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Joint Testimony before the Assembly Standing Committee on Higher Education Regarding the New York State Higher Education Loan Program

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Thank you very much for the opportunity to comment on the proposed New York Higher Education Loan Program (NYHELPS). My name is Claudia Wilner, and I am Senior Staff Attorney at the Neighborhood Economic Development Advocacy Project (NEDAP). NEDAP is a nonprofit resource and advocacy center that works with community groups in New York City's low income neighborhoods and communities of color. NEDAP promotes economic justice and works to eliminate discriminatory economic practices that harm communities and perpetuate inequality and poverty. Through its Consumer Law Project, NEDAP works directly with low income New Yorkers who are struggling with credit and debt issues, including student loan debt.

This testimony is presented also on behalf of the Empire Justice Center, a statewide legal services organization with offices in Albany, Rochester, White Plains, and Central Islip (Long Island). Empire Justice provides support and training to legal services and other community-based organizations, undertakes policy research and analysis, and engages in legislative and administrative advocacy. Empire Justice also represents low-income individuals, as well as classes of New Yorkers, in a wide range of poverty law areas including consumer law.

NEDAP and Empire Justice are testifying today because we are very concerned that NYHELPS lacks vital consumer protections. We appreciate that New York State wants to help students finance higher education; however, we fear that low income New Yorkers who receive loans through NYHELPS – including those who may later become disabled or have difficulty finding employment – will be harmed by this program. NYHELPS should not go forward in its current form. We urge New York State to amend the statute to add the consumer protections outlined below or else abandon the program.

Our testimony today covers the following areas:

- First, we describe six crucial consumer protections that are available to borrowers of federal loans that are not available to NYHELPS borrowers. We believe that New York students and families will be harmed by NYHELPS loans if these vital consumer protections are not added to the program.
- Second, we tell the stories of three low-income New Yorkers who have struggled with student loan debt. These stories illustrate the tremendous burden caused by student loan debt and how NYHELPS loans would increase that burden.

- Third, we point out that there are fundamental, unanswered questions about whether NYHELPS will have any benefit for New York students and taxpayers. In this regard, we have attached a copy of a report issued by the Maryland Higher Education Commission (MHEC) recommending that the state NOT adopt a program like NYHELPS because it would offer no benefit to Maryland students, particularly low income students.

A. NYHELPS Lacks Key Consumer Protections

It is essential that New York State amend the NYHELPS statute to provide basic consumer protections for borrowers.

The NYHELPS Q&A, issued in February 2009, guaranteed that “The NYHELPS loan repayment and cancellation options mirror the federal student loan program” and that “borrower protections will be provided in regulation.” Unfortunately, the NYHELPS regulations fall far short of federal standards. We believe that the NYHELPS regulations place the interests of investors over those of borrowers. Without stronger protections, NYHELPS loans may do more harm than good to low income New Yorkers.

NEDAP and Empire Justice urge New York State to add consumer protections in the following key areas:

1. **Administrative Wage Garnishment:** Federal law provides for administrative wage garnishment of 15% of disposable income *but the borrower’s disposable income should not fall below 30 times the minimum wage per week*. NYHELPS provides for garnishment of 15% of disposable income *with no floor*. Also, unlike federal regulations, NYHELPS regulations do not specifically state that a borrower can request to be garnished at a lesser rate on the grounds of financial hardship. The legislature should amend the administrative wage garnishment provisions so that they parallel federal law and preserve the minimum wage. Likewise, administrative law judges must have flexibility to reduce or even suspend garnishment if necessary because of the borrower’s economic hardship.
2. **Disability and Death Discharge:** NYHELPS regulations provide for disability and death discharge *only if the disability or death occurs while the student is actually enrolled in school*. There is no discharge if the death or disability begins during the repayment period. *Also, there is no discharge for coborrowers at all*. Federal law allows for death and disability discharge at any point in the repayment period. NYHELPS should provide for a death or disability discharge that is equivalent to that provided by federal law, so that people who will never be able to work can discharge their loans rather than suffering through a lifetime of pointless debt collection harassment.
3. **Rehabilitation:** Federal law provides for “rehabilitation” -- a path out of default. Rehabilitation allows borrowers to escape punitive debt collection procedures and improve their credit reports as well as qualify for additional federal loans. NYHELPS completely lacks a path out of default. NYHELPS should allow students to rehabilitate defaulted loans, as is provided for in the federal program, so that borrowers who have fallen on hard times but who can afford repayment can also repair their credit reports.

