

### Memorandum

**To:** U.S. Department of Education  
**From:** Johnson M. Tyler, Jessica Ranucci. Legal Aid negotiators  
**Date:** February 3, 2022  
**Re:** Banning Transcript Withholding with recommended additional language to issue papers #6 and #4

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#### Need and Authority to Regulate Transcript Withholding:

On December 1, 2021, U.S. Education Secretary Miguel Cardona said that withholding transcripts from students drives inequitable outcomes.<sup>1</sup> Almost all colleges and universities withhold a transcript until an unpaid debt owed by the student is paid-off. Most of these debts arise when a student leaves school at the wrong time, or drops some classes, or fails to receive expected aid. The average debt is relatively small: \$631 at community colleges and \$2,335 at four-year colleges.<sup>2</sup> But for students from low-income families, such debts are insurmountable.

Sabrina Ramos' story is typical. Ms. Ramos was forced to drop out of CUNY three weeks into the 2012 semester when her mother became severely ill. Consequently, CUNY returned her need-based Pell grant and billed Ms. Ramos for the entire semester (almost \$3,000). Ms. Ramos was earning only \$250 a week cleaning houses and, having to support her son and mother, had no ability to pay. In 2015, she enlisted Legal Services in her quest to obtain her transcript. However, CUNY refused, requiring full payment including collection fees of 17%, which still was impossible. In 2017, Ms. Ramos remained working as a house cleaner. She reported feeling depressed by her inability to "better myself" and her son's life through college.<sup>3</sup>

Currently, over 6 million Americans are having their transcripts withheld.<sup>4</sup> Many, like Ms. Ramos, incurred their debts due to events beyond their control e.g. family illness, job loss, inability to obtain financial information from parents, etc. Most of these former students are

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1 Kirk Carapezza, WGBH, *Education Secretary, college leaders want colleges to stop holding transcripts over unpaid balances*, (Dec. 21, 2021), <https://www.wgbh.org/news/education/2021/12/21/education-secretary-college-leaders-want-colleges-to-stop-holding-transcripts-over-unpaid-balances>

2 Julia Karon et al, *Solving Stranded Credits: Assessing the Scope and Effects of Transcript Withholding on Students, States, and Institutions*, (October 5, 2020), <https://sr.ithaka.org/publications/solving-stranded-credits/>

3 Jillian Berman, MarketWatch, *How low-income students can avoid this college debt trap*, (October 16, 2017), <https://www.marketwatch.com/story/how-low-income-students-can-avoid-this-college-debt-trap-2017-10-12>

4 *Supra*, note 2.

people of color.<sup>5</sup> This should be no surprise given the Federal Reserve’s finding that Blacks and Hispanics have far less assets with which to pay unexpected school bills than Whites.<sup>6</sup>

Adding transcript withholding to the rulemaking agenda complies with Administrative Procedure Act. First, the Department itself *already* proposed new language regarding transcript withholding in its proposed redline of 34 C.F.R. § 668.14(e)(1)(iii) (Issue Paper #6, Certification Procedures). More importantly, the Secretary solicited comments on “equitable outcome” issues that affect “large groups” of students in his May 26, 2021, negotiated rulemaking announcement.<sup>7</sup> At the subsequent public hearing, transcript withholding was raised by a former student, John Cagle from Woodland Texas.<sup>8</sup> Mr. Cagle lamented how a \$2,800 college-debt has prevented him from completing his education and becoming an architect. “We go into debt for the opportunity to change our stars, but when it’s all said and done, if we owed it to the university, it’s as if these achievements never existed,” testified Mr. Cagle, who lacked any savings or family assets with which to repay the debt.

States and universities equally recognize that transcript withholding is a draconian and ineffective tool. Data from the State University of New York shows that only a tiny fraction (less than 3/4<sup>th</sup> of 1 percent) of the 400,000 students enrolled each year fail to pay their school-based debts.<sup>9</sup> In other words, 99.25% of students pay school-based debts because students want to continue their educations with classmates and professors and because traditional collection tools (such as dunning letters, denial of class registration, and credit reporting) work.

