

September 2005

# DRUG OFFENDERS

## Various Factors May Limit the Impacts of Federal Laws That Provide for Denial of Selected Benefits





Highlights of [GAO-05-238](#), a report to congressional requesters

## Why GAO Did This Study

Several provisions of federal law allow for or require certain federal benefits to be denied to individuals convicted of drug offenses in federal or state courts. These benefits include Temporary Assistance for Needy Families (TANF), food stamps, federally assisted housing, postsecondary education assistance, and some federal contracts and licenses.

Given the sizable population of drug offenders in the United States, the number and the impacts of federal denial of benefit provisions may be particularly important if the operations of these provisions work at cross purposes with recent federal initiatives intended to ease prisoner reentry and foster prisoner reintegration into society.

GAO analyzed (1) for selected years, the number and percentage of drug offenders that were estimated to be denied federal postsecondary education and federally assisted housing benefits and federal grants, contracts, and licenses and (2) the factors affecting whether drug offenders would have been eligible to receive TANF and food stamp benefits, but for their drug offense convictions, and for a recent year, the percentage of drug offenders released who would have been eligible to receive these benefits.

Several agencies reviewed a draft of this report, and we incorporated the technical comments that some provided into the report where appropriate.

[www.gao.gov/cgi-bin/getrpt?GAO-05-238](http://www.gao.gov/cgi-bin/getrpt?GAO-05-238).

To view the full product, including the scope and methodology, click on the link above. For more information, contact Laurie Ekstrand at (202) 512-8777 or [ekstrandl@gao.gov](mailto:ekstrandl@gao.gov).

## DRUG OFFENDERS

# Various Factors May Limit the Impacts of Federal Laws That Provide for Denial of Selected Benefits

## What GAO Found

For the years for which it obtained data, GAO estimates that relatively small percentages of applicants but thousands of persons were denied postsecondary education benefits, federally assisted housing, or selected licenses and contracts as a result of federal laws that provide for denying benefits to drug offenders. During academic year 2003-2004, about 41,000 applicants (or 0.3 percent of all applicants) were disqualified from receiving postsecondary education loans and grants because of drug convictions. For 2003, 13 of the largest public housing agencies in the nation reported that less than 6 percent of 9,249 lease terminations that occurred in these agencies were for reasons of drug-related criminal activities—such as illegal distribution or use of a controlled substance—and 15 large public housing agencies reported that about 5 percent of 29,459 applications for admission were denied admission for these reasons. From 1990 through the second quarter of 2004, judges in federal and state courts were reported to have imposed sanctions to deny benefits such as federal licenses, grants, and contracts to about 600 convicted drug offenders per year.

Various factors affect which convicted drug felons are eligible to receive TANF or food stamps. This is because state of residence, income, and family situation all play a role in determining eligibility. Federal law mandates that convicted drug felons face a lifetime ban on receipt of TANF and food stamps unless states pass laws to exempt some or all convicted drug felons in their state from the ban. At the time of GAO's review, 32 states had laws exempting some or all convicted drug felons from the ban on TANF, and 35 states had laws modifying the federal ban on food stamps. Because of the eligibility requirements associated with receiving these benefits, only those convicted drug felons who, but for their conviction, would have been eligible to receive the benefits could be affected by the federal bans. For example, TANF eligibility criteria include requirements that an applicant have custodial care of a child and that income be below state-determined eligibility thresholds. Available data for 14 of 18 states that fully implemented the ban on TANF indicate that about 15 percent of drug offenders released from prison in 2001 met key eligibility requirements and constitute the pool of potentially affected drug felons. Proportionally more female drug felons than males may be affected by the ban, as about 27 percent of female and 15 percent of male drug offenders released from prison in 2001 could be affected.

### Federal Benefits That May Be Denied to Drug Offenders

Federal benefit	Description
TANF	Cash assistance designed to meet a needy family's ongoing basic needs
Food stamps	Food assistance payments to low-income households
Postsecondary education	Federal Pell Grants, Stafford loans, and work-study assistance
Federally assisted housing	Public housing primarily for low-income families with children and vouchers for private-market assistance for very low-income families
Denial of Federal Benefits Program	Federal postsecondary student loans, federal licenses (e.g., for physicians, pilots, and others), and procurement contracts, among others

Source: GAO analysis of federal law.

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### Abbreviations

ABAWD	Able-Bodied Adults without Dependent
ACF	Administration for Children and Families
AOUSC	Administrative Office for United States Courts
BJA	Bureau of Justice Assistance
BJS	Bureau of Justice Statistics
DOJ	Department of Justice
DFB	Denial of Federal Benefits
ED	Department of Education
EFC	Expected Family Contribution
FAFSA	Free Application for Federal Student Aid
FNS	Food and Nutrition Service
GED	general equivalency degree
HCV	Housing Choice Voucher
HEA	Higher Education Act
HHS	Department of Health and Human Services
HUD	Department of Housing and Urban Development
INDCP	Office for National Drug Control Policy
MASS	Management Operations Certification Assessment System
NCRP	National Corrections Reporting Program
PHA	public housing agency
PRWORA	Personal Responsibility and Work Opportunity Reconciliation Act of 1996
TANF	Temporary Assistance for Needy Families
USDA	U.S. Department of Agriculture
USSC	United States Sentencing Commission

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United States Government Accountability Office  
Washington, DC 20548

September 26, 2005

The Honorable Robert C. Scott  
Ranking Minority Member  
Subcommittee on Crime, Terrorism, and Homeland Security  
Committee on the Judiciary  
House of Representatives

The Honorable Bobby L. Rush  
House of Representatives

During recent years, several hundred thousand persons per year in the United States were convicted in federal and state courts of drug offenses such as felony drug trafficking and misdemeanor drug possession. Provisions of federal law allow that these convictions may render these individuals ineligible to receive selected federal benefits. The benefits include Temporary Assistance for Needy Families (TANF), food stamps, federally assisted housing, postsecondary education grants and loans, and certain federal contracts and licenses. Depending upon the federal benefit, drug offenders may be prohibited from receiving assistance for periods that range from 1 year to life.<sup>1</sup>

You asked us to assess the impacts of these provisions. An important first step in assessing the impacts is to determine how many people could be affected by these provisions. The number and the impacts of federal denial of benefit provisions may be particularly important if the operations of these provisions work at cross purposes with recent federal initiatives intended to ease prisoner reentry and foster prisoner reintegration into society. This report analyzes two interrelated questions about the number or percentage of drug offenders that could be affected by the provisions:

(1) In specific years, how many drug offenders were estimated to be denied federal postsecondary education benefits, federally assisted

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<sup>1</sup>In this report, we use the term “drug offenders” broadly to refer to any person that may be denied federal benefits under the provisions that allow or require them to be denied specifically to drug offenders. This term applies whether the offender was convicted of a felony or misdemeanor drug offense, or whether the offender engaged in a type of drug-related criminal activity that could nonetheless result in the loss of federally assisted housing benefits.

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housing, and selected grants, contracts, and licenses? (2) What factors affect whether drug offenders would have been eligible to receive TANF and food stamp benefits, but for their drug offense convictions, and for a recent year, what percentage would have been eligible to receive these benefits?

You also asked us to address the impact of federal benefit denial laws on racial minorities and the long-run consequences of having benefits denied. The final sections of appendices III, IV, and V in this report include discussions of the data limitations related to estimating the impacts on racial minorities. Where information was available, we also identify in the appendices some of the possible long-run consequences of denial of benefits.

To estimate the extent to which drug offenders were denied federal postsecondary education, federally assisted housing benefits, and selected federal licenses, grants, and contracts, we obtained and analyzed data from several agencies. We analyzed Department of Education data on persons who applied for federal postsecondary education assistance such as Pell Grants and who reported that they had convictions that prohibited them from receiving federal postsecondary education benefits.<sup>2</sup> We analyzed Bureau of Justice Statistics (BJS) data on the educational attainment of a nationally representative sample of drug offenders on probation. From officials at 17 large public housing agencies (PHA) we obtained information about their experiences in denying federally assisted housing benefits to persons because of their drug-related criminal activities.<sup>3</sup> We analyzed data on evictions and denials of admission into public housing that the Department of Housing and Urban Development (HUD) obtains from PHAs that manage units in the Public Housing Program. From the Bureau of Justice Assistance (BJA) we obtained data on persons reported to be denied selected federal licenses, grants, and contracts by federal and state judges.

To estimate the extent to which convicted drug felons would have been eligible to receive TANF and food stamp benefits apart from their felony

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<sup>2</sup>The Pell Grant program provides grants (i.e., aid that does not need to be repaid) to needy undergraduates.

<sup>3</sup>Our review covered both the Public Housing Program and the Housing Choice Voucher Program. Not all 17 of the PHAs provided responses to all of our questions. Below, we report data from the PHAs that provided relevant information.

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drug offense conviction, we obtained and analyzed the most recently available data compiled by BJS on the familial and economic characteristics of drug offenders in prison. We analyzed these data to estimate the number of drug offenders that met selected eligibility criteria to receive these benefits, and we applied our estimates from the BJS prisoner data to data on drug offenders released from prison in 14 of 18 states that fully implemented the federal bans on TANF and food stamps. Because of the limited data on persons actually denied TANF and food stamp benefits, we provide rough estimates of the proportions of drug offenders that met selected eligibility criteria to receive these benefits rather than of the number of such offenders actually denied these benefits.

To identify the various factors that contributed to our estimates of those potentially affected by federal provisions that provide for denial of benefits, we interviewed officials from the federal agencies that administer the federal benefits that may be denied, researchers who have studied the denial of federal benefits and related issues, and officials of various associations who represent PHAs, which are the agencies that manage federally assisted benefits. We also reviewed published studies on the denial of federal benefits.

We assessed the reliability of the data that we used in preparing this report by, as appropriate, interviewing agency officials about their data, reviewing documentation about the data sets, and conducting electronic tests. We used only the portions of the data that we found to be sufficiently reliable for our purposes in this report. We provide a more detailed discussion of our objectives, scope, and general methodology in appendix I. In appendices II through V, we further discuss our methodologies for each of the federal benefits that we reviewed.

We conducted our work from March 2004 through July 2005 in accordance with generally accepted government auditing standards.

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## Results in Brief

Relatively small percentages of applicants but thousands of persons were reported to be denied postsecondary education benefits, federally assisted housing, or selected licenses and contracts as a result of federal laws that provide for denying benefits to drug offenders during the years for which we had data. In relation to postsecondary education loans and grants, during academic year 2003-2004—one of the years in our review—about 41,000 applicants (about 0.3 percent of total applicants) either reported that they had drug offense convictions that disqualified them from receiving assistance or left the question blank, which also disqualified

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them from receiving federal assistance. In relation to public housing, among 13 of the largest PHAs in the nation that responded to our request for information about both lease terminations and reasons for denial of housing assistance that occurred during 2003, less than 6 percent of the more than 9,200 lease terminations that occurred in these agencies were reportedly for reasons of drug-related criminal activities—such as illegal distribution or use of a controlled substance. About 5 percent of the roughly 29,000 applications for admission into public housing in 15 of the largest PHAs in the nation were reportedly denied admission for reasons of drug-related criminal activities. From 1990 through the second quarter of 2004, sentencing judges in federal and state courts reported that they denied benefits such as licenses, grants, and contracts to an average of about 600 convicted drug offenders per year.

Various factors affect which convicted felony drug offenders may be eligible to receive TANF or food stamps. This is because state of residence, income, and family situation all play a role in determining eligibility. Federal law mandates that convicted felony drug offenders face a lifetime ban on receipt of TANF and food stamps unless states pass laws to exempt some or all such drug felons from the ban. At the time of our review, 32 states had laws exempting some or all convicted felony drug offenders from the ban on TANF, and 35 states had done so for the ban on food stamps. TANF eligibility requires that an applicant have custodial care of a child and that income be below eligibility thresholds. For food stamps, income and work requirements are used to determine eligibility. Thus, only those drug offenders who meet these requirements could be denied benefits because of their convictions. From available data for 14 of the 18 states that fully implemented the ban on TANF, we estimated that about 15 percent of drug offenders released from prison in 2001 met key eligibility requirements and constitute the pool of potentially affected felony drug offenders. The custodial parent requirement results in proportionally more female drug felons potentially affected by the TANF ban than males. For food stamps, we estimated that in 12 of the 15 states that fully implemented the federal ban on food stamps, about 23 percent of drug offenders released from prison during 2001 were custodial parents of minor children with incomes that could make them eligible to receive food stamps.

We provided a draft of this report to the Attorney General; the Secretaries of the Departments of Education, Agriculture, and Housing and Urban Development; the Assistant Secretary of the Administration for Children and Families, the Director of the Office of National Drug Control Policy; the Research Director of the United States Sentencing Commission; and

the Director of the Administrative Office of the United States Courts for their review and comment. We received technical comments from the Departments of Justice, Agriculture, and Education, and from the United States Sentencing Commission and the Administrative Office of the United States Courts, which we incorporated into the report where appropriate.

## Background

Selected provisions of federal law explicitly prohibit specific categories of drug offenders from receiving certain federal benefits for specified periods.<sup>4</sup> Table 1 identifies key provisions of federal law that provide for denial of benefits specifically to drug offenders and the corresponding benefits that may or must be denied to drug offenders.

**Table 1: Provisions of Selected Federal Law and the Corresponding Benefits That May Be Denied to Certain Drug Offenders**

Provisions of federal law	Federal programs identified in provisions allowing for denial of benefits	Description of the benefits that may or must be denied
Section 115 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996a (21 U.S.C. § 862 <sup>a</sup> )	Temporary Assistance for Needy Families	Cash assistance, vouchers, and other forms of support designed to meet a needy family's ongoing basic needs
	Food Stamp Program	Food assistance payments to low-income households and those transitioning from welfare to work.
Section 438 of the Higher Education Act Amendments of 1988 (20 U.S.C. § 1091(r)) <sup>b</sup>	Postsecondary education assistance	Federal Pell Grants, Stafford loans, and work-study assistance.
Section 5101 of the Anti-Drug Abuse Act of 1988 (42 U.S.C. § 1437d(l)(6)); <sup>c</sup> Section 428 of the Housing and Urban Development Appropriations Act for fiscal year 1999 (42 U.S.C. § 1437n(f)); and section 577 of the Quality Housing Work and Responsibility Act of 1998 (42 U.S.C. § 13662)	Federally assisted housing: Low-rent Public Housing Program	Public housing primarily for low-income families with children.
	Federally assisted housing: Housing Choice Voucher Program (formerly known as Section 8 Housing)	Private market housing assistance for very low-income families, the elderly, and the disabled.

<sup>4</sup>In addition to federal provisions explicitly denying federal benefits for drug offenders, other federal and state provisions may restrict convicted drug offenders from accessing certain types of occupational opportunities, participating in jury service, obtaining drivers' licenses, or exercising voting rights.

Provisions of federal law	Federal programs identified in provisions allowing for denial of benefits	Description of the benefits that may or must be denied
Section 5301 of the Anti-Drug Abuse Act of 1988 (21 USC § 862)	Denial of Federal Benefits Program	Federal postsecondary student loans, federal licenses (e.g., for physicians, pilots, and others), and procurement contracts, among other benefits

Source: GAO analysis of federal law.

<sup>a</sup>Pub. L. No. 104-93, 110 Stat. 2105 (1996).

<sup>b</sup>Pub. L. No. 105-244, 112 Stat. 1581 (1998).

<sup>c</sup>Pub. L. No. 100-690, 102 Stat. 4181 (1988).

<sup>d</sup>Pub. L. No. 105-276, 112 Stat. 2461, 2511, 2640 (1998). See appendix V for details about other federal provisions that affect the denial of federally assisted housing benefits.

Except for federal licenses, procurement contracts, and grants under Denial of Federal Benefits Program, the benefits that may or must be denied are benefits that are generally provided to low-income individuals and families. TANF, food stamps, federally assisted housing, and Pell Grants are low-income programs. The Denial of Federal Benefits Program, established under Section 5301 of the Anti-Drug Abuse Act of 1988, as amended, provides that federal and state court judges may deny all or some of certain specified federal benefits to individuals convicted of drug trafficking or drug possession offenses involving controlled substances. Additional details on each of the programs may be found in appendices II, III, IV, and V.

The provisions differ on key elements. For example, they establish different classes of drug offenders that may or must be denied benefits, and they provide for different periods that drug offenders are rendered ineligible to receive a benefit and whether or not benefits can be restored. Some of the provisions allow that drug offenders may become eligible for benefits upon completing a recognized drug treatment program.

Provisions established by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), as amended, which govern the TANF and food stamp programs, provide that benefits must be denied to persons convicted of a state or federal felony drug offense that involves the possession, use, or distribution of a controlled substance that occurred after August 22, 1996, the effective date of these provisions. Students become ineligible to receive federal postsecondary education benefits upon a conviction of either a misdemeanor or a felony controlled substances offense. Loss of federally assisted housing benefits can occur if individuals, relatives in their household, or guests under a tenant's control engage in drug-related criminal activity, regardless of whether the activity

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resulted in a conviction.<sup>5</sup> Local public housing authorities, which administer federally assisted housing benefits, have discretion in determining the behaviors that could lead to loss of certain federal housing benefits. Under the Denial of Federal Benefits Program, judges in federal and state courts may deny a range of federal licenses, contracts, and grants to persons convicted of controlled substances drug trafficking and drug possession offenses.

The period of ineligibility to receive benefits varies. Under PRWORA, as amended, unless states enact laws that exempt convicted drug offenders in their state from the federal ban, TANF and food stamp benefits are forfeited for life for those convicted of disqualifying drug offenses. State laws may also result in a shorter period of denial of these benefits. Students are disqualified from receiving federal postsecondary education benefits for varying periods depending on the number and type of disqualifying drug offense convictions. A first conviction for possession of a controlled substance, for example, results in a 1-year period of ineligibility, while a first conviction for sale of controlled substance results in a 2-year period of ineligibility. Upon subsequent convictions, the period of ineligibility can extend indefinitely.

Federally assisted housing benefits may also be denied for varying periods of time, depending upon the number and types of drug-related criminal activities. The minimum loss of benefit is 3 years in certain circumstances, and the maximum is a lifetime ban. For example, for persons convicted of certain methamphetamine offenses, the ban is mandatory and for life. Under the Denial of Federal Benefits Program, the denial of certain other types of benefits by judges, such as federal grants and contracts, can range from 1 year to life depending on the type of offense and number of convictions.

In some cases, the period of benefit ineligibility may be shortened if offenders complete drug treatment. For example, students may have their postsecondary education benefits restored if they satisfactorily complete a drug treatment program that satisfies certain criteria and includes two unannounced drug tests. Under the Denial of Federal Benefits Program, the denial of benefits penalties may, for example, be waived if a person

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<sup>5</sup>The term “drug-related criminal activity” means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use a controlled substance—as defined in section 102 of the Controlled Substances Act (21 U.S.C. § 802), 42 U.S.C. §1437d(1).

successfully completes a drug treatment program. Other than offenders who were convicted of methamphetamine offenses, drug offenders that successfully complete drug treatment may receive federally assisted housing benefits prior to the end of their period of ineligibility. In states that have passed laws so specifying, drug offenders may shorten the period of ineligibility for TANF and food stamp benefits by completing drug treatment. (See table 2.)

**Table 2: Selected Federal Legal Provisions Providing for Denial of Benefits to Drug Offenders**

Federal benefit	Drug offense that may lead to denial of benefits	Period of benefit denial	Conditions under which either the loss of benefits may be limited or benefits may be restored
TANF	Persons convicted of felonies for certain controlled substance related offenses that occurred after August 22, 1996	Lifetime, upon a first felony conviction, unless offenders reside in states that have opted out of or modified the federal ban	Loss of benefit is limited when offenders reside in states whose exemptions either opt out of the federal ban or provide for restoration of benefits
Food stamps	Persons convicted of felonies for certain controlled substance related offenses that occurred after August 22, 1996	Lifetime, upon a first felony conviction, unless offenders reside in states that have opted out of or modified the federal ban	Loss of benefit is limited when offenders reside in states whose exemptions either opt out of the federal ban or provide for restoration of benefits
Postsecondary education assistance	Students convicted of certain misdemeanor or felony controlled substance-related offenses	Varies from 1 year to an indefinite period for repeated convictions	Benefits may be restored after completion of drug treatment or if the conviction is reversed, set aside, or otherwise rendered nugatory
Federally assisted housing	Varies, but includes applicants, tenants, their household family members, and guests under their control who engage in drug-related criminal activities whether convicted or not	Varies, but a minimum of 3 years for those with a prior eviction for drug-related criminal activities and mandatory lifetime denial for persons convicted of certain methamphetamine offenses	Benefits may be restored after completion of drug treatment, with the exception of those persons convicted of certain methamphetamine offenses
Certain federal licenses, contracts, loans, grants, and other federal benefits, under the Denial of Federal Benefits Program	Persons convicted of controlled substance trafficking and possession offenses in federal or state courts	Varies from 1 year to life, depending upon the type of offense and number of convictions	Benefits may be restored after the individual has completed a drug treatment program, has otherwise been rehabilitated, or has made good faith efforts to participate in treatment but is unable to complete treatment because of lack of programs or ability to pay

Source: GAO analysis of selected provisions of federal law and agency documents.

