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## The History of Denying Federal Financial Aid to System-Impacted Students

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# The History of Denying Federal Financial Aid to System-Impacted Students

By Bradley D. Custer

*People who are impacted by the criminal justice system (“system-impacted”) face barriers when seeking financial aid to pay for college. Between the late 1960s and the early 2000s, Congress created laws that prohibited incarcerated students and students with certain criminal convictions from receiving federal grants and loans. This paper offers a comprehensive review of the history of those laws, which provides context for current debates on restoring Pell Grants to students in prison. Legislative documents, scholarly sources, and news reports were studied to build this historical review. Key lessons from history are discussed as to how Congress might treat system-impacted students in the near future.*

People who were impacted by the criminal justice system (“system-impacted”) are among the few populations of college students who, by law, cannot get federal financial aid. System-impacted students include those who are currently incarcerated or who have certain past criminal convictions on their records (see Underground Scholars Initiative, 2019). While incarcerated, some people enroll in prison higher education programs, while people with past criminal convictions can enroll in institutions on the “outside.” But like most students today, paying for college is challenging, and for many system-impacted students, federal financial aid is simply not available to them.

Most notably, students enrolled in prison college programs have been unable to get Pell Grants for 25 years after Congress instituted a ban in 1994 (Ubah, 2004). The debate over restoring Pell Grants to incarcerated students has recently reached new levels of public visibility, with increasing news coverage and opinion writing (see Mooney & Hopwood, 2019; Nadworny, 2019; Ring, 2019; Rizer & King, 2019) and refreshed political interest from Congress and presidential candidates (see Kreighbaum, 2019a; Kreighbaum, 2019b). This presents an opportunity to re-examine the history of how and why federal laws were changed to ban incarcerated students from receiving Pell Grants. Fortunately, scholars and journalists have covered this topic in some detail (see Page, 2004; Tewksbury & Taylor, 1996; Ubah, 2004; Welsh, 2002; Zook, 1994).

But there are other important policy events that affected the ability of system-impacted students to get federal financial aid that often get left out when only discussing Pell Grants for prisoners. This paper contributes to the literature by offering a deeper review of federal policies that tells a more complete story about who among system-impacted students are unable to get financial aid and why. It addresses the political efforts to ban financial aid from prisoners from before and after 1994, the 1994 ban itself, the 1968 ban on aid to convicted campus protesters, and laws from the 1980s and 1990s that banned students convicted of drug offenses from receiving aid. As higher education researchers begin to explore the policy barriers that affect system-impacted students (see Custer, 2018), this paper provides needed historical context for understanding how these students lost access to federal financial aid in the first place. Following the detailed policy review, key lessons from history are discussed as to how Congress might treat system-impacted students in the near future.

## Method

The purpose of this literature review article is to synthesize existing accounts of historical federal policy events that pertain to financial aid for system-impacted college students. I review the history of federal legislation to answer the question: what were the legislative events – and contexts of those events – that led to certain system-impacted students losing aid eligibility?

I referenced three types of source materials to build this review: policies and legislation, scholarly sources, and news reports. First, the subject of this review is federal financial aid policy, so it was important to study original policy texts. This entailed analyzing statutes, public laws, legislation (e.g., bills, amendments) and legislation histories (e.g., dates of introduction, sponsors, vote results, etc.) from official government websites, especially Congress.gov. Similarly, I obtained government reports and official press releases about these policies from federal agency websites and libraries, like the Department of Education's ERIC (Education Resources Information Center) and the Department of Justice's National Criminal Justice Reference Service. Second, scholarly sources – including peer-reviewed journal articles, law review articles, books, and reports from a variety of organizations – offered historical background and policy analyses. Searches on Google Scholar and university library databases, as well as combing the references of relevant papers, led to finding these sources. Finally, news articles proved to be a rich source of information on federal policy events. I searched Google, historical newspaper databases, and individual newspapers to find articles about policy events. I relied heavily on reporting from *The Chronicle of Higher Education*, which regularly produces in-depth coverage of federal legislative activity.

For each policy topic addressed, I corroborated findings by consulting each of the three types of sources (i.e., policy, research, news). For example, if I found a news report about a federal bill, I would pull the official text of the bill and its history, and I would search for any scholarly analyses of it.

This article is organized into three sections, one each for different subpopulations of system-impacted students: students convicted of crimes related to campus protests, incarcerated students, and students convicted of drug offenses. For each subpopulation, I present the history of each financial aid eligibility policy and its current status. Following the literature review are sections for discussion and implications for practice (Nexus).

