

# The American Student Debt Crisis

Changing Narratives Around Higher Education  
and Student Debt





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## **Acknowledgments**

Special thanks to the Justice Lab 2015 for all their helpful feedback and encouragement.

## **About the Systemic Justice Project**

The Systemic Justice Project (“SJP”) is a policy innovation collaboration, organized and catalyzed by Harvard Law School students devoted to identifying injustice, designing solutions, promoting awareness, and advocating reforms to policymakers, opinion leaders, and the public. While targeting specific policy challenges, SJP is devoted to understanding common and systemic sources of injustice by analyzing the historical, cultural, political, economic, and psychological context of particular problems. Toward that end, SJP is committed to collaborating with scholars, lawyers, lawmakers, and citizens and to working with existing institutions in promoting attainable, pragmatic, and lasting policy solutions.

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## EXECUTIVE SUMMARY

The United States is experiencing an overwhelming student debt crisis. Outstanding student debt has exceeded one trillion dollars since 2011.<sup>1</sup> Student debt burdens over forty million Americans,<sup>2</sup> and that debt is the second largest source of consumer debt in the United States, second only to home mortgages.<sup>3</sup>

Still, students continue to borrow at record rates. In 2012-2013, students borrowed 110 billion dollars to pay for higher education.<sup>4</sup> Costs are also continuing to rise. In a 2013 speech on college affordability, President Obama explained, “[o]ver the past three decades, the average tuition at a four-year public college has risen by more than 250 percent” while “[t]he typical family income has gone up 16 percent . . . What that means is . . . it’s getting harder and harder for students to be able to afford that college education . . .”<sup>5</sup>

This report examines the role that two narratives about the purpose of higher education have played in creating and perpetuating the student debt crisis. It explores the tension between how higher education is justified and glorified, on the one hand, and how it is implemented and financed, on the other. Americans have historically believed that the purpose of education is to yield a more knowledgeable, reflective, and productive citizenry. Increasingly, another narrative that locates the purpose of education in personal economic advancement has gained traction. This report refers to these competing narratives as the “civic/social benefit” and “return on investment” narratives, respectively.

This report begins by sharing a number of personal stories that illustrate student debt’s devastating impact on individuals. The report next offers a history of the two dominant narratives at play. It explores how Americans’ understanding of the purpose of higher education has shifted over time and traces the associated impact of these changes on national policy. The report then uses four case studies to illustrate how strategic deployment of the two narratives shapes the current system in ways that ultimately harm student loan borrowers. Each case study identifies policy reforms while also focusing more broadly on how the narratives dictate the very terms of the debate.



The first case study explores trends in spending practices in higher education. Colleges increasingly view themselves as competitors in the educational marketplace. They emphasize the student-as-consumer model to justify increased spending on student services, amenities and recreational facilities. This spending increases tuition costs, harming the students they claim to be serving and worsening inequality by raising barriers to entry for low-income students.

The second case study focuses on the FAFSA, or the Free Application for Federal Student Aid. As the main application for student aid, the FAFSA was originally designed to improve access to higher education by making necessary funds readily available. However, reforms that would improve access to funding, reforms motivated by concern with the importance of universal, egalitarian education have faced strong criticism. The debate over the FAFSA's purpose centers on the competing narratives over higher education. While the civic/social benefit narrative would support simplifying the FAFSA, the return on investment narrative is often invoked to maintain the existing procedural obstacles to ensure that only the most "deserving" students receive aid.

The third case study explores for-profit colleges' manipulation of the narratives. On the one hand, for-profit schools promise students the benefits of both the civic/social benefit and return on investment narratives. However, when responding to government regulatory efforts, for-profit schools masterfully flip between the narratives. They thereby avoid accountability to objective measures of student and institutional success based on either civic/social benefit or return on investment arguments, to the great disadvantage of the students they claim to benefit.

The final case study addresses the extraordinarily limited consumer debt protections for student loan borrowers, particularly in the context of bankruptcy discharge. Though policies encourage student borrowing at the front end through the dual narratives that higher education will provide civil/social benefits as well as a return on investment, the script completely changes when it comes time for repayment. Student debt is consistently excluded from many consumer debt protections, based on the ungrounded fear that students will abuse the debt relief options. The case study explores how stereotypes of the "opportunistic

student loan debtor” are misleading and have led to unfairly limited relief for genuinely struggling borrowers.

Each case study details a policy area in need of reform. Taken together, they illustrate a systemic problem in current discourse on higher education policy. Competing and often unexamined narratives about higher education reflect and reproduce a lack of clarity about the goals of higher education. This lack of clarity allows powerful players to manipulate different narratives to serve their short-term interests at the expense of longer-term societal interests.

This report critically examines two narratives and illustrates how they have shaped the current education financing system, leading to the dominance of the return on investment narrative and student-as-consumer model seen today. After exploring this model’s roots, this report challenges the model, arguing that it rests on flawed assumptions about students and higher education. Addressing the student debt crisis requires confronting these flawed assumptions directly. This report calls for a critical dialogue about the goals of higher education in the United States and how the American system of financing education can better meet individual and collective goals.

## **TERMINOLOGY**

### **The Narratives**

Two narratives have dominated cultural and societal discourse about higher education throughout United States history. Education could theoretically serve the goals of benefitting the individual and society both in terms of personal development and in terms of increasing earning capacity. However, in practice, tensions emerge from these different visions of what education is for, and why it matters.

#### ***Civic/Social Benefit:***

The civic/social benefit narrative asserts that education is valuable because it makes students more deeply human. Education is an “unqualified good” at “every age and level” that is

“unassailably beneficial to the individual, society and the world.”<sup>6</sup> Students should pursue higher education to become their best personal and public selves; full engagement and equality in a democratic society depend on it. Higher education is where students learn to engage critically with one another and the world.

The civic/social benefit narrative envisions students growing through higher education to wrestle with and grasp ideas they “glimpsed only dimly before.”<sup>7</sup> Engaging with ideas helps students more fully realize themselves and creates a society of informed and engaged citizens. The civic/social benefit narrative’s basic picture of the student is the student-as-citizen, since education is understood as an enriching, socializing mechanism. By fostering individual growth and critical engagement, education creates a flourishing civil society and a robust democracy.

This narrative mainly emphasizes the non-tangible, experiential benefits of education (“not everything valuable can be measured”<sup>8</sup>), and tends to differentiate education from the types of goods and services provided by markets. Because it sees individual fulfillment and civic engagement as intimately connected, the narrative emphasizes universal access and diverse educational experiences.

### ***Return on Investment:***

The return on investment narrative values education as a way to increase students’ earning potential. Students should attend college to gain the skills for a more profitable life, which in turn will lead to a more profitable society. This narrative emphasizes tangible, marketable skills that translate into earning power. From this perspective, increasing access to higher education becomes a reflection of the public commitment to expanding economic opportunity.

This narrative, like the civic/social benefit narrative, emphasizes benefits to society as well as to the individual. The aggregate benefit of return on investment for individuals justifies investment in higher education. The College Board’s annual report on higher education emphasizes how individual gain leads to social benefits, reporting that “[f]ederal, state, and local governments enjoy increased tax revenues from college graduates and spend less on income support programs for them,

providing a direct financial return on investments in postsecondary education." In this view, promoting return on investment for students leads to a wealthier, more stable society.

The return on investment narrative is closely intertwined with the idea of the student-as-consumer, which conceptualizes students and higher education institutions as market actors. The student-as-consumer model assumes students have stable internal preferences and shop around, like other investors, for the best return on their investment. According to this model, schools act as producers, and compete with one another for student investment. Schools that satisfy students' preferences, revealed through their market choices, will be rewarded with capital gain.

The student-as-consumer model posits that students will be better off if given access to a broader array of choices in the educational market. Minimal government regulation will benefit students by allowing the market to respond to their preferences, which can be known only by uninterrupted expression in the marketplace. This model rests on a set of assumptions about the markets and the role of law in society advanced by neoliberal economists including Milton Friedman and George Stigler.<sup>9</sup> From this perspective, consumers should not be insulated from the consequences of their decisions. The gain is theirs to enjoy and the loss is theirs to bear. Any interference would skew the market's ability to reflect consumer choices.<sup>10</sup>

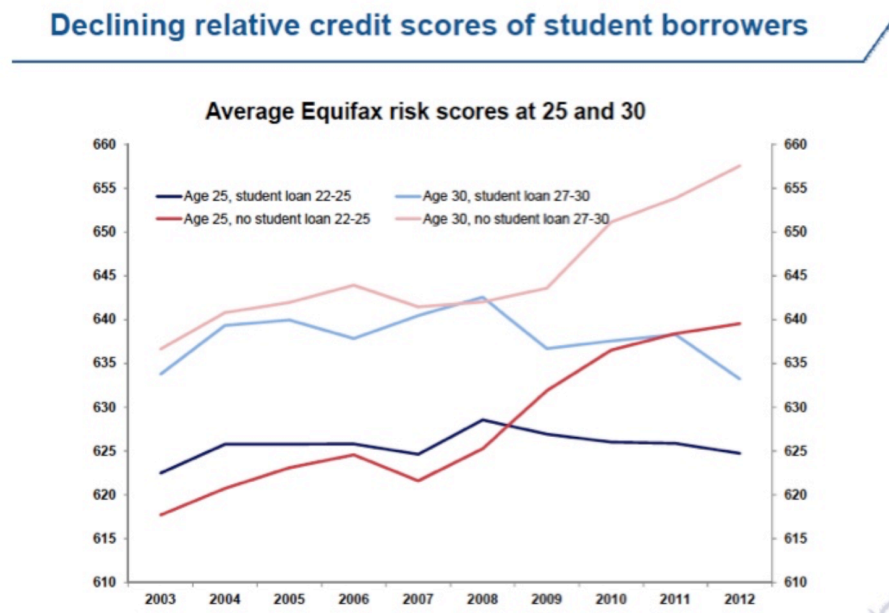
## **STUDENT DEBT AND HIGHER EDUCATION**

### **The Student Debt Crisis**

The average student debt outstanding among households has been growing steadily over the past 25 years, rising from around \$9,000 in the late 1980s to over \$26,000 per household today.<sup>11</sup> The portion of the population holding this debt has increased as well, from 33 percent of Americans in 2007 up to 45 percent in 2010.<sup>12</sup> The rapid growth of student debt has had serious collateral consequences on individuals and society. Student debt interferes with students' abilities to begin and maintain good financial health throughout their careers and lives.

In 2003, the average credit score for a 30-year-old holding student debt was better than the average for a 25-year-old with or without student debt, suggesting that the benefits associated with educational investment allowed individuals to earn and invest enough to improve their credit.<sup>13</sup> In 2012, in contrast, the average credit score for a 30-year-old student debt holder was likely to be significantly below that of a 25-year-old without student debt.<sup>14</sup> This data suggests that, on average, higher education is not as good an investment as it was as recently as 2003. The increasing burden of student debt significantly affects a borrower's quality of life and overshadows major life choices. Individuals report that holding student debt has made paying bills and buying a home more challenging.<sup>15</sup> Many even report that holding student debt has affected career choices and shaped decisions about whether to get married or start a family.<sup>16</sup>

**Figure 1: Student Loans and Credit Scores<sup>17</sup>**

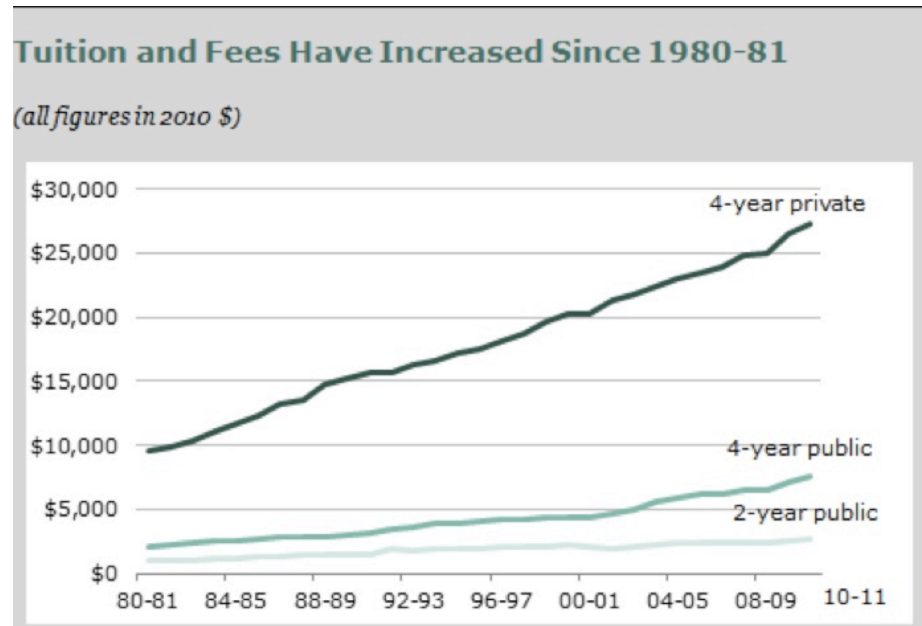


Source: Campaign for America's Future

The burden of student debt resonates among individuals across the economic spectrum. From 1993 to 2012, the percentage of low-income students assuming student debt to attend college rose from 67 to 77 percent, but college graduates from upper middle class or high-income brackets have increasingly assumed debt as well. Today, 50 percent of college

graduates from high-income families assume debt as compared to only 24 percent in 1993.<sup>18</sup> Increases in borrowing reflect, in part, increasing tuition. Over the past thirty years, average inflation adjusted tuition and fees have grown in every institutional category, though they have grown most significantly at four year private colleges, rising from below \$10,000 annually in the early 1980s to over \$25,000 in 2008-09, adjusted for inflation.<sup>19</sup>

**Figure 2:** Rise in College Tuition and Fees, 1980 to 2011<sup>20</sup>



Source: Pew Research Center

Though relying on student loans to fund higher education affects individuals at every income level, the net effect leads to an increase in economic inequality. Because poorer students are more likely to take out loans, they are already disadvantaged upon graduation as compared to their wealthier peers who obtain the same degrees without the encumbering weight of student debt.

Taken together, these trends reflect a systemic crisis. Instead of ensuring economic opportunity, federal policy on financing higher education has resulted in serious financial consequences that interfere with economic mobility and can be disastrous for both individual borrowers and for society.

## Impact on Students

*This section focuses on voices of students affected by trends in higher education. It illustrates the increasing failure of this system to make students better off.*

**He graduated but with massive debt and unable to find a job in his field, ultimately taking his degree off of his resume because employers told him it was “a joke.”**

One student who had been a special-education student throughout his life was recruited to enroll in a for-profit college.<sup>21</sup> He believed the ability to receive federal loans reflected a government endorsement of that program. He graduated but with massive debt and unable to find a job in his field, ultimately taking his degree off of his resume because employers told him it was “a joke.”<sup>22</sup>

Another student graduated from her private Boston suburban college with nearly \$125,000 in debt. She explained that she never doubted her decision to enroll because she believed that, “college was necessary for any youth to be able to get a great job.”<sup>23</sup> Since graduating, she has had to move back in with her nearly retired parents, and work a full time as well as two part time jobs to meet monthly student loan payments of nearly \$900. She explains that she feels like her current life, far from the American Dream, is “waking up and realizing that you have signed your life away.”<sup>24</sup>

Many students with smaller total outstanding debt still struggle with repayment. Stephanie Snyder graduated in 2005 with a BA in public administration, and was working three jobs to pay down her \$38,000 in loans. Though she tried to remain current on her payments, she was caring for her son and terminally ill father, helping her mother and sister financially, and going through a divorce. She fell short. Creditors began garnishing her paychecks and offsetting her tax refunds. She was put on a payment plan but was still unable to make the payments. She ended up in default, which destroyed her credit.<sup>25</sup>

Michael Pope, another student with debt from an undergraduate degree, paid his student debt down to about \$40,000 over many years. Without prospects for career advancement, he decided to return to school. He earned an MBA in 2004, at a cost of \$140,000. Since then, he has been homeless, bankrupt, and consistently struggled to find employment.<sup>26</sup>



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The student debt crisis extends beyond students. It touches students' families and loved ones as well. Kelsey Griffith was working two restaurant jobs and living with her parents when she graduated with \$120,000 in debt from Ohio Northern University. Her mother took out a life insurance policy on her daughter after co-signing Kelsey's student loans. Mrs. Griffith would be unable to repay them if anything ever happened to her daughter. Kelsey explains that at 18, the school "really sold it," and that while she knew college would be expensive, she did not think about what she would owe after graduation – currently \$900 a month.<sup>27</sup>

Student debt touches people of all ages and can often last a lifetime. Janet Lee Dupree is a 72-year-old Florida resident who took out \$3,000 in loans in the 1970s to help pay for an undergraduate degree.<sup>28</sup> She was unable to repay the loan, struggling with alcoholism and having been diagnosed with HIV.<sup>29</sup> Although she explains that she has turned her life around and has been trying to repay the loan, the balance is currently \$15,000, and about one-fifth of her monthly Social Security benefits are being withheld to pay for her debt.<sup>30</sup>

Students who take out loans believing that doing so will lead to a better life often express desperation when that benefit never materializes. Sara Pierce, a Florida student who attended the for-profit school Kaplan learned only a week before graduation that her degree would not qualify her to work in her field in Florida. She had spent the final year of her program waiting tables, babysitting, taking care of her children, and studying constantly to earn her degree that came with a \$40,000 loan. Upon learning the degree was useless, she explains, "I was numb for six months . . . I was so depressed." She tried to do the right thing for herself and her family, and ended up much worse off than before.<sup>31</sup>

Desperate students, powerless in their negotiations with creditors, often fall prey to federal loan repayment scams. Riley Winters was struggling to pay down a \$10,000 college debt, and saw an advertisement for a debt consolidation service. The service promised that she could reduce her monthly payments for an upfront fee, which she paid. They did not explain that she would be charged a \$100 "service fee" every month. She later learned that the program offered a consolidation service that was



already available for free online. She confronted the company but received no explanation or refund.<sup>32</sup>

These stories illustrate key points about the nature of the student debt crisis in the United States. Students believe that enrolling in higher education is a good choice. They dream of a better future and think that higher education is the way to get there. Understanding what loan repayments will mean on a monthly basis is difficult when the decision to enroll is about something aspirational, about feeling hopeful for a better future.

When programs fail to yield a job that will enable students to repay their loans, many experience a crisis of identity. Attending college, so often a decision based on possibility and hope, soon becomes a source of regret that interferes with other life goals, including buying a house, getting married, or having children. For many who struggle to repay their educational loans, payments continue to grow, following not only borrowers but also their families throughout their lives.

These personal stories illustrate the societal as well as individual impact of the student debt crisis. While the effects of the broken higher education financial system are widespread, the root causes are less clear. The following section explores the historical development of this crisis.

