

PEDRO R. PIERLUISI
PUERTO RICO

WASHINGTON OFFICE:
1218 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-2615 FAX: (202) 225-2154

SAN JUAN OFFICE:
250 CALLE FORTALEZA
SAN JUAN, PR 00901
(787) 723-6333 FAX: (787) 729-7738

Congress of the United States
House of Representatives
Washington, DC 20515-5401

COMMITTEES:
EDUCATION AND LABOR
JUDICIARY
NATURAL RESOURCES

January 7, 2011

The Honorable Arne Duncan
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Re: "Ability-to-Benefit" Regulations (Amendments to Subpart J of 34 CFR Part 668)

Dear Mr. Secretary:

I write regarding the final regulations issued by the Department on October 29, 2010 for programs authorized under the Higher Education Act of 1965. Those regulations impose a requirement on certain non-English-speaking students that cannot feasibly be met by the regulations' effective date of July 1, 2011. Accordingly, I respectfully request that you clarify how those regulations will be implemented and give full consideration to possible solutions to this situation, including those suggested by the Instituto de Banca y Comercio, an institution of higher education in Puerto Rico that would be directly affected by the regulations.

Under regulations currently in effect, a student who did not graduate from high school or obtain a General Equivalency Degree and is seeking federal financial aid to pursue postsecondary education must take and pass a test to demonstrate he or she possesses sufficient "ability to benefit" from postsecondary education. Such a test, if given in English, must be formally approved by the Department. The regulations issued by the Department on October 29th require, for the first time, that such a test, if given in a language other than English, must also be formally approved by the Department in order for students to qualify for federal aid. I understand that no test in a language other than English has been submitted to the Department for approval during the past 15 years.

Although I understand this regulatory change was motivated by the desire to encourage the submission of tests that are written in a language other than English, I am concerned that insufficient time has been provided for test makers and students to comply with the new regulation by its effective date of July 1st. As an initial matter, I ask that you clarify whether students who, before July 1st, take and pass a previously accepted test given in a language other than English will be eligible to receive federal aid for the 2011-2012 academic year. If they are not eligible to receive aid, the regulation will result in many Spanish-speaking students in Puerto Rico not possessing sufficient funds to pursue a college education.

Even if the regulatory change would not affect students who take and pass a Spanish-language test before July 1st, I remain concerned that such a test cannot be approved in time for students who intend to take the test after July 1st. In a letter to you of December 28, 2010, the Instituto de Banca y Comercio suggested two possible solutions to this problem: that the Department (a) promptly certify a Spanish-translated version of an approved English-language test; or (b) delay implementation of this aspect of the regulations for Spanish-speaking students seeking admission to programs taught in Spanish. I ask that you fully consider these and any other solutions that would allow students in Puerto Rico to continue to have access to federal aid.

Thank you for your attention to this matter.

Sincerely,



Pedro R. Pierluisi
Member of Congress