

STUDENTS CONVICTED OF POSSESSION OR SALE OF DRUGS

A federal or state drug conviction (but not a local or municipal conviction) can disqualify a student for FSA funds. The student self-certifies in applying for aid that he is eligible; you're not required to confirm this unless you have conflicting information.

Convictions only count against a student for aid eligibility purposes (FAFSA question 23c) if they were for an offense that occurred during a period of enrollment for which the student was receiving federal student aid—they do not count if the offense was not during such a period, unless the student was denied federal benefits for drug trafficking by a federal or state judge (see drug abuse hold sidebar). Also, a conviction that was reversed, set aside, or removed from the student's record does not count, nor does one received when she was a juvenile, unless she was tried as an adult.

The chart below illustrates the period of ineligibility for FSA funds, depending on whether the conviction was for sale or possession and whether the student had previous offenses. (A conviction for sale of drugs includes convictions for conspiring to sell drugs.)

| | Possession of illegal drugs | Sale of illegal drugs |
|--------------------|---------------------------------|---------------------------------|
| 1st offense | 1 year from date of conviction | 2 years from date of conviction |
| 2nd offense | 2 years from date of conviction | Indefinite period |
| 3+ offenses | Indefinite period | |

If the student was convicted of both possessing and selling illegal drugs, and the periods of ineligibility are different, the student will be ineligible for the longer period. Schools must provide each student who becomes ineligible for FSA funds due to a drug conviction a clear and conspicuous written notice of his loss of eligibility and the methods whereby he can become eligible again.

A student regains eligibility the day after the period of ineligibility ends (i.e., for a 1st or 2nd offense); or when he or she successfully completes a qualified drug rehabilitation program that includes passing two unannounced drug tests given by such a program. Further drug convictions will make him ineligible again.

Students denied eligibility for an indefinite period can regain eligibility after completing any of the following 3 options:

- 1) Successfully completing a rehabilitation program (as described below, which includes passing two unannounced drug tests from such a program);
- 2) Having the conviction reversed, set aside, or removed from the student's record so that fewer than two convictions for sale or three

Drug convictions

HEA Section 484(r)

34 CFR 668.40

A student who self certifies that he or she has a qualifying drug conviction will receive a "C" code and comment code 053, 054, 056, 058, or 052 on his or her SAR and ISIR. See the SAR Comment Code and Text Guide on IFAP.

Question 23 Student Aid Eligibility Worksheet



You may distribute this worksheet to students to help them determine and document their eligibility or ineligibility, based on their responses to question 23 on the FAFSA (i.e., drug convictions): www.ifap.ed.gov/drugworksheets/1415DrugWorkSheets.html.

Drug abuse hold

The Anti-Drug Abuse Act of 1988 includes provisions that authorize federal and state judges to deny certain federal benefits, including student aid, to persons convicted of drug trafficking or possession. The Central Processing System maintains a hold file of individuals who have received such a judgment. All applicants are checked against this file to determine if they should be denied aid. This is separate from the check for a drug conviction via question 23; records matching the drug abuse hold file receive a rejected application (reject 19 and comments 009 or 055 on the SAR and ISIR). See the *ISIR Guide* on the IFAP publications page for more information.

convictions for possession remain on the record; or

3) Successfully completing two unannounced drug tests which are part of a rehab program (the student does not need to complete the rest of the program).

In such cases, the nature and dates of the remaining convictions will determine when the student regains eligibility. It is the student's responsibility to certify to you that she has successfully completed the rehabilitation program; as with the conviction question on the FAFSA, you are not required to confirm the reported information unless you have conflicting information.

When a student regains eligibility during the award year, you may award Pell Grant, TEACH, and Campus-Based aid for the current payment period and Direct Loans for the period of enrollment.

Standards for a qualified drug rehabilitation program

A qualified drug rehabilitation program must include at least two unannounced drug tests and satisfy at least one of the following requirements:

- Be qualified to receive funds directly or indirectly from a federal, state, or local government program.
- Be qualified to receive payment directly or indirectly from a federally or state-licensed insurance company.
- Be administered or recognized by a federal, state, or local government agency or court.
- Be administered or recognized by a federally or state-licensed hospital, health clinic, or medical doctor.

If you are counseling a student who will need to enter such a program, be sure to advise the student of these requirements. If a student certifies that he has successfully completed a drug rehabilitation program, but you have reason to believe that the program does not meet the requirements, you must find out if it does before paying the student any FSA funds.

Members of a religious order

34 CFR 674.9(c)

34 CFR 675.9(c)

34 CFR 676.9(c)

34 CFR 685.200(a)(2)(ii)

34 CFR 690.75(d)

Members of any religious order, society, agency, community, or other organization aren't considered to have financial need if the order—

- (1) has as a primary objective the promotion of ideals and beliefs regarding a Supreme Being,
- (2) requires its members to forego monetary or other support substantially beyond the support it provides, and
- (3) directs the member to pursue the course of study or provides subsistence support to its members.

Members of these religious orders can't receive Direct Subsidized Loans, Pell Grants, or Campus-Based aid. They are eligible, however, for Direct Unsubsidized Loans.

INCARCERATED STUDENTS

A student is considered to be incarcerated if she is serving a criminal sentence in a federal, state, or local penitentiary, prison, jail, reformatory, work farm, or similar correctional institution (whether it is operated by the government or a contractor). A student is not considered to be incarcerated if she is in a halfway house or home detention or is sentenced to serve only weekends.

Incarcerated students are not eligible for FSA loans but are eligible for FSEOGs and FWS. They are also eligible for Pell Grants if not incarcerated in a federal or state penal institution. See *Chapter 6* for more information on this and on sex offenders who were incarcerated but are now subject to an involuntary civil commitment.

You may accept the student's written self-certification that he is no longer incarcerated.

CONFLICTING INFORMATION

In addition to reviewing data provided by the Department's application system and NSLDS (as discussed in the rest of this volume), your school must have an internal system to share information relevant to the student's eligibility, such as his or her academic standing. The FSA program regulations require a school to develop an adequate system to ensure the consistency of any data related to a student's application or eligibility for Federal Student Aid regardless of the source of that data. Your school is responsible for reconciling all inconsistencies that it receives with one exception: if the student dies during the award year, you aren't required to resolve conflicting information.

If your school has conflicting information for a student or you have any reason to believe his application is incorrect, you must resolve such discrepancies before disbursing FSA funds. If you discover a discrepancy after disbursing FSA funds, you must reconcile the conflicting information and require the student to repay any aid for which he wasn't eligible, unless he is no longer enrolled for the award year and will not re-enroll. Refer to the *Application and Verification Guide* and *Volume 2, Chapter 3* for more information.

Incarcerated students

HEA Sec. 401(b)(8) and 484(b)(5)
34 CFR 600.2 and 668.32(c)(2)

Conflicting information

34 CFR 668.16(b)(3) and (f)

Defense of Marriage Act Decision



DCL-GEN-13-25

In June, 2013, the Supreme Court struck down Section 3 of the Defense of Marriage Act (DOMA), which provided that for purposes of federal programs, a marriage can only be between one man and one woman. The change will have implications for dependency status and will impact how applicants fill out the FAFSA. For more details, see the *Application and Verification Guide*, Chapter 2.