

Fall 2016

Student Loan Debt for the Millennial Generation and Ineffectiveness of the Federal Student Loan Program, 50 J. Marshall L. Rev. 139 (2016)

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STUDENT LOAN DEBT FOR THE MILLENNIAL GENERATION AND INEFFECTIVENESS OF THE FEDERAL STUDENT LOAN PROGRAM

CHRIS CICIORA*

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I. TRILLION DOLLAR BURDEN

A. Sports Car Debt

“Someday I will own a Lamborghini’s worth of student loan debt.”¹ Student loans can be a huge financial burden and have a major impact on the financial well-being of the students who borrow them.² Student loans cause borrowers to put off financial or

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1. Telephone Interview with Steven O’Connor, Recent Graduate, Univ. of Colo. Sch. of Law (Sept. 28, 2015).

2. See Bill Moak, *Student Loans May Leave Students, Parents Struggling to Pay*, THE CLARION LEDGER (Feb. 18, 2015, 9:22 AM), www.clarionledger.com/story/businessledger/2015/02/18/student-loans/23609665/ (discussing the struggles of student loan borrowers and the steps to take when falling behind);

personal milestones.³ Some of these milestones include marriage and having kids.⁴ Loan debt is hurting the financial well-being of their borrowers so much that 30% of millennials with student loans would give up an organ in order to have their student loans go away.⁵

According to the Federal Reserve Bank of New York's *Household Debt and Credit Report*, student loan debt is the second largest consumer debt at 1.19 trillion dollars.⁶ This figure grew by one billion dollars from the first to the second quarter in 2015.⁷ To put this staggering growth into perspective, consider that more than 20 countries have an annual gross domestic product of less than one billion dollars.⁸

This has led many, including President Barack Obama, to look for ways to lessen the debt burden currently afflicting the millennial generation.⁹ The most drastic suggestion is to make it easier to discharge student loans via bankruptcy.¹⁰ Borrowers are in need of a solution to their student loan debt because the current system is not constructed in their favor. Foregoing a family and losing a kidney are not components of the American dream.

see also Reyna Gobel, *The True Impact of Student Loans on Credit and Home Ownership*, FORBES (Aug. 30, 2014, 10:18 PM), www.forbes.com/sites/reynagobel/2014/08/30/the-true-impact-of-student-loans-on-credit-and-home-ownership/ (discussing ratios that analyze monthly payments to income, including rent and student loan payments).

3. See Janna Herron, *Survey: Student Loan Debt Forces Many to Put Life on Hold*, BANKRATE (Aug. 5, 2015), www.bankrate.com/finance/consumer-index/money-pulse-0815.aspx (conveying survey results of younger adults putting off milestones in life).

4. See Jenai Engelhard Humphreys, *What Can't Grads Afford Because of Student Loans? Kids for One*, BOSTON GLOBE (May 22, 2015), www.bostonglobe.com/magazine/2015/05/22/what-can-grads-afford-because-student-loans-kids-for-one/8U4kYhPA4K0pG3RQf2HiDJ/story.html (discussing debt causing borrowers to put off having children).

5. See Maggie McGrath, *Desperate And In Debt: 30% Of Millennials Would Sell An Organ To Get Rid Of Student Loans*, FORBES (Sept. 9, 2015, 5:32 PM), www.forbes.com/sites/maggiemcgrath/2015/09/09/desperate-and-in-debt-30-of-millennials-would-sell-an-organ-to-get-rid-of-student-loans/ (noting a survey response in which 30% of respondents would sacrifice an organ to be debt free).

6. N.Y. Fed., *Auto Loans Race Ahead, Foreclosures Plunge, and Overall Household Debt Remains Flat*, FEDERAL RESERVE BANK OF NEW YORK (Aug. 13, 2015), www.newyorkfed.org/newsevents/news/research/2015/rp150813.html.

7. *Id.*

8. Cent. Intelligence Agency, *World Fact Book*, www.cia.gov/library/publications/the-world-factbook/fields/2195.html (last visited Sept. 5, 2015).

9. Press Release, Office of the Vice President, Factsheet: Making Student Loans More Affordable, (June 9, 2014) (on file with author), www.whitehouse.gov/the-press-office/2014/06/09/factsheet-making-student-loans-more-affordable.

10. See Hamilton Nolan, *Time to Bring Bankruptcy Back for Student Loan Debt*, GAWKER (Aug. 21, 2013, 1:02 PM), <http://gawker.com/time-to-bring-bankruptcy-back-for-student-loan-debt-1177948307> (advocating for the need to relax the requirements to discharge student loans and make it an easier process for borrowers to discharge their loans).

This comment addresses how recent growth in student loan debt created a crisis among student loan borrowers and how the current system is broken. This Comment also reviews the ways students acquire loans from the federal government and how they repay those loans. Finally, this comment proposes a solution to this problem by drastically changing the student loan process.

Section II of this comment will look at the federal government's role in the student loan industry. This comment discusses economic details surrounding the millennial generation, repayment options, and tax liability issues to show how borrowers got into this situation. This comment will also show how and why many student loan borrowers struggle with their payments. Section III of this comment will analyze current student loan repayment plans and student loan programs offered by the federal government. This analysis will provide an in depth look at how programs meant to help make college affordable actually harm students. Section IV of this comment will propose changes in the law that Congress should take in order to better protect borrowers and help send the student loan marketplace back to the private lenders.

II. THE CURRENT STUDENT LOAN LANDSCAPE

A. Tuition and Loan Growth

Beginning in 2004, the student loan bubble started to grow.¹¹ Outstanding student loan debt has quintupled since then.¹² Student loans quickly overtook credit cards and auto loans to become the second largest consumer debt at nearly 10% of all outstanding consumer debt.¹³

Over a ten year period, college tuition grew by almost 80%.¹⁴ This growth is almost twice the rate of medical care costs, whose prices are known to quickly escalate.¹⁵ In addition, the growth for that period is more than double that of the Consumer Price Index (CPI).¹⁶ According to the Bureau of Labor Statistics, the CPI is “a measure of the average change over time in the prices paid by urban

11. See Joseph Lawler, *\$1.1 Trillion Student Loan bubble? Not So Fast*, WASH. EXAM'R (Dec. 8, 2014, 5:00 AM), www.washingtonexaminer.com/1.1-trillion-student-loan-bubble-not-so-fast/article/2557004 (discussing facts and figures of current student loans).

12. *Id.*

13. *Id.*

14. See Danielle Kurtzleben, *Charts: Just How Fast College Tuition Grown?*, U.S. NEWS & WORLD REPORT (Oct. 23, 2013 3:56 PM), www.usnews.com/news/articles/2013/10/23/charts-just-how-fast-has-college-tuition-grown (reporting on growth of college tuition compared to other price indexes such as housing and medical care).

15. *Id.*

16. *Id.*

consumers for a market basket of consumer goods and services.”¹⁷ Investopedia states the basket of goods “contains food, clothing, furniture and financial services” and is commonly used to determine inflation.¹⁸ According to Investopedia, the CPI is calculated by “taking the price changes for items in the predetermined basket of goods and averaging them.”¹⁹ In 2014, private nonprofit tuition and fees grew 3.7% while inflation was just 1.4%.²⁰

In the 2012-13 academic year, students financed their education with 110 billion dollars in student loans.²¹ For comparison, when adjusted for inflation, students borrowed only 24 billion dollars in the 1990-91 academic year.²² The Pew Research Center found “[a]nnual borrowing per full-time equivalent student nearly tripled from \$2,485 in 1990-91 to \$6,928 in 2012-13.”²³ These figures show a large growth in borrowing and education costs not seen before when adjusting for inflation.

B. Obtaining a Federal Student Loan

The federal student loan program is administered by the U.S. Department of Education.²⁴ The prospective borrower must be a U.S. citizen or eligible noncitizen with a valid social security number.²⁵ Additionally, he must be enrolled or accepted for enrollment in an eligible education program that is covered by the federal student loan program.²⁶ The prospective student borrower must also complete a Free Application for Federal Student Aid (FAFSA).²⁷ On the FAFSA, the prospective borrower must certify he or she is not in default and is using the funds for educational

17. *Consumer Price Index Frequently Asked Questions*, BUREAU OF LABOR STAT. (July 24, 2015), www.bls.gov/cpi/cpifaq.htm#Question_1.

18. *Basket of Goods*, INVESTOPEDIA, www.investopedia.com/terms/b/basket_of_goods.asp (last visited Jan. 30, 2016).

19. *Consumer Price Index - CPI*, INVESTOPEDIA, www.investopedia.com/terms/c/consumerpriceindex.asp (last visited Jan. 30, 2016).

