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BROKEN PROMISES: HOW DEBT-FINANCED HIGHER EDUCATION REWROTE AMERICA'S SOCIAL CONTRACT AND FUELED A QUIET CRISIS

Seth Frotman*

Abstract

The U.S. student loan market stands at $1.5 trillion—the second largest consumer debt market in the country. Despite the vast size of this market and the far-reaching spillover effects of student loan debt on individuals and communities, the American higher education system increasingly relies on debt financing as the predominant mechanism by which American families pay for college. Furthermore, student loans still lack a comprehensive twenty-first century consumer protection infrastructure. Researchers and policymakers are only now beginning to acknowledge the threat runaway student debt poses to the American social contract—even as millions of borrowers across the country struggle with the consequences of this quiet crisis.

I. INTRODUCTION

Student loan debt has fundamentally changed the lives and livelihoods of tens of millions of people. This notion is both obvious and intuitive to the forty-four million Americans who currently owe more than $1.5 trillion in student loan debt, yet remains surprisingly controversial in Washington.[1] America's embrace of a debt-

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 Assistant Director and Student Loan Ombudsman of the Consumer Financial Protection Bureau. The views as expressed are the author's alone and do not necessarily represent those of the Consumer Financial Protection Bureau. This Article was adapted from keynote remarks by Seth Frotman at the Utah Law Review Symposium: *Financing the Future: The Law and Politics of Student Debt in American Higher Education* on October 20, 2017, with special thanks to Bonnie Latreille and Chris Peterson.

[1] *See Consumer Credit–G.19 in March 2018*, FED. RES. BOARD OF GOVERNORS (May 07, 2018), https://www.federalreserve.gov/releases/g19/current/default.htm [https://perma.cc/K3LR-4CRT] (as of March 2018, outstanding student loan debt totaled $1.521 trillion). Commentators have argued that for the majority of student loan borrowers, student loan debt is not a burden. *See, e.g.*, Editorial Board, *Democrats' Loose Talk on Student Loans*, WASH. POST (July 31, 2016), https://www.washingtonpost.com/opinions/democrats-loose-talk-on-student-loans/2016/07/31/fe93430e-5417-11e6-88eb-7dda4e2f2aec_story.html?utm_term=.f08fc3070e44 [https://perma.cc/A85K-NECC] ("[T]he benefits from such investment in human capital accrue to individuals who possess it. So it is not unreasonable to ask them to share the cost."); Debra Liese, *Beth Akers & Matthew Chingos: Does the Public Narrative About Student Debt Reflect Reality?*, PRINCETON UNIV. PRESS (Oct. 27, 2016), http://blog.press.princeton.edu/2016/10/27/beth-akers-matthew-chingos-does-the-public-narrative-about-student-debt-reflect-reality/ [https://perma.cc/P2FG-5B5N] ("The crisis that

financed higher education model has broken the basic tenets of the social contract between the U.S. government and its citizens—the contract that relies on the supposed notion that higher education is the nation's great equalizer; and that attending college always provides a clear pathway to the middle class.[2] An honest assessment of the situation shows this to no longer be true.

This student debt crisis did not happen by accident. A $1.5 trillion market is never an accident.[3] This quiet crisis is the consequence of incremental policy decisions that drove up college costs and shifted the burden for shouldering these costs to individual students—a shift financed by consumer debt.

It is imperative to understand the array of decisions that led to this place for two reasons. First, because the people whose lives have been so severely impacted by student debt deserve an accurate accounting of why they have been uniquely asked to bear this burden. And second, so that policymakers and the higher education community—from universities, to researchers, to foundations—can shape a response that recognizes and effectively addresses the real problems that student loan borrowers face across their financial lives.

In 2008, the worst economic recession since the Great Depression crippled the nation and destroyed trillions of dollars in household wealth.[4] Millions of Americans stood by, powerless to intervene in their own financial lives.[5] The financial crisis exposed deep rooted systemic problems underlying the most basic functions of

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permeates public discussion is a manufactured narrative based largely on anecdotes, speculation, shoddy research, and inappropriate framing of the issue.").

[2] *See In America, Education Is Still the Great Equalizer*, HOMEROOM (last visited Apr. 10, 2018), https://blog.ed.gov/2011/12/in-america-education-is-still-the-great-equalizer/ [https://perma.cc/TY5B-YPNN] ("'In America, education is still the great equalizer,' Secretary Duncan told a group of graduates at Fayetteville State University's Winter Commencement on Saturday. Duncan described the importance of education in today's economy, and that education is, in the long run, one of the best investments one can make for the future.").

[3] *See generally* SETH FROTMAN, CFPB, PREPARED REMARKS BEFORE THE CALIFORNIA STATE SENATE BANKING AND FINANCIAL INSTITUTIONS COMMITTEE (Mar. 22, 2017), http://files.consumerfinance.gov/f/documents/201703_cfpb_Frotman-Testimony-CA-Senate-Banking-Committee.pdf [https://perma.cc/TR42-DN79] [hereinafter FROTMAN, CFPB, PREPARED REMARKS] (detailing the policy decisions that led to the rise in student debt across the country); *see also* Mark Huelsman, *Reflecting on $1 Trillion in Student Debt, and Why We're Headed for $2 Trillion*, DEMOS (Apr. 24, 2014), http://www.demos.org/blog/4/24/14/reflecting-1-trillion-student-debt-and-why-were-headed-2-trillion [https://perma.cc/AMT3-9FPF] (finding that the United States' student loan market will likely reach $2 trillion in 2022).

[4] FED. RES. BD. OF GOVERNORS, FLOW OF FUNDS ACCOUNTS OF THE UNITED STATES: FLOWS AND OUTSTANDINGS FOURTH QUARTER 2008 (2009), https://www.federalreserve.gov/releases/z1/20090312/z1.pdf [https://perma.cc/JC62-RSKR] ("For 2008 as a whole, household net worth fell $11.2 trillion.").

[5] *See generally* Problems in Mortgage Servicing from Modification to Foreclosure: Hearing before the Comm. on Banking, Hous., & Urban Affairs, 111th Cong. (2010), https://www.gpo.gov/fdsys/pkg/CHRG-111shrg65258/html/CHRG-111shrg65258.htm [https://perma.cc/Z9LW-LLXS].

consumer credit markets.[6] The economy failed consumers at every turn. Millions of people needlessly lost their homes.[7] The most vulnerable people in the country were hit the hardest.[8] Nearly a decade later, many families and communities have yet to recover.[9]

As is often the case, researchers and policymakers engaged in a familiar cycle of study and reaction—diagnosing the causes, learning the lessons, and enacting the "right" reforms.[10] In response, America's leaders made three promises. First, they

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[6] *See* Press Release, U.S. Dep't of the Treasury, Remarks by Deputy Secretary Sarah Bloom Raskin at the National Foundation for Credit Counseling 50th Annual Leaders' Conference (Sept. 28, 2015), https://www.treasury.gov/press-center/press-releases/Pages/jl0186.aspx [https://perma.cc/9B2T-GTE6] ("The financial crisis exposed the real dangers from having a system with misaligned incentives and shoddy oversight of complex markets. Those fundamental flaws took a toll on a crucial wealth-building asset—the home—and in their wake we were left with households with damaged balance sheets and a slow, uneven recovery—indicative of a slow rebuilding of household wealth. We need to ensure that we design a credit system that can be navigated and that functions efficiently for all participants in all economic environments."); *see also* Adam J. Levitin, *Hydraulic Regulation: Regulating Credit Markets Upstream*, 26 YALE J. ON REG. 143, 151 (2009) ("The events of the past year have laid bare the shortcomings of our current system of financial-institution regulation. These shortcomings have played out on two levels: consumer protection and systemic risk. . . .").

[7] *See* Patricia A. McCoy, *Barriers to Foreclosure Prevention During the Financial Crisis*, 55 ARIZ. L. REV. 723, 726 (2013) (finding that artificial barriers to foreclosure prevention programs inflicted "enormous, needless losses on borrowers, investors, and society at large").

[8] *See* ANN OWENS & ROBERT J. SAMPSON, THE RUSSELL SAGE FOUNDATION AND THE STANFORD CENTER ON POVERTY AND INEQUALITY, COMMUNITY WELL-BEING AND THE GREAT RECESSION 6 (2013), https://www.stanford.edu/group/recessiontrends/cgi-bin/web/sites/all/themes/barron/pdf/Communities_fact_sheet.pdf [https://perma.cc/P8EK-9G7N] ("Many of the nation's most vulnerable communities have borne the brunt of the economic crisis, as poverty, vacancy rates, and particularly unemployment rates increased more in disadvantaged and minority neighborhoods."); *Why Did the Housing Bust Hit Black and Latino Families Harder?*, FED. RES. BANK OF ST. LOUIS: ON THE ECON. (Aug. 10, 2017), https://www.stlouisfed.org/on-the-economy/2017/august/why-housing-bust-hit-black-latino-families-harder [https://perma.cc/ZZ2U-QRMR].

[9] *See* EMILIA ISTRATE & TADAS PACK, COUNTY ECONOMIES 2016: WIDESPREAD RECOVERY, SLOWER GROWTH (2017), http://www.naco.org/sites/default/files/documents/County-Economies-2016.pdf [https://perma.cc/78ZX-ZUT6]; Rakesh Kochhar & Richard Fry, *Wealth Inequality Has Widened Along Racial, Ethnic Lines Since End of Great Recession*, PEW RES. CTR. (Dec. 12, 2014), http://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-great-recession [https://perma.cc/XJT5-SLGM]; *Ten Years After Financial Crisis, Nearly One-in-Three Americans Still Feeling the Sting*, COUNTRY FIN. (July 13, 2017), https://www.countryfinancial.com/en/about-us/newsroom/year2017/Americans-still-feeling-sting-of-financial-crisis.html [https://perma.cc/5AQE-AQMB].

[10] *See, e.g.*, *Dodd Statement on Implementation of Dodd-Frank Act*, U.S. S. COMM. ON BANKING, HOUSING, & URBAN AFFAIRS (Sept. 30, 2010), https://www.banking.senate.gov/public/index.cfm/democratic-press-releases?ID=6312FD47-F649-1CF7-E53D-C4D3C313

promised that the public and private spheres would install a framework to stop many of the practices that led to the financial crisis.[11] Second, they promised that this framework would protect individual consumers accessing and repaying the financial products that underpin a twenty-first century economy.[12] And finally, they promised that by learning from the practices that ignited the last crisis, America's financial system could prevent the next one.[13] In effect, leaders promised the country that they would never let something like this happen again.[14] The current student loan market is the first real test of this proposition.

For nearly a decade, the federal government has attempted to get a handle on the country's growing student debt problem.[15] And yet, as policymakers across the

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1292 [https://perma.cc/W596-8WNG] ("I believe we can say that, thanks to the hard work of Democrats and Republicans on this committee—and with the sage counsel of our witnesses and many others whose perspectives we have considered carefully—we have delivered the reform our financial system needs and provided the American people with the economic stability they deserve.").

[11] *See, e.g.*, Press Release, U.S. Dep't of Treasury, Treasury Deputy Secretary Neal Wolin Written Testimony before the Senate Banking Committee on "Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act" (Sept. 30, 2010), https://www.treasury.gov/press-center/press-releases/Pages/tg881.aspx [https://perma.cc/2JQ3-LANY] ("The Act builds a stronger financial system by addressing major gaps and weaknesses in regulation that helped cause the financial crisis that led to the recession. It puts in place buffers and safeguards to reduce the chance that another generation will have to go through a crisis of similar magnitude.").

[12] *See, e.g.*, Arthur E. Wilmarth, Jr., *The Financial Services Industry's Misguided Quest to Undermine the Consumer Financial Protection Bureau*, 31 REV. BANKING & FIN. L. 881, 881 (2011–2012), https://www.bu.edu/rbfl/files/2013/09/UnderminingTheConsumerFinancialProtectionBureau.pdf [https://perma.cc/UP7Y-REY6] ("The preamble to the Dodd-Frank Wall Street Reform and Consumer Protection Act . . . affirms that one of the statute's primary purposes is 'to protect consumers from abusive financial services practices.' When President Obama signed Dodd-Frank into law, he declared that the statute would create 'the strongest consumer financial protections in history.'").

[13] *See* Rep. Maxine Waters, *How to Prevent Another Financial Crisis*, U.S. H. COMM. ON FIN. SERV. (Sept. 19, 2014), https://democrats-financialservices.house.gov/news/documentsingle.aspx?DocumentID=398641 [https://perma.cc/7CYE-6MGH].

[14] *See, e.g.*, President Barack Obama, Remarks in Reno, Nevada, AM. PRESIDENCY PROJECT (Sept. 30, 2008), http://www.presidency.ucsb.edu/ws/index.php?pid=84462 [https://perma.cc/E37K-JA8M] ("These are the changes and reforms that we need. . . . Common-sense regulations for our financial system that will prevent a crisis like this from ever happening again."); *Wall Street Reform: The Dodd-Frank Act*, WHITE HOUSE (last visited Apr. 10, 2018) https://obamawhitehouse.archives.gov/economy/middle-class/dodd-frank-wall-street-reform [https://perma.cc/MXM5-TBSB] ("To make sure that a crisis like this never happens again, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act into law.").

[15] *See, e.g.*, SEC'Y JOHN B. KING, JR., GIVING EVERY STUDENT A FAIR SHOT: PROGRESS UNDER THE OBAMA ADMINISTRATION'S EDUCATION AGENDA (2017), https://www2.ed.gov/documents/press-releases/cabinet-exit-memo.pdf [https://perma.cc/2J9E-NBWQ] (reflecting on the administration's achievements in improving student loan affordability); *Fact Sheet: Taking Action to Help More Americans Manage Student Debt*,

government have supposedly worked to prevent another crisis, it remains clear—it is too late. Those promises were broken and, yet again, America finds itself facing a crisis.

Today, more than eight million federal student loan borrowers are in default.[16] Another three million borrowers are at least two payments behind.[17] In 2017 alone, 1.1 million federal student loan borrowers defaulted—that is one default every twenty-eight seconds.[18]

WHITE HOUSE (Apr. 28, 2016), https://obamawhitehouse.archives.gov/the-press-office/2016/04/28/fact-sheet-taking-action-help-more-americans-manage-student-debt [https://perma.cc/8A53-Y3EF] (outlining the administration's efforts to increase flexibility and affordability during student loan repayment). Additionally, in 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), calling for increased measures to protect student loan borrowers. 12 U.S.C. § 5535 (2010). *See also* Matthew B. Fuller, *A History of Financial Aid to Students*, 44 J. STUDENT FIN. AID 42, 58 (2014) ("The Higher Education Act was reauthorized in 2008, under the name The Higher Education Opportunity Act of 2008, and reinforced the government's and society's discontent with increasing college costs.").

[16] *See Federal Student Loan Portfolio*, U.S. DEP'T EDUC., https://studentaid.ed.gov/sa/about/data-center/student/portfolio [https://perma.cc/YUF6-SX2] (last visited Apr. 10, 2018); *Federal Perkins Loan Program Status of Default as of June 30, 2016*, U.S. DEP'T EDUC. (June 12, 2017), https://ifap.ed.gov/perkinscdrguide/1516PerkinsCDR.html [https://perma.cc/DU4Q-BAC9].

[17] *Portfolio by Delinquency Status*, U.S. DEP'T EDUC., https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/DLPortfoliobyDelinquencyStatus.xls [https://perma.cc/4392-JVQS] (last visited May 8, 2018).

