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America's $1.7 Trillion Student Loan Debt Problem: A Story of the American Dream, Good Intentions, and Easy Money

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AMERICA'S $1.7 TRILLION STUDENT LOAN DEBT PROBLEM: A STORY OF THE AMERICAN DREAM, GOOD INTENTIONS, AND EASY MONEY

ABSTRACT

This Note addresses the student loan debt problem in the United States, the serious risks it poses, and why a multi-level solution is required to tackle this growing problem. With the increasing cost of college tuition and correspondingly greater amounts of student loan debt but slower income growth, the mismatch between loan and repayment capability keeps widening. A multi-level approach is required to tackle the $1.7 trillion (and increasing) student loan debt problem. First, tuition must be reduced because even if all student loan debt were to be wiped out today, the unaffordability of tuition would continue to increase, and the student debt would amass again. Second, current student loan borrowers need assistance with repayment, especially given the current pandemic-induced economic environment. Third, student loans need to be dischargeable in bankruptcy proceedings as a last-resort safety net. Inspiration can be taken from the real estate industry in handling each of these levels.

INTRODUCTION

There is about $1.7 trillion of outstanding student loan debt in the United States, and the amount continues to increase every year.[1] Of the $1.37 trillion of outstanding federal student loans, an estimated $435 billion is estimated to be unrecoverable.[2] Approximately 44.7 million Americans have student loan debt, and about two-thirds of college seniors graduate with student loans.[3] Recent college graduates who took out loans to pay for undergraduate tuition have an average of $30,062 in outstanding student debt.[4] However, an increasing number of students graduate with over $100,000 in student loans.[5]

1. FED. RES. SYS., FEDERAL RESERVE STATISTICAL RELEASE: CONSUMER CREDIT JUNE 2021 (Aug. 6, 2021), https://www.federalreserve.gov/releases/g19/current/g19.pdf.

2. Josh Mitchell, *Student Loan Losses Seen Costing U.S. More Than $400 Billion*, WALL ST. J. (Nov. 21, 2020), https://www.wsj.com/articles/student-loan-losses-seen-costing-u-s-more-than-400-billion-11605963600?mod=e2li.

3. *Shocking Student Loan Debt Statistics*, STUDENT LOAN HERO (Jan. 27, 2021), https://studentloanhero.com/student-loan-debt-statistics/; *see also* INST. FOR COLL. ACCESS & SUCCESS, STUDENT DEBT & THE CLASS OF 2018, at 4 (2019), https://ticas.org/wp-content/uploads/2019/09/classof2018.pdf.

4. Emma Kerr, *See 10 Years of Average Total Student Loan Debt*, U.S. NEWS & WORLD REP. (Sept. 15, 2020), https://www.usnews.com/education/best-colleges/paying-for-college/articles/see-how-student-loan-borrowing-has-risen-in-10-years.

5. Annie Nova, *More student loan borrowers carry six-figure balances*, CNBC (July 12, 2019), https://www.cnbc.com/2019/07/12/she-owes-500000-in-student-loans-giant-balances-are-on-the-rise.html.

With traditional four-year college tuition rising at twice the rate of inflation,[6] it is no wonder why the student loan debt keeps increasing at such an alarming rate. This cost is unavoidable for many young adults seeking a middle-class life, given that an increasing percentage of new jobs require higher education.[7]

In 1965, the Higher Education Act was enacted to increase the accessibility of higher education.[8] While the accessibility of higher education has increased, the government's well-intentioned actions have also paved the way for the colossal amount of educational debt today.[9] Although debt is not inherently bad,[10] student loans today exhibit many of the same characteristics as the pre-2007 subprime mortgages. Similar to pre-2007 subprime mortgages, student loans are issued with little to no concern over the borrower's ability to repay the debt.[11] These widely accessible loans create a gap between the debt amount and the borrower's ability to make payments with income or savings.[12] Over one in ten student loan borrowers default on their student loans within the first year of repayment, and one in four default within the first five years.[13] On an individual level, defaulting on student loans is problematic because government-issued student loans can only be discharged if the borrower can prove undue hardship if the debt were not discharged.[14] Defaulting on student loans also impacts future borrowing abilities for up to ten years and disproportionately affects minorities and first-

6. Erik Sherman, *College Tuition Is Rising at Twice the Inflation Rate—While Students Learn At Home*, ZENGER NEWS (Aug. 31, 2020), https://www.forbes.com/sites/zengernews/2020/08/31/college-tuition-is-rising-at-twice-the-inflation-rate-while-students-learn-at-home/#3c1c0d1b2f98.

7. Anthony P. Carnevale, Nicole Smith, and Jeff Strohl, *RECOVERY: Job Growth and Education Requirements Through 2020*, GEO. PUB. POL'Y INST. CTR. EDUC. & WORKFORCE 1, 4 (June 2013), https://cew.georgetown.edu/wp-content/uploads/2014/11/Recovery2020.FR_.Web_.pdf.

8. *Student Loans: How Did We Get Here?*, LUMINA FOUND. & INST. FOR HIGHER EDUC. POL'Y 1, 4–5 (2019), https://www.luminafoundation.org/wp-content/uploads/2019/06/chapter-1-loans-viewing-guide.pdf.

9. *Id.*

10. Casey Bond, *Here's The Real Difference Between Good Debt And Bad Debt*, HUFFPOST (Mar. 12, 2019), https://www.huffpost.com/entry/good-debt-vs-bad-debt.

11. Chris Arnold, *Student Loans A Lot Like The Subprime Mortgage Debacle, Watchdog Says*, NAT'L PUB. RADIO (Dec. 9, 2019), https://www.npr.org/2019/12/09/785527874/student-loans-a-lot-like-the-subprime-mortgage-debacle-watchdog-says.

12. *Id.*

13. *Id.; see also* Melanie Hanson, *Student Loan Default Rate*, EDUCATIONDATA.ORG (July 10, 2021), https://educationdata.org/student-loan-default-rate ("7.8% of all student loan debt is in default," and "[a]n average of 15% of student loans are in default at any given time.").

14. United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260 (2010) (under the Bankruptcy Code, a "debtor may obtain a discharge of government-sponsored student loan debts only if failure to discharge that debt would impose an "undue hardship" on the debtor and his dependents."). According to a New York-based federal appeals court, this contrasts with private student loans, which "are not protected from discharge in bankruptcy." Maria Chutchian, *Private student loans can be tossed in bankruptcy, appeals court rules*, REUTERS (July 15, 2021), https://www.reuters.com/legal/transactional/private-student-loans-can-be-tossed-bankruptcy-appeals-court-rules-2021-07-15/.

generation college students.[15] On the aggregate level, the ever-increasing default rate of student loans may result in a recession reminiscent of the Great Recession from 2007 to 2009, stemming from the subprime mortgages.[16]

Governmental efforts to fix the student debt and high tuition cost problems have clearly been ineffective given the continually growing amount of debt amassed and the rapidly increasing tuition.[17] Student loan default rates were increasing even before the COVID-19 pandemic,[18] which will likely accelerate the rising default rates after the temporary COVID-19 emergency relief from payment ends. To address the growing student loan problem, the government has implemented a federal student loan repayment program, administered a public service loan forgiveness program, and created income-driven repayment plans for student loans.[19] However, the repayment and forgiveness programs have high qualification requirements and only benefit a small fraction of borrowers.[20] Income-driven repayment plans are also problematic because they can be much more expensive than typical student loans and may even cause borrowers' outstanding loan balances to increase, despite paying monthly.[21] According to data released by the U.S. Department of Education, "two-thirds (63%) of borrowers [enrolled] in [an income-driven repayment plan] who made at least one payment during the COVID-19 payment pause were underwater, meaning that they have not repaid even $1 of their original balance."[22]

15. FED. RES. SYS., REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2017 - MAY 2018 (June 19, 2018), https://www.federalreserve.gov/publications/2018-economic-well-being-of-us-households-in-2017-student-loans.htm.

16. Patrick B. Healey, *We Should All Be Concerned About the Student Debt Crisis*, CNBC (Nov. 4, 2019), https://www.cnbc.com/2019/11/04/we-should-all-be-concerned-about-the-student-debt-crisis.html.

17. Kerr, *supra* note 4.

18. Arnold, *supra* note 11.

19. *Student Loan Repayment and Forgiveness*, P'SHIP FOR PUB. SERV., https://gogovernment.org/student-loan-repayment-and-forgiveness/ (last visited Nov. 6, 2021).

20. "The [Public Service Loan Forgiveness] program is way too complicated, but that was how Congress designed it. Borrowers must have one of a few specific loans, make payments for ten years, all in certain repayment plans, and all while working for certain types of employers. PSLF requires paperwork from the borrower every time they change jobs, at a minimum." Wesley Whistle, *The Problem With Public Service Loan Forgiveness? It's Mostly Working*, FORBES (Dec. 6, 2019), https://www.forbes.com/sites/wesleywhistle/2019/12/06/the-problem-with-public-service-loan-forgiveness-its-mostly-working/#be93ae2216cb.

21. Adam S. Minsky, *6 Downsides Of Income-Driven Repayment*, FORBES (Feb. 8, 2019), https://www.forbes.com/sites/adamminsky/2019/02/08/6-downsides-of-income-driven-repayment/#74b09aff3122.

22. NAT'L CONSUMER L. CTR., DATA POINT: ALMOST TWO IN THREE NAVIENT BORROWERS MAKING PAYMENTS DURING COVID-19 FEDERAL STUDENT LOAN PAYMENT PAUSE ARE UNDERWATER (Aug. 2021), https://www.nclc.org/images/pdf/student_loans/CRL_navient_borrowers_covid.pdf. In fact, almost 90,000 borrowers (one-third of all underwater borrowers in an income-driven repayment plan) "owe more than 125% of their original balance despite making at least one payment during the COVID-19 payment pause." *Id.*

There is currently a push for the government to cancel student loan debt, and there are many student loan forgiveness proposals in Washington.[23] Canceling student loan debt would undoubtedly help millions of Americans.[24] However, unless the government solves the underlying issues, which are the ever-increasing college tuition and borrower-unfriendly loan terms, the same problem with a mismatched loan and repayment capability will resurface in the future. As mentioned earlier, this mismatch is reminiscent of the underlying cause of the subprime mortgage crisis beginning in 2007.[25]

To solve the growing student debt crisis in the United States, the government needs to take a multi-level approach focused primarily on pre-default solutions to control the ever-increasing college costs and lessen the student debt burden. Given the similarities between the real estate and higher education industries, the government should use the real estate residential financing market as inspiration for financing higher education. In particular, the government should consider tuition control and stabilization, a general increase of government subsidies to colleges to push down student-fronted costs, a federal takeover of Sallie Mae, federal loan refinancing, and student debt dischargeability.

