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Forgive and Forget? An Analysis of Student Loan Forgiveness Plans

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Forgive and Forget? An Analysis of Student Loan Forgiveness Plans

I. INTRODUCTION

Outstanding student loan debt in the United States has reached a staggering $1.50 trillion, with 10.9% of aggregate student loan debt in delinquency (ninety days or more past due) or default.[1] In spite of this enormous amount of overall debt, the number of individual borrowers carrying substantial student debt is relatively low.[2] Over half of the total student loan debt is held by just 16% of borrowers.[3] Given the magnitude of this issue, it is not surprising that student loan forgiveness proposals have become a more frequent part of political discussions and presidential candidate campaign platforms.[4]

There are two federal student loan forgiveness programs currently in place: Public Service Loan Forgiveness ("PSLF"),[5] for individuals who pursue a career in a qualifying public service industry,[6]

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1. FED. RESERVE BANK OF N.Y., QUARTERLY REPORT ON HOUSEHOLD DEBT AND CREDIT 2019:Q3, at 1 (2019), https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2019Q3.pdf [https://perma.cc/3VA7-7RVC] [hereinafter NOVEMBER 2019 QUARTERLY REPORT]; *see Student Loan Delinquency and Default*, FED. STUDENT AID https://studentaid.gov/manage-loans/default [https://perma.cc/PWQ6-RVBH] (last visited Feb. 6, 2020) (describing the difference between default and delinquency as it applies to federal student loans).

2. *See* COLL. BD., TRENDS IN STUDENT AID 2019, at 18 fig.10 (Nov. 2019) (finding that 17% of borrowers have an outstanding student debt balance less than $5,000, 17% of borrowers have an outstanding debt balance of $5,000 to $9,999, and 21% of borrowers have an outstanding balance of $10,000 to $19,999).

3. Specifically, 55% of the total outstanding student debt is held by 16% of borrowers. *Id.*

4. *See* Jillian Berman, *Where the 2020 Candidates Stand on Student Debt and College Affordability,* MARKETWATCH (July 20, 2019), https://www.marketwatch.com/story/where-the-2020-candidates-stand-on-student-debt-and-college-affordability-2019-02-20 [https://perma.cc/7CZC-RXKU] (describing the various 2020 presidential candidates' stances on student debt).

5. 20 U.S.C. § 1087e(m) (2018); *Public Service Loan Forgiveness*, FED. STUDENT AID (Sept. 23, 2019), https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/public-service#qualifying-payment [https://perma.cc/6NGB-E53J] [hereinafter *Public Service Loan Forgiveness*].

6. For this plan, Public Service Loan Forgiveness ("PSLF"), one must work for an employer that falls under the following definition: "[G]overnment organizations at any level (federal, state, local, or tribal); Not-for-profit organizations that are tax-exempt under Section 501(c)(3) of the Internal Revenue Code; Other types of not-for-profit organizations that are

and Teacher Loan Forgiveness,[7] for individuals who teach for a certain period of time.[8] However, these programs are minuscule—both in terms of costs and number of eligible borrowers—in comparison to the new student debt forgiveness programs proposed by 2020 presidential candidates Elizabeth Warren and Bernie Sanders.[9] Both of these candidates' proposals have the same underlying goal of offering broad student loan forgiveness.[10] However, the two plans differ in terms of their eligibility requirements and the total amount of debt forgiveness given to each borrower.[11]

Student loan debt is an issue that will only become more important as time goes on and as the debt continues to rise.[12] However, there are alternative solutions to this growing problem that may be more feasible than the sweeping cancellation of student loan debt.[13] In fact, two other 2020 presidential candidates—Joe Biden and Donald Trump—

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not tax-exempt under Section 501(c)(3) of the Internal Revenue Code, if their primary purpose is to provide certain types of qualifying public services[; or] serving as a full-time AmeriCorps or Peace Corps volunteer." 20 U.S.C. § 1087e(m) (2018); *Public Service Loan Forgiveness*, *supra* note 5.

