



The United States Department of Education
Via Electronic Submission

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RE: Proposed rule, Intent to establish negotiated rulemaking committees. Docket ID ED-2021-OPE-0077

The City of New York (“the City”) appreciates the opportunity to comment on the U.S. Department of Education’s (“the Department”) intent to establish negotiated rulemaking committees.

The New York City Department of Consumer and Worker Protection’s (“the Agency”), mission is to protect and enhance the daily economic lives of New Yorkers to create thriving communities. Our work embodies a commitment to shield consumers from predatory practices. The Agency’s Office of Financial Empowerment (“OFE”), in particular, seeks to realize this vision by educating, empowering, and protecting New Yorkers and neighborhoods with low incomes so that they can build assets and make the most of their financial resources.

In the last several years, the City has worked to deepen its understanding of the student loan debt crisis in New York City. In December 2017, DCWP’s OFE and the Federal Reserve Bank of New York published a first-of-its-kind neighborhood-level examination of student loan repayment outcomes, [Student Loan Borrowing Across NYC Neighborhoods](#). This report used credit panel as well as delinquency and default data to map student loan debt. Of the nearly one million New York City borrowers, about 16 percent of student loan holders have defaulted (defined as being 270 or more days overdue on student loan repayments). The share of residents struggling with student debt rises even further when one narrows the focus to low-income zip codes, as nearly a quarter of residents with a student loan in the lowest-income areas of the city have defaulted.

DCWP released a follow up report, [Student Loan Debt Distress Across NYC Neighborhoods: Identifying Indicators of Vulnerability](#), in 2018, further shedding light on why borrower distress is distributed unevenly throughout the city. The report revealed that noncompletion of studies, a particular issue of concern for older students, students of color, and students from households with low incomes, is a strong predictor of loan default. The findings in our second report prompted us to focus subsequent research on vulnerable borrowers. The resulting “vulnerable borrowers” series examined factors associated with student loan default, among them: a look at attendance at [for-profit institutions with a focus on veteran attendance](#); the [student loan struggles of Black New Yorkers](#), and the impact of the high cost of college on [borrowers from low income backgrounds](#).

DCWP's student loan debt work extends beyond research. In 2018, we held a listening tour and [public hearing](#) to learn about the impact of student loan debt directly from our residents. Responding to the needs expressed during our outreach, we launched a series of student loan debt clinics, targeting neighborhoods and communities identified as having high levels of student loan debt-related financial distress. Through these clinics, we served 250 student loan borrowers. To sustain access to free, high quality student loan debt counseling beyond the clinics, all DCWP managed Financial Empowerment Center counselors have received specialized training on the management of both public and private student loan debt. Annually, approximately 1,500 clients come to Financial Empowerment Center counselors for help managing their student loan debt.

Together, our outreach and reports signal that higher education and its funding mechanisms deserve serious thought and considerable changes to ensure all students receive affordable, high quality higher education and access to realistic repayment plans that lead to successful student loan repayment. The upcoming negotiated rulemaking is a necessary step in this process. As such, the Agency is writing to express support for the topics you have suggested for the future rulemaking sessions, as well as provide a few suggestions for additional items and areas of focus, as follows:

Establish long-term monitoring for for-profit institutions that convert to nonprofit institutions. The landscape of higher education has changed in the last 10 years. For-profit institutions, after facing scrutiny for poor outcomes and sudden closures, have developed a new strategy for avoiding scrutiny by converting to nonprofit institutions. In some cases, the nonprofit, or covert for-profit as they have been called, is saddled with debt in the form of an IOU at an inflated price.¹ In other cases, the schools are found to contract out management and administrative services to for-profit entities with financial ties to the original for-profit owner, creating a risk of private benefit.² In the upcoming negotiated rulemaking, the Department should prioritize establishing rules that mitigate the risk of for-profit-to-nonprofit conversions, both before the school has been approved for a change of ownership and control and after this event has taken place.

Explore avenues for regulating the use of for-profit online program managers. Many public and private nonprofit higher education institutions have begun to outsource online program management to for-profit companies. This relationship is not always disclosed to the students and tuition remains on par with in-person university administered programs.³ We strongly urge the Department to add the regulation of these relationships as an area for negotiated rulemaking. Further, rules are also needed to establish the continued monitoring of online program management arrangements to ensure these arrangements are not improperly benefiting private entities.

Use all means available to hold schools accountable for poor outcomes. We are pleased to see the Gainful Employment Rules among the items proposed for negotiated rulemaking. The

¹ <https://tcf.org/content/commentary/dubious-conversions-profit-colleges-decoding-gao-report/>;
<https://tcf.org/content/report/covert-for-profit/>

² Same as above.

³ <https://tcf.org/content/report/dear-colleges-take-control-online-courses/>

rulemaking process should prioritize developing a new metric that accounts for the share of student loan debt borrowers who do not graduate, cannot find a job, or earn so little that they are not required to make a payment. Under the previous Gainful Employment Rule, having a large share of borrowers in these positions would not count against the school.

Further, we advise the Department to add the cohort default rate as an item to be addressed during the rulemaking process. The current mandate that schools lose Title IV eligibility if their cohort default rate reaches and/or exceeds 30 percent for three years in a row was effective when first implemented. However, schools have turned to consulting firms to steer borrowers into forbearance or other programs that result in lower default rates but not necessarily better outcomes for the borrower. While we understand that some aspects of the cohort default rate calculation are set by statute, we do think that the Department should regulate in the area of administrative capability to ensure that borrowers are receiving the information they need to make financially healthy repayment decisions, particularly in their first three years of repayment during which they may be targets of unscrupulous consulting firms. Moreover, the Department should use financial responsibility and certification rules to ensure that schools take additional precautions when they approach statutory thresholds. Finally, cohort default rates manipulation may violate the fiduciary standard that applies to institutions who receive federal funding; the Department should clarify that standard in regulations.