Part I of this Note will give a broad overview of the student debt crisis in America and explain the various causes leading up to this $1.7 trillion problem. Part II explains why the student debt crisis will become an even greater issue if new legislation is not adopted, especially given the uncertainties surrounding the post-COVID-19 economy. Part III suggests a multi-level approach, including increasing tuition subsidies and grants, allowing federal loan refinancing, and decreasing student loan dischargeability requirements; it will also explain why this approach is necessary to prevent further worsening of the student debt crisis.

23. Zack Friedman, *Proposal: Forgive $25,000 Of Student Loans*, FORBES (Oct. 8, 2020), https://www.forbes.com/sites/zackfriedman/2020/10/08/proposal-forgive-25000-of-student-loans/#62ee954310ae. On August 19, 2021, the U.S. Department of Education announced that "[o]ver 323,000 [federal student loan] borrowers who have a total and permanent disability (TPD) will receive more than $5.8 billion in automatic student loan discharges." *Over 323,000 Federal Student Loan Borrowers to Receive $5.8 Billion in Automatic Total and Permanent Disability Discharges*, U.S. DEP'T EDUC. (Aug. 21, 2021), https://www.ed.gov/news/press-releases/over-323000-federal-student-loan-borrowers-receive-58-billion-automatic-total-and-permanent-disability-discharges. On a more local level, New York announced its $125 million The City University of New York (CUNY) Comeback debt forgiveness program on July 28, 2021, which would provide relief for "at least 50,000 students who attended CUNY and suffered financial hardships during the COVID-19 pandemic." *Governor Cuomo Announces Sweeping $125 Million Debt Relief Program For At Least 50,000 Students*, CUNY (July 28, 2021), https://www1.cuny.edu/mu/forum/2021/07/28/governor-cuomo-announces-sweeping-125-million-debt-relief-program-for-at-least-50000-students/; *CUNY Comeback Program*, CUNY, https://www.cuny.edu/comeback/ (last visited Nov. 6, 2021).

24. Friedman, *supra* note 23.

25. Arnold, *supra* note 11.

I. AMERICAN DEBT CRISIS TODAY

A. How Did We Get Here?

The Higher Education Act of 1965 was enacted to increase accessibility to higher education by creating grants and loans to help students pay for college.[26] With the guarantee of the government backing student loans, lenders were eager to underwrite loans to students.[27] This lending system also created incentives for colleges to increase their revenues by raising tuition and enrollment.[28] Colleges began relaxing admission criteria, leading to an increased number of dropouts who still owed their student loans but also did not have the increased job prospects associated with college degrees.[29] Since colleges were almost completely unaffected by students who dropped out and subsequently defaulted on their loans, colleges had no incentives to stop.[30] Additionally, more high school graduates decided to pursue higher education because of the widely available loans, which pushed colleges to raise tuition.[31] This increased cost then subsequently pushed Congress to increase the maximum amount allowed for loans and grants.[32] Colleges and lenders found raising tuition and loan amounts to be a highly lucrative business, eventually leading to the colossal amount of educational debt that exists today.[33]

College tuition is expected to reach six-figure yearly prices at some universities within the next few years, but the median household income growth has slowed down in recent years.[34] In 2019, the median pre-tax household income was $68,000.[35] For comparison, the average public four-year college in-state tuition in 2019 was $10,000, and the average private four-year college tuition was $37,000.[36] This is the yearly sticker price for just one student's tuition and does not cover room, board, student fees, books,

26. Josh Mitchell, *The Long Road to the Student Debt Crisis*, WALL ST. J. (June 7, 2019), https ://www.wsj.com/articles/the-long-road-to-the-student-debt-crisis-11559923730; LUMINA FOUND. & INST. FOR HIGHER EDUC. POL'Y, *supra* note 8.

27. *Id.*

28. Mitchell, *The Long Road to the Student Debt Crisis*, *supra* note 26.

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. LUMINA FOUND. & INST. FOR HIGHER EDUC. POL'Y, *supra* note 8.

34. David Cooper & Julia Wolfe, *Household income growth was slower and less widespread in 2018 than in 2017*, ECON. POL'Y INST. (Sept. 26, 2019), https://www.epi.org/blog/household-income-growth-was-slower-and-less-widespread-in-2018-than-in-2017/.

35. U.S. CENSUS BUREAU, Rep. No. P60-270, *Income and Poverty in the United States: 2019* (Sept. 15, 2020), https://www.census.gov/content/dam/Census/library/publications/2020/demo/p60-270.pdf.

36. Jennifer Ma, Sandy Baum, Matea Pender & CJ Libassi, *Trends in College Pricing 2019*, COLLEGEBOARD, at 9 (Nov. 2019), https://research.collegeboard.org/pdf/trends-college-pricing-2019-full-report.pdf.

lab fees, and other miscellaneous costs.[37] The average total cost at a private four-year college was over $44,000 in 2018–2019.[38] Although the cost of higher education and the burden of student loan debt are already so high, they will only continue to worsen if there is no government intervention. This is increasingly true as state funding for higher tuition has decreased substantially over the past decade, pushing colleges to rely more on tuition than they did in the past.[39]

B. WHY ARE AMERICANS WILLING TO TAKE ON SO MUCH EDUCATIONAL DEBT?

Student loans are unavoidable for many Americans because the value of having a college degree is increasing, and college is becoming more of a necessity for those seeking a middle-class life.[40] Because tuition has been increasing quicker than inflation and wages, most students need to take out loans to fund their higher education.[41] College degrees often open opportunities to better employment prospects and higher wages.[42] The median weekly earnings for bachelor's degree holders is over 67% higher than for high school graduates.[43] Job openings increasingly require education credentials, especially because fewer jobs are available for people who do not pursue education beyond high school.[44] College degrees are also associated with better job safety, retirement planning, and life expectancy.[45]

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37. *Id.*

38. NAT'L CTR FOR EDUC. STAT., *Table 330.10: Average undergraduate tuition and fees and room and board rates charged for full-time students in degree-granting postsecondary institutions, by level and control of institution: Selected years, 1963-64 through 2018-19*, DIGEST EDUC. STAT. (Dec. 2019), https://nces.ed.gov/programs/digest/d19/tables/dt19_330.10.asp?current=yes.

39. Jessica Dickler, *Why college tuition keeps rising*, CNBC (Oct. 24, 2019), https://www.cnbc.com/2019/10/24/why-college-tuition-keeps-rising.html; Sonya Krakoff, *Why Is College Tuition Rising So Fast?*, CHAMPLAIN COLL. ONLINE: BLOG & NEWS, https://online.champlain.edu/blog/why-is-college-tuition-rising (last visited Nov. 6, 2021); Michael Mitchell, Michael Leachman & Matt Saenz, *State Higher Education Funding Cuts Have Pushed Costs to Students, Worsened Inequality*, CTR. BUDGET & POL'Y PRIORITIES (Oct. 24, 2019), https://www.cbpp.org/research/state-budget-and-tax/state-higher-education-funding-cuts-have-pushed-costs-to-students.

40. Anthony P. Carnevale, *For a Middle-Class Life, College is Crucial*, N.Y. TIMES (Apr. 9, 2012), https://www.nytimes.com/roomfordebate/2012/03/01/should-college-be-for-everyone/for-a-middle-class-life-college-is-crucial; *College Affordability and Completion: Ensuring a Pathway to Opportunity*, U.S. DEP'T EDUC., https://www.ed.gov/college (last visited Nov. 6, 2021).

41. INST. FOR COLL. ACCESS & SUCCESS, *supra* note 3.

42. *How does a college degree improve graduates' employment and earnings potential?*, ASS'N PUB. & LAND -GRANT UNIVERSITIES, https://www.aplu.org/projects-and-initiatives/college-costs-tuition-and-financial-aid/publicuvalues/employment-earnings.html (last visited Nov. 6, 2021).

43. Tim Stobierski, *Average Salary by Education Level: The Value of a College Degree*, NE. UNIV. (June 2, 2020), https://www.northeastern.edu/bachelors-completion/news/average-salary-by-education-level/.

44. Carnevale, Smith & Strohl, *supra* note 7.

45. Philip Trostel, *It's Not Just the Money: The Benefits of College Education to Individuals and to Society*, MARGARET CHASE SMITH POL'Y CTR. & SCH. ECON. UNIV. ME. (Oct. 14, 2015), https://www.luminafoundation.org/files/resources/its-not-just-the-money.pdf.

Additionally, college graduates are also more likely to have successful marriages and are generally healthier.[46] Thus, to most Americans, college appears to be a necessity for a middle-class life.

C. WHY IS THE $1.7 TRILLION DEBT CONCERNING?

The $1.7 trillion of student debt is problematic in numerous ways, including that substantial student debt obligations slow economic growth, delay marriage, reduce retirement savings, and exacerbate pre-existing racial and wealth disparities.[47] Studies have also shown that student loans take an emotional toll on borrowers, and a vast majority of borrowers have lost sleep or exhibited physical symptoms of stress due to their student loans.[48]

One of the most significant problems with student loans, and large student loan debt loads, in particular, is that many borrowers have trouble repaying their loans.[49] The Federal Reserve reported that one-fifth of individuals with outstanding student loan debt were behind on their payments in 2017.[50] The percentage of delinquent borrowers has been steadily increasing every year.[51] Loans that are delinquent for an extended period may go into default, which has a plethora of negative consequences.[52] The consequences of defaulting on student loans include damaging credit rating for many years, accelerating the repayment of the entire unpaid balance plus all interest owed, and potentially garnishing wages.[53]

Additionally, wealth and racial disparities should not be undermined because first-generation, Black, and Hispanic student borrowers are disproportionately burdened by student loans.[54] For example, Black students take on greater amounts of student loan debt than other students for the same

46. *Id.* However, note that correlations might not be completely causal. *Id.*

47. Elyssa Kirkham, *How Does Student Debt Affect the Economy? Experts Weigh In*, STUDENT LOAN HERO (June 28, 2021), https://studentloanhero.com/featured/effects-of-student-loan-debt-us-economy/.

48. Casey Bond, *7 Scary Numbers That Show How Bad Student Loan Debt Is For Mental Health*, HUFFPOST (May 14, 2019), https://www.huffpost.com/entry/student-loan-debt-mental-health_l_5cd60660e4b0796a95dc15a0. According to the statistics and studies cited in this article, 65% of student loan borrowers lose sleep because of student loan stress, and 67% of student loan borrowers exhibit physical symptoms of student loan debt-induced stress. *Id.* Additionally, a concerning portion of borrowers has contemplated suicide because of their student loan debt. *Id.*; *see also* Alexandre Tanzi, *The Far-Reaching Burden of America's Student Debt*, BLOOMBERG (May 5, 2019), https://www.bloomberg.com/news/articles/2019-05-05/-micro-problem-of-student-debt-spurs-suicide-thoughts-survey.

