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How Can I Ever Repay You? The Borrower's Dilemma and a Tax-Based Solution to the Student Debt Problem

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How Can I Ever Repay You? The Borrower's Dilemma and a Tax-Based Solution to the Student Debt Problem

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The growing cost of higher education relative to wage growth means that college is no longer the sure path to financial security it once was. While the cost of tuition ballooned over the past several decades, government funding for higher education diminished. Students have made up the difference by borrowing more. For many borrowers, large student loans result in unmanageable debt that makes their financial futures less secure. Student debt also harms society and the economy. If the government wants Americans to continue to have access to higher education, it must find ways to make higher education more affordable.

Politicians recognize the problems posed by the current historic levels of student loan debt. They recently proposed to cancel large swaths of student loan debt. However, debt cancellation is not a good solution. It is expensive, unfair, and offers mere temporary relief from a problem that will continue to plague future borrowers. A better solution would offer lasting relief.

To alleviate the student debt problem, the government should allow borrowers to repay their student loans using pre-tax dollars. This would enable borrowers to keep more of their income, while incentivizing both the pursuit of higher education and the repayment of student loans. Regardless of whether President Biden or Congress cancels a portion of student loan debt, the government should ease problematic financial burdens on student loan borrowers by allowing them to use pre-tax funds to repay their debt.

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TABLE OF CONTENTS

INTRODUCTION 131
I. THE STUDENT DEBT LANDSCAPE 134
A. STUDENT DEBT AND THE COST OF HIGHER EDUCATION 134
B. THE FEDERAL INCOME TAX SYSTEM & HIGHER EDUCATION 138
1. Saving for School 138
2. Paying for School While in School 139
3. Repaying Federal Student Loans 140
4. A Critical Look at Education Tax Incentives 141
II. HOW STUDENT LOAN DEBT THREATENS BORROWERS AND SOCIETY 143
A. UNDEREMPLOYMENT AND DIMINISHED OPPORTUNITY 144
B. THE STUDENT DEBT DRAG ON HOMEOWNERSHIP 145
C. STUDENT DEBT AND SMALL BUSINESS FORMATION 146
D. THE IMPACT OF STUDENT DEBT ON FINANCIAL SECURITY 147
III. WHY THE GOVERNMENT SHOULD NOT ACT ON THE CURRENT PROPOSALS TO CANCEL STUDENT LOANS 148
A. LOAN CANCELLATION PROPOSALS 148
B. WHY LOAN CANCELLATION IS A BAD SOLUTION 151
IV. EASING THE BURDEN OF STUDENT LOAN REPAYMENT USING THE TAX SYSTEM 153
A. A SIMPLE, PRAGMATIC SOLUTION 154
B. USING THE EDUCATION TAX SYSTEM TO SOLVE THE STUDENT DEBT PROBLEM 155
1. Outcomes for Borrowers and Society 155
2. Better Than Loan Cancellation 156
3. Improves Existing Education Tax Paradigm 157
V. PROGRESS NOT PERFECTION: A CRITICAL LOOK AT USING PRE-TAX MONEY TO REPAY LOANS 158
CONCLUSION 159

INTRODUCTION

For much of the United States' history, higher education was an elite activity reserved for well-to-do men. During the twentieth century, social and economic changes paved the way for women, minorities, and those of lesser means to pursue higher education.[1] Americans came to see higher education as a "gateway to the middle-class" and a "necessary component of the nation's ideal as a land of opportunity."[2] The government saw education as means to promote equal opportunity and to enable citizens to contribute more fully to society.[3]

In 1965, President Lyndon B. Johnson asked Congress to pass the Higher Education Act for the purpose of "bring[ing] better education to millions of disadvantaged youth who need it most" and to "put the best educational equipment and ideas and innovations within the reach of all students."[4] He asked for significant funding to extend the opportunity for higher education to lower- and middle-income families.[5] This funding enabled the government to broadly offer federal student loans. Following the government's efforts to expand higher education, the proportion of high school graduates attending college rose from 15% in 1940 to 60% at the end of the twentieth century and massively diversified the demographics of college attendees.[6]

From a social and economic standpoint, the government has a significant interest in producing an educated populace. Higher education correlates with "lower levels of unemployment, poverty, and crime . . . and reduced reliance on safety nets."[7] It is associated with healthier lifestyles and reduced healthcare costs.[8] It also correlates with increased economic productivity, technological advancement, higher tax revenue, enhanced civic participation,[9] and a higher standard of living.[10] Continued investment in higher education is also necessary to enable the United States to remain a leader in the increasingly knowledge-based global economy.[11]

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1. Peter D. Eckel & Jacqueline E. King, *United States*, *in* 18 INT'L HANDBOOK OF HIGHER EDUC. 1035, 1035 (James J. F. Forest & Philip G. Altbach eds., 2006).
2. *Id.*
3. David E. Bloom, Matthew Hartley & Henry Rosovsky, *Beyond Private Gain: The Public Benefits of Higher Education*, *in* 18 INT'L HANDBOOK OF HIGHER EDUCATION 294, 295 (James J. F. Forest & Philip G. Altbach eds., 2006).
4. Lyndon B. Johnson, *Lyndon B. Johnson Message to Congress on Education*, Jan. 12, 1965, S. Comm. on Educ. and Labor; 89th Congress, Records of the U.S. Senate, RG 46, National Archives.
5. *Id.* at 13.
6. Bloom et al., *supra* note 3, at 295.
7. Kerry A. Ryan, *Access Assured: Restoring Progressivity in the Tax and Spending Programs for Higher Education*, 38 SETON HALL L. REV. 1, 11 (2008).
8. JENNIFER MA, MATEA PENDER & MEREDITH WELCH, EDUCATION PAYS 2016, at 4 (2016), https://files.eric.ed.gov/fulltext/ED572548.pdf.
9. Ryan, *supra* note 7, at 11.
10. Steven Brint & Charles T. Clotfelter, *U.S. Higher Education Effectiveness*, 2 RSF: THE RUSSELL SAGE FOUND. J. OF THE SOCIO. SCI. 2, 12 (2016).
11. *Id.* at 12–14.

However, the United States is beginning to lag behind the rest of the developed world in producing young adults who hold college degrees.[12] A generation ago, it led the world in the proportion of its population that earned postsecondary degrees.[13] Today, it is ranked just tenth for post-secondary degrees among people age twenty-five to thirty-four.[14] This decline is, in part, due to the difficulty low- and middle-income students have in affording higher education.[15]

The cost of higher education has grown tremendously over the past several decades, and its growth has outpaced both inflation and income.[16] State funding for higher education has simultaneously declined.[17] As a result, it is increasingly difficult for students to afford college.[18] To bridge the gap, students are borrowing more than ever before.[19]

Due to high loan balances and low wages, many federal student loan borrowers are unable to afford their monthly student loan payments.[20] Their struggle is evidenced by very high default rates with over nine million student borrowers currently in default.[21] Federal student loan defaults have wide-reaching effects on individual borrowers and on society. Anxious to repay their loans, borrowers accept jobs for which they are overqualified and avoid taking career risks that might result in more lucrative opportunities. Many of these borrowers are not able to adequately save for retirement. They also cannot afford to buy homes or start businesses or are prevented from doing so by bad credit scores that result from high loan balances or defaults. In these ways, student debt and defaults are overburdening young people and negatively impacting society.[22]

In addition to offering federal student loans and limited grant funding, the government promotes access to higher education through the federal income tax system.[23] The current education tax framework includes the American

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12. *Id.* at 14.

13. *Id.*

14. *Id.*

15. Elissa Nadworny, *Fewer Students Are Going to College. Here's Why That Matters*, NPR (Dec. 16, 2019, 5:00 AM), https://www.npr.org/2019/12/16/787909495/fewer-students-are-going-to-college-heres-why-that-matters.

16. Jason N. Houle, *Disparities in Debt: Parents' Socioeconomic Resources and Young Adult Student Loan Debt*, 87 SOCIO. OF EDUC. 53, 53 (2014).

17. *See* Victoria J. Haneman, *Intergenerational Equity, Student Loan Debt, and Taxing Rich Dead People*, 39 VA. TAX REV. 197, 205–08 (2020); *see also* Seth Frotman, *Broken Promises: How Debt-financed Higher Education Rewrote America's Social Contract and Fueled a Quiet Crisis*, 2018 UTAH L. REV. 811, 819–21 (2018).

18. *See infra* Part II.

19. *See infra* Part II.

20. John R. Brooks & Adam J. Levitin, *Redesigning Education Finance: How Student Loans Outgrew the "Debt" Paradigm*, 109 GEO. L.J. 5, 8 (2020).

21. *Id.*

22. *See infra* Part II.

23. Susan Dynarski & Judith Scott-Clayton, *Financial Aid Policy: Lessons from Research*, 23 FUTURE OF CHILD., 67, 70 (2013); *see also infra* Part I.

Opportunity Tax Credit, Lifetime Learning Credit, student loan interest deduction under section 221, and tax-advantaged education savings accounts known as 529 plans. These offerings are well-intentioned but do not go far enough to enable most borrowers a fair shot at social and economic mobility through education. Middle-income borrowers often cannot take advantage of education tax credits and deductions due to low phaseouts and confusing rules.[24] Low- and middle-income students typically do not benefit from 529 plans because their families cannot afford to save on their behalf. If the government wants to continue to enable students from across the socioeconomic spectrum to pursue higher education, it needs to find new ways to help them.

The affordability issues students face in their pursuit of higher education have gained significant attention in the political sphere amid increased unemployment and other economic challenges faced by borrowers during the COVID-19 pandemic.[25] Politicians have broadly acknowledged these challenges and have emphasized the need for relief.[26] President Biden has signaled an openness to enacting a policy that reduces student loan debt, but has emphasized his desire to do so through legislation rather than executive action.[27] The loudest proponents of student debt relief support the cancellation of up to $50,000 of student loan debt per borrower.[28]

While loan cancellation may seem like a panacea, it is an expensive, short-sighted, unfair, and politically divisive solution. Rather than provide a sweeping one-time bailout that benefits only those who have a student loan balance right now, the government should develop policies that create lasting improvement that benefits both present and future borrowers. Instead of broadly cancelling student loan debt, the federal government should allow borrowers to repay their federal student loans using pre-tax dollars. This would lighten the burden on student borrowers by augmenting existing tax-based education benefits, while preventing borrowers from foisting large portions of their student loan obligations on other taxpayers.