[18] *See Direct Loans Entering Default*, U.S. DEP'T EDUC. 2017 Q2–2018 Q1, https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/DLEnteringDefaults.xls [https://perma.cc/NY8L-5CTP] (last visited May 8, 2018); *see also CFPB Concerned About Widespread Servicing Failures Reported by Student Loan Borrowers*, CFPB (Sept. 29, 2015), https://www.consumerfinance.gov/about-us/newsroom/cfpb-concerned-about-widespread-servicing-failures-reported-by-student-loan-borrowers/ [https://perma.cc/F8LK-SDLC] ("One in four student loan borrowers are currently in default or struggling to stay current on their loans, despite the availability of income-driven repayment options for the vast majority of borrowers."); *see also* Paul Fain, *Growing Number of Borrowers Are in Default*, INSIDE HIGHER ED (Dec. 14, 2017), https://www.insidehighered.com/quicktakes/2017/12/14/growing-number-borrowers-are-default [https://perma.cc/W53L-FKZ2] ("Roughly 298,000 borrowers entered into default during the quarter that ended in September . . . with 274,000 defaulting for the first time."); Shahien Nasiripour, *The Government Can't Agree with Itself on Policing Student Loan Companies*, BLOOMBERG (Aug. 24, 2016, 8:24 AM), https://www.bloomberg.com/news/articles/2016-08-24/the-government-can-t-agree-with-itself-on-policing-student-loan-companies [https://perma.cc/J4LA-HSNR] ("An American defaulted on a student loan direct from the U.S. Department of Education every 28 seconds over the past year. Nearly all of those more than 1.1 million defaults were avoidable, because almost every borrower is eligible for a repayment plan based on affordability.").

To put these numbers into context, in 2016, three times as many people defaulted on a student loan than lost their home due to foreclosure.[19] In fact, the rate of student loan defaults in 2016 is comparable to the foreclosure rate following the mortgage meltdown.[20] However, this is only one part of the crisis. Ballooning, unaffordable student loan debt does not end with the millions of borrowers who are behind or in default on a student loan.

Some people have tried to explain away the student loan crisis by relying on an overly narrow definition of what it means for a borrower to be "struggling."[21] However, by limiting the definition of the student debt problem to those borrowers

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[19] *Household Debt and Credit Report (Q4 2017)*, FED. RES. BANK N.Y., https://www.newyorkfed.org/microeconomics/hhdc.html [https://perma.cc/8AXT-5WFF] (last visited Apr. 10, 2018) (reporting 339,000 foreclosures in 2016 calendar year).

[20] *See* Michelle Conlin, *Student Loan Borrowers, Herded into Default, Face a Relentless Collector: The U.S.*, REUTERS: INVESTIGATES (July 25, 2017, 1:00 PM), https://www.reuters.com/investigates/special-report/usa-studentloans [https://perma.cc/Z873-BGWK] ("Today, 11 percent of the $1.325 trillion of federal student loans outstanding is severely delinquent or in default, higher than the mortgage default rate at the peak of the foreclosure crisis in 2010 . . . .").

[21] *See, e.g.*, SANDY BAUM, STUDENT DEBT: RHETORIC AND REALITIES OF HIGHER EDUCATION FINANCING 7 (2016) ("The misperception that bachelor's degree recipients with very high levels of debt are typical coexists with the misperception that individuals who have borrowed for college are among the groups in society struggling most."); Joel A. Elvery, *Is There a Student Loan Crisis? Not in Payments*, FED. RES. BANK OF CLEV., https://clevelandfed.org/~/media/content/newsroom%20and%20events/publications/forefront/ff%20v7n02/ff%20v7n0204%20is%20there%20a%20student%20loan%20crisis%20pdf.pdf?la=en [https://perma.cc/J4DV-JNEL] (last visited Apr. 10, 2018) (arguing that the college wage premium and the option to make student loan payments based on income negates the harm of increased student debt); Liese, *supra* note 1 ("The typical borrower we hear about in news stories about student loan debt tends to have an enormous balance, is unemployed or working a low-paying job, and lives with his or her parents to save money on living expenses. These struggling borrowers are real, and their problems are troubling, but they are outliers in the broader picture of student borrowing in the United States."); Lizzie O'Leary, *Why Student Debt Is 'A Crisis' for Some Borrowers*, PBS: NEWS HOUR (Oct. 21, 2016, 7:36 PM), https://www.pbs.org/newshour/show/student-debt-crisis-borrowers [https://perma.cc/CFQ5-3NC5] (in which Sandy Baum states, "Student debt is a crisis for some people, but student debt is not the generalized crisis that the common discourse would make it appear. Yes, people are paying more of their incomes for a college education, but still it's worth it for most people.").

who are behind or in default, the literature assumes that the remaining thirty-three million borrowers are doing just fine.[22] This perspective is deeply flawed.[23]

First, it is certainly not acceptable to write off the financial futures of eleven million people. Second, by defining down what it means to "struggle" to include only those in immediate, documented financial distress, these commentators are ignoring the broader reality of debt-financed higher education. For every borrower who misses a student loan payment or defaults on a debt, there is another borrower who is struggling to buy a home, start a business, or save for retirement due to the burden of their student loans.[24]

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[22] *See, e.g.*, Claudio Sanchez, *Is the Student Loan Crisis Fact or Fiction?*, NPR: ED (July 28, 2016, 6:00 AM), https://www.npr.org/sections/ed/2016/07/28/487032643/is-the-student-loan-crisis-fact-or-fiction [https://perma.cc/DWB8-ENQP] (interviewing Sandy Baum, who states that "[p]eople have an image of a recent bachelor's degree recipient who went to college for four years and is now 22–23 years old and is working at Starbucks. Those people are very rare. People who earn bachelor's degrees, by and large, do fine.").

[23] *See* Marshall Steinbaum, *Who's Afraid of the Student Debt Crisis?*, BOS. REV. (Dec. 20, 2016), http://bostonreview.net/education-opportunity/marshall-steinbaum-whos-afraid-student-debt-crisis [https://perma.cc/TY6M-CJ67] ("Baum, Akers, and Chingos—as well as Adam Looney and Constantine Yannelis, authors of a Brookings Institution study both books rely on—are all correct that crisis is felt most acutely by the worst-off borrowers with low incomes, who also tend to have small loan balances. But that pattern does not imply that the policy is a success for everyone else."); *see also* Rajashri Chakrabarti et al., *At the N.Y. Fed: Press Briefing on Household Borrowing with Close-Up on Student Debt*, FED. RES. BANK OF NY: LIBERTY STREET ECON. (Apr. 3, 2017), http://libertystreeteconomics.newyorkfed.org/2017/04/at-the-ny-fed-press-briefing-on-household-borrowing-with-close-up-on-student-debt.html [https://perma.cc/E9N3-ADSP] ("We have noted in the past that delinquency and default rates are lower among higher-balance borrowers; however, the default rates among higher-balance borrowers have worsened notably in recent years. Further, payment progress is slower among those who borrowed more.").

[24] *See, e.g.*, Meta Brown & Sydnee Caldwell, *Young Student Loan Borrowers Retreat from Housing and Auto Markets*, FED. RES. BANK OF NY: LIBERTY STREET ECON. (Apr. 17, 2013), http://libertystreeteconomics.newyorkfed.org/2013/04/young-student-loan-borrowers-retreat-from-housing-and-auto-markets.html [https://perma.cc/T5UA-NUQJ] (illustrating the potential for lost asset accumulation opportunities, homeownership rates of 30-year-old student loan borrowers decreased by more than 5 percent compared with homeownership rates of 30-year-old non-borrowers); FED. RES. BANK OF NY, PRESS BRIEFING ON HOUSEHOLD DEBT, WITH FOCUS ON STUDENT DEBT 36–47 (Apr. 3, 2017), https://www.newyorkfed.org/medialibrary/media/press/PressBriefing-Household-Student-Debt-April32017.pdf#page=39 [https://perma.cc/3AF8-BJYU] (finding that college attendees with student debt have lower homeownership rates than college attendees without student debt and that higher debt balances are associated with lower home ownership rates); Brent W. Ambrose et al., *The Impact of Student Loan Debt on Small Business Formation* (Mar. 31, 2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2417676 [https://perma.cc/ST5Z-F44X]; Brandon Busteed, *Student Loan Debt: Major Barrier to Entrepreneurship*, GALLUP (Oct. 14, 2015), http://www.gallup.com/businessjournal/186179/student-loan-debt-major-barrier-entrepreneurship.aspx [https://perma.cc/KM63-NLWP]; CONSUMER FIN. PROTECTION BUREAU, SNAPSHOT OF OLDER CONSUMERS AND STUDENT LOAN DEBT 14 (2017), http://files.consumerfinance.gov/f/documents/201701_cfpb_OA-

Student debt has imperiled access to these key pillars of the middle class for far too many Americans. The Great Recession devastated an entire generation of people, and by breaking the promises made in the aftermath, America has condemned the next.

As this Article will show, the country is doomed to repeat history again and again until policymakers rebuild the foundation on which these promises were made. Part II of this Article reflects on the series of discrete and intentional policy decisions by state and federal lawmakers that led to unprecedented levels of student loan borrowing. Part III discusses the student loan servicing market structure and how lapses in oversight lead to consumer harm. Part IV evaluates how action across all levels of government can relieve student debt burdens and mitigate consumer harm. Finally, Part V analyzes areas in need of further study as researchers and policymakers seek to fix the student debt crisis.

II. A $1.5 TRILLION PROBLEM

In order to address the student debt crisis, one must first understand how the crisis came to be. In all instances, public policy reflects a series of choices. The student debt crisis is no exception. History can trace the rapid rise of student debt to a series of choices made in state houses across the country, stretching back more than a decade.[25] These choices were laid on a foundation built at the federal level that not only tolerated, but promoted, debt-financed higher education.[26]

Student-Loan-Snapshot.pdf [https://perma.cc/284M-RNY5] (reporting that borrowers nearing retirement "had a lower median amount in their employer-based retirement account or an Individual Retirement Account (IRA) than consumers without student loan debt"); Joseph Egoian, *73 Will Be the Retirement Norm for Millennials*, NERDWALLET (Oct. 23, 2013), https://www.nerdwallet.com/blog/investing/73-retirement-norm-millennials/ [https://perma.cc/QF9V-RN5C] (finding that a 4 year college graduate with median student loan debt of $23,000 has about $115,000 less in retirement savings than a 4 year college graduate with no student loans by the time they reach age 73); Jeffrey P. Thompson & Jesse Bricker, *Does Education Loan Debt Influence Household Financial Distress? An Assessment Using the 2007–09 SCF Panel* 2 (Fin. & Econ. Discussion Series, Working Paper No. 2014-90, 2014), https://www.federalreserve.gov/econresdata/feds/2014/files/201490pap.pdf [https://perma.cc/8GFF-9VJG] (finding "that student loans are correlated with financial distress in the 2007–09 SCF panel and families that hold student loans are more likely to transition to financial distress between 2007 and 2009. Families with student loans in 2007 were about 4 percentage points more likely to be 60 days late paying bills and about 5 percentage points more likely to be denied credit in 2009.").

[25] *See* Michael Mitchell et al., CTR. ON BUDGET AND POL'Y PRIORITIES, A LOST DECADE IN HIGHER EDUCATION FUNDING: STATE CUTS HAVE DRIVEN UP TUITION AND REDUCED QUALITY (Aug. 23, 2017), https://www.cbpp.org/sites/default/files/atoms/files/2017_higher_ed_8-22-17_final.pdf [https://perma.cc/2RDW-MRTH].

[26] *See, e.g.*, COUNCIL OF ECON. ADVISERS, EXEC. OFFICE OF THE PRESIDENT, INVESTING IN HIGHER EDUCATION: BENEFITS, CHALLENGES, AND THE STATE OF STUDENT DEBT 10 (2016), https://obamawhitehouse.archives.gov/sites/default/files/page/files/20160718_cea_

A. State Disinvestment in Higher Education

At the height of the Great Recession, state lawmakers grappled with declines in tax revenue and sought ways to plug holes in their battered budgets.[27] In nearly every state, lawmakers chose to cut public investment in higher education as a way to fill these gaps.[28] This choice directly affected the public colleges and universities that educate nearly three-quarters of all college students in this country.[29]

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student_debt.pdf [https://perma.cc/5R2B-QFM3] ("[M]any individuals who cannot pay for college upfront may find it worthwhile to borrow to finance their education. . . . A major function of the federal student loan system is to ease the credit constraints caused by imperfections in the private loan market and ensure that all citizens have access to affordable loans."); *see also* Press Release, Office of the Press Sec'y, The White House, Fact Sheet: Taking Action to Help More Americans Manage Student Debt (Apr. 28, 2016), https://obamawhitehouse.archives.gov/the-press-office/2016/04/28/fact-sheet-taking-action-help-more-americans-manage-student-debt [https://perma.cc/2KJB-UAJS]; Morgan Adamson, *The Financialization of Student Life: Five Propositions on Student Debt*, 21 POLYGRAPH 97, 97 (2009) ("Of all the transformations that have taken place in the American university, . . . perhaps the most radical is the shift toward financing higher education through borrowed money.").

[27] *See* Dennis Jones & Jane Wellman, *Breaking Bad Habits: Navigating the Financial Crisis*, CHANGE, May–June 2010, at 6, 8 http://archive.sheeo.org/annualmeeting/Change%20Jones%20and%20Wellman%20Breaking%20Bad%20Habits.pdf [https://perma.cc/69Y8-9Q47] ("Although states are reluctant to raise taxes, they evidently have less of a problem letting tuitions go up. And up they are going—California, Oregon, Washington, New York, Wisconsin, and Florida announced increases ranging from 10 to 33 percent. The normally tuition-resistant Florida legislature has authorized annual increases in undergraduate tuitions of 15 percent per year until they reach national averages for public four-year institutions."); Tracy Gordon, *State and Local Budgets and the Great Recession*, BROOKINGS (Dec. 31, 2012), https://www.brookings.edu/articles/state-and-local-budgets-and-the-great-recession [https://perma.cc/E6V4-LMEW] (finding that in the second quarter of calendar year 2009, state and local revenue has reached a 20 year low, and then between 2009 and 2012, states faced more than $500 billion in cumulative budget shortfalls); Phil Oliff et al., *States Continue to Feel Recession's Impact*, CTR ON BUDGET AND POL'Y PRIORITIES (June 27, 2012), https://www.cbpp.org/research/states-continue-to-feel-recessions-impact?fa=view&id=711 [https://perma.cc/H6H4-5TVQ] ("The Great Recession that started in 2007 caused the largest collapse in state revenues on record.").

[28] *See* Michael Mitchell et al., *Funding Down, Tuition Up: State Cuts to Higher Education Threaten Quality and Affordability at Public Colleges*, CTR ON BUDGET AND POL'Y PRIORITIES (Aug. 15, 2016), https://www.cbpp.org/research/state-budget-and-tax/funding-down-tuition-up [https://perma.cc/X3AE-V9VY] (finding that 43 states cut funding for higher education in response to declining state revenue during the recession, and that by 2016, only four states had increased per-student funding back to pre-recession levels); *see* Gordon, *supra* note 27.