## Convicted Campus Protesters

The first population of system-impacted students to lose federal financial aid was students convicted of crimes related to campus protests, riots, or disruptions. Throughout the 1960s, organized college student activists protested the Vietnam War, the draft, racism, police brutality, the suppression of free speech and assembly, and university policies (see President's Commission on Campus Unrest, 1970; Sorey & Gregory, 2010). Though largely nonviolent, student protests were disruptive to college campuses and some turned violent, notably the Columbia University protests of spring 1968 ("Congress Denies Student," 1969). Federal and state lawmakers responded by passing laws aimed at punishing protesters and dissuading students from participating in protests (President's Commission on Campus Unrest, 1970). One such law used financial aid as a sanction (Keeney, 1971). Signed by President Lyndon B. Johnson on October 16, 1968, the Higher Education Amendments of 1968 eliminated aid eligibility for two years for anyone convicted of crimes:

which involved the use of (or assistance to others in the use of) force, disruption, or the seizure of property under control of any institution of higher education to prevent officials or students in such institution from engaging in their duties or pursuing their studies, and that such crime was of a serious nature and contributed to a substantial disruption of the administration of the institution... (Higher Education Amendments, 1968, sec. 504)

At the time, affected federal financial aid programs included the new programs of the 1965 Higher Education Act (i.e., work study, grants, loans, and fellowships), as well as the loans and fellowship programs of the National Defense Education Act of 1958.

In following years, Congress also amended other statutes to ensure that other federal agencies did not award loans and grants to convicted protestors, but the laws were poorly written, making them difficult to enforce ("Congress Denies Student," 1969; McCarthy & Steinkrauss, 1970). Chiefly, there was no

mechanism in place for a criminal conviction to automatically trigger a suspension of financial aid; rather, college administrators had to first have knowledge of a conviction and then determine if the conviction met the statutory standards for suspension of aid (McCarthy & Steinkrauss, 1970; President's Commission on Campus Unrest, 1970). Perhaps this is why only 89 students in 1968-69 and 40 students in 1969-70 were reported to have lost eligibility for aid because of convictions, which some lawmakers thought was evidence that colleges were willfully ignoring the new law (Keeney, 1971; McCarthy & Steinkrauss, 1970).

For those reasons and others, the financial aid ban was criticized by college presidents, two U.S. presidential commissions, the American Council on Education, the American Bar Association, and other organizations ("Congress Denies Student," 1969; Keeney, 1971). For example, in 1970, President Nixon's Commission on Campus Unrest recommended to repeal the ban, asserting that "these laws have completely failed to deter campus disruptions. They have only complicated campus disciplinary procedures and, by providing another student grievance, sometimes helped to provoke further disruption" (p. 222). By the early to mid-1970s, the Student Movement of the 1960s was in significant decline (Sorey & Gregory, 2010), and Congress deleted the financial aid ban on convicted protestors through the Education Amendments of 1980, signed by President Jimmy Carter on October 3, 1980. Additional research is needed to identify how many otherwise eligible students between 1968 and 1980 lost aid because of campus disruption convictions.

## **Incarcerated Students**

The largest and most persistently targeted population of system-impacted students is incarcerated students. As early as the 1830s, postsecondary educators taught students inside prisons, though formalized prison higher education programs did not develop until the mid-20<sup>th</sup> Century (Gehring, 1997; Kenner, 2019). In the earlier years of organized prison higher education programs, incarcerated students received federal aid from the Veterans Administration, the Office of Economic Opportunity, the Law Enforcement Assistance Administration, the Vocational Rehabilitation Act of 1920, the G.I. Bill of 1944, the Manpower Development and Training Act of 1962, and the Elementary and Secondary Education Act of 1965 (Laird, 1971). But the 1972 Basic Educational Opportunity Grant Program (later Pell Grants) created the biggest funding source for incarcerated students, who qualified for the grants based on income just like students with no criminal history (Education Amendments, 1972; Page, 2004). Pell Grants became the primary source of funding for higher education prison programs, growing the number of programs from as few as 46 in 1967, to 218 by 1973, to 350 programs by 1982 (Welsh, 2002; Kenner, 2019; Littlefield & Wolford, 1982). By the 1993-1994 academic year, about 27,000 incarcerated students received Pell Grants, just under 1% of the total 3.3 million students who received Pell Grants that year (Zook, 1994). Further, of the \$5.3 billion spent on Pell Grants that year, incarcerated students received about \$35 million, which is about seven-tenths of one percent (Zook, 1994). At such small proportions, the awards of Pell Grants to prisoners had no effect on the ability of other qualified students to get their awards (U.S. Government Accountability Office, 1994), contrary to what many politicians claimed (Kenner, 2019; Page, 2004). However negligible the expenditure, any amount spent on prisoners proved to be controversial, as explained next.

