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## Message from Milton

As the new school year begins, all of us at HEAG wish you all the very best of luck. Compliance, as you all know, has been and will continue to be a significant challenge as financial aid offices grapple with additional regulations and the chronic need for additional staff. For this issue of the Newsletter, I am repeating a case summary regarding the aid officers fiduciary responsibilities and the interface between the financial aid office and those computer applications upon which we all rely. It is that significant a ruling.

~ Milton Kerstein, President

# FINANCIAL AID, THE LAW AND YOUR SCHOOL

Title IV eligible institutions must be very careful when utilizing third party vendors in the administration of its Title IV Programs. It is standard DOE policy that institutions participating in Title IV student aid programs must enter into program participation agreements with the United States Department of Education (DOE). These participation agreements define the obligations the institution must meet before it can become eligible for Title IV funds. *34 C.F.R. § 668.14*. Inherent in these obligations is the idea that an institution receiving Title IV funds will act as a fiduciary in the administration of those funds. Accordingly, failure to comply with the relevant Title IV statutory and regulatory requirements can result in stiff penalties and possible revocation of an institution's eligibility.

However, as demonstrated by a recent DOE decision, *In the Matter Howard Community College*, Docket No. 08-21-SP, U.S. Dept. of Educ. (December 4, 2008), Title IV eligible institutions are not simply responsible for their own internal compliance efforts. Eligible institutions may also be held liable for third party error or negligence, which affects that institution's Title IV compliance.

In *Howard*, the central dispute concerned Title IV campus-based funds. Campus-based funds are distributed to an institution based upon the

overall financial need of the entire enrolled student population. *34 C.F.R. Parts 675 and 676*. The Office of Federal Student Aid (FSA) uses a school generated report, the Fiscal Operations Report and Application to Participate (FISAP), to determine the amount of Title IV funds an institution is to receive each year. In *Howard*, the FSA alleged that, starting in 2004, Howard Community College (HCC) over-awarded campus-based funds for three consecutive award years.

During the three years in question, HCC used software developed by Datatel Corporation to create its FISAP. In 2007, HCC notified FSA that it had discovered errors in its FISAP, which were attributable to Datatel's software. Upon investigation, FSA confirmed the errors and re-examined the FISAP of the previous two award years. This examination revealed similar errors. As a result, FSA determined that HCC had been awarded \$211,446 more than it was entitled to for those three years.

HCC testified that in 2006 it discovered discrepancies in the number of enrolled students reported on its FISAP. Accordingly, HCC worked with Datatel for almost a year to solve the problem. While working with Datatel, HCC learned that it needed to utilize a "saved list" function when operating the software to ensure the removal of all ineligible students from the

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FISAP. However, Datatel's instructions categorized the "saved list" function as optional up until 2007. In 2007, after working with HCC, Datatel modified its instructions stating that it "strongly" recommended institutions use the "saved list" function.

HCC argued that, although Datatel did not admit culpability, the changes to Datatel's instructions demonstrate that its original instructions were flawed and that HCC should not be held liable for Datatel's error. Additionally, HCC stated that it acted in good faith and FSA should not punish it for alerting FSA to the problems with the FISAP reporting.

In rejecting HCC's arguments, the Judge held that, while it was unfortunate that HCC relied upon Datatel's software to its detriment, neither the FSA nor any other party mandated that HCC use Datatel's software to create and analyze the FISAPs. The Judge continued stating that, when HCC decided to use Datatel's software, "it [HCC] assumed the responsibility that the product chosen would perform the tasks correctly." Accordingly, HCC was ordered to reimburse the DOE for the over-awarded funds.

What is particularly striking about the *Howard* decision is the fact that, even though the Administrative Law Judge recognized HCC acted in a "commendable" manner when it brought the violations to FSA's attention, HCC's conduct and long history of compliance had no bearing on his ultimate decision. An analysis of the *Howard* decision indicates that Title IV eligible institutions must be very careful when utilizing third party vendors in connection with the institution's compliance efforts and must monitor every step of the compliance process. As demonstrated by *Howard*, failure to do so may result in significant penalties and fines.

If you have any comments or questions, you may contact Milton L. Kerstein, Esq. via email at [mkerstein@kcl-law.com](mailto:mkerstein@kcl-law.com) or by telephone at 617-965-9698.