[29] *See* U.S. Department of Education, National Center for Education Statistics, Higher Education General Information Survey (HEGIS), "Fall Enrollment in Colleges and Universities" surveys, 1970 through 1985; Integrated Postsecondary Education Data System (IPEDS), "Fall Enrollment Survey" (IPEDS-EF:86-99); IPEDS Spring 2001 through Spring

These state policymakers predicted that, of the tough choices they faced on spending cuts, cuts to higher education would have the least ramifications.[30] Legislators rightly assumed that if states chose to provide less financial support for public colleges and universities, then these schools could simply raise the cost of college in order to make up any shortfall.[31]

Unfortunately, this same rationale also assumed that individual students and their families could handle a tuition bill of seemingly any size, without any real downside for the state.[32] When the financial consequences of these policies were passed on to families, but not reflected on state balance sheets, state lawmakers could act as if their choices came at no cost to their state or their citizens. In a budgetary sense, this was undoubtedly true.[33] But in a broader social and economic sense, it could not be further from the truth. In fact, the costs would prove to be enormous.

2016, Fall Enrollment component; and Enrollment in Degree-Granting Institutions Projection Model, 2000 through 2026.

[30] *See* HAROLD HOVEY, NAT'L CTR. FOR PUB. POLICY AND HIGHER EDUC., STATE SPENDING FOR HIGHER EDUCATION IN THE NEXT DECADE: THE BATTLE TO SUSTAIN CURRENT SUPPORT 19–20 (1999), http://www.higheredinfo.org/analyses/State_Spending_Hovey.pdf [https://perma.cc/3NTD-5FKR] (arguing that states treat higher education spending as a "balance wheel" for state budgets because higher education institutions have "perceived fiscal flexibility to absorb temporary fiscal adversity" and "the ability to maintain and increase spending levels by shifting larger proportions of costs to users by tuition and fee increases," among other factors).

[31] *See id.*; Douglas A. Webber, *State Divestment and Tuition at Public Institutions*, ECON. OF EDUC. REV. 1, 3 (Oct. 2017), https://doi.org/10.1016/j.econedurev.2017.07.007 [https://perma.cc/XN9H-VGBT] (finding that post-2000, for every $1,000 per student state budget cut to higher education funding, costs increased by $318 per student); Jennifer A. Delaney & William R. Doyle, *The Role of Higher Education in State Budgets*, *in* STATE POSTSECONDARY EDUCATION RESEARCH: NEW METHODS TO INFORM POLICY AND PRACTICE 55, 55 (Kathleen M. Shaw & Donald E. Heller eds., 2007) ("When states' revenues are low, higher education is an attractive option for heavy cuts because it has the ability to collect fees for its services (an ability lacking in most other state spending categories).").

[32] *See* Delaney & Doyle, *supra* note 31.

[33] *See generally* HANS JOHNSON, PUB. POLICY INST. OF CAL., DEFUNDING HIGHER EDUCATION: WHAT ARE THE EFFECTS ON COLLEGE ENROLLMENT 4 (2012), http://www.ppic.org/content/pubs/report/R_512HJR.pdf [https://perma.cc/S36L-5CX9] ("[H]igher education is seen as a budget area that, unlike other government services, has the ability to compensate for cuts in state expenditures. A common and not incorrect assumption is that public colleges and universities have sources of funds, particularly students and the tuitions they pay, that are not available to other government services."); Roger Fillion, *Tackling Tuition*, NCSL: STATE LEGISLATURES MAGAZINE (Mar. 1, 2016), http://www.ncsl.org/bookstore/state-legislatures-magazine/tackling-tuition.aspx [https://perma.cc/9UU7-3JD4] ("Since colleges can offset reductions in state spending with tuition hikes, cutting higher education spending is often one of a few options states have when balancing budgets."); *see, e.g.*, *Governor Christie Signs Final Balanced Budget, Delivering 2 Full Terms of Unprecedented Pension Stability, Fiscal Responsibility, & Tax Relief*, INSIDER NJ (Jul. 5, 2017, 1:48 AM), https://www.insidernj.com/press-release/governor-christie-signs-final-balanced-budget-delivering-2-full-terms-unprecedent

A decade later, research shows that this rationale was rooted in a pyramid of flawed assumptions. First, policymakers incorrectly assumed that families and households would be able to absorb rising college costs without experiencing any long term financial consequences. Second, policymakers relied on the belief that college was always a sound investment. In other words, they believed that as long as they could point to the college wage premium—narrowly defined as the wage gap between college educated workers and workers without a degree—the long term economic benefits to families and to society would eventually offset any immediate increase in costs. Years of evidence has now exposed the flaws in both of these assumptions and paint a deeply disturbing picture of the individual and societal costs of student debt.

In the face of this mounting evidence, policymakers and higher education leaders are finally starting to recognize that their choices over the preceding decade set up millions to fail. As Gordon Gee, the former President of The Ohio State University said in 2012, "I readily admit it. . . . I didn't think a lot about costs. I do not think we have given significant thought to the impact of college costs on families."[34] In order to confront the consequences of these faulty assumptions and to, in Gee's words, "give significant thought" to the drivers of and solutions to the student loan crisis, one must take an honest assessment of the myriad of ways that student debt is impacting individual borrowers, families, and their communities.

B. The Domino Effect of Student Debt

Over the last decade, the total volume of outstanding student loan debt more than tripled, adding $1 trillion on the backs of borrowers.[35] Student loan debt now makes up 11% of all household debt, up from only 5% in less than ten years.[36] The average student loan balance has nearly tripled since 2005.[37] These increases

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ed-pension-stability-fiscal-responsibility-tax-relief [https://perma.cc/7TB8-7PVM]. *But see* Gordon Macinnes, *New Jersey Must Make Higher Education a Priority Again*, N. J. POL'Y PERSP. (Oct. 16, 2017), https://www.njpp.org/budget/new-jersey-must-make-higher-education-a-priority-again [https://perma.cc/T83S-75W8] ("New Jersey's 21-percent cut in inflation-adjusted state spending on public college operating costs since the Great Recession—the equivalent of a $2,113 drop per full-time student—is the 13th largest reduction in the nation.").

34 Andrew Martin & Andrew W. Lehren, *A Generation Hobbled by the Soaring Cost of College*, N.Y. TIMES: BUSINESS DAY (May 12, 2012), http://www.nytimes.com/2012/05/13/business/student-loans-weighing-down-a-generation-with-heavy-debt.html?pagewanted=all [https://perma.cc/55TV-EWAH].

35 *See Historical Data: Consumer Credit Outstanding (Levels)*, FED. RES. BOARD OF GOVERNORS (Feb. 07, 2018), https://www.federalreserve.gov/releases/g19/HIST/cc_hist_memo_levels.html [https://perma.cc/7PJ2-A32J].

36 *See Household Debt and Credit Report (Q1, 2017)*, FED. RES. BANK N.Y.: CTR. MICROECON. DATA, https://www.newyorkfed.org/microeconomics/hhdc.html [https://perma.cc/4JRX-NNXG].

37 *See* Joel Elvery, *Is There a Student Loan Crisis? Not in Payments*, FED. RES. BANK CLEV. (May 16, 2016), https://clevelandfed.org/newsroom-and-events/publications/fore

translate into very real financial consequences for student loan borrowers. For a typical borrower, this increase results in higher amounts coming out of monthly paychecks. According to one recent study, in 2015, the average student loan payment for a millennial borrower was $351 per month—a payment amount more than 50% higher than it was a decade prior.[38]

New evidence shows that declines in household formation and homeownership are being driven by student debt—creating barriers to economic mobility for borrowers across the country.[39] Another study found that rising levels of student debt resulted in 360,000 fewer homes purchased by twenty-eight to thirty-year-olds over the previous fifteen years.[40] For individual families, this struggle is real and immediate. But for policymakers and researchers, the most alarming consequences of the student debt crisis may happen not at the individual level, but rather where student debt begins to shape the economy and society.[41]

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front/ff-v7n02/ff-20160516-v7n0204-is-there-a-student-loan-crisis.aspx [https://perma.cc/J4DV-JNEL] ("[O]utstanding balances have risen 280 percent since 2005 . . . .").

[38] *Id.*

[39] *See, e.g.*, Daniel Cooper & J. Christina Wang, *Student Loan Debt and Economic Outcomes*, FED. RES. BANK BOS.: CURRENT POL'Y PERSP. (Oct. 2014), https://www.bostonfed.org/-/media/Documents/Workingpapers/PDF/economic/cpp1407.pdf [https://perma.cc/7YZL-5HRP] ("In addition, the distribution of total wealth excluding student debt liabilities is lower for homeowners with student debt than for homeowners without student loan debt (again conditional on at least some college attendance). This wealth disparity remains even after controlling for a wide range of demographic and other factors.").

[40] Zachary Bleemer et al., *Echoes of Rising Tuition in Students' Borrowing, Educational Attainment, and Homeownership in Post-Recession America*, FED. RES. BANK OF N.Y. (July 2017), https://www.newyorkfed.org/research/staff_reports/sr820 [https://perma.cc/HB5S-H6DG]; *see also* Shahien Nasiripour, *Student Debt Is a Major Reason Millennials Aren't Buying Homes*, BLOOMBERG (July 17, 2017, 10:25 AM), https://www.bloomberg.com/news/articles/2017-07-17/student-debt-is-hurting-millennial-homeownership [https://perma.cc/6NDJ-59TU] ("There's a good chance the number of millennials kept from buying homes because of their student loans has only grown since the period the economists studied. As tuition has risen, total student debt has increased 13 percent, and every new class graduates with more student debt than the preceding one."); Rajashari Chakrabarti et al., *Diplomas to Doorsteps: Education, Student Debt, and Homeownership*, FED. RES. BANK N.Y.: LIBERTY STREET ECON. (Apr. 3, 2017), http://libertystreeteconomics.newyorkfed.org/2017/04/diplomas-to-doorsteps-education-student-debt-and-homeownership.html [https://perma.cc/PXA3-7LLE].

[41] *See, e.g.*, Press Release, Remarks of Secretary Lew before the Financial Literacy Education Commission (FLEC) (Oct. 23, 2013), http://www.treasury.gov/press-center/press-releases/Pages/jl2191.aspx [https://perma.cc/PXA3-7LLE] (Secretary of the Treasury Jacob Lew remarking that student debt is "hampering our economy" across multiple sectors of society); Minutes of the Federal Open Market Committee, (Mar. 19–20, 2013), http://www.federalreserve.gov/monetarypolicy/fomcminutes20130320.htm [https://perma.cc/394U-7S98] (noting that the Federal Reserve's Federal Open Market Committee, the central bank's monetary policy rate setting board, identified student debt as a risk to aggregate household spending in coming years); FIN. STABILITY OVERSIGHT COUNCIL, 2014 ANNUAL REPORT (2014) 22, http://www.treasury.gov/initiatives/fsoc/

Mounting evidence shows that the ripple effects of student debt on society are substantial. Researchers are beginning to show how this debt fuels economic, gender, and racial inequality, inhibits asset accumulation, accelerates wealth gaps, and carves out a generational divide that, even in the best of circumstances, will take decades to erase.[42] The evidence shows that the burden of student debt is not shared equally, and the impact of this burden is far more severe for certain populations:[43]

- Women make up half of all college students, and yet owe two-thirds of outstanding student loan debt. And the gender pay gap only serves to keep women in debt longer.[44]
- Over 90% of African American and 72% of Latino students leave school with debt, compared to 66% of white students.[45] This debt hangs over their financial lives for longer and at a greater rate than their white peers. Data shows that twelve years into repayment, white borrowers have paid down 65% of their loan balance, while African American borrowers owe 113% of what they originally borrowed.[46] Disturbingly, at four-year, nonprofit

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Documents/FSOC%202014%20Annual%20Report.pdf [https://perma.cc/HS75-2XJ3] (noting that "high student-debt burdens may dampen consumption and could impact household demand for housing purchases"). *See also* Sophia Caronello, *Why Jerome Powell Is Worried About Growing Student Debt*, BLOOMBERG (Mar. 1, 2018), https://www.bloomberg.com/news/articles/2018-03-01/why-jerome-powell-is-worried-about-growing-student-debt-chart.

[42] *See generally* William Elliot & Melinda Lewis, *Student Debt Effects on Financial Well-Being: Research and Policy Implications*, 29 J. ECON. SURVEYS 614 (2015), http://onlinelibrary.wiley.com/doi/10.1111/joes.12124/full [https://perma.cc/84B8-X8J8] (finding that student loan debt can delay asset accumulation for years and can decrease a family's net worth by 63 percent); *see also infra* Part II.C.

[43] S*ee* Daniela Kraiem, *The Cost of Opportunity: Student Debt and Social Mobility*, 48 SUFFOLK U. L. REV. 689, 699 (2015) ("Students with unmanageable debt are more likely to be low-income, female, black, and have dependent members such as children or elderly parents.").

[44] *See* Kevin Miller, *Women's Student Debt Crisis in the United States*, AM. ASS'N U. WOMEN (May 2017), https://www.aauw.org/research/deeper-in-debt/ [https://perma.cc/VHP2-363S].

[45] *See Table 331.95*, NAT'L CTR. FOR EDUC. STAT.: DIG. EDUC. STAT., https://nces.ed.gov/programs/digest/d15/tables/dt15_331.95.asp [https://perma.cc/6QT2-BKBS] (last visited Apr. 10, 2018).

[46] *See* Ben Miller, *New Federal Data Show a Student Loan Crisis for African American Borrowers*, CTR. FOR AM. PROGRESS (Oct. 16, 2017, 9:00 AM), https://www.americanprogress.org/issues/education-postsecondary/news/2017/10/16/440711/new-federal-data-show-student-loan-crisis-african-american-borrowers [https://perma.cc/WSV7-ATVY]; *see also* Judith Scott-Clayton, *The Looming Student Loan Default Crisis Is Worse than We Thought*, BROOKINGS (Jan. 11, 2018), https://www.brookings.edu/research/the-looming-student-loan-default-crisis-is-worse-than-we-thought/ [https://perma.cc/RAL9-J3XL] ("Debt and default among black college students is at crisis levels, and even a bachelor's degree is no guarantee of security: black BA graduates default at five times the rate of white BA graduates (21 versus 4 percent), and are more likely to default than white dropouts.").

schools, African Americans defaulted at four times the rate of their white peers.[47]

- One of the most telling factors in whether residents of a zip code will struggle with paying their student debt is not income, but rather the racial composition—zip codes with predominantly African American and Latino populations have higher rates of delinquency and default than predominantly white zip codes with comparable income levels.[48]
- But the student debt struggle is not limited by race and gender. Data also shows that rural areas such as Appalachia and other communities seemingly long forgotten by policymakers have some of the highest incidences of delinquency and default.[49]

This research shows that where pursuing a college degree was once marketed as the "great equalizer," it now perpetuates the divide between the "haves" and the "have-nots."[50] One recent study projected that a typical household headed by two college-educated adults with average student loan debt balances loses out on more than $200,000 in accumulated wealth over a lifetime.[51]

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[47] Robert Kelchen, *Institutional Accountability: A Comparison of the Predictors of Student Loan Repayment and Default Rates*, 671 ANNALS AM. ACAD. POL. SOC. SCI. 202, 212–217 (2017), http://journals.sagepub.com/doi/full/10.1177/0002716217701681.

[48] *See* Marshall Steinbaum & Kavya Vaghul, *How the Student Debt Crisis Affects African Americans and Latinos*, WASH. CTR. FOR EQUITABLE GROWTH (Feb. 17, 2016), http://equitablegrowth.org/how-the-student-debt-crisis-affects-african-americans-and-latinos/ [https://perma.cc/BQ2X-KP5P].

