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Hilary Malawer
Deputy Assistant General Counsel
U.S. Department of Education
400 Maryland Ave, SW
Room 6E231, Washington, DC 20202
(submitted electronically via regulations.gov)
Re: Docket ID ED-2017-OS-0074

Dear Ms. Malawer:

The Institute for College Access & Success (TICAS) works to make higher education more available and affordable for people of all backgrounds. Through nonpartisan research, analysis, and advocacy, we aim to improve the processes and policies that can pave the way to successful educational outcomes for students and for society. These comments are in response to the June 22, 2017 Federal Register notice regarding the U.S. Department of Education's request for input on implementing Executive Order 13777, "Enforcing the Regulatory Reform Agenda", which calls for a review of current federal regulations.

Any higher education regulatory review must prioritize the needs of students and taxpayers – those the regulations are designed to protect – over the interests of regulated entities that will naturally desire less oversight. We and others have long been troubled that the recommendations of the Task Force on Federal Regulation of Higher Education represented the views of just 16 colleges, and excluded student and taxpayer representation entirely. As a result, the report's recommendations in no way represent a consensus opinion among colleges or other higher education stakeholders. The report's recommendations for changing the negotiated rulemaking process, for example, would increase the influence of professional lobbyists over practitioners, a change we and many others strongly oppose. We are concerned that, as part of this regulatory review process, the Department plans to meet with college presidents and financial aid officers, but has not announced similar meetings with students, consumers, and those who advocate on their behalf.

We strongly believe that current federal higher education regulations and oversight need to be strengthened and improved to better protect students and taxpayers. This requires not only identifying ways to reduce unnecessary burdens on colleges that are clearly serving students well, but also requires *increasing* scrutiny and oversight of schools that pose greater risks to students and taxpayers. Precedent exists for providing colleges with greater flexibility based on positive track records. For example, under current law, schools with lower default rates are given greater flexibility in the disbursement of student loans.[1] In addition, nonprofit and for-profit colleges with strong financial responsibility scores are

[1] For example, schools with a CDR of less than five percent are eligible to make single and nondelayed disbursements of loans for attendance in a study-abroad program. Schools with default rates of less than 15 percent are not required to delay the delivery or disbursement of loans for 30 days for first-time, first-year undergraduate borrowers. For more information, see http://ifap.ed.gov/DefaultManagement/finalcdrg.html.

subject to less oversight and monitoring than schools with lower financial responsibility scores.[2] However, these examples are exceptions to the general one-size-fits-all approach to regulation and oversight, which tends to overregulate the best colleges and under-regulate the worst. Smarter, more targeted oversight requires grounding regulations in performance and taking into account the actual risks that a school poses to students and taxpayers.

Importantly, many of the Department of Education regulations that schools find most burdensome are required by legislation, and reducing their regulatory burden will require working with Congress to make statutory changes. As the National Association of Student Financial Aid Administrators (NASFAA) stated in its public comments, many of the regulations most consistently mentioned as concerns by its member institutions cannot be addressed without a change in statute.[3]

For example, since July 1, 2013, borrowers have faced a limit on the length of time they can receive Direct Subsidized Loans. This 150% Direct Subsidized Loan Limit, or SULA, is notoriously complicated for both borrowers and schools to navigate. The resulting regulatory burden could be greatly reduced by either eliminating the time limit completely or changing it to the full-time equivalent of six years, but both solutions would require a change in the law. Other examples of statutorily-driven regulations that are needlessly onerous or restrictive for colleges and/or students include: the inclusion of at least 20 overly burdensome financial questions on the Free Application for Federal Student Aid (FAFSA) that do not have a significant impact on financial aid determination and could be eliminated; overly prescriptive statutory provisions governing the content of online federal student loan counseling tools, which have led to text-heavy and excessively technical content that impedes the counseling's effectiveness; and the federal ban on creating a student level data network, the implementation of which would, along with providing other benefits for students, states and policymakers, reduce the burden schools currently face in complying with federal reporting requirements.

We urge the Department of Education to work with Congress on a bipartisan basis to address these and other burdensome provisions with an eye towards protecting students and taxpayers and reducing unnecessary burdens on colleges that serve students well.

Thank you for the opportunity to comment on this important process. If you have any questions, please feel free to contact me at dcochrane@ticas.org or 510-318-7900.

Sincerely,

Debbie Cochrane
Vice President, TICAS

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[2] For more information on the relationship of financial responsibility scores to levels of oversight, see http://studentaid.ed.gov/about/data-center/school/composite-scores.

[3] NASFAA. 2017. Public comments on implementing Executive Order 13777, "Enforcing the Regulatory Reform Agenda" https://www.nasfaa.org/uploads/documents/ResponsetoEDSolicitationof6-22-17.pdf