To explain why the government should take this approach, this Note proceeds in six parts. Part I provides an overview of the student debt landscape, including the cost of higher education, the amount of student loan debt, and the

24. *See infra* Part I.

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

26. Glenn Thrush, *Schumer Pushes Plan for $50,000 Student Loan Forgiveness*, N.Y. TIMES (Feb. 4, 2021), https://www.nytimes.com/2021/02/04/us/schumer-democrats-student-loan-forgiveness.html.

27. Abigail Johnson Hess, *'I Will Not Make That Happen': Biden Says He Will Not Support $50k in Student Debt Forgiveness*, CNBC (Feb. 17, 2021), https://www.cnbc.com/2021/02/17/biden-says-he-will-not-support-50k-in-student-debt-forgiveness.html.

28. Press Release, *Warren, Schumer, Pressley, Colleagues: President Biden Can and Should Use Executive Action to Cancel Up to $50,000 in Federal Student Loan Debt Immediately*, ELIZABETH WARREN (Feb. 4, 2021), https://www.warren.senate.gov/newsroom/press-releases/warren-schumer-pressley-colleagues-president-biden-can-and-should-use-executive-action-to-cancel-up-to-50000-in-federal-student-loan-debt-immediately.

existing tax-based framework for enhancing access to education. Part II discusses the negative impact of burdensome student loan debt on individuals and society. Part III analyzes the current education finance paradigm and explains why loan cancellation is not a good solution. Part IV presents a tax-based solution that would alleviate the enormous financial burden on current and future federal student loan borrowers by allowing them to repay their loans using pre-tax dollars. Part V acknowledges the potential shortcomings of this solution and explains why it should be implemented anyway. This Note then offers a brief conclusion.

I. THE STUDENT DEBT LANDSCAPE

To appreciate the magnitude of the debt burden student-borrowers face and the inadequacy of the existing education tax paradigm, it is important to first understand the cost of higher education and the way the government currently helps families fund higher education. This Part provides an overview of the cost of higher education, the extent of student loan debt, the existing education tax benefits, and the inadequacy of those benefits in helping student-borrowers afford higher education.

A. STUDENT DEBT AND THE COST OF HIGHER EDUCATION

Higher education in the United States is expensive and the cost has grown substantially in recent years. The average cost of college, including tuition, books, and living expenses is over $35,000 per student, per year.[29] This means that the average four-year degree costs upward of $140,000, excluding interest and forgone income.[30] After accounting for interest and opportunity costs, the total cost of a bachelor's degree can exceed $400,000.[31] This cost has grown markedly over the past several decades.[32] In 1989, the average inflation-adjusted cost of a four-year degree was $52,892, excluding loan interest and foregone income.[33] Over the past three decades, the inflation-adjusted cost of a four-year degree has increased by around 265%.

State funding for higher education has contemporaneously declined.[34] Between 2008 and 2018, state spending per student to fund higher education declined by 13%.[35] In response to this decline, schools have increased tuition to

29. Jaleesa Bustamante, *Average Cost of College & Tuition*, EDUC. DATA INITIATIVE, https://educationdata.org/average-cost-of-college (last updated June 7, 2019).

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. Andrew Ross, *Mortgaging the Future: Student Debt in the Age of Austerity*, 22 NEW LAB. F. 22, 25 (2013).

35. Michael Mitchell, Michael Leachman & Matt Saenz, *State Higher Education Funding Cuts Have Pushed Costs to Students, Worsened Inequality*, CTR. ON BUDGET & POL'Y PRIORITIES (Oct. 24, 2019), https://www.cbpp.org/research/state-budget-and-tax/state-higher-education-funding-cuts-have-pushed-costs-to-students.

maintain their programs.[36] Students have made up the difference by borrowing more.[37]

After the Higher Education Act of 1965 was signed into law, the federal government became the primary lender for Americans who pursued higher education.[38] Under the original student loan program, the government paid interest on federal student loans, which were available only to low-income students in limited amounts.[39] Later, federal student loans were expanded to cover the entire cost of attendance (including room and board) for all students, regardless of financial need.[40] The federal government remains the primary lender to student loan borrowers today.

Socioeconomic status is a strong predictor of whether an individual will take on debt to finance higher education.[41] Borrowers from middle-income families tend to take out the largest loans.[42] Borrowers from high-income families are much less likely to take on significant student loan debt, because their parents are more likely to have set aside money for their tuition and living expenses.[43]

Burdensome student loan debt "is increasingly a baseline fact of life for young people."[44] Sixty-two percent of the class of 2019 had student loan debt upon graduation from college.[45] Among these graduates, the average balance was $28,950.[46] The burden of repayment has been challenging; 10-20% of borrowers from that cohort have loans that are currently in default.[47]

Student loan debt is becoming an increasingly common problem for older people as well.[48] The number of federal student loan debtors aged sixty or over has increased by 1,256% since 2004.[49] While most student loan debt is held by

36. Emma Whitford, *Public Higher Ed Funding Still Has Not Recovered From 2008 Recession*, INSIDE HIGHER ED (May 5, 2020), https://www.insidehighered.com/news/2020/05/05/public-higher-education-worse-spot-ever-heading-recession.

37. Haneman, *supra* note 17, at 205–08 (2020).

38. Dynarski & Scott-Clayton, *supra* note 23, at 68.

39. *Id.* at 73.

40. *Id.*

41. Houle, *supra* note 16, at 63.

42. *Id.*

43. *Id.* at 54, 66.

44. Brooks & Levitin, *supra* note 20, at 8.

45. Anna Helhoski & Ryan Lane, *2020 Student Loan Debt Statistics*, NERDWALLET (Nov. 18, 2020), https://www.nerdwallet.com/article/loans/student-loans/student-loan-debt.

46. *Id.*

47. Melanie Hanson, *Student Loan Default Rate*, EDUC. DATA INITIATIVE, https://educationdata.org/student-loan-default-rate (last updated Oct. 5, 2020).

48. Bennett G. Boggs, *U.S. Student Loans and Debt Levels Set Record: What's a Legislature to Do?*, NAT'L CONF. OF STATE LEGIS., Paper No. 6, at 2 (May 2019), https://www.ncsl.org/Portals/1/Documents/educ/Student-Loans-And-Debt_v02.pdf.

49. *Id.*

people under the age of forty,[50] borrowers aged forty to forty-nine are entering "serious delinquency" at the fastest rate.[51]

One factor compounding the struggle to repay large student loans is that wage growth lags significantly behind tuition growth. According to the Economic Policy Institute, between 1989 and 2019, average wages for recent college graduates grew by 13.9%.[52] During the same period, the inflation-adjusted cost of a four-year degree increased by 264%.[53] In part due to affordability issues and reduced benefit, college enrollment has declined about 11% over the past eight years.[54]

Despite the challenges of affording higher education, many students remain undeterred because higher education is still a good investment.[55] Graduating with a four-year degree correlates with an increase in average accumulated wealth over the long term,[56] making the cost (and debt) worthwhile. As explained by Kerry Ryan in *Access Assured: Restoring Progressivity in the Tax and Spending Programs for Higher Education*, "[o]ver the course of a forty-year career, a four-year college graduate can expect to earn 73% more in wages than the average high school graduate."[57] While higher education remains a good investment for most graduates, cost and wage trends demonstrate that this will not be so indefinitely.

The enormous magnitude of student loan debt means that it has the potential to affect the broader national economy. Forty-five million borrowers collectively owe $1.56 trillion in federal student loans.[58] These loans constitute 11% of all household debt in the United States, making it the second largest category of consumer debt, behind home mortgages.[59] This debt prevents borrowers from starting small businesses, buying new homes, and saving for retirement, all of which have a damaging impact on the economy.[60]

To help ensure that borrowers can repay their student loans, the federal government offers an array of repayment plans. The default repayment plan requires fixed equal monthly payments for ten years, which results in complete repayment of the borrower's debt.[61] For borrowers who would not be able to afford their payments under the default plan, there are various income-driven

50. Brooks & Levitin, *supra* note 20, at 8.

51. Boggs, *supra* note 48, at 3.

52. ELISE GOULD, ZANE MOKHIBER & JULIA WOLFE, CLASS OF 2019: COLLEGE EDITION 3 (2019), https://files.epi.org/pdf/167037.pdf.

53. Bustamante, *supra* note 29

54. Nadworny, *supra* note 15.

55. Ryan, *supra* note 7, at 10.

56. *Id.*

57. *Id.*

58. CTR. FOR MICROECON. DATA, QUARTERLY REPORT ON HOUSEHOLD DEBT AND CREDIT: 2020 Q4, at ii (2021), https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2020Q4.pdf.

59. *Id.*

60. *See infra* Part II.