[49] *See* MAPPING STUDENT DEBT, www.mappingstudentdebt.org [https://perma.cc/LMT8-PF5N] (last visited Apr. 10, 2018) (showing student loan delinquency rates by zip code); *see also* STATE COUNCIL OF HIGHER EDUC. FOR VA., POLICY CONSIDERATIONS FOR STUDENT-LOAN REFINANCING AUTHORITY 5 (2016), http://www.schev.edu/docs/default-source/Reports-and-Studies/2016-reports/student-loan-refinance-review-11-1-2016.pdf [https://perma.cc/8WYN-V37N] (finding that student loan delinquency rates in Appalachia are among the highest in Virginia).

[50] *See, e.g.*, WILLIAM ELLIOT & MELINDA LEWIS, ASSETS & EDUC. INITIATIVE, UNIV. OF KAN., STUDENT LOANS ARE WIDENING THE WEALTH GAP: TIME TO FOCUS ON EQUITY 7 (2013), http://aedi.ssw.umich.edu/sites/default/files/publications/publication-cd-reports-r1.pdf [https://perma.cc/VUR5-CKUT] ("However, despite our collective belief in an American dream of equitable opportunities for all, higher education today increasingly reinforces patterns of relative privilege, particularly as students rely more and more on student loans to finance college access.").

[51] ROBERT HILTONSMITH, DEMOS, AT WHAT COST? HOW STUDENT DEBT REDUCES LIFETIME WEALTH 9 (2013), http://www.demos.org/sites/default/files/imce/AtWhatCostFinal.pdf [https://perma.cc/E8NR-GAA2]; s*ee also* Richard Fry, *Young Adults, Student Debt, and Economic Well Being*, PEW RES. CTR. (May 14, 2014), http://www.pewsocialtrends.org/2014/05/14/young-adults-student-debt-and-economic-well-being/ [https://perma.cc/9LMJ-VMTK] ("[S]howing that millennials who incur debt after graduation have an average net worth of seven times less than that of their non-indebted counterparts. Millennials with no debt when graduating have an average net worth of $64,700, while millennials graduating with student debt have only $8,700 on average."); Cooper & Wang, *supra* note 39. *See generally* Emily Rauscher & William Elliott, *The*

It is increasingly clear that the student debt crisis is much broader than a series of individual student loan defaults. As more Americans pursue higher education, only to be weighed down by unaffordable student debt, this supposed equalizer is quickly turning into one of the greatest forces cementing economic inequality in this nation.[52]

With a more honest assessment of the full impact of the crisis, one can now look back to the pyramid of assumptions used to justify the public policies that led us here and ask how well they hold up.

C. The Myth of the College Wage Premium

First, one should reconsider the assumption that families could continue to absorb the financial effects of rising college costs without passing these costs on to students.[53] For much of the country's recent past, families have shared the economic burden of paying for college by drawing on a combination of income, savings, home

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Relationship Between Income and Net Worth: A Virtuous Cycle for High but Not Low Income Households, 20 J. POVERTY 380 (2016) (finding that a college graduate with an extra $10,000 in student loans will achieve the nation's median net worth 26 percent slower than a college graduate without that debt, concluding that financing higher education through student loans can put college graduates who begin school with few assets even further behind their wealthier peers).

[52] *See, e.g.*, Thomas Piketty, Transcript of *Student Loan Debt Is the Enemy of Meritocracy in the U.S.*, BIG THINK, http://bigthink.com/videos/thomas-piketty-on-the-rise-of-us-student-debt [https://perma.cc/LV68-ZDQT] ("And I think if we really want to promote more equal opportunity and redistribute chances in access to education, we should do something about student debt. And it's not possible to have such a large group of the population entering the labor force with such a big debt behind them."); William C. Dudley, *Opening Remarks at the Convening on Student Loan Data Conference*, FED. RES. BANK OF N.Y. (Mar. 4, 2015), https://www.newyorkfed.org/newsevents/speeches/2015/dud150304.html [https://perma.cc/SSL5-M4CL] ("We have gained an increasing understanding that how we finance post-secondary education has significant effects on a variety of critical economic outcomes, including economic growth and inequality. For example, our research suggests that higher student debt and delinquencies reduce household formation and depress homeownership."); WILLIAM GALE ET AL., BROOKINGS INST., STUDENT LOANS RISING: AN OVERVIEW OF CAUSES, CONSEQUENCES, AND POLICY OPTIONS 3–4 (2014), https://www.brookings.edu/wp-content/uploads/2016/06/student_loans_rising_gale_harris_09052014.pdf [https://perma.cc/5G97-DCSX] (showing that student debt "is associated with students pursuing jobs that pay higher wages initially, perhaps at the expense of wages in the future," "that student loan borrowers are roughly 60 to 70 percent less likely to apply to graduate school—after controlling for other factors—than non-borrowers," that "[h]igh student loan burdens may disqualify students from taking on mortgage debt, and debt aversion may dissuade student loan holders from purchasing a home even if qualified to do so," and that "[s]tudent debt may also discourage retirement saving, by delaying the initiation of contributions to retirement plans, by reducing the level of contributions, or by increasing the demand for early withdrawals."); ELLIOT & LEWIS, *supra* note 50.

[53] *See supra* Part II.A.

equity, and retirement savings in order to contribute.[54] These family contributions, when combined with a student's income from part-time work, and paired with a combination of student loans and grants, were sufficient to leave a typical borrower with a modest debt load at graduation. As tuition rose in the years preceding the Great Recession, this equilibrium was tenuous, but it held. Then the recession hit.

Rising student debt levels are not just a byproduct of rising college costs, but rather the shift from the state to the household and then the household to the individual. During the recession, millions of families suffered a series of continuing economic shocks. Widespread unemployment, combined with drops in home equity, investments, and retirement savings, battered household balance sheets.[55] As wealth declined, particularly for working families, many households could no longer make a major financial contribution to higher education.[56] Students were left with the

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[54] *See* V. Joseph Hotz et al., The Role of Parental Wealth & Income in Financing Children's College Attendance & Its Consequences, Fed. Res. Bank of NY, presented at the Southern Economics Association Annual Meeting 2 (Dec. 6, 2017) (unpublished manuscript), *available at* https://www.newyorkfed.org/medialibrary/media/research/conference/2017/higher_education/Hotz_Wealth_Paper_12-05-17 [https://perma.cc/9CBS-SG6D] ("The recent trends in household income and a [sic] housing wealth are likely to have important consequences for the educational attainment and college financing decisions of the next generation, as parents have long been a primary source of financial support for their children's post-secondary education").

[55] *See* M. William Sermons, *America's Household Balance Sheet: The State of Lending in America & Its Impact on U.S. Households*, CTR. FOR RESPONSIBLE LENDING 12 (Dec. 2012), http://www.responsiblelending.org/sites/default/files/uploads/2-americas-household-balance-sheet.pdf [https://perma.cc/9CBS-SG6D] ("Data show that the recession depleted household assets. University of Michigan researchers found that households lost value in their homes and other financial assets and also used financial assets to deal with income loss . . . ."); BRIDGET TERRY LONG, *The Financial Crisis and College Enrollment: How Have Students and Their Families Responded?*, *in* HOW THE FINANCIAL CRISIS AND GREAT RECESSION AFFECTED HIGHER EDUCATION 214 (Jeffrey R. Brown & Caroline M. Hoxby eds., 2012) ("This period of economic turmoil has also strongly affected the housing market by reducing the value of many families' homes, while others have lost their homes altogether. [Researchers] conclude that 'the average household experienced a decline in net worth of $177,000 between the middle of 2007 and the trough of the asset price decline in the first quarter of 2009.'"); Megan Kowalski & Hadley Malcolm, *Fewer Parents Can Pay College Tuition*, USA TODAY (July 23, 2013, 8:22 AM), https://www.usatoday.com/story/money/personalfinance/2013/07/22/recession-college-tuition-savings-plans/2569809/ [https://perma.cc/WD6B-56YM] ("'The post-recession reality is (parents) don't have the income and savings,' says Sarah Ducich, senior vice president of public policy at Sallie Mae. 'It's not that they're not willing to stretch. It's that they don't think they have the money to do that.'").

[56] *See, e.g.*, Gene Amromin et al., The Housing Crisis and Rise in Student Loans, Fed. Deposit Insurance Corp. 1 (Oct. 20, 2016) (unpublished manuscript), *available at* https://www.fdic.gov/news/conferences/consumersymposium/2016/documents/mondragon_paper.pdf [https://perma.cc/E2SZ-CEEE] ("Our results show that the decline in house prices reduced households' ability to finance college enrollment with home equity credit, but that constrained households mostly responded by continuing to enroll in college and relying

choice to not go to college or to take on debt.[57] When faced with this choice, millions of people chose debt.[58]

While conventional wisdom often points to the rapid rise in college tuition as the sole driver of increased student indebtedness, that is only part of the story.[59] The other part is the willingness of policymakers to pile college costs onto families at the exact moment these families were trying to stay afloat during the financial fallout of the recession.[60]

Having exposed this first assumption as flawed, one should then consider the great catchall in the higher education funding debate—the proposition that the boost in wages earned by college graduates justifies the explosion of student debt because, over time, college is still "worth it."[61]

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on student loans. Our estimates suggests the 30% fall in house prices from the 2006 peak resulted in the average college student borrowing an additional $1,300 in student loans, with some evidence of larger effects on liquidity-constrained and less-educated households."); LONG, *supra* note 55, at 214 ("Previous research suggests that changes in home values can affect educational attainment, and other research has found that families rely on home equity as a way to finance college. Therefore, with reductions in home values and the ease of getting a home equity loan, there is some concern that the Great Recession may have reduced the likelihood of college attendance."); Hotz et al., *supra* note 54, at 2.

[57] *See* Kowalski & Malcolm, *supra* note 55; NATE JOHNSON, LUMINA FOUND., COLLEGE COSTS, PRICES AND THE GREAT RECESSION 7 (Apr. 2014), https://files.eric.ed.gov/fulltext/ED555862.pdf [https://perma.cc/HQ86-KG89].

[58] Between Fall 2005 and Fall 2010, the number of full time, first time degree seeking undergraduate students receiving federal student loans increased 50 percent (1.2 million to 1.8 million). LAURA G. KNAPP ET AL., U.S. DEPT. OF EDUC., ENROLLMENT IN POSTSECONDARY INSTITUTIONS, FALL 2005; GRADUATION RATES, 1999 AND 2002 COHORTS; AND FINANCIAL STATISTICS, FISCAL YEAR 2005 (Apr. 2007), https://nces.ed.gov/pubs2007/2007154.pdf [https://perma.cc/3JHA-CEGS]; LAURA G. KNAPP ET AL., U.S. DEPT. OF EDUC., ENROLLMENT IN POSTSECONDARY INSTITUTIONS, FALL 2010; FINANCIAL STATISTICS, FISCAL YEAR 2010; AND GRADUATION RATES, SELECTED COHORTS, 2002–07 (Mar. 2012), https://nces.ed.gov/pubs2012/2012280.pdf [https://perma.cc/QJQ3-6VU2].

[59] *See* Michael Greenstone & Adam Looney, *Rising Student Debt Burdens: Factors Behind the Phenomenon*, BROOKINGS (Aug. 12, 2013), https://www.brookings.edu/blog/jobs/2013/07/05/rising-student-debt-burdens-factors-behind-the-phenomenon [https://perma.cc/4FTV-SDNW] (finding that "neither college enrollment nor net college tuition has risen enough over the past decade to explain the rapid upsurge in student debt. Instead, this phenomenon seems to be driven by an increase in the share of student-loan borrowing used to finance each dollar of college tuition").

[60] *See* JOHNSON, *supra* note 57, at 7 ("States that were hardest hit by the recession and that cut appropriations to higher education the most also had the highest tuition increases. . . . While not surprising, the correlation between recession impact and tuition hikes illustrates one of the policy problems associated with state higher education finance. Prices go up exactly where and when citizens are least able to afford the increases.").

[61] *See also* Colleen Curtis, *President Obama: College Is the Best Investment You Can Make*, WHITE HOUSE (Apr. 25, 2012, 10:55 AM), https://obamawhitehouse.archives.gov/blog/2012/04/25/president-obama-college-best-investment-you-can-make [https://perma.cc/

For more than half a century, part of the American dream was built on the implicit understanding, right or wrong, that college is always a sound investment and that taking on debt to get a degree is just a necessary step on a well-worn path to the middle class.[62] Conventional wisdom suggested that the burden on individuals should not be a focus for policymakers because these increased costs were always offset by the broader economic gains that come from getting a higher education.[63] It is easy to see how this led a generation of policymakers and higher education officials to embrace the myth that a student loan was "good debt."[64]

But for borrowers—and for the policymakers and researchers that led them there—conventional wisdom around the merits of "good debt" is just as dangerous as the widely held but misguided belief that home values would always rise in perpetuity and an investment in one's house always paid off.[65]

ZDU4-X74M].

[62] *See generally* Raj Chetty et al., Mobility Report Cards: The Role of Colleges in Intergenerational Mobility (July 2017) (unpublished manuscript), *available at* http://www.equality-of-opportunity.org/papers/coll_mrc_paper.pdf [https://perma.cc/3XKE-RSVY] (analyzing students' earnings outcomes and parents' incomes for American colleges and universities); Lawrence E. Gladieux, *Federal Student Aid Policy: A History and an Assessment* (Oct. 1995), https://www2.ed.gov/offices/OPE/PPI/FinPostSecEd/gladieux.html [https://perma.cc/JC4Z-5QKE] (detailing the history of federal student loans as a mechanism to assist middle class students and families afford college); *see also* Matthew B. Fuller, *A History of Financial Aid to Students*, 44 J. OF STUDENT FIN. AID 1, 25 (2014).

[63] *See, e.g.*, Beth Akers, *Higher Education Debt Is Worth It, but Isn't Risk Free*, BROOKINGS (Jan. 12, 2016), https://www.brookings.edu/opinions/higher-education-debt-is-worth-it-but-isnt-risk-free/ [https://perma.cc/2BA6-8423] ("But the rapidly rising cost of college education is not as troubling as it first appears. While the price of higher education has increased, so has its value. Over the last 30 years the lifetime earnings associated with having a college degree has grown by 75 percent. Today's students are paying more to go to college, but they are also getting more out of it. In this sense they're getting a better deal. . . . Research indicates that the financial rate of return on a college degree is about 15 percent—a rate that far exceeds the yield on most other investments available to the individual consumers, especially young ones."); *see also* Jaison Abel & Richard Deitz, *Do the Benefits of College Still Outweigh the Costs?*, 20 CURRENT ISSUES IN ECON. AND FIN. 1, 8 (2014); Anthony P. Carnevale, *College Is Still Worth It*, INSIDE HIGHER ED (Jan. 14, 2011), https://www.insidehighered.com/views/2011/01/14/carnevale_college_is_still_worth_it_for_americans [https://perma.cc/W7EH-XZKK].

[64] *See, e.g.*, Stephen J. Rose, *Good Debt: Why Student Loans Are Better for You than You Think*, THE ATLANTIC (Sep. 4, 2012), https://www.theatlantic.com/business/archive/2012/09/good-debt-why-student-loans-are-better-for-you-than-you-think/261918/ [https://perma.cc/VG7P-JVBC]; Christopher Shea, *Don't Listen to Those Scary Tales of Student-Loan Woe*, WASH. POST (Mar. 21, 2013), https://www.washingtonpost.com/opinions/dont-listen-to-those-scary-tales-of-student-loan-woe/2013/03/21/0a94b134-90a2-11e2-bdea-e32ad90da239_story.html?utm_term=.174e64d10da9 [https://perma.cc/DN3L-EHPZ].