## ***HOW THE TWO NARRATIVES HAVE SHAPED NATIONAL POLICY ON FINANCING EDUCATION POLICY***

### **ROOTS OF THE NARRATIVES: Early American History**

Prior to the 1940s, higher education was largely restricted to the elite, and while the value of education for all was expounded, it was generally understood in terms of the social and civic benefit. In practice, only the wealthy had the means to pursue this benefit. An excerpt from the Massachusetts State Constitution, approved in 1780, illustrates the popular understanding of the purpose of higher education at the time. “Wisdom, and knowledge, as well as virtue, diffused generally

among the body of the people, being necessary for the preservation of their rights and liberties. . . . it shall be the duty of legislatures . . . to cherish the interests of literature and the sciences.”<sup>33</sup> The purpose of education was understood as intimately related to the cultivation of virtue among the citizenry.

## The GI Bill

**While education had previously been an elite benefit, “by 1947, veterans constituted half of enrolled college students, and overall enrollment [in higher education] had increased 75%.”**

The dynamics of higher education and its role in society started to change in the mid-19<sup>th</sup> Century. The Morrill Act of 1862<sup>34</sup> provided land grants to promote higher education for more practical purposes. Almost a century passed, however, before higher education became more widely available. The GI Bill of 1944 re-shaped higher education in America. Concerned about how to reintegrate servicemen returning from the war into American Society, the GI Bill provided generous benefits for any returning veteran who had served at least 90 days and was discharged in good standing.<sup>35</sup> The program resulted in a basic shift in the demographic make-up of the university.<sup>36</sup> While education had previously been an elite benefit, “by 1947, veterans constituted half of enrolled college students, and overall enrollment [in higher education] had increased 75%.”<sup>37</sup> These older, experienced veterans pressed for more practical learning, hoping to be better prepared to re-join the workforce. Increasingly, upward mobility became associated with higher education.<sup>38</sup>

As higher education was increasingly understood as a mechanism for economic advancement, enrollment increased rapidly. Enrollment jumped from about 2.1 million in 1951 to about 4.1 million in 1961, 12.1 million in 1980, and up to 16 million today.<sup>39</sup> Americans increasingly associated higher education with economic advancement, and government policies reflected this shift. The Truman Commission Report, commissioned in 1946 and released in parts in 1947 through 1948, reimagined the role of government in higher education beyond the GI Bill.<sup>40</sup> Whereas the rationale behind the GI Bill was to re-integrate returning soldiers, the Truman Commission Report argued that the federal government should play a more active role in encouraging access to higher education by providing financial assistance so that the college-going rate could double by 1960.<sup>41</sup> Student loans were offered for the first time as part of the National Defense Education

Act of 1958, an approach suggested by free market economist, Milton Friedman.<sup>42</sup>

## **The Higher Education Act**

**President Johnson emphasized that education should be a “way to deeper personal fulfillment, greater personal productivity, and increased personal reward . . . We will reap the rewards of their wiser citizenship and their greater productivity for decades to come.”**

The Higher Education Act (HEA), the federal statute that is the current basis of higher education policy in the United States, emerged against this backdrop. Upon signing the HEA in 1965, President Johnson emphasized that education should be a “way to deeper personal fulfillment, greater personal productivity, and increased personal reward . . . We will reap the rewards of their wiser citizenship and their greater productivity for decades to come.”<sup>43</sup> Access to higher education was understood as essential not only because of the return on investment for individuals and for society but also because of the civic/social benefits to the individual that society would enjoy. This understanding of the social and civic value of higher education lingered throughout the 1960s and 1970s, though it has been steadily retreating in public discourse since then. As Dan Berrett, a senior reporter for the *Chronicle of Higher Education* explains, “In the early 1970s, nearly three-quarters of freshmen said it was essential to them to develop a meaningful philosophy of life. About a third felt the same about being very well off financially. [In 2015] those fractions have flipped.”<sup>44</sup> Today a greater proportion of the public expresses a belief that college’s purpose should be teaching skills for the workplace as opposed to helping individuals grow personally and intellectually.<sup>45</sup>

## **The Chicago Boys and Higher Ed**

In the 1970s and 1980s, as the free-market orthodoxy associated with Milton Friedman and the Chicago School of Economics gained political traction, so did the concept of treating students as consumers in higher education.<sup>46</sup> Friedman argued for de-regulation and lower taxes so that the free market could respond to individuals’ economic preferences.<sup>47</sup> The only way to know consumer preferences from that perspective was through market choices.<sup>48</sup>

In 1972, President Richard Nixon created the Student Loan Marketing Association, or “Sallie Mae,” a government-sponsored entity (GSE) intended to encourage bank participation in the HEA guaranteed student loan program.<sup>49</sup> Availability of funds was

**According to Governor Reagan, the University of California system was an expensive welfare program that fostered political disruption and moral degradation. He argued that public higher education funding was an “intellectual luxur[y] that perhaps we could do without.”**

important to accommodate growing demand as more people, increasingly people with less money, sought to attain the benefits of higher education.<sup>50</sup> President Nixon believed that the market was the solution to the problem of college affordability.<sup>51</sup> With the growth of the loan-dependent higher education finance system, the notion of the student-as-consumer began to take form.

As this narrative became increasingly normalized, the civic/social benefit model of higher education lost prominence in shaping national policy. College campuses became the fertile grounds of protest against the government, and the government resisted. From the government's point of view, the civic/social benefit of education was not worthy of government investment.<sup>52</sup> If higher education could not reliably produce citizens that were endorsing American values and policy, then why should government divert limited funds to these institutions?<sup>53</sup>

### **Narratives in Tension**

The Reagan rhetoric of the 1970s and 1980s began to advance the idea that the civic/social benefit and return on investment purposes of higher education were in tension. The fiscally conservative Republican candidate, Ronald Reagan, grounded his gubernatorial campaign on two themes: sending “the welfare bums back to work,” and “clean[ing] up the mess at Berkeley.”<sup>54</sup> According to Governor Reagan, the University of California system was an expensive welfare program that fostered political disruption and moral degradation. He argued that public higher education funding was an “intellectual luxur[y] that perhaps we could do without.”<sup>55</sup> Reagan slashed state funding and called to end a century-old tradition of free education by moving towards a tuition-based funding scheme.<sup>56</sup> According to Reagan, if students had to pay, they might value their education too much to protest.<sup>57</sup>

As President, Ronald Reagan continued his efforts to cut public higher education financing and impose the responsibility of paying for college on individual students. Early on, the Reagan administration passed a combination of tax and budget cut measures through the Omnibus Budget Reconciliation Act of 1981. Student aid suffered the deepest cuts as spending on higher education was “slashed by almost 25 percent between 1980 and 1985. In raw dollar figures, cuts totaled \$594 million in

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student assistance and \$338 million in Pell grants.”<sup>58</sup> As a result, the federal government’s focus shifted permanently from providing grants to giving out loans. Public discourse reflected these changes. Students were seen as “tax eater[s] . . . [and] a drain and drag on the American economy.”<sup>59</sup> Reagan administration Education Secretary Terrel Bell would later recount how “students needing aid were part of the problem, not very different from other ‘undeserving’ Americans, no different than the ‘welfare queen,’ the out-of-work father drawing unemployment insurance, the poor families on Medicaid, the elderly in need of Medicare or even farmers relying on subsidies.”<sup>60</sup>

## **The Student as Consumer**

As federal and state funding of higher education decreased, college tuitions rose to fill the gap. The new understanding of college as a private, individual benefit supported this shift. Inflation-adjusted tuition and fees increased dramatically starting in the 1980s, rising by 164 percent at community colleges, and 230 percent at state universities and colleges.<sup>61</sup>

Reduced public funding, however, does not fully explain tuition’s rapid increase. Sandy Baum of the Urban Institute notes that some institutions take advantage of public perception that price corresponds to quality. Baum explains, “There’s certainly evidence that people don’t know how to measure the quality of a college education. . . . they think that if it’s expensive it must be better. I don’t think colleges want to have high prices, but I do think they see strategic reasons why it may be in their interest to have high prices.”<sup>62</sup>

Even schools that intend to keep costs low raise prices as a result of this institutional trend toward treating students as consumers. One of the most significant costs driving tuition increases is spending on administrative support. Data from the Department of Education show that administrative positions at colleges and universities increased by 60 percent between 1993 and 2009.<sup>63</sup>

Construction and efforts to hire famous professors also drive tuition increases.<sup>64</sup> Ironically, so does the desire to increase student interest in a school. As the President of George Washington University explains, the quality of college is not easy

to differentiate up front, so people take cues about the quality based on the price.<sup>65</sup> To signal higher quality, he dramatically raised tuition. He justified this approach by emphasizing that he did not deceive the consumers.<sup>66</sup>

Overall, changing narratives about the purpose of higher education have profoundly shaped current federal policy on education financing. Although students are increasingly treated and understood as consumers of a private good, powerful actors often deploy different narratives about the goals of higher education to the advantage of large institutional interests and the disadvantage of individual student loan borrowers.

## Recent Trends

Today, we see a noticeable shift in the discussion around higher education finance policy, focusing much more on the return on investment for both the individual and their lenders.<sup>67</sup> After the huge economic downturn precipitated by the 2008 sub-prime mortgage lending crisis, the federal government recognized that the low risk and high gains made possible through the federally guaranteed lending programs produced perverse incentives for private lenders to maximize student loans without examining an individual's ability to repay.

In 2010, in the face of enormous pushback from student lenders like Sallie Mae, the federal government passed the Student Aid and Fiscal Responsibility Act (SAFRA) and created the William D. Ford Federal Direct Loan Program, which would remove the banks as middleman lenders and allow individuals to borrow federal student loans directly from the government. Many lenders, threatened with the loss of profitable federally guaranteed student loans, contested the transition to the Direct Loan Program. They argued that lenders help students prepare for college, avoid default, and manage their finances. Lobbyists for the disgruntled lenders justified the then-existing system as best for the students as consumers. Director of government relations for the Consumer Bankers Association, Maria Sullivan, remarked that "[d]irect loans are simply not subject to the same quality of service as FFELP Loans, especially in the area of default aversion."<sup>68</sup>

**"I don't think colleges want to have high prices, but I do think they see strategic reasons why it may be in their interest to have high prices."<sup>1</sup>**

Despite the formidable political pushback, the Direct Loan Program was successfully created and is estimated to save the federal government around \$61 billion through 2020.<sup>69</sup> The Program offered specific relief options to student borrowers such as the income-driven repayment plans and the public service loan forgiveness program. The main policy justification for the Direct Loan Program was to protect the economic stability of the federal student loan system. Converting all new federal student lending to the Direct Loan program “insulated [loan availability] from market swings and [could] therefore guarantee student access to low-cost federal college loans, in any economy.”<sup>70</sup> The Program cemented the federal loan-based system for financing higher education as a long-term reality.

## **WHERE THESE NARRATIVES ARE VISIBLE IN NATIONAL POLICY TODAY**

This report identifies two central narratives about higher education that have shaped current federal policy on higher education financing. The previous section tracked how the narratives emerged and developed throughout United States history. The following sections illustrate four areas where powerful actors have strategically deployed and manipulated those narratives to shape policy in ways that undermine the stated goals of the policies.

### **Treating Students as Consumers in the Higher Education Marketplace: The Problematic Rise of Club Ed**

America’s colleges and universities are engaged in a student services arms race that has produced what some have termed “Club Ed.”<sup>71</sup> College and university spending on student services<sup>72</sup> increased dramatically in the ten-year period between 2001 and 2011, driven by a competition to appeal to students as consumers.<sup>73</sup> Spending on student services (which covers non-instructional student-related activities such as spending on student centers and intramural athletics among others<sup>74</sup>) has grown by 20-30% at many colleges, outpacing any other



category.<sup>75</sup> According to economist Richard K. Vedder, “This is the country-clubization of the American university.”<sup>76</sup>

In 2013 the National Bureau of Economic Research published a study entitled “College as Country Club: Do Colleges Cater to Students’ Preferences for Consumption?”<sup>77</sup> The study investigated “whether demand-side market pressure explains colleges’ decisions to provide consumption amenities to their students.”<sup>78</sup> The study showed that most students valued college consumption amenities, with only high-achieving students indicating a “taste for academic quality.”<sup>79</sup> The study concluded that schools were incentivized to offer consumption amenities because, while some students valued quality, most student-consumers valued consumption amenities.<sup>80</sup> Colleges increasingly point to student-consumer preferences to explain spending, yielding a higher education system that increasingly resembles “Club Ed.”<sup>81</sup>

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This trend toward treating colleges as service providers and students as consumers raises important questions about the purpose of higher education. For most students, pursuing higher education is the biggest and most important “consumer choice” they have ever made. Even for parents, few consumer choices compare. The student-as-consumer model suggests that higher education should be whatever students, who are often teenagers, want it to be. Higher education institutions would like people to believe that satisfying student preferences necessarily leads to programs that produce a quality education and meaningful return on investment. Regrettably, that is often not the case. Many higher education institutions that succeed in securing enrollment and tuition dollars by pandering to student “consumer” preferences ultimately fail to offer quality education and do not adequately consider the substantial risk that students assume when taking on student loans.

This student-as-consumer logic has produced results that are at odds with the traditional understanding that higher education is geared toward developing an informed, well-rounded, and productive citizenry (the civic/social narrative). Instead of further developing programs with these goals in mind, colleges and universities have poured hundreds of millions of dollars into student amenities and recreational facilities. Money that could be spent on hiring tenured faculty is instead spent on



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building lazy rivers (shallow pools often found at waterparks or hotels). Non-tenure track faculty are harmed by the amenities arms race as well. According to a September 2015 article in *The Atlantic*, “based on data from the American Community Survey, 31 percent of part-time faculty are living near or below the federal poverty line. And, according to the UC Berkeley Labor Center, one in four families of part-time faculty are enrolled in at least one public assistance program like food stamps and Medicaid or qualify for the Earned Income Tax Credit.”<sup>82</sup> This is particularly significant given the dramatic rise in the percentage of non-tenure faculty. In 1969, nearly 80% of college faculty members were tenure or tenure-track.<sup>83</sup> Now, almost fifty years later, the numbers have basically flipped.<sup>84</sup> As of 2015, about two-thirds of faculty are non-tenure, with about half of those non-tenure faculty working part-time and many of them working multiple teaching jobs.<sup>85</sup>

As of 2012, 92 schools had started 157 recreational capital projects with a total cost of \$1.7 billion.<sup>86</sup> Colleges and universities are spending tens and sometimes even hundreds of millions of dollars on recreational capital projects and amenities to appeal to student-consumers.

Texas Tech spent \$8.4 million on a water recreation park, including a lazy river (shown to the right<sup>87</sup>), water slide, and terraced wet deck for tanning.<sup>88</sup> According to a N.Y. TIMES article about college spending on recreation, one Texas



Tech student said that “As it gets warmer, you start seeing less people in class.” She went on to say that “Everyone will say, ‘Let’s go float the river.’ There will be, like, 300 people there, and there won’t be any inner tubes or rafts left.”<sup>89</sup>

Not to be bested by Tech Tech’s lazy river, Louisiana State University decided to build a lazy river that spells out the letters LSU.<sup>90</sup> According to LSU’s director of recreation Laurie Braden, “The students involved in the planning process wanted something cooler than what anyone else had.”<sup>91</sup>

**High Point University has “invested in” an enormous hot tub, a movie theatre, valet parking, an ice cream truck that circles campus delivering free treats, live music in the cafeteria, and a concierge desk staffed by people who give restaurant recommendations and send out dry cleaning.**

According to the LSU University Recreation website, the rendering shown to the right “showcases the new facility if the ‘roof were peeled off.’ Here you see the approx. 1/3 mile indoor jogging trail



that circles around the 35' climbing wall, gymnasiums, cardio and weight space, and much more!”<sup>92</sup> The Leisure Pool is estimated to be 536 feet in length “if you were to float around once” and is complemented by an additional “lounging area.”<sup>93</sup>

LSU was building the recreational facility even as the state of Louisiana faced a \$1.6 billion shortfall in its next budget cycle with “the prospect of devastating cuts to higher education.”<sup>94</sup> Jordan Kurland, associate general secretary of the National American Association of University Professors, said that the potential threat to Louisiana’s public colleges is unprecedented, noting “I don’t know if anything that drastic has occurred anywhere in modern times or perhaps ever... “It’s hard to know what cuts of that magnitude will amount to.”<sup>95</sup> LSU spokesman Ernie Ballard has pointed out that the funds for the recreational facility come directly from a student fee and can thus only be used for this project.<sup>96</sup> But others such as LSU associate professor Jeffrey Sadow are left wondering how students have the money to pay fees to fund recreational facilities of questionable value but “balk at the idea of tuition hikes.”<sup>97</sup> According to Sadow, “funding for this aesthetically pleasing but dubious project undercuts arguments that families are too strapped to pay more, allowing taxpayers to pay less at LSU...If they can afford increased student fees to fund this project, surely they can afford higher tuition and fees instead of foisting this responsibility on taxpayers. Or they should reallocate these fees toward the academic activities of LSU and create more fairness in how higher education is funded in Louisiana.”<sup>98</sup>

In preparation for a worst case budget scenario, LSU President F. King Alexander announced in April 2015 that the university was drafting a financial exigency plan (the equivalent of an academic bankruptcy plan) which would enable Alexander to make major cuts, such as firing tenured professors and shutting

down programs.<sup>99</sup> Financial exigency provides institutions with a legal means of changing contracts and other financial obligations.<sup>100</sup>

Texas Tech and LSU are far from alone in pouring money into expansive student-pleasing facilities and services. High Point University, discussed in greater detail below, has spent over \$700 million on renovations since 2007, following what in some higher education circles is known as the “field of dreams” or “residence hall” strategy.<sup>101</sup> High Point University has “invested in” an enormous hot tub, a movie theatre, valet parking, an ice cream truck that circles campus delivering free treats, live music in the cafeteria, and a concierge desk staffed by people who give restaurant recommendations and send out dry cleaning.<sup>102</sup> Purdue University spent \$98 million on a recreation center, which was completed in 2012, that includes a 55-foot climbing wall and a 25-person spa.<sup>103</sup> The University of Iowa spent \$53 million on a recreation center that includes a zero-depth entry leisure pool with bubble chairs and, of course, a lazy river.<sup>104</sup> Ohio State spent \$140 million on a leisure pool with two dry saunas, a whirlpool spa that seats 25 people, and a dive spa, among other things.<sup>105</sup> THE COLUMBUS DISPATCH described the OSU recreation center as “a palace for physical fitness” which “at an unmatched 569,459 square feet... remains the Cadillac of college recreational playgrounds in the country - and the priciest, too.”<sup>106</sup> As of 2014 Clemson University was considering redeveloping a 38-acre property across from the existing recreation center that would include “blobs” (basically floating mattresses that students can jump between). Clemson’s director of recreation explained it as being like “an obstacle course, like ‘American Ninja.’”<sup>107</sup> The list goes on. According to Laurie Braden, who is also the president of the National Intramural Recreational Sports Association, “Students—I don’t know if demand is the right word—but certainly they expect that the amenities to help them have a balanced life will be in place.”<sup>108</sup>

Texas Tech, LSU-Baton Rouge, Purdue-West Lafayette, Clemson, and Ohio State-Columbus have 4-year graduation rates of 33%, 39%, 46%, 61%, and 61% respectively and the default rate for the 2011 graduating class was 7.6%, 4.3%, 5.1%, 4.0%, and 7.1% respectively.<sup>109</sup> The amenities arms race demonstrates the rise and reach of the student-as-consumer narrative and its dominance, at least in some respects, over the civic/social

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narrative. President Obama's 2013 speech <sup>110</sup> on college affordability at a high school in Syracuse, New York illustrates the friction between the competing narratives.

