

NAMSDL



National Alliance for Model State Drug Laws

**LEGAL BARRIERS FOR PEOPLE
IN RECOVERY FROM DRUG AND
ALCOHOL ADDICTION:
EDUCATION**

© 2011 Research is current as of November 17, 2011. In order to ensure that the information contained herein is as current as possible, research is conducted using both nationwide legal database software and individual state legislative websites. Please contact Heather Gray at (703) 836-6100, ext. 114 or hgray@namsdl.org with any additional updates or information that may be relevant to this document. This document is intended for educational purposes only and does not constitute legal advice or opinion. Headquarters Office: THE NATIONAL ALLIANCE FOR MODEL STATE DRUG LAWS, 215 Lincoln Ave. Suite 201, Santa Fe, NM 87501.

The Federal government provides numerous grants and loans for students in need of financial aid in order to obtain a higher education degree. However, there are stipulations attached to these grants and loans. For example, 20 U.S.C.A. § 1011i provides that in order for institutions of higher education to be eligible to receive federal funds, including student loan funds, it must have adopted and implemented a program to prevent drug and alcohol abuse. Further, 20 U.S.C.A. § 1091 and 34 C.F.R. § 668.40 regarding student eligibility in general, provide that a student's eligibility will be suspended for drug related offenses, including possession and sale of controlled substances. The conduct in question must have occurred while the student was enrolled and receiving a grant, loan or work assistance. Ineligibility for possession lasts one year for a first offense, two years for a second offense, and indefinitely for a third offense. For sale of a controlled substance, the period of ineligibility lasts two years for a first offense and indefinitely for a second offense. However, a student may resume eligibility earlier if he or she satisfactorily completes a drug rehabilitation program that complies with federal requirements and includes two unannounced drug tests.¹

Students must be eligible under either 20 U.S.C.A. § 1091 or 34 C.F.R. § 668, subpart C to receive the following loans, grants, or other financial assistance:

- Federal Supplemental Educational Opportunity Grants²
- Perkins Loans³
- FFEL loans (includes Stafford loans and PLUS loans)⁴
- William D. Ford Federal Direct Loan Program, subsidized and unsubsidized⁵
- Pell Grants⁶
- Academic Competitiveness Grants (ACG) and National Science and Mathematics Access to Retain Talent (SMART) grants (must also be eligible to receive a Pell Grant)⁷.

To receive a Pell Grant, students must not be incarcerated at the time they are awarded the grant.⁸ To receive an Academic Competitiveness Grant or a Scholarship for Veteran's Dependents, recipients must meet the requirements for receiving a Pell Grant.⁹

To receive Title IV program assistance, for Pell Grants, Perkins loans, FFEL and Direct Loan programs, students must not be incarcerated and for all others students must meet the program requirements contained in 34 C.F.R. §§ 674.9, 675.9, 676.9, 682.201, 685.200, 690.75,

¹ 20 U.S.C.A. § 1091 and 34 C.F.R. § 668.40

² 20 U.S.C.A. § 1070b-2

³ 34 C.F.R. § 674.9

⁴ 34 C.F.R. § 682.201

⁵ 34 C.F.R. § 685.200

⁶ 34 C.F.R. § 690.2 and § 690.75

⁷ 34 C.F.R. § 691.15

⁸ 20 U.S.C.A. § 107a

⁹ 20 U.S.C.A. § 1070a-1 and 20 U.S.C.A. § 1070h

692.40 and, further, must not be ineligible under 34 C.F.R. § 668.40 (see above).¹⁰ Title IV programs include Pell Grants, Federal Supplemental Opportunity Grants, ACG grants, SMART grants, Teacher Education Assistance for College and Higher Education Grants (TEACH), Leveraging Educational Assistance Partnership (LEAP) and Special LEAP (SLEAP) grants, Direct Loan program, Federal Perkins loans, and Federal Work-Study programs.¹¹

To summarize the federal requirements – students must either not be incarcerated¹² to receive assistance or must not be convicted of a drug related offense after receiving federal assistance.

