
OFFICIAL TRANSCRIPT OF THE
PUBLIC HEARING
CONDUCTED AND SPONSORED BY
THE STATE OF NEW YORK
HIGHER EDUCATION SERVICES CORPORATION (HESC)

DATE OF PUBLIC HEARING: SEPTEMBER 9, 2009

FIRST SESSION: 12:00 NOON TO 2:00 PM

SECOND SESSION: 4:00 PM TO 6:00 PM

HELD AT: THE LEGISLATIVE OFFICE BUILDING
HAMILTON HEARING ROOM B (2ND FLOOR)
ALBANY, NY 12248

MODERATOR: GEORGE KAZANJIAN, ESQ., SENIOR ATTORNEY
NEW YORK STATE HIGHER EDUCATION SERVICES
CORPORATION
99 WASHINGTON AVENUE
ALBANY, NY 12255
518-473-1581
www.hesc.org & www.hesc.com

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Schenectady, New York 12307-1206
Telephone: 518-346-4524**

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LIST OF SPEAKERS

FIRST SESSION SPEAKER:

KRISTINA DELBRIDGE
DIRECTOR OF FINANCIAL AID
EMPIRE STATE COLLEGE

SECOND SESSION SPEAKERS:

ABE LACKMAN
COMMISSION ON INDEPENDENT COLLEGES & UNIVERSITIES

FRANCIS CLARK, COORDINATOR
NEW YORK PUBLIC INTEREST RESEARCH GROUP

JESSICA REID, VICE CHAIR
NEW YORK PUBLIC INTEREST RESEARCH GROUP

KIRSTEN KEEFE, ESQ.
EMPIRE JUSTICE CENTER

1 **INTRODUCTION AND GREETING BY THE MODERATOR:**

2 GEORGE KAZANJIAN, ESQ.: Good afternoon. It is
3 now 12:02, I am ready to begin the public hearing on the proposed
4 rulemaking for the New York Higher Education Loan Program. My
5 name is George Kazanjian, I am a Senior Attorney in the Office of
6 Counsel and Regulatory Compliance at the Higher Education
7 Services Corporation. I will be overseeing today's public
8 hearing regarding HESC's proposed rulemaking implementing this
9 loan program. My role will be to oversee today's hearing to
10 ensure that everyone who has registered to comment is provided
11 with a fair and equal opportunity to do so.

12 Before we begin, I just want to recognize and
13 thank the respective Higher Education Committee Chairs, and their
14 staff, for their ongoing commitment to Higher Education-related
15 issues and their leadership in this area. And a special note of
16 thanks Chairwoman Glick for graciously providing us with the
17 opportunity to use this hearing room here, today.

18 Disruptions in the capital markets have led many
19 lenders to either stop offering their private education loan
20 products, or to tighten their credit criteria for obtaining such
21 loans. As a result, a growing number of New York State students
22 and families are struggling to afford – or to obtain affordable
23 private education loans to fill the gap between college costs and
24 available State and federal student aid.

25 The New York State Commission on Higher Education,

1 in its June 2008 Final Report, recommended the establishment of a
2 state low-interest education loan program to provide students and
3 families with the same range of college financing options
4 available in many other states.

5 Proposed by Governor Paterson in his Executive
6 Budget, and supported by the State Legislature, the New York
7 Higher Education Loan Program was enacted as part of the
8 2009–2010 State budget, to ease the financial burden on students
9 and their families, and ensure that New York's diverse public and
10 independent institutions of higher education remain financially
11 accessible.

12 And in particular, New York State Education Law,
13 section 691 provides that HESC shall have the power, authority
14 and responsibility to adopt rules and regulations to implement
15 this loan program. To that end, HESC proposes to add a new Part
16 2200-a to Title 8 of the New York Codes and Rules and
17 Regulations. To ensure openness and transparency, HESC has
18 posted drafts of the regulation text on its web site,
19 www.hesc.com, since May 29th, for informal public review and
20 comment. Based on comments received, revisions were made and a
21 second opportunity for public comment was provided on a June 19th
22 draft, which was also posted on HESC's web site. A third and
23 final draft which incorporated comments received, and ultimately
24 was submitted by HESC for publication in the *State Register*, was
25 posted in Mid-August for additional public comment and review.

1 The "Notice of Proposed Rulemaking" was published
2 in the September 2nd, 2009 of the *State Register*, and as such,
3 the formal rulemaking process is now underway.

4 The formal forty-five day public comment period
5 expires – closes Monday, October 19th, 2009, and written comments
6 will be accepted at: regcomments@hesc.com.

7 HESC will thoroughly review and respond to all
8 comments submitted by the October 19th deadline, as part of the
9 rulemaking process.

10 Today's public hearing is voluntary, and is part
11 of an ongoing effort by HESC to ensure public input in the
12 development of HELPs regulation.

13 This public hearing has been publicized throughout
14 New York state through a press release distributed to all major
15 daily newspapers, a full week classified advertisement placed in
16 forty-four major daily newspapers, and a notice in the September
17 2nd, 2009 edition of the *State Register*.

18 Today's hearing will consist of two sessions:
19 twelve to two, and four to six. Both sessions will be recorded
20 by a stenographer, and we do anticipate having copies of the
21 transcript available on our web site as soon as practicable.
22 Individuals and organizations presenting comments at today's
23 hearing, and who have pre-registered will be called upon to speak
24 first. All others will be called upon in the order in which they
25 registered here on site.