Moreover, transcript withholding is ineffective. Only 7% of students whose transcripts are withheld by SUNY pay-off their school-based debts.<sup>10</sup> Last month, the New York State Governor stopped transcript withholding at SUNY due to its negative impact on students and

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5 Young Invisibles, Community Service Society, Student Borrower Protection Center, Transcript Withholding Across New York State Neighborhoods( June 2021), <https://younginvisibles.org/transcript-withholding-across-new-yorks-neighborhoods-a-crisis-for-communities-of-color/>

6 The Federal Reserve, *Disparities in Wealth by Race and Ethnicity*, (Sept. 28, 2020) <https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm>

7 Department of Education, Notice of Intent to Establish Negotiated Rule Committees, (May 26, 2021), <https://www.regulations.gov/document/ED-2021-OPE-0077-0001>

8 Department of Education, Public Hearing, Pg 38-39 (June 21, 2021), From <https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/june21hearingtrans.pdf>

9 2020 Freedom of Information data from the New York State Attorney General on file with Johnson M. Tyler, and public records on enrollment, show the following: SUNY enrolls and bills over 400,000 students each year. Most pay and those who don’t are referred to collections and barred from re-enrolling. From that group, about 3,000 are referred annually to the attorney general who both sues and bars release of the transcript.

10 2020 Freedom of Information data from the New York State Attorney General on file with Johnson M. Tyler, reveals that 7% of outstanding SUNY debt under attorney general is collected annually. As of 2019, about 3,000 new cases were added annually to a pile of 40,000 cases, of which about 3,000 cases were resolved.

taxpayers.<sup>11</sup> Southern University of New Hampshire equally banned the practice, acknowledging transcript withholding was ineffective.<sup>12</sup> The City University of New York and 13 public colleges in Massachusetts likewise have stopped withholding transcripts, while the State of California has completely banned the practice.<sup>13</sup>

Below is suggested language to regulations that are being considered.

**Issue Paper 6:**

Issue: Certification Procedures

Statutory cites: §498 of the Higher Education Act of 1965, as amended, [20 U.S.C. § 1099c(a).]

Regulatory cites: 34 CFR § 668.14(b)

**Purpose for proposed change:** Requires schools not to use transcript withholding as collection tool. Traditional collection tools are not implicated (e.g. denial of class registration or re-enrollment, dunning letters, law suits, credit reporting, etc.)

§ 668.14 Program participation agreement

(b) By entering into a program participation agreement, an institution agrees that—

(33) It will not use transcript issuance as a tool for debt collection by, *inter alia*

(i) Refusing to provide a transcript for a current or former student on the grounds that the student owes a debt to the institution or any other party;

(ii) Conditioning the provision of a transcript on the payment of a debt to the institution or any other party, other than a fee charged to provide the transcript; or

**Commented [jt1]:** This is Jessica's and my proposed language. It is identical to that set forth in the February 1, 2022 Issue Paper #6 of Carolyn Fast and Yael Shavit et al.

<sup>11</sup> Rachel Silberstein, Albany Times-Union, *SUNY stops withholding transcripts from indebted students*, (Jan. 23, 2021), <https://www.timesunion.com/news/article/SUNY-stops-withholding-transcripts-from-indebted-16803787.php>

<sup>12</sup> Kirk Carapezza, WGBH, *Education secretary, college leaders want colleges to stop holding transcripts over unpaid balances*, (Dec. 21, 2021), <https://www.wgbh.org/news/education/2021/12/21/education-secretary-college-leaders-want-colleges-to-stop-holding-transcripts-over-unpaid-balances>

<sup>13</sup> *Id.*

(iii) Charging a higher fee for obtaining a transcript, or providing less favorable treatment of a transcript request because a student owes a debt to the institution or any other party.