The following state programs require that students meet the federal Title IV eligibility requirements:

Alaska:	AlaskAdvantage Loan Program and Consolidation Loan ¹³
California:	SAVE Scholarship ¹⁴
Hawaii:	Student Loan ¹⁵
Kansas:	Student Assistance Programs ¹⁶
Kentucky:	Higher Education Finance LEAP and SLEAP ¹⁷
Maine:	Maine Scholarship Program ¹⁸
Missouri:	Financial Aid Program ¹⁹
New Hampshire:	Grants Workforce Incentive Program – Forgiveable Loans ²⁰
Oklahoma:	Tuition Aid Grant Program ²¹
Rhode Island:	College Bound Fund Academic Promise Scholarship Program ²² Rhode Island State Grant and Scholarship Program ²³ Adult Education Grant Program ²⁴

¹⁰ 34 C.F.R. § 668.32

¹¹ See, 34 C.F.R. §§ 675.9, 676.9, 692.40 and 692.54

¹² However, see 20 U.S.C.A. § 1151 which provides grants to states for incarcerated individuals. The purpose of this program is to assist incarcerated individuals 35 years old or younger and eligible for parole within seven years of obtaining the grant to receive a postsecondary degree while in prison.

¹³ Alaska Stat. § 14.43.162 and Alaska Admin. Code Tit. 20, §§ 15.115 and 15.088

¹⁴ Cal. Code Regs. Tit. 5, § 30962

¹⁵ Haw. Rev. Stat. § 309-2

¹⁶ Kan. Admin. Regs. 88-13-4

¹⁷ Ky. Rev. Stat. Ann. § 164A.020 and 11 Ky. Admin. Regs. 5:036

¹⁸ Code Me. R. 94-457 Ch. 614, § 2

¹⁹ Mo. Rev. Stat. § 173.1104 and Mo. Code Regs. Tit. 6, § 10-2.150. Statute states that if an applicant is found guilty of or pleads guilty to any criminal offense during the period he or she is receiving financial aid, the applicant is not eligible for renewal provided such offense would disqualify the applicant from receiving federal aid.

²⁰ N.H. Code Admin. R. Ann. POS 601.04 and 702.01

²¹ Okla. Admin. Code § 610:25-7-6

²² R.I. Code R. 33-1-3:l

²³ R.I. Code R. 33-1-5:l

South Carolina: FFEL²⁵
Tennessee: State Lottery Scholarships and Grants²⁶
HOPE Scholarship²⁷
ASPIRE Scholarship²⁸
General Assembly Merit Scholarship²⁹
HOPE Scholarship for Military Members³⁰
HOPE Access Grants³¹
Wilder-Naifeh Technical Skills Grants³²
HOPE Teachers' Scholarship³³
Helping Heroes Act³⁴
Rural Health Scholarship³⁵
Guaranteed Student Loan Program³⁶
TELS³⁷
Math and Science Teach Loan Forgiveness Program³⁸
Rural Health Loan Forgiveness Program³⁹
Helping Heroes Grant Program⁴⁰
Texas: B-On-Time Loan Program⁴¹
Utah: Centennial Opportunity Program for Education⁴²
LEAP⁴³
Higher Education Tuition Assistance Program⁴⁴
Lender of Last Resort Program⁴⁵
West Virginia: Financial Aid to Athletes⁴⁶
Wyoming: Need Based Scholarship.⁴⁷

