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## **AccessLex Institute Supports Changes to Bankruptcy Code to Protect Student Loan Borrowers**

**West Chester, PA, October 6, 2015** – AccessLex Institute, Inc. announced its support for restructuring the treatment of student loans under the Bankruptcy Code to better assist borrowers in financial distress. This proposal supplements AccessLex Institute’s support of various other, student-borrower friendly positions offered in 2015.

At a time when outstanding student loan debt exceeds \$1.2 trillion, and the most recent data from the Federal Reserve Bank of New York shows that 17 percent of all student loans currently in repayment are either delinquent or in default, AccessLex believes that more needs to be done to protect student loan borrowers in financial distress.

“We have learned with time and experience,” said Christopher P. Chapman, President and Chief Executive Officer of AccessLex Institute, “that there are some borrowers who simply are unable to make required payments; and time, money and continued aggressive contact will not change that fact.”

Prior to 1976, student loans, much like other forms of unsecured credit, were dischargeable in bankruptcy; but changes made over the last 40 years to the Bankruptcy Code have resulted in overly burdensome procedural and substantive hurdles to the discharge of student loans by borrowers. Today, a student loan borrower seeking discharge must engage in a separate adversary proceeding within the bankruptcy proceeding to prove that a student loan creates an “undue hardship” before a court may order full or partial discharge of such loans in bankruptcy. As a result of these hurdles, it is estimated that a mere 0.3 percent of student loan debtors in bankruptcy cases even seek to have their educational debts discharged.<sup>1</sup>

AccessLex Institute believes there is an opportunity to maintain responsible borrowing and offer assistance to those experiencing financial crises. AccessLex believes that the “fresh start” afforded through bankruptcy may be the most appropriate choice and should be more accessible to student loan borrowers under certain circumstances. Therefore, we support permitting the discharge of Federal and private student loans in bankruptcy proceedings on par with other unsecured consumer debt once any affected loan had been in repayment for at least seven years (exclusive of deferments or

mandatory forbearances). The current statutory framework and applicable undue hardship requirements would continue to apply to student loans:

- In repayment less than 7 years;
- Owed by a borrower who had sought and been granted discharge of any student loan amount in a previous bankruptcy proceeding; or,
- Eligible to participate in an income-driven repayment plan that provides for monthly payments no greater than 15% of discretionary income with the possibility of loan forgiveness after no longer than 25 years.

AccessLex Institute believes that this position sufficiently recognizes the unique nature of student loan debt, and properly balances the interests of various stakeholders. In addition, it seeks to eliminate any opportunity for serial use of bankruptcy as a substitute student loan repayment plan and keeps it focused as a last resort option for those truly in need.

There is also interest in Congress to ease the burden on student loan borrowers. Several bills introduced this year seek to make it easier for student loan debtors to discharge their educational debt either by eliminating the undue hardship test entirely, or eliminating it for certain types of loans only. “While we believe that our proposal best resolves the current policy inequities, we look forward to working with our higher education colleagues and federal policymakers to provide borrowers in crisis with a path to a more secure financial future,” said Chapman.

Questions about AccessLex Institute’s position may be directed to Nancy Conneely, Director of Policy at [nconneely@accesslex.org](mailto:nconneely@accesslex.org) or 202-596-3203.

**About AccessLex Institute:** AccessLex Institute is a nonprofit organization committed to helping talented, purpose-driven students find their path from aspiring lawyer to fulfilled professional. In partnership with its nearly 200 Member law schools, improving access and positively influencing legal education have been at the heart of the Company’s mission since 1983. AccessLex Institute has offices in West Chester, Pa., and Washington, D.C., with a team of accredited financial education counselors based throughout the United States. Learn more at [AccessLex.org](http://AccessLex.org)

<sup>i</sup> Austin, D. A. (2013). The indentured generation: Bankruptcy and student loan debt. *Santa Clara Law Review*, 53(2), 329- 420.