

July 1, 2021

Vanessa Gomez
U.S. Department of Education
400 Maryland Ave., SW
Room 2C179
Washington, DC 20202

RE: Intent to establish negotiated rulemaking committees Docket ID ED-2021-OPE-0077

Submitted electronically via: <http://regulations.gov>

Dear Ms. Gomez:

Thank you for the opportunity to provide written public comment regarding the U.S. Department of Education's (the Department) intent to establish negotiated rulemaking committees to prepare proposed regulations for programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA) (Docket ID ED-2021-OPE-0077). UnidosUS, previously known as NCLR (National Council of La Raza), is the nation's largest Hispanic civil rights and advocacy organization. Through its unique combination of expert research, advocacy, programs, and an Affiliate Network of nearly 300 community-based organizations across the United States and Puerto Rico, UnidosUS simultaneously challenges the social, economic, and political barriers at the national and local levels. As a leading advocate on education policy encompassing the perspectives of Latinos in higher education, UnidosUS strongly suggests that the Department consider issuing new regulations governing student loan cancellation programs and strengthen student borrower protections to ensure equitable outcomes for all students and student loan borrowers. To better serve Latino, low-income, first-generation, and other underserved students and borrowers, UnidosUS urges the Department to issue new regulations for the following topics:

Public Service Loan Forgiveness Program

Despite the federal government's intention to provide public service workers with student debt forgiveness through the Public Service Loan Forgiveness (PSLF) program, very few borrowers have benefited. Two reports released in 2018 and 2019 highlight the ineffectiveness of PSLF; after a decade a mere 96 of 28,000 borrowers (1%) who applied for forgiveness had their loans forgiven.¹ Even after Congress's attempt to remedy administrative barriers through the Temporary Expanded Public Service Loan Forgiveness (TEPSLF) program, again only 661 of 54,000 borrowers (1%) received loan forgiveness. Latinos make up 17.6% of the U.S. workforce and are more likely to be public service workers as they make up 9% of teachers, 29% of medical professionals, 15% of frontline workers (firefighters, police, etc.), and 16% of all active-duty military.² While they may be eligible for PSLF, many may not be aware of the program's

eligibility requirements due to barriers in student loan repayment, borrower outreach, and poor counseling by loan servicers. And even when borrowers are aware of PSLF as an option, few understand how to qualify for loan forgiveness.³ The program is overly complicated, requiring that borrowers make payments on a certain type of loan, under a certain type of repayment plan, while working for a certain type of employer. The Department should consider making the Public Service Loan Forgiveness program work by cancelling the federal student loan debt of public service workers who have been in repayment for a decade or more.

Income-Driven Repayment Plans

One in five Latino first-time college entrants in 2004 defaulted on their student loans within 12 years, nearly twice the rate of their White peers (12%).⁴ Defaulting on student debt can be disastrous, impacting an individual's creditworthiness, future financial prospects, and future wages or tax refunds. In a recent UnidosUS study, students reported difficulty in navigating the process and understanding their options in and the long-term implications of taking on student debt.⁵ While income-driven repayment (IDR) plans are intended to provide low-income earners with an affordable student loan payment plan that could help them avoid loan default, many eligible Latinos do not enroll. Borrowers may not be aware of their option to enroll in an IDR plan—only 18% of Latinos who entered college in the 2011–12 academic year and began repayment within five years were enrolled in an income-driven repayment plan.⁶ While being enrolled in an IDR plan can provide an affordable repayment option, it can also lead to an even higher debt over time for low-income borrowers who do not get approved for forgiveness.

Borrower Defense to Loan Repayment

The borrower defense to loan repayment rule (“borrower defense”)—established in 2016—provides a pathway for students who have experienced some form of deceit by their school to receive a reduction or total cancellation of their federal student loan debt. The rule—aimed at protecting students from misconduct by Title IV institutions of higher education—has largely failed due to the 2019 borrower defense rule's approach in approving applications. The application process that the Department established for eligible borrowers has been found to be inefficient, placing much of the case-making on the individual borrower. As of April 2021, the Department has received 362,454 borrower defense applications, and more than 100,000 applications are pending.⁷ These borrowers have made their case and are waiting to be either approved or denied for receiving some or full cancellation of their debt. UnidosUS applauds recent actions taken by Secretary Cardona to withdraw the harmful partial relief policy and looks forward to the Department's commitment to making it easier for borrowers who have been misled or defrauded to be discharged of their student loan debt. The Department's recent announcement, if managed well, could provide a real road to recovery for Latino borrowers who were unfairly targeted by for-profit colleges. Latinos today continue to be overrepresented in for-profit colleges, hold the most debt from these institutions, and experience the worst outcomes in completion and student loan repayment. For instance, Latinos in the 2003–2004 entering cohort who attended for-profit institutions were nearly four times as likely to default within 12 years compared to Latinos who did not attend a for-profit institution.⁸ However, the

process and timeline for debt cancellation is unclear, leaving them with a promise but no loan balance change. Without proper accountability measures in place and oversight of predatory practices by certain institutions, students of color and other vulnerable populations will continue to be at risk, making it critical for the Department to issue new regulations on this issue.