The speech emphasized the civic/social benefit narrative while also acknowledging a limited version of the return on investment narrative and the student-as-consumer subscript. According to President Obama,

"There aren't a lot of things that are more important than making sure people get a good education. That is key to upward mobility. That is key to a growing economy. That is key to a strong middle class. Now, everybody here knows that...[a] higher education is the single best investment you can make in your future. Single best. And I'm proud of all of the students who are working toward that goal."<sup>111</sup>

**"If a higher education is still the best ticket to upward mobility in America -- and it is -- then we've got to make sure it's within reach."**

After providing some statistics to defend the assertion that higher education is a "good investment," President Obama said, "the main reason I'm here is to talk about the fact that we've seen a barrier and a burden to too many American families, and that's the soaring cost of higher education."<sup>112</sup> He went on to say, "If a higher education is still the best ticket to upward mobility in America -- and it is -- then we've got to make sure it's within reach."<sup>113</sup> We've got to make sure that we are improving economic mobility, not making it worse. Higher education should not be a luxury."<sup>114</sup>

President Obama's use of the narratives with respect to the purpose of higher education differs substantially from colleges' and universities' use of the narratives. In his view, students are not consumers of luxury goods but rather investors hoping for a society that will allow upward mobility, promote a growing economy, and foster a strong middle class. In other words, higher education should yield both a societal and an individual return on investment.

The student-as-consumer narrative enables colleges and universities to treat education as a luxury good and in the process often sacrifices these goals of providing a meaningful return on investment for students and society. Treating students as consumers harms low-income students in particular. Spending

more on non-academic services and amenities often leads to higher tuition. Higher tuition decreases access to higher education and increases the likelihood that low-income students will graduate with significant debt, too often interfering with their prospects for economic advancement.

High Point University, a private institution in North Carolina, illustrates the often dire consequences of treating students as consumers. High Point University had an 80.2% acceptance rate in Fall 2014 and a total undergraduate enrollment of 4,208.<sup>115</sup> For the 2015-2016 academic year it charged \$32,430 for tuition and fees and \$12,200 for room and board.<sup>116</sup> High Point has an average freshman retention rate of 77%, a 4-year graduation rate of 59%, and a 6-year graduation rate of 63%.<sup>117</sup> Of the students who graduated in 2014, 52% had taken student loans and the average indebtedness of the 2014 graduating class was \$34,096.<sup>118</sup> For the 2011 graduating class, the default rate was 9.4%.<sup>119</sup> By way of comparison, Bates College is a private institution in Lewiston, Maine that is ranked #25 on the U.S. News and World National Liberal Arts Colleges rankings.<sup>120</sup> Bates had a 25.4% acceptance rate in Fall 2014 and a total undergraduate enrollment of 1,773.<sup>121</sup> For the 2015-2016 academic year it charged \$48,435 for tuition and fees and \$14,105 for room and board.<sup>122</sup> Bates has an average freshman retention rate of 94%, a 4-year graduation rate of 83%, and a 6-year graduation rate of 88%.<sup>123</sup> Of the students who graduated in 2014 40% had taken out student loans and the average indebtedness of the 2014 graduating class was \$18,929.<sup>124</sup> For the 2011 graduating class, the default rate was 1.4%.<sup>125</sup> For further comparison, Boston College (a private institution in Massachusetts with about 9,000 undergraduates) has a freshman retention rate of 95%, a 4-year graduation rate of 88%, a 6-year graduation rate of 91%, an average total indebtedness for the 2014 graduating class of \$21,099, and a default rate for 2011 graduating class of 1.4%.<sup>126</sup>

High Point University was highlighted in a 2008 article in the *Chronicle of Higher Education* entitled “Club Ed: This University Is at Your Service.”<sup>127</sup> High Point experienced a revival due to its “jaw-dropping menu of student services.”<sup>128</sup> This expansion of student services was the brainchild of the college’s president Nido R. Qubein, who the article describes as “a motivational speaker and businessman who believes that the customer (that is, the student) should be not only satisfied, but



wowed.”<sup>129</sup> Thanks to President Qubein, High Point University has a director of WOW! who was hired to “come up with ways to please current and prospective students.”<sup>130</sup>

An image of High Point University is shown to the right.<sup>131</sup> As mentioned earlier, High Point’s student services include an ice-cream truck that laps the campus providing 500 different types of free frozen treats.<sup>132</sup>

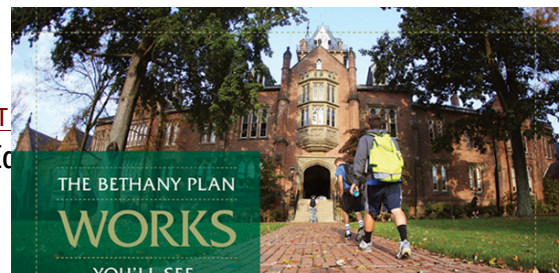


The cafeteria offers live music and a nearby concierge desk with a chief concierge who sends out dry cleaning and makes restaurant reservations, among other things.<sup>133</sup> The school offers automated student wakeup calls, delivers each student a birthday card signed by the president with a Starbucks gift card inside, provides snack kiosks across campus with free pretzels, drinks, and bananas, and leaves gifts based on students’ individual preferences in students’ dorms for when they return from breaks.<sup>134</sup> High Point also built a new building informally known as “The Multiplex,” which houses a sports bar, a movie theatre, and a steakhouse.<sup>135</sup> In further renovations, High Point University added six fountains in two years and its promenade has hidden speakers that play classical music during the day.<sup>136</sup>

**High Point also built a new building informally known as “The Multiplex,” which houses a sports bar, a movie theatre, and a steakhouse.**

President Qubein’s amenities-based approach appears to be working, with freshman enrollment tripling despite the school charging more than before.<sup>137</sup> The university’s slogan is “At High Point, every student receives an extraordinary education in a fun environment with caring people.”<sup>138</sup> Though High Point University may well deliver on its promise of a fun environment, it seems to be falling far short of providing an extraordinary education given its questionable use of student funds, low graduation rates, and high student default rate.

Bethany College, a small private institution in West Virginia, tells a similar tale. Bethany College had a 62.1% acceptance rate in Fall 2014 and a total undergraduate enrollment of 905.<sup>139</sup> It charged students \$26,500 for tuition and fees and \$9,800 for room and board in the



**Miller went on to say that the college has to be responsive because “students walk and talk with their checkbooks.”**

2015-2016 academic year.<sup>140</sup> Bethany College has an average freshman retention rate of 61%, a particularly dismal 4-year graduation rate of 32%, and a 6-year graduation rate of 47%.<sup>141</sup> The default rate of the class of 2011 was 17.9%, meaning nearly one fifth of the graduating class was in default.<sup>142</sup> The image of Bethany College shown to the right is from a section of the school’s website entitled “The Bethany Plan.”<sup>143</sup> As of November 2015, the “Fast Facts” section of the school’s website<sup>144</sup> does not include Bethany College’s freshman retention rate, graduation rate, or graduating class default rate, but does state that the college’s facilities include “beautiful historic landmarks, modern well-equipped classrooms, spacious sports/recreational areas, indoor and outdoor theaters, art galleries, an equestrian center, a teaching greenhouse and more.”<sup>145</sup> Bethany College was highlighted in a 2014 article in THE CHRONICLE OF HIGHER EDUCATION entitled “Spending Shifts as Colleges Compete on Students’ Comfort.”<sup>146</sup> According to the President of Bethany College, Scott Miller, “It is up to us to be more responsive to our consumers and our marketplace, to provide greater activities outside of the classroom.”<sup>147</sup> Miller went on to say that the college has to be responsive because “students walk and talk with their checkbooks.”<sup>148</sup> Bethany College spends approximately \$5 million per year in student-services.<sup>149</sup> The college spent \$5,800 per student on student-services in 2008, up from \$3,800 per student in 2007.<sup>150</sup>

According to a 2014 interview with former U.S. Secretary of Labor Robert Reich, the rising cost of higher education stems in part from colleges and universities overspending on amenities and building facilities and student unions that “resemble country clubs.”<sup>151</sup> Reich stressed, “These amenities are extremely expensive and contribute to the escalating cost of college.”<sup>152</sup> He went on to say that “They have very little or anything to do with the education of most young people.”<sup>153</sup> David Kociemba, chair of the American Association of University Professors’ Committee for Contingency and the Profession, lent further support to this notion, arguing that “Colleges are trying to showcase their value through visuals like dining halls, palatial new buildings and the ubiquitous rock-climbing walls, not the quality of their professors and programs.”<sup>154</sup>

## ***Recommendations for Addressing the Rise of “Club Ed”***

The amenities arms race and rise of “Club Ed” demonstrate a trend toward treating students as consumers that needs to be reversed. A few potentially promising measures, which are discussed below, include: changing Americans’ perceptions about the student-as-consumer narrative and what kind of higher education spending is acceptable, altering the way that colleges and universities provide prospective students with information about costs, benefits, and spending practices, adjusting economic incentives created by the federal government, and creating a new ranking system for colleges and universities that puts much more emphasis on spending practices and educational and employment outcomes.

**Bethany College spends approximately \$5 million per year in student-services. The college spent \$5,800 per student on student-services in 2008, up from \$3,800 per student in 2007.**

Americans have the opportunity to critically reevaluate higher education spending practices and the student-as-consumer narrative. The student debt crisis has highlighted the need to engage in a deeper discussion about the increasing tendency to “sell” higher education as a social-civic benefit with an individual pot of gold at the end, market it as an education that doubles as a vacation, and charge for it as a luxury consumer good. Students may want lazy rivers and climbing walls, but in all likelihood even more than that they want quality jobs and freedom from crushing debt. Spending substantial amounts of money on student services, amenities, and recreation centers is not inherently problematic and such expenditures can of course be justified when they are in the best interest of students for educational, health, personal, or other relevant reasons. But exorbitant spending on luxurious services, amenities, and recreation centers is deeply problematic, particularly when there are insufficient funds spent on academic programs and students are graduating with mountains of debt and poor job prospects. Government representatives, college presidents, university boards of directors, the media, taxpayers, parents, and students, among others, have the opportunity to engage in a serious discussion about whether this type of amenities-oriented non-academic spending by higher education institutions is acceptable when it comes at the expense of quality education and students’ wellbeing. Many colleges and universities are looking increasingly



like luxury resorts and the people who are hurt most by it are also the ones footing the bill.

Critical reevaluation of the student-as-consumer narrative could offer a constructive path toward providing students with more accurate information about college's costs and benefits, requiring higher education institutions to spend funds more responsibly, more accurately assessing the educational and employment value provided by specific institutions, adjusting the way that federal and state governments fund higher education, and demanding better performance and accountability from both higher education institutions and students. At present, higher education spending has in some respects become a game, and we are all losing.

Prospective students often have insufficient access to quality information about colleges and universities' costs, benefits, and spending practices. Colleges and universities could be required to include a highly visible and easily accessible page on their website that includes a specified set of facts that will help students make more informed choices about their education. These facts could include; cost of annual tuition and fees, cost of annual room and board, recent annual increases in tuition, dollars per student spent on student services, dollars per student spent on recreational capital projects, freshman retention rate, 4-year graduation rate, 6-year graduation rate, post-graduation employment rate, percent of students who borrow, average student indebtedness for the most recent graduating classes, average debt per student, and percent of recent graduates in default. The success of this type of information-based approach may be limited given that the approach is built upon dispositionist-informational premises that place the onus on the individual rather than the system to research and make an "informed choice." Nevertheless, this type of information-based strategy would at least help students better understand and navigate the options available in the current environment.

Additionally, the federal government could alter spending practices to better incentivize colleges and universities to reduce tuition and student default rates and improve quality of education, graduation rates, and job placement statistics. One approach would be to implement much stricter gainful employment regulations and apply them to all types of higher education

institutions, meaning that colleges and universities would lose the ability to receive federal student loans if their students default on their loans at unacceptably high rates for multiple consecutive years.

A ranking system could also be created that penalizes colleges and universities for dedicating an unreasonably high percentage of their annual spending to recreational facilities, student services, and amenities (bearing in mind that many student services, such as those related to health and counseling, are extremely important). The ranking system could also reward colleges and universities for affordable tuition rates, low default rates, high graduation rates and post-graduation employment rates, and substantial spending on efforts that are likely to increase quality of education (such as hiring more tenure-track faculty, expanding academic programs in fields where a substantial number of jobs are available, creating strategic partnerships with local or national businesses that are looking to hire recent graduates etc.). As President Obama said in his 2013 speech in Syracuse on college affordability, “Right now all these ranking systems, they rank you higher if you charge more and you let in fewer students. But you should have a better sense of who's actually graduating students and giving you a good deal.”<sup>155</sup> The type of alternative ranking approach discussed here could be combined with greater government investment in college counseling in high schools to help students better understand which schools are most likely to help them reach their academic, personal, financial, and career goals.

Colleges and universities often use the student-as-consumer narrative to defend spending practices that harm students, particularly economically disadvantaged students. They use the narrative to justify spending millions of tuition and taxpayer dollars on often-frivolous facilities, student services and amenities, heightening barriers to entry and essentially wasting money that could be much better spent reducing tuition or improving quality of education and employment outcomes. Higher education is not a luxury good. It is time to reexamine the student-as-consumer narrative.

## **FAFSA and Narratives in Higher Education: How Confused Narratives Lead to Confusing Financing Problems**

Confusion about the two narratives also manifests itself in choices regarding funding higher education. This confusion can be seen in the large, structural choices about funding, as well as in the specific questions asked to students when assessing need on the main application for student aid, the FAFSA. The FAFSA, short for Free Application for Federal Student Aid, is a form that can be prepared annually by current and prospective students pursuing higher education to determine their eligibility for student financial aid. The FAFSA's complexity and ambiguity provides insight into the Department of Education's—and American society's—confusion over the purpose of higher education, specifically which of the two narratives should predominate.

Decisions about how to disperse student aid reflect deep judgments about why students are encouraged to pursue higher education. The application, and the debate surrounding its reform, reflects differing ideas about why education matters and what sort of students the educational system should create and foster. The way schools and the state determine need and fund education forms students in society's own image: a way of reflecting back onto the next generation our view of ourselves as consumers, as citizens, or both.

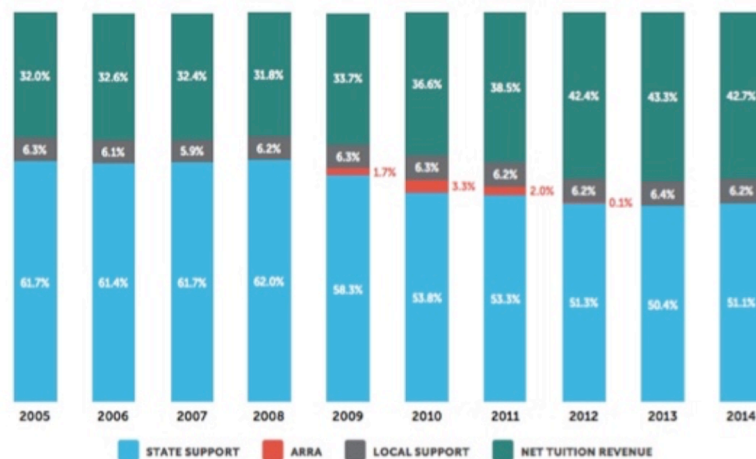
### ***Overview: How We Fund Higher Education***

In the United States, higher education is funded through state-subsidized public universities, research grant funding, federal student loans, private loans, grants and scholarships.<sup>156</sup> State funding for public universities provides a significant proportion of higher education funding. In 2010, state and local governments spent about \$103.7 billion on higher education, comprising about one third of all expenditures, which totaled \$304 billion.<sup>157</sup> However, of the \$103.7 billion, only \$76.4 billion comprised state appropriations for the operation of higher education, the generally allocated fund supporting tuition among other operational expenses.<sup>158</sup> Over the past thirty years, states' fiscal support for universities has steadily declined, both as a proportion of total spending on education and as a proportion of

**Spending as a proportion of states' budgets has dropped from \$10.58 per \$1,000 spent to about \$6 per \$1,000 today.**

states' budgets. Spending as a proportion of the total has dropped from over 60% to less than 33% today, and spending as a proportion of states' budgets has dropped from \$10.58 per \$1,000 spent to about \$6 per \$1,000 today. Short-term trends in 2013 and 2014 have seen an uptick in state support, likely attributable to states' recovering from the recession.<sup>159</sup>

**Figure 3:** Distribution of Funding Sources, Fiscal 2005-2014<sup>160</sup>



Source: State Higher Education Executive Officers

Today, state public institutions count on tuition for 42.7% of their funding.<sup>161</sup> As state support has declined, and both private and public institutions rely on tuition to fund their programs, a greater and greater share of access to government funding depend on assessments of need. Both grants and loans require individual students to apply for financial aid.

This shift from institutional aid to individual application reflects the rise of the student-as-consumer narrative. Aid is linked to individual students rather than institutions. This “packaging” of

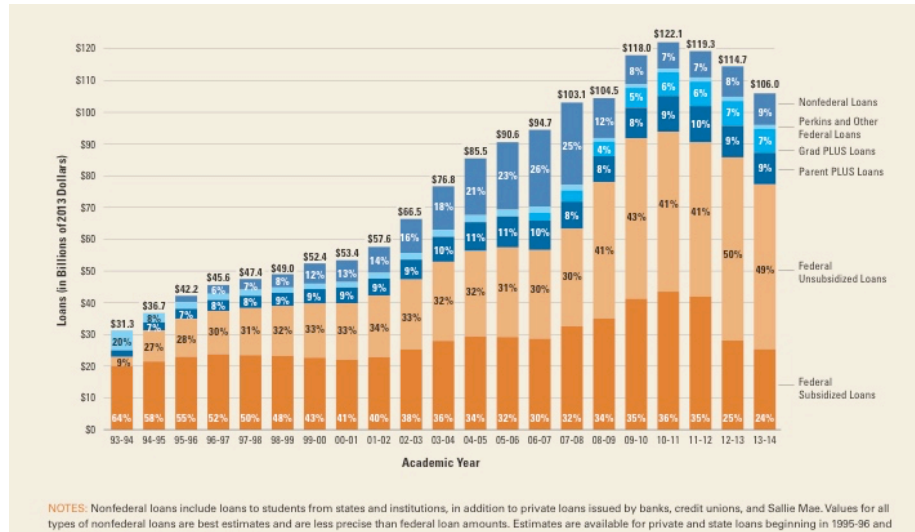
funding by student forces institutions to compete in the higher education market to attract students for their funding. Packaging funds in the form of student aid also privileges the idea of student choice, giving students the power to choose to take their aid anywhere, public or private, rather than being fiscally restrained to public in-state options. This form of funding is premised on the “invisible hand” notion of markets where self-interested choice, unrestrained, will ostensibly lead to the best outcomes for both individual and society. This model assumes that students, as consumers, will make informed choices in the higher education market about the best educational product, and therefore reward successful “producers” of education with funding in the form of the individual’s student aid. These structural choices that shift funding towards the individual reflects pro-market narratives about education that casts the student as the sovereign consumer.