## **Eliminating Aid Eligibility**

Soon after the creation of the Pell Grant in 1972, public opinion turned against the allocation of Pell Grants to incarcerated students, and a "conservative, anti-correctional education trend in the U.S. Congress" took hold (Gehring, 1997, p. 46). From the late 1970s through the 1990s, conservative legislators complained about prisoners receiving Pell Grants instead of other students (Gehring, 1997; Kenner, 2019; Page, 2004; Taylor, 2008; Ubah, 2004), like Senator Jesse Helms (R-NC) who, on July 30, 1991, said on the floor of Congress: "the American taxpayers are being forced to pay taxes to provide free college tuitions for prisoners at a time when so many law abiding, tax-paying citizens are struggling to find enough money to send their children to college" (Taylor, 1999, p. 111).

Pell Grants for prisoners was hotly debated amidst other contentious crime and punishment topics of the time (see Page, 2004). Page (2004) analyzed the political rhetoric of lawmakers and media sources on the “Pell Grants for prisoners” debate between 1991 and 1994. He found five central arguments *against* Pell Grants: 1) that Pell funds were being diverted from the intended target population, 2) prisoners were incapable of being rehabilitated, 3) the government already funded enough prison rehabilitation programs, 4) crime would increase because people would want to go to prison to get a free education, and 5) it was not fair to crime victims. Alternatively, he found six central arguments *in favor of* Pell Grants: 1) prisoners were indeed needy and therefore fit the Pell criteria, 2) overall Pell spending on prisoners was small, 3) prisoners were not taking away grants from non-prisoners, because Pell is a quasi-entitlement program 4) higher education in prison reduces recidivism, 5) education programs helped to maintain order in prisons, and 6) educating prisoners meant safer streets upon their release (Page, 2004).

Though some Congressmen intended to fully remove federal aid from prisoners, other Congressmen resisted, including Senator Claiborne Pell (D-RI), resulting in initial legislative concessions (Page, 2004). Signed by President George H. W. Bush on July 23, 1992, the Higher Education Amendments of 1992 brought the first round of rollbacks in eligibility. First, people sentenced to death or life without parole lost eligibility for Pell Grants altogether, leaving aid for other incarcerated students intact (Higher Education Amendments, 1992). Second, the award amount for incarcerated students was reduced to only cover the cost of tuition, fees, books, and supplies, thereby eliminating the possibility that incarcerated students would be reimbursed for not-applicable living expenses (DeLoughry, 1992). Third, Pell Grants were only to be issued to incarcerated students in a state “if such grants are used to supplement and not supplant the level of postsecondary education assistance provided by such State to incarcerated individuals in fiscal year 1988” (Higher Education Amendments, 1992, p. 481). This was to prevent prison officials from misusing Pell funding for non-postsecondary education expenditures, a common complaint among lawmakers (Page, 2004). Finally, and importantly, all incarcerated students lost eligibility for federal student loans (Higher Education Amendments, 1992). But some lawmakers did not think these rollbacks went far enough, and two years later, they fully eliminated Pell Grant eligibility for all incarcerated students.

Congress used amendments to the Violent Crime Control and Law Enforcement Act (1994) to eliminate aid to prisoners. The Act, often called the 1994 Crime Bill, is best known for its assault weapons ban, expansion of the death penalty, mandatory life sentences for people with three or more “strikes,” and increased funding for police officers and new prisons (Chettiar & Eisen, 2016; U.S. Department of Justice, 1994). First, in November 1993, Senator Kay Bailey Hutchison (R-TX) introduced and passed by voice Senate Amendment 1158 to the Senate version of the Crime Bill, arguing: “Pell grants were sold to help low- and moderate-income families send their kids to college. They were not sold for prison rehabilitation” (LaPeter, 2003, n.p.). But the Senate shortly thereafter agreed to take up the House’s version of the Crime Bill instead. Thus, Representative Bart Gordon (D-TN) had to introduce and pass (by a vote of 312-116) a parallel House Amendment 521 in April 1994 to ban aid to prisoners (Page, 2004). Signed by President Bill Clinton on September 13, 1994, the Crime Bill amended the Higher Education Act, in saying: “No basic grant shall be awarded under this subpart to any individual who is incarcerated in any Federal or State penal institution” (Violent Crime Control and Law Enforcement Act, 1994, p. 1828). However, the Department of Education later clarified that students in local, municipal, or county jails are eligible for Pell Grants, as are all students in juvenile facilities (Mahaffie, 2014; U.S. Department of Education, 2014).