49. FED. RES. SYS., *supra* note 15.

50. *Id.*

51. *Id.*

52. *Student Loan Delinquency and Default*, FED. STUDENT AID, https://studentaid.gov/manage-loans/default (last visited Nov. 6, 2021).

53. *Id.*

54. *See* Judith Scott-Clayton & Jing Li, *Black-white disparity in student loan debt more than triples after graduation*, BROOKINGS (Oct. 20, 2016), https://www.brookings.edu/research/black-white-disparity-in-student-loan-debt-more-than-triples-after-graduation/.

degrees,[55] and they are less likely to complete a degree.[56] Black student borrowers have also defaulted on their loans at nearly twice the rate as white student borrowers.[57] Given that first-generation, Black, and Hispanic college students are most likely to be delinquent on their loans,[58] which comes with the negative consequences discussed above, student loan debt thus exacerbates pre-existing racial and wealth disparities.[59]

Also, as evidenced by the COVID-19 job losses, younger workers are disproportionately impacted by weak job markets and economic downturns, which would affect their ability to repay student loans.[60] Even before the COVID-19 pandemic, many millennials had outstanding student loans, little savings, and no stable home equity.[61] Currently, fewer than 11% of federal student loan borrowers are repaying their loans.[62] The Trump administration temporarily waived federal student loan interest,[63] acknowledging that many Americans are experiencing hardships through job loss, lowered wages, and reduced hours.[64] The Biden administration extended the emergency relief measures for federal student loans until May 1, 2022.[65] However, this relief from repayment is only temporary, and borrowers will need to continue making payments after this policy ends.[66] Given the high uncertainty surrounding COVID-19 from both health and economic perspectives, it will likely be many years before economies stabilize.[67] With many businesses forced into bankruptcy and business leaders wary of investing in the current market, the post-COVID-19 job market seems unlikely to bounce back for years.[68] Given the lingering health and reopening concerns, and the

55. *Id.*

56. Adam Looney, *The Student Debt Burden and its Impact on Racial Justice, Borrowers, and the Economy*, BROOKINGS (Apr. 13, 2021), https://www.brookings.edu/testimonies/the-student-debt-burden-and-its-impact-on-racial-justice-borrowers-and-the-economy/.

57. Hanson, *supra* note 13.

58. FED. RES. SYS., *supra* note 15.

59. Scott-Clayton & Li, *supra* note 54.

60. Sean Collins, *Why the Covid-19 economy is particularly devastating to millennials, in 14 charts*, VOX (May 5, 2020), https://www.vox.com/2020/5/5/21222759/covid-19-recession-millennials-coronavirus-economic-impact-charts.

61. *Id.*

62. Annie Nova, *Less than 11% of people with federal student debt are repaying their loans during Covid*, CNBC (Oct. 7, 2020), https://www.cnbc.com/2020/10/07/less-than-11percent-of-people-with-federal-student-loans-are-paying-during-covid-19-.html.

63. Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 4513 (2020).

64. Memorandum on Continued Student Loan Payment Relief During the COVID-19 Pandemic, 85 Fed. Reg. 49, 585 (Aug. 8, 2020), https://www.federalregister.gov/documents/2020/08/13/2020-17897/continued-student-loan-payment-relief-during-the-covid-19-pandemic.

65. *Coronavirus Info for Students, Borrowers, and Parents*, FED. STUDENT AID, https://studentaid.gov/announcements-events/coronavirus (last visited Nov. 6, 2021).

66. *Id.*

67. Sven Smit & Martin Hirt, *Crushing coronavirus uncertainty: The big 'unlock' for our economies*, MCKINSEY & CO. (May 13, 2020), https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/crushing-coronavirus-uncertainty-the-big-unlock-for-our-economies#.

68. *Id.*

continually increasing unemployment during the pandemic, many jobs may never return.[69] Thus, the COVID-19 pandemic may be accelerating the student debt crisis by increasing borrowers' inability to repay the student debt amassed[70] and depleting emergency savings.[71]

D. WHY SHOULD THE REAL ESTATE INDUSTRY SERVE AS INSPIRATION FOR HANDLING STUDENT LOAN DEBT?

Today, student loans are freely issued and often do not consider the borrower's ability to repay the loan. This gap between the loan amount and the borrower's ability to repay the loan is reminiscent of the large subprime mortgages freely underwritten before 2007.[72] This is concerning because loans in both the real estate and higher education industries are often securitized into more liquid financial instruments, which may obfuscate the underlying loans' true riskiness.[73] Before the Great Recession beginning in 2007, subprime mortgages were securitized into mortgage-backed securities and collateralized debt obligations and were subsequently given overly optimistic credit ratings.[74] Banks and financial institutions held these complex real estate-backed products on their balance sheets, not understanding how risky these products truly were.[75] When home prices began falling in 2006, many homeowners were left with mortgage debt that exceeded their home values, which was problematic for homeowners trying to sell or refinance their homes.[76] This, combined with the rising unemployment at the time, caused many homeowners to default on their monthly mortgage payments.[77] Default rates on bad loans and toxic assets

69. Patricia Cohen, *Many Jobs May Vanish Forever as Layoffs Mount*, N.Y. TIMES (June 11, 2020) https://www.nytimes.com/2020/05/21/business/economy/coronavirus-unemployment-claims.html.

70. Collins, *supra* note 60.

71. Jessica Dickler, *Nearly 14% of Americans have wiped out their emergency savings during the pandemic: CNBC + Acorns survey*, CNBC (Sept. 1, 2020), https://www.cnbc.com/2020/09/01/nearly-14percent-of-americans-have-wiped-out-emergency-savings-during-pandemic.html.

72. Arnold, *supra* note 11.

73. Jack Du, *Student Loan Asset-Backed Securities: Safe or Subprime?*, INVESTOPEDIA (Apr. 22, 2020), https://www.investopedia.com/articles/investing/081815/student-loan-assetbacked-securities-safe-or-subprime.asp; James Chen, *Securitize*, INVESTOPEDIA (Jan. 12, 2020), https://www.investopedia.com/terms/s/securitize.asp.

74. *What Role Did Securitization Play in the Global Financial Crisis?*, INVESTOPEDIA (June 30, 2020), https://www.investopedia.com/ask/answers/041515/what-role-did-securitization-play-us-subprime-mortgage-crisis.asp.

75. Martin Neil Baily, Robert E. Litan & Matthew S. Johnson, *The Origins of the Financial Crisis*, INITIATIVE ON BUS. & PUB. POL'Y AT BROOKINGS, 1, 28-29 (Nov. 2008), https://www.brookings.edu/wp-content/uploads/2016/06/11_origins_crisis_baily_litan.pdf.

76. Martin Feldstein, *The Global Impact of America's Housing Crisis*, PROJECT SYNDICATE (Aug. 25, 2009), http://www2.nber.org/feldstein/projectsyndicate082009.pdf.

77. *Id.*

wiped out $1.2 trillion from top United States and European banks alone[78] and ultimately led to several banks collapsing.[79] An estimated 10 million mortgage borrowers lost their homes,[80] and some economists estimate that over 30 million Americans lost their jobs during the Great Recession.[81] Over $10 trillion was lost in household net worth,[82] and many Americans are still recovering or worse off over a decade later, even before the COVID-19 pandemic.[83]

Student loan asset-backed securities (SLABS) operate in the same way as the real estate-backed securities underlying the Great Recession, and there are growing concerns that the student loan crisis will be the next bubble.[84] The student loan default rate has been increasing and is approaching the default rate of subprime mortgages preceding the 2007 crash.[85] There are also growing concerns that many borrowers may never be able to pay off their student loans.[86] Even before the COVID-19 pandemic, which caused a 22 million job loss[87] and a decrease in household wealth,[88] an estimate of about 40% of borrowers were expected to default on student loan payments by

78. *FACTBOX-U.S., European Bank Writedowns, Credit Losses*, REUTERS (July 15, 2010), https://www.reuters.com/article/banks-writedowns-losses/factbox-u-s-european-bank-writedowns-credit-losses-idUSLDE66E18S20100715.

79. *See* Rosalind Z. Wiggins, Thomas Piontek & Andrew Metrick, *The Lehman Brothers Bankruptcy A: Overview*, YALE SCH. MGMT., 1, 8 (Oct. 1, 2014), http://som.yale.edu/sites/default/files/files/001-2014-3A-V1-LehmanBrothers-A-REVA.pdf.

80. William R. Emmons, *The End Is in Sight for the U.S. Foreclosure Crisis*, FED. RES. BANK ST. LOUIS (Dec. 2, 2016), https://www.stlouisfed.org/on-the-economy/2016/december/end-sight-us-foreclosure-crisis.

81. Arne L. Kalleberg & Till von Wachter, *The U.S. Labor Market During and After the Great Recession: Continuities and Transformations*, 3 RUSSELL SAGE FOUND. J. SOC. SCI.'S 1, 1 (2017), https://www.jstor.org/stable/10.7758/rsf.2017.3.3.01#metadata_info_tab_contents; Jae Song & Till von Wachter, *Long-Term Nonemployment and Job Displacement*, Proceedings from the Jackson Hole Economic Policy Symposium Sponsored by the Federal Reserve Board of Kansas City 315, 384 (Aug. 2015), https://www.kansascityfed.org/documents/4547/2014vonWachter.pdf.

82. Kalleberg & Von Wachter, *supra* note 81, at 1.

83. Aimee Picchi, *5 Groups Still Recovering from the Financial Crisis*, CBS NEWS (Sept. 14, 2018), https://www.cbsnews.com/news/5-groups-still-recovering-from-the-financial-crisis/; Jim Puzzanghera, *A Decade After the Financial Crisis, Many Americans are Still Struggling to Recover*, L.A. TIMES (Sept. 11, 2018), https://www.latimes.com/business/la-fi-financial-crisis-middle-class-20180909-htmlstory.html; Sarah Foster, *Survey: Nearly 1 in 4 American adults are worse off now than before the Great Recession*, BANKRATE (June 13, 2019), https://www.bankrate.com/personal-finance/smart-money/great-recession-survey-june-2019/.

84. Eli J. Campbell, *Wall Street Has Been Gambling With Student Loan Debt for Decades*, OPEN DEMOCRACY (Oct. 24, 2019), https://www.opendemocracy.net/en/oureconomy/wall-street-has-been-gambling-student-loan-debt-decades/.

85. Arnold, *supra* note 11.

86. Simon Galperin, *I'm a 29-Year-Old With $235k in Student Debt. I'll Never Pay It Back*, MONEY (June 17, 2019), https://money.com/student-debt-money-makeover/.

87. Elise Gould, *Six Months Into the Recession and a 11.5 Million Jobs Deficit Remains*, ECON. POL'Y INST. (Sept. 4, 2020), https://www.epi.org/press/six-months-into-the-recession-and-a-11-5-million-jobs-deficit-remains/.

