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LoanNotes

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American Education Services

Compliance Spotlight: Inadvertent Overborrowing

With each new academic year, schools across the country begin the intricate process of creating financial aid packages for their students. This can be quite a challenge and its success depends upon possessing the most up to date and accurate information possible. **Nowhere is this more crucial than when establishing Title IV loan eligibility.**

To begin, your school must review each student's financial aid history thoroughly before disbursing loan funds to the student. A Student's financial aid history can be accessed in a variety of ways; however, the most common is to view the history summarized on the student's Institutional Student Information Record or ISIR. **In most cases, the financial aid history section of the ISIR will be all you need, but occasionally it may be necessary to view more detailed information on-line using the National Student Loan Data System (NSLDS) website.**

If a prospective student is transferring to your school from another institution, regulations require you to identify that student within the NSLDS website and request transfer monitoring. Through the transfer monitoring process, NSLDS notifies you of any changes to the student's financial aid history since the last ISIR was generated. This process may continue for up to 120 days based upon the monitoring duration you establish.

Please keep in mind that you must not make any disbursements for a period of seven days after you request transfer monitoring unless a transfer monitoring report arrives before the seven days expire, or you manually review the student's current financial aid history via the NSLDS website to make a disbursement within this seven day hold period. Properly following the transfer monitoring procedures will protect your school from any liability resulting from an overpayment due to changes in the student's financial aid history.

NSLDS also utilizes a post screening process as an additional method to alert you to significant changes that occur on a student's financial aid history. As changes are identified through post screening, a new ISIR will be generated. **This new output document will highlight the data elements that have changed and will provide the reason the new ISIR has been generated.**

This review will identify students in default, those who have filed bankruptcy, received a discharge due to total and permanent disability, or who have exceeded the annual or aggregate loan limits. **By making this review the basis for your loan origination process, you will ensure that each student is eligible for the Title IV loan funds you originate.**

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WHAT CAUSES INADVERTENT OVERBORROWING?

As noted in the Federal Student Aid Handbook, because the school is responsible for knowing about the student's prior Title IV loans before disbursing additional loan funds to the student, inadvertent overborrowing should not occur often. Excess borrowing might occur if a school is unaware of loans a student received at another school. This might happen if the student received the loans under a different name or SSN.

WHAT CAN WE DO IF A STUDENT HAS EXCEEDED THE LOAN LIMITS?

If you determine that a student has received loan funds in excess of the annual or aggregate loan limits, you must not award further Title IV financial aid of any kind until the overborrowing situation is resolved. The U.S. Department of Education (ED) has published guidance in the Federal Student Aid Handbook that details the steps students may take to regain eligibility for Title IV aid after an inadvertent overborrowing is discovered. **They may address this situation in one of several ways:**

- The student can repay the excess loan amount in full.
- With the borrower's permission, the school might reallocate loan funds between subsidized and unsubsidized disbursements. (It is recommended that your school consult with the loan servicer for assistance with this option.)
- The student can establish a "satisfactory repayment arrangement" with the current holder of the loan that includes the overborrowed amount. If the student successfully consolidates the loan(s) that includes the overborrowed amount, that consolidation loan constitutes a "satisfactory repayment arrangement" and restores the borrower's eligibility for Title IV Aid.

WHAT'S A "SATISFACTORY REPAYMENT ARRANGEMENT"... AND HOW DO WE GET ONE?

According to ED, it is the loan holder who decides what constitutes a "satisfactory repayment arrangement." However, in many cases, the loan holder may allow the student to sign a statement:

1. Acknowledging the debt; and
2. Agreeing to repay the excess loan amount in accordance with the normal terms and conditions of his or her promissory note. To secure such an arrangement, the student must consult with the loan holder directly. (Some loan holders may have designated a separate loan servicer to administer the repayment of these loans on their behalf. Students may work through these loan servicers to establish a "satisfactory repayment arrangement.")

For instance, if your student has Federal Family Education Loan Program (FFELP) loans serviced by American Education Services (AES), or federally owned FFELP or Direct Loan Program loans serviced by FedLoan Servicing, a customer service associate can help determine if a "satisfactory repayment arrangement" is a possibility.

Once the student provides you with suitable documentation supporting a "satisfactory repayment arrangement", or evidence that the overborrowed amount has been paid in full, you may again disburse Title IV funds to that student provided he or she is otherwise eligible. (The student may have no remaining loan eligibility, or may be eligible only for unsubsidized loans.) A copy of this documentation must be retained in the student's financial aid file in accordance with record retention requirements.