There was one population of incarcerated students who were exceptions, as they initially were unaffected by the ban on Pell Grants but later lost aid. A person convicted of certain sex offenses, typically after serving a jail term, can be involuntarily committed to a secure, residential facility if a psychiatric evaluation indicates the person has a mental or personality disorder that contributes to a high likelihood of future sexual offending (Jackson & Covell, 2013). People confined in these facilities were known to enroll in distance education courses at community colleges and used Pell Grants to pay for them, angering some lawmakers (LaPeter, 2003; Norton, 2008). State civil commitment laws were only just developing in the 1990s, which explains why Congress did not include civil commitment facilities in the 1994 Pell Grant ban (Norton, 2008). To stop the flow of Pell Grants and loans to civilly committed people convicted of sex

offenses, Congressman Ric Keller (R-FL) introduced the No Financial Aid for Sex Offenders Act in 2003 and 2005, which themselves were not passed into law. Instead, the text from these bills to eliminate aid eligibility for a student who “is subject to an involuntary civil commitment upon completion of a period of incarceration for a forcible or nonforcible sexual offense” was passed via the Higher Education Opportunity Act (2008), signed by President George W. Bush on August 14, 2008. Today, an estimated 5,400 men are confined across the twenty states that maintain civil commitment laws for people convicted of sex offenses (Koeppel, 2018). Additional research is needed to assess the current state of higher education programming available in civil commitment facilities.

### **Effect of the Pell Grant Ban**

As a result of eliminating Pell Grants for incarcerated students in 1994, once thriving prison higher education programs were drastically cut, resulting in a 44% drop in enrollments the following year (Tewksbury & Taylor, 1996). Said differently, total higher education enrollments in prison as a percentage of the prison population fell “from 7.3 percent in 1994-95, to 4 percent in 1995-96, and 3.8 percent in 1997-98” (Tewksbury, Erickson, & Taylor, 2000, p. 48). Several researchers surveyed the directors of prison higher education programs in each state after the elimination of Pell Grants, consistently finding financial cuts to programs, decreases in student access and enrollment, reduction in availability of programs, and reductions in state governmental commitments to prison education (Tewksbury, Erickson, & Taylor, 2000; Tewksbury & Taylor, 1996; Welsh, 2002).

Over two decades later, the condition of prison higher education has not recovered (Castro, Hunter, Hardison, & Johnson-Ojeda, 2018). Today, it is estimated that 202 institutions – just 4% of degree-granting higher education institutions in the U.S. – offer credit coursework to students in prisons, half of which are community colleges (Castro, Hunter, Hardison, & Johnson-Ojeda, 2018). Ten states have just one institution offering credit courses in at least one of their prisons, and three states plus Washington, DC have none (Castro, Hunter, Hardison, & Johnson-Ojeda, 2018).

Recent estimates show that as many as 463,000 incarcerated people would be eligible today for Pell Grants, and the potential benefits of awarding them Pell Grants are substantial (Oakford et al., 2019). If half of them attended college in prison with the help of Pell Grants, their post-release employment rates would increase by 10%, increasing earnings for those individuals by over \$45 million in the first year (Oakford et al., 2019). The resulting reductions in criminal recidivism were estimated to save states over \$365 million per year in incarceration costs (Oakford et al., 2019). Given the swift negative impact of the Pell Grant ban and the potential benefits of restoring aid eligibility, there has been persistent efforts to restore Pell Grants to incarcerated students.

### **Restoring Aid Eligibility**

Many researchers, advocates, and organizations have urged Congress to restore Pell Grants to incarcerated and committed students (see Institute for Higher Education Policy, 1994; 2018), and there have been several attempts to do so. Early on, an incarcerated student sued over his loss of financial aid, but a federal judge ruled that Congress had the authority to change the Pell Grant program’s rules (“Judge Upholds Ban,” 1995). Organizations like the NAACP in 2007 and the American Federation of Teachers in 2010 issued resolutions in support of restoring prisoners’ grants (Scher, 2017). In 2015, Representative Donna Edwards (D-MD) and 59 Democratic cosponsors introduced the Restoring Education And Learning (REAL) Act to repeal the Pell ban, which was reintroduced in 2017 and 2018, all of which failed (REAL Act, 2015; 2017; 2018; Zoukis, 2015). In August 2018, the organizers of a 19-day nation-wide strike of incarcerated workers included in their demands the restoration of Pell Grants for prisoners (Pilkington, 2018).