88. Shawn M. Carter, *The Average American Fell $7,500 Deeper In Debt While Waiting on a Second Stimulus Check*, ACORNS (Nov. 18, 2020), https://grow.acorns.com/coronavirus-second-stimulus-could-help-americans-in-debt/.

2023.[89] The student loan pandemic relief provided a temporary 0% interest rate and administrative forbearance for select federal student loans,[90] but not all student loans receive this relief.[91] Even for loans that qualify, the relief is only temporary, and many borrowers are expected to default on these student loans.[92] Student loans and mortgages differ in that the former are typically nondischargeable in bankruptcy proceedings, meaning that borrowers still owe student loans after filing for bankruptcy.[93] However, given more immediate and arguably more concerning expenses, such as rent and health care, many borrowers are unable or unwilling to pay their student loans.[94] Thus, while some experts believe that the nondischargeability of student loans will be a safeguard against a second Great Recession, the growing number of student loan defaults illustrates otherwise.[95]

This trajectory of the student loan crisis is concerningly similar to that of the Great Recession.[96] First, the job market weakens, causing borrowers to become unable to repay their loans. Second, the increased defaults on the loans cause a significant decrease in the value of the securities, subsequently leading to a chain of indirect effects, including decreasing the liquidity of financial institutions and increasing the risk of their insolvency.[97] Defaulting on loans has long-lasting effects both on the individual and societal levels, as evidenced through the Great Recession continuing to affect many Americans over a decade later, so the government should not forget the aftermath of the last financial crisis.

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89. Judith Scott-Clayton, *The Looming Student Loan Default Crisis is Worse Than We Thought*, BROOKINGS (Jan. 11, 2018), https://www.brookings.edu/research/the-looming-student-loan-default-crisis-is-worse-than-we-thought/.

90. Ari Lazarus, *If You Have Federal Student Loans, Read this*, FED. TRADE COMM'N (Feb. 22, 2021), https://www.consumidor.ftc.gov/blog/2021/02/if-you-have-federal-student-loans-read.

91. Loans not owned by the federal government (e.g., private student loans) do not receive automatic relief. Susan Tompor, *College Borrowers Aren't Always Seeing COVID-19 Relief. Here's Why*, DET. FREE PRESS (Oct. 9, 2020), https://www.freep.com/story/money/personal-finance/susan-tompor/2020/10/08/student-loan-debt-covid-19-relief/3621883001/.

92. Annie Nova, *They Were Struggling to Repay Their Student Loans Before the Pandemic. Now It'll Get Worse*, CNBC (June 27, 2020), https://www.cnbc.com/2020/06/27/how-covid-19-has-made-the-student-loan-crisis-even-worse.html.

93. John A. E. Pottow, *The Nondischargeability of Student Loans in Personal Bankruptcy Proceedings: The Search for a Theory*, 44 CANADIAN BUS. L. J., 245, 246 (2007).

94. Annie Nova, *Why People With Student Debt are Refusing to Repay It*, CNBC (Feb. 12, 2020, 6:09 PM), https://www.cnbc.com/2020/02/12/student-loan-borrowers-announce-a-strike-refusing-to-pay-their-debts.html.

95. *Id.*

96. Arnold, *supra* note 11.

97. *Coronavirus Impact Increases Maturity Risk for FFELP ABS*, FITCH RATINGS, INC. (Mar. 26, 2020), https://www.fitchratings.com/research/structured-finance/coronavirus-impact-increases-maturity-risk-for-ffelp-abs-26-03-2020.

E. WHICH ASPECTS OF THE REAL ESTATE INDUSTRY CAN SERVE AS INSPIRATION FOR HANDLING THE STUDENT LOAN DEBT PROBLEM?

Following the Great Recession, the government significantly changed the regulatory and legal framework for mortgage lending, took control of Freddie Mac and Fannie Mae through conservatorship, and purchased the illiquid and troubled debt for substantially above market price.[98] The federal government was actively involved with combatting the dire economic consequences of the 2007 subprime mortgage crash, and the government's response to the crash can serve as inspiration for dealing with the current student debt crisis.

Furthermore, state and municipal real estate payment assistance and grant programs can provide additional inspiration to make higher education more affordable on a more localized level.[99] Given the similar interests that state and municipal governments have in promoting and increasing the accessibility of homeownership and higher education, the higher education industry may benefit from initiatives such as caps on price increases and more generous subsidization of costs.[100]

1. Legislative and Regulatory Framework

Legislative and regulatory reforms were an essential part of the federal government's Great Recession economic recovery plan. The inception and implementation of these laws were fueled by the excessively risky, previously-unregulated subprime mortgage originations.[101] Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) of 2010 to increase the transparency in the financial services industry and the accountability of financial institutions.[102] By amending already-existing legislation and creating new standalone provisions, the Dodd-Frank Act increased the power of oversight committees, set higher fund registration requirements, improved the regulation of credit rating agencies, and added new incentives and protections for whistleblowers.[103]

98. Randall D. Guynn, Davis Polk & Wardwell LLP, *United States*, *in* INT'L BAR ASS'N TASK FORCE ON FIN. CRISIS REP. 25, 37, 39 (Oct. 2010), https://www.davispolk.com/files/files/Publication/f1474bde-c5d5-46d5-a6d2-5d8a2ec21e97/Preview/PublicationAttachment/b74d73c4-1c05-4f06-8598-6021f6143232/Financial_Crisis_Report_IBA.pdf.

99. *See HOME Investment Partnerships Program*, U.S. DEP'T HOUS. & URB. DEV., (July 8, 2021), https://www.hud.gov/program_offices/comm_planning/home.

100. *See Homebuyers*, N.Y. STATE HOMES & CMTY. RENEWAL, https://hcr.ny.gov/homebuyers (last visited Nov. 6, 2021); *Rent Control*, N.Y. STATE HOMES & CMTY. RENEWAL, https://hcr.ny.gov/rent-control (last visited Nov. 6, 2021); *Affordable Housing Corporation*, N.Y. STATE HOMES & CMTY. RENEWAL, https://hcr.ny.gov/affordable-housing-corporation-0 (last visited Nov. 6, 2021).

101. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (codified in scattered sections of the U.S.C.).

102. *Id.*

103. *Id.*

The Dodd-Frank Act also created the Consumer Financial Protection Bureau (CFPB) to oversee all consumer financial products and services, provide financial literacy materials, and allow unfair practices to be disputed in court.[104] As of July 2017, the CFPB returned $11.8 billion to consumers, assisted 29 million consumers, and handled over 1.08 million complaints.[105]

The CFPB has also directly impacted the student loan industry by explaining financial aid packages, encouraging student loan forgiveness, and teaching borrowers how to repay their loans.[106] The Dodd-Frank Act and its creations, such as the CFPB, have significantly curtailed abusive lending practices through punishing predatory financial institutional behavior and collecting and analyzing data to identify unjust practices.[107] Complaints regarding consumer financial products and services have also been collected and made available to the public, increasing the transparency of such predatory behavior and pushing Congress to act on consumer challenges.[108]

The CFPB's powers and oversight abilities have been decreased under the Trump administration.[109] Under the Economic Growth, Regulatory Relief, and Consumer Protection Act (Economic Growth Act) of 2018, numerous Dodd-Frank provisions and consumer protection regulations have been rolled back.[110] The Economic Growth Act decreased mortgage origination requirements, reduced reporting requirements for small banks and credit unions, and allowed faster closings on reduced-rate loans.[111] Under the Trump administration, the CFPB has continually pushed for decreases in housing mortgage reporting.[112] As of July 1, 2020, mortgage protections and mortgage data availability have further decreased.[113] While these regulatory relaxations benefit consumers by increasing the availability of mortgages, there are concerns that these relaxations will disproportionately affect rural, low-income, and moderate-income areas.[114] The decrease of CFPB

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104. *Id.*

105. CFPB, FACTSHEET: BY THE NUMBERS (July 2017), https://files.consumerfinance.gov/documents/CFPB-By-the-Numbers-Factsheet.pdf.

106. *Paying for College*, CFPB, https://www.consumerfinance.gov/paying-for-college/ (last visited Nov. 6, 2021).

107. Sarah O'Brien, *Dodd-Frank Changed Consumer Protections After the Financial Crisis — Here's How That's Shaking Out Today*, CNBC (Sept. 11, 2018), https://www.cnbc.com/2018/09/11/dodd-frank—cfpb.html. *See also Consumer Credit Trends*, CFPB, https://www.consumerfinance.gov/data-research/consumer-credit-trends/ (Dec. 10, 2019).

108. *Consumer Complaint Database*, CFPB, https://www.consumerfinance.gov/data-research/consumer-complaints/ (last visited Nov. 6, 2021).

109. Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018, Pub. L. No. 115-74, 132 Stat. 1296; 12 C.F.R. § 1003 (2021).

110. Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018, *supra* note 109.

111. *Id.*

112. 12 C.F.R. § 1003 (2021).

113. *Id.*

114. Letter from Urb. Inst. RE: Proposed Rule for Home Mortg. Disclosure (Regul. C), Docket Number: CFPB-2019-0021; RIN 3170-AA76, to CFPB (June 11, 2019), https://www.urban.org/

enforcement is also believed to allow financial institutions to "prey" on consumers more easily because of the higher requirements required to punish these institutions for abusive practices.[115] It should be noted, however, that the CFPB under the Biden administration has begun undoing some of these changes.[116]

As mentioned earlier, student loan borrowers have already benefited from the legislative and regulatory framework. Perhaps the increased transparency can be extended to the underlying cost of tuition.

2. Conservatorship

The Housing and Economic Recovery Act of 2008 (HERA) established the Federal Housing Finance Agency (FHFA), placing Fannie Mae and Freddie Mac into its conservatorship.[117] Fannie Mae and Freddie Mac are government-sponsored enterprises (GSE) that promote homeownership for low and middle-income borrowers by providing liquidity and security to mortgage lenders.[118] They were established to act like private corporations backed by the government, but that arrangement pushed them to take excessive risks to increase the stock price.[119] Like other financial institutions, Fannie Mae and Freddie Mac reported unprecedented losses during the Great Recession and were unable to meet their debt obligations.[120] The FHFA's federal takeover of Fannie Mae and Freddie Mac was meant to prevent them from becoming insolvent, preserve their assets, and restore their financial health.[121] Since the conservatorship began in 2008, Fannie Mae and Freddie Mac increased lending standards, reduced their portfolios, and reduced operational risks.[122] This takeover kept both Fannie Mae and Freddie Mac functioning during the Great Recession fallout, despite the losses from 2007 to 2011.[123] The FHFA succeeded in restoring Fannie Mae and Freddie Mac

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sites/default/files/publication/100375/comment_letter_on_proposed_rule_for_home_mortgage_disclosure_regulation_c_2.pdf.