[65] *See* Shahien Nasiripour, *Recent Federal Student Loans Look A Lot Like Subprime Mortgages*, HUFFINGTON POST (Sep. 10, 2015, 09:29 PM), https://www.huffingtonpost.com/entry/recent-federal-student-loans-look-a-lot-like-subprime-mortgages_us_55f1cca6e4b093

To start, wages of those without a degree are dropping rapidly.[66] In effect, the bottom has fallen out of the labor market for non-college-educated American workers. This creates a deeply misleading contrast. In other words, the college wage premium does not persist across generations because things are getting better for college educated workers—it persists because things are worse for those without a degree.[67] In fact, when accounting for inflation, wages for college graduates have

be51be0ad9 [https://perma.cc/2G8F-AJ58] ("Rather than paying down their balances after leaving school, borrowers with recent federal student loans are experiencing an increase in debt as they fail to make enough payments to offset the accumulating interest on their loans. The situation parallels subprime mortgages before the financial crisis, when lenders gave borrowers loans they couldn't afford by allowing them to make payments that didn't actually reduce their balances."); *see generally* Press Release, U.S. Dept. of the Treasury, Remarks by Deputy Secretary Sarah Bloom Raskin at the Rappaport Center for Law and Public Policy Conference on the Student Debt Crisis (Mar. 18, 2016), https://www.treasury.gov/press-center/press-releases/Pages/jl0389.aspx [https://perma.cc/CUY9-535C] ("More generally, the experience of the last decade provides a painful reminder that debt burdens can worsen economic downturns and slow economic recoveries. . . . While student loan debt is much smaller than mortgage debt and does not pose the same systemic risk, a burden of student debt could, in principle, have analogous effects down the line.").

[66] *See* Jillian Berman, *A High-School Diploma Is Pretty Much Useless These Days*, HUFFINGTON POST (Dec. 6, 2017), https://www.huffingtonpost.com/2014/05/27/value-college-degree_n_5399573.html [https://perma.cc/MUG7-TYWG] (quoting economist Elise Gould in stating, "The only reason that the [college] premium has gone up at all is because wages for high-school graduates have actually fallen"); Abel & Deitz, *supra* note 63, at 8 ("[A]lthough the wages of college-educated workers have stagnated since the early 2000s—and even declined in the years since the Great Recession—the wages of high school graduates have also been falling. As a result, the college wage premium has remained near its all-time high."); Patricia Cohen, *It's a Tough Job Market for the Young Without College Degrees*, N.Y. TIMES (May 10, 2016), https://www.nytimes.com/2016/05/11/business/economy/its-a-tough-job-market-for-the-young-without-college-degrees.html?_r=0 [https://perma.cc/8J2H-VMYV].

[67] *See* Shaila Dewan, *Wage Premium from College Is Said to Be Up*, N.Y. TIMES: ECONOMIX (Feb. 11, 2014, 8:23 PM), https://economix.blogs.nytimes.com/2014/02/11/wage-premium-from-college-is-said-to-be-up/ [https://perma.cc/2LHF-BCFV] (quoting one researcher as saying that "[f]or today's young adults, the only thing more expensive than going to college is not going to college"); Abel & Deitz, *supra* note 63, at 8; Paul Taylor et al., *The Rising Cost of Not Going to College*, PEW RES. CTR. 3 (Feb. 11, 2014), http://assets.pewresearch.org/wp-content/uploads/sites/3/2014/02/SDT-higher-ed-FINAL-02-11-2014.pdf [https://perma.cc/4WL4-JV8Z]; *see also* Rohit Chopra, *Prepared Remarks of Rohit Chopra Before the Federal Reserve Bank of St. Louis*, CFPB (Nov. 18, 2013), https://www.consumerfinance.gov/about-us/newsroom/student-loan-ombudsman-rohit-chopra-before-the-federal-reserve-bank-of-st-louis/ [https://perma.cc/4GKY-VJV3] ("Much has been made of the college wage premium, that is, the difference between incomes of college graduates versus non-college graduates. . . . But behind that headline number is a more troubling trend. The growing gap between college graduates and others isn't really due to rising starting wages for the average college graduate—it's that the wages of those without a degree are falling rapidly.").

remained nearly stagnant for more than a decade.[68] At the same time, cost of living for all Americans has steadily climbed. The cost of health care and housing has outpaced inflation for the last decade.[69] For all but the highest earning households, these expenses have consumed a steadily rising share of incomes.[70]

Therefore, it should come as no surprise to researchers or policymakers when a college graduate is not satisfied with her lot in life or when she questions the value of her degree. Yet these researchers and policymakers continue to tout a tired statistic describing how bachelor's degree recipients earn an additional million dollars over their lifetimes when compared to non-college-educated workers.[71] This tired statistic does not account for a paycheck already stretched too thin; it does not explain why a college graduate now struggles to accumulate the same assets her

[68] *See* Dylan Matthews, *Between 2000 and 2012 American Wages Grew . . . Not at All*, WASH. POST (Aug. 21, 2013) https://www.washingtonpost.com/news/wonk/wp/2013/08/21/between-2000-and-2012-american-wages-grewnot-at-all/?utm_term=.5bfac97678ad [https://perma.cc/H32A-MB86]; Elise Gould, *The State of American Wages 2016*, ECON. POL'Y INST. (Mar. 9, 2017), http://www.epi.org/publication/the-state-of-american-wages-2016-lower-unemployment-finally-helps-working-people-make-up-some-lost-ground-on-wages/ [https://perma.cc/HKR7-LJV8] ("[F]rom 2000 to 2016, educational attainment has not been sufficient to return many workers to where they were before the recessions of the 2000s: the bottom 50 percent of workers with a college degree still have lower wages than they did in 2000 or 2007.").

[69] *See* Jiachuan Wu & Stephen Culp, *U.S. Inflation*, REUTERS, http://fingfx.thomsonreuters.com/gfx/rngs/1/1262/1901/index.html [https://perma.cc/9YBY-5VMP] (last visited Dec. 24, 2017); Chopra, *supra* note 67 ("While conventional wisdom has focused heavily on rising tuition as the primary driver of debt, this may be too simplistic. . . . The deterioration of household balance sheets seems to be a major culprit.").

[70] *See* Bureau of Labor Statistics, Table 45. Quintiles of income before taxes: Shares of average annual expenditures and sources of income, Consumer Expenditure Survey, 2005, https://www.bls.gov/cex/2005/share/quintile.pdf [https://perma.cc/C2C6-S5ZV]; Bureau of Labor Statistics, Table 1101. Quintiles of income before taxes: Annual expenditure means, shares, standard errors, and coefficients of variation, Consumer Expenditure Survey, 2016, https://www.bls.gov/cex/2016/combined/quintile.pdf [https://perma.cc/4WGV-7DMN]; *see also* Erin Currier et al., *The Precarious State of Family Balance Sheets*, PEW CHARITABLE TRUSTS (Jan. 2015), http://www.pewtrusts.org/~/media/assets/2015/01/fsm_balance_sheet_report.pdf [https://perma.cc/YZX4-UF4D]; Sermons, *supra* note 55, at 12.

[71] *See, e.g.*, Anthony P. Carnevale et al., *The Economic Values of College Majors*, GEORGETOWN U. CTR. ON EDUC. AND THE WORKFORCE 5 (2015), https://cew.georgetown.edu/wp-content/uploads/Exec-Summary-web-B.pdf [https://perma.cc/N2BF-2C8X]; MARGARET SPELLINGS ET AL., U.S. DEPT. OF EDUC., A TEST OF LEADERSHIP: CHARTING THE FUTURE OF U.S. HIGHER EDUCATION: A REPORT OF THE COMMISSION APPOINTED BY SECRETARY OF EDUCATION MARGARET SPELLINGS 6 (Sept. 2006), https://www2.ed.gov/about/bdscomm/list/hiedfuture/reports/pre-pub-report.pdf [https://perma.cc/3QPB-7JQF]. *But see* Doug Lederman, *College Isn't Worth a Million Dollars*, INSIDE HIGHER ED (Apr. 7, 2008), https://www.insidehighered.com/news/2008/04/07/miller [https://perma.cc/J5XD-E9WT].

parents did after leaving school; nor does it explain the role that debt-financed higher education plays in the widening wealth gap.[72]

The college wage premium may seem pronounced and persuasive to an economist, but it is meaningless to millions of today's college graduates. The notion that "other people have it worse" offers little solace when far too many of the borrowers who have done everything asked of them still struggle to afford a down payment, start a business, or save for retirement. When "other people have it worse" becomes the new foundation for the American Dream, America has failed an entire generation.

III. ADDING INSULT TO INJURY

It did not have to be this bad. In 2007, Congress created what is, in effect, an insurance policy for borrowers that assume the risk of an unaffordable higher education.[73] Through income-driven repayment ("IDR") borrowers could make payments based on their incomes, not their debt load.[74] With IDR, Congress promised that students need not worry about persistent economic distress after college as monthly payments would always be affordable because they would be based on how much a borrower earns.[75] Having put in place this insurance policy for borrowers who are unemployed or have very low incomes (in some cases, as low as

[72] *See supra* Part II.B. and C.

[73] *See* 20 U.S.C. § 1098e(b) (2018). Note that an Income-Contingent Repayment ("ICR") plan was introduced in 1993 as part of the Student Loan Reform Act, but was limited to a small set of Direct Loan borrowers and therefore was not widely utilized. As of March 31, 1997, 56,298 Direct Loan borrowers were enrolled in ICR. U.S. GOV'T ACCT. OFF., DIRECT STUDENT LOANS: ANALYSES OF BORROWERS' USE OF INCOME CONTINGENT REPAYMENT OPTION 2 (Aug. 1997), https://www.gao.gov/assets/230/224560.pdf [https://perma.cc/PX8Y-V2S6].

[74] *See* 20 U.S.C. § 1098e(b) (2018). Income-Based Repayment, Pay As You Earn Repayment, Revised Pay As You Earn Repayment, and Income-Contingent Repayment are collectively referred to as income-driven repayment plans. *See Income-Driven Plans*, U.S. DEP'T. EDUC., https://studentaid.ed.gov/sa/repay-loans/understand/plans/income-driven [https://perma.cc/Q6Z2-MH35] (last visited Apr. 10, 2018).

[75] In 2007, income-based repayment was introduced as part of the College Cost Reduction and Access Act. H.R. 2669, 110th Cong. (2007). *See generally Higher Education, Higher Cost and Higher Debt: Paying For College in the Future: Hearing on Examining College Affordability, Focusing on Higher Education, Higher Costs and Higher Student Debt, and the Higher Education Act and Its Amendments Before the S. Comm. on Health, Education, Labor, and Pensions*, 110th Cong. 1 (2007), *available at* https://www.gpo.gov/fdsys/pkg/CHRG-110shrg33516/html/CHRG-110shrg33516.htm [https://perma.cc/96LC-298Z] (discussing how efforts to reduce the burden of student loan payments supports higher education policy goals). *See also* Thompson & Bricker, *supra* note 24 (finding "that student loans are correlated with financial distress in the 2007–09 SCF panel and families that hold student loans are more likely to transition to financial distress between 2007 and 2009. Families with student loans in 2007 were about 4 percentage points more likely to be 60 days late paying bills and about 5 percentage points more likely to be denied credit in 2009.").

$0 per month), the IDR framework should also translate to, in the words of former Department of Education Under Secretary Ted Mitchell, a "zero default rate."[76]

Of course, IDR is not the perfect solution to the most alarming spillover effects of student debt, including effects on wealth inequality, retirement security, and homeownership; but it does have the potential to serve as a powerful protection against both short term and long term financial shocks, acting as a critical bulwark against rising student loan defaults.[77]

This is a great idea—in theory. But as the Consumer Financial Protection Bureau (CFPB) has frequently highlighted, the nation's outdated and dysfunctional student loan system was never up to the task of delivering on this promise.[78] When

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[76] TED MITCHELL, U.S. DEP'T EDUC., OPENING ADDRESS AT THE CFPB FIELD HEARING ON STUDENT DEBT (May 14, 2015), https://www.consumerfinance.gov/about-us/blog/live-from-milwaukee/ [https://perma.cc/4YFT-RB6N].

[77] Student loan borrowers enrolled in the most generous IDR plan have delinquency rates seven times lower than borrowers enrolled in standard repayment. *See* CFPB, STUDENT LOAN SERVICING: ANALYSIS OF PUBLIC INPUT AND RECOMMENDATIONS FOR REFORM 22–23 (2015), http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf [https://perma.cc/KT6P-YE2B]; *see also* Holger M. Mueller & Constantine Yannelis, The Rise in Student Loan Defaults in the Great Recession 1 (Nov. 2017) (unpublished manuscript) ("The Income Based Repayment (IBR) program introduced by the federal government in the wake of the Great Recession reduced both student loan defaults and their sensitivity to home price fluctuations, thus providing student loan borrowers with valuable insurance against negative shocks."); Daniel Herbst, Liquidity and Insurance in Student Loan Contracts: Estimating the Effects of Income-Driven Repayment on Default and Consumption 1 (Jan. 31, 2018) (unpublished manuscript), *available at* https://drive.google.com/file/d/1A-gq_LIqffY6r2gDTcUK9-Y3ZV8Go6SU/view [https://perma.cc/2ALA-BK9H]; Mark Huelsman, *When It Comes to Student Debt, It's Really a Matter of Wealth*, WASH. POST (May 16, 2018), https://www.washingtonpost.com/news/grade-point/wp/2018/05/16/when-it-comes-to-student-debt-its-really-a-matter-of-wealth/?utm_term=.664d34569a94.

[78] *See* CFPB, STUDENT LOAN SERVICING, *supra* note 77, at 11–12 ("The ability to assess the overall quality of student loan servicing is limited by lack of data, particularly for loans not held by the federal government; however, existing evidence . . . suggests that current servicing practices may not meet the needs of borrowers or loan holders, including, in the case of federal loans held by the Department of Education, the needs of taxpayers."); SETH FROTMAN, CFPB, REMARKS AT THE JUDGE ADVOCATE GENERAL'S LEGAL CENTER AND SCHOOL 4 (Oct. 17, 2017), *available at* https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201710_cfpb_Frotman-Remarks-JAG-School.pdf [https://perma.cc/JM4L-S4EE] ("Servicemembers with student loans continue to suffer from outdated policies and servicing lapses that can prevent them from accessing the benefits and protections they are promised under federal law."); CFPB, ANNUAL REPORT OF THE CFPB STUDENT LOAN OMBUDSMAN 4 (2016), *available at* https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/102016_cfpb_Transmittal_DFA_1035_Student_Loan_Ombudsman_Report.pdf [https://perma.cc/2PTN-T9HK] (observing "that legacy requirements in the rehabilitation program place increased burden on borrowers, increase costs for taxpayers, create unnecessary barriers to repayment success, and fail to consider the significant changes that have occurred in higher education finance market in the past decade"); *see also* CFPB, ANNUAL REPORT OF THE CFPB STUDENT LOAN OMBUDSMAN 21–22 (2015), *available at* https://www.consumerfinance.gov/data-research/research-reports/annual-report-of-the-

there are still eight million defaults a decade after laying out the supposed zero-default-rate framework, this is simply another broken promise.[79] And when another three million people are approaching default and there has been no real action to prevent it, these borrowers know they were right.[80] And for every borrower who is struggling to keep up, there are others trying to get ahead but who are knocked off track due to roadblocks and obstacles that can add thousands of dollars in additional debt and years of needless student loan payments.[81]

When policymakers made the choice to drive tens of millions of new students into debt, they should have seen this coming. Compared to other major classes of consumer debt, student loans are subject to less government oversight, offer fewer affirmative consumer protections, and government rarely holds market participants

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cfpb-student-loan-ombudsman-2015/ [https://perma.cc/5TYT-X6H3] ("The identity of the student loan servicer assigned to service a borrower's loan may impact future loan performance. A study released by the Association of Community Colleges Trustees (ACCT) examined the performance of a cohort of federal loan borrowers attending community colleges in Iowa using administrative loan performance data provided by school financial aid offices. This analysis revealed that default rates for seemingly-similar borrowers varied substantially depending on the identity of a borrower's student loan servicer. In one case, nearly three quarters (73.1 percent) of all borrowers assigned to one specific servicer ended up in default. ACCT also observed that, of the six other servicers who handled loans for 1,500 borrowers or more, the share of borrowers who defaulted ranged from approximately 5 percent to more than 20 percent.").

