STUCK IN THE MIDDLE: CURBING INCOME INEQUALITY WITH THE BETTER BARGAIN PLAN

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The American Dream,[1] as it applies to economic mobility, is evolving into an actual dream as opposed to a reality.[2] According to Robert Reich, former Secretary of Labor under President Bill Clinton, "42% of children born in poverty in the USA will stay there."[3] For upward mobility to exist, a certain

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1. The American Dream is defined as "an American social ideal that stresses egalitarianism and . . . material prosperity." *American Dream*, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (11th ed. 2004).

2. Nicholas Kristof, *The American Dream Is Leaving America*, N.Y. TIMES (Oct. 25, 2014), http://www.nytimes.com/2014/10/26/opinion/sunday/nicholas-kristof-the-american-dream-is-leaving-america.html?_r=0 ("A basic element of the American dream is equal access to education as the lubricant of social and economic mobility. But the American dream seems to have emigrated because many countries do better than the United States in educational mobility..."); HEATHER BOUSHEY & ADAM S. HERSH, CTR. FOR AM. PROGRESS, THE AMERICAN MIDDLE CLASS, INCOME INEQUALITY, AND THE STRENGTH OF OUR ECONOMY 18 (May 2012), http://www.americanprogress.org/issues/economy/report/2012/05/17/11628/the-american-middle-class-income-inequality-and-the-strength-of-our-economy/ [hereinafter MIDDLE CLASS STRENGTH] ("There is fairly consistent evidence that intergenerational mobility has stayed roughly constant since 1990 but remains below the rates of mobility experienced from 1950 to 1980.").

3. Carole Cadwalladr, *Inequality for All – another Inconvenient Truth?*, THE OBSERVER (Feb. 2, 2013), http://www.theguardian.com/film/2013/feb/02/inequality-for-all-us-economy-robert-reich.

level of income inequality[4] is required.[5] However, upward mobility does not decrease as income inequality increases.[6] From 1978 to 2010, the yearly income for a typical American employee decreased 31% (adjusted for inflation) while the yearly income for those in the top one percent of income distribution increased 182%.[7] The cost of higher education and coinciding student loan debt has played an integral role in the rise of income inequality in America.[8]

As a vital element of income inequality, the cost of college has risen three and a half times faster than inflation since 1978.[9] College students took out $11.7 billion in loans in 1990; that number escalated to $103.9 billion by 2010.[10] In 2008, Ben Bernanke, Chairman of the Federal Reserve Board, stated, "the best way to improve economic opportunity and reduce inequality is to increase the educational attainment and skills of American workers."[11] In light of the

4. In most studies, "income" is defined as the "sum of all income components reported on tax returns", including "wages and salaries, pensions received, profits from businesses, capital income such as dividends, interest, or rents, and realized capital gains" and excluding Social Security benefits and unemployment compensation. EMMANUEL SAEZ, UC BERKELEY, STRIKING IT RICHER: THE EVOLUTION OF TOP INCOMES IN THE UNITED STATES 2–3 (Sept. 3, 2013), http://eml.berkeley.edu/~saez/saez-UStopincomes-2012.pdf. "Income inequality" occurs when a small percentage of the population receives a disproportionate share of total income. For example, in 1928, the top one percent received 23.9% of all pretax income and the bottom ninety percent received 50.7% of all pretax income. DREW DESILVER, PEW RESEARCH CENTER, U.S. INCOME INEQUALITY, ON RISE FOR DECADES, IS NOW HIGHEST SINCE 1928 (Dec. 5, 2013), http://www.pewresearch.org/fact-tank/2013/12/05/u-s-income-inequality-on-rise-for-decades-is-now-highest-since-1928/.

5. Richard Posner, *Social Mobility and Income Inequality*, THE BECKER-POSNER BLOG (Feb. 2, 2014, 6:19 PM), http://www.becker-posner-blog.com/2014/02/social-mobility-and-income-inequalityposner.html ("Imagine that all incomes were close to being equal. Then social mobility would be close to zero because there would be so little to gain from getting a better job or working harder. And by the same token social mobility might be very great in a society yet income inequality also be very great.").

6. *Id.* ("But while social mobility and income inequality can thus move together . . . social mobility does not decrease as income inequality rises.").

7. *Compare* Cadwalladr, *supra* note 3 ("In 1978, the typical male US worker was making $48,000 a year (adjusted for inflation). Meanwhile the average person in the top 1% was making $390,000. By 2010, the median wage had plummeted to $33,000, but at the top it had nearly trebled, to $1,100,000."), *with* Joseph E. Stiglitz, *Student Debt and the Crushing of the American Dream*, N.Y. TIMES (May 12, 2013), http://opinionator.blogs.nytimes.com/2013/05/12/student-debt-and-the-crushing-of-the-american-dream/?_php=true&_type=blogs&_r=0 ("[M]edian family income . . . is now about $50,000, compared to $46,000 in 1980 (adjusted for inflation).").

8. *Id.* Today, many jobs require a college degree, including those which had previously not required one. Monica Herk, *Fixing Our Broken Colleges: Competency-Based Education and Reauthorizing the Higher Education Act*, COMMITTEE FOR ECON. DEV. (May 14, 2015), https://www.ced.org/blog/entry/fixing-our-broken-colleges-competency-based-education-and-reauthorizing-the ("Ultimately employers are looking for employees who hold a particular mix of skills, with the precise combination dependent on the job in question.").

9. *Id.*

10. Daniel A. Austin, Comment, *The Indentured Generation: Bankruptcy and Student Loan Debt*, 53 SANTA CLARA L. REV. 329, 335 (2013).

11. Daniel L. Bennett & Richard K. Vedder, *Public Policy, Higher Education, and Income Inequality in the U.S.: Have We Reached Diminishing Returns?*, 31 SOC. PHIL. & POL'Y 252, http://www.bennettecon.com/uploads/2/2/5/2/22526640/public_policy_higher_education_and_inc

current levels of student loan debt, the need for federal student aid reform has never been more imperative.[12] State approaches to higher education funding vary because of economic constraints and other political reasons,[13] therefore reform must come from the federal level in order to effectuate real change in the cost of higher education.[14] In August of 2013, President Barack Obama announced a number of proposals, labeled the "Better Bargain Plan,"[15] designed to make college more affordable,[16] particularly for the middle class.[17]

The basic principles of the Better Bargain Plan, if implemented correctly, would help to curb income inequality by offering incentives for colleges to

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ome_inequality_with_tables.pdf [hereinafter *Diminishing Returns*].

12. Stiglitz, *supra* note 7.

13. MICHAEL MITCHELL, VINCENT PALACIOS & MICHAEL LEACHMAN, CTR. ON BUDGET AND POLICY PRIORITIES, STATES ARE STILL FUNDING HIGHER EDUCATION BELOW PRE-RECESSION LEVELS (May 1, 2014), http://www.cbpp.org/cms/?fa=view&id=4135 [hereinafter PRE-RECESSION FUNDING] ("State lawmakers face the simultaneous challenge of adequately funding higher education while supporting other important state priorities.").

14. Martin O'Malley, *Federal solutions to our student loan program*, WASH. POST (Apr. 23, 2015), https://www.washingtonpost.com/opinions/federal-solutions-to-our-student-loan-problem/2015/04/23/a9ab9f6c-e69a-11e4-9767-6276fc9b0ada_story.html ("To really make a dent in student debt, the federal government will have to act."). State funding for higher education, which accounts for a large portion of college revenues, will not be addressed in this article because that issue warrants a more in-depth discussion than is possible here. *See* Omari Scott Simmons, Comment, *Class Dismissed: Rethinking Socio-Economic Status and Higher Education Attainment*, 46 ARIZ. ST. L.J. 231, 284 (2014) (Federal grants and loans only account "for roughly 15% of revenues for colleges nationwide.").

15. *FACT SHEET on the President's Plan to Make College More Affordable: A Better Bargain for the Middle Class*, WHITE HOUSE (Aug. 22, 2013), http://www.whitehouse.gov/the-press-office/2013/08/22/fact-sheet-president-s-plan-make-college-more-affordable-better-bargain- [hereinafter Better Bargain Plan]; Jodi Wood Jewell, *Legislating Higher Education: Applying the Lessons of No Child Left Behind to Post-Secondary Education Reformation Proposals*, 50 IDAHO L. REV. 53, 55 (2013); *see infra* Part III(A) (discussing the details of the Better Bargain Plan).

16. Tamar Lewin, *Obama's Plan Aims to Lower Cost of College*, N.Y. TIMES (Aug. 22, 2013), http://www.nytimes.com/2013/08/22/education/obamas-plan-aims-to-lower-cost-of-college.html?pagewanted=all&_r=0 ("It's past time that more of our colleges work better for the students they exist to serve.").

17. "Middle Class" appears in the title of the Plan. Better Bargain Plan, *supra* note 15. One possibility for including the middle class, rather than the lower class, in the title of a plan to reform higher education is that the social position of a student's parents is a solid predictor of whether or not a student will attend college and eventually earn a degree, meaning higher education reform will more likely affect middle-class, as opposed to working class, students. Laura J. Napolitano, Shelley Pacholok & Frank F. Furstenberg, *Educational Aspirations, Expectations, and Realities for Middle-Income Families*, 35 J. FAM. ISSUES 1200, 1202–03 (2014), http://jfi.sagepub.com/content/35/9/1200 [hereinafter *Middle-Income Realities*] (stating social position consists of "parents' educational attainment, occupational status, and income, or a combination."). While this correlation exists, determining causation is difficult. *Id.* at 1203 ("Although scholars have documented the link between family background and educational attainment, they have failed to offer a coherent explanation for why this relationship exists and persists."). Another possible reason to single out the middle class in the title of the Plan could be the importance of the middle class to the economy. *See infra* notes 43–46 and accompanying text (discussing the importance of a strong middle class).

become more efficient, thereby reducing operating costs which are rolled into tuition costs and passed on to students and their parents.[18] Decreased tuition costs would reduce the amount of debt that middle and lower income students incur, thus curbing income inequality[19] by giving those students more flexibility[20] to build wealth.[21] Although the Department of Education deviated from pursuing the Better Bargain Plan after encountering implementation problems, the principles of the Better Bargain Plan remain clear.[22] This article will focus on the Better Bargain Plan and its potential impact on higher education and income inequality.[23]

Specifically, the purpose of this article is to depict the roles that the cost of higher education and student loan debt play in perpetuating income inequality and reveal how the principles of the Better Bargain Plan can curb income inequality. Part I of this article will examine the rise and current state of income inequality and cost of higher education in the United States as well as the federal student loan environment. Before a useful remedy may be presented, a full understanding of income inequality, the cost of higher education, and federal student loans is needed. Part II will analyze recent legislative and regulatory attempts to make higher education more affordable. Looking at the failures of recent federal attempts to increase college affordability serves two purposes. First, the analysis of recent efforts will enable avoidance of repeating mistakes. Second, the analysis will offer a better prediction of potential obstacles the Better Bargain Plan, or similar legislation, will encounter. Part III will present the Better Bargain Plan in detail and analyze the Plan's potential impact on higher education and income inequality. Part IV will discuss the obstacles to implementing the Better Bargain Plan, examine other alternatives aimed at increasing college affordability, and provide an analysis of the current presidential candidates' stances on the cost of higher education. In sum, a comprehensive analysis of the principles of the Better Bargain Plan will reveal

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18. *See* PRE-RECESSION FUNDING, *supra* note 13 ("Nearly every state has shifted costs to students over the last 25 years — with the most drastic shift occurring since the onset of the recession.").

19. Income is not limited to wages alone. *See* SAEZ, *supra* note 4.

20. *See infra* Part I(C) (discussing federal student loan debt and the consequences of high amounts of debt).

21. *See infra* Part III(B) (discussing the potential impacts of the Better Bargain Plan on higher education and income inequality).

22. *See infra* Part IV(A) (discussing the decision of the Department of Education to retreat on the Better Bargain Plan).

23. Other elements affecting income inequality, such as tax policy, will not be discussed extensively in this article due to space and time limitations. For more on the causes of income inequality, *see generally* Facundo Alvaredo et al., *The Top 1 Percent in International and Historical Perspective*, 27 J. ECON. PERSP. 3, (2013), https://www.aeaweb.org/articles.php?doi= 10.1257/jep.27.3.3 [hereinafter *Top 1 Percent Perspective*]. Grants, which account for a portion of federal aid, will not be addressed in-depth because, unlike student loans, grants do not have to be repaid. For more on federal grants, *see, e.g.*, *Middle-Income Realities*, *supra* note 17, at 1204 (discussing Pell Grants); *see also Federal Pell Grant Program*, U.S. DEP'T OF EDUC., http://www2.ed.gov/programs/fpg/index.html (last visited Oct. 4, 2014) [hereinafter *Pell Grant Program*].

its ability to extend beyond the realm of higher education affordability and curb the nation's income inequality.[24]

I. THE ROLES OF HIGHER EDUCATION AND STUDENT LOAN DEBT IN PERPETUATING INCOME INEQUALITY

Before offering a potential method of federal student aid reform to curb income inequality, a complete understanding of what the problem of income inequality exactly involves is required. Recognizing the roles of higher education and federal student loans, among other factors, in perpetuating income inequality requires a broad understanding of income inequality.[25] In order to understand how the principles of the Better Bargain Plan can curb income inequality, an awareness of how income inequality, the cost of higher education, and federal student loans interact is needed. This section will discuss the growth and current state of income equality, cost of higher education, and levels of student loan debt, while revealing why these areas need to be addressed by legislation, such as the Better Bargain Plan.

A. Growth and Current State of Income Inequality

Certainly, upward mobility would cease to exist without income inequality, but current levels of income inequality do not promote upward mobility as social mobility has stayed relatively constant over the past few decades while income inequality grew dramatically.[26] Although upward mobility requires some income inequality, extremely high levels of income inequality can also result in long-term damage to economic growth and stability.[27] The disparity between rich and poor is currently at its largest since 1928.[28] Income inequality began to grow dramatically in the 1970s,[29] with the average incomes of the top one

24. Reducing income inequality may cause an increase in upward mobility." *See* Posner, *supra* note 5 ("Social mobility may not have fallen," [as income inequality grew] "only because the rise in inequality has been so skewed in favor of a small fraction of the population. A significant redistribution of wealth to the poorer part of the population might, by improving nutrition and family stability, generate increased upward mobility.").