61. *Repayment Plans*, STUDENTAID, https://studentaid.gov/manage-loans/repayment/plans (last visited Jan. 3, 2022).

repayment (IDR) plans, which tie monthly payments to the borrower's discretionary income and family size.[62] These plans cap monthly payments at no more than 15% of discretionary income.[63] Under IDR plans, any unpaid portion of the loan will be forgiven after twenty or twenty-five years of continuous payments.[64]

Borrowers who use an IDR plan must be careful to comply with annual requirements or they risk losing access to the plan. To continue to qualify for an IDR plan, borrowers must recertify and report their income and family size on an annual basis.[65] Borrowers who fail to recertify lose access to IDR plans, which often means that their monthly payment doubles or triples.[66] From November 2013 to October 2014, more than half of borrowers enrolled in an IDR plan failed to recertify.[67] Of these borrowers, nearly one-third "had their loans go into hardship-related forbearance or deferment" within six months,[68] which results in "capitalized interest that causes loan principal to balloon and loss of eligibility for deferment, consolidation, and most income-driven repayment plans."[69] The complication of annual recertification results in the underuse of IDR plans by borrowers who cannot afford their payments under the default plan.[70]

The federal government also offers a Public Service Loan Forgiveness program, which allows for loan cancellation after 120 consecutive payments while working for an eligible non-profit or a federal, state, or local government agency full-time.[71] However, according to the Government Accountability Office, 99% of student borrowers who have applied for loan forgiveness through this program to date have been denied.[72]

Despite the government's efforts to offer affordable repayment plans, many borrowers have difficulty repaying their loans.[73] More than 10% of borrowers are in default,[74] which is triggered when a borrower has gone 270 days without

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62. *Id.*
63. *Id.*
64. *Id.*
65. *Id.*
66. Michele Streeter, *A Popular Student Loan Fix Has Been Stalled for Years. It's Time to Act.*, INST. FOR COLL. ACCESS & SUCCESS (July 1, 2019), https://ticas.org/affordability-2/student-aid/a-popular-student-loan-fix-has-been-stalled-for-years-its-time-to-act.
67. *Sample Data on IDR Recertification Rates for ED-Held Loans 11/1/2013-10/1/2014*, U.S. DEP'T OF EDUC., https://www2.ed.gov/policy/highered/reg/hearulemaking/2015/paye2-recertification.pdf (last visited Jan. 3, 2022); *see also* Streeter, *supra* note 66.
68. U.S. DEP'T OF EDUC., *supra* note 67; Streeter, *supra* note 66.
69. Brooks & Levitin, *supra* note 20, at 8.
70. *Id.* at 49.
71. Kat Tretina, *Guide to Revised Pay as You Earn*, FORBES (Aug. 20, 2020), https://www.forbes.com/advisor/student-loans/revised-pay-as-you-earn.
72. U.S. GOV'T ACCOUNTABILITY OFF., GAO-19-595, PUBLIC SERVICE LOAN FORGIVENESS: IMPROVING TEMPORARY EXPANDED PROCESS COULD HELP REDUCE BORROWER CONFUSION 11 (2019).
73. Brooks & Levitin, *supra* note 20, at 48–49.
74. *Id.*

making a payment.[75] Perversely, borrowers who are in default no longer qualify for income-driven repayment plans.[76] They also suffer myriad other detriments, including a reduced credit score and garnishment of tax refunds and other federal benefits.[77]

Perhaps surprisingly, student loan default rates have an inverse relationship with loan balance.[78] According to a 2016 report by the College Board, 24% of borrowers with loan balances below $5,000 were in default.[79] The default rate was "19 percent for those with loan balances between $5,001 and $10,000, but 12 percent for those with loan balances between $10,001 and $20,000 and 7 percent for those with loan balances above $40,000."[80] Experts suggest that this surprising pattern is, in part, because many of the borrowers with the lowest balances did not complete their degree and, as a result, are much less likely to have obtained a high-paying job.[81] Borrowers with the highest levels of debt typically were enrolled for more semesters, suggesting they may have completed their degree or pursued a graduate degree.[82]

B. The Federal Income Tax System & Higher Education

In conjunction with offering student loans and a variety of repayment plans, the government has used the federal income tax system to increase affordability and access for low- and middle-income borrowers. This Subpart explains how the government has endeavored to use the federal income tax system to support student borrowers as they save for school, pay for school, and repay their federal student loans.

1. Saving for School

To "encourage families and students to save for future education expenses," Congress enacted a tax-favored college savings program.[83] Under the program, tax-advantaged investment accounts, commonly known as 529 plans, can be used to pay education expenses at accredited schools for a designated individual.[84] The most common type of 529 plan functions in the same manner as a Roth IRA: after-tax money is deposited into an account and grows tax-free. Then, if the funds are used for qualifying education expenses (such as tuition, fees, room and board, or books) the funds, including any appreciation, dividends,

75. *Student Loan Delinquency and Default*, STUDENTAID, https://studentaid.gov/manage-loans/default (last visited Jan. 3, 2022).

76. Brooks & Levitin, *supra* note 20, at 48.

77. STUDENTAID, *supra* note 61.

78. Laura W. Perna, James Kval & Roman Ruiz, *Understanding Student Debt: Implications for Federal Policy and Future Research*, 671 ANNALS OF AM. ACAD. OF POL. & SOC. SCI. 270, 272 (2017).

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. S. REP. NO. 105-33, at 16 (1997).

84. I.R.C. § 529(b) (West 2018).

and interest, can be withdrawn tax-free.[85] Unused funds can also be withdrawn, but any gains are subject to income tax and a 10% penalty.

2. Paying for School While in School

To help low- and middle-income student borrowers afford tuition while they attend school, the federal government offers two tax credits and an exclusion: the Lifetime Learning Credit (LLC), the American Opportunity Tax Credit (AOTC), and the section 117 scholarship exclusion.[86] The LLC is a nonrefundable tax credit that was enacted as part of the Taxpayer Relief Act of 1997 to help offset the burden of affording higher education for borrowers that meet certain criteria.[87] It was specifically designed to benefit middle-income borrowers who might not qualify for other types of federal student loan aid.[88] Using this credit, students enrolled at least part time at an eligible institution can claim a credit equal to 20% of up to $10,000 in qualifying tuition and fees, with a maximum nonrefundable credit of $2,000 per tax return.[89]

However, not all students can take advantage of the LLC. Only students whose parents do not claim them as dependents may claim this credit on their own tax return.[90] Additionally, the LLC is subject to income limitations.[91] For the 2020 tax year, the credit available under the LLC is gradually reduced when a single taxpayer's modified adjusted gross income (MAGI) is between $59,000 and $69,000, and is completely unavailable for single taxpayers with a MAGI of $69,000 or more.[92] For subsequent tax years, the credit will be phased out when a single taxpayer's MAGI is between $80,000 and $90,000.[93]

The AOTC was enacted more recently as part of the American Recovery and Reinvestment Act of 2009 and is targeted toward low-income taxpayers.[94] Like the LLC, the AOTC is available to students or the taxpayers who claim them as dependents and was intended to make education more accessible.[95] The maximum value of the credit is $2,500 per eligible student.[96] The actual allowable credit for a taxpayer is determined by adding 100% of the first $2,000

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85. *Id.* § 529(c).

86. Former § 222 allowed for a deduction for qualified tuition and related expenses through the 2020 tax year, but § 222 was repealed for tax years beginning in 2021. Tax Cuts and Jobs Act, H.R. 1, 115th Cong. (2017), Pub. L. No. 115-97, at 100–01.

87. Kat Tretina & Mike Cetera, *Lifetime Learning Credit: How Much Is It Worth?*, FORBES (Dec. 22, 2020), https://www.forbes.com/advisor/student-loans/lifetime-learning-credit.

88. MARGOT L. CRANDALL-HOLLICK, CONG. RESEARCH SERV., R42561, THE AMERICAN OPPORTUNITY TAX CREDIT: OVERVIEW, ANALYSIS, AND POLICY OPTIONS 1 (2018).

89. I.R.C. § 25A(c) (West 2018).

90. *Id.* § 25A(g)(3).

91. *Id.* § 25A(d).

92. *Id.*

93. *Id.*

94. CRANDALL-HOLLICK, *supra* note 88, at 1. The AOTC replaced the Hope Credit, which existed before 2009. *Id.* at 8.

95. *Id.* at 5.

96. I.R.C. § 25A(b) (West 2018).

spent on qualifying education expenses with up to 25% of the next $2,000.[97] This means that students who spent a minimum of $4,000 on qualifying education expenses and meet certain other criteria qualify to claim the entire credit. Unlike the LLC, the AOTC is partially refundable: eligible taxpayers can receive a refund equal to 40% of the credit after the taxpayer's tax bill has been satisfied for the year.[98] The AOTC phaseout begins when a single taxpayer's MAGI is $80,000[99] and the credit is completely unavailable once a single taxpayer's MAGI reaches $90,000.[100]

While the LLC and AOTC are similar, there are several major differences between the two credits. The AOTC is available only during the first four years of higher education to those who are pursuing a degree or other recognized credential.[101] In contrast, the LLC is available during all years of post-secondary education, including to those pursuing a non-college credential or taking a course to acquire or improve job skills.[102] Additionally, unlike the LLC, the AOTC can be claimed for expenses beyond tuition and school fees, including course-related books and supplies.[103] Notably, the AOTC and LLC cannot be claimed for the same student in the same tax year.[104]

In addition to the LLC and the AOTC, the government provides an exclusion-type tax benefit while a taxpayer is in school. Under section 117 of the Internal Revenue Code (IRC), any scholarship funds that a student receives and uses for tuition, books, and supplies can be excluded from gross income.[105] Said differently, scholarship money is tax-free.[106]

3. *Repaying Federal Student Loans*

To ease the burden of repaying federal student loans, the government added section 221 to the IRC as part of the Taxpayer Relief Act of 1997.[107] Section 221 allows eligible borrowers to deduct up to $2,500 in federal student loan interest per year.[108] For example, a taxpayer in the 22% marginal income tax

97. *Id.* at § 25A(i).

98. *Id.*

99. *Compare Education Credits*, IRS, https://www.eitc.irs.gov/other-refundable-credits-toolkit/compare-education-credits/compare-education-credits (last visited Jan. 3, 2022); *517-3rd Educational Expenses and Credits*, BLOOMBERG TAX: U.S. INCOME PORTFOLIOS (last visited Jan. 3, 2022).

100. IRS, supra note 99.

101. I.R.C. § 25A(b) (West 2018).

102. *Id.* at § 25A(c); BLOOMBERG TAX, *supra* note 99.

103. *American Opportunity Tax Credit: Questions and Answers*, IRS, https://www.irs.gov/newsroom/american-opportunity-tax-credit-questions-and-answers (last visited Jan. 3, 2022)

104. *Education Benefits — No Double Benefits Allowed*, IRS, https://www.irs.gov/credits-deductions/individuals/education-benefits-no-double-benefits-allowed (last visited Jan. 3, 2022).