115. Greg Iacurci, *New Rules are Gutting Consumer Watchdog Group from the Inside, Legal Experts Say*, CNBC (Jan. 28, 2020), https://www.cnbc.com/2020/01/28/consumer-watchdog-group-is-being-gutted-legal-experts-say.html.

116. Adam Edelman, *'A Cop on the Beat Again': Biden Looks to Reassert Consumer Watchdog Agency Sidelined by Trump*, NBC NEWS (Mar. 23, 2021), https://www.nbcnews.com/politics/white-house/cop-beat-again-biden-looks-reassert-consumer-watchdog-agency-sidelined-n1261586.

117. Housing and Economic Recovery Act (HERA) of 2008, Pub. L. No. 110–289, 122 Stat 2654.

118. CONG. RSCH. SERV., R44525, FANNIE MAE & FREDDIE MAC IN CONSERVATORSHIP: FREQUENTLY ASKED QUESTIONS (2019), https://fas.org/sgp/crs/misc/R44525.pdf; *About Fannie Mae & Freddie Mac*, FED. HOUS. FIN. AGENCY, https://www.fhfa.gov/SupervisionRegulation/FannieMaeandFreddieMac/Pages/About-Fannie-Mae—-Freddie-Mac.aspx (last visited Nov. 6, 2021).

119. Kimberly Amadeo, *What Was the Fannie Mae and Freddie Mac Bailout?*, THE BALANCE, https://www.thebalance.com/what-was-the-fannie-mae-and-freddie-mac-bailout (Nov. 30, 2020).

120. Cong. Rsch. Serv., R44525, *supra* note 118.

121. *Id.*

122. *Id.*

123. *Id.*

into profitable entities.[124] However, Fannie Mae and Freddie Mac are still under federal conservatorship despite this set-up initially being meant to be a temporary form of relief.[125] Overall, the consensus appears that the conservatorship achieved the short-term goals of stabilizing the mortgage industry and returning the economy to financial stability during the Great Recession but failed to reach the longer-term goal of reforming the residential real estate financing industry.[126]

Similarly, a federal takeover of private student loans could provide immediate relief to borrowers who hold such loans and are not protected by federal protections like COVID-19 forbearance relief.

3. Bailouts and Bail-Ins

The Emergency Economic Stabilization Act (EESA) of 2008 was one of the critical parts of the government's plan to stabilize the economy during the Great Recession.[127] The EESA established the Troubled Asset Relief Program (TARP), which authorized the Secretary of Treasury to purchase and sell "troubled assets" from any "financial institution."[128] The purposes of EESA and TARP were to prevent further failure of financial institutions through increasing liquidity and assisting borrowers through protecting their savings, promoting the job market, and preserving homeownership.[129] Although the bill initially granted the Secretary of Treasury access to up to $700 billion in funding, TARP ultimately spent only $426 billion and then recovered $441 billion.[130] The bill was not passed with the intention of recovering the amount spent in TARP but ultimately earned a profit of $15 billion.[131] However, critics of EESA and TARP pushed Congress to outlaw future federal bailouts of swap entities in the Dodd-Frank Act.[132] The critics' main concerns were that taxpayers were not getting an adequate return on taxpayer money from the bailout and that banks were prioritized over the borrowers facing financial and housing problems.[133]

124. *Id.*
125. *Id.*
126. W. SCOTT FRAME, ANDREAS FUSTER, JOSEPH TRACY & JAMES VICKERY, FED. RES. N.Y., STAFF REPORT NO. 719, RESCUE FANNIE MAE & FREDDIE MAC (Mar. 2015), https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr719.pdf.
127. Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, 122 Stat. 3765.
128. *Id.*
129. *Id.*
130. *Id.*; Ryan Tracy, Julie Steinberg & Telis Demos, *Bank Bailouts Approach a Final Reckoning*, WALL ST. J. (Dec. 19, 2014), https://www.wsj.com/articles/ally-financial-exits-tarp-as-treasury-sells-remaining-stake-1419000430.
131. Ryan Tracy, Julie Steinberg & Telis Demos, *supra* note 130.
132. *Id.*; Dodd-Frank Act, *supra* note 101.
133. Tracy, Steinberg & Demos, *supra* note 130.

With bank bailouts outlawed, bail-ins became statutorily authorized.[134] Bail-ins are a relatively new concept used to assist insolvent banks that focus on shifting the initial cost onto the parent company's creditors.[135] This means that unsecured creditors such as depositors and bondholders have their claims converted into equity.[136] Bank bail-ins have been used in Europe but have proven to be difficult in execution.[137] For example, Cypriot banks used bail-ins to protect the country's banking system during Cyprus's 2013 financial crisis, confiscating billions of dollars of depositors' savings.[138] The Cypriot banks' bail-in scheme and ultimate failures caused depositors to lose billions of dollars, leading to a steep recession.[139] The Cypriot experimental bail-ins serve as a lesson for other countries, some of which have been deterred from wanting to use bail-ins to restructure insolvent banks.[140] Additionally, bail-in experimentation has raised questions of whether bail-ins are effective.[141] The bail-in scheme has been criticized as "Another Crony Bankster Scam," as depositors front the cost of the restructuring and often never fully recover their deposits.[142]

In the context of student loans, this concept could be applied directly to individual borrowers. Instead of rescuing insolvent banks or companies, the government could extend financial support to student loan borrowers by paying (i.e., writing off) their loans.

4. Federally-Backed Refinancing

Loan refinancing is when a new credit agreement is created to pay off an existing debt obligation.[143] Homeowners often choose to refinance their mortgages for favorable terms, such as a lower interest rate, that reduce

134. Dodd-Frank Act, *supra* note 101; Richard Best, *Why Bank Bail-Ins Will Be the New Bailouts*, INVESTOPEDIA (June 25, 2019), https://www.investopedia.com/articles/markets-economy/090716/why-bank-bailins-will-be-new-bailouts.asp.

135. Joseph H. Sommer, *Why Bail-In? And How!*, 20 FED. RES. BANK N.Y. ECON. POL'Y REV. 207, 207, https://www.newyorkfed.org/medialibrary/media/research/epr/2014/1412somm.pdf.

136. *Id.*

137. Hugo Dixon, *EU Enters Brave New World of Bank Bail-Ins*, REUTERS (Jan. 4, 2016), https://www.reuters.com/article/idUS180994900920160104.

138. Michele Kambas, *European Court Dismisses Compensation Claim in Cyprus 2013 Deposit-Grab*, REUTERS (July 13, 2018), https://www.reuters.com/article/us-cyprus-banks/european-court-dismisses-compensation-claim-in-cyprus-2013-deposit-grab-idUSKBN1K3242.

139. Dixon, *supra* note 137.

140. *Id.*

141. *Id.*; Alastair Marsh, Alexander Weber, Sonia Sirletti & Boris Groendahl, *Italy's Dual Bank Rescue Tests the EU's New Rules by Tapping Taxpayers*, BLOOMBERG (June 26, 2017), http://bloomberg.com/news/articles/2017-06-26/italy-s-double-bank-burial-strains-rules-by-tapping-taxpayers; Boris Groendahl, *QuickTake: Bail-In*, BLOOMBERG (Nov. 7, 2017), http://bloomberg.com/quicktake/bail-in.

142. Nathan Lewis, *The Cyprus Bank 'Bail-In' Is Another Crony Bankster Scam*, FORBES (May 3, 2013), https://www.forbes.com/sites/nathanlewis/2013/05/03/the-cyprus-bank-bail-in-is-another-crony-bankster-scam/#3541337e2685.

143. Alexandra Twin, *Refinance*, INVESTOPEDIA (Oct. 28, 2020), https://www.investopedia.com/refinance.

monthly payments.[144] Both federally-backed and private mortgages can be refinanced with a federally-backed loan.[145] This is important because federally and GSE-backed mortgages are afforded more protections than private loans.[146] For example, during the COVID-19 pandemic, the Coronavirus Aid, Relief, and Economic Security (CARES) Act created two protections for all federally or GSE-backed mortgages.[147] These two protections are: (1) disallowing foreclosures until July 31, 2021,[148] and (2) creating the right to request and attain mortgage forbearance to temporarily stop or decrease mortgage payments.[149] Such protections were not extended to private loans, which are not protected under the CARES Act.[150]

In contrast, student loans currently can only be refinanced through private lenders.[151] This means that borrowers looking to benefit from lower interest rates forgo federal loan protections and benefits, such as COVID-19 relief and potential student loan forgiveness.[152] Federally-backed refinancing for student loans would give borrowers the same protections and benefits as federally-backed refinancing for mortgages—lower interest rates while maintaining federal protections.

5. Mortgage Dischargeability

Under the Bankruptcy Code, most mortgage debts can be dischargeable during bankruptcy proceedings.[153] Discharging a loan means that the personal liability of the borrower to repay the loan and unpaid costs is eliminated, so lenders cannot collect discharged debt.[154] Although both the mortgage and attached personal liability to repay the loan are discharged,

144. *Id.*; Cheryl Winokur Munk, *Refinancing—or Paying Off—a Mortgage? Questions to Ask Yourself*, WALL ST. J. (Nov. 20, 2020), https://www.wsj.com/articles/refinancingor-paying-offa-mortgage-questions-to-ask-yourself-11605877200.

145. *FHA Refinance Loan Questions and Answers*, FHA.COM (July 17, 2019), www.fha.com/fha_article (note that this "is a privately owned website, is not a government agency, and does not make loans").

146. *Learn About Forbearance*, CFPB, https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/help-for-homeowners/learn-about-forbearance/ (last visited Nov. 6, 2021).

147. *Id.*

148. NAT'L HOUS. L. PROJECT, FORECLOSURE PROTECTION & MORTGAGE PAYMENT RELIEF FOR HOMEOWNERS 2 (July 20, 2021), nhlp.org/wp-content/uploads/2020.04.10-NHLP-Homeowner-Relief-Info-Sheet-Update2.pdf.

149. CFPB, *supra* note 146.

150. *See Coronavirus: Information for Student Borrowers*, N.Y. STATE DEP'T FIN. SERV., https://www.dfs.ny.gov/consumers/coronavirus/students (last visited Nov. 6, 2021).

151. Kayla McCormack, *Should I Refinance My Federal Student Loans?*, SOFI (Oct. 13, 2021), https://www.sofi.com/learn/content/refinancing-your-federal-student-loans/.

152. Ben Luthi, *Should You Refinance Your Student Loans in 2021?*, U.S. NEWS & WORLD REP. (Mar. 26, 2021), https://loans.usnews.com/articles/should-you-refinance-your-student-loans.