Despite the ban, some prisoners have recently been able to get Pell Grants for college. Citing influential research on the positive effects of prison higher education (see Davis, Bozick, Steele, Saunders, & Miles, 2013), the Department of Education announced in 2015 an experimental program to issue a limited

number of Pell Grants to incarcerated students in approved prison programs (U.S. Department of Education, 2016). Known as the Second Chance Pell experimental program, it was a capstone to President Barack Obama's agenda for criminal justice reform. In July 2016, 67 higher education institutions were selected to partner with correctional institutions in awarding Pell Grants to nearly 12,000 students (U.S. Department of Education, 2016). Predictably, Second Chance Pell was not without its critics. In 2015 and again in 2017, Representative Chris Collins (R-NY) introduced – without success – the sharply titled “Kids Before Cons Act” to prevent the Department from issuing experimental Pell Grants to incarcerated students (Scher, 2017). But the program has since proven successful; 8,769 incarcerated students received Pell Grants in the first two years of implementation, and 954 credentials were awarded (U.S. Government Accountability Office, 2019). In May 2019, the Department under the Trump Administration announced it would expand the program by offering Pell Grants at more sites (U.S. Department of Education, 2019).

The experimental program, however, is by design a temporary fix and is a program operated by the Department of Education, not one authorized by Congress. The Pell Grant ban is still law of the land, though arguments to reverse the ban are gaining strength. The persistent pressure to reverse the Pell ban since it passed in 1994, paired with the successes of the Second Chance Pell program, may be starting to persuade politicians. House Democrats proposed to reverse the ban in its Higher Education Act reauthorization bill (Aim Higher Act, 2018), and some Republicans expressed openness to the proposal (Douglas-Gabriel, 2019). In April 2019, Senator Brian Schatz (D-HI) reintroduced the REAL Act (2019) to reverse the ban, which for the first time had Republican co-sponsors (Kreighbaum, 2019a). Nearly all Democrats running for president in 2020 have pledged their support for restoring Pell Grants for incarcerated students (Kreighbaum, 2019b).

## **Students Convicted of Drug Offenses**

People convicted of drug offenses are the final category of college student who lost financial aid eligibility. Two federal laws affect the ability of these students to get federal financial aid, both of which are rooted in America's drug war. Though drugs have been regulated and criminalized in the US for well over 100 years, it was not until the 1970s that sweeping federal laws authorized the crack down on drug users and sellers now known as the War on Drugs. Led by President Richard Nixon, these policies bolstered law enforcement and increased penalties for drug crimes, resulting in a boom in jail and prison populations (Alexander, 2012). As explained next, federal lawmakers sought to punish drug-offending college students by stripping them of their federal education benefits.

## **Denial of Federal Benefits Program**

Signed into law on November 18, 1988 by President Ronald Reagan, the omnibus Anti-Drug Abuse Act is best known for increasing penalties for drug trafficking crimes and establishing the Office of National Drug Control Policy (Congressional Research Service, 1988). The Act also targeted drug users through its Denial of Federal Benefits Program. The law states, at the discretion of federal or state judges, any person convicted of drug trafficking may be denied some or all federal benefits for up to five years for a first offense, ten years for a second offense, and indefinitely for a third offense; those convicted of drug possession could lose benefits for one year for the first offense and five years for the second (Anti-Drug Abuse Act, 1988, §5301). Eligibility for as many as 750 programs from 50 federal agencies can be stripped from convicted people (Musser, 2000). There are reportedly upwards of 162 programs from the Department of Education alone that can be denied, including Pell Grants, federal loans, work study, other educational grants programs (e.g., for adult, vocational, and migrant education), and eligibility for the Upward Bound program (Musser, 2000; U.S. Department of Justice, n.d.). In other words, as part of a person's criminal sentence, a judge can temporarily or permanently terminate a person's financial aid eligibility.

Upon a person's conviction, courts report the convictions to various federal agencies, which track the barred individuals in databases commonly known as the Debarment List (U.S. Department of Justice, 2002). When financial aid is among the federal benefits that are denied to a person, a "drug abuse hold" is entered into the Central Processing System for federal financial aid (U.S. Department of Education, 2018, p. 1-23). When students file their Free Application for Federal Student Aid (FAFSA), there is no question on the application about this law; rather, all applicants are checked for drug abuse hold (U.S. Department of Education, 2018). Overall, such denials are rare. According to Musser in 2000: "Of the approximately 10 million loan/grant applications processed by the Department of Education each year, 25 to 30 are declined because an individual's benefits had been denied as a result of a conviction for a drug trafficking or drug possession offense" (p. 255). Updated data are needed to show how many students apply for aid but are denied because of drug abuse holds.

