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

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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

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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.\textsuperscript{11}

To summarize the federal requirements – students must either not be incarcerated\textsuperscript{12} 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\textsuperscript{13}
- **California:** SAVE Scholarship\textsuperscript{14}
- **Hawaii:** Student Loan\textsuperscript{15}
- **Kansas:** Student Assistance Programs\textsuperscript{16}
- **Kentucky:** Higher Education Finance LEAP and SLEAP\textsuperscript{17}
- **Maine:** Maine Scholarship Program\textsuperscript{18}
- **Missouri:** Financial Aid Program\textsuperscript{19}
- **New Hampshire:** Grants Workforce Incentive Program – Forgivable Loans\textsuperscript{20}
- **Oklahoma:** Tuition Aid Grant Program\textsuperscript{21}
- **Rhode Island:** College Bound Fund Academic Promise Scholarship Program\textsuperscript{22}
  - Rhode Island State Grant and Scholarship Program\textsuperscript{23}
  - Adult Education Grant Program\textsuperscript{24}

\textsuperscript{10} 34 C.F.R. § 668.32
\textsuperscript{11} See, 34 C.F.R. §§ 675.9, 676.9, 692.40 and 692.54
\textsuperscript{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.
\textsuperscript{13} Alaska Stat. § 14.43.162 and Alaska Admin. Code Tit. 20, §§ 15.115 and 15.088
\textsuperscript{14} Cal. Code Regs. Tit. 5, § 30962
\textsuperscript{15} Haw. Rev. Stat. § 309-2
\textsuperscript{16} Kan. Admin. Regs. 88-13-4
\textsuperscript{18} Code Me. R. 94-457 Ch. 614, § 2
\textsuperscript{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.
\textsuperscript{20} N.H. Code Admin. R. Ann. POS 601.04 and 702.01
\textsuperscript{21} Okla. Admin. Code § 610:25-7-6
\textsuperscript{22} R.I. Code R. 33-1-3:I
\textsuperscript{23} R.I. Code R. 33-1-5:I
\textsuperscript{24} R.I. Code R. 33-1-5:I
South Carolina: FFEL
Tennessee: State Lottery Scholarships and Grants
HOPE Scholarship
ASPIRE Scholarship
General Assembly Merit Scholarship
HOPE Scholarship for Military Members
HOPE Access Grants
Wilder-Naifeh Technical Skills Grants
HOPE Teachers’ Scholarship
Helping Heroes Act
Rural Health Scholarship
Guaranteed Student Loan Program
TELS
Math and Science Teach Loan Forgiveness Program
Rural Health Loan Forgiveness Program
Helping Heroes Grant Program
Texas: B-On-Time Loan Program
Utah: Centennial Opportunity Program for Education
LEAP
Higher Education Tuition Assistance Program
Lender of Last Resort Program
West Virginia: Financial Aid to Athletes
Wyoming: Need Based Scholarship

24 R.I. Code R. 33-1-6:1
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
42 Utah Admin. Code R765-605
43 Utah Admin. Code R765-606
44 Utah Admin. Code R765-607
45 Utah Admin. Code R765-626

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Florida, Georgia, Pennsylvania, South Carolina, South Dakota, Texas, and Wyoming deny eligibility to students who have been convicted of a felony, while Louisiana, Mississippi, Pennsylvania, South Carolina, and Utah 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. 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. 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.

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)
52 S.D. Codified Laws § 13-55-29 (Scholarships and Free Tuition)
56 Miss. Code. Ann. § 37-157-1 (Student Tuition Assistance)
58 See FN 50
60 Cal. Educ. Code § 69810
62 Ark. Code Ann. § 6-82-107
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Arkansas\textsuperscript{63}, California\textsuperscript{64}, Georgia\textsuperscript{65}, Illinois\textsuperscript{66}, Kentucky\textsuperscript{67}, Michigan\textsuperscript{68}, Montana\textsuperscript{69}, New Jersey\textsuperscript{70}, Oklahoma\textsuperscript{71}, Pennsylvania\textsuperscript{72}, Tennessee\textsuperscript{73}, West Virginia\textsuperscript{74}, and Wyoming\textsuperscript{75} deny aid to individuals who are incarcerated. Conversely, Minnesota law specifically provides that incarcerated students are eligible for scholarships and grants-in-aid\textsuperscript{76} 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.\textsuperscript{77} Wisconsin students who are or were incarcerated are eligible for the Talent Incentive Grant.\textsuperscript{78}

Certain programs under Arkansas\textsuperscript{79}, Indiana\textsuperscript{80}, Maryland\textsuperscript{81}, South Carolina\textsuperscript{82}, Tennessee\textsuperscript{83} and Washington\textsuperscript{84} laws provide that an applicant or student must certify or pledge to be or

\begin{footnotesize}
\textsuperscript{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)
\textsuperscript{64} Cal. Educ. Code § 69433.9 (Cal Grant Program)
\textsuperscript{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)
\textsuperscript{66} Ill. Admin. Code Tit. 20, § 2700.65 (ILSAC – excludes National Guard and Veteran’s Grants from being disqualified)
\textsuperscript{67} 11 Ky. Admin. Regs. 3:015 (Kentucky Loan Program)
\textsuperscript{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)
\textsuperscript{69} Mont. Code Ann. § 20-26-605 (Governor’s Postsecondary Scholarship Program)
\textsuperscript{71} Okla. Admin. Code § 610:25-7-6 (Tuition Aid Grant Program)
\textsuperscript{72} 22 Pa. Code § 121.6 (financial aid)
\textsuperscript{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)
\textsuperscript{75} See FN 53
\textsuperscript{76} Minn. Stat. Ann. § 136A.121 and Minn. R. 4830.0400
\textsuperscript{77} Ohio Admin. Code 3351-2-02
\textsuperscript{78} Wis. Admin. Code HEA § 5.04
\textsuperscript{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)
\textsuperscript{80} Ind. Code Ann. §§ 21-12-6-5 and 21-12-6-6 (21\textsuperscript{st} Century Scholars Program); § 21-12-1-9 (General Scholarships and Grants)
\textsuperscript{81} Md. Code Ann., Educ. § 18-111 (Financial Assistance); Md. Code Ann., Educ. § 18-303 (Educational Excellence Award Program – to prequalify as a 9\textsuperscript{th} or 10\textsuperscript{th} grader, student must agree in writing to refrain from substance abuse)

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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.\footnote{\textit{\textsuperscript{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.\footnote{\textit{\textsuperscript{86}}}}

\textsuperscript{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.

\textsuperscript{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)

\textsuperscript{84} Wash. Admin. Code § 250-84-030 (College Bound Scholarship)

\textsuperscript{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)

\textsuperscript{86} Okla. Stat. Ann. Tit. 70, §2603

\textsuperscript{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.

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