



# Student Eligibility: Drug Convictions and Federal Financial Aid

Charmaine Mercer

Laura L. Monagle  
Information Research Specialist

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## Summary

The Higher Education Amendments (HEA) of 1998 added a provision to the Higher Education Act of 1965, as amended, to suspend eligibility for federal student assistance (grants, loans, or work assistance under Title IV of the HEA) for any student who is convicted of a state or federal offense for the sale or possession of a controlled substance. This provision was amended by the Deficit Reduction Act of 2005 (DRA) to apply only to students who were convicted for the sale or possession of a controlled substance that occurred while the student was enrolled in postsecondary education *and* receiving Title IV student aid. DRA did not change the criteria pertaining to the period of ineligibility due to a conviction for the sale or possession of a controlled substance. It remains that the period of ineligibility is determined by the recency of the conviction, the number of prior convictions, and whether the conviction was for selling or possessing a controlled substance. A student is considered indefinitely ineligible after the third conviction for possession and after the second conviction for selling a controlled substance. Participation in an eligible rehabilitation program enables a student to reestablish eligibility. This report includes a description of the drug conviction provision and a brief discussion of selected reauthorization issues. This report will be updated as warranted by major legislative or other relevant developments.

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The Higher Education Amendments (HEA) of 1998 (P.L. 105-244) added a provision, Section 484(r), to the Higher Education Act of 1965 to suspend eligibility for federal student aid (grants, loans or work assistance under Title IV of the HEA) to students who were convicted for the sale or possession of a controlled substance. Although the provision was not scheduled to go into effect until two years after the reauthorization, debate regarding the implementation of the provision immediately ensued. Many policymakers questioned the appropriateness of denying financial assistance to individuals who had already been convicted of a crime and paid their debt to society. Other policymakers questioned the Department of Education's (ED) interpretation of the bill's language and their subsequent implementation of the policy. The debate has continued since the last reauthorization of the HEA.

## Background

Campus crimes, including the sale and use of illegal drugs, were among the topics discussed during the debates over the 1998 HEA amendments. During the discussion, studies were introduced that illustrated that, although campus crime rates in general were decreasing, the number of drug-related incidents on campuses was increasing.<sup>1</sup> In various reauthorization hearings<sup>2</sup> and in committee reports,<sup>3</sup> Congress expressed concern about the increasing number of drug and alcohol-related incidents occurring on college campuses. During the reauthorization discussions, Representative Souder stated that the country was facing an epidemic of drug abuse, and proposed the provision on student eligibility as an "important first step" in dealing with this epidemic.<sup>4</sup> Congress ultimately added the provision to eliminate student eligibility for financial assistance for those who were convicted of drug-related crimes, as a part of P.L. 105-244.<sup>5</sup>

## Eligibility

The legislation specifies that any student who is convicted<sup>6</sup> of a state or federal offense for the sale or possession of a controlled substance<sup>7</sup> shall not be eligible to receive any federal student assistance under Title IV of the HEA. The period of ineligibility depends upon whether the conviction was for the sale or possession of a controlled substance, the recency of the conviction, and the number of prior convictions. A student becomes *indefinitely ineligible*<sup>8</sup> if he/she has more than two convictions for possession or more than one conviction for selling a controlled substance. Once a student is deemed indefinitely ineligible, the student must successfully complete an approved drug rehabilitation program (to be further discussed later), or the

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<sup>1</sup> *Chronicle of Higher Education*, March 21, 1997.

<sup>2</sup> See H.R. 6, The Higher Education Amendments of 1998, Campus Crime and Regulatory Reform, Hearing before the Subcommittee on Postsecondary Education, Training, and Lifelong Learning of the Committee on Education and the Workforce, <http://www.securityoncampus.org/congress/h105113.html>.

<sup>3</sup> H.Rept. 105-481; S.Rept. 105-181; and conference report H.Rept. 105-750.

<sup>4</sup> 1998 reauthorization debate on Representative Souder's amendment.

<sup>5</sup> A similar provision was proposed by Representative Solomon (H.R. 2116) during the debate on the 1992 HEA amendments, but was not included in reauthorization.

<sup>6</sup> The conviction can be a misdemeanor or a felony.

<sup>7</sup> For the purposes of this section, "controlled substance" has the meaning given the term in Section 102(6) of the Controlled Substances Act (21 U.S.C. § 802(6)).

<sup>8</sup> According to the program regulations (34 C.F.R. § 668.40) *indefinite* means that the student permanently loses eligibility for Title IV financial assistance unless the student completes a rehabilitation program or has the conviction removed.

conviction must be removed from the student's record, in order for the student's eligibility to be reinstated. The period of ineligibility begins on the date of such charge and ends after the interval noted in the following:

**Possession of a controlled substance**—ineligibility period for the first, second, and third offense is

- First offense: one year from the date of the conviction;
- Second offense: two years from the date of the conviction;
- Third offense: indefinite.