The legislative history of these provisions is silent as to whether they were intended to do more than provide for denying federal benefits to drug offenders, such as deterring drug offenders from committing future

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criminal acts. For example, our 1992 report indicated that in the floor debates over the Denial of Federal Benefits Program, some members of Congress expressed the opinion that even casual drug use should result in serious consequences, such as the loss of federal benefits.<sup>6</sup> With respect to prohibiting drug offenders from public housing, congressional findings made in 1990 and amended in 1998 address the extent of drug-related criminal activities in public housing and the federal government's duty to provide public and other federally assisted low-income housing that is decent, safe, and free from illegal drugs.

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### How Benefit Eligibility Requirements May Affect whether a Drug Offender Loses Benefits

TANF, food stamps, federally assisted housing, and Pell Grants are means-tested benefits. To receive the benefits, individuals must meet certain eligibility criteria. These criteria vary with the benefit. For instance, states determine maximum earned income limits for TANF, but to receive food stamps, the federal poverty guidelines are generally used in determining eligibility. To receive federally assisted housing, local area median income is used. Additionally, most adults eligible for TANF and some adults eligible for food stamps must meet specified work requirements to participate in the programs. Table 3 summarizes the general eligibility requirements for the federal benefits discussed in this report and identifies the federal, state, and local agencies responsible for administering the programs.

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<sup>6</sup>GAO, *Drug Control: Difficulties in Denying Federal Benefits to Convicted Drug Offenders*, [GAO/GGD-92-56](#) (Washington, D.C.: April 21, 1992).

**Table 3: General Eligibility Criteria to Receive Selected Federal Benefits and Federal Agencies Responsible for Administering Programs**

Federal benefit	General eligibility requirements to receive the federal benefit	Federal, state, or local agency responsible for administering the benefit
TANF	States determine which needy families receive benefits. A needy family must consist of at least one child living with a relative or may consist of a pregnant woman. Eligibility for benefits is based on a variety of factors, including earned income limits, and work and education requirements.	The Administration for Children and Families in the Department of Health and Human Services (HHS).
Food stamps	In most states, household gross income cannot exceed 130 percent of the federal poverty level, and net income cannot exceed 100 percent of the poverty guidelines, and most states place limits on household assets. <sup>a</sup> Unless exempted by law, all food stamp recipients are subject to some type of work requirements. Able-bodied adults without dependent children must meet more stringent work requirements to receive benefits.	The Food and Nutrition Services in the U.S. Department of Agriculture (USDA).
Postsecondary education assistance	Requirements include a high school diploma or general equivalency degree (GED); acceptance into or active enrollment in an eligible, degree-granting institution; and family income requirements. <sup>b</sup>	U.S. Department of Education.
Federally assisted housing	Income eligibility is based on HUD's local area's median family income determinations. PHAs that manage federal housing may establish nonincome preference factors.	Office of Public and Indian Housing within the HUD. Local PHAs have responsibility for managing federally assisted housing rental units.
Licenses, contracts, and loans under the Denial of Federal Benefits Program	Professional competency and specific licensure requirements as defined by regulations.	The Department of Justice (DOJ) maintains records of the information it receives from state and federal court officials about persons denied benefits under this program, and the General Services Administration includes this information on its list of persons excluded from federal procurement or nonprocurement programs, to which other federal agencies have access.

Source: GAO analysis of federal and state requirements and agency documents.

<sup>a</sup>For 2003, 130 percent of the federal poverty level was roughly equivalent to \$1,654 per month for a family of three, and the net income threshold for a family of three was about \$1,272 per month. Net income is determined by taking into account a number of approved deductions from gross income.

<sup>b</sup>Students must be considered as either dependents or independent of their parents for the purposes of financial aid, and the share of family income and assets that are expected to be available for a student's education is determined by certain formulas.

Not all persons who meet the general eligibility requirements to receive federal benefits participate in the respective programs. Our recent study on programs that aim to support needy families and individuals shows that

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the portion of those eligible to receive the benefits that actually enrolled in the programs varied among programs.<sup>7</sup> Among families eligible to participate in TANF in 2001, between 46 percent and 50 percent were estimated to be participating in the program. For food stamps in 2001, between 46 percent and 48 percent of eligible households were estimated to participate in the program. For federally assisted housing, between 13 percent and 15 percent of eligible households in 1999 were estimated to be covered by the Housing Choice Voucher (HCV) Program and between 7 percent and 9 percent of eligible households in 1999 were estimated to be covered by the Public Housing Program. Further, the Department of Education reports that among all applicants for federal postsecondary education assistance in academic year 2001-2002, about 77 percent of the applicants that were eligible to receive Pell Grants applied for and received them.

Drug offenders would be directly affected by the federal provisions that allow for denial of low-income federal benefits when, apart from their disqualifying drug offense, they would have qualified to receive the benefits. For example, if a drug offender is not in a financially needy family and living with her dependent child, the drug offender would not be eligible for TANF benefits aside from the drug offense conviction.<sup>8</sup> To be directly affected by the ban on food stamps, a drug offender would have had to meet income tests and work requirements, unless the work requirements are, under certain specified circumstances, identified as not applicable by federal food stamp laws; otherwise, the offender's ineligibility to receive the benefit would disqualify him, as opposed to his drug offense. Because the ban on the receipt of TANF and food stamps is for life, an offender who is not otherwise eligible to receive the benefits at one point in time might become otherwise eligible to receive the benefits at a later point in time and at that time be affected by the provisions of PRWORA.

To be otherwise eligible to receive federal postsecondary education assistance, a person convicted of a disqualifying drug offense would, at a minimum, have to be enrolled in or accepted at an institution of higher education, as well as meet certain income tests. To be otherwise eligible

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<sup>7</sup>GAO, *Means-Tested Programs: Information on Program Access Can Be an Important Management Tool*, GAO-05-221 (Washington, D.C.: February 25, 2005).

<sup>8</sup>Needy pregnant women can also be eligible for TANF benefits, as they constitute a family unit for the purposes of TANF.

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for federally assisted housing benefits, a person would have to meet income tests.

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## Estimated Number of Drug Offenders Denied Federal Postsecondary Education, Housing, and Certain Contracts and Grants Varies by Type of Benefit

We estimated that among applicants for federal postsecondary education assistance, drug offenders constituted less than 0.5 percent on average of all applicants for assistance during recent years. In general, the education attainment level of drug offenders is lower than that of the general population, and this lower level affects drug offenders' eligibility for federal postsecondary assistance. Among selected large PHAs that reported denying applicants admission into public housing during 2003, less than 5 percent of applicants were denied admission because of drug-related criminal activities. PHAs have discretion in developing policies to deny offenders for drug-related criminal activities. Federal and state court sentencing judges were reported to impose sanctions to federal benefits to fewer than 600 convicted drug offenders in 2002 and 2003, or less than 0.2 percent of felony drug convictions on average.

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## An Estimated 17,000 to 41,000 Drug Offenders Lost Selected Federal Postsecondary Education Benefits in Selected Years

According to Department of Education data on applicants for federal postsecondary education assistance for the academic years from 2001-2002 through 2003-2004, less than 0.5 percent on average of the roughly 11 million to 13 million applicants for assistance reported on their applications that they had a drug offense conviction that made them ineligible to receive education assistance in the year in which they applied. These numbers do not take into account the persons who did not apply for federal postsecondary education assistance because they thought that their prior drug convictions would preclude them from receiving assistance or any applicant who falsified information about drug convictions. Using these data and Department of Education data on applicants that received assistance for the academic years 2001-2002 through 2003-2004, we 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 if the applicants who self-certified to a disqualifying drug offense were eligible to receive the benefits in the same proportion as the other applicants. (See app. III for details on our methods of estimating these figures.)

In general, the educational attainment levels of persons convicted of drug offenses is less than that of persons in the general population. This results in proportionately fewer persons eligible for these education benefits than in the general population. Our analysis of data from the only national survey of adults on probation that also reports on their educational

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attainment indicates that among drug offenders on probation during 1995,<sup>9</sup> less than half had completed high school or obtained a general equivalency degree (GED)—prerequisites for enrolling in a postsecondary institution. By comparison, according to a Bureau of Justice Statistics report, about 18 percent of adults in the general population had less than a high school degree. More recent data from the U.S. Sentencing Commission on roughly 26,000 drug offenders sentenced federally during 2003 indicate that half of them had less than a high school degree, about one-third had graduated from high school, and about 18 percent had at least some college.<sup>10</sup> In addition, our analysis of BJS data on drug offenders released from prisons in 23 states during 2001 indicate that about 57 percent of these drug offenders had not completed high school by the time they were admitted into prison; about 36 percent had completed high school or obtained a GED as their highest level of education completed; and the remainder had completed some postsecondary education.

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### In Selected PHAs Less Than 6 Percent of Residents and Applicants Were Denied Federally Assisted Housing during 2003 because of Drug-Related Criminal Activities

We obtained data from 17 of the largest PHAs in the nation on the decisions that they made to deny federally assisted housing benefits to residents or applicants during 2003.<sup>11</sup> Thirteen of the 17 PHAs reported data on both (1) the number of leases in the Public Housing Program units that they manage that ended during 2003 and (2) the number of leases that were terminated for reasons of drug-related criminal activities. These 13 PHAs reported terminating leases of 520 tenants in the Public Housing Program because of drug-related criminal activities. The termination of a lease is the first step in evicting tenants from public housing. Tenants whose leases were terminated for reasons of drug-related criminal activities constituted less than 6 percent of the 9,249 leases that were

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<sup>9</sup>The Bureau of Justice Statistics' Survey of Adults on Probation in 1995 is its most recent nationally representative survey of probationers that collects data on education level. These data also report the type of offense that led to the probation term.

<sup>10</sup>United States Sentencing Commission, *2003 Sourcebook of Federal Sentencing Statistics*, Washington, D.C.: United States Sentencing Commission. Published annually.

<sup>11</sup>We contacted 40 of the largest PHAs in the nation and requested information about denials of federally assisted housing assistance. The 17 that provided us with information are shown in appendix IV. These 17 are not statistically representative of the more than 3,000 PHAs nationwide. While our review covered both the Public Housing Program and the Housing Choice Voucher Program, not all 17 of the PHAs provided us with information on both types of programs.

terminated in these 13 PHAs during 2003.<sup>12</sup> Among these PHAs, the percentage of terminations of leases for reasons of drug-related criminal activities ranged from 0 percent to less than 40 percent. These PHAs also reported that the total number of lease terminations in 2003 and the volume of denials for drug-related activities were generally comparable with similar numbers for the 3 prior years. (See app. IV for data for each PHA that responded to our request for information.)

Fifteen PHAs acted on 29,459 applications for admission into the Public Housing Program during 2003. Among these applicants seeking residency, we estimated that less than 5 percent were denied admission because of their drug-related criminal activities. The PHAs also reported that they acted on similar numbers of applicants and made similar numbers of denial decisions in the prior 3 years. Table 4 shows the data on lease terminations and denials of admission in two federally assisted housing programs.

**Table 4: Number and Percentage of Tenants and Applicants for Federally Assisted Housing Benefits That Were Denied Benefits for Reasons of Drug-Related Criminal Activities in Selected Large PHAs in 2003**

Housing program	Type of action taken by PHAs	Number of PHAs reporting data	Number of actions	Estimated overall percentage of actions due to drug-related criminal activities	Among PHAs, <sup>a</sup> range of percentage of actions due to drug-related criminal activities
Public Housing Program	Lease terminations	13	9,249	5.6% <sup>b</sup>	0% to 39.3%
	Admissions decisions	15	29,459	< 5%	0.4% to 6.9%
HCV Program	Terminations of assistance	9	12,703	< 2%	0.07% to 6.1%
	Admissions decisions	9	21,996	< 1.5%	0.7% <sup>c</sup>

Source: GAO analysis of data from selected public housing agencies.

<sup>a</sup>Among PHAs that reported the data.

<sup>b</sup>This figure represents the actual percentage of actions taken due to drug-related criminal activities.

<sup>c</sup>Only one PHA reported denying HCV assistance for reasons of drug-related criminal activities.

<sup>12</sup>Leases may end or be terminated for a variety of reasons, including a tenant's failure to make payments due under the lease.

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We also obtained and analyzed data from HUD on the number of evictions and denials of admission into public housing during fiscal years 2002 and 2003 that occurred for reasons of criminal activity, of which drug-related criminal activity is a subset. More than 3,000 PHAs reported to HUD that in each of these years there were about 9,000 evictions for reasons related to criminal activity and about 49,000 denials of admission for reasons of criminal activity. As a percentage of units managed by these PHAs, evictions for reasons of criminal activity in each of these years amounted to less than 1 percent of units managed, and denials of admission amounted to about 4 percent of units managed. Evictions and denials for reasons of drug-related criminal activities would have to be equal to or, much more likely, less than these percentages.

On the basis of data that 9 PHAs were able to report about terminating participation in the HCV Program during 2003, we estimated that less than 2 percent of the decisions to terminate assistance in the HCV program (of the roughly 12,700 such decisions) were for reasons of drug-related criminal activities. In addition, 9 PHAs reported that they acted on 21,996 applications for admission into the HCV Program and that less than 1.5 percent of applicants were denied admission for reasons of drug-related criminal activities.

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**Discretionary Authority  
May Allow Some to  
Receive Housing Benefits,  
but Supply Limitations  
May Be a Significant  
Barrier**

Local PHAs that administer federally assisted housing benefits have discretion in determining whether current tenants or applicants for assistance have engaged in drug-related criminal activities that disqualify them from receiving housing benefits. HUD requires PHAs to develop guidelines for evicting from or denying admittance into federally assisted housing to individuals who engage in drug-related criminal activity. A November 2000 HUD study on the administration of the HCV Program described the variation in PHA policies on denying housing to persons who engaged in drug-related criminal activities. HUD concluded that because of the policy differences, some PHAs could deny applicants who could be admitted by others.<sup>13</sup> For example, some PHAs consider only convictions in determining whether applicants qualify for housing benefits, while others look at both arrests and convictions. Some look for a pattern of drug-related criminal behavior, while others look for evidence that any

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<sup>13</sup>Deborah Devine, Barbara A. Haley, Lester Rubin, and Robert W. Gray, "The Uses of Discretionary Authority in the Section 8 Tenant-Based Program: A Baseline Inventory of Issues, Policy, and Practice," Washington, D.C.: U.S. Department of Housing and Urban Development, November 2000.

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drug-related criminal activities occurred. In addition, among PHAs, the period of ineligibility for assistance arising from a prior eviction from federally assisted housing because of drug-related criminal activities ranged from 3 to 5 years. (See app. IV for a summary of selected PHA policies.)

Any imbalance between the supply of and demand for federally assisted housing may also affect whether drug offenders are denied access to this benefit. The stock of available federally assisted housing units in the Public Housing Program is generally insufficient to meet demand. PHAs may have long waiting lists, up to 10 years in some cases, for access to federally assisted housing. As PHAs generally place new applicants at the end of waiting lists, a drug offender who might be disqualified from federally assisted housing but who applies for housing assistance could go to the end of a PHA's waiting list. Until that applicant moved to the top of the waiting list, the limited supply of federally assisted housing, and not necessarily a drug offense conviction, would effectively deny the applicant access to the benefit.

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### Limited Use of the Denial of Federal Benefits Program Sanctions

Between 1990 and the second quarter of 2004, BJA received reports from state and federal courts that 8,298 offenders were sanctioned under the Denial of Federal Benefits Program in federal and state courts. This amounted to an average of fewer than 600 offenders per year. The Denial of Federal Benefits Program provides judges with a sentencing option to deny federal benefits such as grants, contracts, and licenses. About 62 percent of the cases reported to be sanctioned under the Denial of Federal Benefits Program occurred in federal courts, and the remaining 38 percent occurred in state courts. For recent years (2002 and 2003), BJA reported that fewer than 600 persons were denied federal benefits under the program. In 2002, there were more than 360,000 drug felony convictions nationwide. On average, less than 0.2 percent of these convicted drug felons were sanctioned under this program.

According to the BJA data, state court judges in 7 states have imposed the sanction, and state court judges in Texas accounted for 39 percent of all cases in which drug offenders were reportedly denied benefits under this program by state court judges. Federal judges in judicial districts in 26 states had reportedly imposed denial of benefits sanctions, and federal judges in Texas accounted for 21 percent of the cases in which federal judges reportedly denied benefits. The pattern of use of sanctions under this program, with substantially more use in some jurisdictions than in others, may indicate that there are drug offenders in some locations who

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could have received the sanction but did not. (See app. V for more information about this program.)

We previously reported on the relatively limited use of this sanction.<sup>14</sup> We reported then that many offenders who could be denied access to federal benefits would also be sentenced to prison terms that exceed the benefit ineligibility period; therefore, upon release from prison, the offenders would not necessarily have benefits to lose. BJA officials reported that as of 2004, about 2,000 convicted drug offenders were still under sanction under the Denial of Benefits Program, as the period of denial had expired for the other sanctioned offenders.

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## State Exemptions to the Federal Bans on TANF and Food Stamps and Other Factors Affect the Percentage of Drug Offenders That Would Have Been Eligible to Receive the Benefits

Most states have acted on the discretionary authority provided them under federal law to enact legislation that exempts some or all convicted drug felons in their states from the federal bans on their receipt of TANF and food stamps. That is, these state laws allow that convicted drug felons may not be banned for life from receiving TANF and food stamps provided they meet certain conditions. For states that had not modified the federal ban on TANF, we estimated that about 15 percent of all offenders and 27 percent of female offenders released from prison during 2001 would have met selected eligibility requirements and would therefore potentially be affected by the ban. We also estimated that among drug offenders released from prison during 2001 in states that had not modified the federal ban on food stamps about a quarter were custodial parents whose reported income was below federal poverty thresholds for food stamps. While food stamps are not limited to custodial parents, and the ban could affect other drug offenders, we limited our analysis to this group.

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## Eighteen States Fully Implement the Federal Ban on TANF, as the Remainder Have Enacted Legislation to Exempt Some or All Convicted Drug Felons

A total of 32 states have enacted laws that exempt all or some convicted drug felons from the federal ban on TANF benefits. Of these states, 9 have enacted laws that exempt all convicted drug felons from the federal ban, and these persons may receive TANF benefits provided that they meet their state's general eligibility criteria. Another 23 states have passed laws that exempt some drug felons from the TANF ban. The modifications allow that some convicted drug felons may receive benefits and generally fall into any of three categories: (1) Some states permit felons convicted of

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<sup>14</sup>See GAO, *Drug Control: Difficulties in Denying Federal Benefits to Convicted Drug Offenders*, GAO/GGD-92-56, (Washington, D.C.: April 21, 1992).

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drug use or simple possession offenses to continue to receive TANF benefits but deny them to felons convicted of drug sales, distribution, or trafficking offenses; (2) some states allow convicted felons to receive TANF benefits only after a period of time has passed; and (3) some states allow convicted drug felons to receive TANF benefits conditioned upon their compliance with drug treatment, drug testing, or other conditions. (See app. II for the status of states' exemptions to the TANF ban.)

Using state-level data on drug arrests as a proxy for state-level data on drug convictions, we estimated that the 9 states that completely opted out of the TANF ban and exempted all convicted drug felons from the ban accounted for about 10 percent of drug arrests nationally in 2002.<sup>15</sup> The 23 states whose exemptions modified the TANF ban accounted for about 45 percent of drug arrests nationally. For these states with various exemptions, it is difficult to determine to which drug felons the ban might apply, as participation in the program is contingent upon a felon's behavior (such as abiding with conditions of probation or parole supervision, or participating in drug treatment). Finally, the 18 states that fully implemented the TANF ban accounted for about 45 percent of all drug arrests nationwide.

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**In States That Fully Implement the Ban on TANF, about 15 Percent of All Drug Offenders Released from Prison in 2001 Were Estimated to Meet TANF Eligibility Criteria**

Using Bureau of Justice Statistics survey data on the family and economic characteristics of drug offenders in prison and state-level data on the number of drug offenders released from prison during 2001 in 14 of the 18 states that fully implement the ban on TANF, we estimated that about 15 percent of those released from prison were parents of minor children, lived with their children, and had earned income below the maximum levels permitted by their states of residence.<sup>16</sup> That is, but for the ban, they may have been eligible to receive TANF benefits. We estimated that the majority of drug felons—who are single males and not custodial parents—

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<sup>15</sup>State-level data on the number of felony drug convictions are not collected by federal agencies or by organizations that monitor state court activities.