1 Members of the public are asked to limit their
2 comments to ten minutes. Comments should be limited to the
3 proposed rulemaking. Prepared remarks, written comments and/or
4 other documents may be submitted today, and by email, to
5 regcomments@hesc.com, or included in the record of this hearing,
6 no later than the close of business on September 14th.

7 Keep in mind, today's public will not be a
8 conversation or dialogue, but rather an opportunity for the
9 public to comment on the proposed regulation, and to provide
10 comments aimed at enhancing the proposed regulation. As such,
11 there will not be an opportunity for questions and answers today.
12 HESC will take comments received both at today's public, and
13 written comments submitted, and will respond to all comments
14 received as part of the formal rulemaking process.

15 Thank you all for your participation on today's
16 New York HELP's public hearing. We appreciate your comments and
17 your involvement in this process.

18 As a courtesy, before I call on our first witness,
19 if you could just please silence all cell phones and electronic
20 devices.

21 Do we have anyone wishing to speak? Okay, please
22 come forward to the table, and push the red button there, for
23 your microphone.

24 FIRST SESSION SPEAKER KRISTINA DELBRIDGE:

25 KRISTINA DELBRIDGE: My name is Kristina

1 Delbridge, Empire State College. After reviewing the New York
2 HELP manual, I have concerns. My first is that requirements to
3 have a cosigner. The majority of our students are dependent
4 students, and we feel that exceptions should be made for them.

5 My second concern is that the New York HELPs loan
6 eligibility for dependent students excludes application of the
7 PLUS loan. The PLUS loan interest rate is 7.9% direct, and 8.5%
8 guaranteed, while the New York HELPs loan interest rate is
9 between 7.5% and 8.75%. On the HESC site, it indicates that New
10 York HELPs will likely offer variable interest rates lower than
11 PLUS rates. In the event that the rate – that the rate –
12 [INAUDIBLE] – higher I recommend to the student-parent, that they
13 would be better off with the PLUS loan.

14 Finally, there is concern with student – I am
15 curious to know what volume is expected, and what level of
16 advertising will be done. My main concern is that students who
17 do not otherwise take out traditional loans will see the
18 advertisements, and apply. We need to make sure that efforts are
19 taken to ensure this does not happen. Thank you.

20 GEORGE KAZANJIAN, ESQ.: Thank you. Is there
21 anyone else registered to speak – that would like to speak?
22 Okay. At this time, I guess we will suspend the hearing until
23 either someone comes to speak, or we end two o'clock. So we
24 stand in recess. Thank you.

25 RECESS – OFF THE RECORD (AUDIO STOPS AT 12:12 PM)

1 FIRST SESSION RECONVENES – ON THE RECORD AT 2:00 PM

2 GEORGE KAZANJIAN, ESQ.: Alright. We're back on
3 the record, it's two o'clock. There are no members of the public
4 here who have signed up to speak. We will close this session at
5 2:01 PM, and reconvene at four.

6 [AUDIO STOPS/OFF THE RECORD – END OF FIRST SESSION OF HEARING]

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1 GEORGE KAZANJIAN, ESQ.: Good afternoon. It is
2 now four o'clock, and we will be beginning this final session for
3 today's public hearing regarding the New York state Higher
4 Education Services Corporation's proposed rulemaking implementing
5 the New York Higher Education Loan Program. My name is George
6 Kazanjian, I'm a Senior Attorney in the Office of Counsel and
7 Regulatory Compliance at HESC, and I will be overseeing this
8 afternoon's public hearing. My role will be to oversee the
9 hearing and ensure that everyone that has registered to comment
10 is provided with a fair and equal opportunity to do so.

11 And before we begin, I would like to recognize and
12 thank the respective Higher Education Committee Chair Glick and
13 Chair Stavisky and their staff, for their ongoing commitment to
14 Higher Education-related issues and their leadership in this
15 area.

16 A special note of thanks to Chairwoman Glick for
17 graciously providing us with the opportunity to use the hearing
18 room here today.

19 Disruptions in the capital markets have led many
20 lenders to either stop offering their private education loan
21 products, or tighten their credit criteria for obtaining such
22 loans. As a result, a growing number of New York State students
23 and families are struggling to obtain affordable private
24 education loans to fill the gap between college costs and
25 available State and federal student aid.

1 The New York State Commission on Higher Education,
2 in its June 2008 Final Report, recommended the establishment of a
3 - State low-interest education loan program to provide students
4 and families with the same range of college financing options
5 available in many other states.

6 Proposed by Governor Paterson in his Executive
7 Budget, and supported by the State Legislature, the New York
8 Higher Education Loan Program was enacted as part of the 2009-10
9 State budget to ease the financial burden on students and their
10 families, and ensure that New York's diverse public and
11 independent institutions of higher education remain financially
12 accessible.

13 New York State Education Law section 691 provides
14 that HESC shall have the duty and authority to adopt rules and
15 regulations to implement this program. To that end, HESC has
16 proposed a Subchapter D, Part 2200-a to Title 8 of the New York
17 Code of Rules and Regulations to implement this program.

18 To ensure openness and transparency, HESC has
19 posted drafts of the regulation text on its web site, since May
20 twenty-ninth, for informal public comment and review. Based on
21 comments received, revisions were made and a second opportunity
22 for public comment was provided for the June nineteenth draft,
23 also posted on HESC's web site. A third and final draft which
24 incorporated all comments received, and which ultimately was
25 submitted by HESC for public in the *State Register* was posted in

1 mid-August for public comment and review.

2 The "Notice of Proposed Rulemaking" was published
3 in the September 2nd, 2009 edition of the *State Register*. And as
4 such, the formal rulemaking process is now currently underway.