**Sale of a controlled substance**—ineligibility period for the first and second offense is

- First offense: two years from the date of the conviction;
- Second offense: indefinite.

According to the *2006-2007 Federal Student Aid Handbook* (Volume 1, Student Eligibility), any convictions that occurred prior to the student turning 18, unless the student was tried as an adult, or any convictions that were overturned, reversed, or otherwise removed from the student's record are not used in determining eligibility.<sup>9</sup>

## **Rehabilitation**

A student who is indefinitely ineligible for federal financial assistance must complete a drug rehabilitation program in order to reacquire eligibility. According to the program regulations (34 C.F.R. § 668.40), an eligible rehabilitation program is one that meets the following requirements:

- Has received or is qualified to receive funds directly or indirectly under a federal, state or local government program;
- Is administered or recognized by a federal, state or local government agency or court;
- Has received or is qualified to receive payment directly or indirectly from a federally or state licensed insurance company; or
- Is administered or recognized by a federally or state licensed hospital, health clinic or medical doctor.

In addition, the rehabilitation program must include at least two unannounced drug tests.

Participation in a rehabilitation program reduces ineligibility to the preceding applicable period. For example, if a student has been convicted three times for possession of a controlled substance, participation in a rehabilitation program reduces the ineligibility period to the equivalent of two convictions (e.g., two years from the date of the most recent remaining conviction). A person can participate in a rehabilitation program for any of the convictions, not just those resulting in indefinite ineligibility. In addition, future convictions will make the student ineligible again.

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<sup>9</sup> The handbook can be accessed at <http://www.ifap.ed.gov/sfahandbooks/attachments/0607FSAHBkVol1.pdf>.

Upon completion of the rehabilitation program the student self-certifies that he/she has in fact completed the course.

## Estimated Impact

It is estimated that more than 180,000 students have been denied federal financial aid or had the receipt of federal aid delayed since the adoption of this provision.<sup>10</sup> According to data released by the organization Students for Sensible Drug Policy, this has represented fewer than .25% of all federal financial aid applicants since the provision was enacted.<sup>11</sup> However, at least two states, California and Texas, have had a large number of students who have been declared ineligible as a result of this provision (see **Table 1**).

**Table 1. Estimated Number of Ineligible Federal Student Aid Applicants by Location of Postsecondary Institution: Award Years 2000-2001 Through 2006-2007**

Location	Total Applicants	Applicants Denied Aid for Drug Conviction	Percent of Applicants Denied Aid for Drug Conviction
Alabama	1,148,578	2,389	0.21%
Alaska	142,089	363	0.26%
Arizona	1,229,677	2,557	0.21%
Arkansas	682,573	1,858	0.27%
California	8,794,431	31,830	0.36%
Colorado	1,162,578	2,467	0.21%
Connecticut	804,589	2,242	0.28%
Delaware	175,647	410	0.23%
District of Columbia	141,525	328	0.23%
Florida	4,107,482	9,180	0.22%
Georgia	2,339,505	5,803	0.25%
Hawaii	252,959	472	0.19%
Idaho	398,409	946	0.24%
Illinois	3,240,331	8,071	0.25%
Indiana	1,778,982	8,903	0.50%
Iowa	915,034	2,367	0.26%
Kansas	768,785	1,581	0.21%
Kentucky	1,060,042	2,782	0.26%

<sup>10</sup> See “Harmful Drug Law Hits Home: How Many College Students in Each State Lost Financial Aid Due to Drug Convictions?,” Students for Sensible Drug Policy, <http://www.ssdp.org/states/ssdp-state-report.pdf>.

<sup>11</sup> These data are contained in a report entitled, “Harmful Drug Law Hits Home: How Many College Student in Each State Lost Financial Aid Due to Drug Convictions?” These data were released to the organization Students for Sensible Drug Policy in response to a Freedom of Information Act request. The report is available at <https://www.ssdp.org/states/ssdp-state-report-pdf>.

