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Repeal the Higher Education Act Aid Elimination Penalty

Added in 1998 as an amendment to the Higher Education Act (HEA), the Aid Elimination Penalty (20 U.S.C. 1091 (r)) excludes students with drug convictions from receiving federal financial aid to attend institutions of higher education. To date, the penalty has disqualified more than 200,000 determined, low- to middle-income students from receiving college aid, often for what are relatively minor offenses. The penalty hurts the economy, makes our streets more dangerous, perpetuates racial inequality, and punishes only students who are doing well in their classes, all while actually *increasing* our nation's drug problems.

Harms Caused by the HEA Aid Elimination Penalty

It does nothing to solve our nation's drug problems; it actually makes them worse

Since students must already be making good academic progress to receive aid, the penalty only affects students who are doing well in their classes and who are likely to be good investments of aid resources. Substance abuse counselors and experts know that denying hardworking students the opportunity to earn college degrees brings us no closer to solving our nation's drug problems. In fact, the National Institute on Drug Abuse reports that high school graduates not enrolled in college are three times more likely to have used meth or heroin and are almost twice as likely to have used cocaine in the past year than those in college. Drug arrests on college campuses have actually *increased* since the penalty was enacted in 1998. Even the U.S. Government Accountability Office indicated that it could find no evidence the penalty "actually helped to deter drug use."

It is fiscally irresponsible

By keeping determined students from competing in the 21st-century workforce, the penalty dulls our nation's competitive edge at a time when we need to remove every impediment to American initiative and enterprise. The average full-time worker with a college degree earns 62 percent more and pays over twice as much in income taxes than the average worker with only a high school diploma. Furthermore, high school graduates are three times more likely to rely on costly public assistance programs than are college graduates. Preventing students from becoming successful taxpaying citizens and skilled participants in the workforce blunts our nation's competitive edge in the global economy. Simply put, America cannot afford the penalty.

It pushes at-risk students into cycles of failure and recidivism, making our streets less safe

Receiving an education reduces the likelihood that individuals will abuse drugs or engage in other illegal activity. According to the Department of Justice, people with only high school diplomas are twelve times more likely to break the law and become incarcerated than college graduates. Incarcerating just one prisoner costs taxpayers \$26,000 per year, while the average annual cost of a four-year public college is \$5,836. Denying education to low-income and at-risk students only dooms them to lives without the financial opportunities bestowed upon college graduates and makes them more likely to repeat past mistakes they may have made.

It has a disproportionate impact on people of color

Because of racial profiling and the discriminatory enforcement of drug laws, the penalty keeps people of color out of college at a disproportionate rate. While African Americans comprise 12.3% of the population, and proportionately account for 13% of drug users, they make up 37%

of those arrested, 53% of those convicted, and 67% of those sent to jail for drug offenses. Adding in Latinos, people of color account for 22% of all drug users but 80% of people in prison for drug offenses. By putting an increased burden on communities of color, the penalty perpetuates racial inequalities that so many have fought for so long to abolish.

How the HEA Aid Elimination Penalty Works

The 1998 reauthorization of the HEA included a new provision that blocked eligibility for students revealing drug convictions on the 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:

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

Question 31 on the FAFSA asks applicants to indicate if they have ever been convicted of “possessing or selling illegal drugs.” If the answer is anything other than “no,” an applicant is required to fill out a worksheet to determine if and when he or she will resume eligibility for student aid. The penalty does provide that students may resume eligibility for aid early if they satisfactorily complete drug rehabilitation programs that meet certain requirements prescribed by regulation; however, it does nothing to fund these treatment programs. The same students who can’t afford college without aid are also unlikely to be able to afford private treatment, much less to take time off from work or school to participate in such programs.

While delaying aid for one or two years may not seem devastating at first glance, the consequences can last a lifetime. According to the National Center for Education Statistics, 63% of undergraduates rely on some form of financial aid to afford tuition, meaning that most students affected by the penalty are forced to immediately drop out. Revoking financial aid – even temporarily – deters many students from ever returning to finish their degrees. The Department of Education reports that 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.

In 2005, the congressionally-created Advisory Committee on Student Financial Assistance recommended Congress remove the drug question FAFSA, calling it “irrelevant” to eligibility. More than 325 prominent education, addiction recovery, religious, and civil rights organizations have called on Congress to repeal the aid elimination penalty.

Solution: Include Language Repealing the Penalty in the HEA Reauthorization Bill

Including a provision in the HEA reauthorization bill that repeals the penalty is the easiest and most appropriate avenue to address the problem:

“Section 484 of the Higher Education Act of 1965 (20 U.S.C. 1091) is amended by striking subsection (r).”

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