20. See Janet Lorin, *College Tuition in the U.S. Again Rises Faster Than Inflation*, BLOOMBERG BUS. (Nov. 12, 2014, 11:01 PM), www.bloomberg.com/news/articles/2014-11-13/college-tuition-in-the-u-s-again-rises-faster-than-inflation (discussing rates of inflation compared to the raising costs of college tuition). This article focuses on a study by the New York based college board that tracks changes in tuition and income. *Id.*

21. See Richard Fry, *The Growth in Student Debt*, PEW RES. CTR. (Oct. 7, 2014), www.pewsocialtrends.org/2014/10/07/the-growth-in-student-debt/ (discussing student loan growth figures and other data relating to student debt and education).

22. *Id.*

23. *Id.*

24. *About ED*, U.S. DEP'T OF EDUC., www2.ed.gov/about/landing.jhtml (last visited Jan. 30, 2016).

25. *Eligibility for Federal Student Aid*, U.S. DEP'T OF EDUC., <https://studentaid.ed.gov/sa/eligibility/infographic-accessible> (last visited Jan. 30, 2016).

26. *Id.*

27. *Id.*

purposes only.²⁸ There is no credit check required for all but one federal student loan program.²⁹ A cosigner should, in most situations, not be required.³⁰

Currently, the federal student loan program offers a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct PLUS Loan, and a Direct Consolidation Loan.³¹ An unsubsidized loan accrues interest from the onset of the loan, whereas with a subsidized loan, the Department of Education will pay the interest while the students are in school.³² Only undergraduate students qualify for Direct Subsidized Loans.³³ Graduate students receive Direct Unsubsidized Loans, which means the borrowers must pay the interest while in school or have the interest capitalized.³⁴ Capitalized interest is when “interest will be added to the principal amount of the loan” which leads to paying interest on interest.³⁵ Interest rates for Direct Loans on undergraduate students start at 4.29% and 5.84% for graduate students.³⁶ There is a lifetime aggregate loan limit of 57,500 dollars for direct subsidized loans and 138,500 dollars for direct unsubsidized loans.³⁷

Direct PLUS Loans cover the remaining balance of education costs.³⁸ This is calculated by taking the cost of attendance of the school and deducting any other financial aid received, such as one of the direct loans.³⁹ Direct PLUS Loans require a credit check and currently carry an interest rate of 6.84%.⁴⁰ A Direct Consolidation Loan allows a borrower to combine multiple loans into one loan.⁴¹ The loan consolidation creates a single monthly payment.⁴² The interest rate of this new single loan is fixed during repayment and

28. *Id.*

29. *Federal Versus Private Loans*, U.S DEP’T OF EDUC., <https://studentaid.ed.gov/sa/types/loans/federal-vs-private> (last visited Jan. 30, 2016). The Plus loan offered by the government is the only loan the offer that requires a credit check.
Id.

30. *Id.*

31. *Loans*, U.S. U.S DEP’T OF EDUC., <https://studentaid.ed.gov/sa/types/loans> (last visited Jan. 30, 2016).

32. *Subsidized and Unsubsidized Student Loans*, U.S DEP’T OF EDUC., <https://studentaid.ed.gov/sa/types/loans/subsidized-unsubsidized#subsidized-vs-unsubsidized> (last visited Jan. 30, 2016).

33. *Id.*

34. *Id.*

35. *Id.*

36. *How Much Can I Borrow*, U.S DEP’T OF EDUC., <https://studentaid.ed.gov/sa/types/loans/subsidized-unsubsidized#how-much> (last visited Jan. 30, 2016).

37. *Id.*

38. *PLUS Loans*, U.S DEP’T OF EDUC., <https://studentaid.ed.gov/sa/types/loans/plus> (last visited Jan. 30, 2016).

39. *Id.*

40. *Id.*

41. *Loan Consolidation*, U.S DEP’T OF EDUC., <https://studentaid.ed.gov/sa/repay-loans/consolidation> (last visited Jan. 30, 2016).

42. *Id.*

is determined by the interest rate's weighted average of the loans the borrower chose to consolidate.⁴³

C. Repayment Options

There are four repayment plans offered: Standard Repayment Plan for 10 years, Graduated Repayment Plan for 10 years, Extended Repayment Plan for 25 years, and Income-Based Repayment Plan for up to 25 years.⁴⁴ Upon repayment on unsubsidized loans, any unpaid interest is capitalized and added to the principle of the loan.⁴⁵ Fed Loan Servicing provides an example, describing how “a 20,000 dollar loan at 6.8% interest and 5,700 dollars in accrued interest while in school will have a total repayment of 35,489.54 dollars with monthly payments of 295 dollars over 10 years.”⁴⁶ If the interest is paid for while in school, “the total repayment will be 33,318.29 dollars with payments of 230 dollars over 10 years, including the \$5,700 of accrued interest.”⁴⁷ The Fed Loan Servicing example results in \$65 a month in savings due to interest paid while in school.⁴⁸ The difference stems from not paying interest upon the capitalized interest. This leads to repaying the principle faster, which should leave the borrower with lower payments to ease the debt burden.

President Obama called for more income based repayment plans for borrowers.⁴⁹ He proposed debt forgiveness for those with a remaining balance after 20 years.⁵⁰ For borrowers in public service, such as teachers and nurses, the balance is forgiven in 10 years.⁵¹ This is projected to help over one million borrowers by lowering their monthly payments by 110 dollars.⁵² The current income based repayment plan calls for a maximum monthly payment of 15% of a borrower's discretionary income.⁵³ Discretionary income is the “difference between the borrower's adjusted gross income and 150% of the poverty guideline for the borrower's family size and state of residence.”⁵⁴ The Obama plan

43. *Id.*

44. *Repayment Plans*, U.S. DEP'T OF EDUC., <https://studentaid.ed.gov/sa/repay-loans/understand/plans> (last visited Jan. 30, 2016).

45. *Interest FAQ*, FED. LOAN SERVICING, www.myfedloan.org/help-center/faq/interest-faq.shtml (last visited Jan. 30, 2016).

46. *Id.*

47. *Id.*

48. *Id.*

49. Office of the Vice President, *supra* note 9.

50. *Id.*

51. *Id.*

52. Press Release, The White House, *Ensuring That Student Loans are Affordable*, (Mar. 23, 2015, 8:48 AM) (on file with author), www.whitehouse.gov/issues/education/higher-education/ensuring-that-student-loans-are-affordable.

53. *Id.*

54. *Income-Based Repayment*, FINAID, www.finaid.org/loans/ibr.phtml (last visited Jan. 31, 2016).

calls for reducing the income based repayment plan rate to 10% of a borrower's discretionary income.⁵⁵

Nearly two million borrowers have applied for a payment plan based on their income.⁵⁶ 65% were eligible for a lower payment because they had a proper combination of low income and high debt payments.⁵⁷ 440,000 applications are still in need of review, demonstrating that percentage eligible could grow even higher.⁵⁸

The income based plans will cost the government nearly 22 billion dollars.⁵⁹ The Congressional Budget Office is projecting a deficit of 426 billion dollars for the fiscal year 2015.⁶⁰ It also states the government will make a ten year profit of over 125 billion dollars on student loans.⁶¹ Nearly three quarters of these profits, or 95.25 billion dollars, will come from graduate students.⁶² Graduate students represent 16% of the student population but account for 40% of outstanding student loan debt.⁶³ As previously mentioned, graduate students are not able to participate in the subsidized loan program offered by the government.⁶⁴

D. Tax Liability

There is a downside to an income based repayment plan with loan forgiveness suggested by President Obama. If a loan does not meet the standards of the Public Service Loan Forgiveness program, the forgiven balance of debt could be classified as income, which would then be taxed.⁶⁵ This leads to twice the tax burden for

55. The White House, *supra* note 52.

56. See Ron Lieber, *For Student Borrowers, Relief Now May Mean a Big Tax Bill Later*, N.Y. TIMES (Dec 14, 2012), at B1, www.nytimes.com/2012/12/15/you-r-money-for-student-borrowers-a-tax-time-bomb.html?_r=0 (discussing the number of people signing up for income based repayment plans).

57. *Id.*

58. *Id.*

59. Jeffery Dorfman, *Student Loan Forgiveness Could Be Expensive Education For Taxpayers*, FORBES (Feb. 12, 2015, 11:07 AM), www.forbes.com/sites/jeffreydorfman/2015/02/12/student-loan-forgiveness-could-be-expensive-education-for-taxpayers/.

60. *Budget*, CONGRESSIONAL BUDGET OFFICE, www.cbo.gov/topics/budget (last visited Jan. 30, 2016).

61. See Jeffrey Dorfman, *Student Loan 'Profits' Show Government Should Get Out Of Student Loan Business*, FORBES (Apr. 19, 2014, 10:19 AM), www.forbes.com/sites/jeffreydorfman/2014/04/19/student-loan-profits-show-government-should-get-out-of-student-loan-business/ (discussing the 127 billion dollar profit the federal government will earn on student loans over the next 10 years).