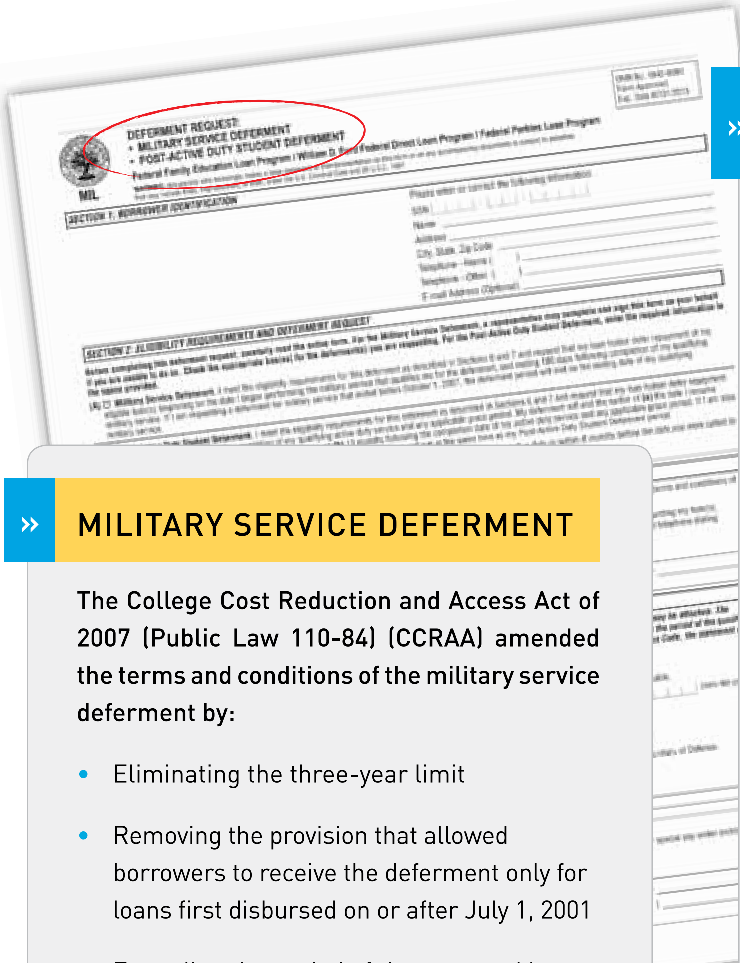
For further assistance regarding this and other compliance topics, please feel free to contact the AES/PHEAA Compliance Department via e-mail at CMPolicy@aesSuccess.org, or by phone at **717.720.3460**.

Military Service Deferment/Post-Active Duty Student Deferment Request Form

On November 26, 2010, ED published Dear Colleague letter GEN-10-17/FP-10-07 to announce the approval of a new Deferment Request: Military Service Deferment/Post-Active Duty Student Deferment form (OMB Control Number 1845-0080), with an expiration date of 07/31/2013, for use by borrowers in the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) Program, and the Federal Perkins Loan (Perkins Loan) Program, and to provide guidance on implementation of the new form.

The new Deferment Request: Military Service Deferment/Post-Active Duty Student Deferment form replaces the Military Deferment Request form that was previously approved under the same OMB Control Number with an expiration date of 04/30/2010.

The previous Military Deferment Request form served as the means by which Direct Loan, FFEL and Perkins Loan borrowers applied for the military service deferment that was established by the Higher Education Reconciliation Act of 2005 (Public Law 109-171) (HERA). Under this provision, borrowers could defer repayment for a maximum of three years on their Title IV loans that were first disbursed on or after July 1, 2001 while completing qualifying active duty service or qualifying National Guard duty with the military service deferment.


DEFERMENT REQUEST
• MILITARY SERVICE DEFERMENT
• POST-ACTIVE DUTY STUDENT DEFERMENT
SECTION 1: BORROWER IDENTIFICATION
SECTION 2: ELIGIBILITY REQUIREMENTS AND DEFERMENT REQUEST

MILITARY SERVICE DEFERMENT

The College Cost Reduction and Access Act of 2007 (Public Law 110-84) (CCRAA) amended the terms and conditions of the military service deferment by:

- Eliminating the three-year limit
- Removing the provision that allowed borrowers to receive the deferment only for loans first disbursed on or after July 1, 2001
- Extending the period of time covered by the military service deferment to include 180 days following the date the borrower completes the qualifying service

POST-ACTIVE DUTY STUDENT DEFERMENT

In addition, the CCRAA created a post-active duty student deferment for Direct Loan, FFEL, and Perkins Loan program borrowers who are:

- Members of the National Guard or another reserve component of the Armed Forces (including retired members); and
- Are called into active duty while enrolled at least half time at an eligible postsecondary institution; or
- Within six months of having been enrolled at least half time.