153. Alexandra Dugan, *Servicing Post-Discharge Residential Mortgage Debt*, BRADLEY ARANT BOULT CUMMINGS LLP (June 5, 2019), https://www.bradley.com/insights/publications/2019/06/servicing-post-discharge-residential-mortgage-debt.

154. *Enforcement of Liens*, 9D Am. Jur. 2d *Bankruptcy* § 3513 (Aug. 2021).

existing underlying liens on the property are not extinguished.[155] For example, even after a debtor was discharged of his personal liability for unpaid costs, he was subject to foreclosure because of a remaining lien.[156] This is typical of secured loans, which are loans that use assets as collateral.[157] The rationale for allowing the dischargeability of secured loans during bankruptcy proceedings is that lenders can at least partially recover the loan amount through claiming the collateral and selling it.[158] However, loan dischargeability is not limited to only secured loans, and unsecured loans such as credit card loans and medical fees may also be discharged in bankruptcy.[159]

Student loan borrowers would also greatly benefit from a similar dischargeability standard in bankruptcy proceedings. This lowered standard would allow borrowers overwhelmed with student loan debt to benefit from the same fresh start as borrowers with other types of debt.

6. State Level

Although the federal government does not directly offer grants to homebuyers, the federal government provides funds to states and select municipalities to distribute to individuals who qualify for a mortgage.[160] Every state has home buyer assistance programs, some of which target certain geographic areas or individuals with certain backgrounds.[161] One such program is the homeowner voucher program, which gives borrowers monthly assistance to make their mortgage payments and other homeownership expenses.[162] By providing payment assistance to certain individuals, homeownership has become more equitable for low-income and minority families.[163]

Additionally, many states use legislation to control and stabilize housing accessibility and rent. For example, the New York Housing Stability and Tenant Protection Act of 2019 made existing rent regulations permanent,

155. *See Discharge of a Debt in Bankruptcy Has No Bearing on the Validity of the Mortgage Lien*, 59 C.J.S. *Mortgages* § 576 (Aug. 2021).

156. *See id.*; *Enforcement of Liens*, *supra* note 154.

157. Carron Armstrong, *Discharging Debts: Car, Home and Other Secured Loans*, THE BALANCE, https://www.thebalance.com/discharging-debts-car-home-and-other-secured-loans-316147 (Aug. 27, 2021).

158. *Id.*

159. Barclay Palmer, *Can Personal Loans Be Included in Bankruptcy?*, INVESTOPEDIA, https://www.investopedia.com/ask/answers/112615/can-personal-loans-be-included-bankruptcy.asp (Aug. 15, 2021).

160. *Resources for Individuals*, U.S. DEP'T HOUS. & URB. DEV., https://www.hud.gov/administration/grants (last visited Nov. 6, 2021).

161. *First-Time Home Buyer Programs by State*, NERDWALLET (July 27, 2021), https://www.nerdwallet.com/blog/first-time-home-buyer-programs-by-state/.

162. *Homeownership Vouchers*, U.S. DEP'T HOUS. & URB. DEV., www.hud.gov/public_indian_housing (last visited Nov. 6, 2021).

163. *Paths to Homeownership for Low-Income and Minority Households*, U.S. DEP'T HOUS. & URB. DEV. (Fall 2012), https://www.huduser.gov/portal/periodicals/em/fall12/highlight1.html.

expanded rent stabilization plans, and extended limitations on rent increases to protect more types of tenants.[164] By increasing tenant protections, New York decreased the evictions of low-income individuals who face a decreasing market of affordable housing options.[165]

Similar state level programs and funding can also be adopted in the context of higher education. States may also be able to use legislation to control and stabilize educational accessibility and tuition by limiting increases in tuition and expanding borrower protections.

7. Local Level

Property taxes are collected to fund local public services such as public education, fire protection, and road maintenance.[166] Under the applicable state law of each of the 50 states, charitable organizations are exempt from property taxes.[167] Because most public and private colleges operate as charitable organizations, cities cannot collect property taxes on these school's buildings and new real estate purchases.[168] Thus, although universities often function as corporate enterprises, they do not internalize the costs of their corporate identity.[169]

Additionally, municipalities often also use rent control and stabilization programs similar to state-level programs.[170] These efforts have generally been successful in maintaining housing stability for residents of rent-controlled housing.[171]

Again, similar local programs and funding can also be adopted in the context of higher education. Local government may use legislation to control

164. Housing Stability and Tenant Protection Act of 2019, N.Y. Comp. Codes R. & Regs. Tit. 9 § 2520.11.

165. *From the Field: New York State Legislators Pass 'Housing Stability and Tenant Protection Act of 2019'*, NAT'L LOW INCOME HOUS. COAL. (July 1, 2019), https://nlihc.org/resource/field-new-york-state-legislators-pass-housing-stability-and-tenant-protection-act-2019.

166. *Property Taxes*, N.Y. STATE DEP'T TAX'N & FIN., https://www.tax.ny.gov/property/proptax.htm (Apr. 20, 2021); Alanna Schubach, *Tax-Exempt Universities are Buying Up NYC Real Estate*, BRICK UNDERGROUND (May 4, 2016), https://www.brickunderground.com/live/tax-exempt-universities.

167. Daphne A. Kenyon and Adam H. Langley, *The Property Tax Exemption for Nonprofits and Revenue Implications for Cities*, LINCOLN INST. OF LAND POL'Y (Nov. 2011), https://www.taxpolicycenter.org/sites/default/files/alfresco/publication-pdfs/412460-The-Property-Tax-Exemption-for-Nonprofits-and-Revenue-Implications-for-Cities.PDF.

168. Schubach, *supra* note 166.

169. Julian T. Miller, *Program Integrity and the Implications of the Corporate Identity in Higher Education*, 7 BROOK. J. CORP. FIN. & COM. L. 509, 510-11 (2013), https://brooklynworks.brooklaw.edu/bjcfcl/vol7/iss2/6.

170. *See* Prasanna Rajasekaran, Mark Treskon & Solomon Greene, *Rent Control: What Does the Research Tell Us About the Effectiveness of Local Action?*, URB. INST. (Jan. 2019), https://www.urban.org/sites/default/files/publication/99646/rent_control._what_does_the_research_tell_us_about_the_effectiveness_of_local_action_1.pdf.

171. *Id.* at 8.

and stabilize educational accessibility and tuition by limiting increases in tuition and expanding borrower protections.

II. WHY NEW STUDENT LOAN LEGISLATION NEEDS TO BE ADOPTED

The government's attempts to assist borrowers with their student loans have had limited success. The student loan default initiatives, forgiveness programs, mandatory borrower assistance programs, college cost reduction plans, income-driven repayment plans, and reform proposals have clearly not fixed or curtailed the ever-increasing student loan total and default rate.[172] The current student loan sum is already at a staggering $1.7 trillion,[173] and repayment on these student loans is slowing or stopping completely because of the COVID-19 pandemic.[174]

A. LOAN FORGIVENESS AND REPAYMENT PROGRAMS

While loan forgiveness programs for student loans have been lauded as a way to cancel student debt for certain government and nonprofit employees, most people do not qualify for these programs.[175] Only 1% of Public Service Loan Forgiveness (PSLF) applicants qualified and were granted loan forgiveness through this program, showing large-scale dysfunction over both the understanding of the program and its impact.[176] From the PSLF's launch in 2007 until 2019, only about 1,216 people received loan forgiveness through PSLF.[177] In contrast, 100,835 were rejected during the same period.[178]

To qualify for the PSLF, borrowers need to have a federal Direct Loan, be under an income-driven repayment plan, be employed by and work full-time for a qualifying government agency or not-for-profit organization, and make 120 qualifying payments.[179] According to the CFPB's Consumer Complaint Database, as of 2019, complaints about the PSLF are becoming

172. *See* Student Loan Default Prevention Initiative Act of 1990, 20 U.S.C. § 1085(a)(2)(A); 20 U.S.C. §§ 1088-1098; Public Service Loan Forgiveness Program, 34 C.F.R. § 685.219 (2021); Cory Turner, *Why Public Service Loan Forgiveness Is So Unforgiving*, NAT'L PUB. RADIO (Oct. 17, 2018), https://www.npr.org/2018/10/17/653853227/the-student-loan-whistleblower.

173. FED. RES. SYS., *supra* note 1.

174. Nova, *supra* note 62.

175. Turner, *supra* note 172.

176. *Id.*; Public Service Loan Forgiveness Program, 34 C.F.R. § 685.219.

177. Robert Farrington, *Public Service Loan Forgiveness (PSLF) Numbers Are Improving, But Is It Enough?*, FORBES (Sept. 20, 2019), https://www.forbes.com/sites/robertfarrington/2019/09/20/public-service-loan-forgiveness-pslf-numbers-are-improving-but-is-it-enough/?sh=169ed3667431.

178. *Id.*

179. *Public Service Loan Forgiveness (PSLF)*, FED. STUDENT AID, https://studentaid.gov/manage-loans/forgiveness-cancellation/public-service (last visited Nov. 6, 2021).

increasingly common.[180] In particular, loan servicers do not accurately, nor timely, advise borrowers whether their payments qualify for the PSLF.[181] Some borrowers have even been told incorrect information regarding their qualification for the PSLF, which has effectively required them to restart the 10-year-long qualification process.[182]

B. INCOME-DRIVEN REPAYMENT PLANS

As its name suggests, an income-driven repayment plan is a loan payment plan that bases a borrower's monthly payment amount on the borrower's income. There are four income-driven plans for federal student loans, which vary in terms of requirements for eligibility, repayment amount, and repayment period.[183] These plans generally require between 10 and 20% of a borrower's discretionary income and will take 20 or 25 years to pay.[184]

Studies have shown that income-based repayment is inefficient for both lenders and certain borrowers.[185] FI Consulting, hired by the Education Department led by Betsy DeVos, found a selection bias where many borrowers who seek income-driven repayment plans have a low income-to-loan ratio.[186] Since borrowers in an income-driven repayment plan pay a fixed percentage of their income every month, sometimes without a cap on the maximum amount they pay per month, those with high incomes or projected high incomes tend to opt for other options.[187] The extended payback period is also concerning, as it means that there will be more interest accrual, and borrowers will end up paying more.[188]

The fixed percentage of disposable income also means that borrowers may even make no payments per month if their income is sufficiently low.[189] While this is especially beneficial for borrowers in low-paying jobs or who

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180. Bureau of Consumer Financial Protection, CONSUMER RESPONSE ANN. REP.: JAN. 1 – DEC. 31, 2019, 1, 48 (Mar. 2020), https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2019.pdf.

181. *Id.*

182. Hunter B. Martin, *Stakeholders, Lawmakers Lament 'Broken Promises' with Public Service Loan Forgiveness*, NAT'L ASS'N OF STUDENT FIN. AID ADMINISTRATORS, (Sept. 20, 2019), https://www.nasfaa.org/news-item/19513/Stakeholders_Lawmakers_Lament_Broken_Promises_with_Public_Service_Loan_Forgiveness.

