

Assister Conflict of Interest Requirements



*For Assisters in
Federally-facilitated
Marketplaces*

September 2019

The information provided in this document is intended only to be a general informal summary of technical legal standards. It is not intended to take the place of the statutes, regulations, or formal policy guidance that it is based upon. This document summarizes current policy and operations as of the date it was presented. We encourage readers to refer to the applicable statutes, regulations, and other interpretive materials for complete and current information. This communication was produced and disseminated at U.S. taxpayer expense.

A Note About This Presentation

- This presentation is current as of the date it was presented.
- It is intended to serve as an overview of the conflict-of-interest requirements that apply to Navigators and certified application counselors in FFMs under the Patient Protection and Affordable Care Act and CMS regulations and guidance.
- We encourage readers to review the applicable statutes and regulations for a complete and current statement of their contents.
- Individual assisters such as government employees or licensed professionals should take appropriate steps to ensure compliance with any additional requirements that may apply to them.

This Presentation will Cover:

This presentation will cover conflict-of-interest requirements for the following assisters in FFMs:

- Navigators
- Certified application counselors (CACs)

Purpose of These Requirements

- Provide unbiased outreach and enrollment assistance
- Provide fair, accurate, and impartial information
- Avoid steering consumers toward a certain plan



Navigators



Who do These Requirements Apply to?

Unless otherwise specified, these requirements apply both to:

- **Individual Navigators** and
- **Navigator organizations**



Who do These Requirements Apply to (Cont.)?

This includes:

- Both **staff and volunteers** of a Navigator organization who:
 - Perform work related to Navigator program activities or
 - Perform Navigator services;

- A **sub-grantee or subcontractor** of a Navigator organization that:
 - Performs work related to Navigator program activities or
 - Performs Navigator services; and

- Any individual who performs:
 - Work related to the sub-grantee's or subcontractor's Navigator program activities or
 - Navigator services for a sub-grantee or subcontractor of a Navigator grantee organization.

Who do These Requirements Apply to (Cont.)?

- Anyone working for a Navigator organization in roles **supervising Navigator program activities**, even if they are not performing on-the-ground application and enrollment assistance.
- Anyone working for a Navigator organization who is engaged in Navigator **outreach and education activities**.
- This does not include persons who are in no way involved with a Navigator organization's Navigator programs.
 - Those individuals are not required to comply with Navigator conflict-of-interest requirements

Fair, Accurate, and Impartial

Individuals or entities subject to the conflict-of-interest requirements for Navigators in FFMs must **provide information and services to consumers in a fair, accurate, and impartial manner**. This includes:

- Providing information that helps consumers submit their eligibility applications;
- Clarifying the distinctions among health coverage options, including qualified health plans (QHPs); and
- Helping consumers make informed decisions during the health coverage selection process.



Fair, Accurate, and Impartial (Cont.)

These assisters also have a duty to provide information to consumers about the full range of QHP options for which they are eligible as well as about Medicaid, the Children's Health Insurance Program (CHIP), advance payments of the premium tax credit (APTC), or cost-sharing reductions (CSRs) if they are eligible for those programs.



Conflict of Interest Prohibitions

Individuals or entities that perform Navigator services and individuals or entities that perform work related to Navigator program activities on behalf of a Navigator organization **must not**:

1. Be a health insurance issuer or issuer of stop-loss insurance.



Conflict of Interest Prohibitions (Cont.)

Individuals or entities that perform Navigator services and individuals or entities that perform work related to Navigator program activities on behalf of a Navigator organization **must not**:

2. Be a subsidiary of a health insurance issuer or issuer of stop-loss insurance.



Conflict of Interest Prohibitions (Cont.)

Individuals or entities that perform Navigator services and individuals or entities that perform work related to Navigator program activities on behalf of a Navigator organization **must not**:

3. Be an association that includes members of, or lobbies on behalf of, the insurance industry.



Conflict of Interest Prohibitions (Cont.)