<sup>16</sup>In the 14 states, about 96,000 drug offenders were released from prison during 2001, and of these, about 51,000 had been released from a new sentence for a drug conviction. The 4 omitted states, for which we could not obtain data, accounted for about 3 percent of the population of the 18 states that fully implemented the TANF ban. Our estimates of the percentage that may have been eligible to receive TANF are based in part on data from the Bureau of Justice Statistics Survey of Inmates of State Correctional Facilities. The survey provides data that prisoners report about their family and economic characteristics prior to their admission into prison. See appendix II for details on our methodology.

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did not meet these TANF eligibility requirements and would therefore not have been qualified to receive the benefit even in the absence of the provisions of PRWORA. (See app. II for additional information about the methods used to estimate these quantities.)

Female drug offenders released from prison in the 14 states constituted about 13 percent of drug offenders released from prison in 2001. We estimated that between 25 percent and 28 percent of these female offenders were parents of minor children who lived with their children and whose incomes were below state thresholds, and therefore stood to lose TANF benefits. This percentage among female drug offenders released from prison is about twice that for males. From the available data, we estimated that less than 15 percent of male prisoners were parents who lived with their children and had earned incomes that would qualify them to receive TANF benefits.

Other factors, which we could not take into account to estimate the percentages of drug offenders that could be eligible to receive TANF benefits, include citizenship status and total family income. Noncitizens with fewer than 5 years of residence in the United States are generally ineligible to receive TANF. Several of the states for which we obtained data on drug offenders released from prison have relatively large noncitizen populations. Therefore, among those drug offenders that we estimated could have been eligible to receive TANF benefits might be some ineligible noncitizens. In addition, the data that we used to estimate whether drug offenders met state income eligibility requirements included individual income rather than total family income. It is possible that some prisoners would join family units with incomes above state TANF eligibility earned income limits and would thus be disqualified for benefits.

Among the drug offenders released from prison during 2001, the percentage that may be affected by the TANF ban at any time during their lifetimes would be greater than our estimate of those initially affected. This is because at a later date some of these offenders may meet the general eligibility criteria for receiving benefits. Thus, the percentage ever affected by the bans would grow over time.

Because of data availability, our estimates focus on convicted drug felons who were in prison. We do not have data to assess the effect of the TANF ban on drug felons who received probation or who were sentenced to time in local jails. According to BJS data, nationwide, about one-third of convicted drug felons are sentenced to probation. Moreover, our estimates apply to the states that fully implemented the ban on TANF. Because of

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complexities associated with state exemptions to the federal ban and the lack of sufficiently detailed data, we cannot provide an estimate of the percentage of convicted drug offenders who could be affected by the ban in the 23 states that modified the TANF ban. We note, however, that state modifications to the ban may allow convicted drug felons to participate in TANF if they abide by the conditions set in the state exemptions (such as abide by conditions of parole or probation supervision or participate in drug treatment). In these states, unlike in the states that fully implement the federal ban, the post-conviction behavior of offenders would help to determine whether they could receive the benefit. Other state modifications allow drug offenders to receive TANF benefits at some point in the future (such as after completing drug treatment or receiving a sufficient number of negative drug test results). In states that require that drug felons wait before becoming eligible to participate in TANF, the federal ban is in effect until the waiting period ends. We would therefore expect estimates of the percentage affected during the waiting period to be similar to the estimates of the percentage affected in the states that fully implemented the federal ban.

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### In States That Fully Implement the Ban on Food Stamps, About One-Fourth of Drug Offenders Released from Prison in 2001 Were Parents Who Could Have Been Eligible for Food Stamps

At the time of our review, 15 states fully implemented the federal ban on food stamp benefits to convicted drug felons, and 35 states had passed laws to exempt all or some convicted drug felons in their own states from the federal ban on food stamps. Of the 35 states with exemptions, 14 states exempt all convicted drug felons from the food stamp ban, and 21 have laws that exempt some convicted drug felons from the food stamp ban provided that they meet certain conditions.<sup>17</sup> In the 21 states that modified the food stamp ban, the modifications are similar to those for TANF and generally include (1) exempting persons convicted of drug possession from the ban, while retaining it for persons convicted of drug sales, distribution, or trafficking; (2) requiring a waiting period to pass before eligibility is restored; and (3) conditioning food stamp eligibility upon compliance with drug treatment, drug testing, or other conditions. (See app. II for the status of states' exemptions to the food stamps ban.)

States' decisions to exempt all or some convicted drug felons in their states from the ban on food stamps affect the proportion of drug felons

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<sup>17</sup>The number of states exempting some or all convicted drug felons from the food stamp ban has increased over time. USDA reports, for example, that in 2001, 19 states had exemptions for some or all convicted drug felons. By 2004, 35 states had some type of exemption.

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that can be affected by the ban. Using the state-level drug arrest data as the proxy for felony drug convictions (as we did for TANF), we find that the 15 states that fully implemented the ban on food stamps accounted for about 22 percent of all drug arrests nationally. Using data from the BJS inmate survey on the family and economic characteristics of drug offenders in prison and state-level data on the number of drug offenders released from prison during 2001 in 12 of the 15 states that fully implemented the ban on food stamps, we estimated that about 23 percent of those released from prison were parents of minor children whose incomes were below the federal poverty guidelines. Among male drug offenders, we estimated that about 22 percent met these conditions, while among female drug offenders, we estimated that about 36 percent did.<sup>18</sup> We are unable to provide an estimate of the percentage of drug offenders that could be eligible to receive food stamps as able-bodied adults without dependent children. According to USDA, in 2003, this class of food stamp recipients constituted about 2.5 percent of food stamp recipients nationwide. Food stamps are not limited to custodial parents. However, we limited our assessment to custodial parents because of data limitations.

Because the denial of food stamps is a lifetime ban, the number of drug offenders affected by the ban will increase over time, as additional convicted drug felons are released from prison.

Also, as with the TANF estimates, data limitations precluded our providing estimates for the felony drug offenders that were sentenced to probation in 2001 or for the states that modified the federal ban.

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## Concluding Observations

A complex array of provisions of federal law allow or require federal benefits be denied to different classes of drug offenders. There is also a good deal of discretion allowed in implementing these laws that can exempt certain drug offenders from their application. Our estimates

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<sup>18</sup>Within these 12 states, there were about 67,000 drug offenders released from prison during 2001, and of these, about 30,000 were released from a new sentence for a drug conviction. Data for the other 3 states were not available. We have no reason to believe that these 3 states are substantially different from the other 12 in relation to the impacts of the ban. Our estimates of the percentage that may have been eligible to receive food stamps are based in part on data from the Bureau of Justice Statistics Survey of Inmates of State Correctional Facilities. The survey provides data that prisoners report about their family and economic characteristics prior to their admission into prison. See appendix II for details on our methodology.

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indicate that denial of benefit laws potentially affect relatively small percentages of drug offenders, although the numbers potentially affected in given years may be large. There are a number of reasons why the percentages affected may be relatively small. First, large numbers of drug offenders would not be eligible for these benefits regardless of their drug offender status. For example, those who lack a high school diploma are ineligible for postsecondary educational loans or grants, and many do not meet eligibility requirement for TANF and food stamps. Also, in the case of TANF and food stamps, the majority of states have used their discretion to either partially or fully lift the ban on these benefits for certain drug offenders.

It is important to note that although the overall numbers of drug offenders that could be affected by the TANF and food stamp bans are relatively small in comparison with the numbers of drug offenders, our estimates suggest that the effects of the bans disproportionately fall on female offenders. This is because they are more likely to be custodial parents with low incomes and thus otherwise eligible for the benefits.

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## Agency Comments and Our Evaluation

We provided a draft of this report to the Attorney General; the Secretaries of the Departments of Education, Agriculture, and Housing and Urban Development; the Assistant Secretary of the Administration for Children and Families; the Director of the Office of National Drug Control Policy; the Research Director of the United States Sentencing Commission; and the Director of the Administrative Office of the United States Courts for their review and comment. We received technical comments from the Departments of Justice, Agriculture, and Education, and from the United States Sentencing Commission and Administrative Office of the United States Courts, which we incorporated into the report where appropriate.

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We are sending copies of this report to the Attorney General; the Secretaries of the Departments of Education, Health and Human Services, Agriculture, and Housing and Urban Development; the Director of the Office of National Drug Control Policy; the Research Director of the United States Sentencing Commission, and the Director of the Administrative Office of the United States Courts. We will also make copies available to others upon request. In addition, the report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staff have any questions concerning this report, please contact me at (202) 512-8777 or by e-mail at [Ekstrandl@gao.gov](mailto:Ekstrandl@gao.gov). Contact

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points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributors to this report are listed in appendix VI.



Laurie E. Ekstrand, Director  
Homeland Security and Justice Issues

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# Appendix I: Objectives, Scope, and Methodology

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Federal law provides that certain drug offenders may or must be denied selected federal benefits, such as Temporary Assistance for Needy Families (TANF), food stamps, federally assisted housing, postsecondary education grants and loans, and certain federal contracts and licenses. Our objectives were to analyze and report on two interrelated questions about the number or percentage of drug offenders that could be affected by the provisions: (1) In specific years, how many drug offenders were estimated to be denied federal postsecondary education benefits, federally assisted housing, and selected grants, contracts, and licenses? (2) What factors affect whether drug offenders would have been eligible to receive TANF and food stamp benefits, but for their drug offense convictions, and for a recent year, what percentage would have been eligible to receive these benefits?

In addition, we were asked to address the impact of federal benefit denial laws on minorities and the long-term consequences of denying federal benefits on the drug offender population and their families. Because of severe data limitations, we were unable to provide a detailed response to this matter. The final section of appendixes II, III, IV, and V in this report include discussions of the data limitations that precluded us from estimating the impacts on minorities. Where information was available, we also identify in the appendixes some of the possible long-run consequences of denial of benefits.

We limited our analysis of federal laws to those that explicitly included provisions that allowed for or required the denial of federal benefits to drug offenders. We excluded other provisions that provide for denial of benefits to all offenders, of which drug offenders are a subset. We also excluded from our analysis provisions that applied to offenders only while they are incarcerated and provisions that applied to fugitive felons. Other federal laws relating to drug offenders but not within the scope of our review include provisions such as those making a person ineligible for certain types of employment, denying the use of certain tax credits, and restricting the ability to conduct certain firearms transactions. Further, because of the limited data available on persons actually denied federal benefits, we provide rough estimates of either the number or the percentage of drug offenders affected by the relevant provisions. We provide an overview of these methodologies below but we discuss the specifics of our methodologies for analyzing and estimating the impacts of denying specific federal benefits in appendixes II through V.

We assessed the reliability of the data that we used in preparing this report by, as appropriate, interviewing agency officials about their data,

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reviewing documentation about the data sets, and conducting electronic tests. We used only the portions of the data that we found to be sufficiently reliable for our purposes in this report.

We conducted our work primarily in Washington, D.C., at the headquarters of five federal agencies—the Departments of Justice (DOJ), Agriculture (USDA), Housing and Urban Development (HUD), Education (ED), and Health and Human Services (HHS)—responsible for administering the denial of federal benefit laws. We also conducted work at the Office for National Drug Control Policy (ONDCP)—which has responsibilities for national drug control policy—the Administrative Office for United States Courts (AOUSC)—which provides guidance to the courts for the implementation of statutory requirements—and the United States Sentencing Commission (USSC)—which has responsibilities for monitoring federal sentencing outcomes.

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## Assessing How Many Drug Offenders Were Estimated to Be Denied Federal Postsecondary Education and Federally Assisted Housing Benefits and Certain Grants and Contracts

To estimate how many or what percentage of drug offenders were reported to be denied federal postsecondary education and federally assisted housing benefits and certain grants and contracts under the Denial of Federal Benefits Program, we obtained and analyzed data from agency officials. From ED, we obtained data for several years on the number of applicants using the Free Application for Federal Student Aid (FAFSA), the number of these who reported a disqualifying drug offense conviction, the number eligible for Pell Grants, and the number receiving Pell Grants and student loans. We analyzed these data to generate our estimates of the number of those that reported disqualifying drug offenses that would have been eligible to receive Pell Grants and student loans. We also obtained Bureau of Justice Statistics (BJS) data that reported on the educational attainment of nationally representative sample of offenders on probation. We used these data, along with USSC data on sentenced drug offenders and BJS data on drug offenders released from prison, to assess the education levels of drug offenders. To identify factors that could contribute to the number of drug offenders denied federal postsecondary education benefits, we interviewed officials at ED about federal regulations, guidance, and rulings pertaining to the eligibility to receive benefits. Appendix III describes in more detail our methods for estimating the education of those denied education benefits.

From a nonprobability sample of some of the largest public housing agencies (PHA) in the United States, we obtained information about reported actions taken in 2003 in these PHAs to deny persons federally assisted housing benefits for reasons of drug-related criminal activities.

We selected large agencies because of the volume of actions that they take in a given year and to provide indications of the range of outcomes in PHAs in different settings with different populations. We also obtained and analyzed data from HUD on persons reportedly evicted from or denied admission into public housing for reasons of criminal activities. From selected PHAs, we obtained, analyzed, and compared termination and admissions policies and procedures used during 2003 or 2004 to deny federally assisted housing to persons involved in drug-related criminal activities. We also spoke with staff from selected research organizations, national associations, and PHAs to review the eligibility criteria to receive federal benefits. Appendix IV describes our methods for assessing denials of federally assisted housing.

From the Bureau of Justice Assistance (BJA), we obtained data on drug offenders reported to have been denied federal benefits under the Denial of Federal Benefits Program. We spoke with officials at BJA about the current operations and plans to enhance the program, and we interviewed officials from USSC and AOUSC about the operations of this program. We also interviewed ONDCP officials about the array of federal provisions that provide for denial of federal benefits and federal programs that provide for drug treatment for drug offenders. Appendix V describes our methodology for analyzing the Denial of Federal Benefits Program.

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## Estimating the Percentage of Convicted Drug Felons That Would Have Been Eligible to Receive TANF or Food Stamps and the Factors Contributing to These Estimates

Data limitations concerning the actual number of persons denied TANF and food stamp benefits required us to develop estimates of the drug offenders that could be denied these benefits in that they had characteristics that would have allowed them to qualify to receive the benefits except for their drug offense convictions. To determine the extent to which drug offenders were otherwise qualified or eligible to receive federal benefits, we identified key elements of the eligibility to receive federal benefits. We met with officials at the federal agencies responsible for administering TANF—the Department of Health and Human Services—and food stamps—the U.S. Department of Agriculture—to discuss issues related to eligibility to receive these benefits. We obtained and analyzed data from BJS on the characteristics of drug offenders in prison, and we applied this information to the number of drug offenders released from prison during 2001 in states that fully implemented the ban on TANF. To determine the current status of states that have opted out of or modified federal provisions banning TANF and food stamp benefits to persons convicted of drug felony offenses, we reviewed state laws and contacted officials at USDA (which annually surveys states about the status of their laws in relation to the ban on food stamps) and state officials in states that

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have modified the federal ban on TANF or food stamps to discuss the status of their provisions regarding the exemptions under their state laws. Appendix II provides detailed information on our methodology for assessing the TANF and food stamps bans.

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## Data Sources Used in Preparing This Report

From the following sources, we obtained, assessed the reliability of, and analyzed data related to denial of federal benefits that we used in developing estimates of the impacts of the federal provisions. To assess the reliability of the data, as needed, we interviewed agency officials about the data systems, reviewed relevant documentation, and conducted electronic tests of the data. We determined that the data were sufficiently reliable for the purposes of this report. The data sources included

- Bureau of Justice Assistance: Data on the number of drug offenders reported to BJA by state and federal courts as having been denied federal benefits under the Denial of Federal Benefits Program from 1991 to 2004.
- Bureau of Justice Statistics:
  - *Survey of Inmates of State Correctional Facilities in 1997*: We used these data to estimate the number of convicted drug felons in prison that were parents of minor children, lived with their children prior to their incarceration, and had incomes within state earned income limits. We used these estimates to assess the impacts of the provisions allowing for the denial of TANF and food stamp benefits.
  - *National Corrections Reporting Program, 2001*: We used these data to obtain counts of the number of drug offenders released from prison during 2001 in selected states. We also used these data to provide estimates of the level of education completed from drug offenders released from prison during 2001 and in developing our estimates of the impacts of the TANF and food stamps provisions.
  - *Survey of Adults on Probation, 1995*: We used these data, from the only national source of data on the characteristics of adults on probation of which BJS is aware, to learn about the education levels of drug offenders on probation and in developing estimates of the impact of denying federal postsecondary education assistance.
- Selected state corrections and court officials: For selected states that fully implemented the ban on TANF and food stamps, we obtained data on the numbers of convicted drug felons released from prison in during 2001. We

used these data in developing estimates of the impacts of TANF and food stamps.

- Department of Housing and Urban Development: We obtained and analyzed data from HUD's Public Housing Assessment System (PHAS) and Management Operations Certification Assessment System (MASS) for fiscal years 2002 and 2003 on the number of public housing residents evicted because of criminal activities (of which drug-related criminal activities form a subset), and of the numbers denied admission into the Public Housing Program for reasons of criminal activities.
- Seventeen of the 40 largest PHAs in the nation: We requested information from the 40 largest PHAs about the number of decisions they made during 2003 to deny federally assisted housing to tenants and applicants for reasons of drug-related criminal activities, and we obtained data from 17 of these PHAs. Not all 17 PHAs provided responses to all of our questions; therefore, we reported data only on the PHAs that were able to provide data relevant to the question under review. We selected these PHAs from among the 1,531 PHAs that managed both Public Housing and Housing Choice Voucher (HCV) programs as of August 31, 2004. We asked them for information about denials of federally assisted housing for reasons of drug-related criminal activities, and we also asked them to provide these data based on the race of tenants and applicants. HUD does not collect this information. We used these data in describing the number of persons denied federally assisted housing and in providing information about the race of persons denied federal housing benefits.
- Department of Education: We obtained and analyzed data on the number of students applying for federal postsecondary assistance for academic years 2001-2002, 2002-2003, and 2003-2004. In addition, we obtained data on the percentage of these applicants who were eligible to receive Pell Grants and of these, the percentage that received them, and we also obtained data on the percentage of applicants who received student loans. We used these data in developing estimates of the impact of the denial of federal postsecondary education assistance.

In addition, we used published statistical reports from various agencies such as BJS; *Uniform Crime Reports* data on drug abuse violation arrests by state; Department of Health and Human Services reports on the characteristics of TANF recipients; USDA reports on food stamp recipients; and the United States Sentencing Commission's *2003 Sourcebook of Federal Sentencing Statistics*.

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Impacts of the Federal  
Provisions on Racial  
Minorities and Long-Run  
Impacts of Denying  
Federal Benefits

We were asked to address the impacts of the federal benefit denial laws on racial minorities and the long-term impacts of denying federal benefits on individuals that were denied, their families, and their communities. Although very limited, the available information on these issues is summarized in appendices II through V.

To determine the extent of data on the race of persons affected by the denial of federal benefit provisions, we asked the officials that we interviewed about their knowledge of data on the race of persons denied federal benefits. We also spoke with researchers and officials at various organizations about their knowledge of available data. To address data limitations of HUD data on persons denied federally assisted housing because of drug-related criminal activities, we requested, obtained, and analyzed data provided by 17 of the largest PHAs in the nation on the race of persons denied housing for reasons of drug-related criminal activity.

To determine the current research and data on the potential economic and social impacts of the loss of federal benefits on individuals, families, and communities, we conducted literature searches to identify and review existing studies that have measured the impacts of the denial of federal benefits on drug offenders and families. We interviewed experts to understand how the incentives for drug treatment, as provided in the laws that deny benefits, are likely to affect drug addicts' behavior, and we obtained their views regarding the effects that incarceration and drug convictions might have on a drug felon's potential employment and earnings.

We conducted our work from March 2004 to July 2005 in accordance with generally accepted government auditing standards.

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# Appendix II: Denial of TANF and Food Stamps Benefits: Legal Framework and Methodologies

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This appendix describes the legal and administrative framework for denying TANF and food stamp benefits to convicted drug felons and our methods for estimating the percentage of convicted drug offenders that would have been eligible to receive TANF and food stamps but for their drug felony convictions.

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## Legal and Administrative Framework

The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA)<sup>1</sup> of 1996 provides that persons convicted of certain drug felony offenses are banned for life from receiving TANF and food stamp benefits. Specifically, Section 115 of PRWORA, as amended, provides that an individual convicted (under federal or state law) of any offense that is classified as a felony by the law of the jurisdiction involved and that has as an element the possession, use, or distribution of a controlled substance shall not be eligible to receive TANF assistance or food stamp benefits. The prohibition applies if the conviction is for conduct occurring after August 22, 1996.<sup>2</sup>

TANF assistance includes benefits designed to meet a need family's ongoing, basic needs (for example, for food, clothing, shelter, utilities, household goods, and general incidental expenses) and includes cash payments, vouchers, and other forms of benefits.<sup>3</sup> TANF assistance excludes short-term episodic benefits that are not intended to meet recurrent or ongoing needs and that do not extend beyond 4 months. The federal prohibition on TANF assistance to convicted drug felons does not apply to TANF "nonassistance" benefits, which include benefits meant to assist an individual's nonrecurring emergency needs.<sup>4</sup> TANF nonassistance can include drug treatment, job training, emergency Medicaid medical services, emergency disaster relief, prenatal care, and certain public health assistance.

