NEW YORK LEGAL ASSISTANCE GROUP

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Written Testimony of Eileen Connor and Jennifer Magida, Senior Staff Attorneys at the New York Legal Assistance Group, in Response to the Notice of Establishment of Negotiated Rulemaking Committees and Public Hearings, 78 Fed. Reg. 22467 (April 16, 2013).

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I. Introduction

This testimony is submitted on behalf of the New York Legal Assistance Group ("NYLAG"), a non-profit organization located in New York City. Founded in 1990, NYLAG provides free legal services to low-income New Yorkers who cannot afford legal representation. NYLAG offers a comprehensive range of legal services such as direct representation, advocacy and impact litigation to a wide variety of clients including immigrants, families facing foreclosure and eviction, low-income consumers, persons with disabilities, victims of domestic violence, and many others in need of free representation.

Through NYLAG's consumer projects, which include a financial counseling unit and a partnership with the New York City Department of Consumer Affairs Office of Financial Empowerment (OFE), as well as NYLAG's ongoing collaboration with other consumer advocacy groups in New York City, NYLAG attorneys have spoken with a numerous students who attend or attended for-profit schools and now face high student debts and no prospect of employment. These students are low-income, and more likely to be foreign-born, of color, and supporting dependents, than students at non-profit or public schools. In 2013, NYLAG established the For-Profit Schools Project, "FPSP," an initiative of NYLAG's Special Litigation Unit, to address the myriad problems faced by students of for-profit schools in New York City. The FPSP is exploring ways to encourage and strengthen government oversight of for-profit schools and to provide individual and systemic relief to students suffering from debts that they are unable to pay.

We appreciate the opportunity to provide comments to the Department of Education ("the Department") and seek to highlight the drastic effect of student debt coupled with bleak employment prospects for students of for-profit schools. We ask that the Department work to alleviate this increasing problem and support students and borrowers by promulgating comprehensive regulations and by penalizing schools that abuse the system and prey on particularly vulnerable populations, those which NYLAG serves on a daily basis. We also ask

that the Department expand relief to student borrowers who have been harmed by past practices of this sector.

II. The For-Profit Post-Secondary Sector in New York City

There are hundreds of for-profit schools in the state of New York, and almost two-thirds of those schools operate within the greater New York City Metropolitan area. NYLAG serves hundreds of clients a year who have attended for-profit schools and have little to nothing to show for it except for insurmountable debt. There is a pressing need for vigorous federal oversight, and reliance on oversight at the state level is insufficient to ensure the integrity of federal student loan programs. As discussed below, New York's regulatory structure and limited resources and attention dictate that little is done to effectively protect New York City residents and necessitate increased federal action.

In New York, non-degree granting for-profit schools are overseen by a division within the State's Department of Education known as the Bureau of Proprietary School Supervision (BPSS). BPSS enforces Article 101 of the Education Law, which imposes special requirements on for-profit certificate-granting schools, including requirements for admission, standards of instruction, enrollment caps, recruiting activities, and form and content of the student enrollment agreement and catalog. During the mid-1990s, BPSS had a staff of over 40 to oversee 300 schools. Today, the staff numbers only 20, and is expected to oversee 500 schools, with another 100 to 150 pending review. The reduced staff has significantly diminished the agency's ability to investigate and respond to student complaints, and to exercise meaningful oversight. Records obtained by NYLAG through freedom of information requests indicate that between January 1, 2009 and July 1, 2012, BPSS received close to 1000 complaints from students concerning for-profit schools. It took an average of over 250 days for BPSS to resolve each complaint.

Specifically exempted from Article 101, and the enforcement jurisdiction of BPSS, is any school (even if for-profit) that is authorized to confer degrees, including associate degrees. These schools are under the jurisdiction of the Office of College and University Evaluation (OCUE). Neither BPSS nor OCUE is effective in overseeing the sector, but the failures of OCUE, which exercises weaker enforcement and oversight, are particularly alarming.[1] Of the 51 proprietary schools reporting cohort default rates for locations in the New York City area, 31 were regulated by BPSS, and 19 offered associates degrees or higher. However, there are three times as many

[1] For example, OCUE can grant an institution the permanent authority to confer degrees, whereas a school must renew its license with BPSS every four years. BPSS is statutorily charged with monitoring each school at least once every licensure period—no such requirement exists for OCUE. BPSS schools are required to make certain disclosures to prospective and current students, whereas OCUE schools must only make similar disclosures upon request and when the information is "available." BPSS is also required to investigate any complaint against a licensed school within 21 days, and issue written findings within 90 days. No such requirement exists for OCUE.

students enrolled in schools regulated by OCUE than by BPSS in the New York City area.

