

March 26, 2019

The Honorable Lamar Alexander
Chairman
HELP Committee
United States Senate
455 Dirksen Senate Office Building
Washington, DC 20515

The Honorable Patty Murray
Ranking Member
HELP Committee
United States Senate
154 Russell Senate Office Building
Washington, DC 20515

RE: Simplifying the FAFSA and Eliminating the Aid Elimination Penalty

Dear Chairman Alexander and Ranking Member Murray:

The undersigned organizations submit this letter for the record following the HELP Committee's March 12, 2019 hearing, *Simplifying the FAFSA and Reducing the Burden of Verification*. We applaud the Committee's interest in finding ways to simplify the Free Application for Federal Student Aid (FAFSA) in ways that reduce barriers to student aid.

As the Committee prepares to take up Higher Education Act reauthorization legislation this session, we agree that the complexity of the FAFSA form poses a significant barrier to applicants that depend upon student aid to pursue and complete higher education and welcome the Committee's concern that there are questions on the form that should be eliminated.

All students who seek federal student aid would benefit from a simplified FAFSA, including applicants who are currently incarcerated. Many college in prison programs currently participating in the Second Chance Pell Experimental Sites Initiative report that the length and complexity of the FAFSA are major impediments for participating incarcerated students.

Among FAFSA questions that create impediments to applicants completing the enrollment process, Question #23 is particularly problematic for students. The Department of Education includes Question 23 on the FAFSA in order to comply with Section 484(r) of the Higher Education Act of 1965, or Aid Elimination Penalty, that renders ineligible from receiving federal student aid any applicant who is convicted of a drug law violation while receiving student aid. As the Committee considers ways to remove impediments to accessing and completing higher education, we urge you to repeal the Aid Elimination Penalty and strike Question 23 from the FAFSA.

The Aid Elimination Penalty is responsible for denying student aid eligibility to more than 200,000 FAFSA applicants since Congress enacted the penalty in 1998, a count that only captures applicants who either responded truthfully to Question 23 or left the question blank.¹ It's become well known over the years, however, that Question 23 deters applicants from applying who are otherwise eligible for aid.² This is especially the case for applicants who have experienced an interaction with law enforcement, or disciplinary action by campus administrators, on account of a drug-related incident while they were receiving federal student aid but were never convicted. Students with a drug arrest or conviction prior to receiving student aid may also misbelieve that this past conduct renders them ineligible for assistance.

Stripping away student aid on account of a drug conviction jeopardizes a student's ability to continue higher education. When a student is forced to drop out of school, they are less likely to retain a stabilizing and enriching environment that higher education provides. States with higher college enrollment have fewer incidents of violent crime, and those states making bigger investments in higher education realized better public safety outcomes.³ The more education an individual obtains, the less likely they are to be incarcerated.⁴ In this regard, enforcement of the Aid Elimination Penalty undermines public safety.

In addition, the Aid Elimination Penalty also undermines people's access to meaningful educational opportunities, with a heightened impact on the people who may already have significantly limited access to those opportunities, in the first place. This also creates, for many people, duplicative punishment that extends far beyond any punishments levied by the criminal justice system. The students affected by the Aid Elimination Penalty have already paid a debt through prison time, fines, probation, or rehabilitation programs, and are therefore punished twice. It is therefore unnecessarily punitive, even more so when you consider that post-secondary schools have internal admissions and student conduct rules in place to address drug law violations or other criminal conduct.

Furthermore, students who do not receive financial aid are not impacted by this provision, meaning that more affluent students are not penalized for a drug conviction in college the same way as middle and low-income students are penalized for the same conduct. As Dr. Scott Taylor told the HELP Committee on March 12th, questions on the FAFSA that create barriers to accessing higher education disproportionately affect high risk students from low-income households. Low-income applicants are more likely to require federal student aid in order to successfully enroll in higher education, but, as Dr. Taylor testified, only 45% of low-income students file the FAFSA each year.⁵

The Aid Elimination Penalty also disproportionately affects people of color who apply for federal student aid. Although no more likely to use drugs than other students, African-Americans are more likely to be convicted of a drug law violation⁶ that results in suspension of student aid. Indeed, the National Institute on Drug Abuse has found that white students are slightly more likely to have used illegal drugs than Black students.⁷

It has been twenty years since the Aid Elimination Penalty was approved by Congress during a time when it was believed that incarceration and other forms of punishment would reduce demand and supply for illegal drugs. The author of the Aid Elimination Penalty argued in 1998 that making it harder for a student to complete higher education deters the student from engaging in drug-related activity.⁸ We now know that imposing legal barriers such as the Aid Elimination Penalty on justice-involved individuals only jeopardizes their ability to succeed.

Individuals with a college education make more money⁹ and contribute more to the tax base, while a person with an advanced degree is less likely to seek public assistance or rely on public assistance than a person with fewer years of education.¹⁰ Given these positive outcomes of completing higher education, it makes no sense to jeopardize a student's future on account of a drug conviction.

The Aid Elimination Penalty has had a significant chilling effect on applicants completing the FAFSA, including applicants who are otherwise eligible for aid. The penalty has also contributed to both the real and perceived complexity of the FAFSA. As the Committee looks for ways to simplify the FAFSA and remove barriers to federal student aid, we urge the Committee to repeal

the Aid Elimination Penalty and strike Question 23 from the FAFSA as part of any higher education reform legislation that is given consideration.