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<sup>1</sup>Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified at 21 U.S.C. § 862a).

<sup>2</sup>See 21 U.S.C. § 862a(d)(2).

<sup>3</sup>See 45 C.F.R. § 260.31. The federal prohibition does not extend to assistance from a state's own separate assistance funds such as State Maintenance of Effort (MOE) funds. MOE funds are funds that states are required maintain at certain historical state expenditure levels in order to receive their full TANF block grants.

<sup>4</sup>As defined at 45 C.F.R. § 260.31(b).

The Food Stamp Program provides benefits in the form of electronic benefit cards, which can be used like cash for food products at most grocery stores. Eligible households receive a monthly allotment of food stamps based on the Thrifty Food Plan, a low-cost model diet plan based upon National Academy of Sciences' Recommended Dietary Allowances. For persons between the ages of 18 and 50 who are also viewed as fit to work and who are not the guardians of dependent children, PRWORA provides for a work requirement or a time limit for receiving food stamp benefits. The provision is known as the Able-Bodied Adults without Dependent (ABAWD) provision. ABAWD participants in the food stamp program are limited to 3 months of benefits in a 3-year period unless they meet certain criteria.<sup>5</sup>

PRWORA provides that states may enact a legislative exemption removing or limiting the classes of convicted drug felons that are otherwise affected by the federal ban on TANF and food stamps. State laws providing for exemptions need to have been enacted after August 22, 1996.

The Office of the Administration for Children and Families (ACF) within the U.S. Department of Health and Human Services provides federal oversight of the TANF program. TANF is funded by both federal block grants and state funds, but states are responsible for determining benefit levels and categories of families that are eligible to receive benefits. State eligibility requirements establish earned income limits, and other rules, and these requirements may vary widely among the states.

The U.S. Department of Agriculture's Food and Nutrition Service (FNS) provides oversight for the Food Stamp Program, which is the primary federal food assistance program that provides support to needy households and to those making the transition from welfare to work. Eligibility for participation is based on the Office of Management and Budget federal poverty guidelines for households. Most households must meet gross and net income tests unless all members are receiving TANF or selected other forms of assistance.<sup>6</sup> Gross income cannot exceed 130

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<sup>5</sup>To be exempt from the ABAWD provisions, an otherwise able-bodied person must either (1) live in local areas that provide for a waiver to the ABAWD provision; (2) live in a state that utilizes provisions from the Balanced Budget Act of 1997 (Pub. L. No. 105-33, 111 Stat. 251, 252 (1997) (codified at 7 U.S.C. § 2015(o)(6)) that allows for the exemption of up to 15 percent of those ineligible to receive benefits under the ABAWD provision; or (3) meet her or her local jurisdiction's work requirements that provide for an exception to the ABAWD limits.

<sup>6</sup>Eligibility requirements are less stringent for elderly disabled persons.

percent of the federal poverty guideline (or about \$1,313 per month for a family of two and \$1,654 per month for a family of three in 2004), and net income cannot exceed 100 percent of the poverty guideline (or about \$1,010 per month for a family of two and \$1,272 per month for a family of three in 2004). “Gross income” means a household’s total, nonexcluded income before any deductions have been made. “Net income” means gross income minus allowable deductions. Allowable deductions include a 20 percent deduction from earned income, dependent child care deductions, and medical expenses, among others.

According to officials at ACF and FNS, states may implement the provisions to deny convicted drug felons TANF and food stamps in a variety of ways. Some states administer the denial of benefits by requiring applicants to admit to disqualifying felony drug offense convictions at the time that they apply for benefits. Also according to agency officials, neither agency regularly collects and assesses data on the number of persons that self-certify disqualifying drug offenses.<sup>7</sup>

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## State Exemptions to the Federal Bans on TANF and Food Stamps

We reviewed documentation provided by USDA and for states that exempted some or all convicted drug felons from the federal ban on food stamps, we reviewed states’ laws pertaining to the exemption and we contacted officials to determine the status of their state’s exemptions to the federal bans on TANF and food stamps. Table 5 shows these statuses and for states that have enacted exemptions, provides citations to the state laws.

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<sup>7</sup>Both agencies review case files to determine if individuals that were ineligible to receive the benefits received them in error, and these reviews may uncover whether a disqualified drug offender received benefits. In its 2002 report to ACF on closed cases, the state of Maryland reported that it closed 3 cases (out of the 17,861 cases that it closed during 2001) because of an individual’s disqualifying felony drug conviction.

**Appendix II: Denial of TANF and Food  
Stamps Benefits: Legal Framework and  
Methodologies**

**Table 5: Status of States on the TANF and Food Stamp Ban as of 2004**

<b>State</b>	<b>TANF status</b>	<b>Food stamp status</b>	<b>State exemptions laws (effective date)</b>
Alabama	Ban	Ban	
Alaska	Ban	Ban	
Arizona	Ban	Ban	
Arkansas	Modify the ban	Modify the ban	Ark. Code Ann. § 20-76-409 (July 1997)
California	Ban	Modify the ban	Cal. Welf. & Inst. Code § 18901.3 (September 2004)
Colorado	Modify the ban	Opt Out	Colo. Rev. Stat. §§ 26-2-305, 26-2-706 (July 1997)
Connecticut	Modify the ban	Modify the ban	Conn. Gen. Stat. § 17b-112d (July 1997)
Delaware	Ban	Modify the ban	Del. Code Ann. tit. 31, § 605 (July 2003)
Florida	Modify the ban	Modify the ban <sup>a</sup>	Fla. Stat. Ann. ch. 414.095 (May 1997)
Georgia	Ban	Ban	
Hawaii	Modify the ban	Modify the ban	Haw. Rev. Stat. § 346-53.3 (June 1997)
Idaho	Modify the ban	Modify the ban	Idaho Code § 56-202 (July 2000)
Illinois	Modify the ban	Opt out	730 Ill. Comp. Stat 5/1-10 (June 1997)
Indiana	Modify the ban	Modify the ban	Ind. Code § 12-20-16-6 (July 2003)
Iowa	Modify the ban	Modify the ban	Iowa Code § 239B.5 (October 1997)
Kansas	Ban	Ban	
Kentucky	Modify the ban	Modify the ban	Ky. Rev. Stat Ann. § 205.2005 (July 1998)
Louisiana	Modify the ban	Modify the ban	La. Rev. Stat. Ann. 46:233.2(July 1997)
Maine	Opt out	Opt out	Me. Rev. Stat. Ann. tit. 22, §§ 3104(14), 3762(17) (April 2002)
Maryland	Modify the ban	Modify the ban	Md. Ann. Code 88A, §§ 50A, 65 (July 2000)
Massachusetts	Modify the ban	Opt out	2001 Mass. Adv. Legis. Serv. 177, § 4400-1000 (December 2001) (reenacted annually )
Michigan	Modify the ban	Modify the ban	1997 Mich. Pub. Acts 109, § 622 (August 1997) (reenacted annually)
Minnesota	Modify the ban	Modify the ban	Minn. Stat. § 256J.26 (July 1997)
Mississippi	Ban	Ban	
Missouri	Ban	Ban	
Montana	Ban	Ban	
Nebraska	Ban	Modify the ban	Neb. Rev.Stat. § 68-1017.02 (August 2003)
Nevada	Modify the ban	Modify the ban	Nev. Rev. Stat § 422.29316 (January 1998)
New Hampshire	Opt out	Opt out	N.H. Rev. Stat. Ann. § 167:81-a (August 1997)
New Jersey	Modify the ban <sup>b</sup>	Modify the ban <sup>b, c</sup>	N.J. Stat. Ann. § 44:10-48 (January 1997) N.J. Stat. Ann. § 44:10-48.1(January 2000)
New Mexico	Opt out	Opt out	N.M. Stat. Ann. § 27-2B-11(C) (March 2002)
New York	Opt out <sup>d</sup>	Opt out <sup>d</sup>	1997 N.Y. Laws § 121436 (August 1997) (reenacted annually)

**Appendix II: Denial of TANF and Food Stamps Benefits: Legal Framework and Methodologies**

<b>State</b>	<b>TANF status</b>	<b>Food stamp status</b>	<b>State exemptions laws (effective date)</b>
North Carolina	Modify the ban	Modify the ban	N.C. Gen. Stat. § 108A-25.2 (July 1997)
North Dakota	Ban	Ban	
Ohio	Opt out	Opt out	Ohio Rev. Code Ann. § 5101.84 (September 1997)
Oklahoma	Opt out	Opt out	1997 Okla. Sess. Laws 414 § 28 (September 1997)
Oregon	Opt out	Opt out	Or. Rev. Stat. § 411.119 (July 1997)
Pennsylvania	Modify the ban	Modify the ban	62 Pa. Stat. § 405.1(i) (February 2004)
Rhode Island	Opt out <sup>e, f</sup>	Opt out <sup>e, f</sup>	R.I. Gen. Laws §§ 40-5.1-8, 40-6-8 (Modify: July 1997, Opt-out: July 2004)
South Carolina	Ban <sup>g</sup>	Ban <sup>g</sup>	
South Dakota	Ban	Ban	
Tennessee	Modify the ban	Modify the ban	Tenn. Code Ann. §§ 71-3-154, 71-5-308 (July 2002)
Texas	Ban	Ban	
Utah	Modify the ban	Opt out	Utah Code Ann. § 35A-3-311 (July 1997)
Vermont	Opt out	Opt out	1997 Vt. Laws 61, § 131 (June 1997) (reenacted annually)
Virginia	Ban	Ban	
Washington	Modify the ban <sup>h</sup>	Opt out <sup>h, i</sup>	Wash. Rev. Code § 74.08.025 (modify: April 1997; opt out: March 2004)
West Virginia	Ban	Ban	
Wisconsin	Modify the ban	Modify the ban	Wis. Stat. §§ 49.79, 49.145, 49.148 (October 1997)
Wyoming	Ban	Ban	

Source: GAO analysis of state laws as of January 2005 and U.S. Department of Agriculture state reports

<sup>a</sup>Our analysis of Florida law and conversations with state officials led to our classification of Florida as a state that has exemptions that modified the food stamp ban. This classification differs from the USDA classification, which identifies Florida as a state that fully implements a lifetime ban on food stamps for convicted drug felons. The discrepancy in classifications may arise from the different methods used to determine Florida's status. Annually, USDA surveys states and asks them to report their status of implementing the ban. Our analysis of Florida law, on the other hand, identifies exemptions that may not have been reported in the survey.

<sup>b</sup>Provision enacted in 1997.

<sup>c</sup>1997 provision modified in 2000.

<sup>d</sup>New York provides for drug use screening of all assistance recipients and conditions eligibility on further assessment and treatment where social services officials find them necessary. N.Y. Soc. Serv. § 132.

<sup>e</sup>Modified in July 1997.

<sup>f</sup>Opted out in July 2004.

<sup>g</sup>Some authorities have classified South Carolina as a modification state (see S.C. Code Ann. § 43-5-1190). However state officials report that no specific exemption to the federal ban has been enacted in South Carolina.

<sup>h</sup>Modified in April 1997.

<sup>i</sup>Opted out in March 2004.

There are several general types of modifications to the federal ban on TANF and food stamps among the states that have modified the ban. These modifications may include one or more of the following elements: (1) removing from the ban drug felons convicted for drug use or simple possession, but implementing the ban for drug sellers or traffickers (e.g., possession with intent to distribute offenses); (2) restoring benefits to drug felons complying with drug treatment program requirements; (3) restoring benefits so long as drug felons have negative drug test results over some period of time; and (4) restoring benefits to drug felons after various waiting periods, such as a number of years after conviction or release from prison. State modifications may also include other conditions. For example, Michigan allows convicted drug felons to receive benefits provided they do not violate the terms of their parole or probation and other conditions are met. Tables 6 and 7 show the types of modifications that states have adopted for the TANF and food stamp bans, respectively. These tables present general categories of different modifications, not an exhaustive listing of all specific requirements. For more detail consult the statutes listed in table 5.

**Table 6: Types of State Exemptions (Modifications) to the Federal Ban on TANF, by States within the Types of Modifications, as of 2004**

<b>Eligibility to participate in TANF restored</b>
To drug users but not to drug traffickers
Arkansas
Florida
New Jersey <sup>a</sup>
Conditional upon undergoing required drug treatment
Colorado <sup>b</sup>
Hawaii
Iowa
Illinois <sup>c</sup>
Kentucky
Nevada <sup>a</sup>
Pennsylvania
Tennessee <sup>d</sup>
Utah
Washington <sup>e</sup>
Conditional upon not failing required drug tests
Maryland <sup>f</sup>

**Appendix II: Denial of TANF and Food Stamps Benefits: Legal Framework and Methodologies**

**Eligibility to participate in TANF restored**

Minnesota <sup>g</sup>
Wisconsin
Following a waiting period
Louisiana <sup>a, h</sup>
Massachusetts <sup>h</sup>
North Carolina <sup>i</sup>
Conditional upon not violating conditions of parole or probation supervision
Connecticut
Idaho
Michigan <sup>g</sup>
For a 12-month maximum if felon participates in a drug court
Indiana

Source: GAO analysis of selected states' statutes as of January 2005, and information from state corrections and court offices.

<sup>a</sup>State also requires drug testing (or demonstration of no drug use in Nevada).

<sup>b</sup>State requires individuals to take action toward rehabilitation, such as, but not limited to, drug treatment.

<sup>c</sup>State requires either a 2-year waiting period or participation in drug treatment, and also restricts the exemption to drug offenders who are not class X or class 1 felons.

<sup>d</sup>State restricts exemption to drug offenders who are not class A felons.

<sup>e</sup>State also requires there be no more than one conviction in a 3-year period.

<sup>f</sup>For current recipients, state also imposes a 1-year ban from date of drug conviction.

<sup>g</sup>State also requires payments must be made to vendors or authorized representatives.

<sup>h</sup>State imposes a 1-year waiting period.

<sup>i</sup>State imposes a 6-month waiting period and also requires drug treatment.

**Appendix II: Denial of TANF and Food Stamps Benefits: Legal Framework and Methodologies**

**Table 7: Types of State Exemptions or Modifications of the Federal Ban on Food Stamps, by States within the Types of Modifications, as of 2004**

<b>Eligibility to participate in food stamps restored</b>
To drug users but not to drug traffickers
Arkansas
California <sup>a</sup>
Delaware <sup>a, b</sup>
Florida
Nebraska <sup>a</sup>
Conditional upon undergoing required drug treatment
Hawaii
Iowa
Kentucky
Nevada <sup>b</sup>
New Jersey <sup>b</sup>
Pennsylvania
Tennessee <sup>c</sup>
Conditional upon not failing required drug testing
Maryland <sup>d</sup>
Minnesota <sup>e</sup>
Wisconsin
Following a waiting period
Louisiana <sup>f</sup>
North Carolina <sup>g</sup>
Conditional upon not violating conditions of probation or parole supervision
Connecticut
Idaho
Michigan <sup>g</sup>
For a maximum of 12 months if felon participates in a drug court; available only through July 1, 2005, unless extended
Indiana

Source: GAO analysis of selected states' laws and officials from state corrections departments court offices.

<sup>a</sup>State also requires drug treatment.

<sup>b</sup>State also requires drug testing (or demonstration of no drug use in Nevada).

<sup>c</sup>State restricts exemption to drug offenders who are not class A felons.

<sup>d</sup>For current recipients, state also imposes a 1-year waiting period from the date of the conviction.

<sup>e</sup>State will also impose a 1-year ban from date of drug convictions for current recipients

<sup>1</sup>State imposes a 1-year waiting period and also requires a negative drug test result.

<sup>2</sup>State imposes a 6-month waiting period and also requires drug treatment.

***Estimating the Percentage of Drug Arrests within States That Implement, Modify, or Opt Out of the Bans on TANF and Food Stamps***

To obtain a general assessment of the degree to which state decisions to modify or opt out of the federal bans on TANF and food stamps exempt drug felons from the federal ban, we estimated the percentage of drug arrests that occurred within three groupings of states: (1) those that fully implement the bans, (2) those that have modified them, and (3) those that have completely opted out of the bans. We used drug arrests as a proxy for drug convictions, as state-level data on the number of drug felony convictions are not available. We analyzed data from the 2002 *Crime in the United States: Uniform Crime Reports* on the number of persons arrested for drug offenses in each of the 50 states. Table 8 reports the relative distributions of drug arrests for the states falling into each category for the TANF and food stamp bans.

**Table 8: Number of States in Each TANF and Food Stamp Ban Status Category and Percentage of Drug Offense Arrests in 2002 Occurring in the States within Each Ban Status Category**

TANF/food stamp ban status category	TANF ban		Food stamp ban	
	Number of states <sup>a</sup>	Percentage of drug arrests <sup>a</sup>	Number of states <sup>a</sup>	Percentage of drug arrests <sup>a</sup>
Implement the ban fully	18	43.8%	15	22.0%
Modified the ban	23	46.6%	20	57.1%
Opted out of the ban	9	9.6%	15	20.9%
<b>Total</b>	<b>50</b>	<b>100.0%</b>	<b>50</b>	<b>100.0%</b>

Source: GAO analysis of Uniform Crime Report data for 2002.

<sup>a</sup>Excludes the District of Columbia.

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## Methods for Estimating the Percentage of Drug Felons Potentially Affected by the TANF and Food Stamp Bans

To assess the potential impacts of the bans on TANF and food stamps, we estimated the percentage of a population of drug felons released from prison that would be eligible to receive TANF, and but for their drug offense conviction could receive the benefit. By potentially affected, we refer to convicted drug felons that we estimated met selected eligibility criteria to participate in these benefit programs. According to our use of the term “impact,” only those drug felons who were otherwise eligible to receive benefits actually stood to lose benefits as a result of the bans, and could therefore be affected by the bans.

To determine the percentage of drug felons that met selected eligibility criteria, we used data from the Bureau of Justice Statistics’ *Survey of Inmates of State Correctional Facilities in 1997*. This survey is based upon a nationally representative sample of persons in state prisons during July 1997. The 1997 data represent the most recently available data from this recurrent survey, which BJS conducts about every 5 years. We used information from the survey about prisoners’ parental status, employment, and income prior to incarceration in developing our estimates of the percentages of drug offenders that were custodial parents and had incomes within allowable maximums to qualify for the benefits.

For both benefits, we provide estimates that are based on drug offenders released from prison during 2001 in the subset of states that fully implemented either the ban on TANF or food stamps. To the extent possible, we limited the data on drug offenders released from prison to those who entered prison during 1997 or thereafter. This allowed for a period of time between the possible date that a drug felony offense was committed and the date that an offender entered prison, and in this way, we took into account the implementation date of the ban, which was August 22, 1996.

Because of data limitations, we did not attempt to develop estimates for states that modified the bans. For example, some states’ exemptions to the bans allow that convicted drug offenders may receive benefits (provided that they are eligible for them) if they do not fail a drug test, if they undergo required drug treatment, if they do not violate conditions of probation or parole supervision, or if they meet certain other conditions. The data that we used did not include this information; therefore, we could not estimate the potential impacts of the bans in the states that modified the bans.

We developed estimates of the potential impact of these bans on the population of released prisoners for 1 year, 2001, the most recent year for

which we obtained data. We did not attempt to develop estimates for all persons potentially affected by the bans since they went into effect during 1996. We discuss the problems associated with estimating all persons potentially affected by the bans in a later section of this appendix.

***Data and Methods Used to Estimate the Potential Impacts of the TANF Ban***

To estimate the potential impacts of the TANF ban, we obtained data from states on drug felons released from prison, and using these data, we applied estimates of the percentages that met selected TANF eligibility requirements. These methods are described more fully below.

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**Methods to Obtain State-Specific Data on the Number of Drug Felons Released from Prison**

For 14 of the 18 states that fully implement the ban on TANF, we obtained data on the number of drug offenders released from prison during 2001. We used two sources of data: (1) the Bureau of Justice Statistics' National Corrections Reporting Program (NCRP) and (2) data from selected other states. From NCRP, we obtained counts of the number of drug felons released from prison during 2001, given that they were committed into prison in 1997 or thereafter for a new conviction that contained a drug offense. We chose 1997 because the TANF ban went into effect on August 22, 1996, and data on the date that ex-prisoners committed their drug offense—which is the factor that determines whether they are under the ban—were not available in the data that we used. From the other states, we obtained comparable data on the number of drug offenders released from prison.