And

(e) If an institution is provisionally certified, the Secretary may apply such conditions as are determined to be appropriate to the institution, including –

**Commented [jt2]:** This is DOE's suggested new language

(1) For an institution that the Secretary determines may be at risk of closure—

(i) Submission of a teach-out plan or agreement to the Department and to the institution's recognized accrediting agency;

(ii) Submission to the Department of a plan for the collection and storage of records related to students' enrollment, payments, and academic progress, including student rosters containing program information and enrollment dates, ledgers documenting payments received, and transcripts; and

(iii) The release of holds on student transcripts over a de minimis amount, and the release of all holds on student transcripts in the event of a closure;

**Commented [jt3]:** We suggest removing this text in light of proposed language elsewhere prohibiting transcript withholding.

#### **Issue Paper #4**

Issue: Financial Responsibility

Statutory cites: §498(c) of the Higher Education Act of 1965, as amended, [20 U.S.C. § 1099c(a).]

Regulatory cites: 34 CFR 668.171, [Subpart L]

#### **Purpose for proposed change:**

Some financially strapped institutions (both private-non-profit, and proprietary) use transcript withholding to ensure re-enrollment exclusively at their institutions. This occurs when the student owes a balance to the institution, and the school conditions the release of the transcript to receive financial aid on re-enrollment at their institution. Transcript withholding thereby prevents students with institutional debt from enrolling at *other* institutions that better meet their needs (e.g. cheaper, higher quality, more convenient, etc. ). Moreover, such institutional debts often are not forgiven but remain on the books resulting in transcript withholding after the degree

is earned, stripping the student (and taxpayers) of the degree's value. For this reason, we proposed adding transcript withholding as an indicator of an institution's inability to meet its financial or administrative obligations.

## SUBPART L - FINANCIAL RESPONSIBILITY

§ 668.171 General.

(b) General standards of financial responsibility. Except as provided under paragraphs (c), (d), and (h) of this section, the Secretary considers an institution to be financially responsible if the Secretary determines that –

**Commented [jt4]:** These are DOE's proposed changes from 1/18/2022.

(3) The institution is able to meet all of its financial obligations and provide the administrative resources necessary to comply with title IV, HEA program requirements. An institution is not deemed able to meet its financial or administrative obligations if –

(i) It fails to make refunds under its refund policy, ~~or~~ return title IV, HEA program funds for which it is responsible under § 668.22, or pay title IV credit balances as required under §668.164(h)(ii);

**Commented [jt5]:** These are DOE's proposed changes from 1/18/2022.

(ii) It fails to make repayments to the Secretary for any debt or liability arising from the institution's participation in the title IV, HEA programs;

(iii) It fails to make a payment in accordance with an existing undisputed financial obligation for more than 90 days;

**Commented [jt6]:** These are DOE's proposed changes from 1/18/2022.

(iv) It fails to make payroll obligations per its published payroll schedule;

**Commented [jt7]:** These are DOE's proposed changes from 1/18/2022.

(v) It borrows funds from retirement plans or restricted funds without authorization;  
or

**Commented [jt8]:** These are DOE's proposed changes from 1/18/2022.

(viii) It is subject to an action or event described in paragraph (c) of this section (mandatory triggering events), or an action or event that the Secretary determines is likely to have a material adverse effect on the financial condition of the institution under paragraph (d) of this section (discretionary triggering events); and

(vii) It withholds transcript as a tool for debt collection by, inter alia

**Commented [jt9]:** This is Jessica's and my proposed language on transcript withholding, which again is identical to that proposed by Carolyn Fast, Yael Shavit and others in their Feb 1 2022 Issue Paper #6.

(A) Refusing to provide a transcript for a current or former student on the grounds that the student owes a debt to the institution or any other party;

(B) Conditioning the provision of a transcript on the payment of a debt to the institution or any other party, other than a fee charged to provide the transcript; or

(C) Charging a higher fee for obtaining a transcript, or providing less favorable treatment of a transcript request because a student owes a debt to the institution or any other party;