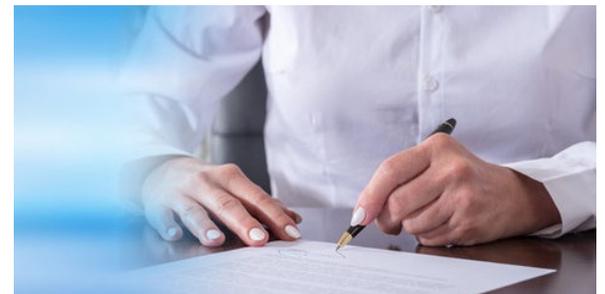
Individuals or entities that perform Navigator services and individuals or entities that perform work related to Navigator program activities on behalf of a Navigator organization **must not**:

4. Receive direct or indirect consideration, including any form of compensation (monetary or in-kind), from a health insurance issuer or issuer of stop-loss insurance in connection with the enrollment of any consumer in a QHP or non-QHP.



Conflict of Interest Attestation

- Navigator organizations in FFMs must attest in writing that the organization and anyone who performs work related to the organization's Navigator program activities or who performs Navigator services for the organization does not have any of the four prohibited relationships.
- Before making this attestation, the organization should carefully evaluate the relationships of anyone who performs work related to Navigator program activities or who performs Navigator services for the organization (including a sub-grantee or subcontractor).
- CMS Navigator grant applicants must make this attestation during the grant application process.



Conflict of Interest Disclosures

Navigators **must disclose to the Marketplace and, in plain language, to each consumer they assist** whether they, their Navigator organization, or anyone who performs work related to the organization's Navigator program activities or who performs Navigator services for the organization, has any of the following non-prohibited relationships...



DISCLOSURE

Conflict of Interest Disclosures (Cont.)

Non-prohibited relationships that **must be disclosed**:

1. Any non-prohibited lines of insurance business that the person or organization intends to sell while performing Navigator services or performing work related to the organization's Navigator program activities.



Conflict of Interest Disclosures (Cont.)

Non-prohibited relationships that **must be disclosed**:

2. Certain non-prohibited employment relationships that the person or their spouse or domestic partner has with a health insurance or stop-loss insurance issuer or its subsidiary:
 - **Current employment relationships and former employment relationships within the last 5 years** between the person and a health insurance or stop-loss insurance issuer or its subsidiary.
 - Current employment relationships between the person's **spouse or domestic partner** and a health insurance issuer or stop-loss insurance issuer or its subsidiary.



Conflict of Interest Disclosures (Cont.)

Non-prohibited relationships that **must be disclosed**:

3. Any non-prohibited financial, business, or contractual relationships that the person or organization has with a health insurance issuer or stop-loss insurance issuer or its subsidiary.
 - This includes both **existing and anticipated** financial, business, or contractual relationships.



Conflict of Interest Plan

- All Navigator organizations must submit to the Marketplace a written plan to remain free of prohibited conflicts of interest during the term as a Navigator.



- Depending on the specific relationships that the organization and persons working for the organization have with health insurance and stop-loss insurance issuers and whether these relationships change over the course of the organization's involvement in the Navigator program, the Marketplace might require organizations to update this plan or to include specific topics and mitigation strategies in it.

Certified Application Counselors (CACs)



Who do These Requirements Apply to?

Unless otherwise specified, these requirements apply both to:

- Individual CACs, and
- CAC designated organizations



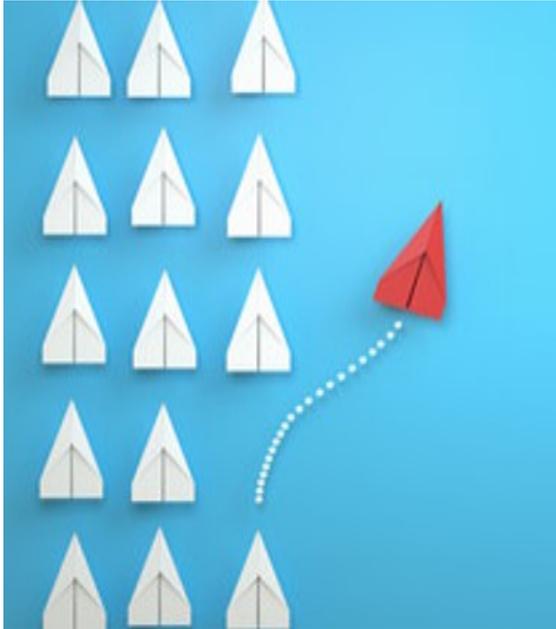
Who do These Requirements Apply to (Cont.)?