As just one example, an institution identified here as College A,[2] under the monitoring authority of OCUE, is the second-largest for-profit school offering associate degree programs in the New York Metropolitan area with a yearly enrollment of approximately 4,500.[3] College A has an open enrollment policy. The student population at College A is 44 percent African American and 36 percent Hispanic/Latino. In 2007 (the last year that it was publicly traded), College A's parent company had revenues of $65 million, 92 percent of which was derived from federal and state student loan dollars. The cost of an associate degree at College A is roughly $26,000. Nearly sixty percent of students who enroll in College A drop out during their first year, and the overall graduation rate for the school is 22 percent.

Although this school bills its offerings as "A Career for Life," its retention rates and allocation of resources cast doubts on this promise. In 2012, the school employed 3 career advisors, compared with 26 Admissions Representatives (recruiters, given the school's open enrollment policy), and 16 Financial Advisors (responsible for ensuring the flow of student loan revenue to the school).

We have represented multiple individuals who attended and dropped out of College A, and who are now being sued by the school for alleged tuition debts. In fact, since 2010, College A has sued over 1400 former students in the civil courts of New York. We have also spoken with multiple individuals who attended this school and have been unhappy with their experience, and incurred significant amounts of debt for a degree that has not helped them advance their careers in any manner. College A has been the subject of adverse findings by both the Inspector General of USED and the New York State Comptroller for its handling of student loan funds. And yet, College A continues to flourish. In fact, it is expanding, and plans to seek authorization to confer bachelor degrees. Not only has New York not acted on any of the numerous student complaints it has received, it continues to both license *and accredit* College A for purposes of Title IV participation.[4]

College A is merely one example of the hundreds of for-profit schools in New York State taking advantage of members of NYLAG's client populations. We speak to clients every day who are enrolled in for-profit colleges and/or have student debts that they cannot pay. These students have been subject to deceptive and coercive recruiting tactics. They have been promised job placement and specific salaries only to be turned away from job placement offices

[2] NYLAG will identify the school upon request.
[3] Data taken from most recent publicly available information on College A's website and College Navigator *available at* http://nces.ed.gov/collegenavigator/.
[4] The Board of Regents, a division of the New York State Department of Education, is recognized by the Department as an accrediting agency, most recently in 2012.

and denied assistance finding jobs after the completion of a program. They have been sued in civil court and coerced into settlements for money they did not owe. They have been promised "hands-on" training programs, and then had to sit through classes which provided no practical training and instructors who fell asleep in class. They have been convinced to enroll in courses, entirely in English, notwithstanding the students' inability to speak and understand English. And the list goes on.

As representatives of individuals subject to these schools' abusive practices, we commend the Department for convening this Negotiated Rulemaking Committee, and for focusing on program integrity regulations. There is an urgent need for the Department to take a serious look at how these schools are operating, and to devise regulations that will prevent as much future harm to individuals and the public as is possible.

III. Specific Recommendations for Negotiated Rulemaking

We join in the testimony and comprehensive comments submitted in 2010 and 2013 by advocates for student borrowers, including those offered by the National Consumer Law Center. On behalf of our clients, we submit the following recommendations relating to Gainful Employment and relief to student borrowers.

a. Program Integrity—Gainful Employment

We support the Department's efforts to promulgate a regulation that will limit Title IV participation to only those programs that have a demonstrable record of placing students in jobs, related to their field of study, with compensation sufficient to enable repayment of student loans.

From the time that Congress first opened Title IV programs to for-profit schools, through the National Vocational Student Loan Insurance Act, participation has always been predicated on student outcomes vis-à-vis employment. And there is no question that, today, our clients enroll in for-profit schools with the belief that enrollment will lead directly to a job in a particular industry. This viewpoint is fostered by the marketing campaigns of for-profit schools, which explicitly and implicitly promise a particular and positive career outcome. For example, College A's slogan is "A Career for Life." Another for-profit vocational school located in New York City ran an ad spot on a local hip hop radio station, in which "Tariq from Brooklyn" attested that he attended this school, and is now "making mad paper. I even got a girlfriend."[5] Virtually every subway car in New York City has at least one advertisement for a for-profit school, and many have five or more such ads.

[5] Ken Wehaton, "Apex Technical School Will Get You a Job AND a Girl," *Advertising Age* (Jan. 11, 2011), *available at*: http://adage.com/article/adages/money-a-girl-school-makes-big-promises/148140/.

Only those schools that actually deliver on this promise, and enhance the earning power and employability of graduates should be entitled to participate in Title IV programs. We are very mindful of the fact that federal student loan programs make higher education an achievable goal for individuals who otherwise would not be able to attend post-secondary school. However, this laudable goal of the Higher Education Act and its Amendments has led to an unintended victimization of the most vulnerable and disadvantaged in our community. Without meaningful Gainful Employment regulations, this will continue. We therefore offer the following recommendations.

i. Incorporate Retention Rates in Reporting for Gainful Employment

It is critical that any Gainful Employment regulation factor in a school's retention rate by requiring the reporting of outcomes for *all students who enrolled in a particular program*, rather than relying on outcomes only for those who complete that program.