### ***Applying for Student Aid: The FAFSA***

Linking higher education funding to individual students requires that students apply for grants and loans. The questions asked to determine loan eligibility reflect confusion of the two narratives. No application is as pervasive and as studied as the FAFSA. On average, over 90 percent of students’ tuition is paid through federal loans and grants, and colleges and universities all employ the FAFSA’s formula for their financial aid determinations.<sup>162</sup> Students are also more likely to attend college when they know they will receive enough financial aid to cover the costs.<sup>163</sup>

As a result, filling out the FAFSA is widely regarded as a necessary step to attending college or university, and is for many the single aid application that will determine college attendance. The FAFSA significantly impacts college completion rates—an important metric, since the costs of attending college are significant each year but the benefits of higher education primarily go to those with a degree in hand.<sup>164</sup> Students who file the FAFSA are 72 percent more likely to graduate than those who do not. This number jumps to 122 percent when considering only low-income students who are Pell Grant eligible.<sup>165</sup>

**Figure 4:** Total Federal and Nonfederal loan dollars, 1993-2014<sup>166</sup>



Source: The College Board

The FAFSA was created in 1992 by Congress as part of a series of amendments to the Higher Education Act.<sup>167</sup> The aim was to improve access to aid by creating one universal, free application for students for federal, state and institutional aid. Before the FAFSA, students would fill out free applications at their school of interest that included questions for federal aid and many more to determine institutional and state aid. The federal portion was technically free, but filling in the rest of the form often required that students pay a fee. Many students who qualified for federal aid ended up paying unnecessarily, or were so put off by the fee that they did fill in the form at all, foregoing federal aid.<sup>168</sup>

Since its inception, the FAFSA has been a target for reform. It is notoriously complex. In its current form, the application includes over 108 questions and often takes well over the promised hour to complete.<sup>169</sup> Completing the FAFSA is often particularly challenging for students from non-traditional families. One researcher estimated it could take up to 10 hours for students to gather the necessary information and input the data.<sup>170</sup> Some of the FAFSA questions, like question number 25 which asks about parents' highest levels of education, are not even required by the federal government. These questions are included at states' request. Many questions ask about parental income, education, and assets, which for students from single-parent homes, or those who grew up living with their grandparents or who are now living away from home, can

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become insurmountable barriers to completing the form. "You need . . . a lot of your parents' information. And sometimes . . . some of us can't get that," says Salay Kamara, a senior at T.C. Williams High School in Alexandria, VA who lives with her grandparents.<sup>171</sup>

Difficulty in accessing information to answer the FAFSA's questions creates substantial barriers to access for low-income students. In the 2011-12 school year, over 2 million students who would have qualified for Pell Grants did not fill in or finish the FAFSA. Together these students would have qualified for as much as \$9.5 billion in grants, and may have qualified for an additional \$2.9 billion in state and institutional grants.<sup>172</sup> This is money that is already on the table—available and designated for higher education—that is not being accessed.

Proposals for FAFSA reform exist. A 2007 Brookings report showed reducing the form from 108 to only two questions would still ensure accurate allocation of aid according to need. The two questions would be: (1) What is your family size? And (2) What was your household income two years ago?<sup>173</sup> In response, Senators Lamar Alexander (R-Tenn.) and Michael Bennet (D-Colo.) proposed a bill slicing the FAFSA down to these two questions, a "Postcard Application" to improve access to higher education through improved access to financial aid.<sup>174</sup> "While other countries are promoting access to higher education, we are making it harder and harder for people to attain a degree. This bill would simplify the entire financial aid process to promote more access and success. Under a simplified system we can expect more students will enroll and stay in school," said Senator Bennet.<sup>175</sup>

Yet some are skeptical. Justin Dreager of the National Association of Student Financial Aid Administrators contends that shortening the FAFSA to just two questions is "not possible." The more the form is simplified, he argues, "the more everybody tends to look needy."<sup>176</sup>

The debate over shrinking the FAFSA illustrates how the two narratives about the purpose of education can lead to both overlapping and competing agendas. No program is perfect—the reform is challenged because it could provide aid to some students who do not need aid. Assuming that to be the case, the



**“While other countries are promoting access to higher education, we are making it harder and harder for people to attain a degree.”**

status quo is nonetheless creating a de facto denial of aid to qualified students through its complexity. Put another way, what to do about the FAFSA depends on which sorts of errors can or should be allowed in providing access to higher education. Is it preferable to overestimate the aid students need to access higher education? Overestimating need would provide aid to all of the needy students, as well as a few “undeserving” students who would not have needed aid to attend school. Or is it better to underestimate need? Underestimating need will provide aid only to needy students, but will deny aid to both unqualified students and students who should have qualified for aid.

Answering those questions requires agreeing upon the purpose of college education. The civic/social benefit narrative suggests access should be encouraged for everyone regardless of financial returns. Advocates for reform who prioritize greater access would rather overestimate aid. Under this narrative, adopting the two-question reform solution seems obvious and straightforward: right now 2 million students a year are not accessing education that could help them to become their fullest selves and could help our democracy to flourish. Access is essential so that education can encourage personal growth, leading to a more educated, thoughtful citizens and enlightened society.

The return on investment narrative is more ambivalent about FAFSA reform. On the one hand, less access reflects foregone investment, and reduced return in investment in the form of future earning potential. When the return on investment narrative treats the student as a consumer, however, concern with ensuring access is lower. The student-as-consumer model would promote choice and rely on markets to ensure satisfaction of consumer preferences. This requires that students be price sensitive consumers of education. In this view, subsidies decrease price sensitivity, skewing the market and leading to sub-optimal outcomes. Access to subsidies should therefore be limited to ensure that prices do not become inflated, creating a drain on resources better spent elsewhere. In addition, the student-as-consumer model suggests that the choice to fill in a FAFSA or not represents strength of preference—if a student values the possibility of aid over the time it takes to fill in the application, it is rational for them to take this time. Students who choose not to fill in the FAFSA, the argument goes, must not have valued the



chance at aid over the hurdles of additional questioning. The student-as-consumer model, then, suggests that erring on the side of reducing access is preferable.

These narratives about what education is for powerfully shapes how to think about changing a policy that currently fails to achieve its intended goal: accurately assessing need at low cost. Low-income students are disproportionately harmed by these policies. Recognizing how these narratives shape policy requires assessing whether the narratives have obscured this failure. FAFSA reform is urgently required, and thoughtful dialogue about the purpose of higher education is needed to encourage this reform.

## **For-Profit Colleges**

Regulations of for-profit colleges in the United States reflect powerful groups' manipulation of different narratives about higher education. At some moments, for-profit schools have emphasized the return on investment script. They argue that students are consumers whose preferences are best understood through their actions, a model that contradicts mounting psychological and sociological research on individual decision making. At other moments, however, particularly when advertising the value of education to students, for-profits focus on both the return on investment and civic/social benefit narratives. They suggest that no tension exists between these dual functions of education. The strategic manipulation of these scripts has fueled the massive growth of the for-profit college industry. The manipulation has also shaped the regulatory climate in ways that ultimately harm students by failing to deliver the promised benefits, at significant cost.

### ***The Rise of For-Profit Colleges***

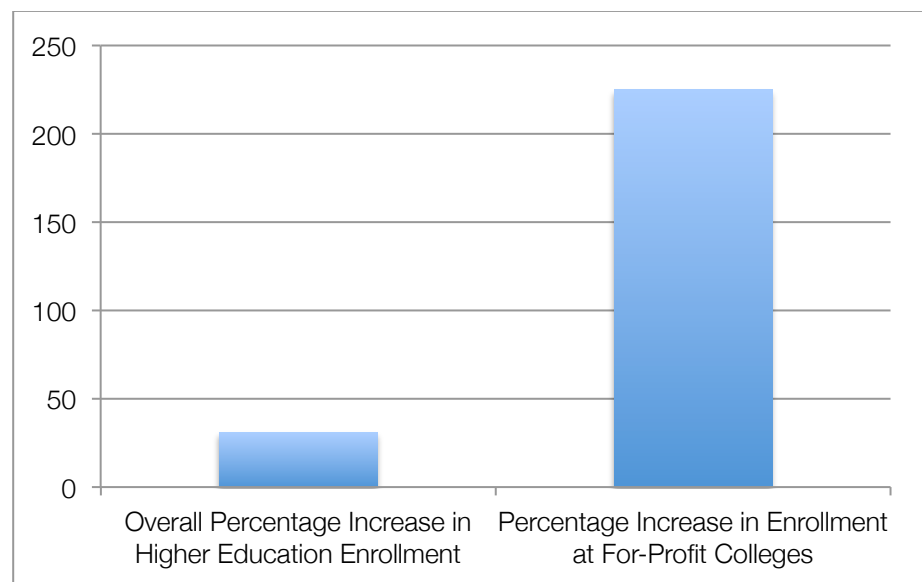
For-profit colleges' place in American higher education shifted dramatically starting in the 1990s. In 1972, Congress had amended the Higher Education Act (HEA) to allow for for-profit institutions to participate in federal financial aid programs, and in the early 1990s in response to documented abusive practices, Congress enacted new regulations of for-profit colleges as part of

**Between 1998 and 2008, enrollment increased 225% at for-profits as compared to the 31% increase in higher education institutions overall.**

the 1992 HEA. However, over the next twenty years, these regulations were eroded through industry lobbying and litigation.<sup>177</sup>

By the late 1990s, as the regulations had started to relax, the rate of enrollment in for-profit schools exploded. Between 1998 and 2008, enrollment increased 225% at for-profits as compared to the 31% increase in higher education institutions overall.<sup>178</sup>

Figure 5: Rates of Increase in Enrollment in Higher Education Between 1998 and 2008, By Type of Institution<sup>179</sup>



Source: Senate Health Education Labor and Pensions Committee Report

Unlike public schools or private non-profit schools, for-profit colleges are corporations that function with the express goal of maximizing shareholder value. The Center for American Progress published a chart (below) that illustrates how structuring colleges as for-profit corporations, as compared to nonprofit corporations, affects their incentives, requiring them to prioritize profits over the quality of education. For instance, whereas revenue-exceeding expenses may be distributed to owners of for-

profit colleges, nonprofits must allocate those revenues according to the organization's purpose.

**Figure 6:** Similarities and differences between for-profit and non-profit corporations<sup>180</sup>

For-profit corporations	Nonprofit 501(c)(3) corporations
<b>Fundamentally different: Governance and conflicts of interest</b>	
Owned by shareholders.	No owners; controlled by trustees on behalf of an educational, charitable, or religious purpose.
Salaries and other compensation are unlimited.	Compensation must be reasonable.
Any revenue exceeding expenses may be distributed to owners.	Revenue exceeding expenses may not be distributed; it must be allocated toward the corporation's purpose.
Board and executive compensation not disclosed—with the exception of some executives of publicly traded corporations.	Compensation of board, executives, and key employees must be disclosed; major contractors also disclosed.
Board members and managers may take actions to increase the value of their shares. When educational goals conflict with profit goals, they may choose any course of action; there are no restrictions and no public disclosure.	Board members are prohibited from involvement in issues that would affect them financially. Potential conflicts between the corporation's purpose and personal financial interests of the board and executives must be publicly disclosed.
No restrictions on lobbying or on independent political expenditures or activities.	Lobbying is restricted; partisan activities by the corporation are prohibited.
<b>Not really that different: Tax treatment</b>	
Investors may deduct losses on income taxes and pay reduced taxes on capital gains.	Donors may deduct donations on income taxes.
Corporation pays income taxes* and payroll taxes; employees pay income taxes.	Corporation pays payroll taxes; employees pay income taxes.
Net revenue that is reinvested in the corporation as an expense is not taxed.	All net revenue must be reinvested in the corporation.
<b>May benefit from various state, local, and federal tax incentives or exemptions.</b>	

\* The less a for-profit college spends on education, the more corporate income taxes it will owe.  
Source: Author's summary based on Internal Revenue Service Guidance documents.

Source: Center for American Progress

By strategically invoking the two scripts, for-profit colleges have been able to shape the regulatory environment to maximize profits and benefit their shareholders, often at the expense of students who incur loans and receive neither the promised civic/social benefit nor the promised return on investment.

## ***Regulation of For-Profit Colleges***

For a for-profit institution's students to be eligible for federal loans, the school must meet Title IV eligibility requirements. As part of these requirements, for-profit schools must enter into a "Program Participation Agreement," which is a contractual arrangement with the Secretary of the Department of Education with conditions determined by Department regulations.<sup>181</sup> These requirements fall broadly into five buckets of requirements: 1) Gainful Employment requirements, 2) 90/10 Funding Requirements, 3) Incentive Compensation Requirements, 4) Cohort Default Rate Requirements, and 5) Accreditation Requirements.<sup>182</sup>

Each of these types of regulations has been weakened over time through the powerful lobbying efforts of for-profit colleges and universities. Previous gainful employment regulations, for instance, determined eligibility in part based on debt-to-income ratios and in part based on repayment rates. These regulations were invalidated as arbitrary because the formulas were based upon the Department of Education's assessment of the most problematic schools.<sup>183</sup> Other regulations have similarly been eroded over time. The "90/10 funding requirement" limits the minimum portion of tuition and fees a school must receive from sources other than Title IV funding. The minimum had previously been 15 percent but that requirement was loosened to only a 10 percent minimum when the HEA was reauthorized in 1998.<sup>184</sup>

### ***Gainful Employment Regulations and the Two Scripts***

**In an advocacy flyer, the ASPCU argues that for-profit higher education is, "a rock solid investment that generates real value"**

Though one set of gainful employment regulations were invalidated in *Association of Private Colleges & Universities v. Duncan* in 2012,<sup>185</sup> the Department of Education has since promulgated new regulations that seek to limit schools' eligibility to receive federal student loans based on debt-to-income ratios.<sup>186</sup> These regulations have been a flash point for debate about the regulation of the for-profit industry and the appropriate level of government regulation of higher education. Given the timely significance of this debate, this section will focus on the arguments surrounding the Gainful Employment (GE) regulations to illustrate the strategic and contradictory ways in which for-profit colleges have invoked the different scripts.

For-profit schools' policy arguments against GE regulations primarily emphasize the return on investment script. They argue that limiting availability of student loans through stricter institutional eligibility requirements will reduce access to higher education for vulnerable populations. They then argue that reducing access is harmful because higher education provides an economic return. A site set up by the Association for Private Sector Colleges and Universities (ASPCU), a lobbying group for the for-profit industry, emphasizes that the new gainful employment regulations which took effect July 1, 2015 will harm institutions that have "a long history of providing access to underserved populations," which they argue is important because, "obtaining a college education is still one of the best investments

students can make. Those who attend college but don't graduate still earn an average of \$250,000 more over their lifetimes than students with only high school diplomas.”<sup>187</sup>

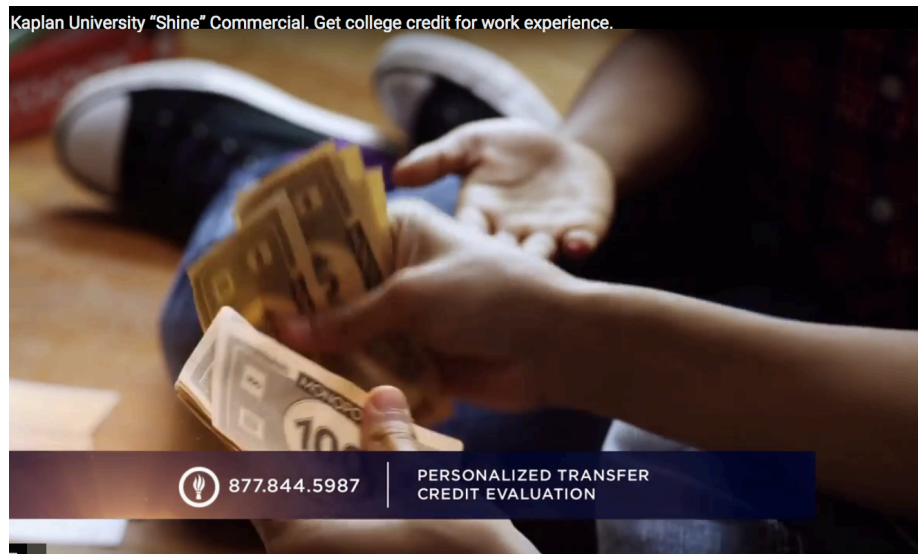
This message is often combined with a general skepticism of the government's ability to measure the value of education. Since part of the value of education comes from the civic/social benefit that students receive, some arguments from the for-profit sector challenge the appropriateness of allowing the government to be the arbiter of the value of the education received. For example, a proposed bill that would eliminate the statutory basis for the gainful employment regulations altogether argued that the bill was needed because it “call[s] for the rollback of some of the most egregious regulatory interference in higher education by the federal government in the past decade....[judging] the worth of academic programs by gainful employment or non-academic factors such as student earnings and debt.”<sup>188</sup> In this account, the government should not evaluate schools based on debt because debt is not an *academic* measurement. This argument flips the script and conflicts with the return on investment argument against the GE regulations.

**University of  
Phoenix  
emphasizes that it  
is the University  
of, “I want a  
bright, shiny new  
life”**

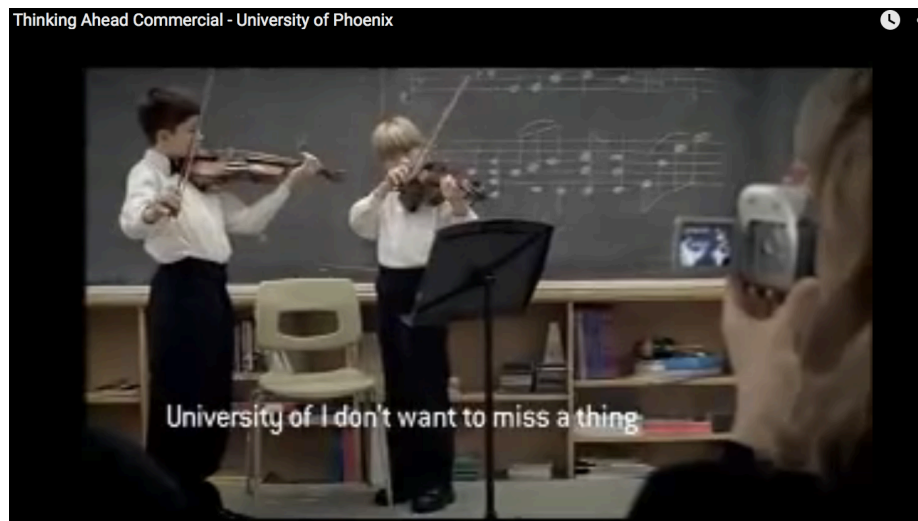
For-profit colleges also invoke the return on investment script to argue that their institutions yield a better return on investment because they provide degrees at lower cost to taxpayers since they are financed more fully through student debt as compared to government investment in public institutions.<sup>189</sup> They combine this emphasis on the lower cost with general statistics about the economic benefit of higher education. In an advocacy flyer, the ASPCU argues that for-profit higher education is, “a rock solid investment that generates real value . . . [because] raising the college graduation rate just a single point will unleash \$124 billion per year in economic impact on the 51 largest metropolitan areas in the United States.”<sup>190</sup>

At the same time that schools emphasize return on investment, they focus on both the economic return and the civic and social benefits associated with higher education in advertising their schools to students. In one University of Phoenix advertisement, professional football player Larry Ellison explains his decision to enroll as both planning for a later career and serving as a role model for his children because, “education can never be taken from you.”<sup>191</sup> Similarly, an advertisement for Kaplan

University promises to help viewers rekindle the “spark you had as a child” promising that, “you still have that spark.”<sup>192</sup>



Still another advertisement from University of Phoenix emphasizes that it is the University of, “I want a bright, shiny new life”, “boundaries are nothing”, and “I am not a hamster, and life is not a wheel.”<sup>193</sup>







The embedded narrative in each of these advertisements is that attending a for-profit college will enable economic advancement, allowing students to obtain a better job or provide a better life for their children, while also providing a non-economic benefit of personal fulfillment. They argue that college it is about more than just economic advancement. It is also about the civil and social benefits of changing how you see the world and escaping the hamster wheel to more fully realize yourself as an individual.