²⁴ R.I. Code R. 33-1-6:l

²⁵ 42 S.C. Code Ann. Regs. 10

²⁶ Tenn. Code Ann. §§ 49-4-904 and 49-4-937

²⁷ Tenn. Code Ann. § 49-4-907

²⁸ Tenn. Code Ann. § 49-4-915

²⁹ Tenn. Code Ann. § 49-4-916

³⁰ Tenn. Code Ann. § 49-4-918

³¹ Tenn. Code Ann. §49-4-920

³² Tenn. Code Ann. § 49-4-921

³³ Tenn. Code Ann. § 49-4-936

³⁴ Tenn. Code Ann. § 49-4-938

³⁵ Tenn. Code Ann. § 49-4-939

³⁶ Tenn. Comp. R. & Regs. 1640-01-02-.02

³⁷ Tenn. Comp. R. & Regs. 1640-01-19-.04

³⁸ Tenn. Comp. R. & Regs. 1640-01-20-.03

³⁹ Tenn. Comp. R. & Regs. 1640-01-21-.03

⁴⁰ Tenn. Comp. R. & Regs. 1640-01-22-.04

⁴¹ Tex. Educ. Code Ann. §§ 56.455 and 56.456

⁴² Utah Admin. Code R765-605

⁴³ Utah Admin. Code R765-606

⁴⁴ Utah Admin. Code R765-607

⁴⁵ Utah Admin. Code R765-626

⁴⁶ W. Va. Code St. R. § 133-27-2

Florida⁴⁸, Georgia⁴⁹, Pennsylvania⁵⁰, South Carolina⁵¹, South Dakota⁵², Texas⁵³, and Wyoming⁵⁴ deny eligibility to students who have been convicted of a felony, while Louisiana⁵⁵, Mississippi⁵⁶, Pennsylvania⁵⁷, South Carolina⁵⁸, and Utah⁵⁹ also disqualify applicants who have convictions for any offense but minor/misdemeanor traffic or other offenses. California statutes provide that a person is ineligible for state aid for a maximum of two years if he or she is arrested and convicted of any act likely to disrupt the peaceful conduct of campus activities. If a student is not arrested or convicted but found, after a hearing, to have willfully and knowingly disrupted the orderly operation of the campus, he or she shall also be ineligible for a period not to exceed two years. If the student is suspended for these acts, he or she shall be ineligible for a period not less than the term of suspension.⁶⁰ California will also deny financial aid to a student as a result of misconduct that, in the judgment of the institution of higher education, bears adversely on the student's fitness for the assistance.⁶¹ Arkansas law provides that a criminal conviction shall not be used as a basis to disqualify a person from receiving a scholarship, grant, or under a loan forgiveness program unless there is a specific statute that provides otherwise.⁶²

⁴⁷ Wyo. Stat. Ann. § 21-16-1306

⁴⁸ Fla. Stat. Ann. § 1009.531 (Bright Futures Scholarship Program)

⁴⁹ Ga. Code Ann. §§ 20-1-24, 20-1-25, and 20-1-27 (denial of financial aid, loans, grants or scholarships generally); § 20-3-400.6 (Graduate on Time Student Loans); § 20-3-405.7 (Education for Public Service Student Loan); and § 20-3-519.1 (HOPE Scholarships and Grants)

⁵⁰ 24 Pa. Cons. Stat. Ann. § 5104.1 (Higher Education Assistance); 24 Pa. Cons. Stat. Ann. § 5158.2 (Scholarships and grants); and 24 Pa. Cons. Stat. Ann. § 5199.7 (New Economy Teachers' Scholarship Act)

⁵¹ S.C. Code Ann. § 59-113-20 (Tuition Grants); § 59-149-90, 62 S.C. Code Ann. Regs. 1200.10, 62 S.C. Code Ann. Regs. 1200.15 and 62 S.C. Code Ann. Regs. 1200.25 (LIFE Scholarships); § 59-150-370 and 62 S.C. Code Ann. Regs. 900.95 (HOPE Scholarships); 62 S.C. Code Ann. Regs. 315 (Palmetto Scholarship); 62 S.C. Code Ann. Regs. 465 (Need-Based Grants)

⁵² S.D. Codified Laws § 13-55-29 (Scholarships and Free Tuition)

⁵³ Tex. Educ. Code Ann. §§ 56.304, 56.305 and 19 Tex. Admin. Code § 22.230 (TEXAS Grant); Tex. Educ. Code Ann. §§ 56.404, 56.405 and 19 Tex. Admin. Code § 22.256 (Education Opportunity Grant Program)

⁵⁴ Wyo. Stat. Ann. § 21-16-1303 and Wyo. Admin. Code Educ. Gen. 38 § 4 (Hathaway Scholarship); § 21-16-1304 (Hathaway Opportunity, Performance & Honor Scholarship); § 21-16-1305 (Hathaway Provisional Opportunity Scholarship); § 21-16-1306 (Need Based Scholarship)

⁵⁵ La. Rev. Stat. Ann. § 17:3048.1, La. Admin. Code Ch. 28, Pt. IV, §§ 703 and 705 [Taylor Opportunity Program for Students (TOPS)]; La. Rev. Stat. Ann. § 17:3050.2, La. Admin. Code Ch. 28, Pt. IV, §§ 1503 and 1507 (Grant Opportunity for Youth Challenge Skill Training Program); La. Admin. Code Ch. 28, Pt. IV, §§ 803 and 805 (TOPS Tech Award); La. Admin. Code Ch. 28, Pt. IV, §§ 903 and 907 (TOPS Teacher Award); La. Admin. Code Ch. 28, Pt. IV, §§ 1303 and 1305 (LEAP); La. Admin. Code Ch. 28, Pt. IV, §§ 2303 and 2309 (Tuition Payment for Medical Students)

