligibility because of drug convictions are urged to work with their staff and advisors to adapt this legislation to the specific needs of their own states. The following pieces of sample legislation are provided only as examples of solutions to solving this problem, which may or may not be viable, legally or politically, in any given state. Additionally, administratively de-linking a state's financial aid system from federal eligibility requirements by executive order is another option to consider where permitted by state law. CHEAR is available to provide additional research upon request.

## DE-LINKING, OPTION I:

An Act

Ensuring that students are provided the necessary funds to attend institutions of higher education regardless of whether they have been convicted of a drug offense.

Residents of the state of \_\_\_ who are financially eligible for assistance toward enrollment in an institution of higher learning, but whose federal aid eligibility has been delayed or denied to them because of a drug conviction under the 1998 Amendments to the Higher Education Act, 20 U.S.C. 1091(r), shall retain eligibility for state financial aid, in an amount and type equal to their normal state aid.

## DE-LINKING, OPTION II:

An Act

Ensuring that students do not lose state financial aid eligibility due to a federal financial aid eligibility requirement.

Residents of the state of \_\_\_ who have lost their eligibility for federal financial aid for attending institutions of higher education because of non-financial federal criteria not explicitly adopted by the \_\_\_ legislature shall retain their eligibility for state financial aid, in an amount and type equal to their normal state aid.

## SAMPLE RESOLUTION:

A CONCURRENT MEMORIAL URGING THE CONGRESS AND PRESIDENT OF THE UNITED STATES TO REPEAL THE DRUG PROVISION OF THE HIGHER EDUCATION ACT

To the Congress and President of the United States of America:

Your memorialist respectfully represents:

Whereas, 20 United States Code section 1091(r) was added in 1998 as an

amendment to the Higher Education Act; and

Whereas, this amendment delays or denies federal financial aid to attend institutions of higher learning to people with drug convictions; and

Whereas, this amendment does not distinguish well between different levels of seriousness in offenses; and

Whereas, according to United States Department of Education statistics, more than 180,000 would-be students have been denied financial aid since the law took effect in July 2000; and

Whereas, this federal provision constitutes a second punishment for individuals who have already served criminal sentences, paid fines, completed community service or received other penalties, and who are attempting to become productive citizens and taxpayers by increasing their education; and

Whereas, this provision is economically discriminatory, affecting only those whose financial status enables them to qualify for federal student aid; and

Whereas, unresolved disparities in the criminal justice system such as racial profiling ensure that the impact of this provision has a racially discriminatory impact; and

Whereas, roadblocks in the way of positive life steps such as education are counterproductive to the goals of rehabilitation, substance abuse treatment and prevention; and

Whereas, the repeal of 20 United States Code section 1091(r) has the support and backing of more than 250 prominent organizations from around the country, including the National Education Association, the National Council for Higher Education, the American Federation of Teachers, the National Association of Student Financial Aid Administrators, and the NAACP;

Wherefore your memorialist, the House of Representatives of the State of \_\_\_\_\_, the Senate concurring, prays:

1. That the Congress and President of the United States take immediate steps to repeal 20 United States Code section 1091(r).
2. That the Secretary of State of the State of \_\_\_\_\_ transmit copies of this Memorial to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives and each Member of Congress from the State of \_\_\_\_\_.

# Acknowledgments and More About CHEAR

“Falling Through the Cracks” was conceived of and researched by Coalition for Higher Education Act Reform (CHEAR) Campaign Director Chris Mulligan and Outreach Coordinators Brian Dolber and Kyle Wibby, and published by the CHEAR Educational Campaign, a project of DRCNet Foundation. CHEAR gratefully acknowledges the valuable advice of SSDP’s Tom Angell, NACDL’s Scott Ehlers, DPFMA’s Whitney Taylor and JPI’s Jason Zeidenberg; the graphic design work of Matt Koglin; and the efforts of the Mintwood Media Collective to spread the word. Justin Davidson came up with the map and provided valuable research assistance during his internship. Interns John Horan, Andrea Villarreal, Alyson Shade, Laura Collins and Michael Flanagan also assisted. “Falling Through the Cracks” was made possible by grants from Tides Foundation and the Drug Policy Alliance.

The Coalition for Higher Education Act Reform (CHEAR) is a network of hundreds of organizations that since 1998 has spearheaded efforts to reform or repeal the Higher Education Act drug provision, a law that delays or denies federal financial aid to would-be students because of drug convictions. CHEAR also works with persons affected by the drug provision to find alternative means of funding their education and to empower them to speak out against the law. For further information, visit [www.RaiseYourVoice.com](http://www.RaiseYourVoice.com) online.

## Endnotes

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5. *Ibid.*
6. *Processing Statistics*.
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22. Texas Education Code 56 (June 19, 1999), ch. 1590.
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24. House of Representatives, 142nd General Assembly, State of Delaware, *Urging the Congress and the President of the United States to Repeal 20 U.S.C. 1091 (r) known as the “Drug Provision” of the Higher Education Act*, (2004).
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29. Delaware Code of Laws, 3411-3413.
30. *2005-06 Florida Financial Aid Application for Students*.
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33. Massachusetts Office of State Financial Assistance, *State Financial Aid Programs Guidelines and Procedures*, (2005-2006).
34. Oregon Student Assistance Commission, *Oregon Opportunity Grant Policies and Procedures* (March 2002).
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36. *Texas Education Code*, 56, ch. 1590.
37. *Ibid*, ch. 779.
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