25. *See supra* note 23 and accompanying text (discussing elements affecting income inequality).

26. *See* Posner, *supra* note 5 (discussing the need for some income inequality in order for upward mobility to exist and the fact that social mobility has stayed constant while income inequality has grown).

27. *See* MIDDLE CLASS STRENGTH, *supra* note 2, at 5.

28. *See* DESILVER, *supra* note 4. Income inequality is not an issue for the United States alone, as income inequality in OECD (Organization for Economic Co-operation and Development) countries "is at its highest since records began." Paul Hannon, *OECD Sees Continued Rise in Growth-Harming Inequality*, WALL ST. J. (May 21, 2015), http://www.wsj.com/articles/oecd-sees-continued-rise-in-growth-harming-inequality-1432198801. The OECD recommends, among other measures, boosting educational attainment in order to reverse rising income inequality. *Id.* The OECD also dismisses the theory that greater access to higher education is possible without first reducing income inequality. *See id.*

29. *See* DESILVER, *supra* note 4.

percent increasing 186% over the past 40 years.[30] The 2008 recession impacted families on the entire spectrum of the income distribution scale,[31] but in recent years, the top one percent has experienced the majority of economic growth.[32] From 2009 to 2012, incomes of the wealthiest one percent increased 31.4% while the incomes of the remaining ninety-nine percent increased just 0.4%.[33]

Although income inequality is at levels not seen since 1928,[34] the belief that income inequality is a mere market trend that will fluctuate as the economy grows is not unfounded.[35] In 1955, economist Simon Kuznets theorized that "economic growth would first be accompanied by a rise in inequality and then by a decline in inequality."[36] The United States is not the only developed nation to experience varying trends of income inequality. Other economically advanced nations, such as France, Germany, and Japan, have experienced their own unique patterns of income inequality.[37] The patterns of income inequality in these nations have not mimicked the trend in the United States, which supports the assertion that economic forces alone do not dictate income inequality, but that public policy plays a crucial role in either expanding or limiting income inequality.[38] The New Deal included sweeping regulation and tax policy changes, which helped reduce income inequality until the 1970s.[39] Economist

30. PRE-RECESSION FUNDING, *supra* note 13, at 17. Also, keep in mind that some of these figures need to be considered in their historical context because not all reports state whether or not amounts are adjusted for inflation. Dollar amounts which are adjusted for inflation provide a better comparison between historical and current income. Jon Nash, *Adjusting Wages for the Inflation Rate*, EDUC. PORTAL, http://education-portal.com/academy/lesson/adjusting-wages-for-the-inflation-rate.html#lesson (last visited Nov. 18, 2014). Tax data is used for long-term comparisons because income surveys were essentially non-existent before 1960. SAEZ, *supra* note 4. (stating the use of tax data allows for accurate historical comparisons before the 1960s).

31. *See* SAEZ, *supra* note 4 ("During the Great Recession, from 2007 to 2009, average real income per family declined dramatically by 17.4% , the largest two-year drop since the Great Depression.").

32. Stiglitz, *supra* note 7.

33. SAEZ, *supra* note 4.

34. DESILVER, *supra* note 4. The level of income inequality in 1928 is likely the highest in recorded U.S. history because it is virtually impossible to measure income inequality before the passage of the 16th Amendment in 1913. U.S. Const. amend. XVI ("The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.").

35. *See Top 1 Percent Perspective*, *supra* note 23 at 4–5 (stating that it is tempting to conclude that increasing income inequality is caused by economic growth).

36. *Id.* at 4. Kuznets won the 1971 Nobel Prize for Economic Sciences for his studies on modern economic growth. *Simon Kuznets*, *Concise Encyclopedia of Econ.*, LIBR. ECON. & LIBERTY, http://www.econlib.org/library/Enc/bios/Kuznets.html.

37. *Top 1 Percent Perspective*, *supra* note 23, at 5.

38. *Id.* at 5–6. This also supports the conclusion that federal, rather than state, policy should be the focus of higher education in order to effectuate real change. *See supra* notes 13–14 and accompanying text (discussing state funding for higher education).

39. *See* SAEZ, *supra* note 4. The results of the New Deal are well-documented. *E.g.*, RAY A. BILLINGTON & MARTIN RIDGE, AMERICAN HISTORY AFTER 1865 193–94 (9th ed. 1981). Beginning around World War II, the income gap began to close, as college degrees and home ownership became signs of success. *See* Stiglitz, *supra* note 7. The gap continued to close until the beginning of the 1970s. *Top 1 Percent Perspective*, *supra* note 23, at 5. As Robert Reich

Emmanuel Saez predicts the current state of income inequality is unlikely to decrease soon without drastic policy changes in the vein of the New Deal.[40] Such a high concentration of income at the top is not limited to economic impacts alone but extends into the political sphere.[41] Less inequality and a stronger middle class promote more inclusive political institutions, which prevents the economically powerful elite from dictating politics and provides the foundation for more inclusive economic institutions which in turn promotes growth.[42]

A weakened middle class affects all aspects of the economy,[43] and, simply put, a strong middle class is the primary driver of economic growth.[44] The middle class purchases goods, creating demand, and, in turn, jobs and tax revenue.[45] However, when the middle class is weakened by income inequality, members of the middle class "either consume less, lowering demand, or put in place short-term coping strategies, such as borrowing more, which has long-term implications for growth and stability."[46] The strength of an economy is often measured by home ownership, and, since 2004, home ownership has declined every year.[47] Aside from potential negative political impacts,[48] income inequality can also reduce worker productivity by jeopardizing motivation and psychological well-being because workers do not have the monetary security to make career changes which may be better suited to their personality.[49]

As noted earlier, without drastic policy changes aimed at reducing income inequality, the current levels of income inequality are unlikely to decrease.[50]

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explains, "since the 1970s, a combination of anti-union legislation and deregulation of the markets contrived to create a situation in which the economy boomed but less of the wealth trickled down." Cadwalladr, *supra* note 3.

40. *See* SAEZ, *supra* note 4.

41. MIDDLE CLASS STRENGTH, *supra* note 2, at 5–6.

42. *See id.* ("In the U.S. context, less inequality and a stronger middle class support more inclusive political institutions and steer politics away from only responding to an economically powerful elite. This provides the foundation for more inclusive economic institutions, which, in turn, promote growth.").

43. *See id.* The International Monetary Fund supports evidence which suggests income inequality hurts economic growth. *See* Larry Elliott, *Pay low-income families more to boost economic growth, says IMF*, GUARDIAN (June 15, 2015), http://www.theguardian.com/business/2015/jun/15/focus-on-low-income-families-to-boost-economic-growth-says-imf-study. When the income share of the top earners increases, economic growth declines over the medium term, which suggests there is no "trickle down" of benefits. *See id.* On the other hand, when the income share of the bottom earners increases, higher economic growth follows. *See id.*

44. MIDDLE CLASS STRENGTH, *supra* note 2, at 6.

45. *See* Cadwalladr, *supra* note 3.

46. MIDDLE CLASS STRENGTH, *supra* note 2, at 5.

47. *See Housing Vacancies and Homeownership*, U.S. CENSUS BUREAU, http://www.census.gov/housing/hvs/data/histtabs.html (specifically table 17). A declining middle class results in the creation of a cycle wherein a lack of demand for homes contributes to a lack of jobs, which decreases household formation and leads to a further lack of demand for houses. *See* Stiglitz, *supra* note 7.

48. MIDDLE CLASS STRENGTH, *supra* note 2, at 5–6.

49. *Id.* at 11.

50. *See supra* note 39 and accompanying text (discussing the impacts of the New Deal and

Intervention from the federal government[51] is required to ensure that current levels of income inequality will not continue for future generations.[52] Income inequality makes it more difficult for children of middle-income families to afford a key driver of income equality: higher education.[53]

B. Increasing Cost of Higher Education

For many years, most Americans believed higher education was essential, if not a prerequisite, to future economic success,[54] although that belief is questioned today.[55] Nevertheless, a typical college graduate earns $12,000 more per year than someone without a college degree.[56] Graduating from a four-year institution enables a student to earn about $1 million more over a lifetime.[57]

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growth of income inequality since the 1970s).

51. *See supra* notes 13–14 and accompanying text (explaining why reform must come from the federal, as opposed to state, level).

52. *See* SAEZ, *supra* note 4.

53. *See* Stiglitz, *supra* note 7 (stating that a college degree is essential to "making one's way in the 21st-century economy"). The average college graduate earns more income per year than someone without a degree. Pre-Recession Funding, *supra* note 13.

"Human capital" is a term of art used to refer to the knowledge and skill that lends economic value to a person. *See* Stiglitz, *supra* note 7; MIDDLE CLASS STRENGTH, *supra* note 2, at 4. Investing in human capital, particularly through education, is crucial to economic growth. *See* MIDDLE CLASS STRENGTH, *supra* note 2, at 9. Income inequality makes growing human capital increasingly difficult. Income inequality is associated with "slower growth in educational attainment overall and increasing disparities in access to human capital." *Id.* at 10. Also, income inequality is associated with "an increasing tendency for human capital and a higher income to be passed down within families, which means that individuals are being rewarded for who their parents are rather than their productivity, characteristics or effort." *Id.*

54. *See* Better Bargain Plan, *supra* note 15 ("A higher education is the single most important investment students can make in their own futures."); *Diminishing Returns*, *supra* note 11 ("With the passage of time, Americans increasingly saw the completion of a good education as being very useful, if not an absolute prerequisite, to the pursuit of economic success."); *Middle-Income Realities*, *supra* note 17, at 1201 ("Since the 1960s, however, policy makers and parents have increasingly viewed college as a universally beneficial aspiration, or even an economic imperative."); PRE-RECESSION FUNDING, *supra* note 13 ("Getting a college degree is increasingly a pre-requisite for professional success and for entry into the middle class or beyond."). The United States thrived economically in the 20th century largely due to having the most educated workforce in the world. Meghan Foley, *Should College Be Free in America?*, WALL ST. CHEAT SHEET (June 12, 2014, 3:35 PM EST), http://www.cheatsheet.com/business/should-college-be-free-in-america.html/?a=viewall. "From 1900 to 1980, every generation born in the United States had about two more years of schooling than the one before. This transformed a nation of semiliterate farmers into the world's most-educated country." Adam Davidson, *Is College Tuition Really Too High?*, N.Y. TIMES (Sept. 8, 2015), http://www.nytimes.com/2015/09/13/magazine/is-college-tuition-too-high.html. "Expanding opportunity for more students to enroll and succeed in college, especially low-income and underrepresented students, is vital to building a strong economy with a thriving middle class and critical to ensuring a strong democracy." Better Bargain Plan, *supra* note 15.

55. *See Diminishing Returns*, *supra* note 11 (concluding there may be a level of college attainment for which additional growth will not diminish income inequality).

56. PRE-RECESSION FUNDING, *supra* note 13. A college degree has a roughly 15% return on investment per year. Davidson, *supra* note 54.

57. *See* Davidson, *supra* note 54.

Aside from individual wages, research suggests college graduates benefit their communities by attracting better employers who offer better wages.[58] Undergraduate enrollment, which grew regularly for decades, increased considerably after the 2008 recession, in part because of more readily available and reliable research on the benefits of a college degree.[59] The high enrollment figures are likely caused by the children of baby boomers[60] and poor employment prospects.[61] While enrollment numbers rose and median income decreased, the average tuition at colleges across America drastically increased after the 2008 recession.[62]

Between the 1973–74 and 2013–14 academic years, average tuition at public four-year colleges increased 228%.[63] During the same period, average tuition at public two-year colleges rose 185% and private, non-profit, four-year colleges increased 179%.[64] Over the last 10 years alone, average tuition increased 50% at public four-year colleges, 34% at public two-year colleges, and 25% at private, non-profit, four-year colleges.[65] Over the last 30 years, tuition increased at double the rate of inflation.[66] Until the early 1990s, tuition rates were largely determined by a comparison of institutions, but today the process

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58. *Id.* Recent studies suggests that growing up in an educated community greatly affects potential future earnings. *See* David Leonhardt, *At Atlas of Upward Mobility Shows Paths Out of Poverty*, N.Y. TIMES (May 4, 2015), http://www.nytimes.com/2015/05/04/upshot/an-atlas-of-upward-mobility-shows-paths-out-of-poverty.html?abt=0002&abg=1&_r=1.
Furthermore, "educated populations tend be healthier, more stable and more engaged in their civic institutions and democratic debate." Davidson, *supra* note 54.

59. *Undergraduate Enrollment*, NAT'L CTR. FOR EDUC. STAT. (May 2015), http://nces.ed.gov/programs/coe/indicator_cha.asp; PRE-RECESSION FUNDING, *supra* note 13 ("[E]nrollment in public higher education increased by about 1 million full-time equivalent students, or 10 percent, between the beginning of the recession and the 2012-13 academic year."). "An estimated 21 million students attend at least some classes in a postsecondary institution." Davidson, *supra* note 54.

60. *See* PRE-RECESSION FUNDING, *supra* note 13 (describing the term "baby boom echo," referring to the children of baby boomers, which accounts for the surge in 18- to 24-year-old population).

61. *See* DONALD E. HELLER, AM. COUNCIL ON EDUC., DOES FEDERAL FINANCIAL AID DRIVE UP COLLEGE PRICES? 4 (2013), https://www.acenet.edu/news-room/Documents/Heller-Monograph.pdf.

62. PRE-RECESSION FUNDING, *supra* note 13 ("Tuition was up 26.1 percent between the 2007-08 and 2012-13 school years, while real median income was down roughly 8.3 percent over the same time period.").

63. COLLEGEBOARD, TRENDS IN COLLEGE PRICING tbl. 2A (2013) , http://trends.collegeboard.org/sites/default/files/college-pricing-2013-full-report.pdf (adjusting the amounts for inflation).