⁵⁶ Miss. Code. Ann. § 37-157-1 (Student Tuition Assistance)

⁵⁷ 24 Pa. Cons. Stat. Ann. § 5104.1 (Higher Education Assistance); 24 Pa. Cons. Stat. Ann. § 5158.2 (Scholarships and grants); 24 Pa. Cons. Stat. Ann. § 5199.7 (New Economy Teachers' Scholarship Act); 22 Pa. Code § 121.6 (Financial Aid – agency may consider violation of the Controlled Substances Act in determining applicant eligibility)

⁵⁸ See FN 50

⁵⁹ Utah Code Ann. § 53B-8-105 and Utah Admin. Code R765-604 (New Century Scholarship); Utah Code Ann. § 53B-8-109 and Utah Admin. Code R765-609 (Regents' Scholarship Program)

⁶⁰ Cal. Educ. Code § 69810

⁶¹ Cal. Educ. Code § 69812

⁶² Ark. Code Ann. § 6-82-107

Arkansas⁶³, California⁶⁴, Georgia⁶⁵, Illinois⁶⁶, Kentucky⁶⁷, Michigan⁶⁸, Montana⁶⁹, New Jersey⁷⁰, Oklahoma⁷¹, Pennsylvania⁷², Tennessee⁷³, West Virginia⁷⁴, and Wyoming⁷⁵ deny aid to individuals who are incarcerated. Conversely, Minnesota law specifically provides that incarcerated students are eligible for scholarships and grants-in-aid⁷⁶ while Ohio will provide the Part-Time Student Instructional Grant to students who are incarcerated if they are eligible for parole within five years of receiving the grant.⁷⁷ Wisconsin students who are or were incarcerated are eligible for the Talent Incentive Grant.⁷⁸

Certain programs under Arkansas⁷⁹, Indiana⁸⁰, Maryland⁸¹, South Carolina⁸², Tennessee⁸³ and Washington⁸⁴ laws provide that an applicant or student must certify or pledge to be or

⁶³ Ark. Code Ann. § 6-85-206, Ark. Admin. Code 008.10.3-2A:2, 008.10.3-2B:2 and 008.10.3-2C:2 (Arkansas Academic Challenge Scholarship Program)

⁶⁴ Cal. Educ. Code § 69433.9 (Cal Grant Program)

⁶⁵ Ga. Code Ann. § 20-3-400.6 (Graduate on Time Student Loans); § 20-3-405.7 (Education for Public Service Student Loan); § 20-3-519.1 (HOPE Scholarships and Grants)

⁶⁶ Ill. Admin. Code Tit. 23, § 2700.40 (ILSAC – excludes National Guard and Veteran’s Grants from being disqualified)

⁶⁷ 11 Ky. Admin. Regs. 3:015 (Kentucky Loan Program)

⁶⁸ Mich. Comp. Laws § 390.1283 (Part-Time, Independent Student Grant Program); § 390.1324 (Graduate Student Work-Study Program); § 390.1374 (Undergraduate Work-Study Program); § 390.1404 (Education Opportunity Program); Mich. Admin. Code R390.907 (Nursing Scholarship)

⁶⁹ Mont. Code Ann. § 20-26-605 (Governor’s Postsecondary Scholarship Program)

⁷⁰ N.J. Stat. Ann. § 18A:71B-2 (scholarships and grants)

⁷¹ Okla. Admin. Code § 610:25-7-6 (Tuition Aid Grant Program)

⁷² 22 Pa. Code § 121.6 (financial aid)