The 14 states for which we obtained data were Alabama, Arizona, California, Georgia, Kansas, Mississippi, Missouri, Nebraska, North Dakota, South Carolina, South Dakota, Texas, Virginia, and West Virginia. The 14 states account for approximately 97 percent of the population in the 18 states that maintain the ban on TANF for drug felons. For the 4 states that were excluded from our analysis—Alaska, Delaware, Montana, and Wyoming—we were unable to obtain data on released prisoners. We also excluded from our analysis states that may have implemented the ban in 2001 but as of January 2005 had modified or opted out of the ban.

Across the 14 states, about 96,000 drug offenders were released from prison during 2001, given that they had been admitted during 1997 or thereafter. This population of all drug felons released from prison includes those who were sentenced to prison following their conviction for a drug offense, and it also includes offenders who entered prison because they

had violated conditions of supervision. Among offenders who entered prison for a violation of conditions of supervision, some may have committed their offenses before the TANF ban went into effect, and they would not be subject to the ban. However, some of the released prisoners who had violated conditions of supervision may have been convicted after the ban went into effect, but the available information reported only the date of admission for the violation and not for the original sentence. These offenders should be included among the population of drug felons that are subject to the ban. Hence, the population of all released prisoners might over estimate the number of drug offenders in these 14 states who committed offenses after the TANF ban had gone into effect.

About 51,000 of the drug offenders released from prison during 2001 were those who had been admitted into prison during 1997 or immediately after their conviction. While this population of released drug offenders includes those whose prison sentence occurred after the ban went into effect, this number may under estimate the number of drug felons in these states who were subject to the ban. It may do so because it will exclude the parole violators who had initially been committed after 1997 but whose most recent commitment was for a violation of parole that also occurred after 1997.<sup>8</sup>

About 87 percent of all drug offenders released from prison during 2001 in the 14 states for which we obtained data were males, as were about 86 percent of the first releases. Females constituted 13 percent of all releases and 14 percent of first releases (table 9).

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<sup>8</sup>Our estimates of the percentage of drug felons that meet selected eligibility conditions are relatively unaffected by whether we base them on all drug offenders released from prison or on first releases only.

**Table 9: Estimated Number of Drug Felons Released from Prison during 2001, in 14 of 18 States That Currently Maintain the Ban on TANF**

	Number of prisoner releases	Percentage distribution of prisoner releases
<b>All drug felons released from prison</b>		
<b>Total</b>	<b>95,940</b>	<b>100%</b>
Males	83,528	87%
Females	12,412	13%
<b>First releases of drug felons from a new court commitment<sup>a</sup></b>		
<b>Total</b>	<b>51,332</b>	<b>100%</b>
Males	44,230	86%
Females	7,092	14%

Source: GAO analysis of Bureau of Justice Statistics National Corrections Reporting Program data for 2001 and data from selected states.

Note: The 14 states are Alabama, Arizona, California, Georgia, Kansas, Mississippi, Missouri, Nebraska, North Dakota, South Carolina, South Dakota, Texas, Virginia, and West Virginia. The 4 excluded states are Alaska, Delaware, Montana, and Wyoming. We also excluded states that implemented the ban in 2001 but have since modified or opted out of the ban.

<sup>a</sup>New court commitments include only those offenders who were sentenced to prison on a new conviction for a drug offense.

## Methods of Estimating the Percentage of Drug Felons That Meet TANF Eligibility Requirements

To receive TANF assistance, an assistance unit (such as a household) must meet the state-mandated definition of a needy family: It must either contain at least one child living with an adult relative or consist of a pregnant woman. The adult guardian must be related to the child by blood, adoption, or marriage (or, if the state provides, the adult may stand in for parents if none exist). Further, TANF recipients must in general be either U.S. citizens or qualified aliens who entered the United States prior to the passage of PRWORA on August 22, 1996, or who have lived in the United States for a period of 5 years. States may also impose other conditions for receipt of TANF benefits.

We used data from the 1997 version of the BJS Inmate Survey to estimate the percentage of drug offenders who were custodial parents and who had monthly incomes within state-determined earned income limits. For estimation purposes, we defined a drug offender in the inmate survey as a custodial parent if the offender met three conditions: (1) reported being the parent of at least one minor child, (2) reported living with the child prior to being incarcerated, and (3) reported that the child was not in foster care or agency care while the offender was in prison. We computed the number of prisoners who met these conditions, and from these counts,

we estimated the percentages of drug offenders that met these conditions. As the data were drawn from a sample, we used weighting factors provided by BJS that were based on the original probabilities of being selected into the sample that were adjusted for nonresponse and information about the sex, race, age, prison security level, and type of offense of the total prison population to produce national-level estimates. We estimated the percentages separately by gender and region of the country. Table 10 shows our estimates of the percentage of convicted drug felons that were reported to be parents and custodial parents (based on our definition) of minor children.

**Table 10: Estimated Parental Status of Drug Offenders, by Gender and Region of the Country**

<b>Gender and region of drug offenders</b>	<b>Percentage of drug offenders that were parents of minor children</b>	<b>Percentage of drug offenders that were custodial parents of minor children<sup>a</sup></b>
<b>Female offenders</b>		
Northeast	64.1%	35.1%
Midwest	69.9%	48.1%
South	66.4%	44.6%
West	62.5%	29.9%
<b>Male offenders</b>		
Northeast	61.4%	24.5%
Midwest	66.6%	31.0%
South	65.0%	29.1%
West	65.3%	30.8%

Source: GAO analysis of BJS Survey of Inmates of State Correctional Facilities, 1997.

<sup>a</sup>We defined custodial parents as inmates that had minor children, lived with them prior to their incarceration, and whose children were not in foster care or agency care while they were incarcerated.

We also estimated the income distributions for drug offender parents who reported living with their children. In the BJS survey, income is reported as the offender’s total income in the month prior to the arrest leading to the incarceration. Monthly income can be from any source and may include illegal income. We omitted from our analysis those offenders who reported income from illegal sources, and we included only offenders who reported earned income or who were unemployed prior to their imprisonment. Offenders who were unemployed prior to their imprisonment received a value of zero for earned income. We estimated

the income distributions separately by gender and region to account for differences in employment and earnings between male and female offenders, and offenders in different states. We applied the regional income distributions to all states within a region, as the BJS data did not report the state in which the offender was incarcerated.

From the income distributions, we estimated the gender-specific percentages of drug offenders who had incomes at or below state-determined earned income limits. The BJS inmate survey data report income in intervals, and in many cases, the intervals do not correspond directly with the state earned income limits. Therefore, we selected income intervals that were as near to the state earned income limits as feasible. We generally selected two income intervals for each state: one that contained the state earned income limit level but whose lower bound was less than the state level, and one that contained the state earned income limit but whose upper bound was above the state level. In this way, we obtained upper- and lower-bound estimates of the potential impacts of the TANF ban.

To obtain estimates of the percentage of drug offenders released from prison who were both custodial parents and were income eligible for TANF, as defined above, we applied the gender-specific estimates of the percentage of prisoners in each region of the country that met the specific TANF eligibility criteria to state-specific counts of the number of drug felons released from prison. We used the region of the country within which a state was located to obtain estimates for a specific state. The result of these operations was to obtain estimates of the percentage of drug offenders released from prison who were both custodial parents and were income eligible for TANF, as defined above. The estimated percentages of drug offenders released from prison that met these conditions are shown in table 11.

**Table 11: Estimated Percentages of Drug Offenders Released from Prison in 2001 That Met Selected Guardianship and Earned Income Limits to Receive TANF benefits**

	Estimated percentage of drug offenders released from prison that were custodial parents <sup>a</sup> and income eligible for TANF	
	Lower bound	Upper bound
<b>Total</b>	<b>13.6%</b>	<b>16.4%</b>
Males	11.7%	14.5%
Females	25.4%	28.4%

Source: GAO analysis of BJS inmate survey data and data for selected states as provided by state corrections and court officials.

<sup>a</sup>“Custodial parent” is defined as one who lived with minor children prior to incarceration and whose minor children were not in foster care while the offender was incarcerated.

***Limitations to the Estimates***

We were unable to take into account all of the factors that determine whether drug offenders met the eligibility criteria to receive TANF. Some of these factors could contribute to reducing the estimated percentages of drug offenders who were otherwise eligible; others could possibly contribute to increasing the estimated percentages. In addition, our estimates for drug offenders released from prison in a given year do not apply to drug felons who were sentenced to probation. Finally, we are unable to provide an estimate of the percentage of drug offenders potentially affected by the ban for the entire period since it was implemented.

**Factors Contributing to a Decrease in the Percentage of Drug Felons That Would Be Otherwise Eligible to Receive TANF**

Data limitations preclude our explicitly taking into account all of the factors that are related to TANF eligibility. Factors affecting TANF eligibility for which we do not have data are the citizenship status and length of residency of noncitizens, state-imposed work requirements to receive TANF, and individual choices to participate in the program. While we were unable to estimate the effect of these factors on our estimated percentages that might have been eligible to receive TANF, these factors would contribute to lowering our estimates of the percentage of drug offenders released from prison that might have been eligible to receive TANF.

Several of the states whose data we analyzed have relatively large populations of noncitizens. In general, to qualify for TANF, aliens must have at least 5 years of residence in the United States since August 22,

1996. Given that our estimates are for 2001, it is unlikely that many aliens among convicted drug felons would have qualified for TANF. Hence, taking the alien qualification into account would lower our estimates of the percentage of drug felons potentially affected by the TANF ban. For 2003, ACF reports that 8 percent of adult TANF recipients were qualified aliens.

Individuals within needy families who do not participate in state-determined work requirements could lose their TANF eligibility. Failing to comply with work requirements would reduce the percentage of drug offenders that were otherwise eligible to receive TANF.

In the general population, adult males constitute comparatively small numbers of TANF recipients. According to ACF, in 2001 adult males constituted about 9 percent of all adult TANF recipients. If we applied the general population adult male TANF recipiency rate to our estimates of the percentage of all drug offenders released from prison, our estimated impact of the TANF ban would be revised downward to about 4 percent of all of drug offenders released from prison in 2001.

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### **Change in Status after Release from Prison Could Increase the Percentage of Drug Felons Affected by the Ban**

One factor that could change the estimated percentage of convicted drug felons eligible to receive TANF benefits and therefore potentially affected by the ban is a change in a felon's eligibility to receive TANF. Our estimates of the percentage of prisoners that may be eligible to receive TANF are based on attributes existing at the time that offenders were in prison. Upon release, these attributes may change, and an offender might become otherwise eligible for TANF and therefore potentially be affected by the ban. For example, if a drug offender was reunited with his or her children after release and met other eligibility requirements, this would contribute to increasing the percentage of released prisoners that were eligible to receive TANF. Alternatively, imprisonment may be a factor that reduces contact with children and therefore contributes to decreasing the percentage of drug offenders released from prison that are eligible to receive TANF.

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### **Drug Felons Sentenced to Probation**

In recent years, drug felons sentenced to probation account for about one-third of all convicted and sentenced drug felons. We did not apply the information about drug offenders in prison to the drug felons sentenced to probation. This is because we do not have data on the parental and income characteristics of drug felons sentenced to probation. To the extent the drug felons sentenced to probation have characteristics similar to those of

drug felons released from prison, the estimated percentage of probationers that may be eligible to receive benefits would be similar to those estimated percentages among released prisoners. However, if income levels and other factors differ between probationers and prisoners, this could affect the estimates of the percentages that would be eligible to receive benefits.

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### Drug Offenders Affected since the Ban Went into Effect

We do not provide an estimate of all drug offenders potentially affected by the ban on TANF since it went into effect. We were unable to obtain data on the number of persons convicted of drug felonies since the ban went into effect in 1996, as only limited data are available. Over time, an individual's attributes that are related to TANF eligibility may change. Convicted drug felons who did not have characteristics that would make them eligible to receive TANF at one point in time could develop these attributes at a later point in time. Conversely, the circumstances of convicted drug felons who at one point in time were otherwise eligible to receive TANF could change so that they are no longer otherwise eligible. To understand the long-term impacts of the ban therefore would require data that track individuals over time and measure changes in their characteristics that are related to TANF eligibility. We know of no such national data on drug offenders.

Our estimates of the percentage of drug offenders released from prison in a given year who are potentially affected by the ban represent lower-bound estimates of the proportion of drug offenders released from prison during that year that would ever be affected by the ban. If, among those released from prison and estimated not to be eligible to receive TANF, any persons became eligible at a later date, this would increase the percentage of persons potentially affected by the ban. Consequently, the long-term impacts of the ban would be greater than the impacts that we estimated for the 1-year release cohort. Similarly, if the 1-year estimates of the percentage potentially affected by the ban were to hold over time, then a larger percentage of all convicted drug felons would be potentially affected by the ban since its inception than the percentages that we estimated for 1 year.

### ***Data and Methods Used to Estimate the Potential Impact of the Ban on Food Stamps***

We focused our analysis of the potential impact of the ban on food stamps on drug offenders that were reported to be custodial parents of minor children. According to USDA, in fiscal year 2003, adult households with children (containing either one or two adults) constituted 73 percent of

food stamp recipients. Consequently, this is likely to be the largest group of drug offenders that could be affected by the food stamp ban. We were unable to develop a quantitative estimate of the percentage of able-bodied adults without dependents (ABAWD) that could be affected by the food stamp ban. ABAWDs, in general, may receive food stamps for 3 months within a given 3-year period or longer if they adhere to the work requirements specifically laid out for ABAWDs. However, we were unable to determine which drug offenders constituted the potential pool of ABAWDs. We further gave the potential ABAWDs recipients separate consideration because, according to USDA reports, in 2003, they constitute 2.5 percent of food stamp recipients nationwide even though they form a large share of the general population of such persons. We also did not attempt to develop an estimate of the impact of the ban for elderly and disabled drug offenders.

For 2003, USDA reported that adult households with children (containing either one or two adults) constitute 73 percent of food stamp recipients. In contrast, elderly individuals living alone constitute 6 percent of food stamp recipients, and disabled nonelderly individuals living alone constitute 5 percent of food stamp recipients. Single-adult households—which according to USDA do not contain children, elderly individuals, or disabled individuals—constitute 6 percent of food stamp recipients. Therefore, adult households with children receive food stamps at a rate greater than 12 times the rate at which single-adult households receive food stamps. The percentage of single adult households receiving food stamps is higher than the percentage of ABAWDs receiving food stamps because an individual is not considered an ABAWD if the person is pregnant, exempt from work registration, or over 50 years of age.<sup>9</sup>

For 12 of 15 states that maintain the full ban on food stamps, we obtained data on the drug felons released from prison during 2001 (given that they entered prison during 1997 or thereafter). The 12 states are Alabama, Arizona, Georgia, Kansas, Mississippi, Missouri, North Dakota, South Carolina, South Dakota, Texas, Virginia, and West Virginia. The 3 excluded states for which we were unable to obtain data were Alaska, Montana, and Wyoming. A total of 67,000 drug offenders were released in 2001 in the 12

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<sup>9</sup>Since ABAWDs cannot be older than 50, and USDA defines an elderly person as being 60 or older, someone who is over 50 and under 60 is considered neither an ABAWD nor elderly.

states, and of these, 30,000 were first releases from new court commitments.

We used the BJS inmate survey data to estimate the percentage of drug felony prisoners who were parents living with their minor children and whose children were not in foster care while they were incarcerated. This was our operational definition for a custodial parent. For these, we estimated the percentage who had gross incomes within the poverty thresholds, based on estimates of family size. Food stamp eligibility is based on gross and net income tests. Because data on the deductions that are used in determining whether households meet the net income tests were not available, our estimates are at best gross income tests. We are unable to determine how our use of the gross income test alone affects our estimates of the percentage of drug felons released from prison that would have been eligible to receive food stamps.

In general, ABAWDs may receive food stamp benefits for an extended duration as long as they meet ABAWD-specific work requirements. This means that a large percentage of drug felons could be eligible to receive, and therefore potentially be denied, food stamps as long as they fell within the income threshold to receive food stamps. However, among all food stamp recipients, ABAWDs constitute only 2.5 percent of the total. Hence, while we cannot estimate the percentage of ABAWDs within the drug offender pool that would be otherwise eligible to receive food stamps, the ABAWD participation rate in food stamps in general would suggest that relatively few drug offenders who fall into this category would participate in the program.

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## **Data on the Race of Drug Offenders Who Meet Selected TANF Eligibility Criteria**

We assessed the impacts of the denial of TANF and food stamp benefits by estimating the percentage of convicted drug felons released from prison who were otherwise eligible to receive the benefits. To assess whether impacts vary by race, we first assessed whether the percentage of drug offenders who met the same eligibility requirements that we used to assess the overall impacts of the TANF and food stamp bans varied according to race. For example, if larger proportions of black than white drug offenders were custodial parents of minor children and had earned income that permitted them to qualify for TANF, then we would expect to find larger percentages of black drug offenders to be affected by the TANF ban, regardless of the racial composition of the group of all drug offenders released from prison.

We used the BJS inmate survey data to compare the estimated percentages of black and white drug offenders who were custodial parents (as we

defined the term previously) and had earned incomes that could qualify them to receive TANF. As before, we estimated these percentages by gender and region. Our estimates indicated that in one region (the South), the percentage of black female drug offenders who were otherwise eligible to receive TANF differed from the percentage of otherwise eligible white female drug offenders. A larger percentage of black female drug offenders in that region were estimated to be eligible to receive TANF than white female drug offenders in the region. Among male drug offenders, we estimated differences in eligibility for TANF in two regions. For both female and male drug offenders, the differences in estimated TANF eligibility arose from differences in incomes, as there were no differences in the percentage of black and white drug offenders that were estimated to be custodial parents.

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# Appendix III: Denial of Federal Postsecondary Education Benefits to Drug Offenders

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This appendix describes the legal framework for denying federal higher education benefits to drug offenders, how the federal provision is administered, our methods for estimating the number of students affected by the federal provisions, and the impacts of the federal provision.

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## Legal Framework for Denying Federal Higher Education Benefits

The Higher Education Act of 1965,<sup>1</sup> as amended, provides for the suspension of certain federal higher education benefits to students who have been convicted for the possession or sale of a controlled substance under federal or state law.<sup>2</sup> The controlled substance offense may be either a felony or a misdemeanor. Federal higher education benefits that are denied to such individuals include student loans, Pell Grants, Supplemental Educational Opportunity Grants, and the Federal Work-Study program.<sup>3</sup>

The Higher Education Act provision outlines different periods for which such drug offenders are ineligible to receive certain federal higher education benefits, depending upon the type and number of controlled substance convictions. The period of ineligibility begins on the date of conviction and ends after a specified interval. Table 12 illustrates the period of ineligibility for the federal higher education benefits, according to the type and number of convictions.

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<sup>1</sup>Pub. L. No. 89-329, 79 Stat. 1219 (1965).

<sup>2</sup>See 20 U.S.C. § 2091(r). This provision was added by the Higher Education Amendments of 1998, Pub. L. No. 105-244, 112 Stat. 1581 (1998).

<sup>3</sup>Student loans include the Federal Family Education Loan (FFEL) Program and the William D. Ford Federal Direct Loan Program. Higher education institutions usually participate in one or the other program. Depending upon the student's estimated financial need, students may qualify for subsidized Stafford loans or, irrespective of financial need, unsubsidized Stafford loans, through either program. Pell Grants are federal grants that are awarded to students with financial need who have not received their first bachelor's degree or who are enrolled in programs that lead to teacher certification or licensure. Supplemental Educational Opportunity Grants are awarded for the purpose of providing grants to needy undergraduate students. The Federal Work-Study program provides part-time employment to needy undergraduate and graduate students attending participating institutions.

**Table 12: Periods of Ineligibility for Federal Higher Education Assistance Based on Type and Number of Controlled Substance Offense Convictions**

Type and number of drug convictions	Period of Ineligibility
<b>Possession of a controlled substance</b>	
First offense	1 year
Second offense	2 years
Third offense	Indefinite
<b>Sale of a controlled substance</b>	
First offense	2 years
Second offense	Indefinite

Source: GAO analysis of Section 484 of the Higher Education Act of 1965, as amended (see 20 U.S.C. § 1091(r)).

This Higher Education Act provision allows for eligibility for federal higher education to be restored prior to the end of the period of ineligibility if either one of two conditions is met. First, a student satisfactorily completes a drug rehabilitation program that includes two unannounced drug tests and complies with criteria established by the Secretary of Education. Second, a student has his or her drug conviction reversed, set aside, or nullified.

## Administration of the Denial of Federal Higher Education Benefits

The provisions of federal law mandating the denial of certain federal higher education benefits were implemented beginning in July 2000 by requiring students who applied for federal assistance to self-report disqualifying drug convictions. Students must self-report disqualifying drug convictions through the Department of Education’s Free Application for Federal Student Aid, a form that any student who wishes to receive federal student aid must complete.<sup>4</sup> The FAFSA is available online and is free to use. ED uses the information that applicants provide on their FAFSA to determine their eligibility for aid from the Federal Student Aid (FSA) programs. Colleges and universities in 49 states also use information from the FAFSA in making their financial aid determinations. ED provides participating colleges and universities with a formula to use when making decisions about financial assistance.