5 The formal forty-five day public comment period
6 expires on the close of business Monday, October 19th, 2009.
7 Written comments will be accepted at regcomments@hesc.com.

8 HESC will thoroughly review and respond to all
9 comments submitted by the October nineteenth deadline as part of
10 the rulemaking process.

11 Today's public hearing is voluntary, and is part
12 of an ongoing effort by HESC to ensure public input in the
13 development of the New York HELPs regulation.

14 This public hearing has been publicized throughout
15 New York State, through a press release distributed to all major
16 daily newspapers, a full week classified advertisement placed in
17 forty-four major major daily newspapers, and a notice in the
18 *State Register*.

19 This is the second and final of two sessions for
20 today's public hearing, which will run from four until six. Both
21 sessions have been, and will be recorded by a stenographer. HESC
22 anticipates having copies of the transcript available in its web
23 site as soon as practicable. Individuals and organizations
24 presenting comments at today's hearing, and who have pre-
25 registered, will be called upon to speak first. All others will

1 be called upon in the order in which they registered here on
2 site. Members of the public are asked to limit their comments to
3 ten minutes, if possible. Comments should be limited to the
4 proposed rulemaking. Prepared remarks, written comments, and-or
5 other documents may be submitted today, and by email, to
6 regcomments@hesc.com, for inclusion in the official transcripts
7 of this - today's proceedings, no later than the close of
8 business on September fourteenth.

9 Keep in mind today's public hearing will not be a
10 dialogue and conversation, but rather an opportunity for the
11 public to comment on the proposed regulation, and to provide
12 comments aimed at enhancing the proposed regulation. As such,
13 there will not be an opportunity for questions and answers today.
14 HESC will take the comments received both at today's public
15 hearing, and any written comments received, and will respond to
16 all comments received as part of this rulemaking process.

17 Thank you all for your participation in today's
18 New York HELPs public hearing. We appreciate your comments and
19 your involvement in the rulemaking process.

20 And, before we go on our first speakers, just as a
21 housekeeping measure, please silence your cellphones and
22 electronic devices.

23 With that, I will turn it over to Mister Fran
24 Clark. Please be sure to push that button.

25 SECOND SESSION SPEAKER JESSICA REID:

1 JESSICA REID: Good afternoon. My name is Jessica
2 Reid. I am a senior at the University at Albany, a TAP recipient
3 and a student loan borrower. I am also vice-chair of the New
4 York Public Interest Research Group's statewide Board of
5 Directors. With me today is Fran Clark, our Program Coordinator.
6 Fran coordinates higher education program at our campus chapters,
7 and leads our higher education advocacy.

8 NYPIRG is New York State's largest student-
9 directed non-partisan research and advocacy organization. We
10 teach organizing, research and communication skills, and provide
11 students with opportunities to learn while working on issues like
12 the environment, consumer rights, and voter registration
13 mobilization. We are also deeply concerned about higher
14 education issues, so I thank for the opportunity to make a few
15 comments about NYHELP.

16 Here in our allocated time, I will discuss our
17 broad concerns about the way NYHELP is structured and how it
18 might interact with the federal PLUS loan program, and Fran will
19 then zoom in on some of the details of the program.

20 From a borrower's perspective, NYHELP has a built-
21 in problem: conflicting interests between the bond issuers and
22 investors, on one hand, and on the other hand borrowers. Funding
23 a state-sponsored student loan program with annual bond issues,
24 carries a high risk of unfriendly loan terms, because many of the
25 borrower protections that might make the state-sponsored loans

1 superior to private loans would also affect the marketability of
2 the bonds. When students get better terms, investors earn less
3 money or sacrifice cash flow. This is a real problem for us, as
4 it means that borrowers don't get the protection that they
5 deserve.

6 Providing a safe, low-cost alternative to the
7 pricey private student loans is an admirable objective, but
8 NYHELP, as it is currently structured, will fall short of that
9 goal. We worry that these proposed regulations were heavily
10 influenced by your efforts to court the bonds rating agencies.
11 The few consumer protections that are built into the proposed
12 NYHELP regulations are made subject to the approval of the public
13 benefit corporation. What's more, interest rates, fees, credit
14 requirements, the definition of "adverse credit" and other
15 important details are not codified in the regulations,
16 presumably, to avoid locking terms that might spook bond rates
17 now, or at sometime in the future.

18 In general, we believe that HESC should write a
19 greater detail into the NYHELP regulations, and provide for a
20 more equitable balance between borrowers and investors.

21 The regulations should be changed to ensure
22 crystal-clear disclosure of PLUS loan availability to potential
23 borrowers. In section 2200-a.2, regarding borrower eligibility
24 requirements, should require that the web-based financial
25 literacy course viewed by student and non-student borrowers

1 should inform potential borrowers that student-parents may be
2 eligible for more friendly terms via PLUS.

3 Section 2200-a.6: Regarding application and
4 solicitation content should require HESC's Student Loan
5 Marketplace to provide a conspicuous disclosure informing
6 potential borrowers that a student's parents be eligible for more
7 friendly terms via PLUS. That disclosure should appear on the
8 same screen as the preliminary instant loan recommendation
9 provided by Marketplace to the potential borrowers.

10 Section 2200-a.17: Regarding disclosure
11 requirements for participating lenders, should be changed also.
12 In addition to requiring the private education loan disclosures
13 called for in the Truth in Lending Act, this section should also
14 require that potential borrowers be well-informed, and the
15 student-parents be eligible for more friendly terms via PLUS.