183. Rebecca Safier, *Which is the Best Income-Driven Repayment Plan for Your Student Loans?*, STUDENT LOAN HERO (Feb. 19, 2019), https://studentloanhero.com/featured/best-income-driven-repayment-student-loans/.

184. *Id.*

185. *See* Mitchell, *supra* note 2.

186. *Id.*

187. Kristin Blagg, *Who Uses Income-Driven Student Loan Repayment?*, URB. INST. (Feb. 20, 2018), https://www.urban.org/urban-wire/who-uses-income-driven-student-loan-repayment.

188. Ryan Lane, *Income-Driven Repayment: Is It Right for You?*, NERDWALLET (July 20, 2020), https://www.nerdwallet.com/article/loans/student-loans/income-driven-repayment-right.

189. *If Your Federal Student Loan Payments are High Compared to Your Income, You May Want to Repay Your Loans Under an Income-Driven Repayment Plan*, FED. STUDENT AID, https://studentaid.gov/manage-loans/repayment/plans/income-driven (last visited Nov. 6, 2021).

are not currently working, thus creating a crucial safety net for such borrowers, it is difficult for lenders to recover the loan amounts.[190] FI Consulting's study found that only 51% of income-driven repayment balances are recoverable compared to 80% of the balances of other plans.[191]

C. STUDENT LOAN DEFAULT PREVENTION INITIATIVE ACT OF 1990

The Student Loan Default Prevention Initiative Act of 1990 was implemented to punish higher education institutions with exceptionally high default rates by barring them from federal loan programs.[192] This act was passed to increase the transparency of and to hold schools accountable for their students' inability to repay their student loans,[193] presumably because of lower-than-expected employment prospects or graduation rates.

One statistic tracked is the cohort default rate, which is the percentage of a school's borrowers who have entered into repayment for certain federal loans but then subsequently defaulted.[194] These numbers are concerning because there are several schools with extremely high default rates or number of defaults.[195] Some of these universities reflected a default rate of above 50%, and others had thousands of student defaults.[196] The University of Phoenix, for example, had over 13,000 defaults in 2016.[197] This shows that colleges are still getting federal funding despite having a concerning number of defaults. Additionally, removing schools from federal financial aid programs may prevent future students from becoming saddled with debt after receiving presumably sub-par education or training but provides no relief for students who had already taken out loans but found themselves with bleak employment prospects.[198]

Perhaps most importantly, the current data also merely reflects the number of defaulters and does not delve into the difficulty of the vast majority of other borrowers to repay their loans, which may be much greater than this data reflects.[199]

190. Mitchell, *supra* note 2.

191. *Id.*

192. Student Loan Default Prevention Initiative Act of 1990, 20 U.S.C. § 1085(a)(2)(A).

193. Paul Combe & Julie Ryder Lammers, *Missing Data: Focusing on the Wrong Factors Could Contribute to Student Loan Distress*, 48 SUFFOLK U. L. REV. 599, 605 (2015).

194. *Official Cohort Default Rates for Schools*, FED. STUDENT AID, https://www2.ed.gov/offices/OSFAP/defaultmanagement/cdr.html (last visited Nov. 6, 2021); *see also* Student Loan Default Prevention Initiative Act of 1990, 20 U.S.C. § 1085(a)(2)(A).

195. *Official Cohort Default Rates for Schools*, *supra* note 194.

196. FED. STUDENT AID, FY 2018, FY 2017, & FY 2016 OFFICIAL COHORT DEFAULT RATES (2021).

197. *School Default Rates FY 2018, 2017, and 2016: University of Phoenix*, FED. STUDENT AID, https://nslds.ed.gov/nslds/nslds_SA/defaultmanagement/cohortdetail_3yr.cfm?sno=1&ope_id=020988 (last visited Nov. 6, 2021).

198. Annie Nova, *For Some, Student Loan Debt Is Doubling, Tripling, and Even Quadrupling*, CNBC (May 5, 2018), https://www.cnbc.com/2018/05/05/for-some-student-loan-debt-is-doubling-tripling-and-even-quadrupling.html.

199. Combe & Lammers, *supra* note 193, at 603–05.

D. Borrower Literacy

While borrower literacy programs are essential for increasing the transparency of student loans so that borrowers can understand the risks and responsibilities of student loans,[200] they are insufficient for handling the underlying lending terms of these loans. Despite increased transparency about the risks associated with student loan debt, more families are taking out even larger loans to fund their children's education.[201]

One concerning trend in recent years is that an increasing number of senior citizens are taking out student loan debt to attend college.[202] While millennials have decades to work off their student loans, senior citizens may incur substantial student loan debt that they could simply never pay off.[203] This often delays when senior citizens can retire, if ever, and has increasingly caused more seniors to fall into poverty.[204] It is important to note that most states and cities offer free or reduced tuition at state universities and community colleges for senior citizens.[205] However, despite the widespread availability of these more affordable programs, many senior citizens take out loans to finance their education at for-profit schools.[206] Senior education loans also have high interest rates, so for-profit education is costlier for senior citizens than available alternative public programs.[207] This reflects the failure of borrower literacy programs to prevent risky student loan borrowing, especially for some of the riskiest and most vulnerable borrowers.

E. Proposal to Decrease the Availability of Federal Funding for Student Loans

Because the student loan crisis originated from the widespread availability of student loans, some scholars have proposed decreasing the availability of federal student loans.[208] However, this would severely and disproportionately impact those who are already less likely to attend

200. 20 U.S.C. §§ 1088-1098 (mandating borrower assistance programs).

201. Nick Ducoff, *Students and Their Families Need Support Systems Before They're Saddled With College Debt*, CNBC (May 17, 2019), https://www.cnbc.com/2019/05/16/students-families-need-support-systems-to-handle-college-debt-crisis.html.

202. Robert Farrington, *The Growing Trend Of Retiree Student Loan Debt*, FORBES (May 22, 2019), https://www.forbes.com/sites/robertfarrington/2019/05/22/the-growing-trend-of-retiree-student-loan-debt/?sh=210daac846a4.

203. *Id.*

204. *Id.*

205. Amy Livingston, *Free & Cheap College Classes for Senior Citizens (By State & University)*, MONEY CRASHERS (Dec. 11, 2018), https://www.moneycrashers.com/college-classes-seniors/.

206. Helaine Olen, *Student Debt Increasing the Strain on Older Americans*, AARP (Mar. 6, 2019), https://www.aarp.org/money/credit-loans-debt/info-2019/parents-student-loan-debt.html.

207. *Id.*

208. Roger Ma, *How The Federal Government Could Control College Costs*, FORBES (May 29, 2018), https://www.forbes.com/sites/rogerma/2018/05/29/how-the-federal-government-could-control-college-costs/#449536321dcc.

college—students of color and students from low-income households.[209] Higher-income households hold most of the student loan debt, but low-income households would be more negatively affected by the reduction of federal funding because higher-income households have more financing alternatives (i.e., are more likely to qualify for private student loans).[210] Because reducing access to federal student loans would increase the socioeconomic difference in access to education and hurt those who need these loans the most, especially in the short run before college tuition hypothetically decreases, other solutions should be explored instead.

F. PROPOSAL TO REDUCE BANKRUPTCY DISCHARGEABILITY REQUIREMENTS FOR STUDENT LOANS

Perhaps the most popular proposed solution to the student debt crisis is to amend the Bankruptcy Code to allow the dischargeability of student loans.[211] Under the current law, student loan borrowers can only discharge a government-sponsored student loan if they show undue hardship.[212] The undue hardship requirement is difficult to meet, so student loans are rarely discharged in bankruptcy.[213] Many scholars and lawmakers are pushing for the reduction of bankruptcy dischargeability requirements for student loans. However, allowing the dischargeability of student loans, without more, will not solve the other problem of the ever-increasing debt.

III. WHY MULTI-LEVEL LEGISLATION IS REQUIRED

A multi-level approach is required to tackle the $1.7 trillion (and increasing) student loan debt problem. First, tuition must be reduced because even if all student loan debt were to be wiped out today, the unaffordability of tuition would continue to increase, and the student debt would amass again. Second, current student loan borrowers need assistance with repayment, especially given the current pandemic-induced economic environment. Third, student loans need to be dischargeable in bankruptcy proceedings as a last-resort safety net.

209. Melanie Hanson, *College Enrollment & Student Demographic Statistics*, EDUCATIONDATA.ORG (Aug. 7, 2021), https://educationdata.org/college-enrollment-statistics. *See also* Sandy Baum & Adam Looney, *Who Owes the Most in Student Loans: New Data from the Fed*, BROOKINGS (Oct. 9, 2020), https://www.brookings.edu/blog/up-front/2020/10/09/who-owes-the-most-in-student-loans-new-data-from-the-fed/.

210. Anna Helhoski, Cecilia Clark & Colin Beresford, *18 Best Private Student Loans*, NERDWALLET USA (Oct. 26, 2021), https://www.nerdwallet.com/best/loans/student-loans/private-student-loans.

211. Andrew A. Sexton, *The Education Loan Bubble: How the Discharge Student Loans in Bankruptcy Act of 2017 and Legislation Alike Is the Only Answer to the Student Loan Crisis*, 54 CAL. W. L. REV. 323, 326 (2018).

212. United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 260 (2010).

213. Sexton, *supra* note 211, at 325.

A. REDUCING TUITION: SUBSIDIZATION AND GRANTS FOR TUITION

The cost of tuition in the United States is astronomical compared to tuition in other countries.[214] In fact, seven developed, democratic countries offer free tuition that has been wholly subsidized by the state.[215] Some of these countries even allot monthly grants for living expenses.[216] Since the United States government initiatives caused the massive and increasingly widened gap between the minimum (or even average) wage and tuition, the government needs to take measures to narrow the gap that it caused and increase the affordability of higher education.[217] Approaches to solving the student loan debt problem that do not address this tuition issue fail to address the student loan debt problem permanently; merely wiping out today's student loan debt may assist current borrowers, but it would not prevent the debt load from accumulating again in the future and increasing further.

Because of the size and complexity of the United States, individual states and municipalities should provide similar and more localized help to prospective student loan borrowers. This has already been done with state and local subsidization and grants available to homebuyers, which have proven to increase the accessibility and equitableness of home purchases. By reducing the upfront costs of tuition, students can take a more manageable amount of student loan debt. From 2008 to 2018, after adjusting for inflation, research has shown that states have deeply cut funding for postsecondary education.[218] Given the increasing value of and the necessity for college education, it does not make sense why funding has continued to decrease in most states instead of increasing or at least remaining stable.