<sup>4</sup>The FAFSA provides a worksheet that guides students in determining whether they have a disqualifying drug conviction.

Applicants who either report that they have a drug conviction that affects their eligibility or those applicants who do not answer the question about drug convictions are automatically ineligible to receive federal higher education assistance in the academic year for which they sought aid.<sup>5</sup> (Below, we refer to this group as FAFSA ineligible.) The drug conviction worksheet of the FAFSA also notifies students that even though a drug conviction may render them ineligible to receive federal higher education assistance in the application year, individuals may still be eligible to receive aid from their state or their academic institution.

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## Methods for Estimating the Numbers of Persons and Amounts of Federal Assistance Affected by the Provisions

For several reasons, not all of the FAFSA applicants who self-report a disqualifying drug conviction would otherwise have been eligible to receive federal assistance; hence, the number of applications containing self-reported disqualifying drug offenses overstates the number of persons denied federal postsecondary education assistance because of a drug offense conviction.

First, not all FAFSA applicants are eligible to receive all types of federal postsecondary education assistance. For example, some applicants may have incomes above the levels required to receive Pell Grants, and even if they self-reported a disqualifying drug conviction, they would not have been eligible to receive Pell Grants. Second, ED officials indicated that not all FAFSA applicants become enrolled in postsecondary education institutions, and these applicants are not eligible to receive federal postsecondary education assistance. Third, some individuals may complete the FAFSA application more than one time, and by counting only the number of applications, some individuals may be double-counted.

To assess the impacts of the Higher Education Act's provisions that render students with disqualifying controlled substances convictions ineligible to receive federal postsecondary education assistance, we estimated the number of students who self-reported a disqualifying drug offense and, absent the controlled substances convictions provisions of the Higher Education Act, would have been qualified to receive assistance but because of the provisions would not have received assistance.

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<sup>5</sup>This rule did not apply to applicants during the 2000-2001 academic year, the first year that the drug conviction question appeared on the FAFSA. During 2000-2001, students who did not answer the question were permitted to receive federal aid.

We developed estimates of the number of applicants for Pell Grants and subsidized and unsubsidized Stafford loans (two of the best-funded federal postsecondary education assistance programs) and the total amounts of assistance lost, because of their self-reported controlled substances convictions. Our methods for estimating these quantities are as follows:

- To estimate the number of students who were denied Pell Grants in a given year, we use ED data on the number of FAFSA applicants that either self-reported a disqualifying drug offense conviction or left this question blank, the group that we labeled as FAFSA ineligible.
- As applicants must meet needs-based criteria to make them eligible to receive Pell Grants, we then use ED data on the percentage of FAFSA applicants that were eligible to receive Pell Grants; we call this second group Pell Grant eligibles.
- We use ED data on the percentage of Pell Grant eligibles that actually received Pell Grants, as not all of the students who were eligible to receive Pell Grants received them. By multiplying these quantities, we obtained a rough estimate of the number of persons who, absent the disqualifying drug offense conviction, would have received Pell Grants.
- To estimate the dollar amount of Pell Grants that these recipients would have received, we multiplied the average amount of Pell Grants (which we obtained from ED) by the estimated number of students denied Pell Grants.

To estimate the number of student loan recipients who were denied assistance because of disqualifying drug convictions, we followed a method similar to the one that we used to estimate the numbers denied Pell Grants.

- Specifically, beginning with the data on FAFSA ineligible, we applied to this number the percentage of all FAFSA applicants that received a student loan. We could not obtain an estimate of the number of FAFSA applicants that were eligible to receive student loans because, as ED reports, unlike Pell Grants, where there are income limitations that can be used to determine eligibility, with student loans, eligibility is determined by both income and institution-specific factors (such as tuition). Thus, our estimate is of the number of FAFSA ineligible that would have received a student loan but for their controlled substances convictions.
- To estimate the amount of student loans denied, we multiplied our estimate of the number denied student loans by the average amount of a student loan.

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### Critical Assumptions in Estimating the Number of Pell Grant and Student Loan Recipients Denied Federal Benefits because of Disqualifying Controlled Substances Convictions

In order to create our estimates for the number of individuals who would have received a Pell Grant or a student loan if not for their drug conviction, we assume that the characteristics of FAFSA eligibles are the same as the characteristics of FAFSA ineligibles. This assumption means that the percentage of FAFSA applicants who are eligible to receive federal higher education assistance should be the same for FAFSA ineligibles (apart from the drug conviction).

Income is an important determinant of eligibility for both Pell Grants and student loans. Specifically, financial need is determined by ED using a standard formula established by Congress to evaluate the applicant's FAFSA and to determine the student's Expected Family Contribution (EFC). The EFC calculation includes various data elements including income, number of dependents, net assets, marital status, and other specified additional expenses incurred. Different assessment rates are used for dependent students, independent students without dependents, and independent students with dependents. After filing the FAFSA, a student is notified if he or she is eligible for a federal Pell Grant and of the student's EFC.

On the one hand, if FAFSA ineligibles on average have lower incomes than FAFSA eligibles, then our estimates of the number of students denied benefits are likely to be underestimates of the true number denied benefits. This is because we rely on the information about eligibility for Pell Grants and student loans from the persons who were eligible to receive them, not from the population who are otherwise eligible but for their disqualifying drug convictions. On the other hand, if FAFSA ineligibles are less likely to be enrolled in postsecondary education institutions, as compared with FAFSA eligibles, then our estimates of the number denied benefits are likely to overestimate the true number denied benefits.

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### Data Used to Estimate the Numbers and Amounts Denied Federal Assistance

Table 13 shows the data that we used to estimate the numbers and amounts of federal postsecondary education assistance that was forgone to students who, absent their controlled substances convictions, would have received federal postsecondary education assistance. The data are provided annually for academic years 2001-2002 through 2003-2004. The key data elements used to estimate the numbers and amounts of federal assistance denied include

- the number of FAFSA applicants and FAFSA ineligibles,
- the percentage of Pell Grant eligibles among all FAFSA applicants,

**Appendix III: Denial of Federal Postsecondary Education Benefits to Drug Offenders**

- the percentage of Pell Grant recipients among Pell Grant eligibles,
- the average amount of Pell Grant received,
- the percentage of FAFSA applicants that received student loans, and
- the average amount of student loan received.

The number of FAFSA ineligible declined from 58,929 in academic year 2001-2002 to 41,061 in academic year 2003-2004.<sup>6</sup> We note that FAFSA ineligible amount to less than 0.5 percent of all FAFSA applications.

**Table 13: Data Used to Estimate the Number of Persons Denied Federal Education Assistance because of Drug Convictions and Estimated Amount of Federal Assistance Denied**

	Academic year		
	2001-2002	2002-2003	2003-2004
<b>Number of FAFSA applications</b>	10,961,421	12,021,249	13,009,596
FAFSA ineligible	58,929	42,537	41,061
Self-reported drug conviction	48,642	37,451	34,914
Drug conviction question not answered	10,287	5,086	6,147
FAFSA ineligible as a percentage of all FAFSA applicants	0.5%	0.4%	0.3%
<b>Pell Grant eligibles, recipients, and amounts</b>			
Percentage of Pell Grant eligibles among FAFSA applicants	51.5%	52.4%	58.0% <sup>a</sup>
Percentage of Pell Grant recipients among Pell Grant eligibles	76.9%	75.9%	77.0% <sup>a</sup>
Average amount of Pell Grant	\$2,298	\$2,436	\$2,467 <sup>b</sup>
<b>Stafford student loan recipients and amounts<sup>c</sup></b>			
Percentage of FAFSA applicants receiving student loans	70.0% <sup>a</sup>	70.0% <sup>a</sup>	70.0% <sup>a</sup>
<b>Average amount of student loan</b>			
Subsidized loan	\$3,378	\$3,405	\$3,469 <sup>b</sup>
Unsubsidized loan	\$3,970	\$4,063	\$4,162 <sup>b</sup>

Sources: GAO analysis of FAFSA data provided by the Department of Education's FSA Central Processing System; Department of Education data on Pell Grant and student loan recipients.

<sup>a</sup>Estimates provided by the Congressional Budget Office.

<sup>b</sup>Estimates provided by the Department of Education.

<sup>c</sup>The amounts that may be borrowed are the same whether a student receives a Stafford Loan through the Federal Family Education Loan (FFEL) Program or through the William D. Ford Federal Direct Loan Program.

<sup>6</sup>We excluded from this analysis the data for academic year 2000-2001, in which 9,605 persons self-reported a disqualifying drug offense, but more than 278,000 left the question blank. Those who left the question blank in 2000-2001 were deemed eligible to receive federal assistance.

Estimates of the Numbers and Amounts of Federal Assistance Affected by Controlled Substances Convictions

In the academic years from 2001-2002 through 2003-2004, we estimated that between 17,000 and 23,000 students were denied Pell Grants because of their drug convictions, and that the total estimated amount of Pell Grants that these students would have received ranged from \$41 million to \$54 million. See table 14.

Table 14: Estimated Number of Persons Denied Federal Education Assistance because of Drug Convictions and Estimated Amount of Federal Assistance Affected

	Academic year		
	2001-2002	2002-2003	2003-2004
Number of FAFSA ineligible	58,929	42,537	41,061
<b>Estimated number and amounts of Pell Grants denied</b>			
Estimated number of students denied Pell Grants because of drug convictions, but who otherwise would have received them	23,000	17,000	18,000
Estimated amount of Pell Grant denied to students	\$54 million	\$41 million	\$45 million
<b>Estimated number and amounts of student loans denied</b>			
Estimated number of students denied student loans because of drug convictions, but who otherwise would have received them	41,000	30,000	29,000
Estimated amount of student loans denied to students <sup>a</sup>			
Lower-bound estimate	\$139 million	\$101 million	\$100 million
Upper-bound estimate	\$164 million	\$121 million	\$120 million

Source: GAO analysis of Department of Education data.

<sup>a</sup>Lower-bound estimates were calculated using subsidized loan amounts, and upper-bound estimates were calculated using unsubsidized loan amounts.

We provide annual estimates of the numbers affected because the period of benefit ineligibility can vary, and a student denied benefits in one year may become eligible to receive benefits in a subsequent year. Thus, the estimates for one year do not necessarily affect the estimates for another year.

In academic year 2001-2002, there were 58,929 FAFSA ineligible. During that same year 51.5 percent of FAFSA applicants were eligible to receive Pell Grants, and 76.9 percent of those who were eligible received Pell Grants (as shown in table 13). Multiplying the 58,929 by the 51.5 percent and then multiplying this result by the 76.9 percent results in the estimate of 23,000 individuals denied Pell Grants who otherwise would have received them. To obtain the amount of Pell Grant lost to these students

during academic year 2001-2002, we multiplied our estimated number of students denied Pell Grants (23,000) by the average amount of a Pell Grant in academic year 2001-2002 (\$2,298).

Table 14 also shows that between academic year 2001-2002 and academic year 2003-2004, an estimated 29,000 to 41,000 students per year would have received student loans if not for their drug convictions. The estimated total amount of student loans forgone by these students ranged between \$100 million and \$164 million per year.

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**Estimates of the Impacts  
of the President's  
Proposed Changes to the  
Rules for Denying Drug  
Offenders' Federal  
Postsecondary Education  
Assistance**

The President's fiscal year 2005 budget contained a proposal that would have changed the administration of the Higher Education Act provision relating to eligibility for federal higher education benefits. Federal law disqualifies students who have been convicted of controlled substance offenses, in accordance with the period of ineligibility in table 12, from receiving federal higher education assistance.<sup>7</sup> As currently implemented by the Department of Education, disqualifying convictions are those drug convictions on a student's record at the time the student's eligibility is being determined, using the rules on the FAFSA worksheet.<sup>8</sup> Under the President's proposal—which was supported by the Office of National Drug Control and Prevention—students would be ineligible for federal higher education assistance only if they committed a disqualifying drug-related offense while they are enrolled in higher education. This proposed change would make eligible all students whose controlled substance convictions occurred prior to enrolling in higher education.

Because of data limitations, we are unable to provide reliable estimates of the impacts of the proposed changes contained in the President's fiscal year 2005 budget proposal. However, we expect that the proposal would lower our estimates for the numbers of students denied benefits because some individuals would regain their eligibility for benefits, and relatively few students enrolled in postsecondary education institutions would be expected to both use drugs and be convicted of drug crimes.

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<sup>7</sup>20 U.S.C. § 1091(r).

<sup>8</sup>64 Fed. Reg. 38,504, 38,505 – 38,506 (1999).

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## Limited Data on the Long-Term Impacts of Denying Federal Postsecondary Education Assistance

While studies consistently show that the economic returns to higher education are positive, we cannot establish a direct link between the denial of federal postsecondary aid to students and a reduction in the amount of postsecondary education completed by those who were denied aid. Moreover, officials at ONDCP also suggested that the provisions of the Higher Education Act that provide for denying educational aid to drug offenders might contribute a deterrent effect on drug use. Similarly, we were unable to identify studies that assess whether provisions of the HEA actually helped to deter drug use. Additionally, we are unable to address the question of whether these provisions of the HEA that deny higher education benefits to drug offenders result in net positive or negative effects on society because we were unable to find research that conclusively indicates whether these provisions of the HEA led individuals to forgo postsecondary education or deterred individuals from engaging in drug use and drug-related criminal activities.

Additional formal education—e.g., completing high school or attending or completing postsecondary education—has been demonstrated to increase annual and lifetime earnings. In its review of the returns to education, the U.S. Census Bureau concluded that increases in formal education had a positive impact on annual earnings. For example, the U.S. Census Bureau reported that for full-time workers between the ages of 25 and 64 between 1997 and 1999 the average annual income for those who have not completed high school is \$23,400, for high school graduates it is \$30,400, and for those completing a bachelor's degree it is \$52,200. Average annual income rises higher yet for those who obtain advanced degrees.

This general pattern, that increases in formal education correlate with increases in annual earnings, also holds true across an individual's lifetime. The U.S. Census Bureau reported that the average lifetime earnings, based upon 1997-1999 work experience, for those who have not completed high school is approximately \$1 million, for high school graduates it is \$1.2 million, and for those completing a bachelor's degree it is \$2.1 million. Again, the average lifetime earnings rise higher yet for those who obtain advanced degrees. Hence, college graduates can expect, on average, to earn nearly twice as much over a lifetime as those persons who have only a high school diploma and more than twice as much as those who have not completed high school.

Similarly, a study published by the congressional Joint Economic Committee in January 2000 concluded that there is a strong consensus among economists that formal education has a positive impact not only on personal income but also on society. The study concluded that among the

positive societal economic returns from increases in formal education are the creation of new knowledge (translating into the development of new processes and technologies) and the diffusion and transmission of knowledge (translating into the expansion of innovative techniques such as those found in the high-technology sector). Positive societal noneconomic improvements are also associated with increased amounts of formal education, which help Americans become better mothers, fathers, children, voters, and citizens. These positive noneconomic improvements are sometimes called positive neighborhood effects. Some of the positive neighborhood effects may be (1) more informed and interested voters, (2) decreases in crime, (3) decreased dependence upon certain types of public assistance, and (4) decreased incidence of illegitimate pregnancies.

Although the census study and the study conducted by the Joint Economic Committee show positive economic and societal impacts of increased levels of education, the total net impacts of these benefits are difficult to quantify.<sup>9</sup> Moreover, these studies do not comment on whether the loss of federal education assistance (as occurs for drug offenders through the provisions of the HEA) contributes to individuals' not completing postsecondary education, or whether those individuals who are denied federal education assistance generate the necessary funding to attend institutions of higher education in other ways.

Also at issue is whether the provisions of the HEA that deny postsecondary education benefits to drug offenders contribute positively to society by providing a deterrent to drug use. Research on the costs to society from drug use, and drug-associated criminal involvement, demonstrated that these costs to society are high. Therefore, if the denial of federal higher education benefits deters people from engaging in drug crimes, then the provisions might have positive economic and noneconomic impacts on society. Some of the positive affects of deterrence may include reductions in drug-related health care costs, reductions in drug-related crime and associated criminal justice costs, and increased national economic productivity. In addition, for many offenders and in particular for first-time drug offenders, the denial of postsecondary education benefits may delay entry into postsecondary education rather than prevent it.

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<sup>9</sup>Joint Economic Committee, United States Congress, *Investment in Education: Private and Public Returns* (Washington, D.C.: January 2000).

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## Limited Data on Racial Minorities and the Denial of Federal Postsecondary Education Benefits

With the available data, we were unable to determine whether the provisions of the Higher Education Act that provide for denial of postsecondary education benefits would affect relatively larger or smaller numbers of minorities. The FAFSA does not request information about applicants' race; therefore ED does not have data on the racial distribution of applicants or FAFSA ineligible. Without data on the race of applicants for federal student aid, it is not possible to determine whether minorities are denied aid at higher rates than whites.

The Bureau of Justice Statistics' Survey of Adults on Probation in 1995, which is the only national survey of probationers that includes data on the type of offense of conviction and educational attainment, indicates that there may be racial differences in the levels of educational attainment of drug offenders. The survey indicates that black and Hispanic drug offenders on probation complete high school at a lower rate than white drug offenders on probation. Specifically, while 68 percent of white drug offenders on probation had completed high school, 51 percent of black and 46 percent of Hispanic drug offenders on probation had completed high school. As completing high school (or gaining a general equivalency degree) is a prerequisite for enrollment in postsecondary education, these data suggest that lower proportions of black and Hispanic drug offenders (at least drug offenders on probation) would be eligible to enroll in postsecondary educational institutions and would therefore be eligible for federal higher education assistance.

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# Appendix IV: Denial of Federally Assisted Housing Benefits for Drug-Related Criminal Activity

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This appendix provides background on the legal and administrative frameworks for denying federally assisted housing benefits to persons who engage in drug-related criminal activities, our methods for estimating the numbers of persons denied benefits, and how we assessed the available data on racial minorities and the limited information on potential impacts.

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## Legal Framework Relating to the Denial of Housing Benefits for Drug-Related Criminal Activity

Federal law contains a variety of provisions relating to the denial of federally assisted housing benefits for certain types of drug-related criminal activity. These provisions relate to, among other things, (1) who may lose eligibility for federally assisted housing benefits because of drug-related criminal activity and (2) screening tools for the providers of federally assisted housing to use to determine ineligibility for such housing benefits. Motivation for prohibiting drug offenders from public housing is reflected, in part, in congressional findings made in 1990 and amended in 1998, about drug-related criminal activities in public housing; these findings stated, in part, that (1) “drug dealers are increasingly imposing a reign of terror on public and other federally assisted low-income housing tenants,” (2) “the increase in drug-related crime not only leads to murders, muggings, and other forms of violence against tenants, but also to a deterioration of the physical environment,” and (3) “the Federal government has a duty to provide public and other federally assisted low-income housing that is decent, safe, and free from illegal drugs.”<sup>1</sup>

Public housing agencies, which are typically local agencies created under state law that, under Department of Housing and Urban Development guidance, manage and develop public housing units for low-income families, are required, for example, to utilize leases that provide that any drug-related criminal activity on or off the premises by a public housing tenant shall be cause for termination of the tenancy.<sup>2</sup> This provision also specifically applies to drug-related criminal activity by any member of the tenant’s household or any guest or other person under the tenant’s control. Similarly, federal law requires PHAs and owners of federally assisted housing to establish standards or lease provisions that allow for the

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<sup>1</sup>42 U.S.C. § 11901.

<sup>2</sup>The term “drug-related criminal activity” means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use a controlled substance—as defined in section 102 of the Controlled Substances Act (21 U.S.C. § 802). 42 U.S.C. § 1437d(1). With respect to termination of tenancy, see 42 U.S.C. § 1437d(1)(6).

termination of the tenancy or assistance for any household with a member who the PHA or owner determines is illegally using a controlled substance.<sup>3</sup> Federal law further specifies that tenants evicted from federally assisted housing by reason of drug-related criminal activity are to be ineligible for federally assisted housing for a 3-year period, although evicted tenants that successfully complete an approved rehabilitation program may regain their eligibility before the 3-year period ends.

Under federal law and implementing regulations, PHAs have the discretion to evict tenants for drug-related criminal activity but are not required to evict such tenants. Rather, they are required to use leases that provide that any drug-related criminal activity on or off the premises by a public housing tenant shall be cause for termination of the tenancy. Implementing regulations by the U.S. Department of Housing and Urban Development relating to termination provide that a determination of such criminal activity may be made regardless of whether a person has been arrested or convicted of such activity and without satisfying a criminal conviction standard of proof of the activity.<sup>4</sup>

With respect to methamphetamine convictions, PHAs are required under federal law to establish standards to immediately and permanently terminate a tenancy as well as permanently prohibit occupancy in public housing for persons convicted of certain methamphetamine offenses occurring on public housing premises. PHAs do not have discretion in evicting these persons, and the standards also require that Housing Choice Voucher Program (formerly Section 8 low-income housing) participation be denied to such persons.