16 Each of these disclosures should also inform
17 potential borrowers that when a parent applies for PLUS and gets
18 rejected, a floodgate opens, and their child becomes more
19 eligible to borrow an addition twenty-six-point-seven thousand
20 dollars.

21 If the Federal Family Education Loan (FFEL)
22 program still exists when NYHELP gets up and running, disclosures
23 should also inform potential borrowers that federal regulations
24 allow FFEL lenders to set more stringent credit criteria for PLUS
25 loans, and borrowers, than the federal Direct Loan program. A

1 recent study found that denial rates for potential PLUS borrowers
2 in the FFEL were almost double the denial rates for potential
3 PLUS borrowers in the DL program.

4 Now, I'll turn it over to Fran, go into more
5 specifics.

6 SECOND SESSION SPEAKER FRANCIS CLARK:

7 FRANCIS CLARK: So, obviously we think there
8 should be some additional consumer protections built in to the
9 program. Again, I'm concerned that the way it's structured,
10 makes that hard to do, and HESC is essentially performing a
11 balancing act, rather than creating a - you know - protection.

12 Before I get into the details, we do want to
13 acknowledge that through the course of this process, there has
14 been - there has been some progress, it was - some additional
15 protections built in, speaking of course to the issue of
16 forbearances, and an Income Sensitive Repayment option. We're
17 glad to see those options added, but we're worried that they can
18 be undone by phrase that peppers the regulations, and that's -
19 quote - subject - I just lost the quote - but you know what I'm
20 talking about - "subject to the approval of the public benefit
21 corporation" - that one short phrase could end up costing
22 students dearly, in - over time. Here are a list of proposed
23 changes within the program we think should be made:

24 One: Establish a reasonable interest rate cap. A
25 25% interest rate cap is so high as to be meaningless, as far as

1 we're concerned. HESC has, in some of the materials, they've
2 used to explain the programs, suggested that the interest on
3 NYHELPS might be the London Inter-Bank Offer Rate plus four or
4 five percent. We took a look at the LIBOR rates over time, and
5 in tables going back to 1989, and over that time, LIBOR never
6 really got - never got higher than 9.125 - the three month LIBOR.
7 So, if you take 9.125, and add a margin of four or five percent,
8 we're looking at 14.125%. Even if you take 10.7% as a margin,
9 which is what the Student Lending Analytics reported as the
10 average margin on private loans, in June of this June - you still
11 end up with 19.825, so, twenty-five percent is so high, it'll
12 never ultimately protect a student, should market conditions
13 change. We know there has to be a need to protect the borrower -
14 the investors' interest, we know you have to earn more on the -
15 in paying them, but you - but there has to be some real
16 protection there.

17 Next up: Forbid forbearance fee - fees for
18 forbearances and their recommended deference. The regulations
19 allow for fees for forbearances, with the approval - of course,
20 we would urge you to never approve them, but, the regulations
21 should explicitly forbid them. The statute creating the program
22 doesn't say anything about forbearance fees. Looking at the
23 regulations for federal student loans, they're not as good among
24 the list of fees that they can charge students. Private lenders
25 charge them - looking around, we want to see what we can find, we

1 see the Sallie Mae charges up to a hundred and fifty dollars,
2 fifty dollars per instance of forbearance, up to one-fifty. But
3 we're differentiating themselves from private lenders is the
4 better alternative, this is one real way to do that.

5 Next up: Allow unemployment and economic hardship
6 deference. The possibility, and here's where - of forbearance -
7 in three month occurrence - might not be enough for some New
8 Yorkers. There have - so - up to now, there have been three
9 rounds of legislation, two federal, and one State, that has
10 expanded unemployment insurance benefits to New Yorkers who are
11 long-term unemployed. As of now, an unemployed New Yorker can
12 receive up to seventy-two weeks of unemployment insurance in New
13 York's three month average unemployment rate exceeds 6.5, and up
14 to seventy-nine, when it exceeds eight percent, as it did in
15 June. Looking at the State Department of Labor figures, seventy-
16 six thousand and some change, that's how many New Yorkers are
17 receiving this expanded State unemployment insurance. And,
18 they've been unemployed for more than fifty-nine weeks.

19 Now, I know that - that those numbers don't reveal
20 how many of those people are student loan borrowers, but, we
21 think they are telling, and we think there will be, especially in
22 an economy like this, a need for longer term relief than a
23 forbearance can - than forbearance can offer. If the program can
24 sustain up to nine years' worth of deferment, for in-school
25 students, including internships, and, almost seemingly indefinite

1 deferments for folks in active military duty, there's no time
2 limit there at all, then there ought to be something that - some
3 way to build in some additional deferment.

4 Next up: And, so to keep bond raters -
5 [INAUDIBLE] - don't worry.

6 Next up: Allow an option for extended repayments
7 when a student or when a student or a borrower uses forbearance
8 when income sensitive repayment option. The regulations
9 explicitly state that neither of those options can increase the
10 length of the repayment period. We recognize that's good and
11 bad, we know a longer term means more - means a higher overall
12 cost to a student borrower, and, coincidentally, protects the
13 cash flow of the investors, but, there are gonna be students who
14 end up in circumstances where that's a problem.