7. 20 U.S.C. § 1078-10.

8. *Id.*; *see* ALEXANDRA HEGJI, DAVID P. SMOLE & ELAYNE J. HEISLER, CONG. RESEARCH SERV., R43571, FEDERAL STUDENT LOAN FORGIVENESS AND LOAN REPAYMENT PROGRAMS (2018), https://fas.org/sgp/crs/misc/R43571.pdf [https://perma.cc/5L39-G2EP] (providing a description of various loan forgiveness programs currently in place).

9. *Compare* FED. STUDENT AID, SEPTEMBER 2019 PSLF REPORT (2019), https://studentaid.ed.gov/sa/about/data-center/student/loan-forgiveness/pslf-data [https://perma.cc/LG62-7LGR] [hereinafter SEPTEMBER 2019 PSLF REPORT] (reporting that the PSLF program provided debt forgiveness for 1,561 borrowers for a total amount of $71.90 million of debt forgiven), *and* FED. STUDENT AID, TEACHER LOAN FORGIVENESS REPORT (2019), https://studentaid.ed.gov/sa/about/data-center/student/loan-forgiveness [https://perma.cc/R8SX-MQDL] [hereinafter TEACHER LOAN FORGIVENESS REPORT] (reporting that the Teacher Loan Forgiveness program provided debt forgiveness for 45,000 borrowers with a total of $383.3 million of debt forgiven), *with Affordable Education for All*, WARREN FOR PRESIDENT (Apr. 22, 2019), https://elizabethwarren.com/plans/affordable-higher-education [https://perma.cc/NL2L-2SPE] [hereinafter WARREN FOR PRESIDENT] (stating that Warren's plan will provide debt forgiveness for 42 million borrowers with a total of $640 billion of debt forgiven), *and College for All and Cancel All Student Debt*, BERNIE 2020, https://berniesanders.com/en/issues/free-college-cancel-debt/ [https://perma.cc/34QG-7HYE] (last visited Feb. 9, 2020) [hereinafter BERNIE 2020] (stating that Sanders' plan would provide debt forgiveness for 45 million borrowers with a total of $1.6 trillion in debt forgiveness).

10. *See infra* Part III.

11. *See infra* Part III.

12. *See* John Aidan Byrne, *US Students May Collectively Owe $2T in Loans by 2021*, N.Y. POST (Aug. 11, 2018, 8:44 PM), https://nypost.com/2018/08/11/us-students-may-collectively-owe-2t-in-loans-by-2021/ [https://perma.cc/X47M-2HPY] ("As long as the overall population continues to grow and as college tuition costs continue to rise, US student debt will keep growing.").

13. *See infra* Part V.

have each proposed their own plans to conquer the increasing student debt, and neither plan involves broad student loan forgiveness.[14] Instead, these plans focus on restructuring some of the existing programs for repayment and forgiveness, as well as promoting career preparation paths that do not require a four-year college degree.[15] Another solution is increasing awareness and information surrounding strategies to save and pay for college.[16] Lastly, there is a recommendation to provide more guidance and support for high school students making decisions about their plans after graduation.[17]

This Note examines both Warren's and Sanders's expansive student debt forgiveness plans and analyzes the likely outcomes of each plan.[18] The negative effects caused by substantial student loan debt on individual borrowers and the economy as a whole are acknowledged and discussed.[19] However, this Note ultimately finds that those issues are minimal in comparison to the pernicious consequences that would result from implementing either Warren's or Sanders's proposal.[20] Part II explains the changes over time in the cost of attending college, the recent trends in student borrowing, and the current state of outstanding student loan debt.[21] Part III describes the existing and newly proposed student loan forgiveness programs.[22] Part IV analyzes the broad forgiveness proposals and predicts possible issues with their implementation and likely outcomes.[23] Part V assesses alternative solutions for preventing

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14. THE WHITE HOUSE, PROPOSALS TO REFORM THE HIGHER EDUCATION ACT (2019), https://www.whitehouse.gov/wp-content/uploads/2019/03/HEA-Principles.pdf [https://perma.cc/DW6A-DFYX]; *The Biden Plan for Education Beyond High School*, BIDEN FOR PRESIDENT, https://joebiden.com/beyondhs/ [https://perma.cc/3857-8422] (last visited Dec. 20, 2019).