105. I.R.C. § 117 (West 2018).

106. *Id.*

107. S. REP. NO. 105-33, at 20.

108. I.R.C. § 221(a)–(b) (West 2018). Unlike tax credits which reduce a taxpayer's tax liability on a dollar-for-dollar basis, deductions are less impactful because they are worth cents on the dollar based on the taxpayer's marginal tax bracket.

bracket who repaid enough loan interest in 2020 to claim the maximum $2,500 deduction, would save $550 in federal income tax. As with the LLC and AOTC, if a borrower's parent claims them as a dependent, the borrower cannot claim this deduction on their own tax return.[109] Like other education tax benefits, the section 221 deduction is subject to income limits. For 2020, the deduction is phased out ratably for taxpayers with MAGI between $70,000 and $85,000.[110] For borrowers whose MAGI is $85,000 or more, the deduction is not available.[111]

From 1997 to 2019, the section 221 deduction was the only tax benefit available to borrowers at the repayment stage. However, in 2019 the SECURE Act modified the rules for 529 plans to allow a limited portion of 529 plan funds to be used to repay student loan debt.[112] Borrowers can now use a lifetime aggregate of up to $10,000 from 529 plans to repay their student loans.[113] This has offered some relief to some borrowers, but the impact of this modification has been limited because most borrowers do not have access to 529 plan funds.

4. A Critical Look at Education Tax Incentives

Over the past several decades, the government has used the federal income tax system as a tool to help make higher education more affordable to borrowers across the socioeconomic spectrum. However, while the LLC, the AOTC, student loan interest deduction, and 529 plans are useful, they are not adequate to help borrowers avoid burdensome student loan debt. One of the primary problems is that the available tax credits are too small relative to the growing cost of higher education to be impactful. While the cost of a college education has risen tremendously over time, the value of the credits has remained fixed. The maximum tax savings available for those who can claim the LLC has been $2,000 since 1997, while the maximum savings under the AOTC has remained at $2,500 since 2010. Similarly, since its inception, the student loan interest deduction under section 221 has provided a maximum annual tax savings of just $550 dollars—a pittance to student borrowers who graduate, on average, with more than $28,000 of student loan debt.[114]

Additionally, some of these tax incentives may not be available to student borrowers at all. Students are only able to claim the LLC or the AOTC if their parents do not claim them as dependents. This means that even if a borrower's federal student loans are in their own name, their parents can claim the LLC or AOTC until the borrower is twenty-four years old. In effect, these tax credits

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109. *Id.* at 221(c).

110. IRS, *supra* note 99; BLOOMBERG TAX, *supra* note 99.

111. *Tax Benefits for Education: Publication 970*, IRS, https://www.irs.gov/pub/irs-pdf/p970.pdf (last visited Jan. 3, 2022).

112. Ann Carrns, *New Law Expands Uses for 529 College Savings Account*, N.Y. TIMES (Jan. 10, 2020), https://www.nytimes.com/2020/01/10/your-money/529-college-savings-accounts.html.

113. I.R.C. § 529(c)(9)(B) (West 2018).

114. I.R.C. § 221(b) (West 2018).

may be reducing the tax bill of parents who may benefit from the credit without contributing to the cost of their child's education.

Furthermore, the availability of these tax benefits depends upon a taxpayer's MAGI, without accounting for the size of a borrower's debt. Borrowers with a MAGI of $90,000 or more do not qualify for any of the education-related tax credits or deductions. This is so regardless of the amount of debt a borrower has and regardless of other factors that affect a borrower's discretionary income, such as the local cost of living, auto loans, or credit card debt.

Another potential roadblock to the efficient use of education tax credits is that the credits are similar but mutually exclusive, and it can be difficult for borrowers to decipher which credit would result in the most tax savings. The AOTC and LLC cannot be claimed by (or for) the same student for the same tax year and determining which would afford the most savings can be difficult and confusing. Additionally, loan amounts paid with 529 plan funds are not eligible to be counted toward the section 221 deduction, which can be confusing for student loan borrowers. The Government Accountability Office has criticized these benefits for "plac[ing] substantial demands on the knowledge and skills of millions of students and families."[115] The complicated nature of determining a borrower's best tax minimization strategy "results in hundreds of millions of dollars of unclaimed credits each year" by some of the lowest income students in the country.[116]

Timing is also an issue. Most of the tax incentives are geared towards education savings before school, such as 529 plans, or provide benefits while students are in school, such as the AOTC and LLC. The tax system offers very little assistance to ease the burden of student loan debt once a borrower is no longer in school. At that point, the primary tax benefit available to borrowers is the student loan interest deduction under section 221, which results in a maximum tax savings of $550 per year. Then, once a borrower's MAGI reaches $85,000—an income level that might allow them to begin to make some headway on repaying their students loans—the student loan interest deduction is unavailable.[117]

While it is true that 529 plan funds can also be used to repay a lifetime maximum of up to $10,000 in federal student loans, these savings plans are unlikely to help most students. Public finance scholars have noted that investors in 529 plans tend to "have incomes, education and wealth that are higher than .

115. CRANDALL-HOLLICK, *supra* note 88, at 15.

116. DEP'T OF THE TREASURY, INTERACTION OF PELL GRANTS AND TAX CREDITS: STUDENTS MAY BE FOREGOING TAX BENEFITS BY MISTAKE 1 (2014), https://home.treasury.gov/system/files/131/Report-Pell-AOTC-Interaction-2014.pdf.

117. MARGOT L. CRANDALL-HOLLICK, CONG. RSCH. SERV., R41967, HIGHER EDUCATION TAX BENEFITS: BRIEF OVERVIEW AND BUDGETARY EFFECTS 10 (2020).

. . the general population."[118] Many low- and middle-income families cannot afford to set aside money in a 529 plan.[119] In the 2016–17 school year, just 13% of families had a 529 plan in place.[120] Students who benefit from 529 plans are the lucky few who are fortunate to have had other people save on their behalf. For most students, 529 plans provide no benefit. Despite their narrow impact, 529 plans offer the largest potential tax benefit to borrowers in the repayment phase.

In sum, the existing education tax framework does not adequately reduce student debt for most borrowers for several reasons. Depending on a borrower's status as a dependent, the available education tax benefits could inure to the borrower's parents rather than to the borrower. The size of education tax benefits targeted toward low- and middle- income borrowers are small and have not been sufficiently increased to track the rising cost of higher education. Additionally, the income phaseout thresholds for education tax credits and deductions mean that most education tax benefits are not available to individuals who make more than $90,000 per year, regardless of the size of a borrower's student loan balance. Furthermore, the largest education tax benefit is available only to borrowers who are fortunate enough to have family members save on their behalf through a 529 plan. Students who struggle the most to repay their loans tend not to have this type of financial support. While the federal income tax system has the potential to be a very useful tool in helping students manage education debt, the current benefits are insufficient.

II. HOW STUDENT LOAN DEBT THREATENS BORROWERS AND SOCIETY

Though the government has attempted to use loans and tax breaks to enable access to higher education for all, the large and growing levels of student debt and high default rates demonstrate that the current paradigm is inadequate. Ballooning education costs and relative wage stagnation mean that postsecondary education is no longer the sure pathway to social and economic mobility that it used to be.[121] The size of the student loan market and its continued growth means that student debt has "macro effects on the economy as a whole that will continue to magnify as time goes on."[122] Borrowers and society have suffered harm already due to the untenable higher education finance system. Without meaningful change, these harms will be further amplified. Fewer people will pursue higher education as a result.

118. Susan Dynarski, *Who Benefits from the Education Savings Incentives? Income, Educational Expectations, and the Value of the 529 and Coverdell*, 57 NAT'L TAX J. 359, 365 (2004).

119. Ryan, *supra* note 7, at 32–33.

120. Jeff Hoyt, *Why Aren't 529 Plans More Popular?*, SAVING ADVICE (May 29, 2018), https://www.savingadvice.com/articles/2018/05/29/1057663_why-arent-529-educational-savings-plans-more-popular.html.

121. Jeffrey P. Naimon, Sasha Leonhardt & Sarah B. Meehan, *School of Hard Knocks: Federal Student Loan Servicing and the Looming Federal Student Loan Crisis*, 72 ADMIN. L. REV. 259, 261–63 (2020).

122. *Id.* at 262.

Society has a strong interest in ensuring an educated populace. Higher education correlates with longer life expectancy, less criminal behavior, stronger social cohesion, and greater political participation.[123] It is also associated with better health care[124] and higher wages for everyone, including those who did not complete high school or attend college.[125] According to Mamphela Ramphele, a former managing director of the World Bank, "modern societies can become or remain materially wealthy only if they are managed by a large group of individuals with the right mix of sophisticated technical and organizational expertise. This expertise, and many of the behavioral attributes that go along with it, are most readily acquired and transmitted through modern tertiary education institutions."[126] In other words, education is essential to the social and economic fabric of America.

This Part will explore how the current student debt paradigm negatively affects both borrowers and society by contributing to underemployment and diminished opportunity, and undermining homeownership, small business formation, and financial security.

A. Underemployment and Diminished Opportunity

Ironically, student loan debt, typically taken on to improve career opportunities, actually stifles career growth for many borrowers. This is, in part, because students who graduate with significant student loan debt often settle for part-time jobs or jobs that are mismatched with their qualifications, because they are not in a position to be as "choosy" when they feel the pressure of enormous debt and high monthly payments.[127] Furthermore, students with significant debt are less likely to take career risks, such as switching jobs.[128] As a result, they may stagnate in a position instead of pursuing higher paying jobs that better align with their qualifications.

Underemployment negatively affects borrowers financially and psychologically. It is associated with depression, low self-esteem, stress-related illness, and alcohol abuse.[129] Underemployed people report lower job and life satisfaction.[130] They also suffer a "wage penalty," which reduces their earning potential and "can continue to depress their earnings for years afterward."[131] Persistent lower income reduces the ability of underemployed individuals to

123. Luis E. Vila, *The Non-Monetary Benefits of Education*, 35 EUR. J. OF EDUC. 21, 21–22 (2000).

124. Arthur M. Hauptman, *Higher Education Finance: Trends and Issues*, in 18 INT'L HANDBOOK OF HIGHER EDUC. 83, 86 (James J.F. Forest & Philip G. Altbach eds., 2006).

125. Bloom et al., *supra* note 3, at 301.

126. *Id.* at 300.

