



August 3, 2023

The Honorable James Kvaal  
Under Secretary of Education  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202

Dear Under Secretary Kvaal:

I am writing on behalf of AccessLex Institute to ask that the U.S. Department of Education (ED) reconsider its guidance to institutions of higher education regarding the treatment of funding provided to a student for a fellowship, assistantship, or internship during periods of non-enrollment. Currently, this money is treated as estimated financial assistance (EFA) for federal financial aid purposes and is subtracted from the student's cost of attendance (COA) to determine need. Because there is not a COA during periods of non-enrollment, this money is subtracted from the COA for the upcoming award year, creating unnecessary financial stress for students. For the reasons outlined below, we believe this guidance should be rescinded.

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. We advocate for policies that make legal education work better for students and society alike; conduct research on the most critical issues facing legal education today; seek to expand access to legal education for underrepresented students through research, grantmaking, data analysis, and the dissemination of information and resources; and aim to increase first-time bar exam passage nationwide.

In short, we believe that funding received during periods of non-enrollment should not count as EFA for the purposes of Higher Education Act Title IV aid because doing so (1) cuts against the plain reading of the applicable regulation and (2) reduces the amount of aid that a student may be eligible for in the subsequent award year without offering a clear benefit to the federal fiscal interest.

#### **1. Inconsistent with Regulatory Text**

The regulatory language in 34 CFR §685.102 defines estimated financial assistance as "The estimated amount of assistance *for a period of enrollment* that a student (or a parent on behalf of a student) will receive from Federal, State, institutional, or other sources, such as scholarships, grants, net earnings from need-based employment, or loans..." [Emphasis added]. This definition limits the times in which financial assistance provided to a student can count as EFA for the purposes of Title IV aid to those times in which the student is enrolled in classes.

Applying the regulatory language cited above, for students that participate in a fellowship, assistantship, or internship in the summer between the spring and fall semesters, but who are not enrolled in classes at their institution, any funding they receive should not be counted as EFA. For these students, the summer is not a period of enrollment, and therefore the above regulation should not apply.

## **2. Reduces Available Aid**

When a student is not enrolled in classes, such as in the summer, they do not incur tuition and fees associated with enrollment. Therefore, the student does not have the opportunity to borrow federal student loans to pay for other costs such as housing and transportation. Money received from a fellowship, assistantship, or internship during the summer would likely go toward paying for these other expenses and cannot be saved to apply to costs incurred in the subsequent semester. This issue is particularly acute for independent students (which by definition includes almost all graduate and professional students) who do not have other forms of financial support.

When a student enrolls in classes in the following semester, they are subject to COA related to a federal loan borrowed to pay for tuition, fees, and indirect costs. As you know, these expenses are set by the school and a student generally may not borrow above that amount (absent a showing of special circumstances and the use of professional judgment by the school). Counting money received during the summer as EFA, and thus subtracting this amount from the total aid available to a student, could result in students not being able to borrow enough to cover tuition, fees, and indirect costs (if they reached the COA limit). In cases such as these, some students will not be able to afford to continue their studies, potentially cutting off access to higher education and saddling these students with debt and no degree, risking the ability to repay their loans.

In conclusion, we urge ED to revert to the plain language of the applicable regulation and cease treating monies received by students during periods of non-enrollment as EFA.

Thank you for your time and attention to this matter. If you have any questions, you can reach me at [cchapman@accesslex.org](mailto:cchapman@accesslex.org). You can also contact Nancy Conneely, Managing Director of Policy, at [nconneely@accesslex.org](mailto:nconneely@accesslex.org).

Sincerely,



Christopher P. Chapman  
President and Chief Executive Officer