A 2002 report – the most updated available – showed a total of 6,938 sanctioned people from 1988 to 2001 lost federal benefits, though it was not reported how many of those people lost education benefits (U.S. Department of Justice, 2002). But the public can look up individuals by name to see who is denied benefits, a service provided to federal agencies and contractors who must be sure not to hire or award contracts to those on the Debarment List (System for Award Management, 2019). As of June 2019, the System for Award Management showed over 131,000 individuals listed in the database, of which 217 people are currently ineligible for education benefits. Of them, 171 (79%) are indefinitely barred from benefits, while the others will have their eligibility restored between 2019 and 2027 (System for Award Management, 2019). The system also showed 743 people whose education program debarments are no longer active. Additional research is needed to uncover which specific benefits were denied to these individuals and under what circumstances they lost those benefits, which is information not made available in the public data.

### **FAFSA Question 23**

The second federal law that affected students with drug convictions has a wider effect than the 1988 law. Representative Mark Souder's (R-IN) Drug-Free Student Loan Provision was passed in the 1998 reauthorization of the Higher Education Act, signed by President Bill Clinton on October 7, 1998 (Crawford, 2005), though earlier versions of the provision were introduced by Republican Congressmen between 1988 and 1992 (Smith, 2003). The amendment suspended eligibility for federal loans, grants, and work study to *anyone* convicted of the sale or possession of drugs. Depending on the type, date, and number of offenses, a student's eligibility could be suspended for one year, two years, or indefinitely from the date of the offense. Restoring eligibility required the student to participate in a rehabilitation program (Higher Education Amendments, 1998). According to Souder, the purpose of the amendment was to deter drug crimes, to help students get drug treatment, and to hold financial aid recipients accountable for their use of taxpayer funds (Crawford, 2005). One study has since refuted the first claim, finding that youth were not deterred from committing drug crimes by the threat of losing financial aid (Lovenheim & Owens, 2014).

To implement the new provision, Question 35 was added to the FAFSA for the 2000-2001 academic year: "*Have you ever been convicted of possessing or selling illegal drugs?*" It proved to be a significant barrier for many students. That year, 6,928 applicants were denied aid because of their convictions (Yachnin, 2000). Later, the U.S. Government Accountability Office "estimated that between 17,000 and 20,000 applicants per year would have been denied Pell Grants, and between 29,000 and 41,000 would have been denied student loans" for their drug convictions between the 2001-02 and 2003-04 academic years (U.S. Government Accountability Office, 2005). Perhaps more problematic was the fact that hundreds of thousands of students left the question blank (Yachnin, 2000). In the Clinton Administration's final year, the Department of Education allowed aid to be awarded to those who skipped the question (Burd, 2000), angering Republican lawmakers (Hardi, 2000). When the George W. Bush Administration took control in 2001, the Department pledged to enforce the question by denying aid to those who skipped it (Maguire, 2001).

Republicans and Democrats alike were dissatisfied with the 1998 law and how it was implemented, and many organizations lobbied for its change (Burd, 2002; Smith, 2003). Even Representative Souder – the

provision's author – thought the Department had misinterpreted his intent by over applying the suspension of aid to all people with convictions in their past, rather than to only those convicted while students (Burd, 2002). Thus, lawmakers made several attempts to amend the 1998 law. In 1999 and 2001, Representative Barney Frank (D-MA) introduced failed bills to repeal the provision outright (Gehring, 2001). In 2002, Souder partnered with Gregory Meeks (D-NY) and 13 other bipartisan cosponsors to introduce the Responsible Student Financial Assistance Assurance Act (2002), which limited aid suspension to only students who were convicted of drug crimes during the time they were receiving federal financial aid. In 2003, Representative Buck McKeon (R-CA) and 37 cosponsors tried the same by introducing the FED UP Higher Education Technical Amendments Act (2003; Cavanagh, 2003). Neither bill survived past introduction, but the language from these bills would pass in the next legislative session.