127. Martin Gervais & Nicolas L. Ziebarth, *Life After Debt: Post-Graduation Consequences of Federal Student Loans*, 57 ECON. INQUIRY 1342, 29–30 (2019).

128. *Id.* at 29.

129. Sabina Lacmanović, Sanja Blažević Burić & Lela Tijanić, The Socio-Economic Costs of Underemployment, Presented at the Management International Conference 331, 342 (June 2016).

130. *Id.*

131. *Id.*

save for retirement and emergencies.[132] Research has shown that "the [financial] effects of being underemployed directly after graduating from college can linger for more than ten years."[133]

Underemployment also negatively impacts society.[134] It represents labor underutilization, which results in "productivity and profitability losses and other socioeconomic costs on both the micro- and macroeconomic level."[135] In the aggregate, increased levels of underemployment are associated with higher levels of property crime and reduced civic engagement.[136] Underemployment also results in slowed economic growth, higher poverty levels, and reduced consumer demand.[137] While the impact of underemployment on individual borrowers might be obvious, underemployment also has a deleterious societal impact which, if left unchecked, will continue to negatively affect society over time.

B. The Student Debt Drag on Homeownership

Student debt is making home ownership less attainable for federal student loan borrowers. According to researchers from the Federal Reserve, the ability of borrowers to purchase homes is diminished by the enormous student loan debt they carry.[138] Borrowers with large monthly loan payments are less likely to be able to save for a down payment,[139] which is often the biggest hurdle for first-time homebuyers.[140] In addition, their credit scores and debt-to-income ratios make them less likely to qualify for mortgages at all.[141] For people aged twenty-four to thirty-two, homeownership plummeted almost 9% between 2005 and 2014.[142] The Federal Reserve's research indicates that about one-fifth of that decline was tied directly to student debt.[143] In comparison, for the overall population, the decline in homeownership during that time was just 4%.[144] In the

132. *Id.*

133. Mike Alberti, *The Hidden Toll of Underemployment*, REMAPPING DEBATE (Nov. 9, 2011), http://www.remappingdebate.org/sites/default/files/The%20hidden%20costs%20of%20underemployment.pdf.

134. Lacmanović et al, *supra* note 129, at 342.

135. *Id.* at 332.

136. *Id.* at 343.

137. *Id.*

138. ALVARO MEZZA, DANIEL RINGO & KAMILA SOMMER, CAN STUDENT LOAN DEBT EXPLAIN LOW HOMEOWNERSHIP RATES FOR YOUNG ADULTS? 4 (2019), https://www.federalreserve.gov/publications/files/consumer-community-context-201901.pdf.

139. A. Mechele Dickerson, *Millennials, Affordable Housing, and the Future of Homeownership*, 24 J. AFFORDABLE HOUS. 435, 455 (2016).

140. *Coming Up with a Down Payment the Biggest Hurdle,* TIMES UNION (June 3, 2017), https://www.timesunion.com/business/article/Coming-up-with-a-down-payment-the-biggest-hurdle-11193849.php.

141. MEZZA ET AL., *supra* note 138, at 6.

142. *Id.* at 2–5.

143. *Id.* at 3.

144. *Id.* at 2.

aggregate, student loan debt prevented 400,000 young families from purchasing homes between 2005 and 2014.[145]

Homeownership is desirable for individuals because it leads to wealth creation through home equity. [146] Wealth creation leads to a number of benefits, including enhanced life satisfaction and the ability to afford better quality health care.[147] It also provides greater financial flexibility, because homeowners are typically able to borrow against their home equity should they need or want extra cash.[148] Additionally, homeowners enjoy better physical and psychological health than renters.[149] High levels of student loan debt forces many borrowers to delay or forego homeownership, which leaves them worse off.

Delayed and reduced homeownership negatively impact individual borrowers, but their impact reaches further. Reductions in home purchases harm the economy by putting downward pressure on home prices.[150] Additionally, neighborhoods with fewer homeowners tend to be less well-maintained and have higher rates of crime.[151] Renters tend to be less socially and politically engaged with their local communities than their homeowner counterparts.[152] Also, due in part to home equity lines of credit, homeowners are also less likely to need to rely on public assistance when they fall on hard times.[153] As young people borrow more to finance the rising cost of higher education, home ownership will likely continue to fall, to the detriment of both individual borrowers and communities at large.

C. Student Debt And Small Business Formation

Student loan debt is also stunting the growth of small businesses. According to a 2015 study, there is "a significant and economically meaningful negative correlation" between increasing student loan debt and decreasing rates of small business formation in the United States.[154] This is because student loan debt prevents graduates from saving the capital they need to launch new businesses.[155] It may also prevent them from qualifying for small business

145. *Id.* at 5.

146. Gervais & Ziebarth, *supra* note 127, at 30.

147. Vila, *supra* note 123, at 24.

148. Lawrence Yun & Nadia Evangelou, Nat'l Ass'n. of Realtors, Social Benefits of Homeownership and Stable Housing, 13 (2016), https://www.hocmn.org/wp-content/uploads/2019/09/Social-Benefits-of-Home-Ownership-2.pdf.

149. *Id.* at 10.

150. Brooks & Levitin, *supra* note 20, at 9.

151. Yun & Evangelou, *supra* note 148, at 12.

152. William Rohe & Mark Lindblad, *Reexamining the Social Benefits of Homeownership After the Housing Crisis* 33 (Harv. U. Joint Ctr. for Hous. Stud., Working Paper No. HBTL-04, 2013).

153. Yun & Evangelou, *supra* note 148, at 13.

154. Brent W. Ambrose, Larry Cordell & Shuwei Ma, *The Impact of Student Loan Debt on Small Business Formation* 5 (Fed. Res. Bank of Phila., Working Paper No. 15-26, 2015), https://www.philadelphiafed.org/-/media/frbp/assets/working-papers/2015/wp15-26.pdf?la=en.

155. *Id.* at 3

loans.[156] A study by the Federal Reserve Bank of Philadelphia concluded that an increase of one standard deviation in debt results in a decline in new business formation by over 14%.[157] Because approximately 60% of new private sector jobs are created by small businesses,[158] this pattern of decline reduces job opportunities and increases unemployment.[159] It also decreases tax revenue.

D. THE IMPACT OF STUDENT DEBT ON FINANCIAL SECURITY

Not only does the enormous debt student borrowers carry after graduation affect their ability to buy houses and start businesses, but it can have a life-long impact on a borrower's ability to establish secure financial footing. Because student loans are not dischargeable in bankruptcy, the shadow cast upon defaulting student loan borrowers never goes away.[160] Borrowers with low wages or large monthly payments (or both) struggle to save money.[161] This means that they are unlikely to have the resources to adequately save for retirement or withstand times of financial hardship.[162] According to a recent study, a household headed by two college-educated adults that have average student loan debt balances "lose out on more than $200,000 in accumulated wealth over their lifetimes."[163] Researchers at the Center for Retirement Research at Boston College likewise found that student loans "have a meaningful adverse effect on retirement security."[164] Their research concluded that if today's working-age households had the same level of student debt as recent college graduates, an additional 4.6% would be at risk of having inadequate retirement savings.[165] Due to the enormous size of the student loan market and its continued growth, student debt threatens borrowers' ability to secure their financial futures.[166]

Inadequate retirement savings are clearly bad for individual borrowers, but they are also bad for society. When individuals do not have adequate savings, they are more likely to rely on government assistance.[167] This increases pressure

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156. *Id.* at 19–20.
157. *Id.* at 5.
158. *Id.* at 5.
159. D. Keith Robbins, Louis J. Pantuosco, Darrell F. Parker & Barbara Fuller, *An Empirical Assessment of the Contribution of Small Business Employment to U.S. State Economic Performance*, 15 SMALL BUS. ECON. 293, 295 (2000).
160. Naimon, *supra* note 121, at 262.
161. *Id.*
162. *Id.*
163. Frotman, *supra* note 17, at 824.
164. ALICIA H. MUNNELL, WENLIANG HOU & ANTHONY WEBB, WILL THE EXPLOSION OF STUDENT DEBT WIDEN THE RETIREMENT SECURITY GAP? 5 (2015), https://crr.bc.edu/wp-content/uploads/2019/12/IB_16-2.pdf.
165. *Id.*
166. Brooks & Levitin, *supra* note 20, at 9.
167. *Id.*

on public resources.[168] This pressure is likely to worsen over time as student loan debt becomes more common for adults aged forty-five to sixty-five.[169]

While the cost of higher education continues to rise and wage growth continues to lag far behind, the promise that higher education is a pathway to social and economic mobility fades. Without intervention, individuals will begin to forego higher education, to the detriment of individuals and society.

III. Why the Government Should Not Act on the Current Proposals to Cancel Student Loans

Politicians across the political spectrum have recognized the challenges faced by borrowers, particularly considering the economic hardships brought on by the COVID-19 pandemic. In 2020, the Trump administration offered borrowers temporary relief by freezing student loan payments and setting the interest rate of most federal student loans at 0%.[170] On his first day in office, President Biden extended this relief until at least September 30, 2022.[171] He subsequently further extended student loan relief until January 31, 2022, and then, again, to May 1, 2022.[172] However, there is little consensus in the political sphere about how much more intervention is necessary or desirable post-pandemic. This Part explores current proposals and argues that loan cancellation is not a good solution.

A. Loan Cancellation Proposals

Senators Elizabeth Warren and Chuck Schumer are two of the most vocal proponents of student debt reform. They rightly view loan cancellation as a tool to help both struggling borrowers and the economy. They advocate for the cancellation of up to $50,000 of federal student loan debt per borrower.[173] Their plan would forgive student loans in tiers, based on income. Borrowers with an

168. *Id.*

169. The percentage of families with heads ages 45–54 having student loan debt grew 309% between 1992 and 2019, and the percentage of families with heads ages 55–65 having such debt grew 321%. Ted Godbout, *How Student Loan Debt is Affecting Retirement Savings*, NAT'L ASS'N OF PLAN ADVISORS (Feb. 1, 2021), https://www.napa-net.org/news-info/daily-news/how-student-loan-debt-affecting-retirement-savings.