The new deferment request form covers both the military service deferment and the post-active duty student deferment. Direct Loan, FFEL, and Perkins Loan program borrowers may use the new deferment request form to apply for one or both of these deferments.

After the completion of active duty and any applicable grace period, borrowers can defer repayment of their loans for up to 13 months or until they resume enrollment on at least a half-time basis at an eligible school, whichever occurs first. **In order to qualify, a borrower's active duty service must include a period on or after October 1, 2007.**

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Military Service Deferment/Post-Active Duty Student Deferment Request Form -continued-

IMPLEMENTATION OF THE DEFERMENT REQUEST FORM

The new Deferment Request: Military Service Deferment/ Post-Active Duty Student Deferment form may be made available to borrowers for immediate use. As of April 1, 2011, only the new form may be provided to borrowers. However, **the previous Military Deferment Request form (expiration date of 04/30/2010) may continue to be accepted from borrowers after April 1, 2011.** Requests for the post-active duty student deferment made by borrowers using other means that were in place before the new deferment form was available may continue to be accepted and processed.

IMAGING TECHNOLOGY

To accommodate imaging technology, the new Deferment Request form instructs borrowers to sign the form in ink; however, a pencil signature does not invalidate the form. In addition, spaces at the top, bottom or sides of the form may be used for bar coding.

PRINTING INSTRUCTIONS

The new Deferment Request form must be printed on white paper with black ink. **The general presentation of the form including typeface and point size may not be changed from the version approved by the OMB.** Program participants may change the order of the program names that appear in the header of the form so that the name of the program for which the form is being used appears first. For example, a Perkins school could change the order of the names so that Federal Perkins Loan Program appears first. Program participants may remove bold type in section headings or add bold or italic type to the instructions. Additionally, FFEL Program loan holders and Perkins school lenders should pre-print the return address and the appropriate contact information in Section 8 of the instructions.

NO ACCRUAL OF INTEREST BENEFIT

The new form also collects information to be used by the U.S. Department of Education's Direct Loan servicers to determine whether a Direct Loan borrower qualifies for the "no accrual of interest benefit" made available to qualifying borrowers who serve in the military. Under this provision, established by the Higher Education Opportunity Act of 2008 (Public Law 110-315) (HEOA), **no interest is charged on Direct Loans first disbursed on or after October 1, 2008 for a period not to exceed 60 months while the borrower is:**

1. eligible for a military service deferment, and
2. serving in an area of hostilities in which service qualifies for special pay under section 310 of Title 37, United States Code.

OBTAINING COPIES FOR REPRODUCTION

The new Deferment Request form is provided as part of the DCL in both PDF and Microsoft Word format. In addition, the form can be found on the sites listed in the Resources section of this article.

FFEL Program participants and Perkins school lenders are responsible for ensuring that the form provided to borrowers is identical to the one approved by OMB. Only the changes referenced in the "Printing Instructions" on this page, may be made to the form, unless a change is necessary to meet the requirements of individual processing systems and does not alter the layout of the form, result in reduced point size, move text from one page to another, or change the general presentation of the form.

Risk-Based Pricing

ARE YOU A CREDITOR THAT GRANTS OR EXTENDS CREDIT WHERE THE TERMS OF THE CREDIT GRANTED TO AN APPLICANT ARE BASED ON AN APPLICANT'S CONSUMER CREDIT REPORT?

If so, you may be required to issue certain specific notices to your applicants. **The Federal Reserve Board and the Federal Trade Commission have jointly issued final rules under the Fair Credit Reporting Act (FCRA) to implement the risk-based pricing notice requirement that was added to the FCRA by Section 311 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).** Section 311 of the FACT Act added a new section 615(h) to the FCRA to address risk-based pricing. **The risk-based pricing rules are effective January 1, 2011.**

Risk-based pricing is the practice of setting or adjusting the price and other terms of credit offered to a particular consumer based on the consumer's creditworthiness. **Final rules generally require that a creditor provide a consumer with a notice when, based on the consumer's credit report, the creditor offers credit on less favorable terms than it may offer to other consumers.** The final rules provide creditors with several methods for determining which consumers must receive risk-based pricing notices. Consumers who receive a risk-based pricing notice will have the opportunity to obtain a free credit report to verify the accuracy of the information used to assign the risk-based pricing. As an alternative to providing risk-based pricing notices, the final rules permit creditors to provide consumers who apply for credit with their free credit score as well as the information relating to their credit score.