Gainful Employment

Establishing a strong gainful employment rule will protect Latino students from future harm when taking on debt to enroll in a program that does not result in family-sustaining employment. The gainful employment rule, first proposed by the Obama administration, holds career and certificate programs accountable by ensuring that graduates do not accumulate a student loan debt that exceeds a specific percentage of their income. In 2019, the rule was formally rescinded, allowing for low-quality career programs to grow without any accountability, leaving vulnerable Latino students without protection. The absence of a strong regulatory environment disproportionately affects Latinos' enrollment, completion, and repayment outcomes. Latino students represent 20% of all undergraduates yet comprise 25% of those enrolled in for-profit institutions.⁹ Latinos enrolled in a for-profit college are less likely to graduate compared to their White peers, leaving them with high loan balances and a higher likelihood of defaulting. The largest increase in Latino student borrowing is among those attending a for-profit institution; more than 76% of Latino students attending a for-profit school took out a loan compared to 72% enrolled at nonprofit institutions.¹⁰ Repayment is particularly difficult if students do not complete their degree or are not seeing returns through wages from attaining a credential, which is particularly true at for-profits. As one of the only regulatory tools protecting students against bad actors in the higher education sector, a stronger gainful employment rule will ensure that Latino students have access to a quality education and are not targeted by more expensive, lower-quality programs.

Finally, we encourage the Department to use internal efforts to issue nonregulatory guidance, implement programs, and leverage existing authorities to rapidly address issues that impact students and borrowers:

Student Loan Cancellation

The federal government's shift to a predominately debt-financed higher education system has resulted in students and families owing \$1.7 trillion in student debt. Holding student debt prevents Latino borrowers from wealth-building opportunities such as becoming homeowners or entrepreneurs, saving for retirement, or pursuing additional education. In a poll conducted by UnidosUS from August to September 2020, Latino borrowers in California reported that student debt prohibited them from reaching important life goals, including saving for retirement (51%), purchasing a home (45%), and finishing their degree (30%).¹¹ Further, as a result of the COVID-19 pandemic, student loan debt among Latinos is expected to grow as students have

experienced loss of income and have struggled to cover their basic food and housing needs. In the same poll, 35% of current Latino college students holding student debt reported that they took out additional loans to cover unanticipated expenses. Recent national estimates confirm that 42% of Latino students experienced financial disruption due to COVID-19 compared to 37.5% of their White peers, yet only 17% received emergency assistance compared to their White peers (12%).¹² The federal government has created a variety of programs that promise to provide borrowers with relief; unfortunately, too few have realized that promise. Providing some level of student loan cancellation, particularly as borrowers struggle to recover from the COVID-19 pandemic, will help provide some immediate relief for borrowers and be a positive step toward narrowing the Latino-White wealth gap while the Department works to improve existing loan forgiveness programs.

Student Loan Payment Pause Extension

As the Department works to reform higher education Title IV program regulations, borrowers are expected to resume making student loan payments in October while facing a slow economic recovery period. While most Latino borrowers are eligible for COVID-19 emergency relief, they continue to experience financial distress related to repaying their loans. In a recent study, Latinos with some college but no degree reported higher levels of financial stress and trouble with making student loan payments during the pandemic compared to non-Latinos.¹³ And since the beginning of the student loan payment pause, Latino borrowers in California who took advantage of the payment pause reported that they diverted their student loan payments to cover food, mortgage or rent payments, and utility bills. When asked about their confidence to resume making student loan payments in the next year, 28% were not confident in their ability to do so.¹⁴ It is clear that borrowers are not prepared to enter the fractured student loan system. To ease the student debt burden on Latino borrowers and their families, cancelling some level of debt through executive action should be delivered immediately. Until then, COVID-19 emergency relief policies should be extended and cover all forms of federal and private student loans.

Pell Grant Eligibility for Prison Education Programs

The nation's criminal justice system has unfairly targeted and incarcerated Latinos, impacting Latino communities for generations. In 2016, Latinos represented 16% of the U.S. adult population but accounted for 23% of prison inmates. The congressional lifting of the ban on the Pell Grant for incarcerated students was a step in the right direction to correct for these troubling trends, and the Department should implement full eligibility for Pell Grants to incarcerated students as soon as possible, with a commitment to ensuring quality programs that provide access to degree-granting coursework. While quality controls are essential to the success of these programs, existing authorities and policy guidance should be fully explored as options for implementation.