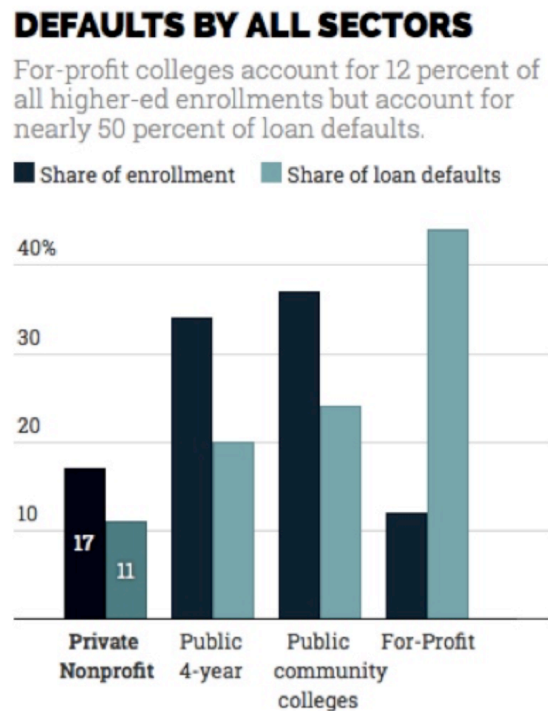
### ***The Results These Scripts Obscure***

These arguments about the non-economic benefits of higher education have continued to fuel enrollment at times when the argument for return on investment is becoming less credible. The for-profit colleges' policy arguments (for example in the gainful employment debates) that emphasize ensuring access to higher education because of the promised return on investment rests on a basic logical flaw that the manipulation of the narratives obscures. While higher education does yield a significant return on investment across the board, for-profit colleges are significantly more expensive than community college or other publicly funded schools, and research has shown that employers prefer community college graduates to graduates of for-profit colleges.<sup>194</sup> Research has also shown that employers show no preference for graduates of for-profit colleges as compared to otherwise comparable candidates with only a high school

**Research has also shown that employers show no preference for graduates of for-profit colleges as compared to otherwise comparable candidates with only a high school degree.**

degree.<sup>195</sup> These findings highlight the error in the for-profits' return on investment script. While higher education may yield economic benefits, different types of institutions do not necessarily provide the same economic benefits. In fact, most of the economic benefits associated with attending higher education are concentrated in non-profit and public institutions, with many for-profits actually making students worse off than they were upon enrollment. Default rates in for-profit schools are much higher than in other types of institutions, as illustrated in the graph below, and research shows that these differences cannot be explained by demographic differences in student enrollment.<sup>196</sup>

**Figure 7:** Share of enrollments v. share of loan defaults<sup>197</sup>



Source: U.S. Department of Education

These outcomes highlight the flaws in the arguments for decreased government regulation of higher education. The government might spend less per student at for-profit schools, but students at those schools will not necessarily meaningfully benefit from their education, since the statistics supporting an argument for return on investment are not specific to these types of programs.

## ***Students as Consumers***

Facing criticism about these outcomes, advocates of for-profit colleges make a familiar pivot in narrative surrounding higher education. They suggest that education is a consumer good, and that the only way to respect individual choice and meaningfully meet the preferences of students is to allow them to choose among schools in the free market. In this narrative, even if outcomes associated with for-profits schools are worse, schools must be offering other meaningful benefits because students continue to enroll, and the only way to know consumers' true preferences is through these market outcomes.

Senator Lamar Alexander, former Secretary of Education under George W. Bush, and current Chairman of the Senate Committee on Health, Education, Labor and Pensions, is one of the top recipients of campaign donations from for-profit schools in 2013-2014.<sup>198</sup> He explained that his goal in the coming year would be to deregulate higher education because the gainful employment regulations, among others,

[take] away [students'] ability to make decisions about where to get an education and tell them the federal government knows better . . . Much accountability on colleges and universities comes from our competitive marketplace. For-profit colleges have been successful at attracting nontraditional students—including working parents and military veterans—and I think our public and nonprofit institutions could learn something from them on how to create an environment attractive to these students.<sup>199</sup>

Similarly, Harris Miller, the president of the Career Colleges Association, a lobbying firm for for-profits explains suggesting that students should not be held responsible for their choices is insulting. He argues,

I think it's a little disingenuous to say that student was pushed too hard into going to a particular school or they don't understand their debt obligations once they graduate. That assumes that people of a lower income are more susceptible to those types of tactics. . . . They're not here because they saw an ad on TV or talked to someone

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students.**

on the phone. They're here because they did the calculations and they made an informed choice.<sup>200</sup>

In both of these models, government regulation is undesirable because it reflects interfering with a marketplace that would otherwise ultimately function for the benefit of society.

### ***Flaws in the Student-as-Consumer Model***

**The majority of both classes of students consider only one school, and only 11 percent of for-profit alumni considered both a not-for-profit and a for-profit before choosing to enroll in a for-profit.**

This argument for understanding students as consumers, however, ignores evidence that this model does not reflect how students actually make decisions. A recent poll finds, “just 39 percent of for-profit undergraduates and 32 percent of for-profit alumni had considered more than one school before they enrolled at their current institutions.”<sup>201</sup> The majority of both classes of students consider only one school, and only 11 percent of for-profit alumni considered both a not-for-profit and a for-profit before choosing to enroll in a for-profit.<sup>202</sup> Further, 65% of current students and 63% of alumni at for-profit colleges are not familiar with the term, “for-profit college” suggesting that they may not have meaningfully compared whether these schools are more likely to meet their interests as compared to public or non-profit institutions.<sup>203</sup> Many student decisions are driven by an emotional response to the prospect of a better future, which is intentionally triggered by marketing and recruitment employees at for-profit schools.

The Senate Health, Education, Labor and Pension committee found that for-profit schools examined in fiscal year 2009 spent 22.7 percent revenue on marketing, advertising, recruiting, and admissions staff, as compared to less than 18 percent on instruction.<sup>204</sup> Recruitment practices at a variety of schools focus on enrolling students without concern for their ability to complete and benefit from programs, often using emotionally manipulative practices. A recent Miami Herald report of for-profit colleges in that state highlighted schools “have formed ‘partnerships’ with homeless shelters or drug treatment halfway houses to get more sign-ups.”<sup>205</sup> Former recruiters have explained that they were directed to employ techniques to emphasize the poor quality of a student’s life, making them emotionally vulnerable and more likely to enroll in programs being presented as “the solution.”<sup>206</sup>

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In addition to the practical reality of students' enrollment decisions, economic theory suggests that students may be particularly vulnerable as consumers of education because of the unique nature of the good. Because education is a *trust good*, the type of good that is often difficult to measure through easily quantifiable standards, students are particularly at risk.<sup>207</sup> When evaluating the quality of the good is difficult, profit seekers can easily charge too much or provide worse services, at the expense of consumer welfare. Knowing which colleges will really help student learn is difficult because so many factors affect student learning. The challenge created by the nature of the good is complicated further from a consumer protection perspective because students may be confused about the significance of federal student loans. Some students have reported mistakenly believing at the time of enrollment that availability of federal student loans indicated government endorsement of academic programs.<sup>208</sup> In other words, they do not realize that they are operating in the market system for-profits seek that does not regulate educational quality.

Another flaw in the idea that students' "free market" choices indicate their preferences undermines the student-as-consumer narrative even further. Far from being a free market, the federal student loan system is a market that likely would not exist without government intervention. Because many of these loans would otherwise be considered too risky, banks would be unlikely to lend to these students if the government were not willing to guarantee federal student loans.

### ***Recommendations for Regulating For-Profits***

For-profit colleges provide a powerful example of how manipulation of the scripts undermines efforts to achieve either promised benefit: civic/social or return on investment. For-profit schools tend to enroll older students, 35% of whom are 35 or older, and many who are working full-time jobs and raising children.<sup>209</sup> With many of these students attending classes online, and many schools offering credits for previous classes or work experience, the schools make little effort to demonstrate that their educational programs are actually providing students any type of civic/social benefit close to the idea promised in many ads. Gesturing toward these types of benefits, though, helps enroll students and distract from scrutiny of arguments that for-profit

schools provide an important return on investment. With mounting evidence that many for-profit schools are not a good economic investment for most students, the schools then pivot to an argument about students as consumers, locating the benefit neither in the narrative about civic/social good nor in the narrative about return in investment. Rather, students' choices illustrate that a benefit exists, whether or not such a benefit can be shown through any external measure.

For-profit colleges do not provide the promised return on investment, either for society, or for the individuals that enroll. Most troublingly, they enroll poor and traditionally underserved minority populations at disproportionate rates, meaning that the harms they impose on their students disproportionately impact these populations.

Noticing the role of different scripts in allowing this system to develop is essential. If schools framed the goal of higher education as solely about return on investment, it would be difficult to resist regulations that would require a showing that students are likely to benefit economically as a result of enrollment. The shift back and forth and tendency to treat students as consumers obscures the troubling lack of ability to meet either goal. An immediate policy response, then, would be to enact stricter regulations, even strengthening the GE regulations set to take effect in summer of 2015.<sup>210</sup>

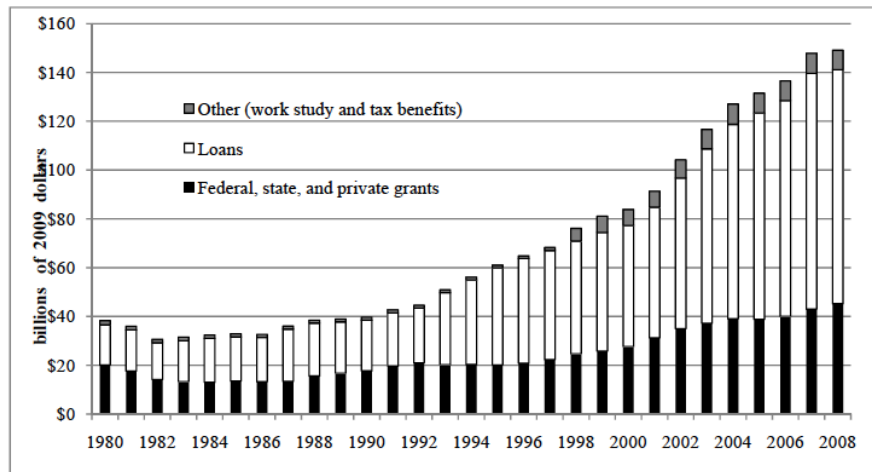
More generally, however, policymakers need to be thoughtful about the goals of higher education and ensure that policies reflect those goals. Doing so is only the first step in encouraging a greater clarity about the goals of higher education in societal discourse.

## **Exceptionality of Student Debt**

Student debt is markedly distinct from other forms of consumer debt, both in how student loans are acquired and in how they are repaid. Over the years, the federal government has become a huge and influential source of student financing. Currently, federal loans account for over 90 percent of undergraduate tuition, exceeding \$140 billion. [See Fig. 7]. What

began as a federal assistance program to help the most needy students has grown into a massive and complex system where almost all educational costs are funded through federal student loans. Through the process, access to higher education has become synonymous with access to student loans, resulting in a growing population of debt-burdened college graduates.

**Figure 8:** Financial aid by category, 1980 to 2009<sup>211</sup>



Source: Center for the Study of Higher Education

While increasing access to higher education institutions through easily available funding may have positive policy objectives, the expansive rise of federal student aid at the front-end becomes problematic when one examines the limited options for student debt relief at the back-end. Somewhere throughout the borrowing process, society's attitude towards student borrowers shifts. In providing education loans, access is key because investing in higher education is viewed as good for students – and society. In discharging loans, however, students are treated with deep suspicion as opportunistic consumers who abuse the system. This shift, driven by inconsistent narratives about students and the purpose of higher education, has led to an unforgiving financial relief system that makes escaping the student debt exceptionally difficult as compared to other forms of consumer debt.

The conflicting narratives about the purpose of higher education financing have resulted in an imbalanced system that protects lenders and servicers while penalizing student loan



borrowers, who bear the full liability of their student debt and have limited options for relief. As a result, many students who attended college with the hope of bettering their lives are actually left worse off. Even if students have not received the promised benefits of higher education, they are still laden with an ever-increasing student debt burden that will follow them for the rest of their lives.

### ***Obtaining Financial Aid for Higher Education***

The exceptional nature of student loans begins from the moment that borrowers access educational funding. The process of obtaining student loans differs from other types of consumer lending. An applicant for a mortgage loan, for example, must undergo a risk assessment process known as *underwriting*, where a lender determines the acceptable financial risk of an individual borrower and the asset being financed. Since most people cannot afford the full payment for a home up front, both the lender and borrower arguably benefit from a system that allows a borrower to access large amounts of funds to finance a home, while also protecting the lender by making sure that the borrower has the necessary income and assets to repay. Large loans are similarly made available to students to encourage access to education. However, student loans are not accompanied by the same underwriting procedures to assess the student borrower's ability to repay or the value of the education to be purchased.

**While Sallie Mae generated a cumulative profit of \$7.3 billion over the last decade, student loans have nearly tripled in that same time.**

The analogy between mortgages and student loans is useful not only because of the strong social and civic pressures that drive the high demand to own a home or get a college degree, but also because of the strong belief in the high return on investment on these goods. According to Sallie Mae, the nation's largest private and federal student loan company, "[h]igher education is a stepping-stone to a better life . . . [and] [e]ven during challenging economic times, a college diploma or professional certificate is a key to opportunity."<sup>212</sup> It is unclear, however, exactly who benefits from the economic opportunities of higher education: while Sallie Mae generated a cumulative profit of \$7.3 billion over the last decade, student loans have nearly tripled in that same time.<sup>213</sup>

While lenders and educational institutions make a huge profit from peddling the dream of a college education to young

Americans and their families, all of the actual financial risk falls on borrowers' shoulders. This was not always the case. Before the 1970s, government funding for higher education was much more focused on public grants, which allowed students to attend college and graduate with little or no debt. President John F. Kennedy, in his special message to the Congress on Education, emphasized the priority of free public higher education, stating that "[i]t is...only prudent social policy for the public to share part of the costs...of higher education...[since] [a]ll of us share in the benefits."<sup>214</sup> The powerful influence of the civic/social benefit narrative promoted the idea that investing in an individual's education meant investing in society. Accordingly, imposing the costs of higher education on an individual through student loans made little sense, since an educated citizenry was seen as a social good that warranted public investment. However, with the growing dominance of the student-as-consumer model, federal student aid policy shifted towards a financing system that relied more on student loans. Under the student-as-consumer model, debt relief options for student loan borrowers have become severely limited and borrowers were held fully and personally liable for what was seen as an individual market choice.

### ***Limitations to Student Debt Relief***

Unlike other forms of consumer debt, student loan borrowers currently do not have a right to refinance their federal student loans by choosing a different lender who can offer more favorable loan terms at lower interest rates. Due to the successful lobbying efforts of large institutional lenders like Sallie Mae, who fought hard to limit the market competition that refinancing could lead to, most student loan borrowers are stuck with the original loan terms and conditions regardless of their actual educational experience or ability to repay.

In 2014, Senator Elizabeth Warren proposed the Bank on Students Emergency Loan Refinancing Act, a bill that aimed to "alleviate heavy debt by fixing interest rates and giving borrowers the ability to refinance both private and public loans."<sup>215</sup> U.S. Senator Lamar Alexander, the senior Republican on the Senate Health, Education, Labor and Pensions Committee, actively opposed the bill by arguing, "[c]ollege students don't need a \$1 a day federal taxpayer subsidy to pay off a \$27,000 student loan. . . They need a job."<sup>216</sup> The unwillingness to "subsidize" students and

implication that borrowers are lazy and need to “get a job” mirrors the unsympathetic stereotype of welfare recipients. Far from Kennedy’s image of students as an essential investment for society, students have become a financial liability and the responsibility for paying for college should fall solely on the individual, not taxpayers.<sup>217</sup> Unsurprisingly, Senator Alexander, the strongest opponent against the recent student loan refinancing legislation, is also the third top recipient of campaign financing from Sallie Mae, which has given more than \$14 million to candidates and parties to ensure that policymakers are protecting its interests, often at the expense of student loan borrowers.<sup>218</sup>

Student debt also differs from other forms of consumer debt in that government-sponsored lenders and servicers are categorically exempt from many of the state and federal consumer protection statutes. State Guaranty Agencies are not bound by the requirements under the Fair Debt Collection and Practices Act (FDCPA), which were enacted to protect debtors from abusive debt collection practices.<sup>219</sup> The 1998 amendments to the Higher Education Act also eliminated all statutes of limitations for the collection of federal student loans, meaning that federal student debt collectors can pursue a borrower for the rest of his or her life.<sup>220</sup>

Finally, unlike other forms of consumer financing, all student debt—federal and private—is presumptively non-dischargeable in bankruptcy.<sup>221</sup> The following section will explore the historical shift towards nondischargeability of student loans and how this system has developed from false stereotypes about the student as an opportunistic consumer.

## ***A History of the Student Loan Exception to Bankruptcy Discharge***

One of the most notable distinctions between student debt and other forms of consumer debt is the limitation on bankruptcy relief. Currently, it is nearly impossible to discharge students loans in a regular bankruptcy proceeding. The formidable limitations on bankruptcy discharge for *all* educational loans—federal and private—was a fairly recent change to the bankruptcy law and is

noteworthy because of its sharp departure from the early rationale for the exception, which was to protect federal investments.

Before the mid-1970s, all education loans could be discharged in bankruptcy. Amid concerns of high default rates and the need to protect federal investments, however, Congress amended the Higher Education Act in 1976 so that loans made by the “government or a non-profit college or university could not be discharged during the first five years of repayment” unless the borrower experienced “undue hardship.”<sup>222</sup> Congress made these changes due to rumors that students were abusing the system, graduating and then racing to the bankruptcy courts to discharge their massive educational debts before starting work in high-paying jobs. Congress feared that the entire federal student loan system would be dismantled if unscrupulous students were permitted to discharge their student debt responsibility so easily.