Federal law also provides various screening tools to assist with determining possible ineligibility of tenants and applicants for federally assisted housing benefits because of drug-related criminal activity. These tools come primarily in the form of access to certain types of information. For example, under federal law, housing assistance agencies are authorized to request access to criminal conviction records from police departments and other law enforcement agencies for the purposes of

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<sup>3</sup>42 U.S.C. § 13662(a). This provision further provides for the termination of tenancy or assistance to a household with a member whose illegal use (or pattern of illegal use) of a controlled substance, among other things, is determined by the PHA or owner to interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

<sup>4</sup>24 C.F.R. § 5.861.

applicant screening, lease enforcement, and eviction. PHAs have the authority under certain conditions to request access to such information with respect to tenants and applicants for the Housing Choice Voucher Program. Public housing authorities are also authorized under federal law to require that applicants provide written consent for the public housing authorities to obtain certain types of records, such as criminal conviction records and drug abuse treatment facility records.<sup>5</sup>

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## HUD and PHA Roles in Denying Federally Assisted Housing Benefits for Reasons of Drug-Related Criminal Activities

HUD is responsible for establishing the rules and providing guidance to PHAs in their administration of federally assisted housing benefits. PHAs can manage a single program or multiple HUD programs. HUD's Office of Public and Indian Housing oversees the two key rental housing assistance programs that we reviewed, namely the Low-Rent Public Housing Assistance Program (also referred to as low-rent, or public housing) and the HCV Program.

During the 1990s, PHAs gained broader latitude from HUD and Congress to establish their own policies in areas such as selecting tenants.<sup>6</sup> This included increased latitude in taking actions to deny federally assisted housing benefits to persons receiving housing benefits and to applicants for benefits. HUD requires PHAs to submit for its review and approval annual plans that include, among other things, their policies for continuing occupancy and denying admission for drug-related criminal activities.

Recent HUD guidance regarding denying federal housing benefits to persons engaged in drug-related criminal activities was issued in its "Final Rule," dated May 2001.<sup>7</sup> The rule amended existing regulations regarding implementing the federally assisted housing tenant eviction and applicant screening provisions for drug-related criminal activities.

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<sup>5</sup>See 42 U.S.C. § 1437d, subsections (q), (s), and (t) for provisions related to PHA authority to obtain criminal history information.

<sup>6</sup>GAO, *Public Housing: Small and Larger Agencies Have Similar Views on Many Recent Housing Reforms*, [GAO-04-19](#) (Washington, D.C.: October 30, 2003).

<sup>7</sup>66 Fed. Reg. 28,776 (2001) (codified at 24 C.F.R. Part 5, among others).

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## PHAs' Policies to Address Drug-Related Criminal Activities Vary

Termination and admission policies can vary substantially among PHAs nationwide. In a baseline study (November 2000) of a stratified random sample of the PHAs that were responsible for managing federally assisted housing units in the HCV Program, HUD reviewed the discretionary authority among PHAs.<sup>8</sup> HUD reported that the variation among PHAs in conducting criminal background checks could legitimately result in an applicant being barred by one PHA even though the applicant could otherwise be admitted by another PHA. Some of the variations reported in the study include differences in (1) the sources used to obtain information about criminal history and drug-related criminal activities (e.g., newspaper stories, resident complaints, self-disclosure, official law enforcement records—federal, state, local); (2) the costs (paid by the PHA) associated with obtaining official law enforcement criminal background records; (3) the time span covered by the criminal history search; and (4) whether consideration is given to repeat offenses, only convictions, or arrests and convictions.

We obtained and reviewed policies from seven of the largest PHAs having combined programs—Public Housing and HCV.<sup>9</sup> Our review of their policies with respect to terminations and admissions for drug-related criminal activities showed variations in the policies established to deny housing benefits. For example, policies regarding terminations of leases (for public housing tenants) or termination of assistance (for HCV recipients) vary in how they implement the drug-related criminal activity

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<sup>8</sup>See Devine, Deborah J., Barbara A. Haley, Lester Rubin, and Robert W. Gray, *The Uses of Discretionary Authority in the Tenant-Based Section 8 Program: A Baseline Inventory of Issues, Policy, and Practice*, Washington, D.C.: U.S. Department of Housing and Urban Development, November 2000. HUD used a stratified random sample of 167 PHAs out of 1,786 that managed 100 or more units of Section 8 housing. These 1,786 represented 70 percent of the 2,553 PHAs, but they also represented 98 percent of all units managed by PHAs in the Section 8 program. The sample was stratified on PHA size (four categories) and seven regions.

<sup>9</sup>We mailed a request for information to 40 of the nation's largest PHAs in which we requested data about denying federally assisted housing for reasons of drug-related criminal activities. We report on these data in subsequent sections. We also requested that the PHAs provide us with copies of policies and procedures used during 2003 for terminating leases or assistance as well as screening applicants for admissions. Seven PHAs provided copies of their 2003 or 2004 policies; listed alphabetically, these were the Cincinnati Metropolitan Housing Authority, Cuyahoga Metropolitan Housing Authority, Housing Authority of the City of Los Angeles, Housing Authority of the County of San Diego, Jacksonville Housing Authority, Memphis Housing Authority, and the Metropolitan Development and Housing Agency of Nashville.

provisions and in the scope of criminal background that can result in terminations:

- Drug-related criminal activity provisions can range from certain types of prohibited behaviors (e.g., those that threaten the health and safety of other residents) to certain drug convictions (e.g., drug-related criminal activity, and methamphetamine in particular).
- Scope of criminal background can vary by the period of prior criminal history that can trigger termination of leases or assistance, the type of prohibited drug-related criminal activities (e.g., personal use, felonious distribution, etc.), or whether there was a conviction in the case.

Analogously, PHA policies on admissions into public housing or into HCV can vary based on a number of factors, and these variations in policies can result in differences among PHAs in the types of drug offenders that are denied federally assisted housing.

- Applicant screenings for drug-related criminal activity can occur in varying forms (such as an application, interview, or eligibility verification) and at varying times—such as before or after placement on the PHAs' waiting lists.
- Sources of criminal history information used can vary, so some PHAs cast a wider net than others when searching for prohibited drug-related criminal activity. Sources can range from using only local law enforcement records to using Federal Bureau of Investigation/National Crime Information Center data.
- Periods of ineligibility for prior evictions from federally assisted housing can vary by time frame and criminal activity (e.g., drug-related or violent). Ineligibility periods ranged from 3 to 5 years.
- The evidence standard for drug addiction can vary to include a reasonable cause to believe illegal drug use exists or self-disclosure of illegal use on the application itself.

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## Number of Denials of Federally Assisted Housing Benefits

We obtained data from HUD on the number of evictions from and applicants denied admission into public housing during fiscal years 2002 and 2003 for reasons of criminal activities. In each year, more than 98 percent of the PHAs that manage public housing responded to HUD's request for data about security within the units managed by the PHA, including information on evictions and applicants denied admission. HUD's information pertains to persons evicted or denied admission for reasons of criminal activity; these data do not distinguish between criminal activity and drug-related criminal activities. The HUD data also do not include measures of the number of tenants or of the total number of applicants screened. To adjust for differences in the size of the PHAs, we

**Appendix IV: Denial of Federally Assisted Housing Benefits for Drug-Related Criminal Activity**

calculated a rate at which applicants were evicted or denied admission into public housing because of criminal activities that was based on the number of units maintained by all reporting PHAs. These data are reported in table 15.

**Table 15: Evictions from and Denials of Admission into Public Housing for Reasons of Criminal Activity, Fiscal Years 2002 and 2003**

	Fiscal year	
	2002	2003
Number of PHAs reporting data	3,103	3,113
Number of public housing units managed	1,164,089	1,156,735
Number of evictions from public housing for criminal activity	9,083	9,325
Number of applications denied admission into public housing for criminal activity	49,207	48,853
<b>Evictions and denials as a percent of units managed by PHAs</b>		
Evictions as a percentage of units <sup>a</sup>	0.8%	0.8%
Denials as a percentage of units <sup>a</sup>	4.2%	4.2%

Source: GAO analysis of HUD Management Operations Certification Assessment System (MASS) data.

<sup>a</sup>Data on the total number of tenants or applicants were not reported in the MASS data that we obtained.

During each of the fiscal years, 2002 and 2003, there were more than 9,000 evictions (amounting to less than 1 percent of all units managed) because of criminal activities. There were about 49,000 applications for admission into public housing that were denied for reasons of criminal activities (amounting to about 4 percent of all units). As drug-related criminal activities are a subset of criminal activities, these data suggest that even if all of those evicted from public housing for reasons of criminal activity had engaged in drug-related criminal activities, terminations leading to evictions would amount to less than 1 percent of the public housing units managed by PHAs.

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**Selected PHAs Mostly  
Report That Relatively  
Small Percentages of  
Tenants Leases Are  
Terminated for Reasons of  
Criminal Activity or Drug-  
Related Criminal Activities**

To gauge the extent to which PHAs denied federally assisted housing by terminating leases (leading to possible evictions) for drug-related criminal activities, we contacted 40 of the largest PHAs in the country and asked them to provide data on the number of actions<sup>10</sup> that they took to evict tenants by terminating leases and of these, the numbers that were terminated for criminal activity and for drug-related criminal activity.<sup>11</sup> Of the 40 PHAs that we contacted, we received data from 17. We assessed the data that these PHAs provided for reliability.

As shown in table 16, 15 of 17 PHAs that responded to our request provided data on the total number of public housing termination of leases. The rate at which PHAs terminated leases for reasons of drug-related criminal activities varied considerably, from 0 percent in Santa Clara County to 39.3 percent in Memphis. The Philadelphia PHA, which reported the largest number of lease terminations (2,324), reported terminating 50 of these leases (or 2.2 percent) for reasons of drug-related criminal activities. The Santa Clara County PHA terminated the smallest number of leases (1). Combined, the 13 PHAs that reported both the number of lease terminations and the number of terminations for drug-related criminal activities, reported ending a total of 9,249 leases, and 520 of the terminations (or 5.6 percent of the total) were for drug-related criminal activities.

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<sup>10</sup>Actions taken by PHAs reflect decisions to terminate leases and assistance, as discussed in this section, as well as denying admissions, as discussed in a subsequent section of this appendix.

<sup>11</sup>HUD collects data on lease terminations and denial of admission into public housing through its Management Operations Certification Assessment System (MASS) data collection. This system reports the number of such actions taken for reasons of criminal activities, but it does not report data on the number of actions taken explicitly for reasons of drug-related criminal activities.

**Appendix IV: Denial of Federally Assisted  
Housing Benefits for Drug-Related Criminal  
Activity**

**Table 16: Public Housing Lease Terminations at Selected Public Housing Agencies, by Reason for Termination (Criminal Activities and Drug-Related Criminal Activities), 2003**

Public housing agency	Public housing lease terminations (leading to possible eviction)	Public housing leases terminated for reasons of criminal activities		Public housing leases terminated for reasons of drug-related criminal activities		Percentage of terminations of leases for reasons of criminal activities
		Number	Percentage of all terminations of leases	Number	Percentage of all terminations of leases	
Atlanta (GA)	320	78	24.4%	38	11.9%	48.7%
Cincinnati (OH)	721	21	2.9%	13	1.8%	61.9%
Cuyahoga County (OH)	1,654	102	6.2%	84	5.1%	82.4%
Indianapolis (IN)	207	36	17.4%	<sup>a</sup>	<sup>a</sup>	<sup>a</sup>
Jacksonville (FL)	1,299	70	5.4%	47	3.6%	67.1%
Los Angeles (CA, City of)	373	109	29.2%	51	13.7%	46.8%
Los Angeles (CA, County of)	170	51	30.0%	26	15.3%	51.0%
Memphis (TN)	28	17	60.7%	11	39.3%	64.7%
Nashville (TN)	260	148	56.9%	90	34.6%	60.8%
New Orleans (LA)	233	133	57.1%	83	35.6%	62.4%
Newark (NJ)	1,720	27	1.6%	20	1.2%	74.1%
Oakland (CA)	146	35	24.0%	7	4.8%	20.0%
Philadelphia (PA)	2,324	133	5.7%	50	2.2%	37.6%
Portland (OR)	65	<sup>a</sup>	<sup>a</sup>	<sup>a</sup>	<sup>a</sup>	<sup>a</sup>
San Bernardino County (CA)	<sup>a</sup>	8	<sup>a</sup>	<sup>a</sup>	<sup>a</sup>	<sup>a</sup>
San Diego County (CA)	<sup>a</sup>	<sup>a</sup>	<sup>a</sup>	<sup>a</sup>	<sup>a</sup>	<sup>a</sup>
Santa Clara County (CA)	1	0	0.0%	0	0.0%	<sup>b</sup>

Source: GAO analysis of data from selected public housing agencies.

<sup>a</sup>Data were missing or not reported.

<sup>b</sup>Not applicable.

Further, although the data on lease terminations for reasons of drug-related criminal activities are not generalizable to all PHAs that manage public housing program units, the information that they provided on leases terminated for reasons of drug-related criminal activities, and our calculation of these numbers as a percentage of terminations for criminal activities, show wide variation in the extent to which drug-related criminal activities predominate among all criminal activities that can result in a termination of a lease. In Cuyahoga County, for example, 82.4 percent of lease terminations for criminal activity were terminations for drug-related criminal activities, but in Oakland, 20 percent of the terminations for criminal activity occurred as a result of drug-related criminal activities. A majority of the PHAs that reported these data also reported that the number of lease terminations and the reasons for them (i.e., criminal or drug-related criminal activities) were similar to or smaller than the numbers in the prior 3 years.

As shown in table 17, 16 of the 17 PHA respondents were able to provide some (although often incomplete) data on actions taken to terminate HCV assistance during 2003. Nine of the 16 PHA respondents were able to provide data on the number of actions to terminate HCV assistance for reasons of drug-related criminal activity or criminal activity. However, only 5 of the 9 respondents were able to provide data on the number of actions specifically taken to terminate HCV assistance for reasons of drug-related criminal activity. These 5 PHAs took 9,537 actions related to terminating HCV assistance, of which 54 (or about 0.6 percent) of such actions were for terminating assistance for reasons of drug-related criminal activities.

Four of the 9 PHA respondents were able to provide data on the number of actions taken to terminate HCV assistance for reasons of criminal activity, and most, but not all, of them provided (at our request) broad estimates for drug-related criminal activity based on the total number of actions to terminate HCV assistance during 2003. These 4 PHAs took a total of 3,166 actions related to terminating HCV assistance, of which 133 actions (or about 4.2 percent) were for terminating assistance because of criminal activities. Three of the 4 PHAs estimated less than 25 percent of their total actions could have been for reasons of drug-related criminal activities, and 1 PHA did not provide an estimate. Applying the upper-bound broad estimates (25 percent) to each PHA's total actions would be overstating terminations for reasons of drug-related criminal activity because the resulting number is most likely to be equal to or be a subset of terminations for reasons of criminal activities. From a conservative perspective, it is conceivable that the 133 actions also represent

**Appendix IV: Denial of Federally Assisted Housing Benefits for Drug-Related Criminal Activity**

terminations of assistance for reasons of drug-related criminal activity, thereby establishing a maximum rate of denial at 4.2 percent for reasons of drug-related criminal activity.

Seven of the 16 PHA respondents provided only the total number of actions taken to terminate HCV assistance, along with a broad estimate of the percentages of terminations that could have been for reasons of drug-related criminal activity. Six of the 7 PHAs reported less than 25 percent of their total actions could have been for reasons of drug-related criminal activities, and one reported 51 to 75 percent. Table 17 provides the data on terminations of assistance from the HCV program.

**Table 17: Housing Choice Voucher Program Terminations of Assistance at Selected Public Housing Agencies, by Reason for Termination (Criminal Activities and Drug-Related Criminal Activities) of Assistance, 2003**

Public housing agency	HCV terminations of assistance	HCV terminations for reasons of criminal activities		HCV terminations for reasons of drug-related criminal activities		
		Number	Percentage of all terminations of assistance	Number	Percentage of all terminations of assistance	Estimated percentage of all terminations of assistance
Atlanta (GA)	855	11	1.3%	<sup>a</sup>	<sup>a</sup>	< 25%
Cincinnati (OH)	98	14	14.3%	6	6.1%	<sup>b</sup>
Cuyahoga County (OH)	1,214	14	1.2%	6	0.5%	<sup>b</sup>
Indianapolis (IN)	247	<sup>a</sup>	25% to 50% <sup>c</sup>	<sup>a</sup>	<sup>a</sup>	< 25%
Jacksonville (FL)	5,770	26	0.5%	4	0.07%	<sup>b</sup>
Los Angeles (CA, City of)	4,468	<sup>a</sup>	< 25% <sup>c</sup>	<sup>a</sup>	<sup>a</sup>	< 25%
Los Angeles (CA, County of)	1,080	<sup>a</sup>	< 25% <sup>c</sup>	<sup>a</sup>	<sup>a</sup>	< 25%
Memphis (TN)	3	<sup>a</sup>	< 25% <sup>c</sup>	<sup>a</sup>	<sup>a</sup>	51% to 75%
Nashville (TN)	720	<sup>a</sup>	< 25% <sup>c</sup>	<sup>a</sup>	<sup>a</sup>	< 25%
New Orleans (LA)	2,241	<sup>a</sup>	< 25% <sup>c</sup>	<sup>a</sup>	<sup>a</sup>	< 25%
Newark (NJ)	8	<sup>a</sup>	< 25% <sup>c</sup>	<sup>a</sup>	<sup>a</sup>	< 25%
Oakland (CA)	<sup>a</sup>	<sup>a</sup>	51% to 75% <sup>c</sup>	<sup>a</sup>	<sup>a</sup>	> 75%
Philadelphia (PA)	1,445	54	3.7%	11	0.8%	<sup>b</sup>
Portland (OR)	380	71	18.7%	<sup>a</sup>	<sup>a</sup>	<sup>a</sup>
San Bernardino County (CA)	1,009	47	4.7%	<sup>a</sup>	<sup>a</sup>	< 25%

**Appendix IV: Denial of Federally Assisted Housing Benefits for Drug-Related Criminal Activity**

Public housing agency	HCV terminations of assistance	HCV terminations for reasons of criminal activities		HCV terminations for reasons of drug-related criminal activities		
		Number	Percentage of all terminations of assistance	Number	Percentage of all terminations of assistance	Estimated percentage of all terminations of assistance
San Diego County (CA)	1,010	42	4.2%	27	2.7%	<sup>b</sup>
Santa Clara County (CA)	922	4	0.4%	<sup>a</sup>	<sup>a</sup>	< 25%

Source: GAO analysis of data from selected public housing agencies.

<sup>a</sup>Data were missing or not reported.

<sup>b</sup>Data reported in previous column.

<sup>c</sup>In response to GAO's request, the PHA estimated the percentage (within certain ranges) of all action initiated to terminate HCV assistance that could have been taken for reasons of criminal activity.

The majority of PHAs that reported data on terminations from the HCV program also reported that the number and types of actions that they took during 2003 were similar to the numbers in the prior 3 years.

**Selected PHAs Report That Relatively Small Percentages of Applicants Are Denied Admission for Reasons of Criminal Activity or Drug-Related Criminal Activities**

As shown in table 18, 15 of 17 PHAs that responded to our request provided data on the number of actions taken on applications for public housing. However, only 6 of the 15 respondents provided data on the number of actions specifically taken to deny admission into public housing for reasons of drug-related criminal activity. Collectively, these six PHAs took action on 11,538 applications, of which 330 (or about 2.9 percent of) such actions were for denying admissions for reasons of drug-related criminal activities.

Nine of the 15 PHAs did not provide counts of the number of denials for reasons of drug-related criminal activity but provided data on the number of actions taken to deny admission for reasons of criminal activity. In completing our request, 4 PHAs provided broad estimates of denials for drug-related criminal activity based on the total number of actions taken on applications for public housing, and 5 PHAs did not provide estimates. Collectively, these 9 PHAs reported a total of 17,921 actions related to applications for admission into public housing, of which 1,081 actions (or 6 percent) were for denying admission for reasons of criminal activities. On the basis of our assumption that admission denials for reasons of drug-related criminal activity are most likely to be either a subset of or

**Appendix IV: Denial of Federally Assisted  
Housing Benefits for Drug-Related Criminal  
Activity**

equivalent to the admission denials for reasons of criminal activities, we estimate that the maximum rate of denial for reasons of drug-related criminal activity for these PHAs is 6 percent.

