



LoanNotes

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SERVICES

Compliance Spotlight: Program Integrity- Ability to Benefit (Part 2)



The following article is Part 2 in the series of three articles discussing the regulations governing ability to benefit (ATB). The goal of this series is to review ATB regulations as a whole, including the amendments made as a result of the Program Integrity Issues; Final Rules (34 CFR Parts 600, 602, 603, 668, 682, 685, 686, 690, and 691) published in the Federal Register dated October 29, 2010, and effective July 1, 2011.

Certified Test Administrators and Assessment Centers

ED states on page 66921 of the Final Rules that “the only practical way for a test publisher or State to ensure that a test administrator has the necessary training required in order to certify that individual as a test administrator is to provide the training that will insure that test administrators are cognizant of the test publisher’s or State’s written requirements.” Therefore, in order to meet the revised definition of test administrator, and to ensure the standards of training, knowledge, skills and integrity are met, ED emphasizes that all individuals administering the tests in an assessment center must be certified by the text publisher or State, as applicable. Test administrators or other employees of the assessment center are not permitted to train one another on test administration. All test administrators are required to be certified through completion of training through their test provider or the State.

Furthermore, ED states that certified test administrators are to protect the test form and test results from improper disclosure or release, and must not be paid on the basis of test results.

Independent Test Administrators

An independent test administrator, as defined by ED, is an individual who is certified to administer the ATB tests at a location other than an assessment center and who meets all of the following criteria:

- Has no current or prior financial or ownership interest in the school, its affiliates, or its parent corporation other than the fees earned for administering the ATB test through an agreement with the publisher or State, and has no controlling interest in any other school;
- Is not a current or former employee of or consultant to the institution, its affiliates, or its parent corporation, a person in control of another institution, or a member of the family of any of these individuals;

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Ability To Benefit
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- Is not a current or former member of the board of directors, a current or former employee of or a consultant to a member of the board of directors, chief executive officer, chief financial officer of the institution, its affiliates, or its parent corporation or of any other institution, or a member of the family of any of these individuals; and
- Is not a current or former student of the institution.

Administration of Ability to Benefit Tests

To establish an individual's eligibility to receive Title IV, HEA program funds, the school must select a test administrator to give an approved ATB test. The school must use the results of the test, administered by the test publisher or assessment center, to determine the individual's eligibility, if the test was independently administered and properly administered in accordance with the regulations.

A student who fails to pass the ATB test may not retake the same form of the test for the amount of time prescribed by the test provider or the State responsible for the test. The school is required to keep a record of each individual who took the test, including:

- The test taken by the individual;
- The date of the test;
- The individual's score as reported to the test publisher, assessment center, or the State;
- The name and address of the test administrator who administered the test and any identifier assigned to that test administrator;
- Whether the individual taking the test is an individual with a disability and was unable to be evaluated by taking the ATB test, or the individual required or requested testing accommodations, documentation of the individual's disability and arrangements provided in accordance with § 668.153 (b).

Independently Administered Tests

The Secretary considers a test as independently administered if it meets one of the following:

- It is administered at an assessment center by a certified test administrator who is an employee of the center; or
- It is administered by an independent test administrator who maintains the test at a secure location and submits the test for scoring to the test publisher or the State, or for a computer-based test, a record of the test scores, within two days of administering the test.

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UPDATE

PRIVATE EDUCATION LOANS: DODD-FRANK CONSUMER FINANCIAL PROTECTION ACT OF 2010

In the February edition of Loan Notes, we discussed implementation issues related to the Dodd-Frank Consumer Protection Act of 2010. Since the date of that publication, changes have been proposed to the language concerning risk-based pricing notices (FCRA Section 615(h)).

This clarification was recently proposed by the Federal Reserve Board and the Federal Trade Commission and published in a Federal Register dated March 15, 2011 (Federal Register Volume 76, Number 50, see information beginning on Page 13902). Language in these proposed rules clarifies that the key factors that adversely affected the consumer's credit score are not required to be disclosed on a credit score exception notice. However, these factors must be disclosed on risk-based pricing notices (the exception notice is not considered a risk-based pricing notice).

