



**Neighborhood Economic
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**New York State Higher Education Services Corporation's
Public Hearing on the New York Higher Education Loan Program Proposed Regulation**

**Legislative Office Building
Hamilton Hearing Room B (2nd Floor)
Albany, New York
September 9, 2009**

Thank you very much for the opportunity to comment on the proposed New York Higher Education Loan Program (NYHELPS) regulation. My name is Kirsten Keefe and I am a Senior Staff Attorney at the Empire Justice Center in our consumer law unit. Empire Justice Center is 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. We also represent low-income individuals, as well as classes of New Yorkers, in a wide range of poverty law areas including consumer law.

This testimony is presented also on behalf of 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.

NEDAP and Empire Justice wanted to testify today because we are very concerned that NYHELPS lacks key 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 and later become disabled or have difficulty finding employment will be harmed by this program. It is essential that HESC strengthen the program to provide better consumer protections to borrowers.

The NYHELPS Q&A, issued in February 2009, promised 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 HESC to amend the regulations 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, NYHELPS regulations do not specifically state that a borrower can request to be garnished at a lesser rate on the grounds of financial hardship. HESC should amend the administrative wage garnishment provisions so that they parallel federal law.
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*. Very few people will qualify for this discharge. 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.
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 regulations should allow students to rehabilitate defaulted loans, as is provided for in the federal program.
4. **No Flexible Payment Options:** NYHELPS regulations provide for extremely limited forbearance and income sensitive payment options. None of these options extend the term of the loan. Thus 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 job options available to graduating students in the current economy, it is unconscionable that NYHELPS fails to provide more flexibility to low income borrowers.
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 go to 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 school-based loan discharge, as in the federal programs. In the alternative, HESC should not allow students to use

NYHELPS loans at private, proprietary trade schools. 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.

In conclusion, NEDAP and Empire Justice are concerned that the NYHELPS regulations, as currently drafted, undermine low income New Yorkers who are seeking to improve their education and job prospects. We urge HESC to amend the regulations to add the basic borrower protections outlined above.

Respectfully submitted by:

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