

October 28, 2021

The Honorable Nancy Pelosi
Washington, DC 20515

The Honorable Charles Schumer
Washington, DC 20515

The Honorable Steny Hoyer
Washington, DC 20515

The Honorable Richard Neal
Washington, DC 20515

The Honorable Ron Wyden
Washington, DC 20510

Re: Repeal of the denial of the American Opportunity Tax Credit for a felony drug conviction

Speaker Pelosi, Leader Schumer, Leader Hoyer, Chairman Neal, and Chairman Wyden,

I write to you regarding Sec. 137704 (“Repeal of Denial of American Opportunity Tax Credit on Basis of Felony Drug Conviction”) of the House Ways and Means Committee recommendations pursuant to S.Con.Res. 14.¹ Although Due Process Institute and the R Street Institute do not offer unified positions on all of the committee recommendations that make up the Build Back Better Act, we write to urge that the repeal of the denial of the American Opportunity Tax Credit for a felony drug conviction in the House Ways and Means Committee recommendations be included in the final budget reconciliation legislation.

The American Opportunity Tax Credit (AOTC) provides eligible students with a tax credit of up to \$2,500 during a tax year, up to \$1,000 of which is refundable even if the tax filer has no income tax liability. The tax credit may be used for eligible expenses associated with the first four years of a post-secondary education. Unfortunately, under current law, the American Opportunity Tax Credit is not available to students who have been convicted of a state or federal felony drug offense.²

Created by the Taxpayer Relief Act of 1997,³ the HOPE Scholarship Credit (the predecessor tax credit to the AOTC) was created to help students afford a post-secondary education, but the credit excluded students who had a felony drug conviction from eligibility. When the HOPE Scholarship Credit was expanded and renamed in Sec. 1004 of the American Recovery and Reinvestment Act of 2009,⁴ Congress, unfortunately, left the felony drug exclusion in place.

Educational opportunities are key to reducing recidivism. Although most of the available research is more specific to in-prison education programs, it illustrates that individuals who have access to educational programs are less likely to commit repeat offenses. A 2014 review and meta-analysis of research conducted by the RAND Corporation noted, “[O]n average, inmates who participated in correctional education programs had 43 percent lower odds of recidivating than inmates who did not.”⁵

A criminal conviction is already a barrier for those who are seeking a better life, but the arbitrary denial of incentives like the American Opportunity Tax Credit because of a felony drug conviction only makes those barriers more difficult to get through. As Sen. Rob Portman (R-OH) has said, “The mistakes of your past shouldn’t define your future, and [repealing the denial of the American Opportunity Tax Credit for a felony

¹ House Committee on Ways and Means, “Committee Print Consisting of Subtitles F, G, H, and J: Budget Reconciliation Legislative Recommendations Relating to Infrastructure Financing, Green Energy, Social Safety Net, and Prescription Drugs.” Accessed October 25, 2021 at https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/SUBFGHJ_xml.pdf.

² 26 U.S.C. § 25A(b)(2)(D).

³ Public Law 105-34.

⁴ Public Law 111-5.

⁵ Lois M. Davis, Jennifer L. Steele, Robert Bozick, Malcolm V. Williams, Susan Turner, Jeremy N. V. Miles, Jessica Saunders, and Paul S. Steinberg, “How Effective Is Correctional Education, and Where Do We Go from Here?” RAND Corporation, 2014, available at https://www.rand.org/pubs/research_reports/RR564.html.

drug conviction] will help more individuals returning from correctional institutions get a second chance and achieve their God-given potential.”⁶

Importantly, although Democrats and Republicans are divided over certain other provisions of the Build Back Better Act, repeal of the felony drug exclusion of the American Opportunity Tax Credit has attracted strong bipartisan support in the past. In July 2014, the House of Representatives passed the Student and Family Tax Simplification Act,⁷ which among more extensive reforms of educational tax credits, would have repealed the denial of the American Opportunity Tax Credit to those students who have drug convictions. More recently, in September 2019, the bipartisan-supported ED ACCESS Act was introduced in the House of Representatives⁸ and Senate⁹ to repeal the exclusion.

Even though Due Process Institute and the R Street Institute do not offer a unified position on the pending budget reconciliation legislation, we do strongly support the repeal of the denial of the American Opportunity Tax Credit for students with felony drug convictions who are seeking to improve their opportunities and enhance their lives and communities.

Thank you for your attention to this matter. If you have any questions, please contact Jason Pye by phone at (202) 558-6686 and by email at jason@idueprocess.org, or Jillian Snider by phone at (917) 417-5680 and by email at jsnider@rstreet.org.

Sincerely,

Jason Pye
Director, Rule of Law Initiatives
Due Process Institute

Jillian E. Snider
Director of Criminal Justice and Civil Liberties
R Street Institute

cc: The Honorable Chris Van Hollen
The Honorable Danny Davis

⁶ Senator Chris Van Hollen, “Sens. Van Hollen, Portman, Merkley and Reps. Davis, Schweikert Announce Bipartisan, Bicameral Legislation to Fix AOTC Inequity,” Accessed October 25, 2021 at <https://www.vanhollen.senate.gov/news/press-releases/sens-van-hollen-portman-merkley-and-reps-davis-schweikert-announce-bipartisan-bicameral-legislation-to-fix-aotc-inequity>

⁷ H.R. 3393, 113th Congress (2013)

⁸ H.R. 4518, 116th Congress (2019)

⁹ S. 2553, 116th Congress (2019)