The Final Rule to the Notice of Proposed Rulemaking is expected to be published prior to the implementation of the Dodd-Frank Act requirements (effective July 21, 2011). Loan Notes will continue to monitor this topic and keep our partners informed through future



Program Integrity- Ability to Benefit (Part 2)

- The Secretary does not consider a test as independently administered if the school:
- Compromises test security or testing procedures;
- Pays a test administrator a bonus, commission, or any other incentive based upon the test scores or pass rates of its students who take the test; or
- Otherwise interferes with the test administrator's independence or test administration.

Properly Administered Tests

The Secretary considers a test as properly administered if the test administrator:

- Is certified by the test publisher or the State, as applicable, to give the test publisher's or the State's test;
- Administers the test in accordance with instructions provided by the test publisher or the State, as applicable, and in a manner that ensures the integrity and security of the test;
- Makes the test available only to a test-taker, and then only during a regularly scheduled test;
- Secures the test against disclosure or release; and
- Submits the completed test or, for a computer-based test, a record of test scores, to the test publisher or the State, as applicable, within the time period specified in § 668.152(b) or paragraph (b)(2) of this section, as appropriate, and in accordance with the test publisher's or the State's instructions.

SPECIAL ALLOWANCE RATES FOR STAFFORD AND PLUS LOANS

FOR THE QUARTER ENDING MARCH 31, 2011

Please Note: The applicable Special Allowance Rates for Consolidation loans and for loans made or purchased with tax-exempt funds are available at www.ifap.ed.gov.

The Treasury Bill (T-bill) rate for the quarter ending March 31, 2011 averaged .13%. The categories for which special allowance was paid on loans made or purchased with taxable funds are:

Loan Interest Rate	Special Allowance Annual Rate+	Special Allowance Quarterly Rate+	LaRS (Lender Reporting System) Part III: Special Allowance Category Column E*
7.00%	0.00%	0.00%	SA
7.00%	0.00%	0.00%	SB
8.00%	0.00%	0.00%	
3.27%	0.11%	0.0275%	SD
3.42%	0.00%	0.00%	
7.00%	0.00%	0.00%	
8.00%	0.00%	0.00%	
3.27%	0.00%	0.00%	SE
3.27%	0.00%	0.00%	SG
3.39%	0.00%	0.00%	
2.67%	0.00%	0.00%	SH
1.87%	0.46%	0.1150%	SJ
2.47%	0.46%	0.1150%	SK

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SPECIAL ALLOWANCE RATES FOR STAFFORD AND PLUS LOANS

For the quarter ending March 31, 2011, the average Commercial Paper (CP) rate – as calculated by the U.S. Department of Education – was .25%. When the special allowance formula results in a negative rate on a loan first disbursed on or after April 1, 2006, the lender must remit the excess interest to ED..

Loan Interest Rate	Special Allowance Annual Rate+	Special Allowance Quarterly Rate+	LaRS (Lender Reporting System) Part III: Special Allowance Category Column E*
1.87%	0.12%	0.0300%	CA
2.47%	0.12%	0.0300%	CB
3.27% (PLUS)	0.00%	0.00%	CD
1.87%	0.12%	0.0300%	CE
6.80%	(4.81%)	(1.2025%)	
2.47%	0.12%	0.0300%	CF
6.80%	(4.21%)	(1.0525%)	
3.27% (PLUS)	(0.38%)	(0.0950%)	CH
8.50% (PLUS)	(5.61%)	(1.4025%)	
5.60%	(4.16%)	(1.0400%)	CI
6.00%	(4.56%)	(1.1400%)	
6.80%	(5.36%)	(1.3400%)	
5.60%	(3.56%)	(0.8900%)	CJ
6.00%	(3.96%)	(0.9900%)	
6.80%	(4.76%)	(1.1900%)	
8.50% (PLUS)	(6.46%)	(1.6150%)	CM

* For a detailed explanation of the Special Allowance codes, please visit the Common Manual at aesSuccess.org. To access the Manual, click on 'Solutions for Lenders' on the left-hand side of the screen. Then click on 'Access financial aid publications' under the heading 'More Lender Solutions,' which is located in the middle column on the screen. Then select the Common Manual. The Special Allowance codes are located in Appendix A, figure A-5.