62. *Id.*

63. Allie Bidwell, *How Much Loan Debt is From Grad Students? More Than You Think*, U.S. NEWS & WORLD REPORT (Mar. 25, 2014, 11:38 AM), www.usnews.com/news/articles/2014/03/25/how-much-outstanding-loan-debt-is-from-grad-students-more-than-you-think.

64. U.S. DEP'T OF EDUC., *supra* note 32.

65. See Anna Bahr, *Obama's Move to Help Students Is Not as Forgiving as It Seems*, N.Y. TIMES, June 23, 2014, at A3, www.nytimes.com/2014/06/24

the borrower in the year of forgiveness.⁶⁶ While the forgiveness may be needed, there will be a burden in the tax year when April 15th comes around.

When the loan forgiveness exceeds 40,000 dollars, the tax bill can surpass 10,000 dollars just to the federal government.⁶⁷ The borrower could pay income tax on the loan forgiveness at the state level as well.⁶⁸ Some arguments hold that the tax liability stemming from an Income Based Repayment Plan with loan forgiveness is actually more expensive.⁶⁹

A bill to change all this, The Relief for Underwater Student Borrowers Act, was presented to Congress in July 2014 by two Democratic lawmakers.⁷⁰ This bill would create a tax exemption for a borrower who has paid his loans as outlined under his debt repayment plan with loan forgiveness.⁷¹ This would eliminate the burden of paying taxes on the forgiven income.⁷²

E. Bankruptcy and Default

Current estimates project that almost 8 million borrowers are in default on their student loans, totaling 110 billion dollars.⁷³ This means 25% of student loan borrowers are behind on their student loan payments.⁷⁴ According to the Department of Education,

/upshot/obamas-move-to-help-students-is-not-as-forgiving-as-it-seems.html?_r=0 (discussing the pitfalls of the student loan forgiveness program).

66. *Id.*

67. See Lieber, *supra* note 56 (discussing the number of people signing up for income based repayment plans). The income based plan is meant to help those not with able to make the payments of the standard plan. *Id.* If monthly payments are a struggle, a large tax bill might hurt more. *Id.*

68. *Id.*

69. See Robin Kawakami, *Suze Orman answers 22 questions on student loans, investing and retirement*, TODAY MONEY (Sept. 28, 2015, 10:38 AM), www.today.com/money/suze-orman-answers-22-questions-student-loans-investing-retirement-t45971 (discussing the downfalls of student loan forgiveness as opposed to paying of the loan in general). Suze Orman is a top financial expert for millennials and is the subject of the interview. *Id.*

70. Bonnie Lee, *Tax Implications of Student Loan Forgiveness*, FOX BUS. (Aug. 21, 2014), www.foxbusiness.com/personal-finance/2014/08/21/tax-implications-student-loan-forgiveness/.

71. *Id.*

72. *Id.*

73. See CFPB *Launches Public Inquiry Into Student Loan Servicing Practices*, CONSUMER FIN. PROTECTION BUREAU (May 14, 2015), www.consumerfinance.gov/newsroom/cfpb-launches-public-inquiry-into-student-loan-servicing-practices/ (discussing details of the student loan industry and how loan servicers could be contributing to the debt issues of student loan borrowers).

74. See Gretchen Morgenson, *A Debt Setup That's Failing the Students*, N.Y. TIMES, (Oct. 11, 2015), at BU1, www.nytimes.com/2015/10/11/business/a-student-loan-system-stacked-against-the-borrower.html (discussing how the student loan system is not set up in favor to borrowers and is likely leading to the 25% default rate). *Contra* Lauren Camera, *Loan Defaults Drops Among*

“default can occur when a borrower has not made a payment in 270 days.”⁷⁵ If the borrower goes into default, he will lose his ability to obtain additional student loans from the federal government and the loans in default can be sent to a collection agency.⁷⁶ Borrowers struggling to make their payments may have to resort to bankruptcy for relief.

Under current bankruptcy law, student loans will not be discharged unless the borrower satisfies a three-pronged test to show that not forgiving the student loans would be an undue hardship.⁷⁷ This three-pronged test is known as the Brunner test.⁷⁸ In order to satisfy the Brunner test, the debtor must show he cannot maintain a minimal standard of living with his loans.⁷⁹ This standard of living is based on the debtor’s current income and expenses.⁸⁰ The first prong “will not be satisfied if the debtor could pay the loan by engaging in some short-term, belt tightening.”⁸¹ *In Re Crawley* went into more detail, describing the minimal standard of living as “being able to afford food, clothing, housing, and medical care.”⁸² The minimum standard is not meant to subject the debtor to poverty but it is not meant to accommodate luxury expenses.⁸³

The second prong of the Brunner test is satisfied by showing that the current financial situation will continue during the repayment period.⁸⁴ The second prong of the test should be satisfied if “long term mental or physical health problems” hinder employment.⁸⁵ If a debtor does not have “marketable skills”, or “the necessity of supporting several dependents precludes sufficient income[,]” then the second prong is satisfied.⁸⁶

Student Borrowers, U.S. NEWS & WORLD REPORT (Sept. 30, 2015, 11:54 AM), www.usnews.com/news/articles/2015/09/30/loan-defaults-drop-among-student-borrowers (showing that while student loan defaults are still occurring, there has been an overall decrease in the rate of defaults).

75. *Understanding Default*, U.S. DEP’T OF EDUC., <https://studentaid.ed.gov/sa/repay-loans/default> (Jan. 30, 2016).

76. *Id.*

77. Betsy Mayotte, *Debunking the Student Loan Bankruptcy Myth*, U.S. NEWS & WORLD REPORT (Aug. 13, 2014, 10:00 AM), www.usnews.com/education/blogs/student-loan-ranger/2014/08/13/debunking-the-student-loan-bankruptcy-myth.

78. *Id.*

79. *Brunner v N.Y. State Higher Educ. Serv. Corp.*, 831 F.2d 395, 396 (2d Cir. 1987).

80. *Id.*

81. *Flickinger-Luther v. ECMC (In re Flickinger-Luther)*, 462 B.R. 157, 159 (Bankr. W.D. Pa. 2012).

82. *Roundtree-Crawley v. Educ. Credit Mgmt. Corp. (In re Crawley)*, 460 B.R. 421, 436 (Bankr. E.D. Pa. 2011) (quoting *In re Johnson*, 400 B.R. 167, 173 (Bankr. M.D. Pa. 2009)).

83. *Id.*

84. *Brunner*, 831 F.2d at 396.

85. *Sperazza v. Educ. Credit Mgmt. Corp. (In re Sperazza)*, 366 B.R. 397, 411 (Bankr. E.D. Pa. 2007).

86. *Id.*

The final prong, good faith effort, should be satisfied under § 523(a)(8) by the debtor's "efforts to obtain employment, maximize income, and minimize expenses."⁸⁷ This is a subjective standard and the proof needed to surmount this hurdle can vary from judge to judge. It would appear that a debtor could argue that the hardships associated with prong two were a reason he or she could not maximize income or obtain employment.⁸⁸

F. For-Profit Colleges

Another current issue is the fallout from for-profit colleges, such as Corinthian College. Corinthian filed for bankruptcy in May 2015 and then ceased operations.⁸⁹ Corinthian grew to over 120 colleges including Everest and Wyotech,⁹⁰ educating over 110,000 students under their umbrella of school brands.⁹¹ This led investors to give the educational corporation a valuation of more than 1.4 billion dollars at one point.⁹²

The federal government is stepping in to help as it has received 12,000 applications for student loan discharge due to their school closing or due to the school lying about job prospects.⁹³ Many of those claims are linked to Corinthian College schools.⁹⁴ Over 3,000 claims were approved and the potential loss to the government can exceed 3 billion dollars.⁹⁵ The plan calls for not only cancelling out current debt but also repaying borrowers for payments made towards their loans.⁹⁶

87. *Id.*

88. See *Hamilton v U.S. Dep't, of Educ. (In re Hamilton)*, 361 B.R. 532, 558 (Bankr. Mont. 2007) (noting the debtor gave his best efforts to maximize income and lower expenses in the face of health problems). See also *Hoskins v Educ. Credit Mgmt. Corp.*, 292 B.R. 883, 888 (Bankr. C.D. Ill. 2003) (discussing the debtor's argument for his lack of marketable skills, but still attempting to repay his loans when putting forth the Brunner test).

89. Shahien Nasirpour, *Corinthian Colleges Files for Bankruptcy*, HUFFINGTON POST (May 4, 2015, 12:33 PM), www.huffingtonpost.com/2015/05/04/corinthian-colleges-bankruptcy_n_7205344.html.