64. *Id.*

65. *Id.* at tbl. 2B. Aside from tuition increases, college textbook prices have increased 1,041% since 1977. Ben Popken, *College Textbook Prices Have Risen 1,041 Percent Since 1977*, NBC NEWS (Aug. 6, 2015), http://www.nbcnews.com/feature/freshman-year/college-textbook-prices-have-risen-812-percent-1978-n399926.

66. *Diminishing Returns*, *supra* note 11, at 18 ("Over the past 30 years or so, tuition fees have risen at roughly double the rate of inflation."); *Middle-Income Realities*, *supra* note 17, at 1201 ("Over the last three decades, college tuition has increased by twice the rate of inflation.").

involves statisticians and data analysts who examine hundreds of variables.[67] There are a variety of causes for the dramatic increase in tuition, such as the relatively high cost of labor and lack of impact by technological innovations.[68]

As tuition has increased, the value of grants[69] and state funding decreased,[70] leaving public institutions, who rely heavily on public funding, most affected.[71] Those universities have responded by recruiting and offering more scholarships to out-of-state students who, even with a scholarship, pay higher tuition rates than in-state students.[72] As a result, financial aid is going from those students who truly need it to those more economically privileged students who can afford

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67. *See* Davidson, *supra* note 54. ("The pricing of college and university tuition used to be based on gut feelings, Crockett told me. Until around 1992, administrators would glance at what their peers were charging and come up with a number. Today, the process involves a level of mathematical and statistical rigor that few other industries could match. Crockett uses a team of statisticians and data analysts, the latest in software and data with hundreds of variables on students' ability and willingness to pay, academic accomplishments, most likely choices of majors, ethnicity and gender, and other attributes.").

68. Higher education is a labor intensive industry, which means a majority of the costs are attributable to labor. *See* HELLER, *supra* note 61, at 5. Most of the labor at colleges, specifically professors and administrators, are "highly skilled and highly compensated." *Id.* At most schools, more than one-third of the cost goes to the compensation of instructors. Lucie Lapovsky, *Five Ways To Reduce College Costs*, FORBES (Aug. 26, 2013), http://www.forbes.com/sites/lucie lapovsky/2013/08/26/five-ways-to-reduce-college-costs/. Most would agree that the best professors, who come with highest salaries, are worth the cost because the students benefit directly. However, the salaries of administrators are particularly troubling because the benefit students derive from highly compensated administrators is difficult to measure. Douglas Belkin, *How to Get College Tuition Under Control*, WALL ST. J. (Oct. 8, 2013), http://online.wsj.com/news/articles /SB10001424127887324549004579068992834736138 ("What is driving costs is the metastasizing army of administrators with bloated salaries, and our university presidents who are now paid as though they were CEOs running a business."). "The median base pay of public-college presidents who served for all of 2013-14 was $428,250. (That's $28,250 more than President Barack Obama's salary.)" *Top of the class: Public universities need to curb presidential pay*, PITTSBURGH POST-GAZETTE (June 16, 2015), http://www.post-gazette.com/opinion/editorials/2015/06/16/Top-of-the-class-Public-universities-need-to-curb-presidential-pay/stories/201506270014.
Also, technological innovations, which made other industries more efficient and less costly, although mostly embraced, did not fundamentally change the higher education industry. *See* HELLER, *supra* note 61, at 5.

69. *See supra* note 23 and accompanying text (discussing federal grants for higher education).

70. *See supra* notes 13–14 and accompanying text (discussing state funding for higher education); *see also* Belkin, *supra* note 68 (According to professor Rudy Fichtenbaum,"between 1987 and 2012, in real dollars, government support has declined from $8,497 to $5,906 per student."). "According to the nonprofit Center on Budget and Policy Priorities, the average state is spending 23 percent less per student on higher education than before the recession." Stephen Bud, *New America, The Out-Of-State Student Arms Race* (2015), https://static.newamerica.org/ attachments/3120-out-of-state-student-arms-race/OutOfStateArmsRace-Final.b93c2211cdfb4c3da 169d668fbb67cc1.pdf.

71. *See* PRE-RECESSION FUNDING, *supra* note 13, at 3 ("Unlike private institutions, which may rely upon gifts and large endowments to help fund instruction, public two- and four-year colleges typically rely heavily on state and local appropriations. In 2013, state and local dollars constituted 53 percent of education revenue — funds used directly for teaching and instruction.").

72. *See* Bud, *supra* note 70.

out-of-state tuition.[73] "As public colleges and universities bring in more and more affluent out-of-state students, fewer institutional aid dollars and fewer seats are available for in-state students who come from less-privileged backgrounds."[74]

Due to the high number of students enrolled[75] and because income inequality has resulted in less family contributions to students, more students are qualifying for federal Pell Grants.[76] Pell Grant amounts depend on:

(1) the student's expected family contribution;

(2) the cost of attendance;

(3) the student's enrollment status; and

(4) whether the student attends a full academic year or less.[77]

In 2015, the maximum Pell Grant amount was $5,775 per student.[78] The size[79] and cost[80] of the Pell Grant program has exploded in recent years because more students met the program eligibility requirements.[81] However, the value of Pell Grants has decreased,[82] and the 2015 budget passed by Congress will cut Pell Grant funding by $303 million.[83] As a result of higher tuition, less state funding, and the impending Pell Grant funding cuts, students and their families will be forced to shoulder the increased costs of higher education.[84]

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73. *See id.* ("[B]y bringing in more and more wealthy nonresident students, these colleges are increasingly becoming bastions of privilege.").

74. *Id.* "If you add up all the financial aid available from federal, state and local governments and from nonprofit institutions, there is enough money already out there to support everybody's education. The problem is that aid is distributed unevenly." Davidson, *supra* note 54.

75. *See supra* notes 59–61 and accompanying text (discussing current levels of enrollment).

76. HELLER, *supra* note 61, at 4. A Pell Grant is a form of federal student aid that, unlike student loans, does not have to be repaid. *Pell Grant Program*, *supra* note 23. Pell Grants are typically disbursed to students whose family incomes are $30,000 or less. Danielle Douglas-Gabriel, *Congress cuts federal financial aid for needy students*, WASH. POST (Dec. 10, 2014), http://www.washingtonpost.com/blogs/wonkblog/wp/2014/12/10/congress-cuts-federal-financial-aid-for-needy-students/; Shahien Nasiripour, *Congressional Leaders Agree To Cut Aid To College Students To Pay Student Loan Contractors*, HUFFINGTON POST (Dec. 10, 2014), http://www.huffingtonpost.com/2014/12/10/pell-cuts-cromnibus_n_6299092.html.

77. *Pell Grant Program*, *supra* note 23.

78. *Id.*

79. *See* HELLER, *supra* note 61, at 3 ("The College Board reported that in the 2010–11 academic year, 9.1 million students received Pell grants, representing 36 percent of all undergraduates that year, an increase from the 25 percent three years earlier in 2007–08.").

80. *Id.* at 4 ("The increased demand for and receipt of Pell grants has caused the cost of the program to skyrocket, from $14.7 billion in 2007–08 to $34.8 billion in 2010–11.").

81. *See supra* note 77 and accompanying text (discussing Pell Grant requirements).

82. *See* HELLER, *supra* note 61, at 16 ("In 1981, the maximum Pell award of $1,670 would have covered 58 percent of a student's annual costs at the average-priced public institution and 26 percent of such costs at a private institution. By 2011, these amounts had dropped to 32 percent and 14 percent, respectively.").

83. Douglas-Gabriel, *supra* note 76; Nasiripour, *supra* note 76. Although the Pell Grant program currently operates at a $4.4 billion surplus, the 2015 levels of funding will result in a program deficit by 2017. *See* Douglas-Gabriel, *supra* note 76.

84. PRE-RECESSION FUNDING, *supra* note 13, at 16 ("Nearly every state has shifted costs to

Some argue that the current funding environment creates more inequities for students from low-income families,[85] but consider the following, keeping in mind that a strong middle class is essential to economic development:[86] middle-income students are less likely than low-income students to qualify for a Pell Grant[87] and are more likely to have accumulated at least $30,000 in student loan debt while completing a degree.[88] Although causation is unclear, compared to high-income students, middle-income students are less likely to actually complete a degree.[89] President Obama may have considered this when deciding to include the middle class in the title of the Better Bargain Plan.[90] Students whose parents are simply unable to help with financing the cost of school[91] face

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students over the last 25 years — with the most drastic shift occurring since the onset of the recession."). Some institutions are taking it upon themselves to increase college affordability, most notably Stanford, which allows students to pay just $5,000 per year from summer earnings, savings, and part-time work if their parents make less than $125,000 per year and have assets of less than $300,000. Libby Nelson, *Stanford just made tuition free for families earning less than $125,000 per year*, VOX (Apr. 1, 2015), http://www.vox.com/2015/4/1/8328091/stanford-tuition-financial-aid. Similarly, more colleges are offering competency-based courses which take advantage of technological developments in order to control costs. *See generally* Alana Semuels, *A College without Classes*, ATLANTIC (Jul. 31, 2015), http://www.theatlantic.com/business/archive/2015/07/a-college-without-classes/400115/. *See also* Herk, *supra* note 8 ("Competency-based education is the idea that the primary unit of measurement and completion in education should be the skills and knowledge learned (an outcome) rather than the time spent achieving them (an input).").

85. Simmons, *supra* note 14, at 257 (discussing several consequences of low access to higher education for low-income students, including "higher incarceration rates, adverse health care outcomes, higher poverty rates, reduced civic engagement, and lower government tax revenues.").

86. *See supra* notes 43–46 and accompanying text (discussing the importance of the middle class on the economy).

87. *See Middle-Income Realities*, *supra* note 17, at 1218 (stating that many middle-income families earn too much to qualify and "in the 2008-2009 academic year, close to two thirds of dependent Pell recipients came from families with annual incomes of $30,000 or less.").

88. *Id.* at 1205.

89. *Id.* ("For students who entered their first postsecondary institution in the 2003-2004 school year, only 36.3% of students with family incomes in the second quartile and 45.5% of students in the third income quartile earned their bachelor's degrees in 6 years, compared with 58.6% of students from families with incomes in the top quartile.").

90. *See supra* note 17 and accompanying text (discussing the inclusion of the middle class in the title of the Better Bargain Plan).

91. Middle-income parents find themselves unable to both help with the cost of their children's college tuition and still afford their own expenses even though parents view college as essential for their own children regardless of whether they themselves attended college. *See Middle-Income Realities*, *supra* note 17, at 2010 (stating that parental desire for their own children to attend college is "often tied into parents own biographies, including regrets or mistakes they felt had been made in their own lives."). It is not uncommon for parents to use their own retirement savings to fund their children's higher education. *See id.* at 1219; *see also* Emily Brandon, *More Parents Use Retirement Accounts to Pay for College*, U.S. NEWS (Sept. 2, 2014), http://money.usnews.com/money/retirement/articles/2014/09/02/more-parents-use-retirement-accounts-to-pay-for-college ("A Sallie Mae and Ipsos survey of 1,601 college students and parents of undergraduate students found that 7 percent of families took a withdrawal from a retirement account to help cover college costs in 2014, up from 5 percent in 2013."). *See also* Davidson, *supra* note 54 ("[T]he chances are greater than 70 percent that an American will not attend college if his or her parents do not have a college degree.").

a difficult choice: take out a loan in order to afford school[92] or forego college altogether.[93]

C. Federal Student Loan Debt

To subsidize and encourage college attendance, the federal government has offered loans to college students since 1965.[94] The number of students receiving loans has climbed steadily for the past two decades.[95] From 2004 to 2014, the number of student loan borrowers increased 92% and the average loan balance increased 74%.[96] The value of the loans[97] is worrisome because of the adverse effects of high levels of student loan debt.[98] By 2013, loans represented 40%[99]

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92. *See Middle-Income Realities*, *supra* note 17, at 1205 (stating students today are more likely to pay for education with loans relative to their peers several decades ago); *see also* MIDDLE CLASS STRENGTH, *supra* note 2, at 17 (acknowledging students from non-wealthy backgrounds are more likely to take out loans).

93. *See* Simmons, *supra* note 14, at 237 ("In 2006, the Advisory Committee on Student Financial Assistance estimated that between 2000 and 2010, 1.4-2.4 million students from low-and middle-income families would be academically qualified for college but would not complete a bachelor's degree due to financial obstacles."); *see also For richer, for poorer*, THE ECONOMIST (Oct. 13, 2012), http://www.economist.com/node/21564414 (stating large income gaps can be inefficient as it prevents talented, but poor, students from access to education).

94. Prior to 1965, the federal government expanded access to higher education in a number of ways. *See generally* Jewell, *supra* note 15, at 66–74; *Diminishing Returns*, *supra* note 11, at 252–254; HELLER, *supra* note 61, at 2–3; Simmons, *supra* note 14, at 262–70. However, since the passage of the Higher Education Act (HEA) of 1965, the federal government made taxpayer-funded loans to be more broadly available to low- and middle-income students. *Diminishing Returns*, *supra* note 11, at 261–274. As part of HEA, the federal government guaranteed student loans provided by banks and non-profit lenders. *History of Federal Student Loan Programs*, NEW AM. FOUND., http://atlas.newamerica.org/federal-student-loan-programs-history (last visited on Oct. 4, 2014) [hereinafter *Federal Student Loan History*]. This guarantee came to be known as the Federal Family Education Loan (FFEL) program. *Id.* In 1978, the Middle Income Student Assistance Act extended federal loans to all students, regardless of need. *Diminishing Returns*, *supra* note 11, at 261. FFEL was eliminated in 2010 with the passage of the Student Aid Fiscal Responsibility Act as part of the Health Care and Education Reconciliation Act. *Federal Student Loan History*, *supra* note 94. Since 2010, all federal student loans come directly from the Department of Education's Direct Loan program. *Id.*

95. *See Middle-Income Realities*, *supra* note 17, at 1205 (showing the growth in the percentage of students with some loans from 1993 to 2004); *see also Total Federal and Nonfederal Loans over Time*, COLLEGEBOARD, http://trends.collegeboard.org/student-aid/figures-tables/total-federal-and-nonfederal-loans-over-time (last visited Feb. 28, 2016) (measuring the growth in the percentage of students taking federal loans from 1994–95 to 2014–15).