Make student loan debt cancellation for authorized reasons systematic and easy. We lend our support to including in the upcoming rulemaking a review of existing pathways to debt cancellation, such as avenues for debt relief for attendees of schools that close, defrauded borrowers, disabled borrowers, low-income borrowers, and borrowers working in public service, in the rule-making process. We hope that the committee will focus on lessening the burden of participating in these forgiveness programs. Further, we call to expand the 2016 borrower defense to include local law enforcement actions more clearly as a route to group relief on par with state and federal actions.

Restore the possibility of student loan debt repayment within 10 years as the program was originally intended. Our support for cancellation does not end with the established forgiveness programs. More than 45 million Americans now owe more than \$1.6 trillion in student debt and to afford to pay back this debt, repayment periods now stretch out up to 25 years. As a matter of generational equity, the negotiated rulemaking should include the topic of using the Department's legal authority to cancel student loan debt to restore borrowers' ability to repay within 10 years as the student loan debt program had originally intended.

Overhaul student loan debt repayment plans. The Department needs to ensure that borrowers can access repayment options that are not onerous to participate in and easy-to-comprehend. The negotiated rulemaking must include a rethink of the administration of student loan debt repayment plans and hold loan servicers accountable for consistently and clearly informing borrowers of their repayment options to ensure that all borrowers receive the same information about available repayment plans.

Mitigate the impact of student loan debt on economic inequality. Black, Latino, and borrowers with low incomes are less able to draw upon familial wealth to pay for college. They

are more likely than their white and/or higher income peers to take on loans to pay for school.⁴ As a result, Black and Latino families and families with low incomes struggle with disproportionately large student debt balances that take longer to pay off—and when their children go to college, disparate wealth perpetuates the cycle.⁵ The negotiated rulemaking should establish a requirement that the Department both monitor the impact of student loan debt on economic inequality as well as establish a protocol for how to use student loan debt cancellation to increase economic equality.

Combat uneven application of ‘Undue Hardship’ determinations in bankruptcy. The ‘Undue Hardship’ provision for absolving debt in bankruptcy is unnecessarily strict and unevenly administered.⁶ Not to mention, the current guidance for disputes creates perverse incentives for companies contracted to handle cases in the required adversary proceedings because they earn money from fees charged to and commission earned on debt collected from student loans in default. This all adds an extra burden on distressed borrowers. The student loan program was meant to expand opportunities, not force borrowers into undue hardship. Without changing bankruptcy law, the Department could establish a regulatory standard of administrative loan relief for borrowers who face bankruptcy but cannot discharge their federal loans. Moreover, the Department could alter guidance to advise lenders to discontinue the process of contesting claims of undue hardship.

Recognize cities and municipalities as entities that represent the interests significantly affected by the proposed regulations. High student loan debt levels and increasing delinquency have not only caused problems with the day-to-day ability of student loan holders to borrow and save, it has also stymied their ability to invest in their future by building home equity, saving for retirement, opening a business, and making other major life decisions. In the long run, the impact of student debt is not limited to the borrower in the present, it affects future generations as it curtails the ability of parent borrowers to invest in their children’s future, and pass on wealth to the next generation.

As the most populous city in the country, we see the economic damage of student loan debt when we look across our city. We also see that the neighborhoods struggling the most with student loan debt tend to have higher concentrations of groups facing systemic barriers—those with low income, Black and Latino Americans—some of the same groups student loan debt was intended to help. But instead of helping, student loan debt is contributing to the perpetuation of systemic barriers. The City of New York, along with other cities and municipalities, have a vested interest in seeing a resolution to the student loan debt crisis. As such, the Agency sees the negotiated rulemaking as an opportunity for cities and municipalities to represent our interests and the interests of our residents.

⁴ <https://www.demos.org/research/debt-divide-racial-and-class-bias-behind-new-normal-student-borrowing>

⁵ <https://link.springer.com/article/10.1007/s12552-016-9162-0>; <https://equitablegrowth.org/how-the-student-debt-crisis-affects-african-americans-and-latinos/>; <https://heller.brandeis.edu/iere/pdfs/racial-wealth-equity/racial-wealth-gap/stallingdreams-how-student-debt-is-disrupting-lifchances.pdf>; <https://www.newamerica.org/education-policy/edcentral/new-data-show-repayment-gap-between-low-and-high-income-borrowers-wider-realized/>; <https://ir.library.louisville.edu/cgi/viewcontent.cgi?article=1032&context=jsfa>

⁶ <https://scholarship.law.uc.edu/uclr/vol74/iss2/3/>

We strongly encourage you to include representation from cities and municipalities on the forthcoming negotiated rulemaking committees.

Thank you for your time and consideration. Taking into consideration our recommendations above would not only help the nearly 43 million current federal student loan holders and their families, it will be a great step forward in reinstating the promise of higher education as a path to financial security. As you continue to develop the upcoming negotiated rulemaking committees to develop proposed regulations, please consider us as your partner in this process. We welcome the opportunity to discuss these issues further and look forward to providing our input at the upcoming public hearings.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Sandra Abeles". The signature is written in a cursive, flowing style.

Sandra Abeles
Acting Commissioner, New York City Department of Consumer and Worker Protection