Sincerely,

National Organizations

American Association of State Colleges and Universities (AASCU)
American Civil Liberties Union
The Association of State and Federal Directors of Correctional Education
Campaign for Youth Justice
Center for Law and Social Policy (CLASP)
College & Community Fellowship
The Correctional Education Association
CURE (Citizens United for Rehabilitation of Errants)
#Cut50
The Daniel Initiative
Drug Policy Alliance
The Education Trust
Formerly Incarcerated College Graduates Network
From Prison Cells To PhD
Institute for Higher Education Policy (IHEP)
JustLeadership USA
Legal Action Center
National Association of Criminal Defense Lawyers
National Association of Social Workers
National Association of Student Financial Aid Administrators
National Council of Churches
National Employment Law Project
National HIRE Network
National LGBTQ Task Force Action Fund
New America Higher Education Initiative
Operation Restoration
Prison Cells - To - Professionals
Project Liberation
Root & Rebound
The Sentencing Project
Treatment Communities of America

State-Based Organizations

Anti-Recidivism Coalition (California)
The Chillon Project, Life University (Georgia)
Diocese of San Diego (California)
Friends of Guest House (Virginia)
Healthy Routines (New York)
Impact Justice & Equity Solutions Inc (Florida)
Interaction Transition (Washington)
Justice Innovations (Maryland)

Mommieactivist and Sons (District of Columbia)
New Hour for Women & Children LI (New York)
Parent Watch Inc (District of Columbia)
Prison Education Project (California)
Prisons and Justice Initiative (District of Columbia)
Reentry Campus Program (Rhode Island)
Renton Technical College (Washington)
SJSU Record Clearance Project (California)
Tacoma Community College (Washington)
Tennessee Higher Education Initiative (Tennessee)
Underground Scholars Initiative (California)
Underground Scholars Initiative at UCLA (California)
University of Washington, Gender Women and Sexuality Studies (Washington)
Urban Scholars Union (California)
Urban Scholars Union City College (California)
Women at the Well-Broward (Florida)

¹ CLASP, "Advancing Financial Aid Reform through the Proposed SUCCESS Act," February 22, 2016, <https://www.clasp.org/blog/advancing-financial-aid-reform-through-proposed-success-act>

² Michael F. Lovenheim and Emily G. Owens, "Does federal financial aid affect college enrollment? Evidence from drug offenders and the Higher Education Act of 1998," *Journal of Urban Economics* 81 (2014): 1-13. DOI: 10.3386/w18749.

³ Justice Policy Institute, *Education and Public Safety*, accessed March 23, 2015,

http://www.justicepolicy.org/images/upload/07-08_rep_educationandpublicsafety_ps-ac.pdf

⁴ Stephanie Ewert and Tara Wildhagen, U.S. Department of Commerce, Bureau of the Census, Housing and Economic Statistics Division, *Educational Characteristics of Prisoners: Data from the ACS*, (Washington, DC: Government Printing Office, 2011), 3.

⁵ Michele Scott Taylor, *Testimony on Reauthorizing the Higher Education Act: Simplifying the FAFSA and Reducing the Burden of Verification*, U.S. Senate Committee on Health, Education, Labor and Pensions, March 12, 2019, <https://www.help.senate.gov/imo/media/doc/Scott%20Taylor.pdf>

⁶ The Sentencing Project, *Report of The Sentencing Project to the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance: Regarding Racial Disparities in the United States Criminal Justice System*, (Washington, DC: March, 2018), 3, <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>.

⁷ Sean Esteban McCabe, Michele Morales, PhD, James A. Cranford, Jorge Delva, Melnee D. McPherson, and Carol J. Boyd, "Race/ethnicity and gender differences in drug use and abuse among college students" *Journal of Ethnicity in Substance Abuse* 6, no. 2 (2007): 75-95. DOI: 10.1300/J233v06n02_06.

⁸ Greg Winter, "Furor Over Student Aid Ban for Long-Ago Drug Offenses," *The New York Times*, March 13, 2004, <https://www.nytimes.com/2004/03/13/us/furor-over-student-aid-ban-for-long-ago-drug-offenses.html>

⁹ Brad Hershbein, Melissa S. Kearney, and Lawrence H. Summers, "Increasing education: What it will and will not do for earnings and earnings inequality," *Brookings*, March 31, 2015, <https://www.brookings.edu/blog/up-front/2015/03/31/increasing-education-what-it-will-and-will-not-do-for-earnings-and-earnings-inequality/>; Kayla Fontenot, Jessica Semega, and Melissa Kollar, *Income and Poverty in the United States: 2017*, U.S. Census Bureau, September 12, 2018, <https://www.census.gov/library/publications/2018/demo/p60-263.html>.

¹⁰ Philip Trostel, Margaret Chase, *It's Not Just The Money: The Benefits of College Education to Individuals and to Society*, Smith Policy Center & School of Economics, University of Maine and the Lumina Foundation, accessed March 15, 2019, <https://www.luminafoundation.org/files/resources/its-not-just-the-money.pdf>; Jennifer Ma, Matea Pender, and Meredith Welch, "EDUCATION PAYS 2016: THE BENEFITS OF HIGHER EDUCATION FOR INDIVIDUALS AND SOCIETY," (Washington, DC: The College Board, 2016), <https://trends.collegeboard.org/sites/default/files/education-pays-2016-full-report.pdf>.