This article is provided with the assistance of Charles E. Gould, Esq. of KCL, for general information purposes only and with the understanding that neither the authors or publisher are engaged in rendering legal advice or opinion. If legal advice is required, the services of a competent professional person should be sought.

## HELP - CONTACT INFORMATION

Have a question about Title IV federal student aid or one of the services the Department of Education provides? Contact one of their Customer Service Centers or Federal Student Aid Offices. If you are not sure which Service Center to call, contact the Research and Customer Care Center at 1-800-433-7327, or e-mail them at [fsa.customer.support@ed.gov](mailto:fsa.customer.support@ed.gov).

### Service Centers for Schools

#### Campus-Based Call Center

For questions related to the Campus-Based Programs, the Fiscal Operations Report and Application to Participate (FISAP), and Federal Perkins Loan cohort default rates.  
Phone: 877-801-7168 (no cost per call)

#### Closed School Contacts

Questions about school closure, unpaid refunds, poor quality of education/student services.  
Phone: 1-800-4-FED-AID (1-800-433-3243)

#### COD School Relations Center

For questions related to Common Origination and Disbursement (COD), ACG, National SMART Grant, Pell Grant, TEACH Grant, and Direct Loan processing.  
Grant Programs: 800-474-7268 (no cost per call)  
Direct Loan Program: 800-848-0978 (no cost per call)  
Applicant Services Line: 800-557-7394 (no cost per call)

#### CPS/SAIG Technical Support

For questions related to the Central Processing System (CPS), the Student Aid Internet Gateway (SAIG), Web products such as FAA Access to CPS Online, and assistance with software products such as EDconnect and EDEExpress.  
Phone: 800-330-5947 (no cost per call)

#### eZ Audit

Questions about financial statements and compliance audits through the web.  
Phone: 1-877-263-0780

#### Federal Student Aid Research and Customer Care Center (RCCC)

For questions related to the Title IV federal student aid programs.  
Phone: 800-433-7327

#### G5 Hotline

For questions related to G5, the Department of Education's electronic system for grants management and payments.  
Phone: 888-336-8930 (no cost per call)

#### National Student Loan Data System (NSLDS)

For questions related to NSLDS functions such as student eligibility, overpayments, loan history, and enrollment reporting.  
Phone: 800-999-8219

#### PEPS Hotline

Questions about connectivity interruptions or other PEPS application problems.  
Phone: 1-877-366-3338

### Loan Servicing Centers for Schools

For questions about loan repayment or other loan servicing issues, a school can contact the appropriate loan servicing center.

Direct Loan Servicing Center-School Services  
Department of Education Student Loan Servicing Center (ACS)  
FedLoan Servicing (PHEAA)  
Great Lakes Educational Loan Services, Inc.  
Nelnet  
Sallie Mae

# UPDATED GUIDANCE ON MAKING DIRECT LOAN REFUNDS OF CASH

By William Leith, Service Director, Program Management,  
Federal Student Aid

July 23, 2010

Each year, we remind schools of the correct process for making a refund of cash (i.e., returning unused Direct Loan funds) to the Department of Education (the Department). All Direct Loan funds that are not disbursed to student or parent borrowers within three business days (or within seven calendar days in certain circumstances) must be returned to the Department in accordance with the cash management regulations at 34 CFR 668.166.

As a reminder, Direct Loan funds are not student-specific, but are award year-specific. This means that when one student will not use the funds or returns them to the school, they can be disbursed to other eligible students for that same award year. If the funds cannot be disbursed within the regulatory timeframes, they must be returned.

To ensure the most accurate and timely processing of a refund of cash, please use one of the following methods:

1. Electronically via G5 Web site. We strongly recommended returning funds electronically because it is faster, more secure, and reduces errors in manual/paper processing. Note that refunds of cash greater than \$100,000 must be returned electronically via G5.
2. Manually via paper check. If you need to return funds via a paper check, make sure to:
  - Issue the check to the U.S. Department of Education and include your Direct Loan School Code or OPE ID and the award year to which the funds apply on the check. Note: If there is not enough information to allow us to process the check, it will be returned to the school.
  - Include a completed Direct Loan Refunds of Cash transmittal sheet with

the check. Note: Funds should not be combined for multiple award years or multiple school codes. A separate check and transmittal sheet should be used for each award year or school.

