MEMO
To: John Walters, Director of the Executive Office of National Drug Control Policy
From: Sandra Derstine, Representative of National Students for Sensible Drug Policy
Date: October 23, 2001
Re: Higher Education Act (HEA) Amendments of 1998

Executive Summary
In recent decades, the domestic war on drugs has grown as a primary target of legislative concern, as well as popular attention. In 1998, amendments to the Higher Education Act of 1965 were signed into law. One of the provisions in this law restricts federal financial aid to any student convicted of a prior drug-related offense, no matter how minor.

Supporters of this law cite it as a major victory over drug abuse, exemplifying the zero tolerance policy of the United States. Opposition, who undoubtedly would also like to see drug abuse decline, disagree with the merit of this path. Those who would like to see the amendment altered see its flawed logic and many gaps—it disproportionately affects working class and minority students, tries students twice for the same crime, and does not appropriately support the drug treatment programs that it proposes. In order to solve the drug problems of this country, education should be encouraged, not denied.

What is the Higher Education Act? What are the HEA Amendments of 1998?
The Higher Education Act (HEA) was created in 1965 to open higher education opportunities for all Americans. It establishes federal financial aid programs such as Perkins Loans, Pell Grants, Supplemental Educational Opportunity Grants, PLUS Loans and Work-Study Programs. The Act is periodically reviewed and updated by Congress to ensure adequate funding and access to college for millions of Americans.¹

In 1998 the HEA was amended to include a new provision that closes college opportunities to students revealing drug convictions on their application forms. The amendment restricts federal financial aid eligibility to all students with any prior drug-related convictions, no matter how minor.²

Why should the HEA Amendments of 1998 be changed?

Restricting eligibility for federal financial aid hurts working class families. Since federal aid is need-based, only drug-convicted students of working and lower class families will be disproportionately affected by the new amendments. Upper class families with drug-convicted children can afford both a good lawyer and a good education, therefore will never need to disclose the information on a federal financial aid form or be affected by the new policy.³

Restricting eligibility for federal financial aid is discriminatory. In New York State, almost 95% of those in prison for drug offenses are people of color, but the majority of people and the majority of drug users are white.⁴ African Americans, who comprise approximately 13% of the population and 13% of all drug users, account for more than 55% of those convicted for drug offenses. There is no reason to believe that the disproportionate racial impact of drug law enforcement won’t spread into the realm of higher education via this law.⁵
This amendment tries students twice for the same crime. The students who are having their aid restricted have already paid the price the criminal justice system demands upon their conviction (whether it be serving time, probation, or community service). It makes no sense to punish students again by limiting their ability to get an education and improve their lives. Additionally, judges handling drug cases already had the option (prior to the implementation of this law) of denying drug offenders federal benefits. School administrators also have the power to expel problem students. These are the people who know the students best and should be the ones who decide their educational futures - not the federal government.6

This amendment does not support the drug abuse treatment that it proposes. This law allows federal financial aid to be reinstated for students once they have successfully completed a qualifying drug-treatment program. Unfortunately though, the law does not increase appropriations for this provision. Treatment accounts for only 15% of the drug budget; hence, most of the people who need it are not getting it. And those who cannot afford an education without financial aid probably cannot afford a private treatment program or the time off from work or school it takes to complete one.7 A recent study by researchers at Substance Abuse Mental Health Services Administration (SAMHSA) has indicated that 48% of the need for drug treatment, not including alcohol abuse, is unmet in the United States.8

What arguments support the HEA Amendments of 1998?

Students who have been convicted of drug-related offenses are bound to do it again; therefore we should not waste federal money on them if their cause is futile. This is a very misinformed logic. This assumes that people do not change. In fact, adolescents have the most maturing and changing to do, and an education is the best way to ensure that an adolescent moves towards improving a past lifestyle.

The Gateway Theory, which exemplifies marijuana as a drug that begins a person’s descent into uncontrollable addiction of harder drugs, leads to the conclusion that users of any drug, no matter how minor, should be treated the same. In this case, the logic is that all students should be denied aid because they are all bound to do hard drugs in the end. The Gateway Theory is false. In March 1999, the Institute of Medicine stated, "There is no conclusive evidence that the drug effects of marijuana are causally linked to the subsequent abuse of other illicit drugs." In fact, over 72 million Americans have used marijuana, yet for every 120 people who have ever tried marijuana, there is only one active, regular user of cocaine9

The Amendment only restricts eligibility until a student’s successful completion of a qualifying drug rehabilitation program. This argument is true. Through the HEA Amendments of 1998, federal financial aid eligibility is only permanently restricted for those who have not completed a treatment program. But, the flaw in this provision is that it establishes a high standard, yet does not authorize any new spending. It fails to anticipate possible appropriations instability due to an increase in student participation in these programs.10 Therefore, the students that want and need treatment are most likely not going to get it. Drug treatment should be provided on request. Treatment has been shown to be 10 times more cost effective than interdiction in reducing the use of drugs.11 Studies also reported by the White House Drug Policy Office show that for every $1 spent on treatment, $7 is saved in criminal justice, health care, or welfare costs that would otherwise be borne by society.12

Why should you support changing the HEA Amendments of 1998?

This amendment will not solve our drug war. The solution is not to deny our citizens an education, but to give them one. Setbacks such as not being able to raise money for school can set a young ex-offender into a downward spiral toward failure. This surely will not set right the drug problems we have in our country, but instead will proliferate and intensify them.
The solution to our drug problems lies within educational programs. In years past our focus has been misdirected. For example, from 1987 to 1995, state spending on higher education decreased by 18.2%, while spending on corrections increased by 30%. Keeping kids in school and making educational opportunities more available should be our focus. Studies have shown that “alternative programming appears to be the most effective among those youth at greatest risk for substance abuse and related problems.” An independent study by Public-Private Partnerships evaluated Big Brother/Big Sister programs and found participants to be 46% less likely to start using illegal drugs and 27% less likely to start using alcohol.

The latest numbers from the Department of Education (9/23/01) indicate that a record number of students are likely to lose their full-year financial aid eligibility this year. For the 2001-2002 school year, 279,044 applicants who refused to answer the drug question had their application processed, and 9,114 had their aid cut after revealing a drug conviction. Tighter enforcement of the existing law is behind the dramatic increase in the number of applicants being denied aid. For the 2002-2003 school year, students who do not answer the question will not have their application processed. It is estimated that between 40,000 and 60,000 students will be formally denied aid for some or all of this school year, plus an unknown number who don’t bother to apply because they rightly or wrongly believe they are ineligible. That means that between 40,000 and 60,000 students will be back on the streets in a downward spiral towards failure. And their lost potential will be on the hands of the federal government.


