



September 11, 2017

Hilary Malawer  
Assistant General Counsel  
Regulatory Services Division  
Office of the General Counsel  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Room 6E231  
Washington, DC 20202

Re: Evaluation of Existing Regulations

Docket ID: ED-2017-OS-0074

Dear Assistant General Counsel Malawer:

I am writing on behalf of AccessLex Institute in response to the June 22, 2017 Federal Register notice soliciting comments on regulations that may be appropriate for repeal, replacement, or modification. Thank you for the opportunity to comment on the Department of Education's evaluation of its existing regulations.

AccessLex Institute, in partnership with its nearly 200 nonprofit and state-affiliated ABA-approved member law schools, has been committed to improving access to legal education and to maximizing the affordability and value of a law degree since 1983. The AccessLex Center for Legal Education Excellence advocates for policies that make legal education work better for students and society alike, and conducts research on the most critical issues facing legal education today. And our Center for Education and Financial Capability offers free on-campus and online financial education programming and resources to help students confidently manage their finances on the way to achieving personal and professional success.

### **Federal Direct Loan Counseling**

The Department's regulations at 34 CFR 685.304 require institutions of higher education to provide entrance counseling to each Direct Loan student borrower prior to the first disbursement of the loan to the borrower (unless the borrower has previously completed entrance counseling at that institution or at another institution). The Department has interpreted this regulation to mean that institutions may not require counseling as a condition of disbursement beyond the required first-time entrance counseling and required exit counseling.

In guidance<sup>1</sup> published on April 6, 2015 the Department affirmed its interpretation that the regulations do not allow a school to require additional loan counseling as a condition of receiving a Direct Loan:

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<sup>1</sup> U.S. Department of Education. (2015). Loan Counseling Requirements and Flexibilities (Dear Colleague Letter). DCL ID: GEN-15-06. Retrieved from: <https://ifap.ed.gov/dpclletters/GEN1506.html>.

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**Q5:** May an institution require students who had previously completed entrance counseling to participate in additional or ongoing counseling as a condition of receiving a Direct Loan? For example, may an institution require transfer students who completed entrance counseling at another institution or returning students who completed entrance counseling several years ago to undergo additional entrance counseling? May an institution require all of its continuing borrowers to participate in counseling before receiving a new Direct Loan each year?

**A5:** No. An institution may not require students to participate in counseling beyond the required entrance counseling for first-time student borrowers as a condition for receiving a Direct Loan, regardless of when or where the earlier counseling occurred. However, an institution may encourage borrowers to participate in additional counseling to make informed borrowing decisions and to understand the terms and conditions of a Direct Loan, loan repayment responsibilities and options, and the consequences of default. For example, directing students to the studentloans.gov website to access the FACT resource discussed above, or the Department’s loan calculator, may be helpful to such borrowers. Institutions must make clear that the additional counseling is not the same as the required entrance counseling for first-time student borrowers (e.g., it must have a different name than the institution’s required entrance counseling).

While the institution may strongly recommend that the student participate in the additional counseling, it may not state or imply that such counseling is required as a condition for receiving a loan. Likewise, the institution may not refuse to originate or disburse a Direct Loan, or reduce the loan amount for an otherwise eligible student because the student chooses not to participate in the optional counseling.

### **AccessLex Institute’s Recommendation**

Executive Order 13777, “Enforcing the Regulatory Reform Agenda,” asks the Regulatory Reform Task Force at each federal agency to identify regulations that, among other things, are “outdated, unnecessary, or ineffective.” The regulations contained in 34 CFR 685.304 should be modified to allow financial aid administrators to require additional loan counseling for graduate and professional students because the current regulations are ineffective.