This Includes:

- All **staff and volunteers** certified by a CAC designated organization to perform CAC services
 - Including certified staff and volunteers of a CAC designated organization engaged in **outreach and education** activities;
- Anyone who **performs work related to CAC program activities** on a CAC designated organization's behalf, even if they are not performing on-the-ground application and enrollment assistance
 - Including anyone **supervising** a CAC designated organization's CAC program activities on the organization's behalf.

Who do These Requirements Apply to (Cont.)?



These requirements do not apply to persons working for a CAC designated organization who are in no way involved with the CAC program.

- Those individuals are not required to comply with CAC conflict-of-interest requirements.

Fair, Accurate, and Impartial

Individuals or entities subject to the conflict-of-interest requirements for CACs in FFMs must provide **fair, accurate, and impartial information** to consumers. This includes:

- Providing information that assists consumers with submitting the eligibility application;
- Clarifying the distinctions among health coverage options, including QHPs; and
- Helping consumers make informed decisions during the health coverage selection process.

CACs also have a duty to provide information to consumers about the full range of QHP options for which they are eligible as well as about Medicaid, CHIP, APTC, or CSRs, if they are eligible for those programs.

In addition, CACs must act in the best interests of the applicants they are helping.

Conflict of Interest Prohibitions

CACs and CAC designated organizations, including anyone who performs CAC services or who performs work related to CAC program activities on a CAC designated organization's behalf, **must not:**

Receive direct or indirect consideration, including any form of compensation (monetary or in-kind), from a health insurance issuer or issuer of stop-loss insurance in connection with the enrollment of any consumer in a QHP or non-QHP.



Conflict of Interest Disclosures

Persons certified as CACs **must**:

- Disclose to the CAC designated organization and to every consumer the CAC assists any non-prohibited relationships the CAC has with QHPs, Medicaid, CHIP, or other potential non-prohibited conflicts of interest

DISCLOSURE



In Depth: Prohibition on Compensation and Other Considerations

Prohibition on Compensation

- All individuals in FFMs who perform assister services or who perform work related to an assister program's activities on behalf of an assister organization (including supervising those activities) as well as their respective assister organizations **must not receive any consideration, including any form of compensation (monetary or in-kind), directly or indirectly from any health insurance issuer or issuer of stop-loss insurance in connection with the enrollment of any consumers in a QHP or non-QHP.**
- We will refer to this requirement as **the prohibition on compensation.**
- This section of the presentation provides guidance on how CMS interprets this requirement with respect to assisters in FFMs.