To avoid some of the issues with tuition subsidization, such as Denmark's problem with eternity students, there could be limits set to the

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214. Allana Akhtar, *7 Countries Where Higher Education is Free*, BUS. INSIDER (Sept. 19, 2019), https://www.businessinsider.com/countries-with-free-higher-education-no-tuition-college#ireland-has-paid-tuition-fees-for-most-full-time-undergraduate-students-since-1995-4.

215. *Id.*

216. Denmark has a program that gives students monthly $1,000 grants for living expenses. Chris Weller, *Denmark's Free Education Policy Has Created 'Eternity Students' Who Never Graduate*, INDEPENDENT (Nov. 13, 2017), https://www.independent.co.uk/life-style/denmark-s-free-education-policy-has-created-eternity-students-who-never-graduate-a8052621.html. This program created a problem of "eternity students," who are "people who stick around at college for six years or more without any plans of graduating, solely because they don't have any financial incentive to leave." *Id.*

217. *See How Many Hours Would It Take You to Work Off Today's College Tuition?*, NEW REPUBLIC (Oct. 6, 2015), https://newrepublic.com/article/122814/how-many-hours-would-it-take-you-work-todays-college-tuition. "In 1979, it took a student working at minimum wage ($2.90 per hour) 385.5 hours to pay off one year of the average college tuition." *Id.* "Today, it takes 2,229 hours working at the federal minimum wage ($7.25 per hour) to pay off one year of the average college tuition." *Id.*

218. Michael Mitchell, Michael Leachman, Kathleen Masterson & Samantha Waxman, *Unkept Promises: State Cuts to Higher Education Threaten Access and Equity*, CTR. ON BUDGET & POL'Y PRIORITIES (Oct. 4, 2018), https://www.cbpp.org/research/state-budget-and-tax/unkept-promises-state-cuts-to-higher-education-threaten-access-and.

availability of subsidies and grants. As with certain state and local homebuyer assistance programs that target certain geographic areas or individuals with certain backgrounds, additional subsidies and grants could be tailored to prospective students of certain demographics. There could also be a limit on the number of years that the per-student subsidies and grants are available to discourage students from staying beyond the typical 2-year period for associate degree students and 4-year period for bachelor's degree students.

B. DECREASING COSTS: DECREASING CERTAIN CHARITABLE EXEMPTIONS

Institutions of higher education should also be pushed to minimize their costs because they currently do not internalize the costs of their corporate identity. Instead, these institutions benefit from the wide availability of student loans and invest in non-educational and non-essential amenities, such as high-end dormitories, instead of improving affordability.[219] Because there is no cap on how much colleges can charge for tuition, colleges continue to increase their tuition at their discretion.

To reduce the gap between average income and tuition, tuition increases should be limited through tuition stabilization or tuition control, similar to the respective rent stabilization and rent control programs at both state and local levels. When tuition is tied to the inflation rate, or other similar metrics that can calculate tuition's true cost, student loan borrowers would worry less about the disconnect between the cost of education and the ability to repay their loans with average-paying jobs. If colleges and universities fail to meet these tuition stabilizations or control requirements and instead continue to increase costs because of non-educational expenditures, the government should remove benefits allotted to charitable organizations. Colleges that excessively spend on non-educational initiatives are akin to charitable organizations that digress from benefiting their charitable purpose. As such, they should not receive these special benefits such as property-tax exemptions.

C. INCREASING BORROWER PROTECTIONS: ASSISTING PRIVATE LOAN BORROWERS

Many private student loan borrowers are left without relief or protection despite the ongoing COVID-19 pandemic, which has eliminated many jobs and depleted many people's savings. Because the government currently only has control over federal loans, initiatives such as the CARES Act do not protect private student loan borrowers. As discussed earlier, the protections given to these borrowers are entirely up to the lenders' discretion and are often inadequate. Given the immediacy of these concerns, the government

219. Sarah Pascarella, *Why Does College Cost So Much*, EDMIT, https://www.edmit.me/blog/why-does-college-cost-so-much (last visited Nov. 6, 2021).

should consider placing private student lenders under conservatorship or bailing out borrowers with private student loans.

D. ASSISTING LOAN REPAYMENT: FEDERALLY-BACKED REFINANCING

In contrast to mortgage refinancing, which allows both federally-backed and private lender mortgages to be refinanced with a federally-backed mortgage, student loan refinancing currently allows borrowers with federal loans to refinance their loans only with private lenders.[220] This is problematic because borrowers who choose to refinance with private lenders will lose all protections given to federal student loans.[221] Since private student loans are not covered by the CARES Act,[222] millions of borrowers who refinanced with private lenders are required to continue to make their monthly payments during the COVID-19 pandemic despite the widespread health and financial difficulties.[223] Borrowers with high interest rates, such as undergraduate borrowers with a fixed interest rate of 6.8%,[224] would not be able to take advantage of the current low-interest rate environment[225] or their improved credit scores[226] without giving up government programs and protections such as the current CARES Act. For private student loan borrowers who experienced COVID-19-related financial hardships, pandemic payment relief depends entirely on the goodwill of loan servicers.[227] Thus, while private loan servicers have made some effort to assist borrowers, the private servicer relief

220. Ryan Lane, *Should You Refinance Federal Student Loans?*, NERDWALLET (Sept. 21, 2021), https://www.nerdwallet.com/article/loans/student-loans/should-you-refinance-federal-student-loans.

221. *Id.*

222. *Coronavirus Info for Students, Borrowers, and Parents*, *supra* note 65.

223. Amira Al-Subaey, Parker Breza & Sejal Singh, *The Class of 2020, Another Lost Generation*, COMMON DREAMS (Oct. 30, 2020), https://www.commondreams.org/views/2020/10/30/class-2020-another-lost-generation?utm_campaign=shareaholic&utm_medium=Social&utm_source=linkedin.

224. *Understand How Interest is Calculated and What Fees are Associated with Your Federal Student Loan*, FED. STUDENT AID, https://studentaid.gov/understand-aid/types/loans/interest-rates (last visited Nov. 6, 2021).

225. Kara Ng, *The impact of today's low-interest rate environment on investors*, RUSSELL INV.'S (Oct. 21, 2020), https://russellinvestments.com/us/blog/impact-low-interest-rates-investors.

226. *See Written Testimony of Rohit Chopra Before the S. Comm. on Banking, Hous., and Urb. Aff.*, (June 24, 2013) (statement of Rohit Chopra, Assistant Dir., CFPB), https://www.consumerfinance.gov/about-us/newsroom/the-cfpb-before-the-senate-committee-on-banking-housing-and-urban-affairs/#fn30.

227. *See Coronavirus: Information for Student Borrowers*, *supra* note 150; Kelly Anne Smith, *Got A Private Student Loan? These Lenders And Servicers Offer COVID-19 Relief*, FORBES (May 5, 2020), https://www.forbes.com/sites/advisor/2020/05/05/got-a-private-student-loan-these-lenders-are-offering-relief/?sh=4b2a2f387f46. *See also* Nova, *supra* note 92 (showing how private student loan borrowers experienced COVID-19 related financial hardships).

seems inadequate given that the pandemic has no clear end, as it only provides protection for up to three months and accrues interest.[228]

Opening the option of student loans being refinanced by federally backed student loans would allow borrowers to severely decrease their monthly payments and pay off their loan principal balances more quickly without giving up all of the federal loan protections. This would quicken up the timeline for loan repayment, reduce risks for both lenders and borrowers, and free up disposable income for borrowers. As current private refinancing lenders already require that borrowers prove their repayment abilities, this would benefit the government by incentivizing the safest borrowers (i.e., borrowers with a steady income) to stay within the federal student loan system.[229] Increasing competition in the student loan refinancing market may also incentivize private lenders to offer more favorable terms to borrowers, such as allowing loan forbearance for certain periods of difficulty, including during a global pandemic.

E. DEFAULTS FOR INSOLVENCY: STUDENT LOAN DISCHARGEABILITY

As discussed more in-depth by other scholars, allowing the dischargeability of student loans is necessary to prevent the student debt crisis from further escalating.[230] Student loan dischargeability is necessary for student loan borrowers overwhelmed with debt and in bankruptcy court even after tuition is reduced and student loans become more consumer friendly. This would help borrowers who already have student loans and do not benefit as much from the above-proposed changes. It would also act as a safety net for future borrowers in significant financial distress who have exhausted their other options.

F. BEST AND MOST COMPREHENSIVE APPROACH: MULTI-LEVEL LEGISLATION

This multi-level legislation is the best and most comprehensive approach to the student loan problem because it addresses the problem now and in the future. The different levels of legislation complement each other, and any potential weakness of an individual level is addressed by another level.

To begin, reducing tuition and decreasing the costs incurred by colleges is necessary to stall the unaffordability of tuition. However, while increasing the subsidization and grants for tuition and decreasing certain charitable exemptions for colleges would help address the issue of ever-increasing

228. *See Coronavirus: Information for Student Borrowers*, *supra* note 150; Smith, *supra* note 227.

229. Elyssa Kirkham, *10 Key Questions to Ask Before Refinancing Your Student Loans*, STUDENT LOAN HERO, https://studentloanhero.com/featured/10-questions-to-ask-before-refinancing-your-student-loans/ (May 19, 2020).

230. *See* Sexton, *supra* note 211.

tuition, solely relying on this approach would fail to address the hardships felt by current borrowers.

That is why increasing borrower protections and repayment assistance is also necessary and complements the other levels. However, while this method would assist borrowers in repaying their loans and decrease potential defaults, this method alone fails to address borrowers who resort to bankruptcy or future college students who would need to take on larger student loans to pay for the ever-increasing tuition.

Thus, an eased standard for the dischargeability of student loans is necessary as a last-resort safety net and complements the levels mentioned above. This last level protects borrowers who do not benefit from the other proposed initiatives or find themselves overwhelmed with student loan debt despite those initiatives.

Overall, these separate levels complement each other because they address different aspects of the present, future, and past issues of the massive student loan debt problem.

CONCLUSION

The growing student loan debt problem in the United States poses severe risks to vulnerable borrowers and the economy. One part of the problem is that borrowers take on more student loan debt as college tuition increases. Another part is the slower income growth relative to the increasing cost of college. Thus, the mismatch between loan and repayment capability keeps widening. Given the similarities between the real estate and higher education industries regarding debt and affordability, the government can take inspiration from the real estate industry in solving the student loan debt problem.

A multi-level approach is needed to address this complex $1.7 trillion (and ever-increasing) student loan debt problem. First, tuition itself needs to be reduced because the underlying problem with student loans is the increasingly expensive tuition. Second, to address current concerns regarding loan repayment and borrower protections, the government should assist borrowers through initiatives like allowing for federally-backed refinancing. Third, and as a last-resort safety net, student loans should be granted a less stringent standard for dischargeability in bankruptcy proceedings. This multi-level legislation would effectively address the existing debt and prevent this problem from happening again in the future.

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