Financial aid access was restored to people with *prior* drug convictions when the Deficit Reduction Act narrowly passed Congress with a tie-breaking vote in the Senate by Vice President Dick Cheney in 2005. The purpose of the Deficit Reduction Act was to reduce federal spending on entitlement programs like Medicare and Medicaid by an estimated \$40 billion over five years (U.S. Office of the Press Secretary, 2006). A subsection of the Act, called the Higher Education Reconciliation Act, also made changes to federal student loan programs, estimated to save \$22 billion (U.S. Office of the Press Secretary, 2006). Regarding students with drug offenses, the Act made it so that the suspension of aid only applied to students whose drug offenses occurred *while the student was receiving some form of financial aid*. In other words, a person who had a drug conviction *before* applying for federal aid was no longer ineligible for aid (unless that person was previously denied education benefits under the 1988 law discussed above). College students who are convicted of drug crimes while receiving financial aid face a one-year, two-year, or indefinite suspension of aid depending on the circumstances of the offense(s) and are also required to complete a rehabilitation program to regain eligibility (Deficit Reduction Act, 2005).

Today, FAFSA applicants disclose relevant drug convictions at Question 23, which asks: “*Have you been convicted for the possession or sale of illegal drugs for an offense that occurred while you were receiving federal student aid (grants, work-study, and/or loans)?*” Though much narrower than the 1998 question, many students still lose aid because of drug convictions. Recent data from the Department of Education showed that between the 2013-14 and 2016-17 academic years, 3,989 students were suspended from federal aid eligibility because of drug convictions or because they left the Question 23 blank; an additional 1,026 students during that period had their aid eligibility partially suspended for the same reasons (Kreighbaum, 2018).

Even after the changes in 2005, many still opposed the suspension of aid eligibility for people convicted of drug offenses. The American Civil Liberties Union represented the Students for Sensible Drug Policy in a lawsuit against the Department of Education; they claimed students' Fifth Amendment rights were violated, arguing that students were being punished again (double jeopardy) for their drug crimes (*Students for Sensible Drug Policy v. Spellings*, 2006). The students lost in court at the district level and again on appeal (*Students for Sensible Drug Policy v. Spellings*, 2008). In February 2016, Senator Bob Casey (D-PA) introduced the Stopping Unfair Collateral Consequences from Ending Student Success (SUCCESS) Act, which would have repealed the drug conviction rule, though the bill did not make it past introduction (SUCCESS Act, 2016). In February 2017, the American Bar Association passed a resolution in support of restoring aid to students convicted of drug offenses (American Bar Association, 2017), and in 2018, the Institute for Higher Education Policy sent a letter to Education Secretary Betsy DeVos urging her to eliminate Question 23 from the FAFSA, co-signed by 37 other organizations and individuals (Institute for Higher Education Policy, 2018). In July 2018, House Democrats introduced the Aim Higher Act to amend and reauthorize the 1965 Higher Education Act. In it, they prohibit the Education Secretary from asking about drug convictions on the FAFSA (Aim Higher Act, 2018). Though House Republican's higher education bill also calls for FAFSA simplification, it leaves intact Question 23 (PROSPER Act, 2017).

## Discussion

This review of federal policies reveals a clear trend. For nearly the entire history of modern-day federal financial aid, policymakers – under both political parties and six presidential administrations – have sought to disenfranchise system-impacted college students. The trend began in 1968 with an attempt to punish students who were convicted for participating in campus protests. In 1988, drug users and traffickers became the target when Congress gave judges the ability to take away financial aid during sentencing. In 1992 and 1994, prison higher education programs were hit hard by the loss of loans and Pell Grants to incarcerated students. After multiple attempts, lawmakers again targeted people with drug convictions in 1998 with a new question on the FAFSA. Finally, 2008 saw the last major policy development, when Congress eliminated aid eligibility for the relatively few civilly committed people enrolled in college. Only twice in the 50 years since the creation of the major federal financial aid programs has Congress reversed the trend by expanding access to system-impacted students, in 1980 with the repeal of convicted protestors rule and in 2005 with a narrower FAFSA question pertaining to drug convictions.

Though difficult to quantify, the impact of these policies on students is significant. Hundreds of thousands of potential students lost the ability to pay for and access higher education. As cited above, a current, conservative estimate of Pell-eligible prisoners stands at 463,000 (Oakford et al., 2019). That figure does not account for the hundreds of thousands more who went to prison and were released (or died) between 1994 and 2020 who could never get federal aid for college. Likewise, an untold number – probably in the tens of thousands, combined – have been ineligible for aid because of convictions for drugs, sexual offenses, or campus disruptions. Additional research is needed to quantify the total number of students affected by these laws and the consequences they experienced as a result.