90. *Id.*

91. *Id.*

92. *Id.*

93. Associated Press, *3,000 former Corinthian College Students to Get College Loans Erased*, J. SENTINEL (Sept. 3, 2015) www.jsonline.com/news/education/3000-former-corinthian-college-students-to-get-college-loans-erased-b99570088z1-324246181.html.

94. *Id.*

95. *Id.*

96. See Natalie Kitroeff, *Democrats Urge Government to Refund Billions in Corinthian Student Loans*, ORANGE COUNTY REG. (Sept. 30, 2015, 2:01 PM), www.oregister.com/articles/departments-685355-corinthian-students.html (discussing the calls in Congress to refund student loan payment and the thought they are past due on the refund payments).

In 2000, there was just one for-profit school on the top 25 list of schools that had the most student loans.⁹⁷ There were 13 for-profit schools in the same top 25 list by 2014.⁹⁸ In 2011, nearly half the borrowers entering repayment graduated from a for-profit school or a two year school.⁹⁹ By 2014, these student borrowers represented 70% of the loans in default.¹⁰⁰ When 50% of the borrowers are from these education sources and 70% are in default, politicians in Washington should take notice and suggest solutions.

G. Political Impact

Millennials could play an important role in the 2016 election, as they can comprise over a third of voters.¹⁰¹ This generation represents the majority of borrowers struggling with student loan debt and is hoping for solutions to their current debt problems.¹⁰² The candidates who ran for the respective Democratic and Republican nominations in the 2016 primaries each had their own opinions on how to solve the problem in the hopes of winning the millennial voting bloc.

On the Democratic side, Hilary Clinton proposed a cut in interest rates for student loans and community college would be free.¹⁰³ Senator Bernie Sanders advocated to tax Wall Street trades to negate undergraduate tuition and fees.¹⁰⁴ Sanders's plan would provide 47 billion dollars in federal funding with this tax with the states picking up the rest.¹⁰⁵

On the Republican side, Jeb Bush has stated he wants to "decrease the cost of college and increase the value of a college

97. Gillian B. White, *The Empty Promises of For-Profit Colleges*, THE ATLANTIC (Sept. 15, 2015), www.theatlantic.com/business/archive/2015/09/the-failure-of-for-profit-colleges/405301/.

98. *Id.*

99. Ashlee Kieler, *For-Profit Colleges Lead the Way on Loan Defaults: Report*, CONSUMERIST (Sept. 11, 2015), <http://consumerist.com/2015/09/11/for-profit-colleges-lead-the-way-on-loan-defaults-report/>.

100. *Id.*

101. See Julian Zelizer, *Who Will Grab the Millennial Vote?* CNN (Feb. 23, 2015, 8:57 AM), www.cnn.com/2015/02/23/opinion/zelizer-millennials-politics/ (discussing the importance of the millennial vote and the issues important to their generation).

102. See Andrew Martin & Andrew W. Lehren, *A Generation Hobbled by the Soaring Cost of College*, N.Y. TIMES, May 12, 2012, at A1, www.nytimes.com/2012/05/13/business/student-loans-weighing-down-a-generation-with-heavy-debt.html?pagewanted=all&_r=0 (profiling multiple people regarding their issues with student loan debt).

103. Stephen Dash, *Where They Stand: Democratic Presidential Candidates on Student Loans*, FORBES (Aug. 20, 2015, 6:52 PM), www.forbes.com/sites/stephendash/2015/08/20/where-they-stand-democratic-presidential-candidates-on-student-loans/.

104. *Id.*

105. *Id.*

degree.”¹⁰⁶ Senator Marco Rubio has introduced several bills focused on student loans by changing repayment plans and making the schools more accountable.¹⁰⁷ Donald Trump has not made his policies clear but he has stated “the federal government is making an immense amount of money” off the backs of students.¹⁰⁸

Presidential hopefuls are not the only people proposing solutions to the student loan crisis. The Obama administration has made investments in Pell Grants, which are financial awards that do not have to be repaid, and tax credits.¹⁰⁹ President Obama has also introduced a Student Aid Bill of Rights, which aims to protect student borrowers from loan servicers and make paying for college an easier process.¹¹⁰

H. Economic and Employment Data

The millennial generation was hit hard the economic downturn as in May 2015, “13.8% of 18 to 29 year olds are out of work”¹¹¹ Only a few months prior, the rate was 14.2%, showing signs of things getting better for this demographic.¹¹² It is an even bigger improvement over May 2014, when the unemployment rate was 15.4% for 18 to 29 year olds.¹¹³ In contrast, however, the national unemployment rate in May 2015 was 5.5%.¹¹⁴ This shows that employment opportunities for the millennial generation are lagging behind that of other generations. The labor force participation rate for those ages 25-34 is projected to be 81.3% in 2024, which would be down over 1.6% from 2004.¹¹⁵ These two statistics show there are fewer jobs for the millennial generation and fewer members of this

106. Stephen Dash, *Where They Stand: Republican Presidential Candidates on Student Loans*, FORBES (Aug. 21, 2015, 8:56 PM), www.forbes.com/sites/stephendash/2015/08/21/where-they-stand-republican-presidential-candidates-on-student-loans/.

107. *Id.*

108. *Id.*

109. Office of the Vice President, *supra* note 9.

110. Secretary Arne Duncan, *The Student Aid Bill of Rights Enhancing Protections for Student Loan Borrowers*, THE WHITE HOUSE (March 10, 2015 2:40 PM), www.whitehouse.gov/blog/2015/03/10/student-aid-bill-rights-enhancing-protections-student-loan-borrowers.

111. See Leah McGrath Goodman, *Millennial College Graduates: Young, Educated, Jobless*, NEWSWEEK (May 27, 2015, 6:22 AM), www.newsweek.com/2015/06/05/millennial-college-graduates-young-educated-jobless-335821.html (discussing current job woes of the millennial generation and the path it is forecasted to take).

112. *Id.*

113. *Id.*

114. *Labor Force Statistics from the Current Population Survey*, BUREAU OF LABOR STATISTICS, <http://data.bls.gov/timeseries/LNS14000000> (last visited Dec. 10, 2016).

115. *Labor force projections to 2022: the labor force participation rate continues to fall*, BUREAU OF LABOR STATISTICS (last updated Dec. 8, 2015), www.bls.gov/emp/ep_table_303.htm.

class seeking employment. This demonstrates the promise of education and the risk of the loans might not be worth it for some borrowers. This data is likely the result of some who can't find a job and some who have given up looking for a job.

The dip in employment has caused the millennial generation to fall behind in lifetime earnings.¹¹⁶ The reason for this is that most earnings growth occurs in the first decade after joining the work force.¹¹⁷ Raises after the first decade of entering the work force are generally smaller in size.¹¹⁸ A drop in earnings will affect a borrower's ability to repay student loans.

The loss in lifetime earnings and the accumulation of student loan debt contribute to the lack of home ownership in the millennial generation. Student loan debt has caused the millennial generation to put off purchasing a home.¹¹⁹ 36.2% of Americans 35 and younger owned a home in March 2014,¹²⁰ down from 36.8% from the same time in 2013.¹²¹ This ownership rate has never been lower, with data going back to 1982.¹²²

III. A SYSTEM SET UP FOR FAILURE

This portion of the Comment will focus on several issues. First, this Comment will analyze the blind approval of many student

116. See John W. Schoen, *Millennial Wage Gains: Too Little Too Late?*, CNBC (Feb. 10, 2015, 1:21 PM), www.cnbc.com/2015/02/10/millennial-wage-gains-too-little-too-late.html (noting the overall lifetime loss of income felt by the millennial generation due to poor wage growth and rates early in their career).

117. *Id.*

118. *Id.*

119. See Katherine Peralta, *Homeownership for Millennials Declines to New Lows*, U.S. NEWS & WORLD REPORT (Apr. 30, 2014, 11:01 AM), www.usnews.com/news/articles/2014/04/30/homeownership-formillennials-declines-to-historic-lows (discussing the historic drop in home buying by the millennial generation due to student loans); see also Ellen Chang, *Student Loan Debt Still Forcing Millennials to Delay Purchases of Cars and Houses*, THE STREET, (Aug. 18, 2015, 8:55 AM), www.thestreet.com/story/13258773/1/student-loan-debt-stillforcingmillennials-to-delay-purchases-of-cars-and-houses.html (contemplating the drop in home buying by millennials due to student loan debt); contra Mark Calvey, *If Millennials Aren't Buying Homes, Don't Blame Student Loans*, Zillow Says, S.F. BUS. TIMES (last updated Sept. 17, 2015, 3:04 PM), www.bizjournals.com/sanfrancisco/blog/real-estate/2015/09/real-estate-zillow-z-millennials-home-buying-debt.html (disproving the argument that student loans affect home buying as there is only a 2% drop in home buying for those with student loans and those who don't).

120. See Peralta, *supra* note 119 (noting how student loans have hit the millennial generation hard when it comes to buying a home).