96. Danielle Paquette, *Americans are having more trouble paying off their student debt than their houses*, WASH. POST (Feb. 19, 2015), http://www.washingtonpost.com/news/get-there/wp/2015/02/19/americans-are-having-more-trouble-paying-off-their-student-debt-than-their-houses/?tid=sm_tw.

97. According to the Federal Reserve Bank of New York, total student loan debt climbed from $364 billion in 2004 to $966 billion in 2012. Janet Lorin, *Student Debt: The Rising U.S. Burden*, BLOOMBERG (July 9, 2014), http://www.bloombergview.com/quicktake/student-debt. Roughly 1.8 million borrowers owe more than $100,000. Paquette, *supra* note 96.

98. *See infra* notes 120–29 and accompanying text (discussing the adverse effects of high loan debt).

99. *See* Jewell, *supra* note 15, at 68.

of the $150 billion in federal financial aid for higher education.[100] Today, more than 70% of graduates take on debt during college at an average of $28,400 per student.[101] Although $28,400 may not appear to be an exorbitant amount, using an average to measure student loan debt hides significant variations in the upward trajectory of debt amounts.[102] About 14% of all borrowers owe more than $50,000 and 4% owe more than $100,000.[103] At the end of 2014, total student loan debt surpassed $1.3 trillion,[104] more than both car loans and credit card debt in America.[105] The common belief that student debt represents good debt is misguided considering the current job market[106] and the fact that some of this debt will never be repaid.[107]

Defaulting on student loan debt is common.[108] Most sources, including the Department of Education, use a measurement known as the cohort default rate when analyzing the number of student loans in default.[109] The cohort default rate is the rate of borrowers who default on a loan once payments on the balance of the loan are required.[110] Although the default rates decreased over the last

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100. Better Bargain Plan, *supra* note 15.

101. *FACT SHEET: A Student Aid Bill of Rights, Taking Action to Ensure Strong Consumer Protections for Student Loan Borrowers*, WHITE HOUSE (Mar. 10, 2014), https://www.whitehouse.gov/the-press-office/2015/03/10/fact-sheet-student-aid-bill-rights-taking-action-ensure-strong-consumer-. [hereinafter *Student Aid Bill of Rights*] High levels of student debt come with negative consequences. *See infra* notes 118–27 and accompanying text (discussing the adverse effects of high loan debt).

102. Stiglitz, *supra* note 7.

103. ADAM LOONEY & CONSTANTINE YANNELIS, BROOKINGS PAPERS ON ECONOMIC ACTIVITY, A CRISIS IN STUDENT LOANS? HOW CHANGES IN THE CHARACTERISTICS OF BORROWERS AND IN THE INSTITUTIONS THEY ATTENDED CONTRIBUTED TO RISING LOAN DEFAULTS 4 (Sept. 2015), http://www.brookings.edu/~/media/projects/bpea/fall-2015_embargoed/conferencedraft_looneyyannelis_studentloandefaults.pdf [hereinafter "STUDENT LOAN CHARACTERISTICS"].

104. Lance Lambert, *The Hidden Portion of Student-Loan Debt*, CHRON. HIGHER EDUC. (May 8, 2015), http://chronicle.com/blogs/data/2015/05/08/missing-full-student-debt-picture/.

105. PRE-RECESSION FUNDING, *supra* note 13, at 18.

106. *See* Austin, *supra* note 10, at 357–59 (disproving of the assumptions that student loan debt is proportional to expected income and that graduates can find a job in the field of their study).

107. Bill Zimmerman, *How to Save the Victims of the Student Loan Crisis*, HUFFINGTON POST (Feb. 12, 2014), http://www.huffingtonpost.com/bill-zimmerman/how-to-save-the-victims-o_b_4776528.html.

108. *See Default Rates Continue to Rise for Federal Student Loans*, U.S. DEP'T OF EDUC. (Sept. 30, 2013), http://www.ed.gov/news/press-releases/default-rates-continue-rise-federal-student-loans; Nasiripour, *supra* note 76 ("Nearly 23 percent, of loans in the government's main student loan program are either delinquent or in default, according to a . . . presentation by the Education Department.").

109. "Cohort default rates are defined by the year in which a cohort enters repayment, and are given by the fraction of borrowers who default within a certain number of years after that cohort begins entering repayment." STUDENT LOAN CHARACTERISTICS, *supra* note 103.

110. Shahien Nasiripour, *Colleges Win, Student Borrowers Lose In Obama Administration Absolution*, HUFFINGTON POST (Sept. 24, 2013), http://www.huffingtonpost.com/2014/09/24/split-servicing-federal-student-loans_n_5879012.html. Some argue using the cohort default rate ignores the most important indicator of default likelihood, whether the student graduated from college, because graduates are more likely to be employed and earn more and that the cohort default rate

year, the cause of the decline is unclear.[111] Borrowers can suffer a multitude of negative consequences if they default on their student loans, including "high collection fees, damaged credit scores, an inability to secure home mortgages or auto loans, and garnishment of their tax refunds and Social Security payments."[112]

Although a majority of borrowers avoid default, they still often face multiple years of repayment.[113] In general, borrowers are having a difficult time making their repayments and, for those loans owned by the Department of Education, about one-third of borrowers are late on their repayments.[114] Median graduate earnings typically increase 65% over the first five years after graduation, but often loan repayments remain fixed.[115] So despite the fact that repayments have become more affordable over time, students are left making repayments and accruing interest for longer than they otherwise would if repayments would adapt to changing income levels.[116] Additionally, those years of repayments can cause stress and financial difficulties for those former students who carry a student loan debt burden.[117]

For students still in school and not yet making repayments, high debt levels create stresses that reduce the probability of graduation and the likelihood of

can be artificially lowered by colleges encouraging borrowers to seek a forbearance of their loans. *See* Ben Miller, *Student-Loan Default Rates Are Easily Gamed. Here's a Better Measure.*, CHRON. HIGHER EDUC. (Mar. 26, 2015), http://chronicle.com/article/Student-Loan-Default-Rates-Are/228771/; *see also supra* notes 56–57and accompanying test (discussing how much more college graduates earn compared to those without a degree).

111. *See* Andy Thomason, *Student-Loan Defaults Decline in Latest Data, Education Dept. Says*, CHRON. HIGHER EDUC. (Sept. 24, 2014), http://chronicle.com/blogs/ticker/student-loan-defaults-decline-in-latest-data-education-dept-says/86699.

112. Nasiripour, *supra* note 110.

113. Repayment for many borrowers will take longer than 10 years. Shahien Nasiripour, *These 9 Charts Show America's Coming Student Loan Apocalypse*, HUFFINGTON POST (Aug. 20, 2014), http://www.huffingtonpost.com/2014/08/20/student-debt-distress_n_5682736.html.

114. *See* Paquette *supra* note 96 ("Student-loan delinquencies increased at the end of 2014: 11.3 percent were at least 90 days overdue in the last three months of 2014, up from 11.1 percent in the previous quarter."); Shahien Nasiripour, *New Federal Data Show Student Loan Borrowers Suffering More Than Previously Believed*, HUFFINGTON POST (Mar. 27, 2015), http://www.huffingtonpost.com/2015/03/27/federal-student-loans-delinquency_n_6957036.html. Those borrowers not struggling with repayments typically have a common denominator: they did not self-finance their college tuition. *See* Gillian B. White, *Millennials Who Are Thriving Financially Have One Thing in Common*, ATLANTIC (Jul. 15, 2015), http://www.theatlantic.com /business/archive/2015/07/millennials-with-rich-parents/398501/.

115. Lance Lambert, *Student Loans Are Poorly Aligned With Graduate Earnings*, CHRON. HIGHER EDUC. (Jan. 7, 2015), http://chronicle.com/blogs/data/2015/01/07/student-loans-poorly-aligned-with-graduate-earnings/.

116. *See id*. "Economist Sue Dynarski has argued there is not a student loan crisis but a 'repayment crisis' because student loans are paid 'when borrowers' earnings are lowest and most variable. But, as she noted in her Brookings paper, that can be remedied with a 'well-structured' income-based repayment structure, longer than the current 10-year timeline." Foley, *supra* note 54.

117. *See* PRE-RECESSION FUNDING, *supra* note 13, at 22; Zimmerman, *supra* note 107; Nasiripour, *supra* note 113.

going on to graduate school.[118] Unlike most other forms of debt, student loan debt is virtually impossible to discharge via bankruptcy.[119] Although policy considerations support the exclusion of student loan debt from bankruptcy,[120] graduates, many of whom are underemployed,[121] struggle to devote portions of their income to their loan payments.[122] Adverse individual effects aside, vast economic problems accompany high levels of student loan debt. Borrowers are less likely to start a small business or become an entrepreneur,[123] which are positions that boost overall economic activity.[124] Borrowers also put off buying a home[125] and saving for retirement, stunting the housing recovery and putting more strain on struggling programs like Social Security.[126] A significant and very real fear is an entire generation will reach retirement age without any significant assets.[127]

An awareness of the interacting problems of income inequality, rising cost of higher education, and federal student loan debt clearly shows the need for a solution to these problems. Such awareness has been the driving force behind recent attempts to increase higher education affordability through initiatives like the Better Bargain Plan.

II. RECENT ATTEMPTS TO INCREASE AFFORDABILITY

In order to determine whether the Better Bargain Plan could achieve its goal of increasing college affordability, or potentially curb income inequality, recent attempts to increase college affordability need to be analyzed. The current and future educational, political, and legal environment will dictate the implementation of the principles of the Better Bargain Plan. Because of that, looking at recent attempts is more beneficial than looking at those attempts that

118. PRE-RECESSION FUNDING, *supra* note 13, at 22.

119. Stiglitz, *supra* note 7. In order to discharge student loans, debtors must prove that repaying the debt results in undue hardship, a very strict standard for which limited debtors qualify. Austin, *supra* note 10, at 333. In January 2015, Maryland Representative John Delaney introduced the Discharge Student Loans in Bankruptcy Act of 2015. H.R. 449, 114th Cong. (2015). The bill seeks to give students the better ability to discharge student loan debt in bankruptcy. *Id.* The bill is currently being reviewed the House Committee on the Judiciary. *Id.*

120. Austin, *supra* note 10, at 333 ("The purpose of this policy is to prevent students from fraudulently obtaining student loans and then speedily discharging them upon graduation, as well as to ensure that there is a pool of funds for access to higher education."). *See generally* Zimmerman, *supra* note 107; Austin, *supra* note 10 (explaining student loan debt and bankruptcy).

121. Zimmerman, *supra* note 107.

122. *See* Nasiripour, *supra* note 113.

123. MIDDLE CLASS STRENGTH, *supra* note 2, at 35 ("As student debt levels have risen, the percentage of Americans ages 20 to 34 who are entrepreneurs has also declined.").

124. *See* Nasiripour, *supra* note 113.

125. Today, 18- to 34-year olds are less likely to be living independent of their families than they were in the Great Recession. Richard Fry, *More Millennials Living With Family Despite Improved Job Market*, PEW RESEARCH CTR (Jul. 24, 2015), http://www.pewsocialtrends.org/2015/07/29/more-millennials-living-with-family-despite-improved-job-market/.

126. *See* Nasiripour, *supra* note 113.

127. *Id.*

occurred during prior presidential administrations. Whether recent attempts failed to pass through the legislature or were struck down in court, analysis reveals the weaknesses and mistakes of those attempts and provides for a better discussion of how the Better Bargain Plan can avoid similar failures. An analysis will also yield predictions of the most common and problematic obstacles that legislation such as the Better Bargain Plan will encounter. Knowledge of problems encountered by recent legislative and regulatory attempts to increase affordability and reactions by Congress and the courts will contribute to a well-rounded assessment of the Better Bargain Plan and its ability to curb income inequality and increase college affordability.

A. Bank on Students Emergency Loan Refinancing Act

In the summer of 2014, U.S. Senator Elizabeth Warren introduced the Bank on Students Emergency Loan Refinancing Act ("SELRA").[128] The legislation would have, most notably, allowed student borrowers with loans issued prior to 2010 to refinance at a rate of 3.86%, the current interest rate for federal student loans.[129] Senator Warren stated, "[h]omeowners are refinancing. Small businesses are refinancing. We just want young people who got an education to have their shot."[130] The interest rate reform would have constituted a tremendous benefit to borrowers by making loan payments more affordable.[131] The bill was designed to benefit those with the most need by targeting borrowers with the highest loan balances and insufficient income to repay the balance.[132] "The Obama administration estimated that the bill could have helped 25 million borrowers save $2,000 over the lifetime of their loans."[133]

In order to refinance the loans, the bill would have enabled the government to purchase the loans from the issuing institutions, mostly banks.[134] The Congressional Budget Office predicted the government would have spent $51 billion to purchase the loans.[135] In order to offset the costs of purchasing those

128. Danielle Douglas-Gabriel, *Elizabeth Warren's bill to refinance student loans dies in the Senate. Now what?*, WASH. POST (June 11, 2014), http://www.washingtonpost.com/blogs/wonkblog/wp/2014/06/11/elizabeth-warrens-bill-to-refinance-student-loans-dies-in-senate-now-what/.

129. *Id.*

130. *Id.*

131. *See* Zimmerman, *supra* note 107 (Arguing that lowering interest rates to non-profit levels "…would allow former students to remain creditworthy even if they are unable to make payments. Distressed borrowers would be protected from collections abuse, allowed to pay for the essentials of life, retain sufficient credit to rent apartments and start businesses, and be confident that their indebtedness will not be recycled to past generations or to the next one.").

132. Jordan Weissmann, *Elizabeth Warren's Smart, Flawed, and Obviously Doomed Plan to Help Student Borrowers*, SLATE (May 6, 2014, 7:32 PM), http://www.slate.com/blogs/moneybox/2014/05/06/elizabeth_warren_s_student_loan_bill_smart_flawed_obviously_doomed.html.