15 For instance, if you end up unemployed, and you're
16 unfortunately gonna have to enter into forbearance, a year's
17 worth of forbearance in the ninth year of repayment - here's an
18 example - just using some numbers that we crunched from the - the
19 loan calculator - [INAUDIBLE] - if you're borrowing twenty-five
20 thousand dollars, and that's half the average - and - you got an
21 eight percent interest rate, and a ten year repayment plan - if
22 you qualify for a twelve month forbearance, you're gonna have to
23 make up a year's worth of payments, which is \$3,831, and a little
24 bit of change. If you qualify for that - if you're unfortunate
25 enough to request that in the ninth - for the ninth year of

1 repayments, and you get it, you have one - you have your tenth
2 year to make up the difference, with no additional. The fact
3 that doubles your payments to more than \$660.00 per month.

4 Now, obviously the - it's gonna be hard to get it,
5 but, if you're in need of that forbearance, or those income -
6 those income-sensitive payments, there might - there may be some
7 instances where there's a need for expanded payments.

8 Next up: Only a few left. Bring discharges for
9 death and permanent total disability in line with the federal
10 regulations. So the federal regulations on student loans - this
11 - as - as you're aware, require that a - that a loan be
12 discharged if an individual borrower dies, or, if the student
13 from a PLUS loan is taken out of class. They go on to state
14 explicitly that the lender can't attempt to create - to collect
15 on that obligation from the borrower's estate, or from a
16 cosigner. Permanent and total disability regulations work
17 similarly when they apply to the borrower. NYHELPS with those
18 regulations, offer protection. A borrower or cosigner's
19 obligation to repay NYHELP can be discharged only if the student
20 dies or meets the PTD criteria, while they're enrolled, or have
21 been accepted as a student for enrollment. The parent or another
22 non-student co-borrower passes away, or meets the PTD criteria,
23 at any time, they're ineligible - they're - they can't - they
24 can't be forgiven - or - it can't be - discharged - their estate
25 isn't - their estate isn't protected. We think you should bring

1 this - these should be brought closer in line with federal
2 regulations. Since the discharged loans are paid out of NYHELP's
3 default reserve fund, we recognize that this complicates matters,
4 and that whenever you expand the discharge policy, you're putting
5 pressure on the - on that - that credit enhancement - we get that
6 - but nonetheless, we think that some broadening of the death and
7 PTD policy would be necessary and compassionate. At the very
8 least, HESC should prioritize expanding the death and PTD
9 discharge policy to ease the burden when a parent passes away
10 during the - the student's enrollment in school. This will -
11 discharging a parent borrower, where there's a loan repayment
12 obligation, under these circumstances, would ensure and would
13 help assure that the college student stay enrolled in college.
14 That's a smaller expansion than the full expansion out to the -
15 to meet the borders of the federal program, but it's a
16 compassionate one, and it's one that will make a difference for a
17 number of students.

18 Next up, and finally: Protect borrowers from
19 undue and burdensome wage garnishment. Advocates have criticized
20 administrative wage garnishment in general - due process -
21 because they feel a lot - lacks due process and the due process
22 requirements that are built in there, they aren't expanded over
23 time - are often times poorly enforced. Setting those, the
24 fundamental issues aside, the NYHELP's proposed regulation - the
25 NYHELPS regulations regarding wage garnishment have oteher

1 issues. They may allow for too large garnishment of very - very
2 low income borrowers' pay. Federal student loan regulations
3 allow for a garnishment of the lesser of fifteen percent of a
4 borrower's disposable pay, or, the amount by which a borrower's
5 disposable pay exceeds thirty times the federal minimum wage.
6 Both programs define disposable pay exactly the same. This
7 guarantees that \$217.00 a week is protected for a low borrower,
8 protected from garnishment. NYHELPS has a fifteen percent, but
9 it doesn't have - it doesn't have - that - that limit of thirty
10 times - thirty times the minimum wage.

11 Second, in the same area, the proposed regulations
12 don't offer a hardship defense - in a similar way to what the
13 federal regulations do. The federal regs allow you to - they
14 allow hardship as a - as a defense for the way they charge - the
15 borrower can object to a proposed amount, on the grounds of
16 withholding - will - the withholding would cause financial
17 hardship for them and their dependents - then at the hearing,
18 there's now a - I think there's a three year conditional, or a -
19 you know - a six month - there's some conditional built-in
20 waiting period before they get their hearing in most instances.
21 But they get a hearing to prove hardship - their garnishment can
22 be changed. Some sort of built-in protection that allows some
23 process when the - when - the - when limits built in to the
24 regulations don't fit a particular family's situation would be
25 helpful - would certainly be helpful.

1 So, in closing, we are concerned about built-in
2 need to protect investors' interest, it comes with any bod funded
3 loan program, and we worry that it will make it very - it'll be
4 hard for - the larger safeguards we would like to see, or codify
5 important details like interest rates, et cetera, and we - we
6 think there might be some needs for change in the statutes
7 governing NYHELP - and we worry about the financing. But, we do
8 think there are some changes to be made, even within the confines
9 of - [UNINTELLIGIBLE] - so that's where - [UNINTELLIGIBLE] -

10 GEORGE KAZANJIAN, ESQ.: Thank you.

11 FRANCIS CLARK: Alright. Thank you.

12 GEORGE KAZANJIAN, ESQ.: Our next speaker, Abe
13 Lackman.

14 SECOND SESSION SPEAKER ABE LACKMAN:

15 ABE LACKMAN: Hello. Thank you having me, and
16 CICU here for testimony. I have with me Sheila C. Seery
17 who is the Vice President for State Relations and Policy at
18 CICU. I have testimony, but I'm going to try to speak
19 broadly on the issue of New York HELPs, and the opportunity to
20 talk about New York HELPs and, to offer some suggestions on
21 regulations.