121. Contra Prashant Gopal & John Gittelsohn, *Rising Rents are Finally Forcing Millennials to Buy Houses*, BLOOMBERG (last updated Mar. 25, 2015 9:05 AM), www.bloomberg.com/news/articles/2015-03-25/millennials-start-shift-to-homeownership-as-rents-soar (stating home ownership rates are increasing due to rising rents forcing the purchasing of homes for economical sense).

122. Peralta, *supra* note 119.

loans and the possible consequences of these policies. Second, this Comment will look at universities' greedy actions in this country. Third, this Comment will compare the interest charges by the government on student loans with taxes. Fourth, this Comment will analyze the effects of the unusual decisions in the Unsubsidized Loan program affecting graduate and doctoral level students. Last, this Comment will compare and contrast the private lenders' loan requirements with those of the federal government's student loan program.

A. *Blind Approval*

The majority of student loans offered by the government do not require a credit check,¹²³ while private student loans do require a credit check.¹²⁴ A credit check is required to buy a home and car.¹²⁵ Credit can even affect job prospects; in one study, 10% of people lost a job offer due to what an employer found in the applicants credit history.¹²⁶

The housing crisis in the 2000s was created in part by a lack of credit worthiness and the government's involvement in our private lives.¹²⁷ This can be seen as a mirror image of government's involvement with student loans. The Community Reinvestment Act of 1995 required lenders to prove loans were being offered and executed in markets not traditionally served.¹²⁸ These loans were made to parties with "poor credit history, low down payments, and limited income documentation."¹²⁹ These loans made to unqualified buyers resulted in an astronomical default rate.¹³⁰

The current student loan program offered by the federal government can lend 138,500 dollars via the Direct Subsidized and Unsubsidized Loan program without a credit check.¹³¹ The

123. U.S. DEP'T OF EDUC., *supra* note 29.

124. *Id.*

125. See *Why Your Credit Score Matters*, CHASE BANK, www.chase.com/mortgage/home-loans/credit-history (last visited Jan. 30, 2016) (discussing credit needs for home loans); see also *Check Your Credit First*, BANKRATE, www.bankrate.com/finance/auto/check-your-credit-first-1.aspx (last visited Jan. 30, 2016) (noting credit needs for a car purchase).

126. Kerry Hannon, *Has Your Credit Report Cost You a Job?*, FORBES (Mar. 16, 2013, 10:22 AM), www.forbes.com/sites/kerryhannon/2013/03/16/has-your-credit-report-cost-you-a-job/.

127. See Peter J. Wallison & Edward J. Pinto, *A Government-Mandated Housing Bubble*, FORBES (Feb. 16, 2009, 12:01 AM), www.forbes.com/2009/02/13/housing-bubble-subprime-opinions-contributors_0216_peter_wallison_edward_pinto.html (detailing how the government mandates to home lenders caused the housing bubble by requiring that loans be given to unqualified people).

128. 12 U.S.C. § 2901 (2012).

129. Wallison, *supra* note 127.

130. *Id.*

131. U.S. DEP'T. OF EDUC., *supra* note 36.

government can be setting borrowers up for default just as the borrowers were defaulting on their housing loans. Also, the government does not take into account a borrower's academic major when determining his or her eligibility for a student loan.¹³² This is similar to having the limited income documentation with the housing loans.

While college graduates should make 1,000,000 dollars more than high school graduates, there is an income difference between college majors.¹³³ In 2012, a video and photographic art major earned roughly 30,000 dollars annually and 13% of these grads were out of work.¹³⁴ To contrast this, a nursing major earned on average 48,000 dollars annually and had a low jobless rate of 4%.¹³⁵ There is a difference in the ability to pay between these majors, but this information is not taken into account when the government issues a student loan.

To see the effects of making loans without a clear credit history or an ability to repay, one should look to the recent housing crisis. The housing crisis cost the real estate industry an estimated 7 trillion dollars.¹³⁶ Wall Street lost 11 trillion dollars and 3.4 trillion dollars vanished from retirement funds.¹³⁷ The housing crisis had such a substantial effect that an estimated 46.2 million people ended up in poverty.¹³⁸ Poverty estimates have been recorded for over 50 years and it has never been higher than this 46.2 million person estimate.¹³⁹ As previously stated, student loans are now the second largest consumer debt category behind mortgages.¹⁴⁰ Therefore, a downturn in the economy could produce results similar to the housing crisis.

132. U.S. DEP'T. OF EDUC., *supra* note 25.

133. See Katrina Trinko, *Choose Your College, Major and Loans Wisely*, USA TODAY (last updated Apr. 22, 2012, 5:34 PM), <http://usatoday30.usatoday.com/news/opinion/forum/story/2012-04-22/college-majors-student-loans/54474222/1> (discussing the drastic difference between bachelor level majors and the corresponding salary and unemployment levels). In terms of lifetime earnings, there can sometimes be a million dollar difference between a bachelor's degree and a doctorate degree. *Id.*

134. *Id.*

135. *Id.*

136. Sarah Childress, *How Much Did The Financial Crisis Cost?*, PBS (May 31, 2012, 3:53 PM), www.pbs.org/wgbh/pages/frontline/business-economy-financial-crisis/money-power-wall-street/how-much-did-the-financial-crisis-cost/.

137. *Id.*

138. *Id.*

139. *Id.*

140. N.Y. Fed, *supra* note 6.

B. Greedy Schools

Another issue coinciding with the blind approval of loans is that it causes tuition to rise.¹⁴¹ As previously mentioned, college tuition grew by 80% over a ten year period.¹⁴² The Federal Reserve Bank of New York discovered tuition was raised 65% for every new dollar in Direct Loan funding from the government loan program.¹⁴³

This continual rise in easy money for student loans likely led to the expansive growth in the for-profit college industry. This industry has recently crashed because many of their students did not have the success that was promised.¹⁴⁴ The federal government is now stepping in to provide relief to borrowers for some of these for-profit schools.¹⁴⁵ This means that the government has now paid for an education that has no value to the borrowers.

When borrowers from a school default at a rate of more than 30%, the school must take steps to correct the issues.¹⁴⁶ If the action taken by the school is not successful, the school can lose its eligibility to participate in the federal loan programs.¹⁴⁷ This can devastate an institution financially by having it lose the biggest student lender. It appears that the government does take steps to prevent schools from taking advantage of student borrowers, but only after the damage is done.¹⁴⁸

141. See *College Aid Means Higher Tuition*, WALL ST. J. (July 19, 2015, 6:34 PM), www.wsj.com/articles/college-aid-means-higher-tuition-1437345298 (noting a study conducted by the Federal Reserve Bank of New York that concluded when Direct Loans are increased by one dollar tuition rises by 65 cents).

142. Kurtzleben, *supra* note 14.

143. *College Aid Means Higher Tuition*, *supra* note 141.

144. See Jillian Berman, *Nearly 30 More For-Profit College Campuses to Close*, MARKETWATCH (May 7, 2015, 11:53 AM), www.marketwatch.com/story/nearly-30-more-for-profit-college-campuses-to-close-2015-05-07 (discussing the closures of two for-profit organizations leading to increased scrutiny of the for-profit college industry); see also Shahien Nasirpour, *Troubled For-Profit Corinthian Colleges Shutting Down As Education Department Faces Bill*, HUFFINGTON POST (last updated Apr. 27, 2015), www.huffingtonpost.com/2015/04/26/corinthiancollegesclosing_n_7147380.html (noting an additional for-profit college filing for bankruptcy after having over 120 schools at one point). These closures have left students scrambling to finish their education. *Id.* While not discussed, the education credits earned at these for-profit schools might not transfer to other schools. *Id.*

145. *3,000 former Corinthian College Students to Get College Loans Erased*, *supra* note 93.

146. Lauren Camera, *Loan Defaults Drops Among Student Borrowers*, U.S. NEWS & WORLD REPORT (Sept. 30, 2015, 11:54 AM), www.usnews.com/news/articles/2015/09/30/loan-defaults-drop-among-student-borrowers (showing that while student loan defaults are still occurring and the corresponding pitfalls, there is a decrease in the rate of defaults).

147. *Id.*

148. See James A. Bacon, *How the Feds Run Virginia's Colleges and Universities Now*, BACON'S REBELLION (Oct. 24, 2015), www.baconsrebellion.com/2015/10/how-the-feds-run-virginias-colleges-and-universities-now.html

C. Taxation of Education

The aforementioned lack of credit safeguards has not lost taxpayers money.¹⁴⁹ The federal loan program is a profitable venture taken by the government, with 127 billion in projected profits over 10 years on all the loan programs combined.¹⁵⁰ In simple terms, the student borrowers are paying the government back their education costs plus 127 billion dollars. This is essentially a federal sales tax on education.