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<b>Location</b>	<b>Total Applicants</b>	<b>Applicants Denied Aid for Drug Conviction</b>	<b>Percent of Applicants Denied Aid for Drug Conviction</b>
Louisiana	1,333,912	2,890	0.22%
Maine	356,394	669	0.19%
Maryland	1,375,538	2,780	0.20%
Massachusetts	1,566,888	3,004	0.19%
Michigan	2,783,668	6,722	0.24%
Minnesota	1,441,991	2,503	0.17%
Mississippi	849,438	1,969	0.23%
Missouri	1,505,033	2,819	0.19%
Montana	282,819	483	0.17%
Nebraska	498,273	782	0.16%
Nevada	346,518	631	0.18%
New Hampshire	322,762	541	0.17%
New Jersey	2,048,015	4,650	0.23%
New Mexico	531,170	1,046	0.20%
New York	5,513,797	8,962	0.16%
North Carolina	1,887,657	5,323	0.28%
North Dakota	226,870	453	0.20%
Ohio	3,194,880	7,664	0.24%
Oklahoma	964,900	2,508	0.26%
Oregon	997,710	3,637	0.36%
Pennsylvania	3,230,729	6,010	0.19%
Puerto Rico	1,485,832	2,261	0.15%
Rhode Island	274,167	807	0.29%
South Carolina	1,112,720	2,798	0.25%
South Dakota	251,021	455	0.18%
Tennessee	1,437,014	3,342	0.23%
Texas	5,611,435	15,026	0.27%
Utah	645,692	1,151	0.18%
Vermont	172,625	204	0.12%
Virgin Islands	28,789	37	0.13%
Virginia	1,639,755	3,217	0.20%
Washington	1,585,720	4,762	0.30%
West Virginia	488,193	847	0.17%
Wisconsin	1,345,345	2,897	0.22%
Wyoming	137,597	307	0.22%
Outlying Areas	102,676	245	0.24%

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<b>Location</b>	<b>Total Applicants</b>	<b>Applicants Denied Aid for Drug Conviction</b>	<b>Percent of Applicants Denied Aid for Drug Conviction</b>
U.S. Military Facilities	967	2	0.21%
Foreign Country	59,025	48	0.08%
Unknown	3,596	64	1.78%
Total	76,784,347	189,065	0.25%

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**Source:** CRS estimates based on data received by the non-profit organization, Students for Sensible Drug Policy, from the U.S. Department of Education.

## **Deficit Reduction Act**

Largely in response to the confusion and contention surrounding the provision, the Deficit Reduction Act of 2005 (DRA) (P.L. 109-171) was enacted to change the manner in which the provision was being implemented. The amended provision specifies that only those convictions for the sale or possession of a controlled substance that occur while the student is enrolled in postsecondary education *and* receiving Title IV student aid would disqualify a student from receiving federal student aid. The DRA did not change the provisions pertaining to the period of ineligibility due to a conviction for the sale or possession of a controlled substance. It remains that the period of ineligibility depends upon whether the conviction was for the sale or possession of a controlled substance, the recency of the conviction, and the number of prior convictions.

## **Reauthorization Issues**

Title IV of the HEA may be considered in the upcoming reauthorization. There are several legislative proposals to modify the existing drug conviction provision. Since its initial enactment, issues have continued to arise, including how the provision should be implemented, what types of penalties, if any, should be imposed, who should be penalized, and whether there are other crimes that are more deserving of disqualifying a student from receiving financial aid. The following section presents a brief analysis of selected issues that may be considered during the reauthorization discussions.

## **Singling Out Drug Abuse**

In the discussions surrounding the addition of this provision to the student eligibility requirements during the 1998 reauthorization, the increased incidence of drug usage on college campuses was continually referenced. Many policymakers expressed concern about the growing number of drug-related crimes that were reported each year by institutions across the country. Largely in response to this increasing problem, Congress included this provision for eligibility. However, critics assert that drugs are unfairly being singled out. Representative Frank is reported to contend that singling out drugs as the only crime for which a student can lose financial aid eligibility treats drug convictions more harshly than rape, arson or armed robbery.<sup>12</sup> Supporters maintain

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<sup>12</sup> Greg Winter, "Furor Over Student Aid Ban for Long-Ago Drug Offenses," *New York Times*, March 13, 2004.



that robbery, rape and arson are less likely to occur on a college campus than drug-related crimes, thus justifying the focus on drug-related crimes.

The implications of limiting the loss of financial aid eligibility to students convicted of drug-related crimes might be considered during reauthorization. If it was the intent of Congress to deter certain illegal behaviors occurring on college campuses when this provision was included, crimes such as alcohol abuse on college campuses may arise as an issue.

## **Severity of Crimes**

As noted above, the existing provision does not distinguish between a misdemeanor or felony drug-related conviction. At present all convictions, whether or not the conviction warranted jail or prison time and regardless of the amount of time served, result in a loss of eligibility. The separate ineligibility periods and the allowable number of convictions for selling versus possession of a controlled substance acknowledges a difference between those who use and those who sell. Similarly, Congress may debate the difference between a felony and a misdemeanor drug conviction in relation to suspending eligibility for student aid.

## **Author Contact Information**

(name redacted)

(name redacted)  
Information Research Specialist  
/redacted/@crs.loc.gov, 7-....

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