The final rules apply to all consumer credit; whether secured or unsecured, open-ended or closed-ended. The notice must inform the consumer that the credit terms being offered are based on information in the consumer's credit report. **In addition, the notice must include a statement that such credit terms may be less favorable than terms offered to consumers with a more favorable credit history.** A similar risk-based pricing notice is required when an account review results in an increase in the consumer's annual percentage rate (APR) based on information in a consumer's credit report.

In addition, the final rules require that the risk-based pricing notice be provided before consummation of closed-ended credit or before the first transaction for open-ended credit, but no earlier than when the approval is communicated for either type of credit.

A safe harbor was created for creditors using the final rules' model forms. The model forms require that certain information, including the consumer's credit score, be provided by the creditor's credit reporting agency when accessing the consumer's credit report. The FCRA does not provide a private right of action for violations of the risk-based pricing notice requirement. **Violations will only be subject to regulatory enforcement actions.**

Creditors are strongly encouraged to discuss these risk-based pricing notice regulations with their institutional legal counsel to determine applicability and to ensure compliance.

Gainful Employment

In the Federal Register, dated July 26, 2010, the U.S. Department of Education (ED) published a Notice of Proposed Rulemaking (NPRM) on Gainful Employment. The comment period for the proposed regulatory changes contained in this NPRM ended on September 9, 2010. In response to the thousands of comments received, and in an effort to consider each comment in detail, ED is now planning to publish the final rules in 2011. The planned implementation date for the final Gainful Employment rules is July 1, 2012.

Textbook Guidance

With the adoption of the Higher Education Opportunity Act (HEOA), the Higher Education Act of 1965 (HEA) was amended to address the issue of affordable course materials. Through this legislation, guidelines have been established for textbook publishers and institutions of higher education to decrease costs for students, and to enhance transparency and disclosure regarding the selection, purchase, sale, and use of course materials while preserving the academic freedom of faculty members to select high quality course materials.

REQUIREMENTS FOR TEXTBOOK PUBLISHERS

A publisher must provide written information pertaining to college textbooks and supplemental materials to the appropriate faculty, entity or individual responsible for the selection of course materials at a school receiving Title IV funds. **This information must include:**

- **The price** the publisher would charge the campus bookstore, or a bookstore otherwise associated with the school, for the textbook or supplemental material.
- **The copyright dates for the three previous editions** of the textbook or supplemental material.
- **A description of the major differences or revisions** between the current and previous editions of the textbook or supplemental material.
- **Whether the textbook or supplemental material is available in other printed formats**, including paperback or unbound, and the price the publisher would charge for these alternate printed formats to the campus bookstores, those bookstores affiliated with the school, and the general public.
- To the extent possible, publishers must also provide the information described above for custom textbooks.

REQUIREMENTS FOR SCHOOLS RECEIVING TITLE IV FUNDS

To the maximum extent practicable, **schools which receive Title IV funds must disclose the International Standard Book Number (ISBN) and the verified retail price for both required and recommended course materials on the institution's online course schedule.** If an ISBN number is not available, the school may substitute the author, title, publisher, and copyright date. If a school determines that the publication of this information is not practicable for a given textbook or supplemental material, the school may substitute the designation "To Be Determined" in lieu of the pricing information for those materials. **Schools should also include a notice on their written course schedule which states that textbook information is available on their online course schedule.** The web address of the online schedule should also be included.

The following information must be provided by the school upon the request of any college bookstore that is operated by, in a contractual relationship or otherwise affiliated with the institution:

- The school's course schedule for the subsequent academic period.
- The required pricing information regarding recommended textbooks and supplemental materials for each course or class offered by the institution for the subsequent academic period
- The number of students enrolled in the course or class, and the maximum enrollment for that course or class.

QUARTER ENDING SEPTEMBER 30, 2010

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 September 30, 2010 averaged .15%. 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% 8.00%	0.00% 0.00%	0.00% 0.00%	SB
3.27% 3.42% 7.00% 8.00%	0.13% 0.00% 0.00% 0.00%	0.0325% 0.00% 0.00% 0.00%	SD
3.27%	0.00%	0.00%	SE
3.27% 3.39%	0.00% 0.00%	0.00% 0.00%	SG
2.67%	0.00%	0.00%	SH
1.87%	0.48%	0.12%	SJ
2.47%	0.48%	0.12%	SK