133. Douglas-Gabriel, *supra* note 128.

134. Weissmann, *supra* note 132.

135. Ramsey Cox, *Dem Student Loan Bill Fails*, THE HILL (June 11, 2014, 10:27 AM), http://thehill.com/blogs/floor-action/senate/208970-republicans-block-student-loan-bill#ixzz3AwyS7pVt.

loans, the bill would have enacted a minimum 30% tax rate on citizens earning between $1 million and $2 million per year; this was referred to as the "Buffet Rule."[136] However, the bill met resistance and ultimately failed in the Senate[137] because it purported to simply make borrowing easier rather than addressing the real problem – the rising cost of tuition.[138]

Similar to SELRA, the Better Bargain Plan was not immune from the legislative powers of Congress regarding federal financial aid for higher education.[139] Congressional support or opposition to the principles of the Better Bargain Plan will determine whether the Plan is put into effect or remains a theory for future political and educational leaders to debate. SELRA failed, in part, because it was viewed as an empty bill, a bill that failed to address the real problem of rising tuition.[140] Because SELRA failed to advance past the Senate, it is unknown whether SELRA would have failed in the House of Representatives as well, but a vital lesson from SELRA can be taken. The Better Bargain Plan, or similar legislation, must address the actual problem in higher education affordability: the rising cost of tuition.[141] Rather than focusing on how to make the lives of students taking federal loans easier, as SELRA attempted to do, the Better Bargain Plan must pinpoint what actually causes colleges to increase tuition and incentivize colleges from continuing this trend.[142] It should be noted, however, that passing legislation such as the Better Bargain Plan does not guarantee the Plan will remain in effect. If the Better Bargain Plan ever comes into law, colleges, considering the billions of dollars in yearly revenue they receive, will have the incentive to challenge the legality of the Plan.[143]

B. Vacated Gainful Employment Rule Regulations

A challenge to the legality of the Plan could come from private or public institutions. Surely all institutions, private or public, would be affected by an attempt to increase college affordability.[144] However, for-profit schools, in particular, will be the most likely institutions to challenge any legislation which

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136. *Id.*

137. Douglas-Gabriel, *supra* note 128.

138. *See* Lorin, *supra* note 97.

139. *See infra* Part IV(A) (discussing the decision of the Department of Education to retreat on the Better Bargain Plan).

140. *See* Lorin, *supra* note 97 (discussing the criticisms of SELRA).

141. *See supra* Part I(B) (discussing the rising cost of higher education).

142. *See supra* notes 63–84 and accompanying text (discussing the rising cost of higher education and the upcoming funding cuts to the Pell Grant Program).

143. NAT'L CTR. FOR EDUC. STATS., POSTSECONDARY REVENUES BY SOURCE (May 2014), http://nces.ed.gov/programs/coe/indicator_cud.asp [hereinafter POSTSECONDARY REVENUES] ("In 2011–12, total revenues, in current dollars, at degree-granting postsecondary institutions were $317 billion at public institutions, $162 billion at private nonprofit institutions, and $27 billion at private for-profit institutions."); *See infra* Part III (discussing the details and impact of the Better Bargain Plan).

144. *See supra* notes 63–68 and accompanying text (discussing the rising costs of tuition).

could alter the status quo of federal financial aid because tuition accounts for a majority of revenue at such schools.[145] For-profit schools present a unique and especially troubling hurdle to regulating and reducing tuition costs, in part due to their lack of reliance on state funding.[146] Similar to private colleges, for-profit schools do not depend upon state funding for revenue.[147] Students at for-profit schools experience lower graduation rates and higher student debt.[148] The default rate at for-profit schools, which account for half of all student loan defaults,[149] is 19.1%.[150] Currently, students at for-profit schools receive more than $27 billion in federal aid.[151] Besides higher debt and default numbers, students at for-profit schools struggle to find employment because of the "minimal educational credentials" they receive.[152]

In 2011, the Department of Education issued the Gainful Employment Rule (GER) in response to growing concerns regarding for-profit schools.[153] Under the GER regulations, in order to be eligible to receive federal student aid, a school had to meet one of three standards: 1) at least 35% of graduates are repaying their loans; 2) a typical graduate's estimated annual loan payments may not exceed 12% of earnings; or 3) a typical graduate's estimated annual loan payments may not exceed 30% of discretionary income.[154] Shortly after the

145. POSTSECONDARY REVENUES, *supra* note 143 (stating that in 2012–13, student tuition and fees accounted more than 89% of revenue at for-profit institutions).

146. *See* Sarah Ann Schade, Note, *Reining in the Predatory Nature of For-Profit Colleges*, 56 ARIZ. L. REV. 317 (2014). Over the past year, several lawsuits against for-profit colleges have been filed, with claims ranging from "deceptive trade practices" to intentionally misleading students. Andy Thomason, *Colorado Sues For-Profit College, Claiming 'Deceptive' Practices*, CHRON. HIGHER EDUC. (Feb. 18, 2015), http://chronicle.com/blogs/ticker/jp/colorado-sues-for-profit-college-claiming-deceptive-practices; Andy Thomason, *2 For-Profit Colleges Will Pay Former Students $2.3 Million in Settlement*, CHRON. HIGHER EDUC. (Jul. 30, 2015), http://chronicle.com/blogs/ticker/2-for-profit-colleges-will-pay-former-students-2-3-million-in-settlement/102585.

147. *See supra* note 71 and accompanying text (discussing the reliance of public colleges on state funding).

148. Austin, *supra* note 10, at 335.

149. Simmons, *supra* note 14, at 255.

150. Richard Pérez-Peña, *Number of Student Loans in Default Declines*, N.Y. TIMES (Sept. 24, 2014), http://www.nytimes.com/2014/09/25/us/student-loan-defaults-decline-education-dept-reports.html.

151. Simmons, *supra* note 14, at 255 ("Between 2000 and 2014, the amount of debt owed by borrowers who first attended a for-profit institution increased from $39 billion to $229 billion (in real 2013 dollars) and from $14 billion to $68 billion among borrowers who had first attended a 2-year public institution."); STUDENT LOAN CHARACTERISTICS, *supra* note 103 ("The students who borrowed to attend these institutions were from more disadvantaged backgrounds (based on their family income), were older, independent, and, especially during the recession, likely to have struggled in the labor market."); *Id.*

152. Schade, *supra* note 146, at 321. In April 2015, the Department of Education fined a for-profit college based in California $30 million for recruiting students with inflated job placement statistics; Chris Kirkham, *U.S. fine Corinthian Colleges $30 million over false job placement rates*, L.A. TIMES (Apr. 15, 2014), http://www.latimes.com/business/la-fi-corinthian-colleges-fine-20150414-story.html.

153. Simmons, *supra* note 14, at 255.

154. *E.g.*, Stiglitz, *supra* note 7.

GER regulations were announced, the Association of Private Sector Colleges and Universities ("Association") filed suit to enjoin the debt measure regulations from restricting federal aid eligibility.[155] Absent a challenge to the regulations, about one-third of for-profit institutions would have failed all three measures and potentially lost federal aid eligibility.[156]

The Association first challenged the GER regulations in *Ass'n of Private Sector Colleges & Univs. v. Duncan*, arguing that the Department of Education exceeded its statutory authority in creating the GER regulations.[157] Under 5 U.S.C.A § 706(2)(C), any action found to be outside of the agency's statutory authority must be set aside.[158] After finding the Department of Education did not exceed its statutory authority to create regulations in order to fill the gaps left by Congress, the court looked to whether or not the Department of Education created the regulations reasonably.[159] The court found the Department of Education failed to "identify any expert studies or industry practices indicating that a repayment rate of 35% would be a 'meaningful performance standard' but rather emphasized that a quarter of gainful employment programs would fail such a test."[160] The court ruled that the repayment rate test was arbitrary because the Department of Education would have offered the same rationale for the repayment rate test regardless of the exact percentage used.[161] Because the repayment rate test could not be set aside from the other measurements, the court vacated the entirety of the regulations.[162] Although the regulations were vacated, a spokesman for the Department of Education emphasized that the court did not reject the concept of GER regulations but simply required a more clear rationale for setting standards.[163]

Immediately following the decision, some predicted the Department of Education would likely further examine the failed regulations in order to accomplish the goal of protecting students attending for-profit schools.[164] As anticipated, in October of 2014, the Department of Education announced new

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155. *See* Austin, *supra* note 10, at 409.

156. Tamar Lewin, *Judge Strikes Main Element of For-Profit College Rules*, N.Y. TIMES (July 1, 2012), http://www.nytimes.com/2012/07/02/education/judge-strikes-a-for-profit-college-regulation.html?_r=0 ("Only about a third of the programs met all three tests.").

157. Ass'n of Private Sector Colls. & Univs. v. Duncan, 870 F. Supp. 2d 133, 145 (D.C. Cir. 2012).

158. *See* 5 U.S.C. § 706(2)(C) (1966).

159. *Ass'n of Private Sector Colleges & Univs.*, 870 F. Supp 2d at 146 (applying the framework from Chevron, U.S.A., Inc. v. NRDC, Inc., 467 U.S. 837 (1984) to analyze agency authority under 5 U.S.C.A § 706(2)(C)).

160. *Id.* at 153.

161. *See id.* at 154 ("If the Department had chosen to disqualify the bottom ten percent of programs, or the bottom half, it would have offered the same rationale: the rate chosen disqualified the percentage of programs that it was intended to disqualify, and to have disqualified fewer would have made the test too lenient while disqualifying more would have made the requirement too stringent. This is not reasoned decisionmaking.").

162. *Id.*

163. Lewin, *supra* note 156.

164. *Id.*

regulations to enforce the GER.[165] Under the new regulations, "a program would be considered to lead to gainful employment if the estimated annual loan payment of a typical graduate does not exceed 20 percent of his or her discretionary income or 8 percent of his or her total earnings."[166] Institutions that failed to meet those standards would risk losing their federal aid eligibility.[167] After the Department of Education released the new regulations in late 2014, the Association brought suit again, arguing the Department exceeded its authority and the new regulations lacked a reasoned basis and were "arbitrary and capricious."[168] In June of 2015, the United States District Court for the District of Columbia rejected the Association's challenge to the new regulations, enabling the new regulations to take effect in July of 2015.[169] The new regulations are expected to put over 1,000 for-profit colleges at risk of losing their federal student aid eligibility.[170]

Although it remains to be seen whether the new GER regulations will be challenged by any further litigation, critics of the new regulations are already pointing out its potential flaws.[171] "'The regulation is ripe for manipulation,' said Barmak Nassirian, director of federal relations and policy analysis for the American Association of State Colleges and Universities. 'The majority of students at for-profits don't graduate. This regulation takes no recognition of their plight, so why even do it?'"[172] Nonetheless, the Department of Education views the regulations as necessary to protect students.[173] While the ultimate effects of the GER regulations will not be seen for many years, the difficulties

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165. *Obama Administration Announces Final Rules to Protect Students from Poor-Performing Career College Programs*, U.S. DEP'T OF EDUC. (Oct. 30, 2014), http://www.ed.gov/news/press-releases/obama-administration-announces-final-rules-protect-students-poor-performing-care [hereinafter *Final Rules*].

166. *Id.*

167. *Id.; See also* Danielle Douglas-Gabriel, *Obama administration issues rules to regulate colleges with career-training programs*, WASH. POST (Oct. 30, 2014), http://www.washingtonpost.com/business/economy/white-house-issues-rules-to-regulate-colleges-with-career-training-programs/2014/10/29/daa89996-5fa7-11e4-91f7-5d89b5e8c251_story.html ("Programs with graduates whose loan payments equal 20 to 30 percent of discretionary income, or 8 to 12 percent of total annual income, would be placed in a warning zone. A program would be labeled failing if typical graduates have loan payments that surpass 30 percent of discretionary earnings or 12 percent of annual earnings. Programs that fail in two out of any three consecutive years — or land in the danger zone for four consecutive years — will be ineligible for aid.").

168. Kelly Field, *For-Profit Colleges Sue Again Over Federal Gainful-Employment Rule*, CHRON. HIGHER EDUC. (Nov. 6, 2014), http://chronicle.com/article/For-Profit-Colleges-Sue-Again/149871/.

169. Andy Thomason, *Gainful-Employment Rule Survives For-Profit Group's Court Challenge*, CHRON. HIGHER EDUC. (June 23, 2015), http://chronicle.com/blogs/ticker/gainful-employment-rule-survives-for-profit-groups-court-challenge/101079 ("Judge John D. Bates of the U.S. District Court for the District of Columbia dismissed those claims, saying the [A]ssociation 'throws a host of arbitrary-or-capricious arguments against the wall in hope of a different outcome. None of them stick.'").

170. *See id.*

171. Douglas-Gabriel, *supra* note 167.

172. *Id.*

173. *See Final Rules*, *supra* note 165.

the Department of Education faced in creating and enforcing the regulations can provide guidance to the enactment and implementation of legislation such as the Better Bargain Plan.

Mr. Nassirian's criticisms of the new GER regulations reveal a difficulty for any legislation which attempts to regulate universities: student performance can vary for a great number of reasons. A student may not graduate because of poor performance in school, but also may not graduate because they decided to enter the workforce earlier. The Better Bargain Plan needs to be able to account for all students attending college whether or not they eventually graduate.[174] Regardless of whether a student graduates, he or she still must pay back his or her loans.[175] Also, although the proposed GER regulations attempt to address the problem of for-profit schools, the regulations still fail to address affordability for all colleges. For-profit schools, although troublesome,[176] are not solely responsible for the current state of higher education.[177] In order for the Better Bargain Plan to increase affordability at all colleges, and in turn help to curb income inequality, the Plan must be extensive and address affordability at all colleges, not just for-profit institutions.

III. THE BETTER BARGAIN PLAN: ITS DETAILS, POTENTIAL PROBLEMS, AND IMPACT

With a better understanding of how recent attempts have not increased college affordability, the focus can turn to the Better Bargain Plan itself. An examination of the details of the Better Bargain Plan followed by an analysis of the Plan's potential impact on higher education and income inequality will reveal the potentially far-reaching impact of the Plan. On its face, the Plan may seem to focus solely on higher education affordability. However, the Plan has the ability to extend outside the realm of higher education and impact the economy, social mobility, and income inequality by increasing the access and affordability of higher education, a key driver of income equality.[178] This section will describe the Plan's ability to curb income inequality by increasing the affordability of higher education.