[79] *See* CITI GPS: GLOBAL PERSPECTIVES & SOLUTIONS, EDUCATION: BACK TO BASICS 81 (2017), https://www.privatebank.citibank.com/ivc/docs/CitiGPS_Education_Backt_Basics.pdf [https://perma.cc/7GB4-82ZB] ("Default and 90-day delinquency rates are about 11%. To some this might appear eerily reminiscent of the mortgage crisis where delinquency rates had peaked at 11.5% in 2010.").

[80] *See* FED. STUDENT AID, U.S. DEP'T. EDUC., DIRECT LOAN PORTFOLIO BY DELINQUENCY STATUS 1 (2017), *available at* https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/DLPortfoliobyDelinquencyStatus.xls [https://perma.cc/C6R6-UVQU]; *see also* CFPB, ANNUAL REPORT OF THE CFPB STUDENT LOAN OMBUDSMAN (2016), *supra* note 78, at 4 (finding that one in three student loan borrowers who cure a default through rehabilitation is delinquent within 60 days).

[81] *See, e.g.*, CFPB, MIDYEAR UPDATE ON STUDENT LOAN COMPLAINTS 19 (2016), *available at* https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201608_cfpb_StudentLoanOmbudsmanMidYearReport.pdf [https://perma.cc/2PCZ-PTFG] (discussing how servicing breakdowns related to the recertification of income-driven repayment plans may "result in the capitalization of unpaid interest charges, potentially increasing loan balances by hundreds or even thousands of dollars"); CFPB, STAYING ON TRACK WHILE GIVING BACK (2017), *available at* http://files.consumerfinance.gov/f/documents/201706_cfpb_PSLF-midyear-report.pdf [https://perma.cc/LYQ5-FK3S] (explaining how servicing "delays inhibit [borrowers'] ability to make qualified payments driven by their income, or borrowers can end up making dozens of unnecessary payments, costing them thousands of dollars that they might otherwise never have had to pay").

to account for their most egregious practices.[82] As a result, borrowers routinely fail to benefit from the protections that are in place.[83] The consequences for borrowers are greater than merely the lost protection of IDR; borrowers encounter breakdowns starting from the day a borrower receives her first bill and continuing until the day she pays off her loans.[84] These breakdowns are not mere annoyances that can be greeted with a collective shrug. This is not like calling the cable company.

By October 2017, the CFPB had received over sixty thousand complaints from student loan borrowers.[85] That is more than one new complaint each hour, twenty-four hours per day, seven days per week since the CFPB started accepting student

[82] *See* Letter from the Nat'l Consumer Law Cent. to the CFPB 7 (July 13, 2015), *available at* https://www.regulations.gov/document?D=CFPB-2015-0021-6840 [https://perma.cc/FND4-TZMD] ("There are few laws specifically governing student loan servicer conduct for either federal or private loans. The absence of clear borrower protections contrasts with other consumer credit areas such as credit cards and mortgages."); Letter from Consumers Union to Monica Jackson, Office of the Exec. Sec'y, CFPB (July 13, 2015), *available at* https://www.regulations.gov/document?D=CFPB-2015-0021-0975 [https://perma.cc/Q2XL-6K5F] ("[F]or people who took out loans to get an education, there are fewer protections and the system is often tough to navigate—as a result, these borrowers may be at the mercy of their servicers.").

[83] *See* FROTMAN, *supra* note 78, at 7 ("The Bureau has heard from tens of thousands of borrowers who are struggling to keep up with their payments because they are unable to access essential consumer protections. It's clear that the status quo isn't working."); *see also* U.S. GOV. ACCOUNTABILITY OFFICE, FEDERAL STUDENT LOANS: EDUCATION COULD DO MORE TO HELP ENSURE BORROWERS ARE AWARE OF REPAYMENT AND FORGIVENESS OPTIONS 13 n.21 (2015), *available at* http://www.gao.gov/products/GAO-15-663 [https://perma.cc/V8SL-L6RT] (finding that 70 percent of borrowers in default had income that would entitle them to a reduced monthly payment under an income-driven repayment plan); Andrew Kreighbaum, *New Guidelines on Loan Servicing*, INSIDE HIGHER ED (July 21, 2016), https://www.insidehighered.com/news/2016/07/21/education-dept-spells-out-new-student-borrower-protections [https://perma.cc/H5BE-D5WF] (quoting Secretary of Education John King as stating "Every borrower deserves access to the right information and resources to manage and ultimately pay off their debt . . . . When loan servicers make mistakes or don't provide the right information at the right time, borrowers pay the price").

[84] *See, e.g.*, CFPB, STUDENT LOAN SERVICING, *supra* note 77, at 103–32 (documenting widespread servicing problems at all stages of student loan repayment); CFPB, STUDENT DATA & STUDENT DEBT 1 (2017), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201702_cfpb_Enrollment-Status-Student-Loan-Report.pdf [https://perma.cc/DF47-5MKE] (documenting how enrollment status errors may incorrectly trigger early repayment for student loan borrowers); CFPB, MID-YEAR UPDATE ON STUDENT LOAN COMPLAINTS 3 (2015), http://files.consumerfinance.gov/f/201506_cfpb_mid-year-update-on-student-loan-complaints.pdf [https://perma.cc/44XQ-V35M] ("Complaints received by the CFPB indicate that borrowers are having trouble obtaining accurate payoff statements in order to refinance, as well as experiencing payment processing errors and delays.").

[85] *See* CFPB, ANNUAL REPORT OF THE CFPB STUDENT LOAN OMBUDSMAN 2 (2017), *available at* http://files.consumerfinance.gov/f/documents/cfpb_annual-report_student-loan-ombudsman_2017.pdf [https://perma.cc/F4ZA-UPSB] (noting that, as of August 31, 2017, the CPFB had received 50,700 student loan complaints and 9,800 debt collection complaints from student loan borrowers).

loan complaints in 2012.[86] Driven by these complaints, the CFPB and other federal and state law enforcement officials allege rampant illegal practices across the student loan market that are hurting student loan borrowers at every stage of repayment.[87]

These enforcement actions offer evidence that, too often, on top of the historic debt that was pushed onto an entire generation, the process of repaying a student loan routinely adds insult to injury. After saddling borrowers with a mountain of student debt, they are then subject to harmful and illegal industry practices that drive them to default or lead to thousands of dollars in unnecessary costs.[88] Collectively,

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[86] *See* CFPB, MONTHLY COMPLAINT REPORT VOL. 22, 4 n.5 (2017), *available at* https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201704_cfpb_Monthly-Complaint-Report.pdf [https://perma.cc/G5YC-MQH3].

[87] *See, e.g.*, *Nearly 78,000 Service Members to Begin Receiving $60 Million Under Department of Justice Settlement with Navient for Overcharging on Student Loans*, U.S. DEP'T JUST. (May 28, 2015), http://www.justice.gov/opa/pr/nearly-78000-service-members-begin-receiving-60-million-under-department-justice-settlement [https://perma.cc/UQ57-39RH]; *FDIC Announces Settlement with Sallie Mae for Unfair and Deceptive Practices and Violations of the Servicemembers Civil Relief Act*, FDIC (May 13, 2014), http://www.fdic.gov/news/news/press/2014/pr14033.html [https://perma.cc/VH2X-JUHF]; *CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment*, CFPB (Jan. 18, 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-nations-largest-student-loan-company-navient-failing-borrowers-every-stage-repayment [https://perma.cc/AAX8-SWA7] [hereinafter *CFPB Sues Navient*]; *CFPB Takes Action Against Wells Fargo for Illegal Student Loan Servicing Practices*, CFPB (Aug. 22, 2016), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-wells-fargo-illegal-student-loan-servicing-practices/ [https://perma.cc/DAC5-C539]; *CFPB Orders Discover Bank to Pay $18.5 Million for Illegal Student Loan Servicing Practices*, CFPB (July 22, 2015), http://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-discover-bank-to-pay-18-5-million-for-illegal-student-loan-servicing-practices [https://perma.cc/9MMC-RHU5] [hereinafter *CFPB Orders Discover Bank to Pay*]; *AG Ferguson Files Suit Against Sallie Mae Offshoot Navient Corp., Announces Student Loan Bill of Rights Legislation*, WASH. STATE OFF. OF THE ATT'Y GEN. (Jan. 18, 2017), http://www.atg.wa.gov/news/news-releases/ag-ferguson-files-suit-against-sallie-mae-offshoot-navient-corp-announces-student [https://perma.cc/6RBQ-T3DS]; *Attorney General Madigan Sues Navient and Sallie Mae for Rampant Student Loan Abuses*, ILL. ATT'Y GEN. (Jan. 18, 2017), http://www.illinoisattorneygeneral.gov/pressroom/2017_01/20170118.html [https://perma.cc/XU5G-GG44]; *AG Healy Sues to Protect Public Service Loan Forgiveness*, ATT'Y GEN. MASS. (Aug. 23, 2017), http://www.mass.gov/ago/news-and-updates/press-releases/2017/2017-08-23-pheaa-lawsuit.html [https://perma.cc/ANB8-5UYQ]; *Attorney General Shapiro Sues Nation's Largest Student Loan Company for Widespread Abuses*, OFFICE OF ATT'Y GEN. JOSH SHAPIRO (Oct. 5, 2017), https://www.attorneygeneral.gov/Media_and_Resources/Press_Releases/Press_Release/?pid=4042 [https://perma.cc/WR2W-G8NC]; *CFPB Takes Action Against Citibank for Student Loan Servicing Failures that Harmed Borrowers*, CFPB (Nov. 21, 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-citibank-student-loan-servicing-failures-harmed-borrowers/ [https://perma.cc/D9JV-ZMT8].

[88] *See, e.g.*, *CFPB Sues Navient*, *supra* note 87 ("From January 2010 to March 2015, the company added up to $4 billion in interest charges to the principal balances of borrowers

this adds billions of dollars of additional student debt to household balance sheets, thereby creating a further drag on the economy and damaging the financial future for millions of people.

Over the last six years, the CFPB has shown a widening disconnect between the protections touted in press releases and the reality forty-four million people face on the ground.[89] Widespread harmful and illegal practices, misaligned economic incentives, and antiquated or ill-considered public policies coalesce in ways that

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who were enrolled in multiple, consecutive forbearances. The Bureau believes that a large portion of these charges could have been avoided had Navient followed the law."); *CFPB Projects that One-in-Three Rehabilitated Student Loan Borrowers Will Re-default Within Two Years*, CFPB (Oct. 17, 2016), https://www.consumerfinance.gov/about-us/newsroom/cfpb-projects-one-three-rehabilitated-student-loan-borrowers-will-re-default-within-two-years/ [https://perma.cc/22SR-JWGJ] (stating that program implementation failures may cost consumers $125 million in unnecessary interest charges alone); *CFPB Orders Discover Bank to Pay*, *supra* note 87 ("Today's action demonstrates how Discover failed at providing the most basic functions of adequate student loan servicing for a portion of the loans that were transferred from Citibank. Thousands of consumers encountered problems as soon as their loans became due and Discover gave them account statements that overstated their minimum payment. Discover denied consumers information that they would have needed to obtain tax benefits and called consumers' mobile phones at inappropriate times to contact them about their debts.").

89 *See, e.g.*, Navient Statement on Apr. 10, 2017 Article, *available at* https://news.navient.com/static-files/7e0e7414-45af-4979-80da-d9f5ef40ee7f; *but see* CFPB, *CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment* (Jan. 18, 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-nations-largest-student-loan-company-navient-failing-borrowers-every-stage-repayment [https://perma.cc/AAX8-SWA7]; CFPB, *CFPB Takes Action Against Wells Fargo for Illegal Student Loan Servicing Practices* (Aug. 22, 2016), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-wells-fargo-illegal-student-loan-servicing-practices/ [https://perma.cc/M962-PS89]; CFPB, *CFPB Orders Discover Bank to Pay $18.5 Million for Illegal Student Loan Servicing Practices* (July 22, 2015), http://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-discover-bank-to-pay-18-5-million-for-illegal-student-loan-servicing-practices [https://perma.cc/9MMC-RHU5]; CFPB, SUPERVISORY HIGHLIGHTS: ISSUE 13, FALL 2016 (Oct. 2016), https://www.consumerfinance.gov/documents/1389/Supervisory_Highlights_Issue_13__Final_10.31.16.pdf [https://perma.cc/7296-G7UC]; CFPB, SUPERVISORY HIGHLIGHTS: ISSUE 15, SPRING 2017 (Apr. 2017), https://www.consumerfinance.gov/documents/4608/201704_cfpb_Supervisory-Highlights_Issue-15.pdf [https://perma.cc/94W4-8XAN]; CFPB, SUPERVISORY HIGHLIGHTS: ISSUE 10, WINTER 2016 (Mar. 2016), http://files.consumerfinance.gov/f/201603_cfpb_supervisory-highlights.pdf [https://perma.cc/5XKP-KR5F]; CFPB, SUPERVISORY HIGHLIGHTS: ISSUE 9, FALL 2015 (2015), http://files.consumerfinance.gov/f/201510_cfpb_supervisory-highlights.pdf [https://perma.cc/Q5QM-YTWS]; CFPB, 2015 ANNUAL REPORT OF THE CFPB STUDENT LOAN OMBUDSMAN (Oct. 2015) https://www.consumerfinance.gov/data-research/research-reports/annual-report-of-the-cfpb-student-loan-ombudsman-2015/ [https://perma.cc/79SN-MR9C]; CFPB, 2016 ANNUAL REPORT OF THE CFPB STUDENT LOAN OMBUDSMAN (Oct. 2016), https://www.consumerfinance.gov/data-research/research-reports/2016-annual-report-cfpb-student-loan-ombudsman [https://perma.cc/79SN-MR9C].

deny payment relief to struggling student loan borrowers.[90] Furthermore, when struggling borrowers fall victim to a rigged system, they are treated like tax cheats and dead beat parents as they are driven to poverty through garnishment and offsets.[91] With this in mind, two conclusions are inevitable.