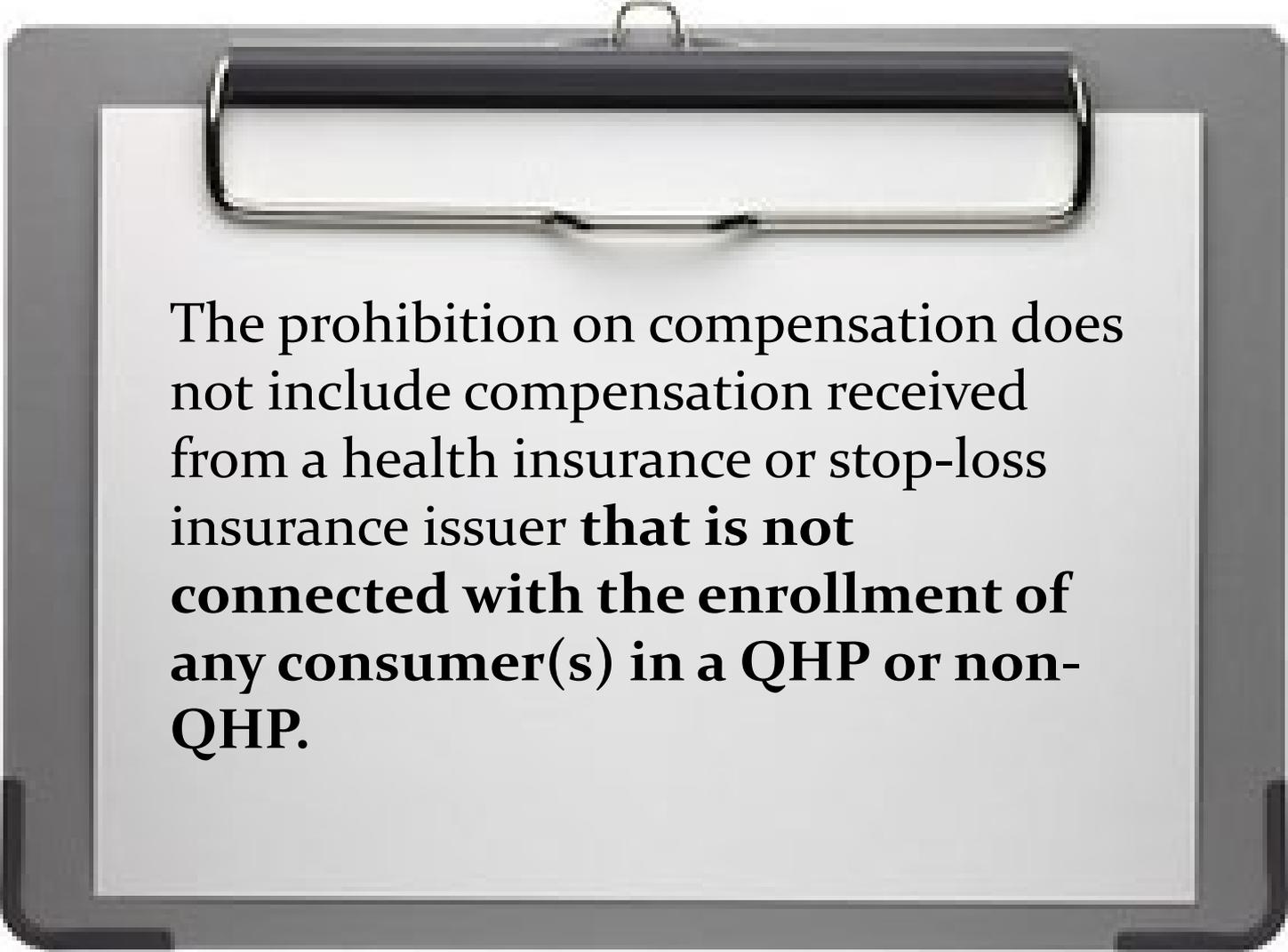


What Does the Prohibition on Compensation Include?

- Prohibited compensation means:
 - Any financial compensation or other consideration from a health insurance issuer or stop-loss insurance issuer that is connected with the enrollment of any consumers in a QHP or non-QHP, including but not limited to:
 - Monetary or in-kind compensation of any type,
 - Grants,
 - Gifts,
 - Free travel, or
 - Any other type of influence a health insurance or stop-loss insurance issuer could use which may create incentives for assisters to steer individuals to particular QHPs or non-QHPs.



What does the Prohibition on Compensation not Include?



The prohibition on compensation does not include compensation received from a health insurance or stop-loss insurance issuer **that is not connected with the enrollment of any consumer(s) in a QHP or non-QHP.**

What does the Prohibition on Compensation not Include (Cont.)?

- For example:



- Health care providers are not prohibited from operating as assisters in an FFM solely because they receive compensation from a health insurance issuer for health care services they provide.
- An assister organization may host an annual fundraising event that is sponsored by a health insurance issuer or stop-loss insurance issuer as long as the funds raised are not allocated towards the assister organization's application and enrollment assistance activities and application and enrollment activities or issuer marketing activities are not performed during the fundraising event. As long as these criteria are met, CMS would not consider the issuer's sponsorship of the fundraising event to be compensation connected with enrollment in a QHP or non-QHP.