4. **No Flexible Payment Options:** NYHELPS regulations provide for extremely limited forbearance and income sensitive payment options. Although these options would allow a borrower to defer payments for a limited period of time, none of these options would extend the term of the loan. Thus, for example, a borrower who loses a job and needs forbearance will come out of forbearance facing extremely high and unaffordable monthly payments. A borrower who loses a job twice during the repayment period is out of luck; only one forbearance period is allowed. Federal loans, in contrast, offer a myriad of flexible repayment options. Considering the limited job options available to graduating students in the current economy, it is especially unconscionable that NYHELPS fails to provide more flexibility to low income graduates and their families.
5. **No Fraud or School-Based Discharges:** NYHELPS loans may be used to pay tuition at private, proprietary trade schools. These schools often offer a sham education that is of no benefit to the enrolled student. NEDAP's consumer law hotline receives numerous calls from low income New Yorkers who have been scammed by trade schools and left holding the federal student loan bills. These students, already deprived of a legitimate education, are often unable to repay their loans and consequently unable to qualify for additional loans so that they can attend a legitimate school, such as a public community college.

Federal programs provide for closed-school, false-certification, and unpaid-refund discharges of student loans. NYHELPS should offer these discharges as well. In the alternative, New York State should not allow students to use NYHELPS loans at private, proprietary trade schools. NYHELPS should not become yet another source of revenue for these sham schools that prey on low income New Yorkers. Instead, loans should be available only for use at legitimate public or non-profit educational institutions.

6. **NYHELPS and PLUS:** NEDAP and Empire Justice agree with and endorse NYPIRG's testimony with regard to the relationship between NYHELPS and PLUS loans. We agree that students should be required to exhaust PLUS availability before turning to NYHELPS. An exhaustion requirement would aid students by enabling some of them to qualify for increased Federal Stafford loans, which are far better than NYHELPS loans. At the very minimum, students should be offered clear disclosures with regard to the availability of PLUS loans.

B. The Legislature Should Consider the Negative Impact of Student Loan Debt on Low Income New Yorkers

NEDAP runs the NYC Financial Justice Hotline, a consumer hotline that provides free legal information and advice to low and moderate income New Yorkers who are aggrieved by abusive and discriminatory financial services practices. We have helped thousands of people since launching the Hotline in September 2005.

We often receive requests for assistance from low income New Yorkers who are heavily burdened with student loan debt. Our clients want to pay their student loans, but they simply cannot, because they do not have incomes adequate to support repayment. Many are low wage workers; others are elderly or disabled and rely on Social Security and other public benefits. Because student loans have no statute of limitations, cannot be discharged in bankruptcy, and accrue substantial

interest and fees, many of our clients carry their student loan debt for their entire lives. They endure ongoing wage garnishment, seizure of their income tax returns, and repeated collection calls.

In recognition of the increasingly unsustainable debt loads, the federal government has moved to reduce, not expand, the debt burden on student loan borrowers. Interest rates have been slashed for new borrowers. Moreover, since July 2009, borrowers of many federal loans can qualify for income-based repayment (IBR). Under this program, borrowers must be offered an affordable repayment plan that is proportionate to their income; after 25 years of income-based repayment, the balance of the loan is forgiven. Our clients' incomes are generally so low that they cannot afford to pay anything at all; under IBR, they are completely excused from payment. Given the federal effort to reduce student loan debt burdens for low-income borrowers, we find it difficult to understand why New York State would create a new loan program which will saddle borrowers with increased debt at relatively high rates for which there is no flexibility in repayment.

The following stories illustrate the hardships caused by student loan debt:

- Ms. F is a 51-year-old single woman with a psychiatric disability whose only income is \$1000 in SSI and part-time employment. In the 1980s, Ms. F borrowed \$4000 in federal student loans. Unfortunately, in 1988, she became very ill and, as a result, was unable to work for many years. Ms. F recently felt well enough to take a small part-time job. As soon as she started working, her lender contacted her and asked her to start making payments on her \$4,000 loan, which had ballooned to \$9000 with interest and fees. Ms. F began making payments, but she soon found that she was unable to do so and also cover her basic living expenses, such as housing, food and utilities. Ms. F contacted NEDAP to see whether there was anything we could do to help her. We discovered that Ms. F is eligible to apply for Income Based Repayment (IBR). This plan will help Ms. F avoid defaulting on her student loan by lowering her payment to \$0 every month. However, if Ms. F had taken out a NYHELPS loan, this option would not be available to her. Ms. F would have no option but to make unaffordable payments or drop out of the work force to avoid wage garnishment.
- Mr. L is a 68-year-old disabled man whose only source of income is Social Security in the amount of \$974 per month. In the 1980s, Mr. L borrowed \$6,625 to attend the Berk Trade and Business School, a scam trade school. Mr. L received no benefit from this “education”; he attended a few classes, but the school neglected to provide a teacher. Mr. L eventually gave up on his education, but his student loans never went away. In fact, they have doubled, to \$11,650. The federal government recently threatened to garnish his Social Security benefits to repay this loan. Mr. L would not have enough money to buy food if his benefits were garnished. Fortunately, because Mr. L has federal student loans, he is eligible to apply for a school-based discharge of his loans. If Mr. L had taken out a NYHELPS loan, this option would not be available to him, as NYHELPS regulations provide no relief for people who are scammed by proprietary trade schools.
- Ms. M is a Haitian immigrant who has sporadic income as a health care worker. In 2005, she borrowed \$13,641 in Parent PLUS loans to help her son attend the Art Institute of New York City, a proprietary trade school. Ms. M's son graduated from school, but he does not have a job. Meanwhile, Ms. M's loan has more than doubled, and she now owes \$31,353. Ms. M and her husband are in severe economic distress; their house is in foreclosure, and they owe several thousand dollars in utility arrears. A collection agency is threatening to garnish her wages. Because Ms. M borrowed a Parent PLUS loan, she does not have as many repayment