22 Let me start off saying from the perspective of
23 CICU, I represent a hundred and twelve private not-for-profit
24 colleges and universities in New York. It always comes as a
25 little bit of a surprise to people that New York private and

1 not-for-profits are actually larger than the publics - we have
2 the largest concentration of private not-for-profit college
3 students - 460,000, which is not only the largest concentration
4 in the United States, but is also the largest concentration in
5 the world. We are an extraordinarily vibrant sector. We - we've
6 been a very very vibrant sector for the last twenty years - in
7 1990 our enrollment was three 390,000 students, and today, we're
8 460,000. Having said that, there's always apprehension in terms
9 of what the future brings, both for higher education in general,
10 but also very specifically, for the private not-for-profit sector
11 in New York. I was fortunate to be asked to serve on the
12 Commission of Higher Ed, two years ago, I served with both the
13 Chancellor of the SUNY system, the Chancellor of the City
14 University System, the - the - Commission was chaired by Hunter
15 Rawlings, who was the previous president of Cornell, had been
16 asked by Governor Spitzer to try to - do a blueprint for higher
17 education in New York for the next decade - with a particular
18 emphasis, but not an exclusive emphasis on the - [INAUDIBLE] -

19 We had numerous hearings around the State - we
20 brought in expert witnesses from other parts of the country - we
21 brought in expert witnesses from the financial community. And we
22 issued a report that had, I'd say, fifteen key recommendations.
23 And I will - I'm gonna focus in on the top three key
24 recommendations that Rawlings commission.

25 The first key recommendation was to create a three

1 billion dollar innovation fund for technologies and research that
2 would help stimulate New York's economy. The second key
3 recommendation was to do a significant increase in funding for
4 the public's - particularly the SUNY system, to try to get them
5 to a level to start to approach the system in California and
6 North Carolina. And the third key recommendation, and I don't -
7 and I don't use this lightly, because they were the top three
8 recommendations, was to create a low-cost student loan program.

9 During the testimony that we took, and numerous
10 public hearings, we became aware that New York was the only large
11 urban state, and one of only a handful of states that did not
12 have a program to help its students, both public and private,
13 access loan funds at a low interest rate. And, we thought this
14 put New York's students, and New York families at a significant
15 disadvantage, and one of the states we looked at as a model, when
16 we had these discussions on the student loan program, was the
17 state of Texas, which is offering these students a fixed low-cost
18 student loan program, with interest rates as low as six percent.
19 So, we made that as one of our top three recommendations, and
20 quite apparently, what - you know - hindsight, this
21 recommendation is made prior to what would call the meltdown on
22 Wall Street - almost a total seizure of the loan market, not only
23 for student loans, but also for housing loans, commercial loans,
24 we were in a period at the end of 2008 where major parts of our
25 credit markets were frozen, and activity was coming to a

1 standstill, and banks that we took as household names we were -
2 people were scared that they - that their deposits were not even
3 safe.

4 So, we thought - you know - and - in that
5 environment, which was an environment of extraordinary stress -
6 you know - representing private not-for-profit universities - we
7 thought it was a singular act of courage by the Governor -
8 Governor Paterson, to say our budget, and our state is in
9 extraordinary fiscal distress, however, we feel there was one
10 program that did not have a large cost, in terms of the State
11 budget, but would have the potential to help hundreds of
12 thousands of students get a college education, and now is the
13 low-cost student loan program which he deemed the New York HELPs
14 program.

15 And I remember - you know - when the commission
16 met with the governor, and when he told us that he was gonna
17 advance the low cost student loan program - he gave an
18 extraordinarily powerful story. And the story he gave was that
19 during the height of the Civil War, that, this is even prior to
20 the north having won any of the battles, Abraham Lincoln advanced
21 the Morrill Act, which created all the land-grant colleges and
22 universities in the country. And that, in many ways, even when
23 the economy is very very tough, there has to be a message of hope
24 to families, and to students, that one of the great equalizers,
25 and one of the great forces for good in our society is a college

1 education. Having said that, and we're all very aware that in
2 this environment, families are incredibly strapped, in terms of
3 their budgets, we have an unemployment rate that is now
4 approaching ten percent, it's going to be the highest
5 unemployment rate, at least in three decades - we have seen the
6 families wealth, and it's in the testimony, we have seen a whole
7 decade of families' wealth disappear. The wealth - household
8 wealth in the United States today is now - it's back to the level
9 in 1998 - we have lost a whole decade of family wealth.

10 And then, I talked to my financial aid offices,
11 and I hear there are less lenders - there are less lenders
12 available, obviously the most single most important lender - and
13 at the best interest rates today, for families, is the federal
14 government, through the - Stafford Loan Program, whether it's the
15 FFEL program, the direct lending program, and I know there's a
16 debate in Congress today, in terms of how do we shape that - but
17 for many, many families, that federal - subsidized federal loans
18 are not enough in terms of being able to afford a college
19 education, and that you have to then go into the secondary loan
20 market, or private loans, enable to finance a college education.