170. Erica L. Green, *Relief Offered From Testing and Student Loans as Virus Roils Education*, N.Y. TIMES (Mar. 20, 2020), https://www.nytimes.com/2020/03/20/us/politics/coronavirus-student-loans-education-testing.html.

171. Annie Nova & Carmen Reinicke, *Biden Extends Payment Pause for Student Loan Borrowers Until October 2021*, CNBC (Jan. 20, 2021), https://www.cnbc.com/2021/01/20/biden-plans-to-extend-pause-on-student-loan-payments-until-october.html.

172. Ben Gittelson, Allison Pecorin & Oren Oppenheim, *Biden Extends Student Loan Payment Pause Until May*, ABC NEWS (Dec. 22, 2021), https://abcnews.go.com/Politics/biden-extends-student-loan-payment-pause/story?id=81897906.

173. Press Release, Elizabeth Warren, *Schumer, Warren: The Next President Can and Should Cancel Up to $50,000 In Student Loan Debt Immediately; Democrats Outline Plan for Immediate Action in 2021* (Sept. 17, 2020), https://www.warren.senate.gov/newsroom/press-releases/schumer-warren-the-next-president-can-and-should-cancel-up-to-50000-in-student-loan-debt-immediately-democrats-outline-plan-for-immediate-action-in-2021. Section 9675 of the American Rescue Plan (passed in March 2021) provides that student loan forgiveness will be tax free from 2021 through 2025. I.R.C. § 108(f) (West 2018).

adjusted gross income of $100,000 or less would receive the maximum benefit of $50,000 cancellation, and the cancellation benefit would be gradually phased out for borrowers who earn between $100,000 and $250,000.[174] Under the Warren-Schumer plan, all households with federal student loan debt below the ninetieth percentile of income would receive some amount of debt forgiveness and 56% of those in the ninetieth percentile or above would receive some debt relief.[175] According to Senator Warren, "[c]anceling student loan debt is the single most effective executive action that President Biden can take to kick start this economy."[176]

The Warren-Schumer plan asks President Biden to use executive authority to cancel student loan debt and to ensure that the debt cancellation will be tax free.[177] Section 1082(a)(6) of the Higher Education Act grants the Secretary of Education the authority to "modify, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right of redemption."[178] While these parts of the proposal have been viewed as radical by conservatives, at least fourteen other senators and forty-five representatives signed on to the proposed resolution.[179] The Warren-Schumer plan also encourages President Biden to freeze student loan payments and interest accumulation for federal student borrowers for the remainder of the pandemic.[180] As explained by Senator Warren: "Even before the coronavirus pandemic plunged our economy into chaos, student loan borrowers were already in crisis."[181] Supporters of the Warren-Sanders plan believe it will stimulate the economy, reduce the racial wealth gap, encourage new businesses and home buying, and increase family formation.[182] The estimated cost of the Warren-Schumer plan is $650 billion.[183]

Senator Bernie Sanders' plan goes even further. His plan advocates for complete loan forgiveness of the nearly $1.6 trillion of outstanding student loan

174. Annie Nova, *Elizabeth Warren's Plan to Forgive Student Debt Would Help 45 Million Students*, CNBC (July 23, 2019), https://www.cnbc.com/2019/07/23/elizabeth-warrens-student-debt-bill-would-help-45-million-students.html.

175. Anna E. Huffman, *Forgive and Forget? An Analysis of Student Loan Forgiveness Plans*, 24 N.C. BANKING INST. 449, 459 (2020).

176. Kate Smith, *Progressive Democrats Unveil Plan to Cancel $50,000 of Student Loan Debt*, CBS NEWS (Feb. 5, 2021), https://www.cbsnews.com/news/student-loan-relief-50k-plan.

177. Warren, *supra* note 173.

178. 20 U.S.C. § 1082(a)(6).

179. Jacob Pramuk, *Democrats Ramp Up Pressure on Biden Administration to Cancel Up to $50,000 of Student Debt*, CNBC (Feb. 4, 2021), https://www.cnbc.com/2021/02/04/schumer-warren-call-on-biden-to-cancel-50000-in-student-debt.html.

180. Warren, *supra* note 173.

181. *Id.*

182. *Id.*; Zach Friedman, *Biden Considers Student Loan Cancellation by Executive Order*, FORBES (Feb. 6, 2021), https://www.forbes.com/sites/zackfriedman/2021/02/06/biden-considers-student-loan-cancellation-by-executive-order/?sh=1e32924c4c74.

183. Smith, *supra* note 176.

debt, including both federal and private student loans – for all borrowers.[184] Sanders believes his proposal would enable student borrowers to have better financial health and stimulate the economy.[185] Under Sanders' plan, the cost of loan forgiveness would be borne by Wall Street via a "speculation tax" of varying amounts, depending on the type of financial transaction.[186] Sanders' plan also includes legislation that would permanently eliminate tuition and fees at four-year public colleges and universities, community colleges, trade schools, and apprenticeship programs. Sanders' plan would cost approximately $2.2 trillion and would save each student borrower around $3,000 per year.[187]

Despite progressive leaders' insistence that Biden has the power to broadly cancel student loans "with a stroke of a pen,"[188] Biden has expressed doubt about his authority to unilaterally cancel hundreds of billions of dollars of student loan debt at once.[189] According to the White House, while Biden supports student loan cancellation, he has expressed a strong preference for student debt relief to come through legislative action.[190] On the campaign trail, he promised to support a resolution that would use Congressional action to cancel up to $10,000 per federal student loan borrower.[191] Biden's $1.9 trillion American Rescue Plan, which was unveiled at the end of January 2021 was silent on student loan cancellation.[192] More recently, however, he has signaled a willingness to consider debt cancellation by executive action by asking his Education Secretary, Miguel Cardona, to prepare a memo outlining the president's legal authority to forgive up to $50,000 of student loan debt per borrower.[193] He has also cancelled an aggregate of $9.5 billion in student loan debt for 563,000 borrowers who were misled by for-profit schools.[194] It remains to be seen how serious President Biden is about broadly cancelling student loan debt.

184. Zach Friedman, *This Is How Bernie Sanders Will Pay For $1.6 Trillion Of Student Loan Forgiveness*, FORBES (Feb. 25, 2020), https://www.forbes.com/sites/zackfriedman/2020/02/25/student-loan-forgiveness-bernie-sanders/?sh=621989e81b42.

185. *Id.*

186. *Id.*

187. *Id.*

188. Jacob Pramuk, *Senate Democrats Say Covid Relief Plan Makes It Easier for Biden to Cancel Student Loan Debt*, CNBC (Mar. 15, 2021), https://www.cnbc.com/2021/03/15/student-debt-forgiveness-schumer-warren-menendez-urge-biden-to-cancel-loans.html.

189. Friedman, *supra* note 182.

190. *Id.*

191. Ayelet Sheffey, *Biden's Campaign Made 2 Promises on Canceling Student Debt. He Hasn't Done Either.*, MSN (Apr. 7, 2021), https://www.msn.com/en-us/money/careersandeducation/bidens-campaign-made-2-promises-on-canceling-student-debt-he-hasnt-done-either/ar-BB1foLLp.

192. Elizabeth Gravier, *What Biden's Student Loan Forgiveness Would Mean for Your Taxes*, CNBC (Feb. 10, 2021), https://www.cnbc.com/select/biden-student-loan-forgiveness-and-taxes.

193. Annie Nova, *Biden Asks Education Secretary to See If He Can Legally Cancel Student Debt*, CNBC (Apr. 1, 2021), https://www.cnbc.com/2021/04/01/biden-administration-explores-options-for-canceling-student-debt.html.

194. Annie Nova, *Education Department Will Cancel Student Debt for 115,000 Borrowers*, CNBC (Aug. 26, 2021), https://www.cnbc.com/2021/08/26/education-department-will-cancel-student-debt-for-115000-borrowers-.html.

B. Why Loan Cancellation Is a Bad Solution

Politicians are right to seek solutions to the student debt problem. The amount of student loan debt young and middle-aged Americans carry has far-reaching negative consequences for borrowers and society.[195] While canceling large swaths of student debt would likely reduce or eliminate many of the underemployment, homeownership, small business formation, and financial security problems outlined in Part III, this relief would come at an enormous cost. If this were the only issue, broad debt cancellation might be a worthwhile, albeit imperfect solution. However, the cancellation of large portions of student loan debt is fraught for a litany of other reasons. In addition to its eye-popping price tag, it would be a mere temporary fix to an endemic problem that would primarily benefit a discrete group of individuals: those who have student loan debt right now. It would also be unfair to taxpayers who do not have federal student loans and create undesirable incentives. In addition, student loan debt cancellation would also be unlikely to result in the economic stimulus its proponents suggest.

Broadly canceling student debt is an expensive proposition. The estimated cost of the Warren-Schumer plan is $650 billion.[196] Bernie Sanders' plan would cost $1.6 trillion.[197] If implemented, these plans would become some of the largest government transfer programs in history.[198] To illustrate the magnitude of these costs, it is helpful to compare it to government spending on a variety of other initiatives. Sanders' complete loan cancellation plan would cost more than the cumulative amount the government spent on its Food Stamps program from 2000 through 2019.[199] The cost to forgive $50,000 in student loans per borrower would exceed the cumulative government spending on its Housing Assistance Programs during the same period,[200] and would be almost as much as the U.S. military budget in 2021.[201] Cancellation of $10,000 per borrower would exceed the cumulative government spending on School Lunch and Breakfast programs from 2000 through 2019.[202] While the student debt problem is an important one that requires government action, it is not so extreme that it demands a one-time expenditure of more resources than the government spent to help feed or house vulnerable populations over the course of two decades.