+ For entities approved as not-for-profit holders, Special Allowance payments will be based on another code that ED sets in the respective demographic profiles. Please see the March/April 2008 issue of *Loan Notes* for more information.

Dear Colleague Letters

During the month of March, ED published several important Dear Colleague letters (DCL). Below is a summary of the recent DCLs, which can be viewed in their entirety at IFAP.ed.gov.

» IMPLEMENTATION OF PROGRAM INTEGRITY REGULATIONS

On March 17, 2010, ED published DCL GEN -11-05: "Implementation of Program Integrity Regulations" to provide guidance on three areas of the final regulations published on October 29, 2010, (effective July 1, 2011) to address program integrity: State authorization, incentive compensation, and misrepresentation.

This letter does not change any of the regulations, but rather provides schools with further guidance to understand the changes the regulations made to these areas. Schools are responsible for taking the necessary steps to ensure compliance by the effective dates established by the final regulations.

[Click here to view the DCL in its entirety.](#)

» EDEXPRESS ONLINE TRAINING- RELEASE OF FIRST EDEXPRESS ONLINE TRAINING FOR 2011-2012 MODULE

On March 21, 2011, ED published DCL ANN-11-07: "EDEXpress Online Training- Release of First EDEXpress Online Training for 2011-2012 Module" to announce the availability of web-based, self-paced training. Users can learn the basic skills needed to access and navigate the 2011-2012 EDEXpress and EDconnect software.

[Click here to view the DCL in its entirety.](#)

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Dear Colleague Letters

GUIDANCE TO INSTITUTIONS AND ACCREDITING AGENCIES REGARDING A CREDIT HOUR AS DEFINED IN THE FINAL REGULATIONS PUBLISHED OCTOBER 29, 2010

On March 18, 2011, ED published DCL GEN -11-06: "Guidance to Institutions and Accrediting Agencies Regarding a Credit Hour as Defined in the Final Regulations Published October 29, 2010" to provide schools with information regarding the definition of a credit hour and guidance on implementing these final regulations. DCL topics include the credit hour definition, flexibility for institutions, accrediting agency responsibilities, implementation, additional questions and answers regarding the credit hour definition, and a supplement for Accrediting Agencies.

[Click here to view the DCL in its entirety.](#)

GUIDANCE ON PARTICIPATION IN THE WILLIAM D. FORD FEDERAL DIRECT LOAN (DIRECT LOAN) PROGRAM

On March 22, 2010, ED published DCL GEN-11-07: "Guidance on Participation in the William D. Ford Federal Direct Loan (Direct Loan) Program" to provide guidance on several important topics related to participation in the Direct Loan Program, including:

- Participation in one or more components of the Direct Loan Program,
- Limiting student or parent borrowing,
- Denial of Direct PLUS Loans based on adverse credit,
- Awarding additional Direct Unsubsidized Loan funds to dependent students, and
- Student FAFSA required for parent Direct PLUS loans

[Click here to view the DCL in its entirety.](#)

ABILITY TO BENEFIT (ATB) PROVISIONS PUBLISHED IN FINAL REGULATIONS ON OCTOBER 29, 2010 (75 FR 66832)

On March 25, 2011, ED published DCL GEN -11-08: "Ability to Benefit (ATB) Provisions published in Final Regulations on October 29, 2010 (75 FR 66832)". This DCL provides schools with guidance regarding ATB testing for Spanish-speaking students whose native language is not English, and who are enrolled in a program taught in their native language.