Among other required elements, the regulations state that the counseling must “emphasize to the borrower the seriousness and importance of the repayment obligation the student borrower is assuming.” Changes to these regulations are necessary because they create barriers for schools to effectively provide borrowers with sufficient and timely information to understand the seriousness and importance of repayment. A recent Brookings Institute study found that about half of all first-year college students underestimate how much student debt they have and 14 percent who have student loans do not think that they have any student debt at all.<sup>2</sup> Without additional loan counseling, students are not given the opportunity to review and understand their cumulative loan debt on a more frequent basis. Schools should have the flexibility to require students to participate in annual loan counseling. Doing so would provide students with their cumulative debt amount and revised estimated monthly payments, and remind them of the seriousness and importance of repayment.

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<sup>2</sup> Akers, E. & Chingos, M. (2014). *Are College Students Borrowing Blindly?*. Washington, DC: Brookings Institution. Retrieved from: <https://www.brookings.edu/wp-content/uploads/2016/06/Are-College-Students-Borrowing-Blindly-Dec-2014.pdf>.

Dissemination of this information is vital. And changes to the loan counseling requirements for Direct Loan borrowers enjoys bipartisan support in both the House and Senate.<sup>3</sup>


The rising cost of higher education and the increased levels of student borrowing creates an imperative that students have the necessary information to make the best financial decisions, and for some students, the minimum counseling requirements are not enough. Graduate and professional students in particular, who as a group hold the largest loan balances upon graduation, need more comprehensive and customized counseling. Forty percent of the \$1 trillion federal student loan debt is attributable to the financing of graduate and professional degrees – with average indebtedness (undergraduate and graduate) levels of \$42k for an MBA, nearly \$51k for a master’s in education, just over \$140k to achieve a law degree, and over \$160k to achieve a medical degree.<sup>4</sup>

While those debt levels alone should warrant additional counseling, students themselves are interested in receiving information and education for their personal financial challenges and goals. In AccessLex Institute’s 2017 survey of nearly 5,000 law school students, 98 percent indicated an interest in having a personal finance program offered to them. Eight-five percent of respondents self-reported a grade of a B- **or lower** as it related to their own personal finance knowledge. And 75 percent are worried about their student loan debt, which increased to 84 percent among those who indicate they will be pursuing public interest work. Allowing schools to require additional loan counseling for graduate and professional borrowers should provide a strong benefit for both students and the federal government.

Changes to counseling regulations need not result in an increased burden to schools. There are options available to schools for loan counseling that involve online components and/or partnership with outside organizations. For example, throughout its 34 years of service AccessLex Institute has provided free financial education to student borrowers through on-campus presentations and printed materials on topics such as financing legal education, loan repayment and budgeting. We also offer AccessConnex, a free service providing on-demand, one-on-one loan repayment and other financial education information to graduate and professional students via phone, live chat or email. Most recently, AccessLex launched MAX by AccessLex<sup>SM</sup>, a free personal finance curriculum exclusively for law students that combines in-person workshops, online programming, and one-on-one counseling so that financial education is supported through multiple channels and with varied touchpoints. The MAX program complements the work that schools are already doing to educate students on borrowing and loan repayment. Programs like MAX could serve as a means for schools (free of cost) to satisfy modified regulations that allowed for required annual loan counseling.

Thank you for your time and attention to this matter. If you have questions or would like any additional information, please contact me or Nancy Conneely, Director of Policy, at [nconneely@accesslex.org](mailto:nconneely@accesslex.org).

Sincerely,



Christopher P. Chapman  
President and Chief Executive Officer

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<sup>3</sup> *Know Before You Owe Federal Student Loan Act of 2017*, S.1628 (Sen. Chuck Grassley (R-IA), Sen. Joni Ernst (R-IA) and Sen. Al Franken (D-MN)) and *Empowering Students Through Enhanced Financial Counseling Act*, H.R. 1635 (Rep. Brett Guthrie (R-KY-02) and Rep. Suzanne Bonamici (D-OR-01)), 115th Cong. (2017), would make loan counseling an annual requirement before new loans are disbursed.

<sup>4</sup> Student Loan Hero. (2017). 2017 Student Loan Debt Statistics. Retrieved from <http://studentloanhero.com/wp-content/uploads/Student-Loan-Hero-2017-Student-Loan-Statistics.pdf>.