15. THE WHITE HOUSE, *supra* note 14; *The Biden Plan for Education Beyond High School*, *supra* note 14.

16. *See infra* Part V.

17. *See infra* Part V.

18. This Note focuses exclusively on the student loan forgiveness portion of the two newly proposed plans and does not provide an analysis of the proposal for free tuition for all public two- and four-year institutions that is included in both candidates' plans. *See infra* Parts III–IV.

19. *See infra* Part II.

20. *See infra* Part IV.

21. *See infra* Part II.

22. *See infra* Part III.

23. *See infra* Part IV.

further increases in student debt in the U.S.[24] Part VI summarizes the arguments and draws final conclusions.[25]

II. CURRENT STATE OF STUDENT LOAN DEBT

In 1958, the first federal student loan program, the National Defense Student Loan ("NDSL") Program, was created.[26] Starting in 1965 with the first Higher Education Act ("HEA") and continuing throughout the 1970s and 1980s, the volume of federal loans rapidly increased.[27] This was due to the rise in college costs, the creation of state loan guarantee agencies, and the expansion of loan limits and eligibility.[28] Fast-forward to 1999—outstanding student loan debt was $90 billion.[29] By 2010, that number skyrocketed to $760 billion.[30] Now, a mere decade later, total outstanding student debt has reached $1.50 trillion.[31]

One clear contributing factor to the rise in student loan debt is the rapid increase in the cost of attending college in the past decade.[32] Between 2006 and 2016, the average cost of attendance[33] for two- and four-year colleges increased by 31% for public, 24% for private non-profit, and 11% for private for-profit.[34] For the 2018–19 school year, Americans spent an average of $26,226 on college.[35] Only 24% of those

24. *See infra* Part V.

25. *See infra* Part VI.

26. LUMINA FOUND., A HISTORY OF FEDERAL STUDENT AID, https://lookingback.luminafoundation.org/chapter/1/ [https://perma.cc/NSK3-6PTS] (last updated Nov. 8, 2017).

27. *Id*.

28. *Id.*

29. Daniel Indiviglio, *Chart of the Day: Student Loans Have Grown 511% Since 1999*, ATLANTIC (Aug. 18, 2011), https://www.theatlantic.com/business/archive/2011/08/chart-of-the-day-student-loans-have-grown-511-since-1999/243821/ [https://perma.cc/QJ47-5YPX].

30. NOVEMBER 2019 QUARTERLY REPORT, *supra* note 1.

31. *Id*.

32. *See* Jessica L. Gregory, *The Student Debt Crisis: A Synthesized Solution for the Next Potential Bubble*, 18 N.C. BANKING INST. 481 (2013) ("The high amount of student debt is due in part to the rise in the cost of a college education.").

33. "Cost of college attendance" includes the total cost of tuition, fees, room, and board. NAT'L CTR. FOR EDUC. STATISTICS, DIGEST OF EDUCATION STATISTICS: 2017, tbl.330.10 (Jan. 2018), https://nces.ed.gov/programs/digest/d17/ch_3.asp [https://perma.cc/AQT5-ANDB].

34. *See id.* (stating that for the 2016–17 academic year costs for public universities were $17,237 total for tuition, fees, room, and board for full-time undergraduate students and $6,817 for tuition and required fees only; for private non-profit universities costs were $44,551 total, $32,556 for tuition and required fees only; and for private, for-profit universities $25,431 total and $14,419 for tuition and required fees only).