Schools with such students are advised that ED does not currently have a Spanish speaking test in place for ATB determination. However, under the current regulations (34 C.F.R. 668.149) if no test is reasonably available for a student whose native language is not English, and who is not fluent in English, then any test in the student's native language may be considered to be an approved exam by ED so long as:

- The test has not been previously rejected by ED,
- The test measures basic verbal and quantitative skills at the secondary school level; and
- The passing scores and method used to determine the passing scores are fully documented.

Because of the necessary time for test publishers to submit a new ATB test for approval by ED, and the time required by ED to evaluate and approve the test, it is not expected that a Spanish-language test will be available by July 1, 2011. ED recognizes that this is a unique situation encountered while in the transition to new regulations.

[Click here to view the DCL in its entirety.](#)

GUIDANCE ON HELPING STUDENTS ENROLLED IN STUDY-ABROAD PROGRAMS IN JAPAN

On March 18, 2011, ED published DCL GEN -11-06: "Guidance to Institutions and Accrediting Agencies Regarding a Credit Hour as Defined in the Final Regulations Published October 29, 2010" to provide schools with information regarding the definition of a credit hour and guidance on implementing these final regulations. DCL topics include the credit hour definition, flexibility for institutions, accrediting agency responsibilities, implementation, additional questions and answers regarding the credit hour definition, and a supplement for Accrediting Agencies.

[Click here to view the DCL in its entirety.](#)

Program Integrity - Misrepresentation

In the Federal Register, dated October 29, 2010, the U.S. Department of Education (ED) published Program Integrity Issues; Final Rule (34 CFR Parts 600, 602, 603, 668, 682, 685, 686, 690, and 691). **As part of the final rules, ED published regulations regarding what action ED may take if it discovers that an eligible school has engaged in substantial misrepresentation. These regulations are effective July 1, 2011.**

Section §668.71(a) has been revised to clarify that ED may take any one of the following steps if substantial misrepresentation by an eligible school is discovered:

- Revoke the eligible school's program participation agreement;
- Impose limitations on the school's participation in the title IV, HEA programs;
- Deny participation applications made on behalf of the school; or
- Initiate a proceeding against the eligible school under subpart G of §668.71.

WHAT IS MISREPRESENTATION?

Substantial misrepresentation is any false, erroneous or misleading statement made directly or indirectly to a student, a prospective student, any member of the public, to an accrediting agency, a State agency, or to ED by the eligible school, one of its representatives, or any ineligible institution, organization, or person with whom the eligible school has an agreement to provide educational programs, marketing, advertising, recruiting, or admissions services.

ACTIVITIES THAT CONSTITUTE SUBSTANTIAL MISREPRESENTATION

A statement is misleading if it has the likelihood or tendency to deceive or confuse. Moreover, ED considers a school to have engaged in substantial misrepresentation "if the institution itself, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, marketing, advertising, recruiting or admissions services, makes a substantial misrepresentation regarding the eligible institution, including statements about the nature of its educational program, its financial charges, or the employability of its graduates."

The regulations governing substantial misrepresentation include information disseminated orally, in writing, visually, or through any other means, including advertising, promotional materials, and marketing or sale of courses by the school. Substantial misrepresentation also includes the distribution of any endorsement or testimonial made by a student either under duress or because the school required the student to make such a statement.

NATURE OF EDUCATION PROGRAMS

The final rules amended the regulations that address the misrepresentation of the nature of an eligible school's educational programs to include the following:

The particular type(s), specific source(s), nature and extent of its institutional, programmatic, or specialized accreditation;

- Whether a student may transfer course credits earned at the school to another school; and the conditions under which the school will accept transfer credits from another school;
- Whether the successful completion of a course of instruction qualifies a student for acceptance in a labor union or similar organization; to receive or apply to take an examination to receive a local, State, or Federal license, a non-governmental certification required as a pre-condition for employment; to perform certain functions in the States in which the educational program is offered; or to meet additional conditions that the institution knows or reasonably should know are generally needed to secure employment in a recognized occupation for which the program is represented to prepare students;