It is widely recognized that retention rates at for-profit career and vocational schools are significantly below the retention rates at public and non-profit schools. As reported by the Senate Committee on Health, Education, Labor and Pensions, over fifty percent of students who enroll in for-profit schools drop out without a degree or diploma within a median of four months, with an estimated debt of between $4000 and $11,000.[6]

We have personally spoken to many students who dropped out of for-profit schools in the New York City area. Some are now being sued by their former schools for alleged tuition debt, irrespective of the reason for their leaving school. Many of these students dropped out after they realized that the program was not what it was made out to be and that it would not lead to gainful employment. Others did not persist in school because the language of instruction was a language that they did not speak. One client dropped out after she realized that, unlike what she had been told by her school, any credits that she earned would not transfer to the local community college. Yet another client was asked to leave school, two weeks after her classes started, because she was unable to secure financial aid. The school is now suing her for the full balance of the semester's tuition.

Of course, no school could possibly meet a requirement that all of its students graduate and find gainful employment in the field of their study, and it is generally understood that any standard for gainful employment has to be significantly less than 100 percent. However, it is clear that for-profit schools have a tremendous incentive to enroll as many students as possible, and little or no incentive to retain the students. When a student drops out, the school is still able to retain at least a portion, if not all, of the Title IV funds delivered to the school because of that student's enrollment. The student is the one harmed. He or she owes debt, without whatever

[6] *For-Profit Education: The Failure to Safeguard the Federal Investment and Ensure Student Success* 137 (2012).

benefit may have been gotten from the credential offered by the school, and with an impaired ability to borrow federally-guaranteed student loans in the future. Therefore, we ask that the Department consider available data regarding retention rates in public and non-profit schools when setting the threshold for participation in Title VI programs.

Holding a school accountable for the outcome of all the students that it enrolls will have multiple salutary effects. It has the potential to curb many of the abusive recruiting practices that we see: recruiting at public high schools for those with learning disabilities, promising unachievable future jobs and salaries, and enrolling students with mental disabilities so severe that they could not benefit from the programs, for example. It will lead schools to invest more in student support services, to ensure that students progress in their studies. It will encourage schools to devote more resources to career counseling and placement, and to ensure that program curricula are designed to give students in-demand skills.

ii. Require Specificity in Reporting

We support the requirement that schools disclose their employment statistics and believe that consumers have a right to know their chances of finding future employment. But even if the Gainful Employment regulation does not require schools to report the statistics to consumers, but rather only to the Department, it is critical that the regulation be very specific about how a school must calculate its placement rate. For example:

- An unpaid internship or volunteer position, even if in the relevant field, should not be counted as gainful employment. It is true that internships may sometimes lead to paying positions, but if the reporting window is long enough, a school will be able to capture those internships that lead to jobs for its students, without providing misleading information.
- A part-time position that requires less than 35 hours per week should not be treated as gainful employment.
- Jobs created by or funded by the school should not be counted as gainful employment, unless the job truly relates to the student's field of study.

The very purpose of a Gainful Employment regulation is to ensure that schools subject to it prepare students for employment in their field of study. Thus, for the Department to adequately assess any school's fulfillment of this goal, it is imperative that the Department receive detailed and accurate information about the schools' placement rates.

iii. Impose Consequences for Incomplete or Missing Data

Finally, the success of any Gainful Employment regulation depends on the accuracy and completeness of data gathered by reporting schools. To eliminate the incentive to manipulate data, and to encourage schools to assist all of their students, the regulation should create a presumption that any student for whom outcome data is missing has not found gainful employment.

Current practices in self-reported employment statistics illustrate the need for the onus to be on the schools to track the outcomes of all of its enrollees. The lack of specificity and detail in a school's self-reported job statistics can be so misleading as to be worse than if no information was provided at all. Some schools limit their self-reported employment statistics to capture only a certain segment of its graduates. Other schools may be diligent only in tracking down information about graduates it knows have attained employment.

For example, the placement rates reported on College A's website are between 90 and 100 percent for its various programs. However, College A only self-reports outcomes for those students who "seek the assistance of Career Services," and mandates that students meet certain requirements before they are eligible for Career Service assistance. Apparently, less than one third of students graduating from College A in 2011 sought the assistance of Career Services. For the potential students targeted by College A's marketing and recruiting practices, these incomplete statistics create a very misleading picture of the benefit of attendance.