After several decades of further modifications to the Bankruptcy Code and persistent lobbying from institutional lenders, Congress passed the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) in 2005. That legislation changed the standard for discharge of student loans such that no student loan—federal or private—could be discharged in bankruptcy unless the debtor filed an additional adversary proceeding and successfully showed that repaying the debt would impose an “undue hardship” on the debtor and her dependents.<sup>223</sup> These legislative changes expressed “Congress’s intent to make it harder for a student to shift his debt responsibility onto the taxpayer.”<sup>224</sup> In practice, meeting the “undue hardship” standard has become increasingly more difficult and unpredictable for student loan debtors. While judges have expressed some confusion about what standard to apply, institutional debt collectors such as the Education Credit Management Corporation, a guaranty agency, have persistently pushed courts to impose a stricter definition of “undue hardship,” known as the “Brunner” test, to ensure that individuals cannot escape their student debts, even when they have no ability to repay.<sup>225</sup>

The extraordinarily harsh treatment of student debt under the U.S. Bankruptcy Code warrants further attention. If society has decided that assisting an individual’s higher education pursuits is an important social and economic investment, why

penalize struggling students by blocking access to the bankruptcy relief system that is available for nearly all other forms of debt?

## ***Recommendations for Developing Reality-Based Policy Solutions***

The Supreme Court announced in a 1934 decision that the purpose of bankruptcy was to provide “the honest but unfortunate debtor . . . a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt.”<sup>226</sup> While student loan debtors were originally allowed to establish a “fresh start” through bankruptcy, the law gradually moved towards curtailing the financial relief options for student loan borrowers. Based largely on false rumors that student loan debtors were neither honest nor unfortunate, education loans have become increasingly difficult to discharge in bankruptcy. This section explores two policy arguments put forth to justify nondischargeability of student loans. It then discusses how the blanket exemption of student loans is overly broad and empirically flawed, and offers structural solutions that are better tailored to meet the policy concerns of protecting federal funds, minimizing risk to creditors, and promoting affordable student loans.

## ***Flawed Policy Argument 1: Guard Against the Opportunistic Student Loan Debtor***

The nondischargeability of student loans in bankruptcy has put student debt in an almost criminalized state, lumping student loans in the same category as criminal fines, child support, alimony, and debt obtained by fraud.<sup>227</sup> One theory to justify the harsh bankruptcy limitations on student loans is the presumption that student loan debtors, as compared to other consumer debt holders, are inherently suspect. University of Michigan Law School Professor John Pottow explores several theories behind the nondischargeability of student loans, which he identifies as “soft fraud” or “opportunism.”<sup>228</sup> According to Professor Pottow, a student loan debtor who takes out low-cost loans for high-profit opportunity is incentivized to “pick her debt relief at the point in time when her realizable assets and present income are at their lowest and her debt and future income are at their highest.”<sup>229</sup> Given that similar incentives for opportunism exist with any other

**Only 1% of all  
matured student  
loans had been  
discharged in  
bankruptcy prior  
to 1976**

form of consumer debt, what it is it about student loans in particular that justify the nondischarge rule? Professor Pottow offers three reasons for the exceptionality of student debt: 1) debtors are usually young and have more earning years to repay their debt; 2) education is a unique good that reflects “personal investment in future earning potential”;<sup>230</sup> and 3) unlike other consumer goods like a car or home, education is “inalienable” and it is difficult to “divest the debtor of an educational benefit *ex post*.”<sup>231</sup>

Each of these arguments is fundamentally flawed. First, the notion that youth and high future earning potential call for restricted bankruptcy discharge conflicts with a major economic justification for bankruptcy. It has been argued that “a bankruptcy system that encourages beneficial risk-taking, that keeps corporations searching out new business opportunities, that encourages entrepreneurs to form small businesses, and that gives consumers a reason to go to work every morning is better for everyone--debtors, creditors and all the rest of us.”<sup>232</sup> To burden young student loan borrowers with an overwhelming, inescapable debt at the start of their earning potential contradicts the economic benefits of a “fresh start” and “beneficial risk-taking” that bankruptcy promotes.

Furthermore, the empirical evidence confirms that the early fear that student loan debtors were abusing the bankruptcy system had no grounds in reality. A 1977 study from the General Accounting Office (GAO) undermined this perceived abuse, finding that “only 1% of all matured student loans had been discharged in bankruptcy prior” to 1976.<sup>233</sup> Given the results of the GAO study, Representative James O’Hara argued strongly against the enactment of the undue hardship provision in 1976, calling it “a discriminatory remedy for a ‘scandal’, which exist[ed] primarily in the imagination.”<sup>234</sup> He opposed putting student loan debtors in the same category as criminals who obtained loans by “fraud, felony, and alimony-dodging.”<sup>235</sup> Nevertheless, the stereotype of the opportunistic student loan debtor persisted in the minds of lawmakers and judges as the undue hardship provision continued to be developed and expanded.<sup>236</sup> Access to financial aid may be a public investment couched in terms of the civic/social benefit narrative, but when it comes time for repayment, lenders are quick

to switch the script and demand full liability from the student as consumers.

The other justifications for the nondischargeability of student debt deal with the unique nature of the product being financed. Student loans are different from other forms of consumer debt because “[t]hey are made without business considerations, without security, without cosigners, and rely . . . for repayment solely on the debtor’s future increased income resulting from the education. In this sense, the loan is viewed as a mortgage on the debtor’s future.”<sup>237</sup> The implicit assumption is that higher education is inherently valuable and a good return on investment; therefore, the student, as the recipient of that benefit, should internalize the costs of education.

However, even if an individual’s education has not produced any valuable benefits, bankruptcy judges are still wary of granting student loan discharges under the undue hardship provision. Often, judges raise the dispositionist<sup>238</sup> argument of individual choice to justify holding a debtor responsible for her financial decisions. As the 7th Circuit notes, “[t]he government is not twisting the arms of potential students...[and] does not guarantee the student’s future financial success. If the leveraged investment of an education does not generate the return the borrower anticipated, the student, not the taxpayer, must accept the consequences of the decision to borrow.”<sup>239</sup> Underlying the court’s rationale is the notion that students assume a special risk when they borrow money to pursue higher education. The problem with this reasoning, however, is that the non-discretionary access to student loans promotes a different message: education does pay off and that it’s worth investing in. Further, if no benefit was actually received, then the justifications for bankruptcy exemptions are even less persuasive since the argument that an education is inalienable does not apply when a student has not received anything of value. Selling students this false hope of future prosperity and then penalizing them for believing it is an unfair and unsustainable economic system that requires immediate restructuring.

### ***Policy Recommendation 1***

If the fear of student loan debtor opportunism is driving the non-discharge provision, a more tailored legal approach may be



preferable to the current blanket exemption. For example, the legal system could set up a bankruptcy system that considered the individual's "earning potential and separated the rich from the poor" through an "'income-contingent' model of discharge."<sup>240</sup>

Law Professor John Pottow provides a helpful comparative analysis of the bankruptcy systems in the U.S. and in other countries that have adopted the income-contingent approach, such as Australia and New Zealand.<sup>241</sup> While the U.S. system treats "student debt as a lump-sum outlay that gets capitalized at graduation and then amortized over fixed-period installment payment,"<sup>242</sup> countries like Australia and New Zealand determine student loan repayment according to a certain percentage of the debtor's income.<sup>243</sup> Therefore, the more the debtor earns, the more she pays back of her federal student loans. While the U.S. has begun to move toward the income-driven repayment plans to help student debt borrowers manage repayment, eligibility for these plans are limited according to when the federal student loan was dispersed and are not automatically applied as they are in Australia and New Zealand. While efforts have been made to streamline the U.S. application process for income-driven repayment, many students are not aware that they may be eligible and lenders and servicers have little incentive to properly inform borrowers of the repayment options. Therefore, to better ensure that student loan borrowers are able to manage their existing education loans, the U.S. should consider moving towards a more automated and accessible repayment program similar to those of Australia and New Zealand.

The automated income-based repayment model is also useful because it directly addresses the opportunism concerns associated with student loan debtors. Rather than just assuming that higher education will lead to a return on investment, the income-based repayment system is more tailored to individual circumstances and is sensitive to the individual's ability to repay. Automatic income-based repayment is an effective alternative to protect against opportunism because all student loan borrowers will be required to repay a fair proportion of the economic "benefit" that their education provided.

## ***Flawed Policy Argument 2: Protect Federal Investment and Increase Future Access to Education Funding***

Another early justification for the nondischarge exception was to protect the federal student loan program.<sup>244</sup> Fearful that the perceived rise in federal loan defaults would lead to “the destruction of student loan programs,”<sup>245</sup> Congress prohibited student loan discharge in bankruptcy until five years after repayment had become due, or if the debtor could show that repayment would cause “undue hardship.”<sup>246</sup>

Then in 2005, without any hearings, Congress amended § 523(a)(8) of the Bankruptcy Code and extended the bankruptcy exemption to include private student loans. While the initial arguments for nondischargeability of federal student loans seemed unsubstantiated, arguments for extending this protection to private student loans rested on even more attenuated evidence. Private student lending institutions argued that the removal of bankruptcy protections would allow lenders to loosen underwriting criteria and make student loans more accessible to financially risky individuals with lower credit scores in need of additional funding. However, several years since BAPCPA extended the nondischargeable presumption to private student loans, no evidence could be found that lenders actually increased lending to low-income individuals. A Finaid.Org study found that since 2005, the percentage of borrowers with low credit scores receiving private loans increased by a mere 0.2%.<sup>247</sup>

## ***Policy Recommendation 2***

In 2013, Representative Steve Cohen, along with 14 other members of Congress, introduced the Private Student Loan Bankruptcy Fairness Act (H.R. 532) to remove the exemption of private student loans in bankruptcy and put private student lenders on the same level as other unsecured creditors. Cohen noted how the changes to the Bankruptcy Code in 2005 “gave special federal protections to for-profit lenders, penalized borrowers for pursuing higher education, and provided no incentive to private lenders to lend responsibly.”<sup>248</sup> Most recently, 13 senators, including Senators Dick Durbin and Elizabeth Warren, introduced The Fairness for Struggling Students Act of

2015,<sup>249</sup> which reinvigorated Representative Cohen’s efforts to make private student loans once again dischargeable in bankruptcy.

Making private student loans nondischargeable is particularly harmful since private student loans often involve high interest rates and fees and lack many of the debt relief and affordable repayment options federal student loans include. The empirical evidence runs counter to the policy arguments originally set forth to exclude private student loans from regular bankruptcy discharge. Therefore, to realign student debt relief policies with the major goals of higher education funding—promoting the civic/social benefit and reaping a return on investment—we should remove the harsh penalties imposed on student loan borrowers and restore the availability of bankruptcy relief for private student loans.

## CONCLUSION

The United States currently holds roughly 1.2 trillion dollars in student debt. Forty million Americans are burdened by student debt, which is second only to mortgages as the largest source of consumer debt. As the demand and competition for jobs have continued to rise, more students than ever are enrolling in higher education at increasingly higher costs. A critical dialogue about the purpose of higher education is essential to address the challenges of student debt and to reform our system of financing education to better meet both individual and collective goals

The two narratives about higher education identified in this report have fundamentally differing views on why education is good for individual students and society. Both have shaped how we finance higher education, but they have become increasingly confused over time. As a result, ideological justifications for our educational policies are often contradictory, leading to a mismatch between what we believe education should achieve and how to structure the legal system regulating higher education. Powerful actors within the system strategically deploy these narratives to maximize the benefits they receive while minimizing accountability and oversight.

This report begins by showing how the return on investment and civic/social benefit narratives have emerged and developed throughout the history of U.S. higher education, culminating in the dominant view of the student as a consumer and education as a market good. It then explores the extensive consequences of the student-as-consumer narrative through four different case studies within the higher education system.

This report first examines how colleges and universities, viewing themselves as competing among one another in the educational market, are spending massive amounts of money on student services and amenities. Schools justify this spending by pointing to the variant of the return on investment narrative that views the student as a consumer. From that perspective, educational institutions argue that they must do whatever is necessary to make their product the most attractive on the market, even if the approach drives massive and unchecked increases in the cost of higher education.

The report then analyzes how the narratives have led to two competing visions of how to provide aid to students in the context of the FAFSA. Though the FAFSA was originally designed to improve access, recent reform efforts to improve access to financial grants and expand upon the importance of universal, egalitarian education have faced harsh criticism. On the one hand, the civic/social benefit narrative would unambiguously support FAFSA simplification. But on the other hand, the return on investment narrative puts the burden on the student, as consumer, and resists reform efforts by stressing the importance of students making cost-conscious choices on their own.

The report's third case study explores how for-profit colleges' manipulation of the narratives harms students, particularly low-income and minority students. For-profit schools promise students the benefits of both the return on investment and civic/social narratives, though outcomes are often significantly worse than at other types of institutions. They justify their access to federal loans by pointing to the universal benefit of education of the civic/social narrative and return on investment at a societal level, but base their resistance to regulation on a student-as-consumer narrative.

Finally, the report addresses the exceptionality of student debt. Student loan borrowers are excluded from many of the regular consumer debt protections, including bankruptcy discharge. By encouraging and facilitating student borrowing, federal policy promotes access to higher education as providing both a civic/social and return on investment benefit. As a result, student loan borrowers are not subject to the types of risk screening procedures that apply in other borrowing contexts. However, when considering dischargability of student debt, federal policies severely limit the available relief options as the view of the students shift from a worthwhile investment to an untrustworthy consumer.

These case studies illustrate how different narratives about higher education are systematically deployed in ways that harm students. This deployment of different narratives impedes society's ability to create meaningful reform and construct a system that better reflects overarching social and economic values. Confusion about the purpose of higher education has promoted a deeply flawed student-as-consumer model, as the report illustrates. Directly engaging with questions about why education matters and what role the government should play in promoting education is the first step toward meaningfully addressing the student debt crisis.

While each case study suggests specific reforms, the report's broader goal is to locate these troubling aspects of higher education policy in a system powerfully shaped by our discourse on higher education. The most basic reform needed is greater focus on the narratives employed to define the goals of American higher education policy. When misused and confused, the narratives can facilitate the harms documented in this report. However, once recognized and consciously examined, they can also shape the landscape of higher education. The decision remains – whether to define students primarily as consumers or primarily as citizens. The definition chosen and the narratives driving that choice merit attention because they reflect the vision and values of society that are mirrored back in the higher education system.

## ENDNOTES

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<sup>2</sup> Nicholas Rayfield, *National Student Loan Debt Reaches a Bonkers \$1.2 Trillion*, USA TODAY, Apr. 8, 2015, <http://college.usatoday.com/2015/04/08/national-student-loan-debt-reaches-a-bonkers-1-2-trillion/>.

<sup>3</sup> Rohit Chopra, *Student Debt Swells, Federal Loans Now Top a Trillion*, THE CONSUMER FIN. PROT. BUREAU BLOG (Mar. 21, 2014), <http://www.consumerfinance.gov/newsroom/student-debt-swells-federal-loans-now-top-a-trillion/>.

<sup>4</sup> Richard Fry, *The Changing Profile of Student Borrowers*, PEW RES. CTR. (Oct. 7, 2014), <http://www.pewsocialtrends.org/2014/10/07/the-changing-profile-of-student-borrowers/>.

<sup>5</sup> President Barack Obama, Speech on College Affordability at Syracuse, NY (Aug. 13, 2013), <https://www.whitehouse.gov/the-press-office/2013/08/23/remarks-president-college-affordability-syracuse-ny>.

<sup>6</sup> Marina Werner, *Learning my Lesson*, THE LONDON REV. OF BOOKS, Mar. 19 2015, at 8.

<sup>7</sup> *Id.* at 10.

<sup>8</sup> *Id.* at 8.

<sup>9</sup> Ronald Chen & Jon Hanson, *The Illusion of Law: The Legitimizing Schemas of Modern Policy and Corporate Law*, 103 MICH. L. REV. 1, 12 (2004).

<sup>10</sup> *Id.* at 30. See also PBS Frontline Interview with Milton Friedman, Oct. 1, 2000, [http://www.pbs.org/wgbh/commandingheights/shared/minitext/int\\_miltonfriedman.html#1](http://www.pbs.org/wgbh/commandingheights/shared/minitext/int_miltonfriedman.html#1). Friedman explained, “Nobody spends somebody else’s money as carefully as he spends his own. Nobody uses somebody else’s resources as carefully as he uses his own. So if you want efficiency and effectiveness, if you want knowledge to be properly utilized, you have to do it through the means of private property.” The key point that Friedman make is that student access should be encouraged, but in such a way that mimics or creates a private investment by the student, so that his/her behavior in the market is done “carefully” and achieves “efficiency and effectiveness.”

<sup>11</sup> Richard Fry, *Young Adults, Student Debt and Overall Economic Well-being*, THE PEW RES. CTR. (May 14, 2014), <http://www.pewsocialtrends.org/2014/05/14/section-1-student-debt-and-overall-economic-well-being/>.

<sup>12</sup> Joe Valenti, et al. *Student-Loan Debt Has a Rippling Negative Effect on the Broader Economy*, CTR. FOR AM. PROGRESS (Apr. 10, 2013), <https://www.americanprogress.org/issues/highereducation/news/2013/04/10/60173/student-loan-debt-has-a-rippling-negative-effect-on-the-broader-economy/>.

<sup>13</sup> Meta Brown, *Household Debt and Credit, Student Debt Overview*, Federal Reserve Bank of New York, New York, N.Y.) Aug. 14, 2013, at slide 22, [http://www.newyorkfed.org/regional/Brown\\_presentation\\_GWU\\_2013Q2.pdf](http://www.newyorkfed.org/regional/Brown_presentation_GWU_2013Q2.pdf).

<sup>14</sup> *Id.*

<sup>15</sup> Fry, *Young Adults*, *supra* note 11.

<sup>16</sup> Fry, *Young Adults*, *supra* note 11.

<sup>17</sup> Richard Eskow, *Four Charts With What Everyone Should Know About the Student Debt Crisis*, CAMPAIGN FOR AM.’S FUTURE (Apr. 2, 2015),

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<http://ourfuture.org/20150402/4-things-every-american-should-know-about-the-student-debt-crisis-wcharts>.

<sup>18</sup> Fry, *The Changing Profile*, *supra* note 4.

<sup>19</sup> *Is College Worth It?*, PEW RES. CTR. (May 15, 2011), <http://www.pewsocialtrends.org/2011/05/15/chapter-1-overview-4/>.

<sup>20</sup> *Id.*

<sup>21</sup> Megan Woolhouse, *For-Profits Gets Harsh Grades by Former Students*, THE BOSTON GLOBE, Oct. 20, 2014, <http://www.bostonglobe.com/business/2014/10/19/high-debt-unfulfilled-dreams/KuDKIWiyRO5E5HDpRpSLRO/story.html>.

<sup>22</sup> *Id.*

<sup>23</sup> *Real Life Student Debt Stories*, STUDENT DEBT CRISIS (Nov. 20, 2014), <http://studentdebtcrisis.org/read-student-debt-stories/>.