For the quarter ending September 30, 2010, the average Commercial Paper (CP) rate – as calculated by the U.S. Department of Education – was .30%. 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%	0.17%	0.0425%	CA
2.47%	0.17%	0.0425%	CB
3.27% (PLUS)	0.00%	0.00%	CD
1.87% 6.80%	0.17% (4.76%)	0.0425% (1.19%)	CE
2.47% 6.80%	0.17% (4.16%)	0.0425% (1.04%)	CF
3.27% (PLUS) 8.50% (PLUS)	(0.33%) (5.56%)	(0.0825%) (1.39%)	CH
5.60% 6.00% 6.80%	(4.11%) (4.51%) (5.31%)	(1.0275%) (1.1275%) (1.3275%)	CI
5.60% 6.00% 6.80%	(3.51%) (3.91%) (4.71%)	(0.8775%) (0.9775%) (1.1775%)	CJ
8.50% (PLUS)	(6.41%)	(1.6025%)	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.

QUARTER ENDING DECEMBER 31, 2010

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 December 31, 2010 averaged .14%. 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% 8.00%	0.00% 0.00%	0.00% 0.00%	SB
3.27% 3.42% 7.00% 8.00%	0.12% 0.00% 0.00% 0.00%	0.03% 0.00% 0.00% 0.00%	SD
3.27%	0.00%	0.00%	SE
3.27% 3.39%	0.00% 0.00%	0.00% 0.00%	SG
2.67%	0.00%	0.00%	SH
1.87%	0.47%	0.1175%	SJ
2.47%	0.47%	0.1175%	SK

For the quarter ending December 31, 2010, the average Commercial Paper (CP) rate – as calculated by the U.S. Department of Education – was .26%. 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%	0.13%	0.0325%	CA
2.47%	0.13%	0.0325%	CB
3.27% (PLUS)	0.00%	0.00%	CD
1.87% 6.80%	0.13% (4.80%)	0.0325% (1.20%)	CE
2.47% 6.80%	0.13% (4.20%)	0.0325% (1.05%)	CF
3.27% (PLUS) 8.50% (PLUS)	(0.37%) (5.60%)	(0.0925%) (1.40%)	CH
5.60% 6.00% 6.80%	(4.15%) (4.55%) (5.35%)	(1.0375%) (1.1375%) (1.3375%)	CI
5.60% 6.00% 6.80%	(3.55%) (3.95%) (4.75%)	(0.8875%) (0.9875%) (1.1875%)	CJ
8.50% (PLUS)	(6.45%)	(1.6125%)	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.

Article Resources

INADVERTENT OVERBORROWING

The following reference documents may be accessed on-line at www.ifap.ed.gov:

- 2010-11 Federal Student Aid Handbook, Volume 1, Chapter 3, "NSLDS Financial Aid History"
- Dear Colleague Letter (DCL) GEN-01-09, "NSLDS Student Transfer Monitoring Process"
- 2009/10 Federal Student Aid Handbook, Volume 3, Chapter 6, pages 3-127 to 3-128; "Effect of Overborrowing"
- 2010-11 Federal Student Aid Handbook, Volume 5, Chapter 1, pages 5-16 to 5-17; "Overpayments Created by Inadvertent Overborrowing"

MILITARY SERVICE DEFERMENT/POST-ACTIVE DUTY

Student Deferment Request Form Please visit www.ifap.ed.gov to view Dear Colleague letter GEN 10-17/FP 10-07 in its entirety or to view and print the military deferment form in PDF or Microsoft Word format.

The Deferment Request: Military Service Deferment/Post-Active Duty Student Deferment form is also available on the following web sites:

American Education Services at: aesSuccess.org

FedLoan Servicing at: MyFedLoan.org

RISK-BASED PRICING

The Federal Reserve Board and the Federal Trade Commission's Fair Credit Reporting Risk-Based Pricing Regulations Final Rule may be reviewed in a Federal Register dated January 15, 2010, Volume 75, Number 10.

TEXTBOOK GUIDANCE

This legislation is located in section 133 of the HEA, and became effective July 1, 2010. For Additional information please refer to Dear Colleague Letter (DCL) GEN-10-09 available at www.ifap.ed.gov.

SPECIAL ALLOWANCE RATES FOR STAFFORD AND PLUS LOANS

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

Rates for previous quarters may be found on the AES website.

CONTACT

BUSINESS DEVELOPMENT
& OPERATION/LOAN GUARANTY
Mon - Fri, 7:30 am to 9:00 pm ET

STUDENT/PARENT
GRANT & LOAN INQUIRIES
800.692.7392
granthelp@aesSuccess.org
studentloans@aesSuccess.org

SCHOOL/LENDER INQUIRIES
800.443.0646
loanhelp@aesSuccess.org

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