options as our other clients, who have Stafford loans. However, at least she can seek a hearing on the wage garnishment and ask the judge to cancel or reduce the amount of the garnishment on the ground of economic hardship. If Ms. M had taken out a NYHELPS loan, she would not have this option. The NYHELPS regulations do not give an administrative law judge discretion to cancel or modify a wage garnishment for this reason.

As these stories illustrate, student loan debt can be a crushing burden for low income New Yorkers. NYHELPS threatens to add to this burden in an extremely oppressive manner. For this reason, New York should not go forward with this loan program without adding the consumer protections recommended above.

C. Unanswered Questions About NYHELPS

NYHELPS was rushed through the budget process with little information, analysis or debate. Many fundamental questions about the program remain unstudied and unanswered.

- **Is NYHELPS' Structure Itself Fatally Flawed?** It appears that the lack of consumer protections in the NYHELPS program can be traced back to the structure of the program itself. NYHELPS is funded mainly through private activity bonds that will be sold to private investors and used to purchase NYHELPS loans from lenders. Apparently, HESC has determined to skimp on consumer protections out of fear that investors will not like these protections, and therefore the bond issuance will not succeed. A related fear is that if consumer protections are added to the statute, potential investors will demand a higher interest rate, which will raise the rates of NYHELPS loans to an unaffordable level. Thus, HESC has sold out borrowers to appease potential investors who have not yet materialized.

HESC has not tried to devise a student loan program with consumer protections; it is possible that the State could add more consumer protections and the bond issuance would still be successful. However, if HESC is correct, then New York State should ask whether it makes sense to invest \$50 million this year, and \$10 million thereafter, to pay for an unaffordable loan program that lacks basic consumer protections. We would argue that it does not, and that if investors will not tolerate the addition of basic consumer protections for borrowers, the program should be eliminated and other options considered.

- **Is NYHELPS Necessary?** NYHELPS was created and approved during the middle of the greatest economic crisis since the Great Depression. At the time, lawmakers had a legitimate fear that the secondary market for private student loans would dry up, and that these loans would no longer be available for New York's students. Fortunately, these fears proved to be unfounded. The secondary market for private student loans appears to be functioning, and lenders are now making private loans to New York students.

While an alternative to private loans may be desirable, it is not clear that NYHELPS is the appropriate solution. The legislature should, at the very least, delay implementation of NYHELPS while it considers whether another program would deliver greater benefits to New York students (especially low income students). The legislature should consider whether there are other ways to hold down or even reduce tuition (so that students need to borrow less), whether the state should make loans to students directly (as opposed to paying private banks to make loans), or whether the state could directly intervene in the private market to buy down the interest rates offered by private lenders to New York students.

Other states have recently considered and rejected student loan programs along the NYHELPS model. For example, in 2008, the Maryland Higher Education Commission (MHEC) and Office of Student Financial Assistance conducted a feasibility study with regard to whether to establish a state-sponsored student loan program along the NYHELPS model. After study, MHEC recommended against creating such a program, citing volatility in the bond markets and lack of appreciable benefit to students, particularly low income students. A copy of the Maryland report is attached to this testimony.

- **Does HESC Have A Conflict of Interest?** One of the key aspects of the NYHELPS program is the Student Loan Marketplace, a website run by HESC where students can learn about loan options, including NYHELPS. Students must apply for NYHELPS loans through Student Loan Marketplace. The Student Loan Marketplace has the potential to generate substantial increased fee revenue for HESC. For example, all lenders who wish to offer NYHELPS loans will have to sign up for the student loan marketplace and pay a fee to HESC. Furthermore, HESC will receive another fee when a student borrows through NYHELPS, but does not receive a fee if a student borrows a PLUS loan or a private loan. Thus HESC will earn significant fee income from NYHELPS and will have a financial incentive to recommend NYHELPS loans to students even when other loans would be more appropriate and/or affordable.

In conclusion, NEDAP and Empire Justice are concerned that the NYHELPS program, in its current form, undermines low income New Yorkers who are seeking to improve their education and job prospects. It is essential that New York State strengthen the program to provide better consumer protections to borrowers. We urge the legislature to amend the NYHELPS statute to add the basic borrower protections outlined above, or else abandon the program.

Respectfully submitted by:

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