<sup>24</sup> *Id.*

<sup>25</sup> Mandi Woodruff, *7 College Graduates Whose Lives Were Wrecked By Student Debt*, BUSINESS INSIDER, June 16, 2013, <http://www.businessinsider.com/students-loan-debt-horror-stories-2013-6#stephanie-snyder-44-graduated-in-2005-with-a-ba-in-public-administration-she-worked-three-jobs-at-one-time-to-pay-down-her-38000-student-loan-balance-1>.

<sup>26</sup> *Id.*

<sup>27</sup> Andrew Martin & Andrew W. Lehren, *A Generation Hobbled by the Soaring Cost of College*, N.Y. TIMES, May 12, 2012, <http://www.nytimes.com/2012/05/13/business/student-loans-weighing-down-a-generation-with-heavy-debt.html?pagewanted=2>.

<sup>28</sup> Elizabeth Olson, *Student Loan Debt Burdens More Than Just Young People*, N.Y. TIMES, Sept. 12, 2014, <http://www.nytimes.com/2014/09/13/business/student-loan-debt-burdens-more-than-just-young-people.html>.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Chris Alcantara & Michael Vasquez, *Higher Ed Hustle: A Closer Look at Complaints*, MIAMI HERALD, Apr. 24, 2015, <http://pubsys.miamiherald.com/static/media/projects/2015/higher-ed-hustle/complaints/index.html>.

<sup>32</sup> Interview with R.W., Former U.C.L.A. Student, in L.A., Cal. (Mar. 25, 2015).

<sup>33</sup> MASS. CONST. pmbl.

<sup>34</sup> Ellen Condliffe Lagemann & Harry Lewis, “Renewing the Civic Mission of American Higher Education,” in *WHAT IS COLLEGE FOR? THE PUBLIC PURPOSE OF HIGHER EDUCATION* 9, 19 (2012).

<sup>35</sup> Melissa Murray, *When War Is Work: The G.I. Bill, Citizenship, and the Civic Generation*, 96 Cal. L. Rev. 967, 973-74 (2008).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Milton Greenberg, *How the GI Bill Changed Higher Education*, THE CHRON. OF HIGHER EDUC., June 18, 2004, <http://chronicle.com/article/How-the-GI-Bill-Changed-Higher/12760>.

<sup>39</sup> Lagemann & Lewis, *supra* note 34; Greenberg, *supra* note 38.

<sup>40</sup> Claire Krendl Gilbert & Donald E. Heller, *Access, Equity, and Community Colleges: The Truman Commission and Federal Higher Education Policy from 1947 to 2011*, 84 J. HIGHER EDUC. 417, 418 (2013).

<sup>41</sup> *Id.*



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<sup>42</sup>*History of Federal Student Loan Programs*, NEW AM. FOUND. (JULY 7, 2015), <http://febp.newamerica.net/background-analysis/federal-student-loan-programs-history>.

<sup>43</sup> President Lyndon B. Johnson, Remarks at Southwest Texas State College Upon Signing the Higher Education Act of 1965 (Nov. 8, 1965), [http://www.lbjlib.utexas.edu/johnson/lbjforkids/edu\\_whca370-text.shtm](http://www.lbjlib.utexas.edu/johnson/lbjforkids/edu_whca370-text.shtm).

<sup>44</sup> Dan Berrett, *The Day the Purpose of College Changed*, THE CHRON. OF HIGHER EDUC., Jan. 26, 2015, [chronicle.com/article/The-Day-the-Purpose-of-College/151359/](http://chronicle.com/article/The-Day-the-Purpose-of-College/151359/).

<sup>45</sup> *Is College Worth It?*, *supra* note 19.

<sup>46</sup> Berrett, *supra* note 44.

<sup>47</sup> Friedman Interview, *supra* note 10.

<sup>48</sup> *Id.*

<sup>49</sup> Following the 1972 Reauthorization of the Higher Education Act and creation of “Sallie Mae,” President Nixon praised Congress for responding to an urgent problem and ensuring that “thousands of deserving young people, ready to return to college or other post-secondary schools” could get the “loans they needed for the coming school year.” See Joel Best & Eric Best, *THE STUDENT LOAN MESS: HOW GOOD INTENTIONS CREATED A TRILLION-DOLLAR PROBLEM* 35-36, (2014).

<sup>50</sup> *Id.* at 40.

<sup>51</sup> “Sallie Mae began life as the Student Loan Marketing Association in 1972. It was designed to serve as a secondary market for student loans, increasing their liquidity, and thereby making it more attractive for investors to finance student lending.” Scott Piazza & Victor Nava, *Sallie Mae and Uncle Sam: Cronyism in Higher Education Finance*, REASON FOUND. (July 2013), [http://reason.org/files/sallie\\_mae\\_cronyism.pdf](http://reason.org/files/sallie_mae_cronyism.pdf).

<sup>52</sup> Jeffrey Kahn, *Ronald Reagan launched political career using the Berkeley campus as a target*, UC BERKELEY NEWSCENTER, June 8, 2004, [http://www.berkeley.edu/news/media/releases/2004/06/08\\_reagan.shtml](http://www.berkeley.edu/news/media/releases/2004/06/08_reagan.shtml).

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<sup>54</sup> *Id.*

<sup>55</sup> Frank Bruni, *College’s Priceless Value*, N.Y. TIMES, Feb. 11, 2015, <http://www.nytimes.com/2015/02/11/opinion/frank-bruni-higher-education-liberal-arts-and-shakespeare.html>.

<sup>56</sup> Wallace Turner, *Gov. Reagan Proposes Cutback in U. of California Appropriation: Would Impose Tuition Charge on Students From State Kerr Weighs New Post*, N.Y. TIMES, Jan. 7, 1967, <http://query.nytimes.com/gst/abstract.html?res=9401E4D7133CE43BBC4F53DFB766838C679EDE>.

<sup>57</sup> Aaron Bady & Mike Konczal, *From Master Plan to No Plan: The Slow Death of Public Higher Education*, DISSENT MAG. (Fall 2012), <http://www.dissentmagazine.org/article/from-master-plan-to-no-plan-the-slow-death-of-public-higher-education>.

<sup>58</sup> Devin Fergus, *My Students Pay Too Much for College. Blame Reagan*, WASH. POST, Sept. 2, 2014, <http://www.washingtonpost.com/posteverything/wp/2014/09/02/my-students-pay-too-much-for-college-blame-reagan/>.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

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<sup>61</sup> Thomas G. Mortenson, *State Funding: A Race to the Bottom*, Am. Council on Educ., Winter 2012, <http://www.acenet.edu/the-presidency/columns-and-features/Pages/state-funding-a-race-to-the-bottom.aspx>.

<sup>62</sup> Claudio Sanchez, *How the Cost of College Went From Affordable to Sky-High*, NPR, Mar. 18, 2014, <http://www.npr.org/2014/03/18/290868013/how-the-cost-of-college-went-from-affordable-to-sky-high>.

<sup>63</sup> Paul F. Camps, *The Real Reason College Tuition Costs So Much*, N.Y. TIMES, Apr. 4, 2015, [http://www.nytimes.com/2015/04/05/opinion/sunday/the-real-reason-college-tuition-costs-so-much.html?\\_r=0](http://www.nytimes.com/2015/04/05/opinion/sunday/the-real-reason-college-tuition-costs-so-much.html?_r=0).

<sup>64</sup> Kevin Carey, *How to Raise a University's Profile: Pricing and Packaging*, N.Y. TIMES, Feb. 6, 2015, <http://www.nytimes.com/2015/02/08/education/edlife/how-to-raise-a-universitys-profile-pricing-and-packaging.html>.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> As part the College Board's 2013 Trends in Education Series, the College Board published a report entitled "Education Pays: The Benefits of Higher Education for Individuals and Society." The 2013 version incorporates the social and civic benefit narrative that "the knowledge, fulfillment, self-awareness, and broadening of horizons associated with education transform the lives of students and of those with whom they live and work." Sandy Baum, Jennifer Ma & Kathleen Payea, *Education Pays 2013*, TRENDS IN HIGHER EDUCATION SERIES (CollegeBoard), <https://trends.collegeboard.org/sites/default/files/education-pays-2013-full-report.pdf>. In contrast, President Barack Obama has emphasized the return on investment narrative of higher education. Given the reality of the current competitive, globalized job market, President Obama recognized that "a high school diploma is not going to be enough. Folks need a college degree. They need workforce training. They need a higher education. [We need]... to make sure our graduates are ready for a career; ready to meet the challenges of a 21st century economy." President Barack Obama, Speech at the University of Texas (Aug. 8, 2010) <http://blog.chron.com/txpotomac/2010/08/full-text-of-president-obamas-speech-in-austin/>.

<sup>68</sup> Doug Lederman, *Obama's Budget Blockbuster*, INSIDE HIGHER ED, Feb. 27, 2009, <https://www.insidehighered.com/news/2009/02/27/budget>.

<sup>69</sup> Jeremy Byellin, *In 2010: The FFEL Student Loan Program is Abolished*, THOMAS REUTERS LEGAL SOLUTIONS BLOG (Mar. 30, 2012), <http://blog.legalsolutions.thomsonreuters.com/legal-research/today-in-2010-the-ffel-student-loan-program-is-abolished/>.

<sup>70</sup> William D. Ford *Federal Direct Loan Program*, NAT'L ASS'N FOR COLL. ADMISSION COUNSELING (Sept. 2009), <http://www.nacacnet.org/issuesaction/LegislativeNews/Documents/DLProgramFactSheet.pdf>.

<sup>71</sup> Thomas Bartlett, *Club Ed: This University Is At Your Service*, THE CHRON. OF HIGHER EDUC., July 4 2008, <http://search.proquest.com.ezpprod1.hul.harvard.edu/docview/214655097/188E83BBC81C4541PQ/16?accountid=11311>.

<sup>72</sup> Donna M. Desrochers & Jane V. Wellman, *Trends in College Spending 1999-2009*, DELTA COST PROJECT (2011), [http://www.deltacostproject.org/sites/default/files/products/Trends2011\\_Final\\_090711.pdf](http://www.deltacostproject.org/sites/default/files/products/Trends2011_Final_090711.pdf); Donna M. Desrochers & Steven Hurlburt, *Trends in College Spending 2001-2011*, DELTA COST PROJECT (2014), [http://www.deltacostproject.org/sites/default/files/products/Delta%20Cost\\_Trends%20College%20Spending%202001-2011\\_071414\\_rev.pdf](http://www.deltacostproject.org/sites/default/files/products/Delta%20Cost_Trends%20College%20Spending%202001-2011_071414_rev.pdf);

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Steven Hurlburt & Rita J. Kirshstein, *Spending: Where Does the Money Go*, DELTA COST PROJECT (2012), <http://www.deltacostproject.org/sites/default/files/products/Delta-Spending-Trends-Production.pdf>. The study defines student services as “noninstructional, student related activities such as admissions, registrar services, career counseling, financial aid administration, student organizations, and intramural athletics. Costs of recruitment, for instance, are typically embedded within student services.”

<sup>73</sup> Scott Carlson, *Spending Shifts as Colleges Compete on Students' Comfort*, THE CHRON. OF HIGHER EDUC., July 28, 2014, <http://chronicle.com/article/Spending-Shifts-as-Colleges/147921/>. Between 2001 and 2011 (in 2011 dollars) private bachelor's institutions increased total expenditures on student services per full-time-equivalent (FTE) student by over 21% (compared to a 5.5% increase in spending on instruction). Spending on institutional support, research, and public service declined during that period. Public master's institutions increased spending on student services per FTE student by almost 15% (compared to a 6% increase in spending on instruction and a decrease in spending on academic and institutional support). The increase in spending on student-services per FTE student at private master's institutions was 24%. Public research institutions and private research institutions increased spending on student-services per FTE student by 16% and 30% respectively.

<sup>74</sup> Sam Dillon, *Share of College Spending for Recreation is Rising*, N.Y. TIMES, July 19, 2010, <http://www.nytimes.com/2010/07/10/education/10education.html?src=tw&tw=nytimes&r=0>.

<sup>75</sup> Carlson, *supra* note 73.

<sup>76</sup> Dillon, *supra* note 74.

<sup>77</sup> Brian Jacob, Brian McCall & Kevin M. Stange, *College as Country Club: Do Colleges Cater to Students' Preferences for Consumption?* (The Nat'l Bureau of Econ. Research, Working Paper No. 18745., 2013), [http://www.nber.org/papers/w18745?utm\\_campaign=ntw&utm\\_medium=email&utm\\_source=ntw](http://www.nber.org/papers/w18745?utm_campaign=ntw&utm_medium=email&utm_source=ntw).

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> Bartlett, *supra* note 71.

<sup>82</sup> Caroline Fredrickson, *There Is No Excuse for How Universities Treat Adjuncts*, THE ATLANTIC, Sep. 15, 2015, <http://www.theatlantic.com/business/archive/2015/09/higher-education-college-adjunct-professor-salary/404461/>.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> Charles Lane, *Colleges Drift Away From Their Academic Priorities*, WASH. POST, Sep. 24, 2014, [http://www.washingtonpost.com/opinions/charles-lane-colleges-drift-away-from-their-academic-priorities/2014/09/24/30efcda2-4409-11e4-9a15-137aa0153527\\_story.html](http://www.washingtonpost.com/opinions/charles-lane-colleges-drift-away-from-their-academic-priorities/2014/09/24/30efcda2-4409-11e4-9a15-137aa0153527_story.html).

<sup>87</sup> Courtney Rubin, *Making a Splash on Campus*, N.Y. TIMES, Sep. 19, 2014, [http://www.nytimes.com/2014/09/21/fashion/college-recreation-now-includes-pool-parties-and-river-rides.html?\\_r=0](http://www.nytimes.com/2014/09/21/fashion/college-recreation-now-includes-pool-parties-and-river-rides.html?_r=0).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

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<sup>91</sup> *Id.*

<sup>92</sup> *University Recreation, Plans and Renderings*, La. State Univ., <http://suuniversityrec.com/lisuurec/expansion/plans/>. (last visited Nov. 27, 2015).

<sup>93</sup> *Id.*

<sup>94</sup> Stephanie Grace, *How Bobby Jindal Broke the Louisiana Economy*, NEWSWEEK, June 1, 2015, <http://www.newsweek.com/how-bobby-jindal-broke-louisiana-economy-337999>.

<sup>95</sup> Martha White and NBC News, *Amid Funding Cuts, Will LSU Have to Declare 'Bankruptcy'?*, NBC NEWS, Apr. 26, 2015, <http://www.nbcnews.com/business/economy/amid-funding-cuts-will-lsu-have-declare-bankruptcy-n347951>.

<sup>96</sup> Aalia Shaheed, *LSU's \$85M 'Lazy River' Leisure Project Rolls On, Despite School's Budget Woes*, FOX NEWS, May 17, 2015, <http://www.foxnews.com/us/2015/05/17/l-su-85m-lazy-river-leisure-project-rolls-on-despite-school-budget-woes/>.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> White and NBC News, *supra* note 95.

<sup>101</sup> Carol Matlack, *Bubble U.: High Point University*, BLOOMBERG BUSINESS, Apr. 19, 2012, <http://www.bloomberg.com/bw/articles/2012-04-19/bubble-u-dot-high-point-university>. See also Cara Newlon, *The College Amenities Arms Race*, FORBES, July 31, 2014, <http://www.forbes.com/pictures/gfhf45fim/high-point-university-2/>.

<sup>102</sup> Matlack, *supra* note 101.

<sup>103</sup> Newlon, *supra* note 101.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> Encarnacion Pyle, *The \$140 Million OSU rec center, now almost 5 years old, is a palace for physical fitness*, THE COLUMBUS DISPATCH, Dec. 14 2009, [http://www.dispatch.com/content/stories/local/2009/12/14/osu\\_rec.html](http://www.dispatch.com/content/stories/local/2009/12/14/osu_rec.html).

<sup>107</sup> Rubin, *supra* note 87.

<sup>108</sup> *Id.*

<sup>109</sup> *Texas Tech University*, U.S. NEWS AND WORLD REPORT, <http://colleges.usnews.rankingsandreviews.com/best-colleges/texas-tech-university-3644>. (last visited Nov. 27, 2015); *Louisiana State University--Baton Rouge*, U.S. NEWS AND WORLD REPORT, <http://colleges.usnews.rankingsandreviews.com/best-colleges/l-su-baton-rouge-2010>. (last visited Nov. 27, 2015); *Purdue University--West Lafayette*, U.S. NEWS AND WORLD REPORT, <http://colleges.usnews.rankingsandreviews.com/best-colleges/purdue-1825>. (last visited Nov. 27, 2015); *Clemson University*, U.S. NEWS AND WORLD REPORT, <http://colleges.usnews.rankingsandreviews.com/best-colleges/clemson-university-3425>. (last visited Nov. 27, 2015); *Ohio State University--Columbus*, U.S. NEWS AND WORLD REPORT, <http://colleges.usnews.rankingsandreviews.com/best-colleges/ohio-state-6883>. (last visited Nov. 27, 2015).

<sup>110</sup> President Barack Obama, Remarks by the President on College Affordability (Aug. 22, 2013), <https://www.whitehouse.gov/the-pressoffice/2013/08/23/remarks-president-college-affordability-syracuse-ny>.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

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<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *High Point University*, U.S. NEWS & WORLD REPORT, <http://colleges.usnews.rankingsandreviews.com/best-colleges/high-point-university-2933>. (last visited Nov. 27, 2015).

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Bates College*, U.S. NEWS & WORLD REPORT, <http://colleges.usnews.rankingsandreviews.com/best-colleges/bates-college-2036>. (last visited Nov. 27, 2015).

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Boston College*, U.S. NEWS & WORLD REPORT, <http://colleges.usnews.rankingsandreviews.com/best-colleges/boston-college-2128>. (last visited Nov. 27, 2015).

<sup>127</sup> Bartlett, *supra* note 71.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Slane Center Is Named No. 1 In Nation*, HIGH POINT UNIVERSITY (Jan. 8, 2015), <http://www.highpoint.edu/blog/2015/01/slane-center-is-named-no-1-in-nation/>.

<sup>132</sup> Bartlett, *supra* note 71.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Bethany College*, U.S. NEWS & WORLD REPORT, <http://colleges.usnews.rankingsandreviews.com/best-colleges/bethany-college-west-virginia-3808>. (last visited Nov. 27, 2015).

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *The Bethany Plan Works, You'll See*, BETHANY COLLEGE, <http://www.bethanywv.edu/prospective-students/bethany-plan/>. (last visited Nov. 27, 2015).

<sup>144</sup> *Fast Facts*, BETHANY COLLEGE, <http://www.bethanywv.edu/prospective-students/fast-facts/>. (last visited Nov. 27, 2015).

<sup>145</sup> *Id.*

<sup>146</sup> Carlson, *supra* note 73.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

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<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> Mark I. McNutt, *Why Does College Cost So Much?*, U.S. NEWS & WORLD REPORT, Sep. 22 2014, <http://www.usnews.com/news/college-of-tomorrow/articles/2014/09/22/why-college-costs-so-much-overspending-on-faculty-amenities>.