- Mail the check to the COD School Relations Center at:

*Regular Mail/No Signature Required*  
U.S. Department of Education  
Attention: Direct Loan Refunds of Cash  
P.O. Box 9001  
Niagara Falls, NY 14302

*Overnight Address/Requiring Signature*  
U.S. Department of Education  
Attention: Direct Loan Refunds of Cash  
2429 Military Rd, Suite 200  
Niagara Falls, NY 14304

Phone number for tracking form only: 716-284-2225)

## Note to Foreign Schools

The way a foreign school will refund Direct Loan funds will differ depending on whether the school has a foreign bank account or a U.S. bank account. With a foreign bank account, a school must return funds via paper check. A school can use the attached transmittal sheet to send information about the funds being returned. With a U.S. bank account, a school can return funds electronically as explained in #1 above. For additional information, foreign schools can refer to Section 7 of the Funding Process Overview in the Direct Loan Processing area of the Foreign School Information Page.

For additional information on returning funds via G5, refer to the G5 website ([www.g5.gov](http://www.g5.gov)) or call the G5 Hotline at 888/336-8930 for assistance.

For questions about this announcement or returning Direct Loan funds via a paper check, contact the COD School Relations Center at 800/848-0978. You can also send an e-mail to [CODSupport@acs-inc.com](mailto:CODSupport@acs-inc.com).

## Did you know that there is a FSATech Electronic Newsletter?

A listserv where financial aid professionals can ask and get answers to their technical questions about FSA's software or systems. Listserv subscribers will also automatically get "hot" news flashes about processing and software issues.

Visit <http://www2.ed.gov/offices/OSFAP/services/fsatechsubscribe.html> to sign up for FSA Tech or to change your FSA Tech options.

# A MESSAGE FROM BILL TAGGART

*By William J. Taggart, Chief Operating Officer, Federal Student Aid, U.S. Department of Education*

As we mark the beginning of the 2010-11 award year, I am proud to report that we continue to see a smooth and seamless transition to the Direct Loan Program. This is a testament to your hard work and determination to meet the financial needs of your students.

Many questioned your ability to make this transition. I never had a doubt. From the very beginning, you were dedicated to preparing your schools for the Direct Loan Program. More than 5,300 of you attended the Federal Student Aid Conference in December to learn about the Direct Loan Program and more than 10,000 of you registered and completed Direct Loan webinar training to ensure you had the necessary tools to successfully administer the Direct Loan Program at your school.

As of July 15, 2010, 81% of domestic schools, representing 96% of last year's federal student loan volume, have already originated a Direct Loan and the remaining schools are transitioning on schedule as their academic calendars demand. Despite not being able to participate in the Direct Loan Program until July 1, 2010, 10% of foreign schools, representing 54% of last year's federal foreign student loan volume, have already originated a Direct Loan and another 76% are in the transition process.

We have prepared for this by upgrading our systems, increasing our capacity and augmenting our customer support structure. These efforts began in earnest in 2007 when many of you began your transition to the Direct Loan Program.

Today, we stand ready to assist you throughout this process and encourage you to take advantage of our training classes. In the event your institution requires additional support, we have dedicated resources to provide one-on-one, customized technical assistance. If you have any questions, please do not hesitate to reach out to your point of contact. If you are unsure of your point of contact, please e-mail [DLEnrollment\\_FSA@ed.gov](mailto:DLEnrollment_FSA@ed.gov).

I look forward to working with you and your institutions to ensure students and their families continue to receive the federal financial aid they need to fund their postsecondary education. I appreciate all of your hard work over the last year to make this transition a success.

## DIRECT PLUS LOAN PROCESSING

Q1. Do you have a dedicated phone number for Direct PLUS Loan borrowers?

A1. Yes, the COD Applicant Services team at the COD School Relations Center can assist Direct PLUS Loan borrowers with credit appeals or endorser questions. The phone number is (800) 557-7394.

Q2. Do you accept "parent increase requests" by phone?

A2. Parent borrowers work with their child's school to request changes in loan amounts.

Q3. Do you have a Web site on which parents and graduate/professional students can submit a request for a Direct PLUS Loan?

A3. Yes. As an alternative to a school-based PLUS application process, parents and graduate/professional student borrowers can request a Direct PLUS Loan, complete an MPN, and initiate a credit check at [StudentLoans.gov](http://StudentLoans.gov). Before submitting a PLUS Loan request online, parents and graduate students should verify with the school's financial aid office that they will accept and process the request. Note: If a school does not wish to use the Direct PLUS Loan Request process, we will still initiate a credit check upon receipt of the origination record from the school.

