



## Facts about the Higher Education Act Aid Elimination Penalty

### Background

The Higher Education Act (HEA) drug provision is federal law passed in 1998 that denies financial aid to students with past drug convictions. Since taking effect in 2000, more than 175,000 would-be students have lost their financial aid because of past drug convictions, many of them for very minor offenses for which the law allows no judicial discretion.

### Text of the Provision<sup>1</sup>

The following provision was contained in subsection (r) of section 484 of the Higher Education Act of 1998 (see 20 U.S.C. 1091(r)).

(r) Suspension of eligibility for drug related offenses.-

(1) IN GENERAL- A student who has been convicted of any offense under any Federal or State law involving the possession or sale of a controlled substance shall not be eligible to receive any grant, loan, or work assistance under this title during the period beginning on the date of such conviction and ending after the interval specified in the following table:

If convicted of an offense involving:

The possession of a controlled substance:

Ineligibility Period  
First Offense - 1 year  
Second Offense - 2 years  
Third Offense - Indefinite

The sale of a controlled substance:

Ineligibility Period  
First Offense - 2 years  
Second Offense - Indefinite

REHABILITATION- A student whose eligibility has been suspended under paragraph (1) may resume eligibility before the end of the ineligibility period determined under such paragraph if-

- (A) the student satisfactorily completes a drug rehabilitation program that-
    - (i) complies with such criteria as the Secretary shall prescribe in regulations for purposes of this paragraph; and
    - (ii) includes two unannounced drug tests; or
  - (B) the conviction is reversed, set aside, or otherwise rendered nugatory.
- (3) DEFINITIONS- In this subsection, the term `controlled substance' has the meaning given the term in section

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<sup>1</sup> From the web site [www.ed.gov](http://www.ed.gov)

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102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).'

(2) EFFECTIVE DATE- The amendment made by paragraph (1), regarding suspension of eligibility for drug-related offenses, shall apply with respect to financial assistance of cover the costs of attendance for periods of enrollment beginning after the date of enactment of this Act.

## Consequences

Persons convicted in district court for a first-time drug offense while receiving student financial aid lose eligibility for their loan, grant, or work-study for one year from the date of conviction. In effect, their student loan becomes due, their grant must be repaid, and/or they lose their job and are forced to drop out of school.

These are otherwise well performing students. No other type of criminal conviction results in the loss of student financial aid!

## Action Needed

The Coalition for Higher Education Act Reform (CHEAR) and the more than 250 organizations supporting full repeal of the law are making a strong push to encourage Congress to restore financial aid to as many students as possible.

Contact information for your representative and senators' district offices can be found at [www.RaiseYourVoice.com/lookup.html](http://www.RaiseYourVoice.com/lookup.html)

## What You Can Do

If believe the Aid Elimination Penalty should be repealed ask your members of Congress to change this law. Call any day this week and don't be afraid to leave a message.

When calling, you might find the following sample script, provided by Raise Your Voice, helpful:

"Hi, my name is \_\_\_\_\_, and I'm calling from \_\_\_\_\_ (location or organization).

I'm calling to encourage (Senator or Representative) •••••\_\_\_\_\_ to ensure that the Higher Education Act drug provision, which has denied financial aid to more than 175,000 students with prior drug convictions, is scaled back as much as possible. I would like to encourage (Senator or Representative) \_\_\_\_\_ to introduce legislation to remove the drug question from the Free Application for Federal Student Aid (FAFSA) altogether. Thank you for your time."

## Notes

If, in the unlikely event that the congressional staffer might ask, you can cite the "drug provision" as section 484(r) of the Higher Education Act of 1965, or Title 20, section 1091(r) of the U.S. Code.

*For more information on HEA and how to become active, please see [www.raiseyourvoice.com](http://www.raiseyourvoice.com) Send correspondence from members of Congress to [heareform@raiseyourvoice.com](mailto:heareform@raiseyourvoice.com) or fax to (202) 293-8344.*

## Conclusion

The HEA already excludes students receiving lower than a “C” average in their studies from receiving federal financial aid. The Drug Provision, therefore, only denies aid to students who are doing well in school.

The Department of Education reports that among students who left four-year colleges before the beginning of their second year, 36% did not return within five years; 50% of those leaving two-year institutions did not return within five years.