A sales tax is a “tax levied on the sale of goods and services that is usually calculated as a percentage of the purchase price.”¹⁵¹ In the case of college education, a state or local government agency is often offering the service of college education.¹⁵² Simply put, the government sets the price of their education service and the student pays their tuition over an agreed upon period of time. The government then charges a tax on the student’s education starting at 4.29% of the education cost.¹⁵³ Nearly 70% of students will pay this tax, with the remaining 30% of students being exempt from paying this tax.¹⁵⁴

The interest rate difference seen between undergraduate students and graduate students can be compared to the progressive tax for income tax. The income tax in the United States starts at 10% and ends at 39.6% with multiple tiers in between.¹⁵⁵ The lower

(discussing the level of complexity and the roughly 1,000 pages of regulations put forth by the Department of Education to schools that participate in the Direct Loan program). The Department of Education is required to issue final regulations when legislation is passed affecting education programs within 360 days but almost never meets this deadline. *Id.*

149. Dorfman, *supra* note 61.

150. *Id.*

151. *Sales Tax*, MERRIAM-WEBSTER, www.merriam-webster.com/dictionary/sales%20tax (last visited Jan. 30, 2016).

152. Lynn O’Shaughnessy, *20 Surprising Higher Education Facts*, U.S. NEWS & WORLD REPORT (Sept. 6, 2011, 10:00 AM), www.usnews.com/education/blogs/the-college-solution/2011/09/06/20-surprising-higher-education-facts.

153. *See* U.S. DEPT OF EDUC., *supra* note 36. This displays the interest rates provided by government loans. *Id.*

154. 70% of students take out student loans meaning 30% have other means to pay thus they are exempt from paying the tax that is student loans. *See* Fry, *supra* note 21 (discussing student loan growth figures and other data relating to this matter).

155. *See* Kelly Phillips Erb, *2016 Tax Rates, Brackets & Exemption Amounts May Result In Lower Bills*, FORBES (Sept. 16, 2015, 2:26 PM), www.forbes.com/sites/kellyphillipserb/2015/09/16/2016-tax-rates-brackets-exemption-amounts-may-result-in-lower-bills/ (discussing the 2016 tax rates, standard deductions, and credits); *see also* Kelly Phillips Erb, *2015 Tax Rates, Standard Deductions, Personal Exemptions, Credit Amounts & More*, FORBES (May 14, 2015, 4:23 PM), www.forbes.com/sites/kellyphillipserb/2015/05/14/2015-tax-rates-standard-deductions-personal-exemptions-credit-amounts-more/ (discussing the 2015

level students, those working towards a bachelor's degree, will pay the 4.29% rate.¹⁵⁶ This is similar to a lower income family paying a lower income tax rate. When students choose to earn their master degrees and doctorate degrees, they progress into a higher bracket with an interest rate of 5.84%.¹⁵⁷ The borrowers can progress into higher rates after this with additional borrowing if they take out a PLUS loan.

There is even a parallel to the standard deduction offered in the tax code to further align student loans with taxes. The standard deduction is a set dollar amount that "reduces the taxpayer's taxable income".¹⁵⁸ Similar to the standard deduction, the aggregate loan limits on Direct Subsidized and Direct Unsubsidized loans allow for the student borrowers to pay a lower rate on money borrowed below those levels.¹⁵⁹ Once the borrower exceeds these levels, they progress into a new bracket with a rate of 6.84%.¹⁶⁰

Some may argue that interest on student loans is required because of the risk involved for the lenders.¹⁶¹ There are even arguments that the rates need to be higher because of the risk.¹⁶² Unlike auto loans and home mortgages, there is not a tangible asset to hold as collateral, should the borrower default. However, if a student borrower were to default on a loan, he or she faces collection calls, loss of a tax refund, or wage garnishment.¹⁶³ As opposed to a borrower losing a house or car, there is not much the government can do to compel a borrower to pay, which means that interest is needed to balance this risk.

tax rates and providing a comparison for the 2016 rates, standard deduction, and credits).

156. U.S. DEP'T OF EDUC., *supra* note 36. The "tax" rate the student pays is the interest rate the government is charging on his loan, which is based on the education level. *Id.*

157. *Id.*

158. *Standard Deduction*, IRS, www.irs.gov/publications/p17/ch20.html (last visited Jan. 30, 2016).

159. *See* U.S. DEP'T OF EDUC., *supra* note 36 (providing the loan limits students can take out and at what interest rates).

160. *Id.* This is the top interest rate the government charges student loans, which would be a parallel to the top tax rate. *Id.*

161. *See* Robert Tracinski, *No, Bernie Sanders, Student Loans Rates Should Be Higher*, THE FEDERALIST (Oct. 21, 2015), <http://thefederalist.com/2015/10/21/no-bernie-sanders-student-loan-rates-should-be-higher/> (describing why student loan rates should be higher particularly because there is not a tangible asset tied to the student loan to be held as collateral). A lender can sell a home or car should the borrower default, but there is nothing to sell when it comes to an education. *Id.*

162. *Id.*

163. *How is Missing a Payment a Problem*, U.S DEP'T OF EDUC., <https://studentaid.ed.gov/sa/repay-loans/default#missed-payment> (last visited Jan. 30, 2016).

D. Graduate Students Need Not Apply

As mentioned previously, a graduate student cannot receive a Direct Subsidized loan, which is a loan that does not require interest payments while in school.¹⁶⁴ The interest the borrower cannot pay on his Direct Unsubsidized loan while in school will be capitalized.¹⁶⁵ This will lead to student borrowers effectively paying interest on interest, and consequentially, higher monthly payments due to the larger debt burden.

The federal loan program did not always operate this way for graduate students. Graduate students were allowed to take out subsidized loans up until July 1, 2012.¹⁶⁶ This policy change was made to save the government 18 billion dollars over 10 years and, in addition, to save the Pell grants program, which provides aid to needy college students.¹⁶⁷ The elimination of this option is odd. In data mentioned previously, the entire student loan program is expected to make a profit of 127 billion dollars.¹⁶⁸ It would appear that this cost saving measure was not needed as both the Pell grants and the subsidized loans to graduate students were both feasible. This results in a net profit of 109 billion dollars instead of the 127 billion dollar profit as is currently projected.¹⁶⁹

Another way the Direct Unsubsidized Loan program is not as friendly to graduate students is with interest rates. Interest rates start at 4.29% for a subsidized loan and 5.84% for the unsubsidized loan.¹⁷⁰ This means not only do graduate students have to accrue interest while in school, but graduate students have to accrue and pay interest at a higher rate. To pay off the interest while in school, the borrower will need a job, family help, or significant savings, which sometimes is not possible for a student.

Interest rates are a reflection of risk, and a borrower's interest rate rises the more unlikely it appears he will not repay the loan.¹⁷¹ By this standard, one would assume undergraduate Direct Subsidized Loans are less risky than the graduate Direct Unsubsidized Loans because of the current interest rates. This assumption is likely incorrect as those with master's and doctoral degrees earn more money in their lifetime than those with just a

164. U.S. DEP'T OF EDUC., *supra* note 32.

165. *Id.*

166. Katy Hopkins, *Grad Students to Lose Federal Loan Subsidy*, U.S. NEWS & WORLD REPORT (Mar. 13, 2012, 9:00 AM), www.usnews.com/education/best-graduate-schools/paying/articles/2012/03/13/grad-students-to-lose-federal-loan-subsidy.

167. *Id.*

168. Dorfman, *supra* note 61.

169. *Id.* When the 18 billion is subtracted from the 127 billion, the result is the 109 billion. *Id.*

170. U.S. DEP'T OF EDUC., *supra* note 36.

171. Reem Heikal, *Forces Behind Interest Rates*, INVESTOPEDIA, www.investopedia.com/articles/03/111203.asp (last visited Jan. 30, 2016).

bachelor's degree.¹⁷² It even can be argued the higher interest rate paid by graduate students is justified by the additional income gained by having this level of education.¹⁷³

E. Public vs Private Loans

There is a significant difference between a private lender earning interest income and the government earning interest income. A private lender requires interest in order to make money on their loans to stay in business.¹⁷⁴ A private lender will also have to pay taxes on the interest earned.¹⁷⁵ The government is not paying itself tax on the interest it is earning, whereas a private lender must pay taxes on interest income.¹⁷⁶ By not having to pay taxes on the profits, the government can have a larger tolerance for default, which puts them at an advantage over private lenders.¹⁷⁷

The private student loan lenders advertise a range of interest rates for their loans rather than fixing their rates for all borrowers.¹⁷⁸ The reason for this is that private lenders do a credit check on the prospective borrowers to determine his interest rate.¹⁷⁹ The rates are offered after the credit check, which will help the lender determine risk.¹⁸⁰ The government simply designates their

172. See Brian Burnsed, *How Higher Education Affects Lifetime Salary*, U.S. NEWS & WORLD REPORT (Aug. 5, 2011, 8:30 AM), www.usnews.com/education/best-colleges/articles/2011/08/05/how-higher-education-affects-lifetime-salary (noting the increase in lifetime career earnings as the education level increases).