35. SALLIE MAE & IPSOS PUB. AFFAIRS, HOW AMERICA PAYS FOR COLLEGE 2019, at 1 (2019),

college costs were paid using borrowed money, which made it the smallest share in terms of actual dollar amount compared to other methods of financing such as family income and savings,[36] scholarships,[37] and grants.[38] Private loans paid for 6% of college costs,[39] and federal loans—the single largest source of borrowed money—paid for 13% of college costs.[40] The remaining 5% of college costs paid with borrowed money came from alternative sources, such as credit cards, home equity loans, and retirement account loans.[41] Over half of all students used some amount of borrowed money to pay for college.[42]

As a result of the prevalence of borrowing to pay for college, student loan debt is now the second-highest consumer debt category—behind only mortgage debt—and ranks higher than both credit cards and auto loans.[43] The average debt for a Class of 2018 college graduate was $29,200.[44] Although, only considering the average does not provide an accurate depiction of the current student loan debt distribution: approximately 55% of the outstanding federal education loan debt was held by just 16% of borrowers.[45] Over half of all borrowers owe less than

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https://www.salliemae.com/assets/research/HAP/HowAmericaPaysforCollege2019.pdf [https://perma.cc/K2YN-6HV9].

36. "Family income and savings" in this study included: parent current income, student current income, private education loans taken out by the student and parent, home equity loan or line of credit, parent and student credit cards, retirement account loan (including 401k, Roth IRA, or other IRA), and any "other" loans borrowed by the student or parent. *Id.* at 31.

37. "Scholarships" included all scholarships "received from the school or outside organizations, businesses, or state programs." *Id.*

38. "Grants" included federal, state, or school based. *See id.* (finding that 43% of college costs were paid using family income and savings, 33% using a combination of scholarships, grants, and gifts).

39. *See id.* at 32 (finding that of private student loans, student-borrowed loans paid for 4% of college costs and parent-borrowed loans paid for 2% of college costs).

40. *See id.* (stating that of federal student loans, student-borrowed loans paid for 9% of total college costs and parent-borrowed loans, specifically through the Federal Direct PLUS Loan program, paid for 4% of total college costs); *see generally Federal Versus Private Loans*, FED. STUDENT AID (Oct. 28, 2019), https://studentaid.ed.gov/sa/types/loans/federal-vs-private [https://perma.cc/G2A5-TB9S] (providing additional information on the differences between federal and private student loans).

41. Student credit cards and other types of loans borrowed by students each paid for 1% or less of college costs. *See* SALLIE MAE & IPSOS PUB. AFFAIRS, *supra* note 35, at 9. Parents borrowed using credit cards, home equity loans, retirement account loans, and other loans, which each paid for about 1% of college costs. *Id.*

42. *See id.* at 9 fig. 5 (showing that 51% of families borrowed money to pay for college).

43. NOVEMBER 2019 QUARTERLY REPORT, *supra* note 1, at 3.

44. INST. FOR COLL. ACCESS & SUCCESS, STUDENT DEBT AND THE CLASS OF 2018, at 4 (2018), https://ticas.org/wp-content/uploads/2019/09/classof2018.pdf [https://perma.cc/KF2A-ZHRN].

45. COLL. BD., *supra* note 2, at 4.

$20,000.[46] Put simply, the majority of borrowers owe an amount well below the average on their loans while only a small fraction of borrowers are responsible for more than half of the total outstanding student debt.[47]

A. Effect of Student Debt on Individual Borrowers and the Economy

For the small percentage of individuals who do hold a significant amount of student debt, there can be a multitude of potential negative outcomes.[48] First, if monthly loan payments are not made on time, it could cause substantial adverse effects on an individual's debt-to-income ("DTI") ratio[49] and credit score.[50] Both low credit scores and high DTI ratios may jeopardize—and in some situations, preclude—an individual's ability to obtain a personal or mortgage loan in the future,[51] which can delay homeownership.[52] Homeownership is one of the most common

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46. *See id.* (finding that 55% of borrowers owe less than $20,000).