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Gainful Employment regulation is a means for limiting the flow of federal student loan dollars to only those schools that genuinely advance the career prospects of their students. We believe that a meaningful regulation will include the three elements discussed above—incorporation of outcomes for all enrollees, strict parameters on what jobs may be counted as gainful employment, and presumptions that place the onus on schools to provide complete data.

b. <u>Expansion of Student Borrower Relief</u>

We recommend that the Department expand the relief available to student borrowers in a manner commensurate with any and all of its program integrity regulations. Expansion of the discharges discussed below, coupled with a requirement that makes schools financially responsible for compensating the Department when a loan is discharged, will enhance compliance with Department regulations and alleviate the unfairness of binding individuals with non-dischargeable loans that should not have been disbursed in the first instance.

i. Expanded Discharge for failing Gainful Employment Standards

If a program or school loses its Title IV eligibility because it fails to meet the Department's standards regarding Gainful Employment, borrowers in the reporting cohort who fail to obtain gainful employment ought to be eligible for discharge of their student loans, and the school ought to be responsible for refunding taxpayer money for any discharged loan to the Department. This will not only enhance the incentive for schools to ensure positive outcomes for their students, it will correct the current, inequitable arrangement in which many students lack an avenue for debt relief even when their program of education should not have been eligible for federally-guaranteed student loans.

ii. Expanded Discharge for False Certification

Additionally, the Department should support a broad interpretation of the false certification discharge for students who, because of circumstances obvious at the time of enrollment, had little realistic possibility of obtaining gainful employment in the particular field of the program, and who in fact did not obtain such employment. Schools must bear the financial risk of reckless recruitment and enrollment, and only certify students who may not have the ability to benefit from one of their programs if they are willing to invest resources in support and accommodation necessary to ensure student success.

Although some schools have a nominal admissions policy, in practice, for-profit schools are open-enrollment. As stated above, we have worked with clients who are suffering under crippling debt after they enrolled in a for-profit school. Some were receiving SSI at the time they enrolled, due to mental or physical conditions that precluded them from being able to engage in the employment activities for which they were supposedly being trained. Others spoke no English and were enrolled in a career training program taught entirely in English.

The benefit of a broad false-certification discharge is twofold. First, abusive enrollment practices will be curbed if a school bears the risk that ultimately it will have to return any revenue associated with the enrollment of an individual in a program that will never be of any benefit to them in terms of employment. Second, as a matter of basic fairness, a school should not benefit while taxpayer money is wasted and students are harmed. Allocating the risk of inappropriate enrollment to the school will align the incentives in a way that will curb abusive practices and protect individuals and the public interest.

iii. Expanded Discharge for School Closure

Further, we recommend that the Department extend the look-back window and use broad discretion in applying the statutory discharge for students who are enrolled in schools that close, beyond the current 90-day regulatory requirement. We have met with many clients who attended

for-profit schools and gained nothing from attendance except excessive debt, even though the student withdrew more than 90-days, before the school closure. It may be that a strict numerical cutoff is too inflexible to be administered fairly, but it is clear that the plain language of the statute allows for school-closure discharges even if the borrower was not enrolled at the time of closure and does not meet the requirements of the 90-day rule. The Department has the discretion to extend the ninety-day period in exceptional circumstances, and the statute should be read broadly to protect student borrowers who enrolled in schools that close or are forced to close because of their bad practices.

iv. Expanded Group Discharge

Finally, we recommend that the Department facilitate group discharges in two ways. First, the Department should make publicly available the results of any of its own investigative findings relating to discharge applications, so that other individuals who may be eligible will have access to corroborating information.

Second, the Department should take proactive steps in the face of any investigative finding that a school has engaged in a widespread practice that would entitle some of its students to discharges. We represent a group of over two dozen women who have or had student loan debt from the same beauty school. None had high school diplomas or the equivalent at the time that they attended school, and all were falsely certified as having the Ability-to-Benefit by the school. This school was the subject of a Departmental investigation (and its principals were subject to subsequent criminal prosecutions for financial aid fraud, among other things) and the school has since closed. The Department determined that, in light of the widespread pattern of fraud, any and all ATB discharges from this school should be granted. However, many individuals are still carrying these debts despite the fact that they are eligible for, and entitled to, a discharge. Meanwhile, the Department continues its efforts to collect on loans obtained to attend this school, including referring individuals for tax refund interception.

This should not happen. It is unfair that only individuals who find their way to a legal services office or other consumer advocate can obtain relief. Once the Department has evidence of a pattern of fraud—either as the result of independent investigation or the granting of a threshold number of discharge applications—it should at a minimum contact other individuals holding debt from the same school and notify them of the opportunity to request a discharge.

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We appreciate the Department's continued assessment of program integrity and student borrower relief, and thank you very much for accepting our testimony. We welcome the opportunity to engage in the future on these issues and can be reached at (212) 613-5000 or fpsp@nylag.org.