⁷³ Tenn. Code Ann. §§ 49-4-904 and 49-4-937 (State Lottery Scholarships and Grants); §§ 49-4-907 and 49-4-911 (HOPE Scholarships); § 49-4-915 (ASPIRE Scholarship); § 49-4-916 (General Assembly Merit Scholarship); § 49-4-918 (HOPE for Military Members); § 49-4-920 (HOPE Access Grants); § 49-4-921 (Wilder-Naifeh Technical Skills Grants); § 49-4-936 (HOPE Teachers’ Scholarships); § 49-4-938 and Tenn. Comp. R. & Regs. 1640-01-22-.04 (Helping Heroes Grant Program); Tenn. Code Ann. § 49-4-939 (Rural Health Scholarships); Tenn. Comp. R. & Regs. 1640-01-01-.02 (TSAC); Tenn. Comp. R. & Regs. 1640-01-19-.04 (TELS); Tenn. Comp. R. & Regs. 1640-01-20-.03 (Math and Science Teacher Loan Forgiveness Program); Tenn. Comp. R. & Regs. 1640-01-21-.03 (Rural Health Loan Forgiveness Program)

⁷⁴ W. Va. Code Ann. § 18C-5-7, W. Va. Code St. R. §§ 128-66-5 and 133-6-5 (HEAPS)

⁷⁵ See FN 53

⁷⁶ Minn. Stat. Ann. § 136A.121 and Minn. R. 4830.0400

⁷⁷ Ohio Admin. Code 3351-2-02

⁷⁸ Wis. Admin. Code HEA § 5.04

⁷⁹ Ark. Code Ann. § 6-82-1704 (Higher Education Opportunity Grant Program); Ark. Code Ann. § 6-85-206, Ark. Admin. Code 008.10.3-2A:2, 008.10.3-2B:2 and 008.10.3-2C:2 (Arkansas Academic Challenge Scholarship Program)

⁸⁰ Ind. Code Ann. §§ 21-12-6-5 and 21-12-6-6 (21st Century Scholars Program); § 21-12-1-9 (General Scholarships and Grants)

⁸¹ Md. Code Ann., Educ. § 18-111 (Financial Assistance); Md. Code Ann., Educ. § 18-303 (Educational Excellence Award Program – to prequalify as a 9th or 10th grader, student must agree in writing to refrain from substance abuse)

remain drug-free and/or avoid criminal activity. The Washington regulation requires that applicants must sign a pledge in the 7th or 8th grade that commits them to having no felony convictions before they will be eligible for the scholarship. Still other state programs require that an applicant be of good moral character to be eligible.⁸⁵ Oklahoma law provides that, to retain eligibility under the Higher Learning Access Act, a student must refrain from conduct that leads to expulsion or suspension of more than one semester.⁸⁶

⁸² 62 S.C. Code Ann. Regs. 315 (Palmetto Scholarship); 62 S.C. Code Ann. Regs. 465 (Need-Based Grants); 62 S.C. Code Ann. Regs. 900.95 (HOPE Scholarship); 62 S.C. Code Ann. Regs. 1200.10, 62 S.C. Code Ann. Regs. 1200.15, 62 S.C. Code Ann. Regs. 1200.25 (LIFE Scholarship) – for each of these programs, the applicant must certify that he or she has never been adjudicated delinquent or been convicted of or plead guilty to a felony or any second or subsequent alcohol or drug-related offenses. If the applicant has, he or she is ineligible for one year following the conviction.

⁸³ Tenn. Comp. R. & Regs. 1640-01-08-.03 (Teacher Loan/Scholarship); Tenn. Comp. R. & Regs. 1640-01-10-.04 (Christa McAuliffe Scholarship); Tenn. Comp. R. & Regs. 1640-01-12-.03 (Teacher Loan Program)

⁸⁴ Wash. Admin. Code § 250-84-030 (College Bound Scholarship)

⁸⁵ See, Ark. Code Ann. § 6-81-706 (Rural Medical Practice Student Loans and Scholarships); Ark. Code Ann. § 6-81-1203 (Graduate Nursing Student Rural APN and Nurse Educator Loans); 110 Ill. Comp. Stat. § 947/65.10 (Higher Education Student Assistance Act – Fellowship Program); Ill. Admin. Code Tit. 23, § 2772.110 (Fellowship Program); Ill. Admin. Code Tit. 23, § 2772.210 (Traineeship Program); N.J. Stat. Ann. § 18A:72J-4 (Martin Luther King Physician-Dentist Scholarships); 22 Pa. Code § 121.6 (financial aid); and S.C. Code Ann. § 59-113-20 (Tuition Grants)

⁸⁶ Okla. Stat. Ann. Tit. 70, §2603