In Depth: Staff Members of Health Insurance Issuers or Stop-Loss Insurance Issuers



Staff Member of Health Insurance Issuers or Stop-Loss Insurance Issuers

- While health insurance and stop-loss insurance issuers cannot serve as assisters in assister organizations in FFM, individuals who are staff members of health insurance issuers or stop-loss insurance issuers may be interested in serving as assisters.
- If they otherwise meet eligibility requirements, these individuals may become Navigators or CACs in an FFM (and thereby perform assister services) or perform work related to those assister programs' activities (including supervising those activities) for a Navigator or CAC organization in an FFM **provided that any direct or indirect compensation they might receive from the issuer is not in connection with the enrollment of any consumers in a QHP or non-QHP.**

Staff Member of Health Insurance Issuers or Stop-Loss Insurance Issuers (Cont.)

- Examples of activities that would **prohibit** issuer staff members from becoming assisters and from performing work related to an assister program's activities on behalf of an assister organization (including supervising those activities):
 - Actively licensed "captive" agents employed by a health insurance or stop-loss insurance issuer who receive any commissions or salary in connection with the enrollment of any consumers in a QHP or non-QHP.



Staff Member of Health Insurance Issuers or Stop-Loss Insurance Issuers (Cont.)

- Examples of activities that would **prohibit** issuer staff members from becoming assisters and from performing work related to an assister program's activities on behalf of an assister organization (including supervising those activities):
 - An individual who is a marketing or outreach strategy consultant under contract with a health insurance or stop-loss insurance issuer and who receives compensation from the issuer for marketing and outreach activities.



Staff Member of Health Insurance Issuers or Stop-Loss Insurance Issuers (Cont.)

- Examples of activities that would **prohibit** issuer staff members from becoming assisters and from performing work related to an assister program's activities on behalf of an assister organization (including supervising those activities):
 - An individual who is employed by a health insurance or stop-loss insurance issuer as a customer service representative or member services representative and who receives compensation from the issuer for customer or member services activities.



Staff Member of Health Insurance Issuers or Stop-Loss Insurance Issuers (Cont.)

- Examples of activities that would **not prohibit** issuer staff members from becoming assisters and from performing work related to an assister program's activities on behalf of an assister organization (including supervising those activities):
 - Issuer staff members whose activities and compensation are not connected with the enrollment of consumers into an issuer's QHPs or non-QHPs which might include administrative assistants, facilities managers, or nurses or social workers who perform case management or care coordination work.



Test Your Knowledge!

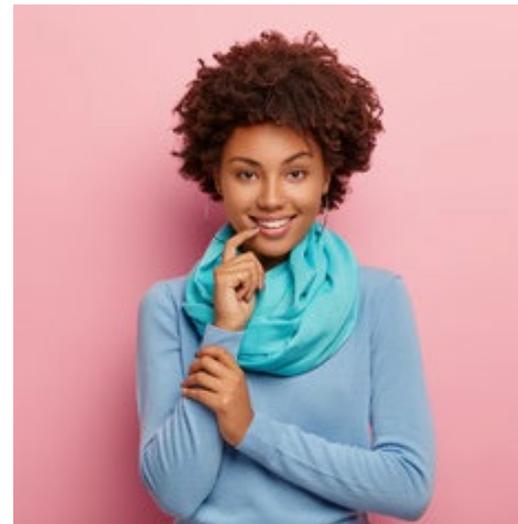


I work for a
health insurance
issuer. Can I be
an assister?

Q: I work for a health insurance issuer. Can I be an assister?

It depends. As long as the scope of your work with the issuer **does not include activities that are connected with enrollment and your compensation is not connected with enrollment in QHPs or non-QHPs**, you would be considered eligible to serve as an assister provided you meet all other eligibility requirements.

- If any Navigator has a current, non-prohibited employment relationship with an issuer, this relationship must be disclosed to the Marketplace and to every consumer assisted.
- A CAC must disclose this type of relationship to the CAC organization and to every consumer assisted.





My spouse works
for a health
insurance issuer.
Can I still be an
assister?

Q: My spouse works for a health insurance issuer. Can I still be an assister?