**Table 18: Selected Public Housing Agencies' Actions Reported on Applications for Admission and Denials of Admission into Public Housing for Reasons of Criminal Activities and Drug-Related Criminal Activities, 2003**

Public housing agency	Number of actions taken on applications for public housing	Public housing applications denied because of criminal activities		Public housing applications denied because of drug-related criminal activities		
		Number	Percentage of all actions taken on applications for assistance	Number	Percentage of all actions taken on applications for assistance	Estimated percentage of all actions taken on applications for assistance
Atlanta (GA)	608	56	9.2%	a	a	a
Cincinnati (OH)	5,785	359	6.2%	24	0.4%	b
Cuyahoga County (OH)	2,307	282	12.2%	a	a	< 25%
Indianapolis (IN)	506	75	14.8%	a	a	a
Jacksonville (FL)	970	22	2.3%	a	a	a
Los Angeles (CA, City of)	3,920	295	7.5%	a	a	< 25%
Los Angeles (CA, County of)	1,217	44	3.6%	a	a	> 75%
Memphis (TN)	420	157	37.4%	4	1.0%	b
Nashville (TN)	2,093	137	6.5%	127	6.1%	b
New Orleans (LA)	365	12	3.3%	12	3.3%	b
Newark (NJ)	2,359	600	25.4%	163	6.9%	b
Oakland (CA)	674	59	8.8%	a	a	51% to 75%
Philadelphia (PA)	5,400	226	4.2%	a	a	a
Portland (OR)	2,319	22	0.9%	a	a	a
San Bernardino County (CA)	a	147	a	a	a	< 25%
San Diego County (CA)	a	a	a	a	a	a
Santa Clara County (CA)	516	0	0.0%	0	0.0%	b

Source: GAO analysis of data from selected public housing agencies.

<sup>a</sup>Data were missing or not reported.

<sup>b</sup>Data reported in previous column.

As with the other outcomes, the PHAs varied in the extent to which they reported that applicants were denied admission into public housing for reasons of drug-related criminal activities, and the majority of PHAs that provided data for 2003 reported that their activities related to actions and denials in 2003 were similar to the numbers in the prior 3 years.

As shown in table 19, 14 of the 17 PHA respondents provided some (although mostly incomplete) data on actions taken on applications for the HCV program. Nine of the 14 PHAs provided data on the number of denials of admission into the program for reasons of drug-related criminal activities or criminal activity. Of the 2 PHAs that provided data on the number of denials for reasons of drug-related criminal activity, 1 PHA reported no denials, and the other PHA reported 10 denials out of 1,483 actions taken on applications, or 0.7 percent. Seven PHAs provided data on the number of denials for reasons of criminal activity. Among these 7 PHAs, there were a total of 20,513 reported actions taken on applicants. Of these, 303 were denied admission for reasons of criminal activities (or about 1.5 percent). On the basis of our assumption that admission denials for reasons of drug-related criminal activity are most likely to be either a subset of or equivalent to the admission denials for reasons of criminal activities, we estimate that the maximum for admission denials for reasons of drug-related criminal activity is 1.5 percent. We could not provide reliable estimates for the remaining 5 PHAs that reported incomplete data.

**Appendix IV: Denial of Federally Assisted  
Housing Benefits for Drug-Related Criminal  
Activity**

**Table 19: Housing Choice Voucher Program, Selected Public Housing Agencies' Actions Reported on Applications for Assistance and Denials of Assistance for Reasons of Criminal Activities and Drug-Related Criminal Activities, 2003**

Public housing agency	Number of actions taken on HCV applications for assistance	HCV denials of assistance for reasons of criminal activities		HCV denials of assistance for reasons of drug-related criminal activities		
		Number	Percentage of all actions taken on HCV applications for assistance	Number	Percentage of all actions taken on HCV applications for assistance	Estimated percentage of all actions taken on HCV applications for assistance
Atlanta (GA)	3,886	57	1.5%	a	a	< 25%
Cincinnati (OH)	3,138	79	2.5%	a	a	25% to 50%
Cuyahoga County (OH)	a	49	a	a	a	a
Indianapolis (IN)	390	12	3.1%	a	a	25% to 50%
Jacksonville (FL)	4,191	91	2.2%	a	a	a
Los Angeles (CA, City of)	53,426	a	< 25% <sup>d</sup>	a	a	< 25%
Los Angeles (CA, County of)	1,711	a	< 25% <sup>d</sup>	a	a	< 25%
Memphis (TN)	0	0	c	0	c	c
Nashville (TN)	990	a	< 25% <sup>d</sup>	a	a	< 25%
New Orleans (LA)	1,321	8	0.6%	a	a	< 25%
Newark (NJ)	472	a	< 25% <sup>d</sup>	a	a	< 25%
Oakland (CA)	a	a	a	a	a	a
Philadelphia (PA)	1,483	22	1.5%	10	0.7%	b
Portland (OR)	1,387	53	3.8%	a	a	a
San Bernardino County (CA)	a	a	a	a	a	a
San Diego County (CA)	4,940	a	a	a	a	a
Santa Clara County (CA)	6,200	3	0.05%	a	a	< 25%

Source: GAO analysis of data from selected public housing agencies.

<sup>a</sup>Data were missing or not reported.

<sup>b</sup>Data reported in previous column.

<sup>c</sup>Not applicable.

<sup>d</sup>In response to GAO's request, the PHA estimated the percentage (within certain ranges) of all action taken on HCV applications for assistance that could have been for reasons of criminal activity.

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## Several Factors Can Contribute to the Reported Low Number of Denials because of Drug- Related Criminal Activities, but Potential Impacts Are Unclear

Our review of limited data and interviews with those involved in federally assisted housing suggest a number of factors can contribute to the relatively low percentages of denials being reported for reasons of drug-related criminal activities. As noted in a HUD baseline study, variation among PHAs in conducting HCV criminal background checks could legitimately result in an applicant being barred by one PHA who would otherwise be admitted by another PHA. In addition, a HUD official suggested that the percentages of denials that were reported to us by selected PHAs can be influenced by whether (1) the PHAs place drug users at the bottom of their waiting lists, (2) PHAs differ in the treatment of applicants if a household member rather than the applicant is the subject of the drug-related criminal activity, and (3) local courts presiding over eviction proceedings view the PHAs as the housing provider of last resort. In the last instance, the PHA's decision to terminate a lease for reason of drug-related criminal activity may not be upheld.

Moreover, comments made during interviews with selected officials on matters related to housing were consistent with our analysis of HUD data on PHA denials for criminal activity, and the relatively low number of denials for drug-related criminal activity provided to us by selected PHAs. Regarding the relatively small number of persons whose housing benefits were reported as terminated or persons denied program participation for reasons of criminal or drug-related criminal activities, a representative from the National Association of Housing and Redevelopment Officials stated that PHAs are not looking to turn away minor offenders (e.g., "the type of people that may have only stolen a candy bar") but rather hardened criminals. On the variation in denials of federally assisted housing for drug-related criminal activities, the Project Coordinator for the Re-Entry Policy Council at the Council of State Governments suggested that the barriers to housing ex-drug offenders revolve around the discretion afforded PHAs, and that these barriers can best be dealt with at the local level by making states more aware of the issue, the applicability of the local rules, and the need for building collegial relationships with PHAs to develop options for housing ex-felons.

More generally, assessing the impacts of the denial of federal housing benefits on the housing communities or on the individuals and families that have lost benefits was beyond the scope of our review, given the limited data that are available. Officials at HUD reported that they have not studied this issue, and our review of the literature did not return any comprehensive studies of impacts. In our opinion, any full assessment of the impacts of denial of housing benefits to drug offenders would have to consider a wide range of possible impacts, such as improvements in public

safety that result from terminating leases of drug offenders; displacement of crime from one area to another with perhaps no overall (or area-wide) improvements in crime reduction; as well as the impacts on individuals and families, to name a few. Any such impact assessments would be complicated by the market conditions (limited quantity and high demand) for federally assisted housing and the variation in PHAs' policies and practices that would also need to be considered.

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## Data on the Race of Persons Denied Federally Assisted Housing Were Infrequently Provided

We requested the PHAs to provide us with data on the race of persons who were denied federally assisted housing for reasons of drug-related criminal activities. Of the 17 PHAs that responded to our request, few provided data by race on (1) the total number of actions taken and (2) those actions that were specifically for drug-related criminal activity. Only 4 PHAs provided data by race on public housing terminations, and 3 PHAs provided data by race on public housing admission denials. Four PHAs provided data by race on HCV terminations of assistance. Only 1 PHA provided data by race on HCV admission denials.

From these limited data, we were unable to develop reliable estimates of racial differences in the frequency of terminations and denials of admission into federally assisted housing. In some cases, the number reported as terminated for drug-related criminal activities was too small to provide stable estimates, and because of the small numbers, the estimates of racial differences could exhibit large changes with the addition of a few more cases. For example, only 4 PHAs provided data by race on the number of leases terminated for reasons of drug-related criminal activities. In 1 PHA, slightly more than 3 percent of all lease terminations of blacks were for drug-related criminal activities, while almost 6 percent of all lease terminations of whites were for drug-related criminal activities. In this PHA, whites were about one and one half times more likely than blacks to have their leases terminated for reasons of drug-related criminal activities. In this PHA, 110 whites had leases terminated during 2003, and 6 of these terminations were for drug-related criminal activities. In a second PHA, blacks were three times as likely as whites to have their leases terminated for reasons of drug-related criminal activities, as 18 percent of blacks and 5 percent of whites had leases terminated for reasons of drug related criminal activities. But in this second PHA, 19 whites had leases terminated, and 1 of these was for drug-related criminal activities. An addition of 2 whites to the number that had leases terminated for drug-related criminal activities would have almost eliminated the racial difference.

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# Appendix V: Legal and Administrative Framework for the Denial of Federal Benefits Program

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## About the Law

The Denial of Federal Benefits Program established under section 5301 of the Anti-Drug Abuse Act of 1988,<sup>1</sup> in general, provides federal and state court judges with a sentencing option to deny selected federal benefits to individuals convicted of federal or state offenses for the distribution or possession of controlled substances. The federal benefits that can be denied include grants, contracts, loans, and professional or commercial licenses provided by an agency of the United States.<sup>2</sup> Certain benefits are excluded from deniability under this provision of the law; these include benefits such as social security, federally assisted housing, welfare, veterans' benefits, and benefits for which payments or services are required for eligibility.<sup>3</sup> Federally assisted housing, TANF, and food stamp benefits may be denied to drug offenders under other provisions of federal law. (See app. II for more information on the denial of TANF and food stamp benefits, and see app. IV for more information on the denial of federally assisted housing benefits.)

Federal and state court sentencing judges generally have discretion to deny any of the deniable benefits for any length up to those prescribed by the law, with the exception of the mandatory denial of benefits required for a third drug trafficking conviction. More specifically, depending upon the type of offense, and conviction and the number of prior convictions, the law provides for different periods of ineligibility for which benefits can or must be denied. As the number of convictions for a particular type of drug offense increases, so does the period of ineligibility for which benefits can or must be denied. Table 20 shows these periods.

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<sup>1</sup>Pub. L. No. 100-690, 102 Stat. 4310 (1988) (codified at 21 U.S.C. § 862).

<sup>2</sup>The term "Federal benefit" is defined at 21 U.S.C. § 862(d)(1) to mean "any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States."

<sup>3</sup>The term "Federal benefit," under 21 U.S.C. § 862(d)(1), specifically excludes "any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility."

**Table 20: Periods of Ineligibility for Which Benefits Can or Must Be Denied under Section 5301 of the Anti-Drug Abuse Act, as Amended**

Number of convictions	Type of conviction offense	
	Drug possession	Drug trafficking
First conviction	Up to 1 year	Up to 5 years
Second conviction	Up to 5 years	Up to 10 years
Third conviction	<sup>a</sup>	Permanent ineligibility

Source: GAO analysis of provisions of section 5301 of the Anti-Drug Abuse Act of 1988, as amended.

<sup>a</sup>No period of ineligibility is listed for drug possession offenses with three or more convictions.

With respect to first-time drug possession convictions, a court may impose certain conditions, such as the completion of an approved drug treatment program, as a requirement for the reinstatement of benefits. In addition, the sentencing court continues to have the discretion to impose other penalties and conditions apart from section 5301 of the Anti-Drug Abuse Act of 1988.

Section 5301 of the Anti-Drug Abuse Act of 1988, as amended, also provides that under certain circumstances, the denial of benefits penalties may be waived or suspended with respect to certain offenders. For example, the denial of benefits penalties are not applicable to individuals who cooperate with or testify for the government in the prosecution of a federal or state offense or are in a government witness protection program.<sup>4</sup> In addition, with respect to individuals convicted of drug possession offenses, the denial of benefits penalties are to be “waived in the case of a person who, if there is a reasonable body of evidence to substantiate such declaration, declares himself to be an addict and submits himself to a long-term treatment program for addiction, or is deemed to be rehabilitated pursuant to rules established by the Secretary of Health and Human Services.”<sup>5</sup> Also, the period of ineligibility for the denial of benefits is to be suspended for individuals who have completed a supervised drug rehabilitation program, have otherwise been rehabilitated, or have made a good faith effort to gain admission to a supervised drug rehabilitation program but have been unable to do so because of

<sup>4</sup>21 U.S.C. § 862(e).

<sup>5</sup>21 U.S.C. § 862(b)(2).

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inaccessibility or unavailability of such a program or the inability of such individuals to pay for such a program.<sup>6</sup>

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## Administration of the Law

State and federal sentencing judges generally have discretion to impose denial of federal benefits, under section 5301 of the Anti-Drug Abuse Act of 1988, as a sanction. This sanction can be imposed in combination with other sanctions, and courts have the option of denying all or some of the specified federal benefits and determining the length of the denial period within certain statutorily set ranges. When denial of benefits under section 5301 of the Anti-Drug Abuse Act of 1988 is part of a sentence, the sentencing court is to notify the Bureau of Justice Assistance, which maintains a database (the Denial of Federal Benefits Program Clearinghouse) of the names of persons who have been convicted and the benefits that they have been denied. BJA passes this information on to the U.S. General Services Administration (GSA), which maintains the debarment list for all agencies. GSA publishes the names of individuals who are denied benefits in the *Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs*, commonly known as the Debarment List. The Debarment List contains special codes that indicate whether all or selected benefits have been denied for an individual and the expiration date for the period of denial. Before making an award or conferring a pertinent federal benefit, federal agencies are required to consult the Debarment List to determine if the individual is eligible for benefits.

The Department of Justice also has data-sharing agreements with the Department of Education and the Federal Communications Commission. The purpose of these agreements is to provide these agencies with access to information about persons currently denied the federal benefits administered by them. For example, as described in this report, students who are convicted of offenses involving the sale or possession of a controlled substance are ineligible to receive certain federal postsecondary education benefits. In order to ensure that student financial assistance is not awarded to individuals subject to denial of benefits under court orders issued pursuant to section 5301, DOJ and the Department of Education implemented a computer matching program. The Department of Education attempts to identify persons who have applied for federal higher education assistance by matching records from applicants against

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<sup>6</sup>21 U.S.C. § 862(c).

the BJA database list of persons who have been denied benefits. Officials at the Department of Education report that the department has matched only a few records of applicants for federal higher education assistance to the DOJ list of persons denied federal benefits. The individuals whose names appear on the DOJ list may differ from those individuals who self-certify to a drug offense conviction on their applications for federal postsecondary education assistance. (See app. III for more information on this.)

The Administrative Office of United States Courts is responsible for administrative matters for the federal courts. Shortly after the passage of the Anti-Drug Abuse Act of 1988, AOUSC added the Denial of Federal Benefits sentence enhancement to the Pre-Sentence Report Monograph, which provided information to probation officers about the availability of the DFB as sanction along with its requirements. AOUSC also developed a standard form for federal judges to use in reporting the imposition of the Denial of Federal Benefits sanctions; the form is part of the Judgment and Commitment Order that is completed by the court upon sentencing.

The United States Sentencing Commission promulgates federal sentencing guidelines and collects data on all persons sentenced pursuant to the federal sentencing guidelines. After the passage of the Anti-Drug Abuse Act of 1988, the USSC prepared a guideline for this sanction and included it in the *Sentencing Guidelines Manual*. Annually, USSC distributes the *Sentencing Guidelines Manual* to federal court officials.

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## Use of the Denial of Federal Benefits Program Provisions

Bureau of Justice Assistance data show that between 1990 and the second quarter of 2004, 8,298 offenders were reported as having been denied federal benefits by judges who imposed sanctions under the Denial of Federal Benefits Program. About 38 percent (or 3,128) of these offenders were denied benefits in state courts, and about 62 percent (or 5,170) were denied benefits in federal courts. About an average 635 persons per year were denied benefits under the program over the 1992 through 2003 period, and the number denied in any given year ranged from about 428 to 833. The number denied a benefit under the program decreased to 428 in 2002 and increased to 595 in 2003.<sup>7</sup>

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<sup>7</sup>The second quarter of 2004 was the most recent BJA data on the number of offenders denied benefits under the DFB.

According to BJA data, judges in comparatively few courts used the denial of federal benefits provisions. State court judges in 7 states and federal judges in judicial districts in 26 states were reported to have imposed the sanction. Among state courts, judges in Texas accounted for 39 percent of the state court totals, while judges in Oregon and Rhode Island accounted for 30 percent and 13 percent, respectively. Among the federal courts, judges in judicial districts in Texas accounted for 21 percent of the federal totals, while judges in North Carolina, Mississippi, Georgia, Florida, Nevada, and Kansas accounted for between 8 percent and 15 percent of the totals. Federal judges in each of the remaining 19 states accounted for less than 3 percent of the federal totals.

Not all of the 8,298 offenders recorded as having been denied federal benefits between 1990 and 2004 under the program are currently denied benefits. For about 75 percent of these offenders, the period of denial has expired. Officials at BJA report that as of April 2004, they maintained about 2,000 active records of persons currently under a period of denial.

Relative to the total number of felony drug convictions, the provisions of the Denial of Federal Benefits (DFB) Program are reportedly used in a relatively small percentage of drug cases. For example, biannually between 1992 and 2000, there were a minimum of 274,000 and a maximum of 348,000 convictions for drug offenses in state courts, or about 307,000 per year. In federal courts over this same period, there were between 15,000 and 24,000 drug offenders convicted, or about 19,000 per year. As the average annual number of drug defendants in state courts denied benefits under the DFB was 223, the rate of use of the DFB in state courts averaged about 0.07 percent. Among federal drug defendants, the annual average number reported as having received a sanction under the program was about 369, while the average annual number of drug defendants sentenced federally was about 19,000; hence, the percentage of all federal drug defendants receiving a sanction under the program was about 2 percent.

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## Assessing the Impacts of the Denial of Federal Benefits Program

Throughout the history of the program, questions have been raised about its apparently limited impacts. In 1992, we reported on the difficulties in denying federal benefits to convicted drug offenders<sup>8</sup> and suggested that there would not be widespread withholding of federal benefits from drug offenders.<sup>9</sup> Officials at BJA also reported that the sanction has not been widely used by judges. In 2001, BJA program managers met with some U.S. attorneys in an attempt to provide them with information about the potential benefits of the program. According to BJA officials, the U.S. attorneys responded that they typically used other statutes for sanctioning and sentencing drug offenders, rather than the sanctions under the Denial of Federal Benefits Program.

The benefits that can be denied under the program—federal contracts, grants, loans, and professional or commercial licenses—suggest some reasons as to its relatively infrequent use. Persons engaged in federal contracting, for example, are generally engaged in business activities, and such persons compose small percentages of federal defendants sentenced for drug offenses. Hence, relatively few defendants may qualify to use these federal benefits, and therefore relatively few may be denied the benefits.

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<sup>8</sup>GAO, *Drug Control: Denying Federal Benefits to Convicted Drug Offenders*, GAO/GGD-92-56 (Washington, D.C.: April 21, 1992).

<sup>9</sup>GAO's opinion was based on the following factors: (1) the views held by those who may affect the imposition of the sentence—judges and other criminal justice officials—that the sentence would not have much impact on many of the offenders convicted in federal and state courts; (2) accepted court sentencing practices such as excluding many first-time drug offenders—such as those charged with drug possession—from receiving such a sentence, and (3) federal benefit administration policies and practices such as those that preclude the interruption or termination of ongoing benefits.

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**Reliable Data by Race  
of Persons Receiving  
the DFB Are Not  
Available**

None of the data sources that we reviewed provided reliable data on the race and ethnicity of persons denied federal benefits under the Denial of Federal Benefits Program.

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# Appendix VI: GAO Contact and Staff Acknowledgments

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## GAO Contact

Laurie E. Ekstrand, (202) 512-8777

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## Acknowledgments

In addition to the contact named above, William J. Sabol, Clarence Tull, Brian Sklar, DuEwa Kamara, Geoffrey Hamilton, David Makoto Hudson, Michele Fejfar, David Alexander, Amy Bernstein, Anne Laffoon, Julian King and Andrea P. Smith made key contributions to this report.

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