A. Policymakers, Regulators, and Law Enforcement Officials Neglect the Student Loan Market at Borrowers' Peril

Simply because the word "student" comes before "loan," policymakers routinely treat these consumers like second class citizens. As previously mentioned, when compared to other consumer financial products like credit cards or mortgages, the companies paid to manage the student loan repayment process are subject to less oversight and consumers are entitled to fewer affirmative protections.[92] Student loan

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[90] *See, e.g.*, Susan Dynarski et al., *An Economist's Perspective on Student Loans in the United States*, ECON. STUD. AT BROOKINGS (2014), http://www.brookings.edu/~/media/research/files/papers/2014/09/economist_perspective_student_loans_dynarski/economist_perspective_student_loans_dynarski.pdf [https://perma.cc/SZS6-343D] ("Here we have a classic 'principal-agent' problem, with the agent (the student loan servicers) having little incentive to act in the best interests of the principal (the federal government). Student loan servicers don't have much incentive to prevent borrowers from defaulting, because the servicers either don't own the underlying loans or, if they do, face few costs if a borrower defaults. Restructuring a borrower's payments and preventing default requires effort, and the beneficiary of this effort is the government and the student—not the servicer."); *see also* Molly Hensley-Clancy, *How America's Student Loan Giant Dropped the Ball*, BUZZFEED (Feb. 13, 2017, 10:46 AM), https://www.buzzfeed.com/mollyhensleyclancy/how-things-went-wrong-at-americas-student-loan-giant?utm_term=.ruBN1D2LzX#.gyXGeQq30w [https://perma.cc/7D76-J4AJ] ("At Navient's call centers . . . [a Navient employee] said . . . [d]uring March Madness, her managers created a bracket on the wall and had agents compete against one another to collect payments and resolve accounts.").

[91] *See, e.g.*, U.S. GOV'T ACCOUNTABILITY OFF., GAO-17-45, SOCIAL SECURITY OFFSETS: IMPROVEMENTS TO PROGRAM DESIGN COULD BETTER ASSIST OLDER STUDENT LOAN BORROWERS WITH OBTAINING PERMITTED RELIEF (2016), http://www.gao.gov/assets/690/681722.pdf [https://perma.cc/W7AC-H9C3] (showing that 47 percent of student loan borrowers subject to Social Security offsets have a monthly benefit that is below the poverty line and is further reduced by the offset. For 16 percent of borrowers, their Social Security benefits are above the poverty line but the offset reduces the benefit below the poverty line); CFPB, SNAPSHOT OF OLDER CONSUMERS AND STUDENT LOAN DEBT (Jan. 2017), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201701_cfpb_OA-Student-Loan-Snapshot.pdf [https://perma.cc/284M-RNY5] (detailing the financial strain benefits offsets have on older student loan borrowers); CFPB, 2016 ANNUAL REPORT OF THE CFPB STUDENT LOAN OMBUDSMAN, *supra* note 89 (documenting how servicing breakdowns can lead to "unnecessary offset of tax returns garnishment of wages or certain [S]ocial [S]ecurity benefits, and prolonged ineligibility for federal student aid.").

[92] *See, e.g.*, Letter from the National Consumer Law Center to the Consumer Financial Protection Bureau (July 13, 2015), https://www.regulations.gov/document?D=CFPB-2015-0021-6840 [https://perma.cc/FND4-TZMD] ("There are few laws specifically governing student loan servicer conduct for either federal or private loans. The absence of clear

borrowers routinely face breakdowns and harmful practices that would simply never be permitted in other markets.[93] And a series of recent actions by the U.S. Department of Education purport to further shield the largest student loan companies from scrutiny by regulators and law enforcement officials.[94]

B. The Department of Education Cannot Self-Regulate

If policymakers seek to accomplish any meaningful and lasting reform, they must overcome the misguided notion that one of the nation's largest creditors, the Department of Education, should be relied upon to self-regulate. Too many people

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borrower protections contrasts with other consumer credit areas such as credit cards and mortgages."); Letter from Suzanne Martindale, Staff Attorney, Consumers Union, to Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau (July 13, 2015), https://www.regulations.gov/document?D=CFPB-2015-0021-0975 [https://perma.cc/2J4C-8KYE] ("[F]or people who took out loans to get an education, there are fewer protections and the system is often tough to navigate—as a result, these borrowers may be at the mercy of their servicers.").

[93] For example, the CFPB has noted the issues student loan borrowers face when their loans are transferred to a new servicer. In 2015, the CFPB released data from one large student loan servicer showing that:

> Out of the more than 2.5 million accounts transferred, the company encountered problems with more than one out of five borrower accounts. These problems largely related to the transfer of records and other basic account information. . . . The cause of many of these problems may have originated with servicing errors made by the transferor servicer. Issues identified by this company include: Incorrect balance information leading to a change in monthly payment . . . ; incorrect balance information that would have produced balloon payments . . . ; multiple consecutive forbearances prior to transfer . . . ; [and] trailing and missing payments.

CFPB, ANNUAL REPORT OF THE CFPB STUDENT LOAN OMBUDSMAN (Sept. 2015), http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf [https://perma.cc/M4VJ-4UT2]; *cf.* 12 U.S.C. § 2605(b)–(e) (2018) (defining mortgage servicer obligations in the event of a servicing transfer); 12 C.F.R. § 1024.33 (regulations for mortgage servicing transfers).

[94] *See* Letter from Kathleen Smith, Acting Asst. Secretary, Office of Postsecondary Education, to The Honorable Richard Cordray, Director, Consumer Financial Protection Bureau (Aug. 31, 2017), https://edworkforce.house.gov/uploadedfiles/2017-09-01_signed_letter_to_cfpb.pdf [https://perma.cc/7UP5-9QEL] (revoking an information sharing agreement related to consumer complaints); U.S. DEP'T OF EDUCATION, FEDERAL PREEMPTION AND STATE REGULATION OF THE DEPARTMENT OF EDUCATION'S FEDERAL STUDENT LOAN PROGRAMS AND FEDERAL STUDENT LOAN SERVICERS, 83 Fed. Reg. 10619 (Mar. 12, 2018), https://www.federalregister.gov/documents/2018/03/12/2018-04924/federal-preemption-and-state-regulation-of-the-department-of-educations-federal-student-loan; U.S. Department of Education Statement of Interest, Massachusetts v. Pennsylvania Higher Education Assistance Authority (PHEAA), No. 1784CV02682 (2018).

are too comfortable only looking to the Department of Education to fix the consumer debt market it dominates. The Department of Education is responsible for contracting with private companies to originate and service the more than $1 trillion in consumer debt it owns.[95] In no other market and with no other creditor would policymakers permit self-policing or reform via contract, rather than imposing independent statutory and regulatory requirements that are transparent and enforceable.[96]

As recent events have illustrated, self-regulation by the Department of Education leaves student loan borrowers exposed and vulnerable to the political priorities of each new administration.[97] Where sympathetic administrations prioritized consumer protection, reform that was implemented through guidance and contracts fail to endure.[98] And where one administration may prioritize consumer protection, the next may seek to advance a different goal.[99] But what ties all

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[95] *See Loan Servicing Contracts*, U.S. DEPT. OF EDUC. (last visited Apr. 10, 2018), https://studentaid.ed.gov/sa/about/data-center/business-info/contracts/loan-servicing [https://perma.cc/4WCB-PSVV].

[96] *See also* U.S. GOV'T. ACCOUNTABILITY OFF., GAO-16-196T, FEDERAL STUDENT LOANS: KEY WEAKNESSES LIMIT EDUCATION'S MANAGEMENT OF CONTRACTORS (2015), https://www.gao.gov/assets/680/673725.pdf [https://perma.cc/75MK-6DFN]. For a historical perspective of the Department of Education's oversight in a predominately FFELP loan market, see *Statement of Representative George Miller Before House Committee on Education and Labor* (May 10, 2007), https://www.gpo.gov/fdsys/pkg/CHRG-110hhrg34989/html/CHRG-110hhrg34989.htm [https://perma.cc/HGZ6-U36P] ("[T]he federal student loan programs must be managed in the best interests of students, parents and taxpayers. . . . I agree with New York Attorney General Andrew Cuomo that testified before this committee last month when he said that the department [of Education] had been 'asleep at the switch' when it comes to overseeing the federal student loan programs. In fact, Mr. Cuomo might have been too polite . . . . Over the last several months, New York Attorney General Cuomo has led the way in the investigations into the student loan industry, and many other state attorneys general have begun their own investigations. But the Department of Education has been conspicuously missing from action.").

[97] *See supra* note 96 and accompanying text.

[98] *See* Letter from Betsy DeVos, Secretary, U.S. Dept. of Educ., to James W. Runcie, Chief Operating Officer, Federal Student Aid (Apr. 11, 2017), https://www2.ed.gov/documents/press-releases/student-loan-servicer-recompete.pdf [https://perma.cc/Z825-EHHT] (withdrawing the previous administration's memorandum detailing policy direction for federal student loan servicing); *see also* Letter from Ted Mitchell, Under Secretary, U.S. Dept. of Educ., to James Runcie, Chief Operating Officer, Federal Student Aid (July 20, 2016), https://www2.ed.gov/documents/press-releases/loan-servicing-policy-memo.pdf [https://perma.cc/W5ZL-A29F]; *supra* note 96.

[99] On March 12, 2018, Education Secretary Betsy DeVos issued a new "interpretation" of the Higher Education Act, purporting to preclude oversight by states over the servicing of certain types of student loans. U.S. DEP'T OF EDUCATION, FEDERAL PREEMPTION AND STATE REGULATION OF THE DEPARTMENT OF EDUCATION'S FEDERAL STUDENT LOAN PROGRAMS AND FEDERAL STUDENT LOAN SERVICERS. Subsequent to the release of this statement, the student loan industry has relied on this interpretation to support legal claims that its practices are, in effect, above the law. *See* Student Loan Servicing Alliance (SLSA) v. Taylor et al.,

administrations together is the desire to manage a $1 trillion portfolio at the lowest cost possible in order to invest in other priorities—pitting other higher education programs against the investment necessary to deliver on the baseline protections promised to borrowers.

Industry takes its lead from these priorities.[100] Unprecedented efforts to deprioritize or deflect rigorous oversight by independent federal and state agencies risks leaving a $1 trillion blind spot in the heart of the nation's financial sector.[101] Student loan borrowers deserve better. If the student loan market continues down this path, it leaves the future of forty-four million people subject to the political winds and special interest groups who view the student debt crisis as an avenue to enrich themselves, openly touting that they have no responsibility to help student loan borrowers.[102]

IV. THE ROAD AHEAD

The task awaiting today's policymakers and researchers is, in some ways, more difficult than the previous crisis. The present problem is a quiet crisis. It is not driven by storefronts springing up on corners in vulnerable communities and peddling financial products that strip wealth from those least able to afford it. It does not feature families forced from their homes because they fell behind on a mortgage they could not afford. There are no abandoned houses to point to. Research now shows that a foreclosure harms more than just the individual family.[103] The ripple effect of

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No. 1:18-cv-00640 (D.D.C. filed Mar. 20, 2018); Pennsylvania Higher Education Assistance Authority (PHEAA) v. Perez et al., No. 1:18-cv-00770 (D.D.C. filed Apr. 4, 2018).

[100] *See, e.g.*, Letter from James P. Bergeron, President, Nat'l Council of Higher Educ. Resource, to Kathleen Smith, Acting Asst. Secretary for Postsecondary Education, U.S. Dept. of Educ., http://www.ncher.us/resource/resmgr/images/letters-testimony/2017/07-18-17_NCHER_Letter_to_ED_.pdf ("NCHER urges the Department to issue regulatory guidance that clearly states that federal student loan servicers and guaranty agencies are governed by the Department's rules and requirements and those of other federal agencies, and preempt state and local laws and actions that purport to regulate the activities of participants in the federal student loan programs, including federal contractors.").

[101] *See* FROTMAN, CFPB, PREPARED REMARKS, *supra* note 3; *see also* Letter from 20 State Attorneys General to The Honorable Betsy DeVos, U.S. Dept. of Educ. (Sep. 26, 2017), https://ag.ny.gov/press-release/ag-schneiderman-fellow-ags-betsy-devos-stop-undermining-critical-protections-student ("Congress did not exempt the $1.3 trillion federal student loan market from the CFPB's jurisdiction—or from the jurisdiction of any other law enforcement agencies.").

[102] *See* Defendant's Motion to Dismiss, CFPB v. Navient, No. 3:CV-17-00101-RDM, at 20–21 (M.D. Pa. 2017), *available at* https://news.navient.com/static-files/d95c10ce-11a3-41b6-8ea7-49a83a41cf04 [https://perma.cc/AY2D-ULB6] ("[T]here is no expectation that the servicer will 'act in the interest of the consumer.'").

[103] *See* G. THOMAS KINGSLEY ET AL., THE URBAN INSTITUTE, THE IMPACTS OF FORECLOSURES ON FAMILIES AND COMMUNITIES (2009), https://www.urban.org/sites/default/files/publication/30426/411909-The-Impacts-of-Foreclosures-on-Families-and-Communities.PDF [https://perma.cc/UJ9N-GWTN]; James H. Carr et al., *The Foreclosure*

a foreclosure extends across the community.[104] However, to a casual observer, the signs of a family's own internal student debt crisis are less visible than the empty house at the end of the block that used to belong to a neighbor and now belongs to a bank. But simply because a family's crisis is not as readily apparent, does not mean that the effects on communities are any less significant or severe. The burden of student debt can ravage communities in a myriad of ways.

For example, consider a borrower devoting so much of his paycheck to his monthly student loan payment that he never puts enough away to save for a home. He is then pushed into an often punishing rental market that further limits the options available to him and his family, such as the school district in which they can live, thus perpetuating a cycle of economic and geographic segregation. Consider also one of the several towns in rural America where residents lost their jobs after a major employer—a factory, a mine, or a lumber mill—was shuttered. These residents go back to school to learn new skills, take on debt, fall behind on their debt despite protections that should prevent this, and now the town is doubly harmed.

Consider also the thousands of borrowers who took on debt so they could go to school to learn the skills necessary for vital professions. These borrowers depend on their credit to get or keep a job because in many states, a credit check can still be used as a precondition for nearly any employment.[105] Furthermore, thousands of nurses, teachers, EMTs, and other public servants rely on their credit to maintain their professional licenses.[106] And yet, all across the country, these borrowers fall behind on a student loan and become unable to get or keep the job that keeps a roof over their head.[107]

Crisis and Its Impact on Communities of Color: Research and Solutions, NAT. COMMUNITY REINVESTMENT COALITION (Sept. 2011), https://schar.gmu.edu/sites/default/files/faculty-staff/cv/ncrc_foreclosurewhitepaper_2011.pdf [https://perma.cc/AG93-TF2P].

[104] *See* KINGSLEY ET AL., *supra* note 103; Carr, *supra* note 103; *see also* Brief of Nat'l Ass'n of Counties as *Amici* Curiae, Bank of America v. Miami, 137 S. Ct. 1296 (2016), *available at* http://static1.1.sqspcdn.com/static/f/624306/27284305/1476191781460/BOA_filed.pdf?token=HTNgFPT14MuaeHcz3ZoecAJw9W8%3D [https://perma.cc/HY6X-JY2X] (arguing that cities are uniquely harmed when banks engage in discriminatory lending practices that lead to foreclosures).

[105] *See* AMY TRAUB, DEMOS, DISCREDITED: HOW EMPLOYMENT CREDIT CHECKS KEEP QUALIFIED WORKERS OUT OF A JOB (2013), http://www.demos.org/sites/default/files/publications/Discredited-Demos.pdf [https://perma.cc/99FJ-UUSD] (noting that as of February 2013, only 8 states have passed legislation that restrict employment discrimination based on credit checks).