21 But, CICU was an active participant in advocating
22 to the Legislature - you know - I, as the head of CICU as a
23 member again of the Rawlings Commission, and pushed very hard for
24 the low cost student loan program, and, when Governor Paterson
25 proposed the program, I, with HESC, would meet almost daily with

1 elected officials to say this is a good program, and, one of the
2 key, you know, just for the record, one of the key moments in
3 that debate, in terms of enacting the student loan program, at a
4 time when again, many-many private banks were dropping out of the
5 market, was a front page article in the *New York Times*, and I
6 forgot the exact date, that said - and it was a little bit of a
7 surprise, the *New York Times* had done a pretty large article,
8 saying that as less and less lenders were making funds available
9 for student loans, there was a perception - there was a
10 perception that the first casualty of that were gonna be students
11 at my private not-for-profit colleges whether it's Colgate,
12 Union, Marist, Columbia - and the *Times* said that ironically,
13 that with the drying up of private student loan capital, the
14 single - the sector that was being most hurt, was actually the
15 community college students, and they said that, because their
16 analysis showed that banks said that the loan volume, and the
17 loan balances at the community colleges were significantly less
18 than the public four-years, or the private four years, so the
19 profit margin that the banks were making was lower at the
20 community colleges, and that that was actually the first market
21 that they were pulling out of.

22 And I remember and - that the president of Borough
23 Community College did an op-ed with the president of Pace
24 University, and that op-ed ran in the *Times Union*, saying that
25 this issue - as to low cost student loans, was critical both for

1 the publics and the privates, and was critical for the two years,
2 as well as the four years. So - and - and then I also overlaid
3 on that - you know - I'm constantly in contact with the -
4 financial aid offices in my college - and I'm also always hearing
5 horror stories, that unsuspecting families would sometimes be
6 facing private loans, in order to get through college, that would
7 start to approach thirty percent, which from my viewpoint is
8 totally usury, and it puts an extraordinary burden on families to
9 get a college education.

10 And so, I think one of the really extraordinary
11 features of the bill that was enacted by the Legislature, was the
12 feature that would have a fixed rate program, that as we
13 understand it, will probably and obviously, depending on market
14 conditions, be somewhere between seven and a half and eight and a
15 half percent. My own personal view is that with interest rates
16 as low as they are, I'm hoping HESC can actually get the rate
17 below seven and a half percent. I would much rather see a rate
18 that approaches that, which what we see - let's say the State of
19 Texas - with a fixed rate loan is at - is in the neighborhood of
20 six percent. But obviously that would depend on (A) market
21 conditions, and (B) what borrowing confidence.

22 We really do not have a lot of technical
23 observations on the program. We just think it's A) critical that
24 we get this program up and running, we think it's critical,
25 because we're still in an economic environment - and an economic

1 climate where there's an enormous risk for students and families,
2 that capital will dry up. And then, I think this program by
3 Governor Paterson, is a major step forward to making certain that
4 capital is available, so, I know it's not often that you hear
5 testimony where the basic message that we have, is we really just
6 want to say thank you, and we really want this program up and
7 running as fast as possible. We clearly want it to be available
8 for the spring semester, for both the students at the public and
9 private universities. And, we want a fixed interest rate, as low
10 as possible, given the fiscal parameters. You know, we're hoping
11 that when the dust settles, and this program is up and running,
12 we will see an interest rate below seven and a half percent.

13 So those are our really - we have a few other
14 issues - which is in our testimony, which I would say are more of
15 a technical nature, not say they're not important - I know there
16 have been some questions raised about some caps on the variable
17 rates. We think those are legitimate questions - but I think the
18 key in this program, given all the economic uncertainty, is
19 really gonna be the setting of the fixed interest rate on the
20 fixed side of what the program is, which is, I think as I
21 understand it, \$350,000,000.00 per year for a number of years, on
22 fixed rate, and a combo rule now, on variable rate. At that
23 point, I'm just gonna - you know - you have my testimony, I'd be
24 more than happy if you had any questions, otherwise, that is my
25 testimony.

1 GEORGE KAZANJIAN, ESQ.: Thank you. Thank you
2 very much. Come on down.

3 SECOND SESSION SPEAKER KIRSTEN KEEFE, ESQ.:
4 KIRSTEN KEEFE, ESQ.: Waiting to be called -
5 sorry -

6 GEORGE KAZANJIAN, ESQ.: Come down. Now you've -
7 state your name, and then, have at it - thank you.

8 KIRSTEN KEEFE, ESQ.: Great. So, first of all, I
9 just want to thank you very much for the opportunity to comment
10 on the proposed New York Higher Education Loan Program, and its
11 regulations. My name is Kirsten Keefe, and I am a Senior Staff
12 Attorney at the Empire Justice Center in our Consumer Law Unit.

13 Empire Justice Center is a statewide legal
14 services organization with offices in Albany, Rochester, White
15 Plains, and Central Islip on Long Island. We provide support and
16 training, with legal services in other community based
17 organizations, - [INAUDIBLE] - policy, research, and analysis,
18 and engage in legislative and administrative advocacy. And we
19 also represent low income individuals, as well as classes of New
20 Yorkers, in a wide range of areas, including consumer law. This
21 testimony is presented, also on behalf of the Neighborhood
22 Economic Development Advocacy Project, which is called NEDAP.
23 NEDAP is a nonprofit, resource and advocacy center that works
24 with community groups, and New York City's low income
25 neighborhoods, in - and in communities of color.

1 NEDAP promotes economic justice, and works to
2 eliminate discriminatory economic practices that harm
3 communities, and perpetuate an inequality and poverty. Through
4 its Consumer Law Project NEDAP works directly with low income New
5 Yorkers who are struggling with credit and debt issues, including
6 student loan debt. NEDAP and Empire Justice wanted to testify
7 today, because we are very concerned that NYHELPS lacks key
8 consumer protections. We appreciate that the State of New York
9 wants to help students finance higher education, however, we fear
10 that low income New Yorkers who receive loans through NYHELP, and
11 later become disabled or have difficulty finding employment, will
12 be harmed by this program. It is essential that the Higher
13 Education Services Corporation strengthen the program to provide
14 better consumer protections for borrowers.