A. Better Bargain Plan Details

While recent attempts to increase affordability have focused solely on graduates, the Better Bargain Plan focuses on colleges themselves. A senior

174. *See Final Rules*, *supra* note 165 (explaining the new GER regulations only account for students who graduate).

175. *See supra* notes 118–27 and accompanying text (discussing the economic problems that accompany high levels of student loan debt).

176. *See supra* notes 145–52 and accompanying text (discussing the problems with for-profit schools as compared to public and private institutions).

177. *See supra* Part I(B) (discussing the increasing cost of higher education).

178. *See supra* note 53 and accompanying text (discussing why higher education decreases income inequality).

Obama administration official stated that colleges should offer good value in exchange for their required tuition, because, inevitably, there will be some students who must take out loans in order to afford school, but those students should not be saddled with an amount of debt they cannot pay back.[179] President Obama directed the Department of Education to develop a ratings system that identifies and rewards the colleges that offer the best value and publish the first ratings before the start of the 2015 academic year.[180] The Department of Education held public hearings around the country in order to hear from "students and parents, state leaders, college presidents, and others with ideas on how to publish excellent ratings that put a fundamental premium on measuring value and ensure that access for those with economic or other disadvantages are encouraged, not discouraged."[181] The ratings identify colleges doing the most for disadvantaged students and colleges improving student performance.[182] After seeking feedback from institutions across the nation, the Department of Education decided which exact metrics to use for the ratings system, including the percentage of students receiving a Pell Grant, the average net price of a college, completion rates, transfer rates, employment rates, median earnings, graduate school attendance, and loan outcomes.[183]

Currently, most federal student aid is distributed based upon the number of students enrolled at a school.[184] By contrast, the Better Bargain Plan proposes distributing aid based upon results, specifically those measurements that will go into the ratings system such as graduate earnings and average loan debt incurred by a graduate.[185] By 2018, the ratings would be tied to federal financial aid.[186] Waiting until 2018 to tie the ratings to federal financial aid, as opposed to when the first ratings are published in 2015, would not only enable the Department of

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179. *See* Lewin, *supra* note 16.

180. Better Bargain Plan, *supra* note 15*; see also* James McCusker, *Ranking Teacher Training Programs has Merit*, HERALD BUSINESS JOURNAL (Dec. 5, 2014), http://www.theheraldbusinessjournal.com/article/20141205/BIZ04/141209655 ("The purpose of the DOE rules is not to compete with the private sector in the college rankings business but to improve the quality of classroom teaching.").

181. Better Bargain Plan, *supra* note 15

182. *Id.* The purposes of the ratings system include providing better information about college value to students and families, generate useful and reliable data for policymakers, and help colleges "measure, benchmark, and improve across shared principles of access, affordability, and outcomes." *For Public Feedback: A College Ratings Framework*, U.S. DEP'T OF EDUC. (Dec. 19, 2014), http://www.ed.gov/news/press-releases/public-feedback-college-ratings-framework.

183. *See id.* ("[T]he Department set out to design a ratings system that is clear, fair, and focused on a few key critical measures of institutional performance, while accounting for the diversity and complexity of the nation's rich system of higher education. That said, many of the factors that contribute to a high quality postsecondary education are intangible, not amenable to simple and readily comparable quantitative measures, and not the subject of existing data sources that could be used across all institutions.").

184. Lewin, *supra* note 16.

185. Better Bargain Plan, *supra* note 15. The Department of Education considered three ratings levels: high-performing, low-performing, and those somewhere in the middle, and planned to separate two-year and four-year institutions; Davidson, *supra* note 54.

186. *See* Lewin, *supra* note 16.

Education to perfect the ratings, but also give colleges the opportunity to adapt and improve their ratings.[187]

Aside from the ratings, the Plan would also keep students on the path towards completing their degrees.[188] The Plan requires responsibility on the part of students to complete a certain percentage of their classes in order to be eligible to receive future aid.[189] Many students do not complete four-year degrees within four years, but the Plan would give students the incentive to complete their degrees on time.[190] As a method of increasing affordability, the Plan would discourage students from paying five or more years of tuition for a degree which should only require four years to complete.[191]

While many of the proposals of the Plan are aimed at future students, the Plan does not ignore current and former students with existing loan debt.[192] Presently, students who took out loans before 2008, or have not taken out a loan since 2011, are ineligible for the Pay As You Earn program, which caps loan payments at 10% of the borrower's monthly income.[193] The Plan would expand the flexible income-driven payment option to all students.[194] As part of the Plan, the Department of Education and Department of the Treasury would inform borrowers of the income-driven payment option and help to enroll those who choose to take part.[195]

The overall goal of the Better Bargain Plan is to make colleges more accountable and affordable,[196] with a chief concern, as the title of the Plan indicates, for middle-income families.[197] Federal aid would be directed towards those colleges obtaining the highest ratings by providing the best value and performance.[198] The proposal is based on "encouraging colleges and universities to lower tuition by rewarding them with additional financial aid, creating an improved educational model by rewarding education reform and

187. Better Bargain Plan, *supra* note 15.

188. *Id.*

189. *Id.*

190. *See id; See also* Lewin, *supra* note 16 ("While 'satisfactory academic progress' is required by the current law, it is left to each institution to define such progress, and students who fail out of one college can simply transfer to another and receive more aid.").

191. *See* Better Bargain Plan, *supra* note 15 ("These changes would encourage students to complete their studies on time, thereby reducing their debt…").

192. *Id.*

193. *Id.* The Pay As You Earn program is one of several income-driven repayment plan options offered to students with federal loans; *See Income-Driven Repayment Plans for Federal Student Loans*, FED. STUDENT AID (July 2014), https://studentaid.ed.gov/sites/default/files/income-driven-repayment.pdf. Enrollment is income-based repayment programs can help borrowers avoid default; STUDENT LOAN CHARACTERISTICS, *supra* note 104.

194. *Id.*

195. *Id.*

196. *See* Lewin, *supra* note 16.

197. *See supra* note 17 and accompanying text (discussing why the Plan includes the middle class in its title); *see also supra* notes 85–93 and accompanying text (discussing the struggles of middle-income students to attend college).

198. *See* Jewell, *supra* note 15, at 75.

achievement, and asking Congress to keep higher education accessible through low financial aid interest rates, increased work study funds and educational tax credits."[199] Currently, higher education appears to be a competitive market good rather than a subsidized public right, which means the treatment of institutions may need to reflect such an approach.[200] Higher education appears similar to any other competitive industry, with colleges selling their product (the education) to students. According to Katharine Lyall, president of the University of Wisconsin System from 1992 to 2004, higher education needs "a new and more honest business model for . . . universities, one that ceases to treat them as state agencies and treats them as valuable market-driven entities."[201] The Better Bargain Plan would treat colleges as any other type of business that provides a competitive market good by encouraging colleges to lower their tuition costs by finding ways to educate more efficiently and effectively.[202] While the potential impacts on higher education, the economy, and income inequality are compelling,[203] the Better Bargain Plan remains a set of proposals subject to change.[204]

B. Potential Impact of the Better Bargain Plan

The Better Bargain Plan is fundamentally different from recent attempts to increase college affordability. Instead of making it easier for a student to borrow[205] or attempting to prevent students from attending schools with a tuition amount that does not match a graduate's future earning ability,[206] the Better Bargain Plan would attack the problem at its core, the rising cost of tuition.

Increased affordability will lead to greater access to higher education.[207] A majority of schools will decrease tuition in order to be eligible for increased federal aid through the Better Bargain Plan. Lower tuition will increase college attendance for academically-qualified, middle- and low-income students who might not otherwise be able to afford college because of current tuition rates. Even if tuition remains at a level where federal students loans are still needed for some students to attend school after the Plan is implemented, those borrowers will incur significantly less debt. Decreased debt amounts and flexible, income-

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199. *Id.* at 74.

200. *See* Belkin, *supra* note 68 ("We need to start from a recognition that we have crossed a key line from 'higher education as subsidized public good' to 'higher education as a competitive market good.'").

201. *Id.*

202. *See* Better Bargain Plan, *supra* note 15.

203. *See infra* Part III(B) (discussing the potential impact of the Better Bargain Plan).

204. *See* Lewin, *supra* note 16.

205. *See supra* Part II(A) (discussing the failure of the Bank on Student Emergency Loan Refinancing Act to pass through the Senate).

206. *See supra* Part II(B) (discussing the Gainful Employment Rule regulations).

207. Simmons, *supra* note 14, at 234–35 ("Research consistently shows that finances are the primary deterrent for academically-qualified students who do not enroll in college.").

driven payment methods will afford graduates more opportunities than ever before.[208]

Not all schools will be able to decrease tuition enough to increase their Plan ratings and still be able to operate, but the Better Bargain Plan provides flexibility. Schools can improve their ratings in ways besides lowering tuition, such as graduation rate and graduate earnings, which can benefit students to similar ways as low tuition.[209] The students attending a school that focuses on improving measurements not based on tuition will likely have to take on more debt but are also more likely to offset the debt amount through other measures, such as relatively high post-graduate earnings. Even in the instance where a graduate earns less income than the average graduate from the same school, the income-driven payments will adapt and enable graduates with higher debt amounts to avoid default.[210]

The ratings would inform students to make the best decision based upon their own individual needs and desires by presenting which colleges perform best in various areas. To some students, measurements such as tuition and average debt incurred by a graduate will be the determinative factors, whereas other students may choose to take on more student loan debt in order to attend a school that produces graduates with the highest earning capabilities. Students benefit no matter which method colleges focus on to improve their ratings. In the short-term, college graduates, regardless of which school they attended, will be able to buy a home, save for retirement, start a small business, or even go on to graduate school, endeavors that many college graduates in recent years find impossible[211] but that are vital to economic growth and income equality.[212]

In the long term, the increased access to higher education and decreased debt students incur as a result of lower tuition will curb income inequality.[213] Students with lower loan balances will be more likely to purchase a home upon graduation, unlike current graduates.[214] Demand for housing should experience an upsurge because of the increasing enrollment at colleges.[215] Increased demand for housing will result in more jobs in the housing industry, which will

208. *See supra* notes 118–27 and accompanying text (discussing the adverse effects of large amounts of student loan debt).

209. By basing the ratings system on more than just cost of tuition alone, the Plan suggests that other measurements the ratings will incorporate can be just as beneficial to students. *See* Better Bargain Plan, *supra* note 15.

210. *See supra* notes 108–12 and accompanying text (discussing the consequences of defaulting on student loans).

211. *See supra* notes 122–26 and accompanying text (discussing the economic difficulties that accompany high levels of student loan debt).

212. *See supra* notes 123–24 and accompanying text (discussing the lack of activities, because of student loan debt, that boost the economy).

213. *See supra* note 56 and accompanying text (discussing the average income for a college graduate versus the average income for someone without a degree).

214. *See supra* note 126 (discussing the decreased likelihood of home ownership by graduates with high levels of student loan debt).

215. *See supra* notes 59–61 and accompanying text (discussing the causes of high college enrollment).

increase household formation and lead to further demand for housing and creation of more jobs with better wages.[216]

Aside from the housing market, college graduates benefit their communities by attracting better employers who offer better wages.[217] Better wages, even for those who are not college graduates, can help to increase median income and build a larger middle class with stronger purchasing power.[218] Median income growth will impact future generations of students because the parents of future generations will have more ability to assist their children with the cost of tuition.[219] Those students whose parents are now able to assist financially during college because of higher median income, will not have to incur as much, if any, student loan debt as current college students, further reducing income inequality through increased access and less debt. It is unlikely that income inequality can be solved with higher education alone, but given the effects of high levels of student loan debt as a result of high tuition, and empirical evidence from the relationship between the costs of higher education and income inequality, reform which promotes increasing college affordability can help, at the very least, to curb income inequality.

IV. MOVING FORWARD: DEPARTMENT OF EDUCATION DEVIATING FROM THE BETTER BARGAIN PLAN

In June 2015, President Obama and the Department of Education announced a deviation away from the Better Bargain Plan.[220] Subsequently, President Obama announced other proposals for higher education reform, aimed at increasing college affordability and helping students with loan repayments.[221] Likewise, the Department of Education announced a plan aimed at providing more information to students than ever before.[222] This section will discuss the various reasons why the choice was made to deviate from the Better Bargain Plan and analyze the other proposals made by President Obama and the

216. *See supra* note 47 and accompanying text (discussing the declining rates of home ownership).

217. *Supra* note 58 and accompanying text (discussing research which suggests college graduates attract better employers, which benefits entire communities).

218. *See supra* notes 43–46 (discussing the economic benefits of a strong middle class).

219. *See supra* note 91 and accompanying text (discussing current parents' inability to help their children with the cost of tuition).

220. Josh Lederman, *How Obama Reversed Course On College Ratings Scorecards*, HUFFINGTON POST (July 2, 2015), http://www.huffingtonpost.com/entry/obama-college-ratings_5595b088e4b05bbba184b0e9.

221. Davidson, *supra* note 54 ("Obama recently proposed making community college free for anyone able to maintain a G.P.A. of 2.5 while in school and whose parents make less than $200,000 a year."); Kelly Field, *What Obama's 'Student Aid Bill of Rights' Will – and Won't – Do*, CHRON. HIGHER EDUC. (Mar. 11, 2015), http://chronicle.com/article/What-Obama-s-Student-Aid/228391/.

222. Jamienne Studley, *Helping families navigate their higher education options*, HOMEROOM (June 25, 2015), http://www.ed.gov/blog/2015/06/helping-families-navigate-their-higher-education-options/.

Department of Education's own efforts. A discussion of why the Better Bargain Plan ultimately failed provides further insight into the challenges of passing higher education reform. An analysis of the other proposals and efforts aimed at college affordability will reveal their own strengths and weaknesses in comparison to the Better Bargain Plan. Finally, this section will discuss the various opinions of the current 2016 presidential candidates on higher education affordability. Without support from the next president, higher education reform most likely will not occur any time soon.