47. *See id.* (reporting that 10% of borrowers owe $80,000 or more and 55% of borrowers owe less than $20,000); *see also* INST. FOR COLL. ACCESS & SUCCESS, *supra* note 44 (stating that the average student loan debt for individuals graduating in 2018 was $29,200).

48. *See, e.g.*, Shannon Insler, *5 Ways Student Loans Can Help – Or Hurt – Your Credit*, STUDENT LOAN HERO (Feb. 28, 2018), https://studentloanhero.com/featured/do-student-loans-affect-credit/ [https://perma.cc/H6D7-QEG4] (describing the negative impact of late student loan payments on an individual's credit score).

49. "Debt-to-income ratio" is defined as "all your monthly debt payments divided by your gross monthly income." *What Is a Debt-to-Income Ratio? Why Is the 43% Debt-to-Income Ratio Important?,* CONSUMER FIN. PROT. BUREAU, https://www.consumerfinance.gov/ask-cfpb/what-is-a-debt-to-income-ratio-why-is-the-43-debt-to-income-ratio-important-en-1791/ [https://perma.cc/Y3HQ-BHV2] (last updated Nov. 15, 2019).

50. *See* Insler, *supra* note 48 (stating that the flipside of the aforementioned positive is that if you do not pay on time, that will be a substantial negative effect on 35% of your credit score).

51. *See What's Your Debt-to-Income Ratio? Calculate Your DTI*, NERD WALLET (Oct. 8, 2019), https://www.nerdwallet.com/blog/loans/calculate-debt-income-ratio/ [https://perma.cc/AZ7E-Z5UP] ("Each lender sets its own debt-to-income ratio requirement. Not all creditors, such as personal loan providers, publish a minimum debt-to-income ratio, but generally it will be more lenient than . . . a mortgage. . . . [A] debt-to-income ratio of 43% is generally the highest mortgage lenders will accept for a qualified mortgage.").

52. *See* Christopher Ingraham*, 7 Ways $1.6 Trillion in Student Loan Debt Affects the U.S. Economy*, WASH. POST (June 25, 2019), https://www.washingtonpost.com/business/2019/06/25/heres-what-trillion-student-loan-debt-is-doing-us-economy/ [https://perma.cc/F5QS-FTL9] ("This year the Federal Reserve issued a report showing that student loan debt prevented about 400,000 young families from purchasing homes, accounting for about a quarter of the drop in home-ownership rates in this demographic from 2005 to 2014."); *but see* SANDY BAUM, STUDENT DEBT: RHETORIC AND REALITIES OF HIGHER EDUCATION FINANCING 75 (1st ed. 2016) ("[W]e find little evidence that student loan debt is a 'major culprit' of declining home ownership among young adults. Instead, it is likely that declining home ownership in young adults—which predates the recent

ways an individual builds wealth, so the inability to purchase or a delay in purchasing a home can have long-lasting financial effects that are far more harmful than holding student loan debt alone.[53]

From a macroeconomic perspective, student loan debt slows the economy because less money is available for borrowers to spend and those with debt have a lower willingness to spend money.[54] High student loan debt also magnifies financial problems in times of economic recessions because of the weakened ability of those with significant student debt to withstand times of financial hardship.[55] The increase in student debt has also been correlated with a decrease in the number of small businesses formed.[56] Small businesses account for 99.9% of total businesses in the U.S. and employ 47.5% of all employees nationwide.[57] Therefore, this decline could have wide-spread negative effects because of how essential small businesses are to the U.S. economy.[58]

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rise in student loan debt—is more responsive to structural changes in the economy and changes in the transition to adulthood.").