An important lesson from this history is that there is little reason to think that Congress will not continue its trend of taking away financial aid from system-impacted students. As the price of higher education rises, as states spend less on higher education, and as the Pell Grant covers less of a student's total college bill (see Protopsaltis & Parrott, 2017), pressures to cut and save can only intensify. Could the next step be to eliminate federal aid for all people convicted of any felony? There are currently no proposals to do so, but advocates for system-impacted students should heed history's warning. It is more likely, however, that Congress will maintain its longstanding policies. Despite apparent popularity among Democrats, the Republican-controlled Senate of the 116th Congress is not likely to restore financial aid to students in prison or to those with drug convictions (Caygle & Everett, 2019). Or perhaps Congress will make incremental changes to financial aid eligibility. They could restore aid to *some* people in prison – like those who are nearer to their release dates – while leaving the ban in place for others – like those sentenced to life or death or those with certain convictions. This would be in line with how they targeted certain populations for aid ineligibility in the past. Observers will have to monitor Washington politics for the right conditions that might someday lead to policy changes.

The focus on federal legislation in this paper obscures the concurrent political activity happening in the states. State-funded financial aid is an important tool for college access and completion (see Gross, Williams-Wyche, & Williams, 2019), including for system-impacted students. For example, in absence of Pell Grants, prison college programs in Indiana thrived with funding from need-based financial aid grants (Loughlin, 2011), and in most states, students with past criminal convictions – including for drugs – face no restrictions when applying for state financial aid (Custer, 2019). But that is not the whole story. Many other states deny financial aid to system-impacted students, especially to incarcerated students, as in California, Illinois, New York, Pennsylvania, and beyond (Custer, 2019; Keeney, 1971). Some state programs are off-limits to anyone with a felony conviction – like the Florida Bright Futures Scholarship and Kentucky Educational Excellence Scholarship – and others are still off-limits to students convicted of campus protest-related crimes (see Custer, 2019). To fully understand the extent to which system-impacted are disenfranchised from financial aid, this paper on federal policy should be read in tandem with emerging reviews of state financial aid policies (see Custer, 2019; Kelley, 2019).

## Conclusion

The legislative history of how system-impacted college students lost access to federal financial aid is longer and more complex than most writers acknowledge. The loss of Pell Grants to incarcerated students in 1994 undoubtedly had the largest negative impact, which advocates have focused on trying to reverse. But federal lawmakers long before and long after passed legislation that denied aid eligibility to other populations of system-impacted students, including those convicted for campus protests and drug offenses. Small gains were made in restoring aid, but most incarcerated students and students with certain drug convictions remain ineligible for federal financial aid. As advocates and politicians pursue change, the history presented in this paper may be a sobering reality check for the effort it will take to get Congress to reverse course.

## Nexus

- According to the ACPA/ NASPA (2015) Professional Competency Areas for Student Affairs Educators, higher education professionals should be able to “articulate the history of the inclusion and exclusion of people with a variety of identities in higher education” (p. 18) and “explain how today’s practice is informed by historical context” (p. 19). This paper teaches financial aid administrators about the history of a population of students that has been repeatedly excluded from aid eligibility. It explains how legislative actions of the past resulted in today’s programs and policies, which financial aid professionals administer daily. Historical knowledge gives individuals the ability to be critical of their work and to not lose sight of the people excluded from higher education opportunities.
- History also shapes the future. As described above, there are several possible scenarios for the near future regarding aid eligibility for system-impacted students, including no change, partial restoration of aid, or complete restoration of aid. Understanding the history of these policies helps to prepare aid administrators for maintaining the status quo when policies remain unchanged or for implementing new rules when Congress makes changes. Should aid eligibility be restored, it will be in the hands of aid administrators to support the potentially hundreds of thousands of new students who will – for the first time in 25 years – be able to get federal financial aid.
- Financial aid administrators should be aware of the policy positions held by the National Association of Student Financial Aid Administrators (NASFAA). According to its website, NASFAA recommends to “eliminate the tie between student eligibility and drug convictions,” the history of which was described in this paper (NASFAA, 2019a). Though NASFAA does not take an expressed position on restoring aid to people confined or incarcerated, its first core value is to “promote fairness and equity for students across all sectors of postsecondary education, with a particular emphasis on low-income, underrepresented and underserved students” (NASFAA, 2019b). With a new understanding of the history of how these students lost aid, NASFAA members and aid administrators everywhere should press NASFAA’s leadership to join the many other higher education organizations in calling on Congress to reverse the Pell Grant ban (see Institute for Higher Education Policy, 2018).

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