Yes, as long as this relationship is disclosed either to the Marketplace or your CAC organization (depending on whether you are a Navigator or CAC) and to each consumer you assist.

I'm an agent or broker actively engaged in selling health insurance or stop-loss insurance. Can I be an assister?



Q: I'm an agent or broker actively engaged in selling health insurance or stop-loss insurance. Can I be an assister?

No. Agents or brokers who receive commissions or other consideration from a health insurance or stop-loss insurance issuer as a result of their active involvement in selling health insurance or stop-loss insurance receive consideration in connection with the enrollment of consumers in a QHP or non-QHP and therefore cannot serve as Navigators or CACs.

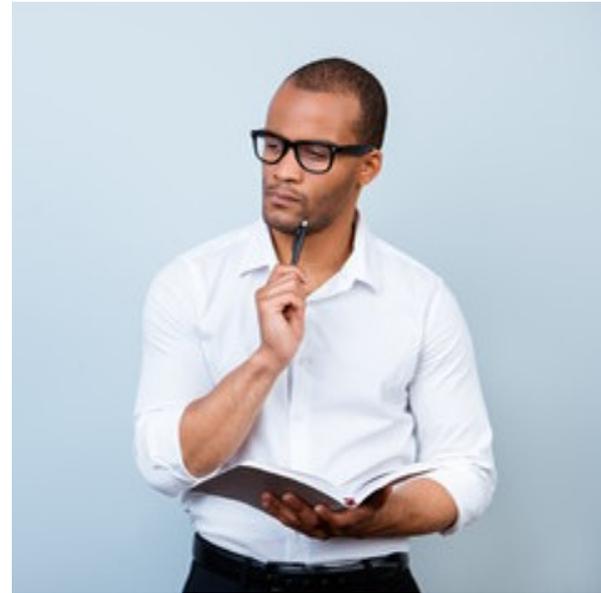


I sell auto insurance, but do not sell health insurance or stop-loss insurance. Can I be an assister?



Q: I sell auto insurance, but do not sell health insurance or stop-loss insurance. Can I be an assister?

Yes, as long as this activity is disclosed either to the Marketplace or your CAC organization (depending on whether you are a Navigator or CAC) and to each consumer you assist.





Can an assister organization receive a grant or other funds from a health insurance issuer for activities that are not connected with enrollment in a QHP or non-QHP?

Q: Can an assister organization receive a grant or other funds from a health insurance issuer for activities that are not connected with enrollment in a QHP or non-QHP?

Yes. An entity that receives a grant or other funding from a health insurance issuer would not be prohibited from serving as an assister organization unless the grant or funding is related to the enrollment of individuals or employees in a QHP or non-QHP.



- However, a Navigator entity would need to disclose the receipt of the grant or funding from the issuer to the Marketplace and to each consumer assisted because it would be an existing or anticipated financial, business, or contractual relationship with an issuer.
- Similarly, CAC organizations, either directly or through their CACs, must disclose this potential non-prohibited conflict of interest to each consumer assisted.

Can I invite
health
insurance
issuers to share
plan
information
with
consumers or
with my
organization's
assistants?



Q: Can I invite health insurance issuers to share plan information with consumers or with my organization's assisters?

Yes. Assister organizations may invite issuers in their area to share information or attend education sessions regarding plan benefits and details.



As long as all health insurance issuers in the Marketplace service area are invited and all applicable assister conflict-of-interest provisions are followed, including the rule prohibiting assisters from receiving any consideration directly or indirectly from any health insurance issuer or stop-loss insurance issuer in connection with the enrollment of any individuals or employees in a QHP or non-QHP, such an event would not represent a conflict of interest or violate an assister's duty to provide information and services in a fair, accurate, and impartial manner.

Resources

- Tip Sheet: Federally-facilitated Marketplace Assister Conflict of Interest Requirements
 - <https://marketplace.cms.gov/technical-assistance-resources/conflict-of-interest-requirements.PDF>
- Information and Tips for Assisters: How and when to provide information about agent and broker services to consumers and other information about engaging with agents and brokers
 - <https://marketplace.cms.gov/technical-assistance-resources/agents-and-brokers-guidance-for-assisters.PDF>