173. See Jordan Weissmann, *Do Graduate Students deserve Dirt-Cheap Loans?*, SLATE (Apr. 21, 2014, 2:18 PM), www.slate.com/articles/business/moneybox/2014/04/do_graduate_students_deserve_cheaper_loans_the_case_for_it_is_weak.single.html (arguing the case is weak for graduate students receiving cheaper loans because there is not an entitlement to cheaper loans).

174. Lee Ann Obringer, *How Banks Work*, HOW STUFF WORKS (May 29, 2002), <http://money.howstuffworks.com/personal-finance/banking/bank4.htm>.

175. *Line 5. Interest*, IRS, www.irs.gov/instructions/i1120/ch02.html#d0e1366 (last visited Jan. 30, 2016).

176. See generally Nathan Lewis, *Can a Government Finance Itself Simply By Issuing Money?*, FORBES (July 31, 2015, 9:49 AM), www.forbes.com/sites/nathanlewis/2015/07/31/can-a-government-finance-itself-simply-by-issuing-money/2/#552d29616230 (discussing the way the government finances itself, while taxing itself is not mentioned).

177. *Id.*

178. See *Graduate Student Loans*, DISCOVER STUDENT LOANS, www.discover.com/student-loans/graduate-student-loans.html (last visited Jan. 30, 2016) (showing the range of rates available for graduate student loans); see also *Smart Option Student Loan for Graduate Students*, SALLIE MAE, www.salliemae.com/student-loans/graduate-student-loans/graduate-smart-option-student-loan/ (last visited Jan. 30, 2016) (providing an additional example of student loan rates being advertised as a range and not locked in under the "Rates & Terms" tab of the page).

179. U.S. DEP'T OF EDUC., *supra* note 29.

180. *Supra* note 178.

loan rate based on the education level the student is at. This makes the application process a lot simpler for the student borrower as there are less steps to complete.

There is also a lack of competition in the student loan industry between the private industry and government loans. The main reason for this is because the government simply offers a better deal than private lenders.¹⁸¹ The government also will take a loss of three billion dollars between 2014 and 2024 on undergraduate loans; but this is offset or offset in part by profit gained on unsubsidized loans.¹⁸² Given the large profit made on graduate loans, it is a surprise that only 8 percent of people have a master's degree.¹⁸³ This means the government can dominate the student loan market early and create product knowledge more easily with their borrowers.¹⁸⁴

Essentially, the federal government is treating undergraduate Direct Subsidized Loans as a loss leader and making up for this with the unsubsidized loan program. A loss leader is when a business is willing to take a loss on one item in order to receive greater profit with other items.¹⁸⁵ This strategy is undercutting private lenders. While not a monopoly, the federal government is the leading student loan originator in the country with 55% of all loans.¹⁸⁶ All other sources combined for the remaining 45% of loans.¹⁸⁷

181. See John Sandman, *Private Lenders Should Take the Lead on Student Loan Refi*, SAYS CFPB, MAIN ST. (May 20, 2013, 5:38 AM), www.mainstreet.com/article/private-lenders-should-take-lead-student-loan-refi-says-cf (stating how the private loan system does not have the benefits of the public loan system). The article also goes on to state private lenders are cherry picking the borrowers in the best position to repay and offering even better terms than the public loans. *Id.* This makes it seem like no one in the private world wants to help the borrowers in public service with private loans get into a better position. *Id.*

182. Jordan Weissmann, *The Big Secret About Washington's Student Loan Profits*, SLATE (Apr. 16, 2014, 12:29 PM), www.slate.com/articles/business/monetarybox/2014/04/student_loan_profits_the_government_makes_its_money_off_grad_students.html.

183. *The Rise of the Master's Degree*, THE AM. INT. (May 22, 2014, 1:35 PM), www.the-american-interest.com/2014/05/22/the-rise-of-the-masters-degree/.

184. *Product Knowledge*, BUS. DICTIONARY, www.businessdictionary.com/definition/product-knowledge.html (last visited Feb. 4, 2016).

185. *Loss Leader Strategy*, INVESTOPEDIA, www.investopedia.com/terms/l/lossleader.asp (last visited Jan. 30, 2016).

186. See Rohit Chopra, *Student Debt Swells, Federal Loans Now Top a Trillion*, CONSUMER FIN. PROTECTION BUREAU (July 17, 2013), www.consumerfinance.gov/newsroom/student-debt-swells-federal-loans-now-top-a-trillion/ (discussing the growth in the student loan industry and describing some of the resulting impacts of student loans). One point of interest is that families are using "home equity loans and loans from retirement plans" to fund education. *Id.* This means the true balance of student loan debt is higher than the 1 trillion dollar figure given by multiple sources and is truly unknown. *Id.*

187. *Id.*

There are flaws with the current student loan system. Several areas of concern are the interest rates, approval standards, and tuition growth. The system can be saved and future students should be spared from future hardships. Schools, private lenders, and government will all need to work together on a solution but reasonable changes should benefit everyone.

IV. REDISTRIBUTE THE STUDENT LOAN WEALTH

In order to fix this broken federal student loan system, there will need to be changes made. The major change by the federal government is to have it act as a traditional lender, which should level the playing field with private lenders. Private lenders will need to make changes to make their loan offerings more enticing to borrowers to draw them away from the federal government program. Colleges and universities will need to make changes to control the growing cost of their education services. The goal is to have the federal government, the private lenders, and the schools on the same page to make repayment an easier process for student borrowers to repay their loans.

A. Federal Loan Program Changes

This Comment proposes changing the student loan program so that it is less of a money maker for the federal government and more effective for the student borrowers. The ultimate goal is for the federal government to not profit or lose money on federal loans. Rather the goal should be for the government to break even. Along with this, the private sector will be encouraged to be a bigger player in paying for college education. Schools will also have to make changes to their business practices to remain eligible to receive federal student loans.

As the program currently stands, the federal government will make a ten year profit of over 125 billion dollars on student loans.¹⁸⁸ The first step to eliminating this profit is to stop the disparate treatment between graduate student loans and undergraduate student loans. Graduate student loans should no longer accrue interest while the students are in school. The change will cost the student loan program 18 billion dollars over 10 years.¹⁸⁹ This should reduce the interest expense graduate students pay and will eliminate the capitalized interest for graduate students.

188. Dorfman, *supra* note 61.

189. See Hopkins, *supra* note 166 (showing, by reversing the actions mentioned in this article, that the cost of paying the interest on graduate student loans will be 18 billion dollars).

Interest rates for student loans will be tied to the prime rate.¹⁹⁰ The prime rate, which is currently 3.5 percent, is “widely used in determining home equity loan rates and credit card rates.”¹⁹¹ This should allow borrowers to get a sense of how their rate is calculated. To help student borrowers forecast their student loan plans, the student loan rates will be set in January of the calendar year for the upcoming academic year starting that fall. For example, the federal loan rates for the 2016-2017 academic year will be set in January 2016.¹⁹²

Interest rates for undergraduate students would rise in order to lower or eliminate the losses suffered on undergraduate loans. The current losses on these loans stand at three billion dollars.¹⁹³ The new rate for undergraduate students would start at prime rate plus 2 percent. This would result in a rate of 5.5 percent for undergraduate students at a minimum.

Interest rates on federal student loans for graduate students should be lowered to a rate below undergraduate students. This would more accurately reflect the fact that graduate students are less likely to default, since interest rates are a reflection of risk.¹⁹⁴ The rate charged to graduate students would start at the prime rate plus 1.25 percent.¹⁹⁵ The current prime rate is 3.5 percent.¹⁹⁶ This results in graduate loans set at 4.75 percent at a minimum when the 1.25 percent is added.¹⁹⁷ This rate will cut into the profit that the federal government earns and will help get the student loan program closer to the breakeven goal.

Along with the rate changes for the minimum rate, there will also be credit checks for student borrowers who have received over \$25,000 in student loans. While college students likely do not know much about their credit or how it works, credit should play a larger

190. See generally *Prime Rate*, INVESTOPEDIA, www.investopedia.com/terms/p/primerate.asp (last visited Jan. 30, 2016) (giving the definition of the Prime Rate and the common uses for it in the finance industry).

191. *Prime Rate, Federal Funds Rate, COFI*, BANKRATE, www.bankrate.com/rates/interest-rates/prime-rate.aspx (last visited Jan. 30, 2016).