A. Obstacles to Implementing the Better Bargain Plan

In theory, the Better Bargain Plan is a solution to higher education issues, but in reality it faced the same difficulties as recent attempts at higher education reform.[223] Similar to the Bank on Students Emergency Loan Refinancing Act,[224] the Better Bargain Plan could not pass through Congress without losing its core principals.[225] The Better Bargain Plan faced resistance from associations representing universities who warned the Plan was "too complex, too subjective and too depending on shoddy data to ever work fairly."[226] While the Department of Education toured the country to receive input on the Plan, college presidents urged the government to reconsider in light of potentially "dire unintended consequences."[227] "University of California President Janet Napolitano, who had been Obama's homeland security secretary, said in December 2013 she was 'deeply skeptical' that the federal government could develop meaningful criteria for ratings."[228] Experts in the education industry also offered warnings similar to those of university presidents.[229] Secretary of Education Arne Duncan acknowledged the numerous challenges facing the Plan.[230]

Certain members of Congress voiced their opposition to the Plan.[231] It is possible that some members of Congress disagreed with the Plan's assumption that the current model of higher education is "wasteful and does not prepare

223. McCusker, *supra* note 180 ("At ground level, though, this kind of measurement system is difficult to design and implement.").

224. *See supra* notes 128–43 and accompanying text (discussing the failure of Senator Elizabeth Warren's Bank on Students Emergency Loan Refinancing Act to pass through the Senate).

225. After the 2014 midterm elections, the Republican Party controled both the House of Representatives and, for the first time in eight years, the Senate, which "opens up new possibilities for deal-making after years of partisan gridlock." Siobhan Hughes, *GOP Senate Win Opens Door to Deals*, WALL ST. J. (Nov. 5, 2014), http://www.wsj.com/articles/midterm-elections-2014-gop-senate-win-opens-door-to-deals-1415127046.

226. Lederman, *supra* note 220.

227. *Id.*

228. Nick Anderson, *Obama Administration Retreats From Federal College Rating Plan*, WASH. POST (June 25, 2015), https://www.washingtonpost.com/news/grade-point/wp/2015/06/25/obama-administration-retreats-from-federal-college-rating-plan/.

229. *See* Lederman, *supra* note 220 ("Technical experts in the education industry that the administration consulted offered similar warnings.")

230. Anderson, *supra* note 228.

231. *See id.*

students for the work force."[232] Some members of Congress believe the current model of higher education adequately prepares students for the work force and can point to statistics regarding the average income of a college graduate compared to the average income of someone without a degree to support such a proposition.[233] Other members of Congress possibly opposed the Plan entirely because they viewed the Plan as determining college choices for students.[234] Students in need of federal aid could be forced to choose a college based solely on the ratings[235] because the Plan would direct taxpayer dollars away from schools performing poorly.[236] Some legislators believe higher education would benefit from less presence of the federal government, in accord with the Bennett Hypothesis, which asserts that the availability of federal aid drives up tuition.[237]

Other legislators support the proposition that increased access to higher education does not necessarily drive income equality because recent studies have shown there could be a rate of college attainment for which additional growth may not support income equality.[238] Without even considering the current polarized climate of American politics, federal aid would not be based on the Department of Education ratings system until 2018,[239] meaning interim elections could drastically alter the political landscape and the level of support for the proposed system or any higher education reform.[240]

Another line of potential legal issues has emerged in light of the litigation surrounding the GER regulations.[241] Many questions about the ratings system of the Better Bargain Plan would have remained unanswered until the ratings were published in 2015, but certain measurements that the ratings would

232. Jewell, *supra* note 15, at 56; *see* McCusker, *supra* note 180 ("The overall problem with the ranking systems is that they are ranking systems; they do not measure the quality of programs in any absolute sense.").

233. *See supra* notes 56–57 and accompanying text (discussing the economic benefits of college graduates).

234. Jewell, *supra* note 15, at 75.

235. Better Bargain Plan, *supra* note 15 ("Students attending high-performing colleges could receive larger Pell Grants and more affordable student loans.").

236. Better Bargain Plan, *supra* note 15.

237. In 1987, Secretary of Education William Bennett wrote an op-ed in The New York Times concluding that financial aid enables colleges to raise tuitions. HELLER, *supra* note 61. Bennett's theory, the Bennett Hypothesis, claims that the availability of federal loans provides colleges with "cover" to raise their prices, because the federal loans will offset some, if not all, of the increase. *Id.* While the Bennett Hypothesis has been cited by those arguing that the government should remove itself completely from the higher education, the most comprehensive study of the Bennett Hypothesis concluded that the theory is not strongly supported in regards to tuition hikes by colleges. *Id.*

238. *See Diminishing Returns*, *supra* note 11 (analyzing the historical correlation between college attainment and income inequality).

239. Better Bargain Plan, *supra* note 15.

240. *See* Hughes, *supra* note 225 (discussing the effects of the Republican party holding the majority in both the Senate and House of Representatives and the possibility of new legislation as the 2016 presidential election approaches).

241. *See supra* notes 153–78 and accompanying text (discussing the decision in *Ass'n of Private Sector Colleges & Univs.*).

incorporate, such as graduate earnings,[242] would surely have faced challenges.[243] "Ultimately, the concern is that the Department of Education will develop a formula and impose it without adequate consultation . . . ."[244] Setting the potential problems with the ratings system aside, the Better Bargain Plan is more expansive than the GER regulations from the Department of Education because the Plan addresses affordability across all colleges, not just for-profit schools.[245] Whereas the recently announced GER regulations still only account for those students who graduate from for-profit schools,[246] the Better Bargain Plan not only considers every school's dropout, transfer, and graduation rates when ranking the schools,[247] but also helps to keep students on the path towards graduation by requiring students to complete a certain percentage of their classes each year.[248]

Ultimately, high-level officials in the Department of Education were convinced the Plan was "unworkable" and persuaded President Obama's administration to develop a "scaled-back approach devoid of hard-and-fast ratings."[249] In a joint statement, Republican Representatives John Kline and Virginia Foxx described the decision to abandon the Plan as a "win for students and taxpayers."[250] The deviation from the Better Bargain Plan was followed by several other proposals aimed at increasing college affordability, including the Department of Education's College Scorecard.

B. Department of Education's College Scorecard and Other Alternatives Aimed at College Affordability

Rather than allowing months of work to go to waste after the original Better Bargain Plan was abandoned, the Department of Education adjusted its approach to developing a website aimed at providing students with more data than previously available in order to compare costs and outcomes at various colleges.[251] The Department of Education stated the website, titled College

242. Lewin, *supra* note 16 ("Graduates' earnings, however, will be a new data point, and one that experts say is especially tricky to make meaningful.").

243. As discussed previously, institutions, particularly for-profit schools, will have the financial incentive to challenge any change in the status quo of federal financial aid. *See supra* note 145 and accompanying text (discussing for-profit schools reliance on federal financial aid for revenue).

244. Lewin, *supra* note 16.

245. *See* Better Bargain Plan, *supra* note 15.

246. *Final Rules*, *supra* note 165.

247. Better Bargain Plan, *supra* note 15.

248. *See supra* notes 188–91 (discussing the Plan's requirement that students complete a certain percentage of their classes in order to be eligible to receive future aid).

249. Lederman, *supra* note 220.

250. Anderson, *supra* note 228 ("This unprecedented scheme would have ultimately discouraged innovation, reduced access for disadvantaged individuals, and used limited taxpayer dollars to reward institutions that put the department's priorities before students.").

251. Studley, *supra* note 222; *see also* Shahien Nasiripour, *What The White House Wants Every Family To Know About College*, HUFFINGTON POST (Sept. 12, 2015), http://www.huffingtonpost.com/entry/white-house-data-student-debt-

Scorecard,[252] "will take a more consumer-drive approach that some have expected, providing information to help students to reach their own conclusions about a college's value."[253] Rather than the Department of Education evaluating colleges for students, this approach will enable students to make their own decisions, essentially, "a ratings system without any ratings."[254] Those who support this more consumer-oriented approach argue this alternative recognizes the diversity of higher education.[255] "The White House is betting that by arming households with new information about how students from certain schools fare during and after college, it will transform a sector that has largely escaped accountability for jacking up tuition or larding students with unaffordable debts that ultimately are backstopped by taxpayers."[256] On the other hand, one could argue this approach simply provides more information rather than an actual solution because it still leaves a decision up to students and does not require accountability on the part of colleges.[257] While the Better Bargain Plan still left the decision of where to attend college up to students, similar to the College Scorecard, the Plan affected such decisions by directing taxpayer dollars away from institutions performing poorly. However, the Department of Education is describing the College Scorecard as a "retooling" rather than a "retreat" of the Better Bargain Plan.[258]

In addition to the College Scorecard, the Department of Education is also working with the Social Security Administration to develop better ways to identify those who may be eligible for a discharge of outstanding loans due to a disability.[259] The Department of Education has also proposed expansions to the

earnings_55f35579e4b063ecbfa48231?utm_hp_ref=tw.

252. College Scorecard, U.S. Dep't of Educ., https://collegescorecard.ed.gov/ (last visited Feb. 2, 2016).

253. Studley, *supra* note 222.

254. Goldie Blumenstyk, *Education Department Now Plans a College-Rating System Minus the Ratings*, CHRON. HIGHER EDUC. (June 25, 2015), http://chronicle.com/article/Education-Department-Now-Plans/231137/.

255. Allie Bidwell, *What's the Best College? Decide for Yourself, Feds Say*, U.S. NEWS (June 25, 2015), http://www.usnews.com/news/articles/2015/06/25/education-department-will-publish-college-ratings-without-the-ratings (stating that what data is important to a student varies from student to student).

256. Nasiripour, *supra* note 251.

257. *See* F. King Alexander, *Why We need A Federal Ratings System*, CHRON. HIGHER EDUC. (Dec. 19, 2014), http://chronicle.com/blogs/conversation/2014/12/19/why-we-need-a-federal-ranking-system/ ("Right now, American students and their families are, for the most part, left to determine an institution's value through the misconception that paying higher tuition somehow results in better educational outcomes. That way of thinking has led us to today's ballooning student debt and skyrocketing tuition.").

258. *See* Lederman, *supra* note 220.

259. *See* Kelly Field, *Education Dept. Takes Steps to Easy Repayment for Student-Loan Borrowers*, CHRON. HIGHER EDUC. (July 7, 2015), http://chronicle.com/blogs/ticker/education-dept-takes-steps-to-ease-repayment-for-student-loan-borrowers/101625 ("Starting next year, the department and the Social Security Administration will conduct periodic data matches to identify borrowers who may be eligible for a disability discharge. The two agencies are also working on ways to identify borrowers who receive disability benefits and might benefit from income-based repayment.").

most flexible income-based student loan repayment plans.[260] Similar to the Department of Education's proposals in regards to repayment plans, President Obama announced plans to enact a Student Aid Bill of Rights, which would enable students to keep better track of their student loans, make filing complaints regarding aid centralized, and help students stay within income-based repayment plans.[261] President Obama directed the Department of Education to do more to help borrowers, including: "(1) a state-of-the-art complaint system to ensure quality service and accountability for the Department of Education, its contractors, and colleges, (2) a series of steps to help students responsibly repay their loans including help setting affordable monthly payments, and (3) new steps to analyze student debt trends and recommend legislative and regulatory changes."[262]

Along with the Student Aid Bill of Rights, President Obama recently proposed making community college free.[263] On average, tuition and fees at public two-year colleges was $3,347 for the 2014–15 academic year.[264] Both Tennessee and Oregon, which began offering free community college a short time ago, have argued such a measure will "boost their college-graduation rates and grow their states' economies. . . ."[265] In Tennessee, high school seniors may attend two years of community college at no cost so long as they perform eight hours of community service and meet with mentors.[266] Oregon has slightly more restrictions, requiring students to have lived in Oregon for at least a year, have a minimum 2.5 high school grade-point-average and complete a federal financial aid application.[267] Because the programs in Oregon and Tennessee began only a short time ago, it will take a few years before the actual impact of these programs can be measured.

In July of 2015, the America's College Promise Act of 2015 was introduced in the House of Representatives.[268] With over 60 sponsors, the Act would make community college free for two years and subsidize the costs of tuition at four-year schools which serve minorities.[269] Secretary of Education Arne Duncan

260. *Id.*

261. Field, *supra* note 259.

262. *Student Aid Bill of Rights*, *supra* note 101.

263. Davidson, *supra* note 54 ("Obama recently proposed making community college free for anyone able to maintain a G.P.A. of 2.5 while in school and whose parents make less than $200,000 a year.").

264. Beckie Supiano, *What Students Pay at Community Colleges Now – and How Obama's Proposal Might Change That*, CHRON. HIGHER EDUC. (Jan. 9, 2015), http://chronicle.com/article/What-Students-Pay-at-Community/151129/.

265. Emily Deruy, *The Debate Over Free Community College*, THE ATLANTIC (Jul. 27, 2015), http://www.theatlantic.com/education/archive/2015/07/free-community-college-mixed-reviews/399701/.

266. *See id.*

267. *See id.*

268. H.R. 2962, 114th Cong. (1st Sess. 2015).

269. *See* Colleen Murphy, *Democrats Unveil Bill to Help Realize Obama's Free-College Proposal*, CHRON. HIGHER EDUC. (Jul. 8, 2015), http://chronicle.com/article/Democrats-Unveil-Bill-to-Help/231451/.

stated such legislation builds upon the momentum of increasing college affordability.[270] Larger colleges fear free community college could result in a large number of students shifting away from their own institutions and towards community colleges.[271] The White House has stated offering free community college across the nation would cost the federal government $60 billion over ten years, which decreases the likelihood of such a measure occurring as lawmakers will likely be hesitant to accept such a steep price.[272] Similar to the Better Bargain Plan, the America's College Promise Act of 2015 will face the challenge of passing through Congress, a task which will be heavily influenced by the 2016 elections.

