U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

NOV -3 2014

Peter K. Underwood
13888 Lewis Mill Way
Chantilly, VA 20151

Dear Mr. Underwood:

This letter responds to your request for legal interpretation submitted to Marcel Bernard, an Aviation Safety Inspector (ASI), in a letter dated September 12, 2014. You have asked several questions related to instructor qualifications for providing flight training and endorsements for an initial flight instructor certificate.

According to your letter, your son received flight training for his initial flight instructor certificate under 14 C.F.R. part 61. The flight instructor who provided flight training to your son received his flight instructor certificate in June 2014. After your son failed his flight instructor practical test conducted by an FAA ASI at the Long Beach Flight Standards District Office (FSDO), your son received additional training from a flight instructor who received his flight instructor certificate in March 2013. You maintain that the chief flight instructor, who provided some classroom instruction but no flight training to your son, provided the logbook endorsements for the practical test and retest and signed FAA Form 8710 (Airman Certification And/or Rating Application). That form contains the following statement: "I have personally instructed the applicant and consider this person ready to take the test."

Based on this scenario, you have asked whether it is legal for an instructor who does not meet the requirements in § 61.195 to provide flight training to an applicant for an initial flight instructor certificate or to provide retraining after the applicant has failed the practical test for an initial flight instructor certificate.

Under § 61.195(h)(2), a flight instructor who provides training to an initial applicant for a flight instructor certificate under part 61 must meet the following requirements, in part:

- Meet the flight instructor eligibility requirements prescribed in § 61.183;
- Hold the appropriate flight instructor certificate and rating;
- Have held a flight instructor certificate for at least 24 months; and

- For training in preparation for an airplane rating, have given at least 200 hours of flight training as a flight instructor.[1]

Under § 61.49(a)(1), an applicant for a practical test who fails that test may reapply for the test only after the applicant has received the necessary training from an authorized instructor who has determined that the applicant is proficient to pass the practical test.

Based on the scenario above, the flight instructors were not authorized to provide flight training or retraining to an initial applicant for a flight instructor certificate because they had not held their flight instructor certificates for at least 24 months.

You have also asked whether it is legal for a flight instructor who meets the requirements in § 61.195, but has not provided any flight training in an aircraft, to give the endorsement required under § 61.187(a) and sign FAA Form 8710. Similarly, you have asked whether such a flight instructor may provide endorsements required for retesting after an applicant has failed the practical test for an initial flight instructor certificate.

Under § 61.187(a), a person who is applying for a flight instructor certificate must receive and log flight and ground training from an authorized instructor on the areas of operation listed in that section for the flight instructor rating sought. The rule further states, "[t]he applicant's logbook must contain an endorsement from an authorized instructor certifying that the person is proficient to pass a practical test" on the listed areas of operation.

Because a flight instructor providing the endorsement under § 61.187(a) must certify that the applicant has demonstrated a level of flight proficiency sufficient to pass the practical test, the instructor must, at a minimum, have provided some flight training on the areas of operation listed in § 61.187(b). FAA guidance for ASIs concerning the conduct of a flight instructor practical test addresses this issue stating that § 61.187 requires an "endorsement by the person who has given the instruction certifying that the applicant is competent to pass the practical test on the subjects listed." FAA Order 8900.1, Vol. 5, Chpt. 2, Sec. 11, ¶ 5-501(B)(2).[2] Likewise, § 61.49(a)(2) requires that an applicant seeking to retake a practical test after failure may reapply for the test only after the applicant has received an endorsement from an authorized instructor who gave the applicant the additional training.

Under the standard set forth in the regulations, a flight instructor who has not provided any flight training in an aircraft would not be qualified to provide the endorsement of flight proficiency required by §§ 61.49(a) or 61.187(a) and would, therefore, not be qualified to make the necessary recommendation for the practical test on FAA Form 8710.

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[1] A flight instructor who provides flight training in an FAA-approved course for the issuance of a flight instructor certificate may meet the alternate requirements listed in § 61.195(h)(3).

[2] The FAA first proposed instructor endorsements as an eligibility requirement for a practical test in 1972. At that time, the FAA presented a new training concept that placed increased responsibility on flight instructors. The FAA stated, "[t]he keystone of this concept should be the instructor would assume full responsibility for all phases of the required ground and flight training." 37 FR 6012 (March 23, 1972). To that end, the instructor "would assume responsibility for the endorsement . . . of a pilot he has instructed to pass the required written and flight tests."

Finally, you have asked whether it is standard policy for an FAA examiner[3] to validate that instructors providing training for an initial flight instructor applicant meet the requirements of 14 C.F.R. § 61.195 prior to administering a practical test. FAA guidance to ASIs on establishing an applicant's eligibility notes that, "[f]or initial flight instructor certification, the instructor who provides the training and the instructor who recommends the applicant must meet the requirements of § 61.195." FAA Order 8900.1, Vol. 5, Chpt 2, Sec. 11, ¶ 5-510(H)(11).

This response was prepared by Anne Moore, an attorney in the International Law, Legislation, and Regulations Division of the Office of the Chief Counsel and coordinated with the Airman Certification and Training Branch of the General Aviation and Commercial Division of the Flight Standards Service. If you have any additional questions regarding this matter, please contact my office at (202) 267-3073.

Sincerely,

Mark W. Bury
Assistant Chief Counsel for International Law,
Legislation, and Regulations

[3] Since your inquiry describes a practical test that was provided by an FAA ASI, this response offers reference to FAA Order 8900.1. This order provides guidance to FAA personnel. However, guidance for FAA designated examiners (such as designated pilot examiners) on this aspect of conducting a flight instructor practical test can be found in FAA Order 8900.2, Chapter 7, Section 16, 101(c)(7).