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> President Barack Obama, Remarks, *supra* note 110.

<sup>156</sup> Colleges, especially research institutions, derive a significant proportion of their funding from research grants. However, research grant funding typically funds little student education and is instead focused more specifically on research expenses.

<sup>157</sup> Mortenson, *supra* note 61.

<sup>158</sup> *Id.* This data comes from Grapevine, an annual compilation of data on state fiscal support for higher education.

<sup>159</sup> Andrew Carlson, *State Higher Education Finance: FY 2014*, STATE HIGHER EDUC. EXEC. OFFICERS ASS'N, <http://www.sheeo.org/sites/default/files/project-files/SHEF%20FY%202014-20150410.pdf>.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Trends in Student Aid 2014*, COLLEGEBOARD, <http://trends.collegeboard.org/student-aid>. (last visited Nov. 27, 2015).

<sup>163</sup> Caroline Hoxby & Sarah Turner, *What High-Achieving Low-Income Students Know About College* (Nat'l Bureau of Econ. Res., Working Paper No. 20861, 2015), <http://www.nber.org/papers/w20861>.

<sup>164</sup> Baum, *supra* note 67.

<sup>165</sup> Mark Kantrowitz, *Leaving Money on the Table*, EDVISORS, <https://www.edvisors.com/ask/student-aid-policy/leaving-money-on-the-table/>. (last visited Nov. 27, 2015).

<sup>166</sup> *Trends*, *supra* note 162.

<sup>167</sup> Mark Kantrowitz, *History of the FAFSA and Need Analysis*, EDVISORS, <https://www.edvisors.com/fafsa/estimate-aid/history-fafsa-need-analysis/>. (last visited Nov. 27, 2015).

<sup>168</sup> Owen Phillips & Cory Turner, *Shrink the FAFSA? Good Luck With That*, NPR, Mar. 4, 2015, <http://www.npr.org/blogs/ed/2015/03/04/387533091/shrink-the-fafsa-good-luck-with-that>.

<sup>169</sup> The Department of Education estimates that it takes an average of 55 minutes to complete the FAFSA, but this number is only for those who successfully completed the form. It suggests people allot 1.5 hours for the process. *FAFSA Questions*, FAFSA.ED.GOV, <https://fafsa.ed.gov/help/fotwfaq59.htm>. (last visited Nov. 28, 2015).

<sup>170</sup> Sara Goldrick-Rab & Robert J. Kelchen, *Change Fafsa Now*, THE CHRON. OF HIGHER EDUC., Aug. 25, 2013, <http://chronicle.com/blogs/conversation/2013/08/15/change-fafsa-now/>.

<sup>171</sup> See Phillips & Turner, *supra* note 168.

<sup>172</sup> Kantrowitz, *supra* note 165.

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<sup>173</sup> Judith Scott-Clayton & Susan M. Dynarski, *College Grants on a Postcard: A Proposal for Simple and Predictable Federal Student Aid* (The Brookings Inst., Hamilton Project Discussion Paper, 2007), <http://www.brookings.edu/research/papers/2007/02/education-dynarski>.

<sup>174</sup> Press Release, U.S. Senate Comm. on Health, Educ., Labor and Pensions, Senators Alexander, Bennet Would Cut 100-Question Student Aid Form to 2 Questions (June 19, 2014), <http://www.help.senate.gov/newsroom/press/release/?id=0b173481-41c0-4d78-ab29-76b7fdfed071>.

<sup>175</sup> *Id.*

<sup>176</sup> See Corey Turner, *The Magic Trick That Could Shorten the FAFSA*, NPR, Mar. 4, 2015, <http://www.npr.org/blogs/ed/2015/03/04/389518500/the-magic-trick-that-could-shorten-the-fafsa>.

<sup>177</sup> Osamudia R. James, *Predatory Ed: The Conflict Between Public Good and For-Profit Higher Education*, 38 J.C. & U.L. 45, 49 (2011-2012); Omari Scott Simmons, *For-Profits and the Market Paradox*, 48 WAKE FOREST L. REV. 333, 339 (2013).

<sup>178</sup> Staff of S. Comm. on Health, Education, Labor and Pensions, 112th Cong., Rep. on For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success (Comm. Print 2012), <http://www.harkin.senate.gov/documents/pdf/4c23515814dca.pdf>, [hereinafter HELP].

<sup>179</sup> *Id.*

<sup>180</sup> Robert Shireman, *Perils in the Provision of Trust Goods, Consumer Protection and the Public Interest in Higher Education*, CTR. FOR AM. PROGRESS, (May 2014), <https://www.americanprogress.org/issues/higher-education/report/2014/05/21/90131/perils-in-the-provision-of-trust-goods/>,  
<sup>181</sup> 34 C.F.R. § 668.14 (2014).

<sup>182</sup> Scott Simmons, *supra* note 177, at 341.

<sup>183</sup> Ass'n of Private Colls. & Univs. v. Duncan, 870 F. Supp. 2d 133, 154 (D.D.C. 2012).

<sup>184</sup> Mark Kantrowitz, *90/10 Rule*, FINAID, Apr. 26, 2015, <http://www.finaid.org/loans/90-10-rule.phtml>.

<sup>185</sup> *Duncan*, 870 F. Supp. 2d at 154.

<sup>186</sup> Paul Fain, *Gainful Employment Arrives*, INSIDE HIGHER ED, Oct. 30, 2014, <https://www.insidehighered.com/news/2014/10/30/final-gainful-employment-rules-drop-loan-default-rate>.

<sup>187</sup> *Higher Education for All*, ASSOC. OF PRIVATE SECTOR COLLS. AND UNIVS. (Apr. 26, 2015), <http://www.highereducation4all.com/issue/>.

<sup>188</sup> Judith S. Eaton, *New Bills Protect Academic Quality Through Calls for Reducing Regulation*, THE HILL, Mar. 30, 2015, <http://thehill.com/blogs/pundits-blog/education/237329-new-bills-protect-academic-quality-through-calls-for-reducing>.

<sup>189</sup> Anthony J. Guida Jr. & David Figuli, *Higher Education's Gainful Employment and 90/10 Rules: Unintended "Scarlet Letters" for Minority, Low Income, and Other At-Risk Students*, 79 U. CHI. L. REV. 131, 137 (2012).

<sup>190</sup> *America's Private Sector Colleges and Universities: Generating Real Value for Students & Society*, (ASPCU, D.C.) Summer 2013, at 11.



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<sup>191</sup>The University of Phoenix, *The Graduation Route*, YouTube (Jan. 20, 2015), <https://www.youtube.com/watch?v=dXXFM2fyMCg&list=PLob1O8IDG1UDHUj75dChf1ls6do6DYfcj&index=7>.

<sup>192</sup> Kaplan University, *Kaplan “Shine” Commercial*, YouTube (Jan. 14, 2015), [https://www.youtube.com/watch?v=8Qsg3\\_q3iaA](https://www.youtube.com/watch?v=8Qsg3_q3iaA).

<sup>193</sup> The University of Phoenix, *Thinking Ahead*, YouTube (July 20, 2007), <https://www.youtube.com/watch?v=5mFMiTcFdNQ>.

<sup>194</sup> Rajeev Darolia, et al., *Do Employers Prefer Workers Who Attend For-Profit Colleges? Evidence from A Field Experiment*, (RAND Working Paper Series WR-1054, 2014), <http://ssrn.com/abstract=2508434>.

<sup>195</sup> *Id.*

<sup>196</sup> Shireman, *supra* note 180.

<sup>197</sup> Chris Kirkham, *U.S. Targets For-Profit Colleges That Saddle Students With High Debt*, L.A. TIMES, Oct. 31, 2014, <http://www.latimes.com/business/real-estate/la-fi-for-profit-college-rules-20141031-story.html>; see also Press Release, U.S. Dep’t of Educ., Obama Administration Takes Action to Protect Americans from Predatory, Poor-Performing Career Colleges U.S. Department of Education (Mar. 14, 2014), <http://www.ed.gov/news/press-releases/obama-administration-takes-action-protect-americans-predatory-poor-performing-career-colleges>.

<sup>198</sup> *For-Profit Education*, CTR. FOR RESPONSIVE POLITICS, <https://www.opensecrets.org/industries/indus.php?ind=H5300>. (last visited Apr. 27, 2015).

<sup>199</sup> Kelly Field, Q&A: *Lamar Alexander in His Own Words*, THE CHRON. OF HIGHER EDUC., Nov. 3 2014, <http://chronicle.com.ezp-prod1.hul.harvard.edu/article/Q-A-Lamar-Alexander-in-His/149809/>.

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<sup>201</sup> *Profiting Higher Education? What Students, Alumni and Employers Think About For-Profit Colleges*, PUB. AGENDA, (April 26, 2015, 10:13 AM), [www.publicagenda.org/pages/profitting-higher-education](http://www.publicagenda.org/pages/profitting-higher-education).

<sup>202</sup> *Id.*

<sup>203</sup> Tyler Kingkade, *Most Students at For-Profit Colleges Haven’t Heard of “For-Profit Colleges,”* HUFFPOST FIN. EDUC., Feb. 10, 2014, [http://www.huffingtonpost.com/2014/02/10/for-profit-colleges-survey-public-agenda\\_n\\_4760666.html?&co=f000000009816s1158206718&utm\\_source=February+20%2C+2014+Alert&utm\\_campaign=February+20%2C+2014+Alert%3A+Many+College+Students+Not+Comparative+Shoppers&ut](http://www.huffingtonpost.com/2014/02/10/for-profit-colleges-survey-public-agenda_n_4760666.html?&co=f000000009816s1158206718&utm_source=February+20%2C+2014+Alert&utm_campaign=February+20%2C+2014+Alert%3A+Many+College+Students+Not+Comparative+Shoppers&ut).

<sup>204</sup> HELP, *supra* note 178, at 5.

<sup>205</sup> Michael Vasquez, *Higher Ed Hustle*, MIAMI HERALD, Apr. 23, 2015, <http://pubsys.miamiherald.com/static/media/projects/2015/higher-ed-hustle/students.html#storylink=cpy>.

<sup>206</sup> *Id.* (discussing among other practices disclosed by former employees, the “pain funnel”, a tool used to manipulate students into enrollment).

<sup>207</sup> Shireman, *supra* note 180, citing Henry B. Hansmann, *The Role of Nonprofit Enterprise*, 89 YALE L. J. 835, 901.

<sup>208</sup> Woolhouse, *supra* note 21, (explaining how student Will Puntarich believed that availability of government loans indicated government endorsement).

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<sup>209</sup> 2015 Fact Sheet, ASSOC. OF PRIVATE SECTOR COLLS. AND UNIVS., <http://www.career.org/knowledge-center/facts/sector/>. (last visited Nov. 27, 2015).

<sup>210</sup> *Higher Education for All*, *supra* note 187.

<sup>211</sup> Roger L. Geiger & Donald E. Heller, *Financial Trends in Higher Education: The United States* (Ctr. for the Study of Higher Educ., Pa. State Univ., Working Paper No. 6, 2011), <https://www.ed.psu.edu/cshe/working-papers/wp-6>.

<sup>212</sup> For more information on SallieMae, see <https://www.salliemae.com/about/who-we-are/>.

<sup>213</sup> See Daniel Luzer, *Who's Getting Rich Off Student Loans? College Endowments*, WASH. MONTHLY, May 10, 2013, [http://www.washingtonmonthly.com/college\\_guide/blog/whos\\_getting\\_rich\\_off\\_student.php](http://www.washingtonmonthly.com/college_guide/blog/whos_getting_rich_off_student.php); Tami Luhby, *Fed: Student loans sore 275% over past decade*, CNN MONEY, May 31, 2012, <http://money.cnn.com/2012/05/31/news/economy/fed-student-loans/>.

<sup>214</sup> President John F. Kennedy, Special Message to the Congress on Education, (Feb. 6, 1962) <http://www.presidency.ucsb.edu/ws/?pid=8858>.

<sup>215</sup> David Duhalde, *The Money Behind Keeping Students in Debt*, PUBLIC CAMPAIGN (Jun. 11, 2014), <http://publiccampaign.org/blog/2014/06/11/money-behind-keeping-students-debt>.

<sup>216</sup> Michael Collins, *U.S. Sen. Alexander calls push for student loan legislation a 'stunt'*, SCRIPPS NEWS, Jun. 10, 2014, <http://www.theindychannel.com/news/us-sen-alexander-calls-push-for-student-loan-legislation-a-stunt>.

<sup>217</sup> Though some have analogized between narratives used to describe welfare recipients and student loan debtors, the federal government loans money for student loans whereas welfare is not a loan.

<sup>218</sup> Duhalde, *supra* note 215.

<sup>219</sup> 15 U.S.C.A. §1692(e); see also 15 U.S.C. §1692a(6)(C) (exempting "any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties"); *Games v. Cavazos*, 737 F. Supp. 1368, 1389 (1990) (holding that Congress did not intend the FDCPA to apply to guarantee agencies administering the Guaranteed Student Loan Program in cooperation with the Education Department).

<sup>220</sup> Higher Education Technical Amendments Act of 1991, Pub. L. No. 102-26, (codified at 20 U.S.C. § 1091a(a)).

<sup>221</sup> 11 U.S.C. § 523(a)(8) (2012).

<sup>222</sup> See 11 U.S.C. § 35(a) (1976) (repealed by Bankruptcy Reform Act of 1978, Pub. L. No. 95-598); Kayla Webley, *Why Can't You Discharge Your Student Loans in Bankruptcy?*, TIME, Feb. 9, 2012, <http://business.time.com/2012/02/09/why-cant-you-discharge-student-loans-in-bankruptcy/>. Most courts have adopted the *Brunner* test, which requires debtors to meet a three-part showing: "(1) the debtor cannot maintain, based on current income and expenses, a "minimal" standard of living for herself and her dependents if forced to repay the loans; (2) additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and (3) the debtor has made good faith efforts to repay the loans." *Brunner v. N.Y. State Higher Educ. Servs. Corp.*, 831 F.2d 395, 396 (2d Cir. 1987).

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<sup>223</sup> See 11 U.S.C. § 523(a)(8) (2005, as revised), which states that an “education loan” is excepted from bankruptcy “unless excepting such debt from discharge...would impose an undue hardship on debtor and the debtor’s dependents.”

<sup>224</sup> *In re Cox*, 338 F.3d 1238, 1242 (11th Cir. 2003).

<sup>225</sup> Natalie Kitroeff, *Loan Monitor is Accused of Ruthless Tactics on Student Debt*, N.Y. TIMES, Jan. 1, 2014, [http://www.nytimes.com/2014/01/02/us/loan-monitor-is-accused-of-ruthless-tactics-on-student-debt.html?\\_r=1](http://www.nytimes.com/2014/01/02/us/loan-monitor-is-accused-of-ruthless-tactics-on-student-debt.html?_r=1).

<sup>226</sup> *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934).

<sup>227</sup> Mher Asatryan, *Nondischargeable Debts in Chapter 7 Bankruptcy*, NOLO, <http://www.nolo.com/legal-encyclopedia/nondischargeable-debts-chapter-7-bankruptcy.html>. (last visited Nov. 27, 2015).

<sup>228</sup> John A.E. Pottow, *The Nondischargeability of Student Loans in Personal Bankruptcy Proceedings: The Search for a Theory*, 44 CANADIAN BUS. L.J. 245, 252 (2007).

<sup>229</sup> *Id.* at 253.

<sup>230</sup> *Id.* at 254.

<sup>231</sup> *Id.* at 255.

<sup>232</sup> Elizabeth Warren, *The Path to Economic Growth: Bankruptcy*, CREDIT SLIPS, Aug. 21, 2008, <http://www.creditslips.org/creditslips/2008/08/the-path-to-eco.html>.

<sup>233</sup> Ashlee Keiler, *You Can’t Discharge Your Student Loan Bankruptcy Because of Panicked 1970s Legislation*, CONSUMERIST (Mar. 17, 2015), <http://consumerist.com/2015/03/17/you-cant-discharge-your-student-loans-in-bankruptcy-because-of-panicked-1970s-legislation>.

<sup>234</sup> See H.R. REP. NO. 94-1232 (1976).

<sup>235</sup> *Id.*

<sup>236</sup> Representative Allen E. Ertel opposed the removal of the undue hardship provision, insisting that, without the undue hardship provision, the law would “encourage fraud,” and that student loan debtors would take advantage of a free education, immediately discharge their debts upon graduation, and begin their promising careers with a “clean slate” and the “excellent credit rating that accompanies a bankruptcy.” See H.R. REP. NO. 95-595, at 536–38; see also Ryan Alexander Freeman, *Student-Loan Discharge—An Empirical Study of the Undue Hardship Provision of § 523(A)(8) Under Appellate Review*, 30 EMORY BANKR. DEV. 147, 154 (2013).

<sup>237</sup> *Matter of Roberson*, 999 F.2d 1132, 1135-36 (7th Cir. 1993).

<sup>238</sup> *Dispositionism* is a term that social psychologists use to describe the human tendency to focus on internal disposition or preferences as a driving force for individual *behavior*. However, a growing body of behavioral scientists have developed research and studies to counter the “dispositionist” assumption, arguing instead that human behavior is more strongly influenced by unseen situational forces than by internal motivations. See, e.g., Jon Hanson & David Yosifon, *The Situation: An Introduction to the Situational Character, Critical Realism, Power Economics, and Deep Capture*, 152 U. PA. L. REV. 129 (2003).

<sup>239</sup> *Roberson*, *supra* note 237, at 1137; see also *In re Gerhardt*, 348 F.3d 89, 93 (5th Cir. 2003) (holding that a musical school graduate earning a low-income as a professional cellist was not entitled to the “undue hardship” discharge of his student loan debt because “nothing in the Bankruptcy Code

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suggests that a debtor may choose to work only in the field in which he was trained, obtain a low-paying job, and the claim that it would be an undue hardship to repay his student loans”) (citations omitted).

<sup>240</sup> Pottow, *supra* note 228, at 267.

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

<sup>243</sup> *Id.*

<sup>244</sup> *Id.* at 261 (citing Stephanie Ben-Ishai, *Government Student Loans, Government Debts and Bankruptcy: A Comparative Study*, 44 CANADIAN BUS. L.J. 211, 229-31 (2006)).

<sup>245</sup> H.R. REP. NO. 95-595, at 148 (1977).

<sup>246</sup> See Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, § 316, 92 Stat. 2549, 2678 (effective Oct. 1, 1979).

<sup>247</sup> *The Fall of Consumer Protections for Student Loans*, STUDENTLOANJUSTICE.ORG, <http://studentloanjustice.org/conprotpic.htm>. (last visited Nov. 27, 2015).

<sup>248</sup> *Cohen/Davis Host Congressional Briefing on Student Loan Debt*, COHEN.HOUSE.GOV (June 17, 2013), <http://cohen.house.gov/press-release/cohendavis-host-congressional-briefing-student-loan-debt>.

<sup>249</sup> Fairness for Struggling Students Act of 2014, S.729 (114th Cong.) (2015), <https://www.congress.gov/bill/114th-congress/senate-bill/729/text>.