Q4. How does the credit check process work?

A4. Once a parent or graduate/professional student completes an MPN (which includes the applicant's authorization for a credit check to be completed) or the school's credit check authorization form, a credit check can be processed. A credit check can be initiated by the school via the COD Web site or by the COD System upon receipt of the Direct PLUS Loan origination data. The COD System will not initiate another credit check if one was completed within the past 90 days. Borrowers will receive written confirmation of the credit check result.

Q5. For how long are credit checks valid?

A5. A credit check is valid for 90 days.

Q6. Can endorsers of Direct PLUS Loans complete the endorser addendum online?

A6. Yes. Direct PLUS Loan endorsers will be able to complete an online Endorser Addendum at [StudentLoans.gov](http://StudentLoans.gov).

## INTEREST RATES FOR STAFFORD AND PLUS LOANS IN THE DIRECT LOAN AND FEDERAL FAMILY EDUCATION LOAN PROGRAMS EFFECTIVE JULY 1, 2010

### Fixed Rates for Loans First Disbursed on or After July 1, 2006

Loan Type	Grade Level	First Disbursed Between July 1, 2009 and June 30, 2010	First Disbursed Between July 1, 2010 and June 30, 2011 (See note)
Subsidized Loans	Undergraduate	5.60	4.50
	Graduate	6.80	6.80
Unsubsidized Loans	Undergraduate	6.80	6.80
	Graduate	6.80	6.80
PLUS Loans	Parent and Grad Student	7.90 for Direct Loans and 8.50 for FFEL	7.90 for Direct Loans and 8.50 for FFEL

NOTE: Effective July 1, 2010, the only loans that can be made are Direct Loans.

## DIRECT LOAN RECONCILIATION- FOR BANNER SCHOOLS

The Higher Education Assistance Group, Inc. (HEAG) will be offering a free webinar on Direct Loan Reconciliation for Banner schools on October 6, 2010 at 10am (EST). Reconciliation is a federal requirement for those participating in the Federal Direct Loan program and with many loans hitting accounts in September what better time to get some insight on how to reconcile direct loans. This training webinar is intended for financial aid, students accounts or finance department personnel and will focus on Banner and Direct Loan tools. All participants will receive detailed procedural instructions that will help guide you through the process.

Registration deadline is **Friday, October 1, 2010**. Please contact Raymond Nault via email at [rnault@heag.cnc.net](mailto:rnault@heag.cnc.net) or by phone 401-636-2917 with your name and email address. Ray is the Vice President for Technology and Compliance at HEAG.

HEAG is a financial aid and higher education consulting group located in Wellesley, MA. More information about us can be found on our website at [www.heag.us](http://www.heag.us). This webinar is part of a series of free training opportunities provided to colleges and universities.

## 2010 Federal Student Aid (FSA) Annual Conference

**Nov. 30 – Dec. 3 at Walt Disney World Swan  
and Dolphin, in Orlando, FL**

The Federal Student Aid (FSA) annual conference is designed to provide the most up-to-date information on Title IV programs and the evolving federal policies and procedures affecting our customers and partners. We also cover topics ranging from the technologies associated with our information systems to improved practices for supporting aid applicants and recipients.

At the FSA Conference, you will learn the most current information about our programs from members of the Department of Education team and our key partners. Our conference also provides a great opportunity for training, collaborating and networking with your counterparts from across the nation.

## About The Higher Education Assistance Group

The Higher Education Assistance Group, Inc. is a comprehensive higher education consulting and financial aid consulting group located in Wellesley, Massachusetts. In operation since 1989 initially as a financial aid consulting firm, we have since grown and expanded to represent all areas of student services management. We continue to advance and evolve to meet the needs of our school clients. The Group provides exceptional administrative and professional management services to all student service fields, including Admissions, Financial Aid, Continuing Education, Bursar and Registrar offices at two and four year institutions, both public and proprietary. The Group's highly qualified team of consultants has spent decades in the field providing administrators with the tools, knowledge and support necessary to complete institutional objectives. We pride ourselves on assisting post secondary institutions to meet challenges such as program regulatory compliance, organizational structure, staffing needs, and technological support.