[106] *See* Jessica Silver-Greenberg et al., *When Unpaid Student Loan Bills Mean You Can No Longer Work*, N.Y. TIMES (Nov. 18, 2017), https://www.nytimes.com/2017/11/18/business/student-loans-licenses.html [https://perma.cc/QT5S-E2NJ]; JOBS WITH JUSTICE, STATE LAWS AND STATUTES THAT SUSPEND PROFESSIONAL LICENSES AND CERTIFICATES (2014), http://www.jwj.org/wp-content/uploads/2015/02/State-Laws-and-Statutes-That-Suspend-Professional-Licenses-and-Certificates.pdf [https://perma.cc/2R9H-38QB].

[107] *See* Silver-Greenberg, *supra* note 106.

A growing body of evidence suggests that millions of Americans are experiencing crises exactly like these.[108] Individual lives are disrupted; families become buried under the financial consequences of unmanageable student debt; and this devastation ripples across their communities. The stakes are high and the consequences are enormous for neighborhoods, communities, states, and the nation—all driven by a cycle dependent on the debt that flows through this broken system and spurred on by the tired assumptions that set the country down this path.

So, what can researchers and policymakers do to end the student debt crisis? The national conversation is starting to incorporate exciting and far reaching proposals for how actors at all levels of the public or the private sector can help new borrowers avoid the consequences of student debt.[109] This is a laudable and

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[108] *See, e.g.*, William Elliott III, *New Report: Are Student Loans the Best We Can Do?*, NEW AM. (Sept. 9, 2014), https://www.newamerica.org/asset-building/the-ladder/new-report-are-student-loans-the-best-we-can-do/ [https://perma.cc/RR38-Q88U] ("[A] growing body of research is beginning to reveal that student loans, large and small, have negative effects on far too many potential students' college preparation, the decision to enroll in college, which college to select, whether to stay and complete college, which job to take after college, whether and when to marry, when they have kids, the amount of overall financial stress they experience, whether to buy a home, and whether, when, and how much they save for retirement."); *Remarks of Secretary Lew Before the Financial Literacy Education Commission* (Oct. 2013), http://www.treasury.gov/press-center/press-releases/Pages/jl2191.aspx [https://perma.cc/R5TB-6H3H] (Secretary of the Treasury Jacob Lew remarked that student debt is "hampering our economy" across multiple sectors of society); Richard Fry, *Young Adults, Student Debt and Economic Well-Being*, PEW RES. CTR. (May 14, 2014), http://www.pewsocialtrends.org/2014/05/14/young-adults-student-debt-and-economic-well-being/ [https://perma.cc/AME2-BVZ9] ("Research also shows a troubling connection between higher debt burdens and other economic challenges like material or health care hardship. As student loan borrowers enter repayment, they are less likely to have emergency savings or save for retirement. One study shows that households headed by a young, college-educated person without student debt have seven times the typical net worth as a similar household with student debt."); *see also* Phyliss Korki, *The Ripple Effects of Rising Student Debt*, N.Y. TIMES (May 24, 2014), https://www.nytimes.com/2014/05/25/business/the-ripple-effects-of-rising-student-debt.html?_r=0 [https://perma.cc/Q2NE-TEQY].

[109] *See, e.g.*, MARK HUELSMAN, DEMOS, THE CASE FOR DEBT-FREE PUBLIC COLLEGE (2015), http://www.demos.org/sites/default/files/publications/thecasefordebtfreecollege-_mark_.pdf [https://perma.cc/GA6X-6RQP] (detailing "why a return to a debt-free system of public universities and colleges would help revive the promise of affordable higher education regardless of one's family income"); Keith Ellison, *The Argument for Tuition-Free College*, AM. PROSPECT (Apr. 14, 2016), http://prospect.org/article/argument-tuition-free-college [https://perma.cc/2RJ2-AZ8Y] ("The first step in making college accessible again, and returning to an education system that serves every American, is addressing the student loan debt crisis. . . . Eliminating student loan debt is the first step, but it's not the last. Once we ensure that student loan debt isn't a barrier to going to college, we should reframe how we think about higher education."); Michael Dannenberg & Konrad Mugglestone, *The Promise of "Free" College*, DEMOCRACY JOURNAL (Nov. 14, 2017), https://democracyjournal.org/arguments/the-promise-of-free-college/ [https://perma.cc/Q3PW-EA8Y] (defining metrics to evaluate free college policy proposals); *see also* CFPB, INNOVATION

necessary endeavor, but it is wholly inadequate to address the crisis borrowers are facing today. Policymakers could make college free for everyone tomorrow, but that would do nothing to help the millions of Americans struggling today. For those borrowers with student debt, solutions that help the next guy not only miss the mark, but reinforce the notion that America is willing to write off this entire generation of borrowers. America cannot forget forty-four million people.

A. Strengthen Consumer Protections in the Student Loan Market

Strengthening consumer protections in this market, while not a cure-all, is a critical step. At a bare minimum, fixing the severely broken repayment system that fails more student loan borrowers each day is essential. When society asks people to take a risk and go to college, it must make sure that at the very least, they do not spend the next two decades of their lives navigating a minefield of illegal practices.

The student loan market can achieve this through robust oversight at the state and federal levels. For decades, state and federal regulators have overseen banks, credit unions, debt collectors, and other companies that provide financial products or services to consumers.[110] This oversight has been a key component of the post-recession strategy to ensure consumers are protected when things go wrong.[111] However, tellingly, until 2014, a student loan servicing industry responsible for handling over a trillion dollars in consumer debt was not subject to the same federal

HIGHLIGHTS: EMERGING STUDENT LOAN REPAYMENT ASSISTANCE (Aug. 16, 2017), https://www.consumerfinance.gov/data-research/research-reports/innovation-highlights-emerging-student-loan-repayment-assistance [https://perma.cc/BXK3-GBZZ] (discussing "the growing number of employer-based student loan repayment programs that can save eligible employees hundreds or thousands in loan principal and interests payments, but where barriers to innovation exist."); Nat'l Conference of State Legislatures, *Student Loan Debt* (Nov. 9, 2015), http://www.ncsl.org/research/education/student-loan-debt.aspx [https://perma.cc/X673-NUDB] (discussing a variety of state policy ideas for addressing student loan debt).

[110] By 1914, the 48 contiguous states had instituted state-based bank examinations, and by 1931, they had each established a specific agency for state-based bank regulation. BENJAMIN KLEBANER, AMERICAN COMMERCIAL BANKING: A HISTORY 99 (1990); *see also* CFPB, FEDERAL CONSUMER AGENCY TO PARTNER WITH STATE REGULATORS ON SUPERVISION OF PROVIDERS OF CONSUMER FINANCIAL PRODUCTS AND SERVICES, INCLUDING MORTGAGE LENDERS, PRIVATE STUDENT LENDERS AND PAYDAY LENDERS (Jan. 4, 2011), https://www.consumerfinance.gov/about-us/newsroom/consumer-agency-to-partner-with-state-regulators [https://perma.cc/HH63-GA3S].

[111] *See* Testimony of Steven L. Antonakes, Massachusetts Commissioner of Banks Before the House Financial Services Committee (Apr. 23, 2009), https://www.csbs.org/sites/default/files/2017-11/April232009StevenAntonakesTestimony.pdf [https://perma.cc/R7MP-BHDS] ("The states have long been recognized as leaders in responding to consumer protection issues with innovative solutions. . . . States have been leading the fight to reign in abusive lending through predatory lending laws, licensing and supervision of mortgage lenders and brokers, and through enforcement of consumer protection laws and standards of safety and soundness.").

accountability.[112] And today, only a handful of states have expanded their oversight to include these companies despite the central role they play in many citizens' economic lives.[113]

How does one explain to student loan borrowers all across the country that if they rent out a spare room on Airbnb, they likely need to obtain a license to do so, but the companies running the $1.5 trillion student loan system often operate in the shadows?[114] Student loan borrowers deserve a government that focuses on their problems by building out the critical framework necessary to ensure these companies are complying with the law.

Additionally, to ensure this oversight is effective, the student loan market also needs clear rules of the road, just like those in other consumer debt markets. When setting standards in this market, individual borrowers, law enforcement, and regulators must be given the tools to hold student loan companies accountable for meeting these standards.

B. Expanding Help for Struggling Borrowers

Second, the public and private sectors must think of innovative ways to help borrowers and their families reduce the financial burden caused by student debt. States have implemented a range of creative solutions that help borrowers in repayment, from programs like New York's "Get on Your Feet," to Maryland's "SmartBuy."[115] Programs like these are not only critical for student loan borrowers'

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[112] *See Defining Larger Participants of the Student Loan Servicing Market*, CFPB, https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/defining-larger-participants-student-loan-servicing-market/ [https://perma.cc/89R7-HRW2] (last visited Apr. 10, 2017).

[113] To date, Connecticut (Pub. Acts 15-200 and 15-162), the District of Columbia (L21-0214), California (AB 2251), Illinois (Public Act 100-0540), and Washington (SB 6029) have passed legislation for state-based student loan servicing oversight. At least a dozen other states have considered similar legislation, including Colorado, Maine, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, New Mexico, New York, Oregon, Rhode Island, and Virginia.

[114] *See What Legal and Regulatory Issues Should I Consider Before Hosting on Airbnb?*, AIRBNB, https://www.airbnb.com/help/article/376/what-legal-and-regulatory-issues-should-i-consider-before-hosting-on-airbnb [https://perma.cc/FV6H-WTDH] (last visited Apr. 10, 2017) ("In many cities, you must register, get a permit, or obtain a license before you list your property or accept guests.").

[115] *See* New York State, *Get on Your Feet Loan Forgiveness Program*, https://www.hesc.ny.gov/repay-your-loans/repayment-options-assistance/loan-forgiveness-cancellation-and-discharge/nys-get-on-your-feet-loan-forgiveness-program.html [https://perma.cc/W8YB-EV5H] (last visited Dec. 18, 2017) ("The NYS Get on Your Feet Loan Forgiveness Program provides up to 24 months of federal student loan debt relief to recent NYS college graduates who are participating in a federal income-driven repayment plan whose payments are generally capped at 10 percent of their discretionary income."); Maryland State, *Maryland SmartBuy*, http://mmp.maryland.gov/Pages/SmartBuy/default.

financial futures, but must be viewed as an extension of the national effort and obligation to continue righting the wrongs of the Great Recession. There is no silver bullet to fix a problem of this scale, but innovative policymaking, diligent oversight, and a government-wide crackdown on illegal student loan industry practices offer necessary first steps.

V. CONCLUSION

Society should not succumb to the wishes of those who have not only resigned themselves to this broken system, but have also endorsed the status quo as an acceptable new normal.[116] We must find ways to end the cycle of debt-fueled higher education and student loan borrower distress.

Individual groups and organizations across the country are taking notice of how student debt affects their members. Organizations ranging from the AARP and the National Association of Realtors, to the NAACP and the American Federation of Teachers, are continuing to increase their efforts to fix the student debt crisis.[117] This

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aspx [https://perma.cc/94KF-GFAB] (last visited Dec. 18, 2017) (offering student loan borrowers a state-funded home mortgage down-payment loan that can be used to pay off student loan debt); *see also* Kansas State, *Kansas State Loan Repayment Program*, http://www.kdheks.gov/olrh/FundLoan.html [https://perma.cc/47ZP-KXPP] (last visited May 7, 2018).

116 *See, e.g.*, Claudio Sanchez, *Is the Student Loan Crisis Fact or Fiction?*, NPR (July 28, 2016), https://www.npr.org/sections/ed/2016/07/28/487032643/is-the-student-loan-crisis-fact-or-fiction [https://perma.cc/DWB8-ENQP] ("Student debt is really creating a lot of opportunities for people. People wouldn't be able to go to college otherwise."); Joel A. Elvery, *Is There a Student Loan Crisis? Not in Payments*, FED. RES. BANK OF CLEV. (May 16, 2016), https://clevelandfed.org/~/media/content/newsroom%20and%20events/publications/forefront/ff%20v7n02/ff%20v7n0204%20is%20there%20a%20student%20loan%20crisis%20pdf.pdf?la=en [https://perma.cc/J4DV-JNEL] ("If the share of young people pursuing college degrees is going to rise, it will probably be because of increases in college enrollment by low- and middle-income students, to whom student loans are especially important. Like any borrower, a potential student loan borrower should focus on whether the debt is enabling her or him to make a valuable investment in the future."); Beth Akers & Matthew Chingos, *Is a Student Loan Crisis on the Horizon*, BROWN CTR. ON EDUC. POL'Y AT BROOKINGS (June 2014), https://fortunedotcom.files.wordpress.com/2014/06/is_a_student_loan_crisis_on_the_horizon.pdf [https://perma.cc/VZN5-7JNF]; *see also* Mark Huelsman, *The Debt Divide: The Racial and Class Bias Behind the "New Normal" of Student Borrowing*, DEMOS (May 19, 2015), http://www.demos.org/publication/debt-divide-racial-and-class-bias-behind-new-normal-student-borrowing [https://perma.cc/7E3A-8PWX].

117 *See* Eilieen Ambrose, *Student Debt Traps Older Borrowers*, AARP (2014), https://www.aarp.org/money/credit-loans-debt/info-2014/student-loan-debt-traps.html [https://perma.cc/HE64-QBZQ]; NAT. ASSOC. OF REALTORS, STUDENT LOAN DEBT AND HOUSING REPORT 2017: WHEN DEBT HOLDS YOU BACK (2017), https://www.nar.realtor/sites/default/files/reports/2017/2017-student-loan-debt-and-housing-09-18-2017.pdf [https://perma.cc/6YCJ-H4EA]; Letter from The Leadership Conference on Civil and Human Rights, to Secretary Betsy DeVos (Sept. 19, 2017),

is promising, but reinforces how much work still needs to be done and how many more people need to be doing it. Student debt is not simply a "college student" issue. It is not only a "consumer protection" issue. Nor is it solely an economic justice issue, or a civil rights issue, or an elder justice issue. The student loan crisis is all of these and more.

If this country is to build a foundation for these reforms, more research, advocacy, and organizing is needed. New scholarship, in particular, is necessary for these policies to be successful. Researchers should consider the following questions:

- If you care about income disparities and economic justice, what have you done to demonstrate how student debt entrenches inequality?
- If you care about civil rights and racial justice, what have you done to explore the uniquely burdensome role of student debt in communities of color?
- If you remain committed to the American ideal of college as a gateway to the middle class, what have you done to show how the debt-financed higher education model impedes this ideal?
- If you care about college access and affordability, what have you done to ensure that the determinant of success is not limited to walking across the stage with a diploma?
- If you care about protecting American consumers, what have you done to lay out a twenty-first century consumer protection framework for the student loan market?

Perhaps most importantly, the academic community should ask itself if it has collectively done the work necessary to demonstrate to policymakers across the country that debt-fueled higher education merely shifts these costs onto those least able to bear them. Researchers and advocates have an opportunity and obligation to cast aside the tired and faulty assumptions that underpin this crisis and document for elected officials that such policy decisions merely shift the burden onto the backs of the students, families, and communities they represent. The only indisputable conclusion is that there is much more work to do. America needs to do better for this generation and for the next. Policymakers need to renew the promise to never let this happen again. And this time, they need to keep that promise.

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https://civilrights.org/letter-re-concerns-impact-student-loan-servicing-debt-collection-changes-undermined-regulations-black-latino-borrowers/ [https://perma.cc/S5UR-SXBN]; Letter from American Federation of Teachers, to State Attorneys General (Apr. 26, 2017), https://www.aft.org/sites/default/files/ltr_generic_agstuloansvc_042617.pdf [https://perma.cc/J3FD-8YG5] (AFT's coalition wrote to 56 state attorneys general and state banking commissioners to urge oversight action on behalf of student loan borrowers).