15 The NYHELPS Q and A, which was issued in February
16 of 2009 promised that the NYHELPS loan repayment and cancellation
17 options mirror the federal student loan program, and that
18 borrower protections will be provided in the regulation.
19 Unfortunately, the ultimate regulations fall far short of the
20 federal standards. We believe that NYHELP's regulations place
21 the interests of investors over those of borrowers. Without
22 stronger protections, NYHELP's loans may do more harm than good,
23 especially to low income New Yorkers.

24 NEDAP and Empire Justice urge HESC to amend the
25 regulations in the following key areas, and there are six of

1 them:

2 First, administrative wage garnishment. Federal
3 law provides for administrative wage garnishment, fifteen percent
4 of disposable income. But the borrower's disposable income
5 should not fall below thirty times the minimum wage per week.
6 NYHELP provides for garnishment fifteen percent of disposable
7 income without absolutely no floor. Also, NYHELP's regulations
8 do not specifically state that a borrower can request to be
9 garnished at a lesser rate, on the grounds of any financial
10 hardship. HESC should amend the administrative wage garnishment
11 provisions, so that they parallel federal law.

12 Second: The disability and death - and death
13 discharge. NYHELP's regulations provide for disability and death
14 discharge only if disability or death occurs while a student is
15 actually enrolled in school. There is no discharge if the death
16 or disability begins during the repayment period. Also, there is
17 no discharge for co-borrowers whatsoever. Very few people
18 qualify for this discharge. Federal law allows for death and
19 disability discharge at any point within the repayment period.
20 NYHELP should provide for a death and disability discharge that's
21 equivalent to that provided by federal law.

22 The third point regarding rehabilitation. Federal
23 law provides for rehabilitation, and cap out of default.
24 Rehabilitation allows borrowers to escape punitive debt
25 collection procedures, and to improve their credit reports, as

1 well as to qualify for additional federal loans. NYHELP
2 completely lacks a cap out of default. NYHELP's regulations
3 should allow students to rehabilitate defaulted loans, as is
4 provided for in federal programs.

5 The fourth point: No flexible payment options.
6 NYHELP's regulations provide for extremely limited forbearance
7 and income-sensitive payment options. None of these options
8 extend the term of the loan. Thus, the borrower who loses the
9 job, and needs forbearance, will come out of the forbearance
10 facing extremely high and unaffordable monthly payments. A
11 borrower who loses a job twice during the repayment period, is
12 out of luck altogether. Only one forbearance period is allowed.

13 Federal loans in contrast offer a myriad of
14 flexible repayment options, and in fact, the federal government
15 has significantly increased the payment options, in the last
16 decade, and found that to be beneficial to them. Considering the
17 job options available to graduating students, especially in the
18 current economy, is unconscionable that NYHELP fails to provide
19 more flexibility to low income borrowers.

20 Fifth: No fraud or school-based discharge.
21 NYHELP's loans may be used to pay tuition at private proprietary
22 trade schools. These schools often offer sham education, that is
23 of no benefit to the enrolled student. NEDAP's Consumer Law
24 Hotline receives numerous calls from low income New Yorkers, who
25 have been scammed by trade schools and left holding the federal

1 student loan bill. These students already deprived of a
2 legitimate education, are often unable to repay their loans, and
3 consequently unable to qualify for additional loans that they can
4 go - so that they can go to a legitimate school, such as a public
5 community college. I just have to comment - my favorite sham
6 school that I ever dealt with a correspondent typewriting school,
7 for which you did not get a license.

8 Federal programs provide for closed school, false
9 certification, and unpaid refund discharge of student loans.
10 NYHELP should offer school-based loan discharge, as in the - as
11 is provided for in the federal programs. And in the alternative,
12 or in addition, HESC should not allow students to use NYHELP's
13 loans at private, proprietary trade schools, and instead, loans
14 should be available only for use at legitimate, public, or
15 nonprofit educational institutions.

16 And finally, NYHELPS and PLUS - NEDAP and Empire
17 Justice agree with, and endorse NYPIRG's testimony with regard to
18 the relationship between NYHELP and PLUS Loans. We agree that
19 students should be required to exhaust PLUS availability, before
20 turning to NYHELPS. And - its requirement that aids students by
21 enabling some of them to file - increased federal Stafford loans,
22 which are far better than NYHELP's loans. At the very minimum,
23 students should be offered clear disclosures with regard to the
24 availability of PLUS loans.

25 In conclusion, NEDAP and Empire Justice are

1 concerned that the NYHELP's regulations as currently drafted,
2 actually undermine low income New Yorkers who are seeking to
3 improve their education and job prospects. We strongly urge HESC
4 to amend the regulations to add the basic borrower protections as
5 outlined below. Thank you.

6 GEORGE KAZANJIAN, ESQ.: Is there anyone else who
7 has signed up to speak? Anyone else want to say anything? Okay,
8 at the moment, it is now - 4:47 PM. We will suspend the hearing
9 until someone appears, or, six o'clock. So, at the moment, we
10 will be in recess. Thank you.

11 RECESS - OFF THE RECORD (AUDIO STOPS AT 4:47 PM)

12 SECOND SESSION RECONVENES - ON THE RECORD AT 6:00 PM

13 GEORGE KAZANJIAN, ESQ.: Alright. We're back on
14 the record, it is six o'clock. There are no further members of
15 the public here to provide public comment. As such, the hearing
16 is closed. Thank you.

17 [AUDIO STOPS/OFF THE RECORD - END OF SECOND SESSION OF HEARING]

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