Negotiated Rulemaking Committee Makeup

To achieve equitable outcomes from this negotiated rulemaking process, the Department needs to ensure that there is a diverse set of voices at the table representing those most directly impacted—students and borrowers. In the past, institutions or those that represent industry outnumbered student voices on the committee. For example, in the most recent iterations of negotiated rulemaking (2015, 2016, and 2019), students were inadequately represented, often with just one student at the table. We strongly urge the Department to center the interests of students, borrowers (federal and private), veterans, parents with PLUS loans, and others directly affected by the regulations governing the nation’s fractured higher education and student loan servicing system. We also urge the Department to include civil rights and other equity-focused groups at the table to represent students of color and other underserved communities so that these perspectives inform the negotiated rulemaking process.

We appreciate the opportunity to provide comments regarding the Department’s intent to establish negotiated rulemaking committees to prepare proposed regulations for programs authorized under Title IV of the HEA. Should you have any questions regarding these comments, please contact Roxanne Garza, Senior Education Policy Advisor, at rgarza@unidosus.org.

¹ Stacy Cowley, "28,000 Public Servants Sought Student Loan Forgiveness. 96 Got It." *The New York Times*, September 27, 2018, <https://www.nytimes.com/2018/09/27/business/student-loan-forgiveness.html> (accessed June 2021).

² Janet Murguía for UnidosUS, *Latinos: Overrepresented in Covid Cases, Underrepresented in Relief*, 117th Cong., #117 sess., 2021; and Adrianna Rodriguez, "Latinos are fastest growing population in U.S. military, but higher ranks remain out of reach," *USA Today*, May 23, 2020, <https://www.usatoday.com/in-depth/news/nation/2020/05/23/latino-hispanic-military-high-ranking-commissioned-officer-positions/4668013002/> (accessed June 25, 2021).

³ Business Wire, "AIG Retirement Services Study Finds Strong Awareness but Minimal Understanding of Public Service Loan Forgiveness Program." Business Wire, February 24, 2021, <https://www.businesswire.com/news/home/20210224005592/en/AIG-Retirement-Services-Study-Finds-Strong-Awareness-but-Minimal-Understanding-of-Public-Service-Loan-Forgiveness-Program> (accessed July 2021).

⁴ UnidosUS, *Latinos in Higher Education: Student Loan Repayment* (Washington, DC: UnidosUS, March 2019), http://publications.unidosus.org/bitstream/handle/123456789/1937/studentloanrepayment_brief_32519.pdf?sequence=2&isAllowed=y (accessed June 26, 2021).

⁵ UnidosUS, "Following Their Dreams in an Inequitable System: Latino Students Share Their College Experience" (Washington, DC: UnidosUS, September 2020), http://publications.unidosus.org/bitstream/handle/123456789/2078/unidosus_followingtheirdreams_lr.pdf?sequence=4&isAllowed=y (accessed June 2021).

⁶ Ben Miller, *The Continued Student Loan Crisis for Black Borrowers* (Washington, DC: Center for American Progress, December 2, 2019), <https://www.americanprogress.org/issues/education->

postsecondary/reports/2019/12/02/477929/continued-student-loan-crisis-black-borrowers/ (accessed June 24, 2021).

⁷ U.S. Department of Education, Borrower Defense Quarterly Report for the quarter ending April 30, 2021 (2021 Q2 Report), <https://studentaid.gov/data-center/student/loan-forgiveness/borrower-defense-data>.

⁸ UnidosUS, *For-Profit Colleges Are Harmful to Latino Students* (Washington, DC: UnidosUS, May 2019), http://publications.unidosus.org/bitstream/handle/123456789/1954/unidosus_highereducationact_accountability.pdf?sequence=2&isAllowed=y (accessed June 24, 2021).

⁹ Ibid.

¹⁰ Ibid.

¹¹ UnidosUS and Latino Decisions, "Student Loan Debt in California: Survey of Current and Former Student Borrowers," September 2020, http://publications.unidosus.org/bitstream/handle/123456789/2083/unidosus_castudentdebtsurvey.pdf?sequence=5&isAllowed=y (accessed June 24, 2021).

¹² Margaux Cameron et al., *2019–20 National Postsecondary Student Aid Study (NPSAS:20): First Look at the Impact of the Coronavirus (COVID-19) Pandemic on Undergraduate Student Enrollment, Housing, and Finances (Preliminary Data)* (NCES 2021-456). Washington, DC: U.S. Department of Education, National Center for Education Statistics at the Institute of Education Sciences, June 2021, <https://nces.ed.gov/pubs2021/2021456.pdf> (accessed June 2021).

¹³ Kate Sablosky Elengold et al., *Debt, Doubt, and Dreams: Understanding the Latino College Completion Gap*, (Chapel Hill, NC: University of North Carolina at Chapel Hill Center for Community Capital and UnidosUS, November 2020), <https://communitycapital.unc.edu/wp-content/uploads/sites/340/2020/11/Debt-Doubt-and-Dreams-Updated-Final.pdf> (accessed June 2021).

¹⁴ UnidosUS and Latino Decisions, "Student Loan Debt in California: Survey of Current and Former Student Borrowers."