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Program Integrity - Misrepresentation

- The requirements for successfully completing the course of study or program and the circumstances that are grounds for terminating the student's enrollment;
- Whether the school's courses are recommended or are the subject of unsolicited testimonials or endorsements by vocational counselors, high schools, colleges, educational organizations, or employment agencies, members of a particular industry, students, former students, governmental officials for governmental employment;
- The school's size, location, facilities or equipment;
- Whether the school's courses and programs meet its stated employment objectives;
- The nature, age, and availability of its training devices or equipment and their appropriateness to the employment objectives that it states its programs and courses are designed to meet;
- The number, availability, and qualifications, including the training and experience, of its faculty and other personnel;
- The availability of part-time employment or other forms of financial assistance;
- The nature and availability of any tutorial or specialized instruction, guidance and counseling, or other supplementary assistance it will provide its students before, during or after the completion of a course;
- The nature or extent of any prerequisites established for enrollment in any course; or
- The subject matter, content of the course of study, or any other fact related to the degree, diploma, certificate of completion, or any similar document that the student is to be, or is, awarded upon completion of the course of study;
- Whether the academic, professional, or occupational degree that the institution will confer upon completion of the course of study has been authorized by the appropriate State educational agency. This type of misrepresentation includes, in the case of a degree that has not been authorized by the appropriate State educational agency or that requires specialized accreditation, any failure by an eligible institution to disclose these facts in any advertising or promotional materials that reference such a degree; or
- Any matters required to be disclosed to prospective students under §§ 668.44, 668.42, 668.47, and 668.43 of this part. (Authority: 20 U.S.C. 1094)

NATURE OF FINANCIAL CHARGES

Misrepresentation concerning the financial charges of an eligible school includes, but is not limited to false, erroneous, or misleading statement concerning any of the following:

- Offers of a scholarship to pay all or part of a course charge;
- Whether a particular charge is a customary charge at the institution of a course; the cost of the program and the school's refund policy if the student does not complete the program;
- The availability and nature of any financial assistance offered to students, including a student's responsibility to repay loans, regardless of whether or not the student is successful in completing the program and obtaining employment;
- The student's right to reject any particular type of financial aid or other assistance, or whether the student must apply for a particular type of financial aid such as aid offered by the school.

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EMPLOYABILITY OF GRADUATES

The final regulations also amended the rules governing misrepresentation of the employability of an eligible school's graduates including, but not limited to, false, erroneous, or misleading statements regarding:

- The school's relationship with any organization, employment agency, or other agency providing authorized training leading directly to employment;
- The school's plans to maintain a placement service for graduates or otherwise assist its graduates to obtain employment;
- The institution's knowledge about the current or likely future conditions, compensation, or employment opportunities in the industry or occupation for which the students are being prepared;
- Whether employment is being offered by the school or that a talent hunt or contest is being conducted, including, but not limited to, through the use of phrases such as "Men/women wanted to train for * * *," "Help Wanted," "Employment," or "Business Opportunities";
- Other requirements that are generally needed to be employed in the fields for which the training is provided, such as requirements related to commercial driving licenses or permits to carry firearms, and failing to disclose factors that would prevent an applicant from qualifying for such requirements, such as prior criminal records or pre-existing medical conditions.

RELATIONSHIP WITH THE DEPARTMENT OF EDUCATION

An eligible school, its representatives, or any ineligible institution, organization, or person with whom the school has an agreement may not misrepresent the eligible school's participation in any Title IV, HEA program by suggesting approval or endorsement by ED of the quality of the school's educational programs.

American Education Services (AES) was created to guarantee and service a variety of Federal Family Education Loan Program (FFELP) and private student loan products for lending partners throughout the nation. AES is a national leader in providing quality customer service to millions of student loan borrowers through its highly-trained and experienced customer service representatives. For more information, visit aesSuccess.org.

Pennsylvania Higher Education Assistance Agency conducts its student loan servicing activities nationally as American Education Services (AES) and FedLoan Servicing.



American Education Services

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