195. *See supra* Part II.
196. Smith, *supra* note 176.
197. Friedman, *supra* note 184.
198. Adam Looney, *Putting Student Loan Forgiveness into Perspective: How Costly is It and Who Benefits?*, BROOKINGS INST. (Feb. 12, 2021), https://www.brookings.edu/blog/up-front/2021/02/12/putting-student-loan-forgiveness-in-perspective-how-costly-is-it-and-who-benefits.
199. *Id.*
200. *Id.*
201. Amanda Macias, *The Pentagon is Seeking $705 Billion for Its 2021 Budget, Including a 3% Raise for Troops*, CNBC (Feb. 10, 2020), https://www.cnbc.com/2020/02/10/pentagon-seeks-705-billion-for-budget-including-3percent-raise-for-troops.html.
202. *Id.*

Aside from being enormously expensive, loan cancellation would not solve the student debt problem because it offers relief only to borrowers who have federal student loan debt right now. While one-time debt cancellation may begin to ameliorate the individual and societal issues that arise from student debt in the short term, it offers no sustainable relief that would prevent future generations from ending up with the same predicament. John Brooks, a Law Professor at Georgetown University whose scholarship focuses on federal student loans, recently expressed a similar concern: "If we only cancel student debt, [] without addressing any of the underlying causes of student debt . . . we're just going to have this same debate over again in a few years."[203] A better solution would help existing borrowers as well as those who will take out student loans in the future.

Loan cancellation is not only an expensive and temporary solution, but it is also unfair to other taxpayers. Under the Warren-Schumer plan, taxpayers would shoulder the burden of student loan debt cancellation. It seems unfair to foist this burden on other Americans, two-thirds of whom do not hold a bachelor's degree.[204] Many Americans who chose to forego higher education cite financial barriers or debt-averseness as the primary reasons.[205] It seems wrong to ask those who chose not to attend college for financial reasons[206] to pay the loans of educated borrowers who are likely to out-earn them by 73% in the long term.[207] In addition, loan cancellation would disproportionately benefit wealthier Americans. This is, in part, because the pursuit of post-secondary education is highly correlative with household income.[208] Students from high-income families are three times more likely to go to college than their low-income counterparts.[209] According to the Brookings Institution, under the Warren-Schumer plan, nearly half of the amount forgiven would go to the top 40% of earners.[210] The bottom 60% of households would receive only 34% of the benefit.[211] The impact of debt cancellation would be even more disparate

203. Kristin Myers & Aarthi Swaminathan, *Canceling Student Debt Without Addressing the Causes Will Create 'Same Debate' in a Few Years: Georgetown Law Professor*, YAHOO! (Dec. 14, 2020), https://www.yahoo.com/lifestyle/canceling-student-debt-without-addressing-192151425.html.

204. Mary Clare Amselem, *No, Your Student Loans Should Not Be Forgiven*, HERITAGE FOUND. (July 1, 2019), https://www.heritage.org/education/commentary/no-your-student-loans-should-not-be-forgiven.

205. Pamela Burdman, *The Student Debt Dilemma: Debt Aversion as a Barrier to College Access*, 3–4 (UC Berkeley Ctr. for Stud. in Higher Educ., Working Paper No. 13.05, 2005).

206. Amselem, *supra* note 204.

207. Ryan, *supra* note 7, at 10.

208. J.T. Young, *Doing Good, Badly*, AMER. SPECTATOR (July 29, 2020, 12:04 AM), https://spectator.org/student-loan-debt-cancellation-doing-good-badly.

209. *Id.*

210. Josh Mitchell, *Warren's Student-Debt Deal Would Most Benefit Stronger Earners, Study Finds*, WALL ST. J. (Apr. 24, 2019, 8:47 PM), https://www.wsj.com/articles/warrens-student-debt-deal-would-most-benefit-stronger-earners-study-finds-11556150109?mod=article_inline.

211. Zaid Jilani, *Canceling Student Debt Would Be a 'Brahmin Bailout,'* WALL ST. J. (Nov. 29, 2020, 5:10 PM), https://www.wsj.com/articles/canceling-student-debt-would-be-a-brahmin-bailout-11606687827.

under the Sanders plan, which supports cancelling all student loan debt, regardless of income.

The cancellation of student debt is likely to create undesirable incentives. Critics have expressed concern that if some loans are cancelled, students will load up on debt because they think cancellation might happen again.[212] This has the potential to worsen the student debt problem. Debt cancellation would also reward those who did not honor their loans and punish borrowers who budgeted and sacrificed to make timely payments.[213] Loan cancellation could also foster fiscal irresponsibility by potentially encouraging students to attend more expensive schools than they otherwise would choose, due to the expectation that loans would be cancelled again in the future.[214] A better solution would reduce the long-term impact of federal student loan debt without encouraging a culture of irresponsibility surrounding borrowing.

While proponents of federal student loan cancellation suggest that eliminating all or a portion of student loans would serve as an immediate, impactful stimulus to the economy, that view is misguided. Because loan forgiveness is likely to have a small impact on the amount of money available to be spent,[215] it is unlikely to be the extraordinary stimulus that Senators Warren, Schumer, and Sanders suggest. According to Marc Goldwein, a senior policy director at the nonpartisan Committee for a Responsible Federal Budget, loan cancellation would "boost the economy, but by our estimates, for every $1 of loan forgiveness . . . it would boost the economy by somewhere between 8 and 23 cents."[216] That is a poor multiplier and suggests that one-time loan cancellation is an extremely inefficient way to bolster the economy.[217]

In their current form, the Warren-Schumer and Sanders debt cancellation plans are bad policy. They are expensive, unfair, and would promote undesirable behavior. They also offer mere temporary relief to an ongoing problem and do not forge a pathway for lasting systemic improvement. Given the extensive shortcomings of these proposals, they do not warrant the extraordinary expense of debt cancellation.

IV. EASING THE BURDEN OF STUDENT LOAN REPAYMENT USING THE TAX SYSTEM

Rather than using a fraught, one-time cancellation of student loan debt that provides relief for a discrete set of student loan borrowers at a very high cost, the student loan debt problem would be best addressed by seeking a more

212. Myers & Swaminathan*, supra* note *203*.
213. Huffman, *supra* note 175, at 465.
214. Amselem, *supra* note 204; Huffman, *supra* note 175, at 465.
215. *Canceling Student Loan Debt Is Poor Economic Stimulus*, COMM. FOR RESP. FED. BUDGET (Nov. 18, 2020), https://www.crfb.org/blogs/canceling-student-loan-debt-poor-economic-stimulus.
216. Emily Stewart, *The Debate Over Joe Biden Canceling Student Debt, Explained*, VOX (Dec. 28, 2020, 9:11 AM), https://www.vox.com/policy-and-politics/22152601/biden-student-loan-debt-cancellation.
217. *Id.*

affordable solution that will create lasting improvement. The best and most efficient way to do this would be to leverage the federal government's existing and well-established framework for making higher education more affordable: the federal income tax system. To ameliorate the student debt problem, the government should allow federal student loan borrowers to repay their student loans using pre-tax dollars.

A. A Simple, Pragmatic Solution

To implement this solution, the government should replace the existing student loan interest deduction under section 221 with an above the line deduction that allows taxpayers to deduct the aggregate amount the taxpayer paid toward federal student loans during the tax year. In other words, unlike section 221, the new provision would allow a deduction for student loan interest *and* principal. Because this would enable borrowers to keep a much larger portion of their income, it would provide meaningful relief.

Like other education tax benefits, the proposed deduction would be subject to an income limit. However, the limit for the new deduction would be substantially higher than the $90,000 limit for existing education tax benefits. For borrowers whose modified gross income places them in the 32%, 35%, or 37% marginal income tax bracket, the new deduction would be unavailable. That means that for the 2021 tax year, all student loan borrowers making $164,925 or less would qualify for the deduction. This income limit would be adjusted annually for inflation.

The higher income limit would tremendously expand the number of borrowers who could claim education tax benefits but would include practical limitations that avoid benefitting the borrowers who are least likely to need help. Borrowers making upward of $164,925 are unlikely to struggle to make their monthly federal student loan payment, even if their loan balance is especially high. For the sake of simplicity and administrability, the new deduction would be available to borrowers who previously claimed the Lifetime Learning Credit or the American Opportunity Tax Credit.

The new deduction would also be limited in other ways. While it would be available to student loan borrowers who file a tax return regardless of whether they itemize, it would be limited to student borrowers repaying their *own* federal student loans or those of their spouse. No benefit under the new provision could be claimed by parents, grandparents, or other donors who might wish to help another person repay their loan.[218]

To discourage other potential abuse, the maximum lifetime deduction available to a taxpayer would be the total cost of attendance for the years the borrower attended school (plus accrued interest) reduced by the amount of any

218. Admittedly, family members could provide borrowers with a monetary gift to be used toward loan repayment. However, no tax benefit would inure to the donor.

scholarships that were excludable from their gross income under section 117. This would ensure that borrowers could not receive a deduction on loans that they did not actually use to pay for their program.

To understand how the deduction would work, an illustration may be useful. The average monthly federal student loan payment for a borrower that completed a four-year degree is $448.[219] The average salary among recent college graduates is $55,800,[220] which would place a single filer in the 22% marginal tax bracket.[221] Under the current paradigm, that borrower would need to use $574 of their gross income to make an after-tax payment of $448. If the same borrower could repay their monthly loan using pre-tax dollars, the borrower would be able to keep $126 more of their monthly income. A student who invested this amount in the stock market each month, earned an annual return of 7%, and reinvested their gains would have more than $72,000 saved in twenty years. The additional funds could likewise be used as seed money to launch a new business, saved for a down payment on a house, or added to a retirement savings account. For those who wish, the extra cash could go toward student loan repayment, allowing the borrower to repay their student loan debt more quickly and reducing the overall cost of the loan.

B. Using the Education Tax System to Solve the Student Debt Problem

Enabling students to repay their student loans with pre-tax dollars is a simple solution that would both provide immediate relief to current borrowers and provide a lasting solution to the student debt problem. This Subpart will explain how this solution would improve financial outcomes for borrowers and society, why it is a better approach than loan cancellation, and how it enhances the existing education tax paradigm.

1. *Outcomes for Borrowers and Society*

Allowing students to repay their loans with pre-tax dollars would result in significantly more financial flexibility for borrowers and would benefit society as a result. Borrowers who are currently in default would be more likely to be able to afford their monthly loan payment while still meeting their basic needs. This would enable them to rehabilitate their credit, making them more likely to be able to borrow in the future if needed. Borrowers who are not in default but who have been unable to accumulate savings due to high monthly student loan payments would be able to begin to set aside money for a down payment on a home, new business launch, emergency fund, or retirement. This enhanced

219. Melanie Hanson, *Average Student Loan Payment*, EDUC. DATA INITIATIVE, https://educationdata.org/average-student-loan-payment (last updated June 20, 2021).