192. See *Who Sets Interest Rates for Federal Student Loans*, U.S. DEP'T OF EDUC., <https://studentaid.ed.gov/sa/types/loans/interest-rates#who-sets-interest-rates-for-federal-student-loans> (last visited Jan. 30, 2016) (noting that Congress sets the interest rates for federal student loans); see also Susannah Snider, *3 Facts to Know About the New Student Loan Interest Rates*, U.S. NEWS & WORLD REPORT (July 1, 2015, 9:00 AM), www.usnews.com/education/best-colleges/paying-for-college/articles/2015/07/01/3-things-to-know-about-the-new-student-loan-interest-rates (noting current rates are tied to the 10 year treasury bond).

193. Weissmann, *supra* note 182.

194. Burnsed, *supra* note 172.

195. Investopedia, *supra* note 185.

196. See *Prime Interest Rate*, FEDPRIMERATE.COM, www.fedprimerate.com (last visited Jan. 30, 2016) (noting current prime rate which will be added to a percentage to get new rate).

197. *Id.*

role in federal student loans.¹⁹⁸ The interest rate the student borrower should pay will rise with the more risk seen in their credit history or lack thereof.

The student borrower's major should also be taken into account. As mentioned previously, in 2012, a video and photographic art major earned about 30,000 dollars and 13 percent of these graduates were not employed overall.¹⁹⁹ A nursing major received a salary of about 48,000 dollars and overall 4% of nurses were out of work.²⁰⁰ The nursing major should pay a lower rate on federal student loans than the video and photographic major as the risk is lower. Interest rates are nothing more than a reflection of risk.²⁰¹

B. Private Marketplace Changes

With the federal government now offering higher rates on their student loans, there should be more competition with private student loan lenders. To further promote this competition, a tax credit will be granted to private lenders for each private student loan originated. This tax credit pool will be funded by 20 percent of the profit on current student loans.²⁰²

To receive this tax credit, private lenders must agree not to charge interest on the loans while the student borrowers are in school. This should help level the playing field with the federal loans and could help draw more borrowers away from the federal marketplace.²⁰³ The tax credit should also help subsidize the interest income the private lenders are giving up.²⁰⁴

Another private marketplace solution to lower the student loan burden on student borrowers is to allow employers to pay for

198. College students generally do not pay attention to their credit or understand how it works. See Robert Farrington, *Why College Students Need to Worry About Their Credit Score More Than Anyone Else*, FORBES (Feb. 19, 2015, 8:47 AM) www.forbes.com/sites/robertfarrington/2015/02/19/why-college-students-need-to-worry-about-their-credit-score-more-than-anyone-else/3/ (discussing why college students should pay more attention to their credit). Bringing credit checks into the student loan process may change this.

199. Trinko, *supra* note 133.

200. *Id.*

201. Burnsed, *supra* note 172.

202. This pool is projected to be just over 20 billion dollars over ten years based on the current profit projections. See Dorfman, *supra* note 61 (suggesting the student loan profit will be over 125 billion dollars).

203. Federal loans not accruing interest while the student borrower is noted as a selling point on the federal loan website. See U.S. DEP'T OF EDUC., *supra* note 32 (showing the website where interest not accruing while in school is displayed).

204. If 1,000,000 loans originate in the private market place and the pool for the year is 2 billion dollars, each loan will have a 2 thousand dollar tax credit attached. See generally Dorfman, *supra* note 61 (noting the student loan profit the government is making).

education. There currently is a 5,250 dollar limit on tax-free contributions from employers.²⁰⁵ This cap on tax-free contributions for education by businesses will be eliminated. Businesses will now be able to pay for the entire portion of an employee's education expenses tax free, if they choose.²⁰⁶ This can eliminate the need for a borrower to take out a student loan.

C. University Level Changes

The proposed changes to the federal loan program and for private sources of tuition assistance will only work if there are changes in the schools. The 80% growth in tuition will not continue.²⁰⁷ To participate in the federal student loan program colleges must agree to tie all tuition increases to an inflation index.²⁰⁸ Private lenders will also be encouraged to require colleges to tie tuition to an inflation index in order to provide loans to the students. This should keep education costs in line with costs of other items in the consumer marketplace.²⁰⁹ This should also cause tuition increases to occur at a more acceptable pace.

Tuition costs for the schools participating in the federal loan program will also be adjusted to reflect the return on investment. This means video and photographic art classes will cost less than nursing classes.²¹⁰ This should help those seeking a degree in a field not as financially rewarding by lowering the cost of their education. Colleges will determine this price via a survey of their recent graduates' salaries.²¹¹ This survey should provide the base for the

205. 26 U.S.C. § 127 (2012).

206. While helpful, the 5,250 dollar cap does not allow employers to pay much per year for a student tax free. *See 2015-2016 Admission Tuition & Cost of Attendance*, J. MARSHALL L. SCH., www.jmls.edu/admission/jd/tuition.php (last visited Jan. 30, 2016) (noting the 2015-16 cost of attendance for The John Marshall Law School).

207. Kurtzleben, *supra* note 14.

208. The federal government uses the consumer price index as one of their inflation indicators and is likely the most well-known. Tuition will be tied to this and can grow at a better pace than the current unregulated pace. *See* BUREAU OF LABOR STATISTICS, *supra* note 17.

209. INVESTOPEDIA, *supra* note 19.

210. This discount is due to the difference in the amount each major will make when out of school. *See* Trinko, *supra* note 133 (discussing the income differences between majors). This will help the old adage you get what you pay for.

211. Many schools complete and publish a survey every year to see what percentage of their graduates are employed and at what salary. *See Career Plans Survey*, UNIVERSITY OF PENNSYLVANIA CAREER SERVICES, www.vpul.upenn.edu/careerservices/files/Class2014CareerPlans.pdf (last visited Nov. 15, 2015) (noting the average salary and what employers the graduates of the University of Pennsylvania are working for); *see also Reports*, TEXAS A&M CAREER CENTER, <http://moses.tamu.edu/ccsurveyreports/SurveyReport.aspx> (last visited Nov. 15, 2015) (displaying the graduate survey salary reports by major dating back to 2010).

price scale for each major's tuition by using the median salary for graduates' majors. Only the degree fields in the top 10% of starting salary will be allowed to charge the full tuition rate. There will be a staggered system of tiers. These tiers can lower tuition rates to as low as 75% of the full tuition price. The rate growth and tiers will be based of the 2015-2016 academic year so schools cannot raise tuition higher than inflation.

D. Repayment Changes

Among all the changes for loans and universities, repayment will remain relatively the same. Income-based payment plans will be the standard repayment plan. The current standard is the 10 year repayment plan.²¹² Student borrowers should still have the option to select which payment plan they prefer.²¹³ Complete loan forgiveness will occur after 30 years for those who successfully made all of their payments.²¹⁴ This longer period should allow lenders to further recoup the principle loaned out to student borrowers.

For the student loan tax credit to be granted to a private lender, it must agree to use the repayment terms offered by the federal government.²¹⁵ By offering the same terms as the federal government, private lenders could draw more borrowers over to them. Private lenders should benefit from the terms offered by the federal loan system to limit the growth in the costs of education. Student borrowers should benefit by having the same repayment options on private loans as federal loans.

V. A NEW BALANCED SYSTEM

The federal student loan program has helped many students go to college. However, there are several flaws to the program which have allowed tuition to rise at a staggering rate.²¹⁶ The lenders in the private marketplace combined are only a minor player in the student loan arena.²¹⁷ Changes can be made to draw more

212. U.S DEP'T OF EDUC., *supra* note 44.

213. *Id.*

214. The forgiveness period is the typical length of a home mortgage so the proposal is giving a similarity to these two investments. *See generally* Colin Robertson, *What Mortgage Term is Best?*, THE TRUTH ABOUT MORTGAGE (Aug. 23, 2011) www.thetruthaboutmortgage.com/what-mortgage-term-is-best/ (noting the 30 year mortgage is the most common mortgage currently).

215. There are four types of repayment plans currently offered by the federal government. *See* U.S DEP'T OF EDUC., *supra* note 44 (providing the four payment plans offered).

216. The student loan program did not have a cost control for tuition and will blindly approve student loans without a credit check. U.S. DEP'T OF EDUC., *supra* note 31.

217. Over 50% of loans originated are from the federal government leaving all other private lenders at less than 50%. *See* Chopra, *supra* note 186

borrowers to the private lenders and create a level playing field between private lenders and the federal government. Furthermore, actions can be taken to limit the tuition growth and lower the costs of education in America to make a college education more affordable. These actions bring student loans back to the private marketplace and limit the government's involvement in the student loan industry.

Tuition cannot grow uncontrolled anymore.²¹⁸ Lenders, both government and private, need to band together to bring change. However, the government cannot be allowed to earn over 125 billion dollars on student loans.²¹⁹ Those profits need to be redistributed to make education more affordable and the changes suggested can make this occur.

(discussing the dominance of the government in the student loan field with a ten point spread).

218. Kurtzleben, *supra* note 14.

219. Dorfman, *supra* note 61.