C. 2016 Presidential Candidates' Stance on College Affordability

The idea of debt-free college has garnered increased attention on the 2016 presidential campaign trail.[273] However, the term "debt free" appears to have differing definitions.[274] Only three candidates, former U.S. Senator and Secretary of State Hillary Clinton, Senator Bernie Sanders, and former Maryland Governor Martin O'Malley have presented plans for higher education affordability, while only one Republican candidate, Senator Marco Rubio, has spoken extensively about the cost of higher education. "Democratic candidates have primarily focused on college affordability more broadly – with plans for debt-free or tuition-free college, as well as reforms to student loan repayment plans."[275] The conservative critics of the Democratic candidates' plans "say any of the plans would simply shift the burden of paying for college from students to taxpayers, while doing nothing to bend the cost curve."[276]

Hillary Clinton, who served eight years on the Senate education committee, endorsed President Obama's free community college proposal,[277] stating college should be "affordable and open for everybody willing to work for it."[278] Clinton has also acknowledged the troubles with for-profit colleges.[279] In August 2015,

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270. *See id.*

271. Eric Kelderman & Scott Carlson, *Who Has a Stake in Obama's Free Community-College Plan?*, CHRON. HIGHER EDUC. (Jan. 9, 2015), http://chronicle.com/article/Who-Has-a-Stake-in-Obama-s/151131/.

272. *See* Deruy, *supra* note 265.

273. *See* Kelly Field, *'Debt-Free College' Is Democrats' New Rallying Cry*, CHRON. HIGHER EDUC. (June 12, 2015), http://chronicle.com/article/Debt-Free-College-Is/230863/.

274. *See id.* ("'It means different things to different people,' said Sandy Baum, an economist and senior fellow at the Urban Institute, and 'most people proposing it are not at all specific about what it means.'").

275. Allie Bidwell, *2016 Presidential Candidates Scattered on Higher Ed, Student Aid Views*, NAT'L ASS'N STUDENT FIN. AID ADMINS. (Aug. 12, 2015), http://www.nasfaa.org/news-item/5223/2016_Presidential_Candidates_Scattered_on_Higher_Ed_Student_Aid_Views.

276. *See* Field, *supra* note 273.

277. See supra notes 269–72 (discussing the America's College Promise Act of 2015).

278. Kelly Field, *A Higher-Ed Guide to 4 Presidential Contenders*, CHRON. HIGHER EDUC. (Apr. 16, 2015), http://chronicle.com/article/A-Higher-Ed-Guide-to-4/229411/.

279. *Id.* (stating for-profit colleges "take all this money and put all these young people and families into debt"); *see also supra* notes 146–54 (discussing the troubling nature of for-profit

Clinton unveiled a $350 billion plan, named the New College Compact,[280] to make college more affordable by encouraging states to increase higher education funding and cut student costs.[281] "More than half of the total would be used to increase state investment in higher education, a third would cover the cost of lowering the interest rates on student loans and the rest would support the other initiatives."[282] "States that guarantee 'no-loan' tuition at four-year public schools and free tuition at community colleges will be eligible to receive federal funds."[283] In order to pay for this plan, Clinton would eliminate tax deductions for the wealthy, a strategy that will be difficult to pass through a Congress that is heavily populated by Republicans who oppose increasing taxes.[284] "The core of Clinton's plan would allow students to earn a four-year degree from state colleges and universities without taking out loans to pay for tuition. She'd do that by providing federal grants to states, as long as the states up their investment in higher education."[285] Clinton's plan would require families to make some contributions towards tuition, including student earnings from 10 hours of work per week.[286] The plan would also simplify the application process for federal student aid, cap loan payments at 10% of income, forgive any outstanding debt after 20 years of payments, allow current borrowers to refinance their loans and give additional grants to colleges that do more to reduce costs.[287] Some worry Clinton's plan wholly ignores graduation rates and the quality of education received by students.[288]

Offering a cheaper alternative, at a cost of $70 billion per year, Vermont Senator Bernie Sanders has proposed making public college tuition free.[289] Dubbed the College for All Act, Senator Sanders' plan would be paid for by imposing further taxes on Wall Street.[290] Senator Sanders would also eliminate the profit the federal government makes from student loan interest and allow students to refinance at significantly lower rates.[291] Two-thirds of the College

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colleges).

280. *See* Bidwell, *supra* note 275.

281. Lisa Lerer, *Clinton to Propose $350 Billion College Affordability Plan*, ASSOCIATED PRESS (Aug. 10, 2015), http://finance.yahoo.com/news/clinton-propose-350-billion-college-041429011.html.

282. Danielle Douglas-Gabriel and Anne Gearan, *Clinton Proposes a $350 Billion Plan to Make College Affordable*, WASH. POST (Aug. 10, 2015), http://www.washingtonpost.com/news/wonkblog/wp/2015/08/10/clinton-proposes-a-350-billion-plan-to-make-college-affordable/.

283. Lerer, *supra* note 281.

284. Kaitlin Mulhere, *7 Things You Need To Know About Hillary Clinton's College Plan*, TIME (Aug. 10, 2015), http://time.com/money/3990445/hillary-clinton-college-plan/.

285. *Id.*

286. *See id.*

287. *See id.*; *see also* Heather Gautney, *College Affordability: Comparing the Clinton and Sanders Plans*, HUFFINGTON POst (Aug. 20, 2015), http://www.huffingtonpost.com/heather-gautney/college-affordability-com_b_8011428.html.

288. *See id.*

289. *See* Field, *supra* note 273.

290. Foley, *supra* note 54.

291. Gautney, *supra* note 287. "[T]he Congressional Budget Office predicts that the student loans the government will make over the next decade will ultimately yield $135 billion over the

for All Act would be funded by the federal government, with the remaining one-third funded by the individual states.[292] When comparing the Clinton and Sanders plans, some point out Clinton's plan requires further state investment and funding from students and families, while Senator Sanders' plan eliminates both of those requirements.[293]

Former Maryland Governor Martin O'Malley has also supported debt-free college.[294] In Maryland, O'Malley froze tuition and ensured students were graduating with a valuable degree.[295] O'Malley has proposed allowing current students to refinance their existing debt and making income-based repayment plans automatic, rather than optional.[296] Similar to the Better Bargain Plan, O'Malley also suggests tying federal aid receipt to "schools' performance."[297] O'Malley would "set a goal of limiting college tuition to 10 percent of a state's median income at four-year institutions and 5 percent at two-year institutions."[298] O'Malley suggested his plan could be paid for by "measures such as closing corporate tax loopholes and taxing capital gains at the same rate as earned income."[299]

As the most outspoken Republican candidate on higher education affordability, Florida Senator Marco Rubio favors creating a federal database which would track student outcomes, such as job placement.[300] Similar to President Obama, Senator Rubio supports funding for competency-based courses,[301] stating "it's not just about spending more money on these programs; it's also about strengthening and modernizing them."[302] Having experienced the difficulties of student loan debt himself, Senator Rubio has stated that student

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term of those loans as graduates pay back their debt with interest." Michael Sainato, *Bernie Sanders and the Crisis of Affordable College Education*, OBSERVER (July 31, 2015), http://observer.com/2015/07/bernie-sanders-and-the-crisis-of-affordable-college-education/.

292. *See* Bidwell, *supra* note 275.

293. *See id.* ("The Clinton plan is a step in the right direction. But it's not debt free. The Sanders plan offers real solutions to the high costs of college tuition and student debt, and as such, real progress towards the building of a robust democracy.").

294. *See* Field, *supra* note 273.

295. *See* O'Malley, *supra* note 14 ("We froze tuition at public four-year institutions while making investments in universities, community colleges and financial aid. We took steps to make sure our high school students were graduating with a degree that's worth something and with some college credit or technical training already under their belts.").

296. *See id*.

297. *See id.*

298. John Wagner, *How Martin O'Malley Wants to Lighten the Load of College Debt*, WASH. POST (July 8, 2015), http://www.washingtonpost.com/news/post-politics/wp/2015/07/08/martin-omalley-racked-up-339200-in-loans-putting-two-kids-through-college-he-wants-to-lighten-the-load-for-others/.

299. *Id.*

300. *See* Douglas-Gabriel and Gearan, *supra* note 282.; *see also* Kelly Field, *In 3 Reports, Senate Republicans Hint at Higher-Ed Agenda*, CHRON. HIGHER EDUC. Mar. 24, 2015), http://chronicle.com/article/In-3-Reports-Senate/228715/.

301. *See supra* note 84 and accompanying text (discussing competency-based courses).

302. Field, *supra* note 278.

debt is a restriction on the American Dream.[303] Senator Rubio has called for dismantling the "cartel of existing colleges and universities. . . ."[304] "We need to change how we provide degrees, how those degrees are accessed, how much that access costs, how those costs are paid and even how those payments are determined."[305] Senator Rubio stated he would provide repayment options that cause "less strain."[306] "[Senator] Rubio would also allow students to team with investors who would cover the students' tuition in exchange for a percentage of their earnings for a few years after graduation."[307] In response to Clinton's education proposal, Senator Rubio pointed out the tax increases that would accompany Clinton's program.[308]

The remaining Republican candidates have made various statements regarding college affordability, but nothing specific in terms of what their approach to higher education would be if elected. Similar to Senator Sanders, Donald Trump believes the federal government should not be profiting from student loans.[309] Texas Senator Ted Cruz previously stated that federal student aid should be controlled by individual states rather than the federal government.[310] Kentucky Senator Rand Paul called for abolishing the Department of Education, believing that "more money, more bureaucracy, and more government intervention are eroding this nation's educational standards."[311] As a way of making college more affordable, Paul suggests making college tuition fully tax deductible.[312] Former Florida Governor Jeb Bush stated: "We need to change the incentives for colleges with fresh policies that result in more individualization and choices, drive down overall costs, and improve the value of a college degree, which will help lead to real, sustained four-percent economic growth."[313] Bush has also stated that technology could help increase college affordability.[314] New Jersey Governor Chris Christie believes free tuition is not the answer to higher education because students are

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303. *See id.*

304. Jeremy W. Peters, *Marco Rubio Calls for Overhaul of the 'Cartel' of Colleges*, N.Y. TIMES (Jul. 7, 2015), http://www.nytimes.com/politics/first-draft/2015/07/07/marco-rubio-attacks-higher-education-cartel-and-jabs-rivals/.

305. *Id.*

306. *See id.*

307. *Id.*

308. *See* Alan Rappeport, *Marco Rubio and Jeb Bush Pan Hillary Clinton's Student Loan Plan*, N.Y. TIMES (Aug. 10, 2015), http://www.nytimes.com/politics/first-draft/2015/08/10/marco-rubio-and-jeb-bush-pan-hillary-clintons-student-loan-plan/.

309. Kevin Cirilli, *Trump: Why is Federal Government Making Money on Student Loans?*, THE HILL (July 23, 2015), http://thehill.com/policy/finance/248913-trump-why-is-federal-government-making-money-on-student-loans ("That's probably one of the only things the government shouldn't make money off — I think it's terrible that one of the only profit centers we have is student loans.").

310. *See* Bidwell, *supra* note 275.

311. Field, *supra* note 273.

312. *Id.*

313. Rappeport, *supra* note 308.

314. *See* Bidwell, *supra* note 275.

the ones who benefit from earning a degree.[315] Governor Christie believes college affordability proposals should target the lowest-income students.[316] Governor Christie has supported the theory behind Senator Rubio's plan which would match a student with an investor, who, in return, would be paid a percentage of the graduate's income for a set period of time.[317] Dr. Ben Carson has dismissed President Obama's free community college proposal and stated that hard work is the way to fix the student loan problem.[318] "Given his past statements, it is fair to assume that Dr. Carson does not favor legislation as a device to make college more affordable, instead he favors more 'elbow grease' and other private sector solutions."[319]

Although the current presidential candidates' various stances on college affordability do reveal the importance of higher education in the 2016 elections, only the plan proposed by former Maryland Governor Martin O'Malley shares the most important distinguishing characteristic of the Better Bargain Plan: accountability on the part of colleges.[320] Without the possibility of reduced, or even eliminated, federal aid eligibility, colleges will continue to set tuition levels as they please, thus continuing the problem of student loan debt and perpetuating income inequality. The current presidential candidates should acknowledge the principles of the Better Bargain Plan as a viable set of solutions to the student loan problem and a way to curb income inequality by making higher education more affordability by placing accountability on colleges and universities.

V. CONCLUSION

Citizens of the United States value the principle of upward mobility, and individual autonomy is treasured by most. If someone plays by the rules, they should be able to succeed, get ahead in life, and climb the socio-economic ladder. With the Better Bargain Plan, reality could once again reflect these values. The American Dream, the idea that someone can climb the socio-economic ladder with hard work, is nearly unobtainable for many of today's Americans, but the current environment does not have to dictate the future. With adequate policies that promote income equality, such as the Better Bargain Plan,

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315. *See* Allie Bidwell, *Chris Christie's No Fan of Free College*, U.S. NEWS (June 11, 2015), http://www.usnews.com/news/articles/2015/06/11/chris-christie-comes-out-against-free-college ("There are always costs involved, and if college graduates are going to reap the greater economic rewards and opportunities of earning a degree, then it seems fair for them to support the cost of the education they're receiving. Earning a degree should actually involve earning it.").

316. *See id.*

317. *See id.*

318. *See* Stephen Dash, *Ben Carson's Non-Traditional Solution to the Student Loan Debt Crisis*, HUFFINGTON POST (May 8, 2015), http://www.huffingtonpost.com/stephen-dash/ben-carsons-non-tradition_b_7243426.html ("[T]here is a four letter word that works extremely well, it's called w-o-r-k, work.").

319. *Id.*

320. *See supra* note 298 and accompanying text (discussing Governor O'Malley's plan to tie federal aid to school performance).

future generations can achieve their educational and economic aspirations.[321] Although it cannot wholly cure the problem, the Better Bargain Plan can curb income inequality by increasing the affordability of higher education and placing accountability on colleges and universities to either lower tuition or provide an education that is truly worth the price of tuition.

321. *See Middle-Income Realities*, *supra* note 17, at 1221. "Without greater access to higher education, the United States is likely to have even greater income inequality, a huge segment of the population will see its income fall and some of our core assumptions about national identity — ours as a land of opportunity, a prosperous democracy — will be at risk." Davidson, *supra* note 54.