220. *Id.*

221. *IRS Provides Tax Inflation Adjustments for Tax Year 2021*, IRS (Oct. 26, 2020), https://www.irs.gov/newsroom/irs-provides-tax-inflation-adjustments-for-tax-year-2021.

financial security would enable borrowers to be choosier and take more career risks that would result in less underemployment and increase earning potential.[222] Borrowers who chose to do so could pay off their student loans faster, thereby reducing the total interest they pay over the lifetime of the loan. As a result of this solution, borrowers' income would go further toward achieving their financial goals, whatever they may be.

While the impact would not be as immediate, society would likewise benefit from implementing this solution. Additional money in borrowers' pockets means that they would be more likely to purchase homes, which would indirectly improve the quality and safety of local communities.[223] The enhanced ability of student loan borrowers to accumulate savings would result in higher rates of small business formation,[224] which would increase job opportunities and tax revenue in their communities. It would also enable borrowers to save for emergencies and retirement, which would result in reduced reliance on public resources. Borrowers would also be less likely to be underemployed, which would correlate with reductions in poverty and crime and increased civic engagement. The increased financial flexibility that would result from enabling borrowers to repay their student loans using pre-tax money would have broad and lasting benefits both for individuals and for society.

2. *Better Than Loan Cancellation*

While loan cancellation would increase liquidity for borrowers, it would do so at an extraordinary cost. Enabling borrowers to repay their student loans using pre-tax money would be a significantly less expensive way to provide immediate relief. Determining the precise cost of this solution would require the ability to foresee the future tax brackets of current borrowers, the volume of future loans, and numerous other variables. However, to get a rough estimate of the maximum cost, assume that the entire $1.6 trillion in existing student loans was repaid by borrowers in the 24% marginal tax bracket who claimed the new deduction proposed here. The result would be roughly $384 billion in foregone tax revenue over the course of the entire repayment period for all outstanding loans.[225] That number is 41% less than the one-time, immediate $650 billion cost of the Warren-Schumer plan.

The solution proposed here is also better than student loan cancellation because it would create lasting relief. Unlike loan cancellation which would benefit only current borrowers at an enormous cost, allowing borrowers to repay their student loans using pre-tax dollars would provide relief to present *and*

222. *See supra* Part II.A., pp. 116–17.
223. *See supra* Part II.B., pp. 117–18.
224. *See supra* Part II.C., pp. 118–19.
225. Because some borrowers are in a lower tax bracket and others would be disqualified from taking the deduction because they are in a higher tax bracket, the actual cost of the proposed solution would be much lower.

future borrowers at much lower cost. Because this solution is a more affordable way to provide sustainable relief to borrowers, it is superior to loan cancellation.

Allowing borrowers to repay their loans using pre-tax dollars is also fairer than loan cancellation because it would hold borrowers accountable for loans that they took out voluntarily rather than requiring other taxpayers to foot the cost of their education. It would also avoid providing an enormous transfer of government funds that disproportionately benefits wealthier Americans. As a result of perceived fairness and increased borrower accountability, enabling borrowers to repay student loans using pre-tax dollars would be more likely to receive bipartisan political support than the Warren-Schumer and Sanders loan cancellation proposals, which are viewed as radical by most conservatives.

It would also provide relief to borrowers without creating unwanted incentives. Cancelling student loan debt would be a windfall to borrowers and might create an expectation that cancellation would happen again. This expectation would make borrowers more likely to default on their loans, take out larger loans than they need, or be less cost-sensitive when choosing which school to attend. In contrast, allowing borrowers to repay their student loans with pre-tax money would incentivize repayment while reinforcing a culture of responsibility and accountability toward student loan debt.

3. *Improves Existing Education Tax Paradigm*

The solution proposed in this Note fills a gap in the existing education tax framework by providing an impactful tax incentive for borrowers in the repayment stage. Under the current education tax paradigm, 529 plans provide significant tax benefits before a student begins college, education tax credits reduce tax liability by thousands of dollars while qualifying borrowers are in school, but the sole tax benefit available to most borrowers during the repayment phase[226]—the student loan interest deduction—is shockingly small, maxing out at a tax savings of just $550 per borrower per year. In contrast, the solution proposed in this Note would allow for significant tax relief. For example, a single borrower making $80,000 per year who put $20,000 toward student loans would save about $4,400 in taxes that year. Providing a larger tax benefit during the repayment stage (when so many borrowers struggle) augments the existing education tax framework in a way that would provide meaningful relief to borrowers, while filling a void in the existing education tax paradigm.

Enabling borrowers to repay their student loans using pre-tax money also enhances the existing education tax framework by expanding the number of borrowers who qualify for education tax benefits. Under the existing education tax paradigm, low phaseout thresholds limit the impact of education tax credits and deductions. Once a borrower makes $90,000 or more, no education credits or deductions are available. The solution proposed here would expand the reach

226. While the Internal Revenue Code allows for a lifetime maximum use of $10,000 in 529 plan funds to repay student loans, the overwhelming majority of borrowers do not have 529 plans.

of education tax benefits by providing relief to borrowers with a MAGI of $164,925 or less. While that number might sound high, the enormous growth of the cost of higher education since the existing education tax benefits were established, coupled with lagging wage growth, justifies providing a tax benefit to those with higher incomes. This higher threshold would expand relief while still limiting tax benefits to those who truly need assistance. Those in the highest tax brackets would not qualify for the deduction.

The solution proposed here would improve the education tax framework by providing a benefit that is very simple relative to the existing benefits. As explained in Subpart B of Part I, one of the biggest problems with the existing education tax framework is its complexity. It is not easy for taxpayers to determine whether they qualify for the AOTC or the LLC, and if they do, the size of the benefit.[227] In contrast, to take advantage of the deduction proposed here, borrowers would merely need to know (i) the number of dollars they used to pay federal student loans over the course of the tax year, and (ii) whether they are under the income threshold to qualify for the deduction. Compared with the mire of calculations required to determine the amount of an LLC or AOTC credit, the straightforward analysis here would be easy for borrowers. They would merely need to check their bank statement and W-2.

Rather than being shortsighted, allowing student loan borrowers to repay their loans using pre-tax money would provide a way for existing and future borrowers to repay their loans while retaining the flexibility to save for other financial goals or accelerate their repayment timeline. It also would avoid rewarding fiscal irresponsibility and would fill a significant gap in the existing education tax framework by offering a significant tax benefit in the repayment phase. Furthermore, by foregoing large scale loan cancellation, this solution incentivizes students to continue to make wise choices when deciding how to finance their education.

V. Progress Not Perfection: A Critical Look at Using Pre-Tax Money to Repay Loans

Although allowing borrowers to repay their student loans using pre-tax money would go far to alleviate the existing student loan problem and the social and economic issues that come with it, it is an imperfect solution. However, because it would both improve outcomes for student borrowers and for society more broadly, it is something policymakers should pursue anyway. This Part highlights and responds to the likely critiques of this solution.

Critics of a tax deduction for student loan payments are likely to point out that tax deductions are regressive.[228] Put differently, they are unfair because they are worth more to the wealthy.[229] While it is true that the proposed tax

227. *See supra* Part I.B.4.

228. *See* Ryan, *supra* note 7, at 21.

229. *See id.* at 31.

deduction would be worth less to borrowers in lower income tax brackets, the inclusion of an income limit on the new deduction proposed here would prevent those who are least in need of assistance from benefitting.[230] While this would not cure regressivity below the income threshold, it would provide meaningful relief to a large number of borrowers and better enable them to secure their financial futures. Additionally, borrowers in low tax brackets are likely to have qualified for other education tax benefits, reducing the amount they needed to borrow in the first place.

Other critics would be likely to point out that allowing borrowers to repay federal student loans with pre-tax dollars would be expensive and would result in significant foregone tax revenue. While a roughly $384 billion cost *is* expensive, it is a fraction of the cost of student loan debt cancellation in any of its currently proposed forms.[231] Furthermore, the cost would be worthwhile because it would ultimately provide significant benefits to both individuals and the economy, while honoring the importance and value of higher education to society.

Finally, critics who support loan cancellation would likely suggest that allowing borrowers to repay their federal student loans using pre-tax dollars does not go far enough or provide relief fast enough. It is true that the student debt problem is an important one that requires quick and decisive action. However, it did not develop overnight and may take some time to resolve. Though not revolutionary, allowing borrowers to use pre-tax money to repay their student loans would be an important stride toward financial security for student loan borrowers and would be significantly more attainable than large scale debt cancellation in the current polarized political climate. While enabling borrowers to repay their student loans using pre-tax money is an imperfect solution, in view of the considerations outlined above, it would be a realistic compromise and an impactful solution to the student debt problem.

CONCLUSION

The government has an important interest in ensuring an educated populace, because education is good for individuals and for society. Although post-secondary education yields positive returns for most students, the increasing cost of tuition relative to wage growth and inflation means that it is becoming a less reliable investment. For many students, large student loans result in unmanageable student loan debt that interferes with their lives and makes their financial futures less secure. Massive student loan debt also harms society and the economy more broadly. To encourage individuals to continue to pursue higher education, the government must find ways to make higher education more affordable.

230. *See id.* at 30–31.
231. *See supra* Part IV.

Politicians have recognized the challenges posed by the historic levels of student loan debt and the struggles borrowers face as they try to repay their loans. They have proposed cancellation of large swaths of student loan debt. Whether $10,000, $50,000, or more, debt cancellation is not a good solution because it is expensive and unfair. Furthermore, it offers only temporary relief from a problem that will continue to plague future borrowers if further action is not taken.

To alleviate the student debt problem, the government should augment existing education tax benefits by replacing the section 221 deduction with one that enables borrowers to repay their student loans using pre-tax dollars. This would enable borrowers to keep more of their income and build financial security, while incentivizing the pursuit of higher education—something that is good for individuals and for society. Regardless of whether President Biden cancels student loan debt, the government should make student loan debt more manageable for borrowers by allowing them to use pre-tax funds to repay their student loans.