53. Ben Hecht, *Homeownership Is a Key Driver of Wealth*, HUFFINGTON POST (Apr. 19, 2017, 3:00 PM), https://www.huffpost.com/entry/homeownership-as-a-key-driver-of-wealth_b_58f66a5de4b0c892a4fb7319 [https://perma.cc/4298-Z62W].

54. Yi Zhang, Ronald T. Wilcox, & Amar Cheema, *The Effect of Student Loan Debt on Spending: The Role of Repayment Format*, J. OF PUB. POL'Y & MKTG. 1 (Aug. 26, 2019), https://doi.org/10.1177/0743915619847465 [https://perma.cc/CFT3-85NB] (finding that individuals with moderate student debt ($30,000) were less likely to spend money than those with low or no debt).

55. *See* William Elliott & IlSung Nam, *Is Student Debt Jeopardizing the Short-Term Financial Health of U.S. Households?*, FED. RES. BANK OF ST. LOUIS REV., Sept./Oct. 2013, at 405, 414 (2013), https://files.stlouisfed.org/files/htdocs/publications/review/13/09/Elliott.pdf [https://perma.cc/5NQT-ACEU] (finding a larger decrease in net worth among households with outstanding student debt compared to those without student debt); *but see Get Temporary Relief*, FED. STUDENT AID (Oct. 16, 2019), https://studentaid.ed.gov/sa/repay-loans/deferment-forbearance [https://perma.cc/K797-N6Q5] (detailing options of deferment and forbearance of loan payments under certain qualifying circumstances).

56. *See* Brent W. Ambrose, Larry Cordell & Shuwei Ma, *The Impact of Student Loan Debt on Small Business Formation* 2 (Research Dep't, Fed. Reserve Bank of Phila., Working Paper No. 15-26, 2015), https://www.philadelphiafed.org/-/media/research-and-data/publications/working-papers/2015/wp15-26.pdf [https://perma.cc/4V5C-UBBT] (observing "a significant and economically meaningful negative correlation" between decreasing small business formation and increasing student loan debt).

57. U.S. SMALL BUS. ADMIN. OFFICE OF ADVOCACY, 2018 SMALL BUSINESS PROFILE 1 (2018) https://www.sba.gov/sites/default/files/advocacy/2018-Small-Business-Profiles-US.pdf [https://perma.cc/7VGP-ZSF4].

58. *See* Ben Casselman, *A Start-Up Slump Is a Drag on the Economy. Big Business May Be to Blame*, N.Y. TIMES (Sept. 20, 2017), https://www.nytimes.com/2017/09/20/business/economy/startup-business.html [https://perma.cc/ABD5-8QKH] ("The start-up slump has far-reaching implications. Small businesses in general are often cited as an exemplar of economic dynamism.").

B. Student Loan Debt Presumed as Non-Dischargeable in Bankruptcy

To make matters worse, student loan debt—unlike other forms of consumer debt—is presumed to be non-dischargeable in bankruptcy.[59] After a lengthy debate in Congress, Section 523(a)(8) of the 1978 Bankruptcy Reform Act[60] created the presumption that student loan debt[61] is non-dischargeable in bankruptcy unless the individual can prove "undue hardship."[62] This presumption makes it very difficult for an individual to discharge student debt, even if all of the borrower's other debts are forgiven.[63]

Several policy justifications were given for this differential treatment of student loans in bankruptcy, and many of these concerns are equally applicable to the analysis of the new broad student loan forgiveness plans.[64] First, supporters of Section 523(a)(8) cited the interest in the continuation and viability of the federal student loan program for future borrowers.[65] The fear was that if student loans were able to be easily discharged in bankruptcy, it would divert the funding available for future generations of student borrowers to instead go towards paying off the discharged debt of past borrowers.[66]

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59. KEVIN LEWIS, CONG. RESEARCH SERV., R5113, BANKRUPTCY AND STUDENT LOANS 3–9 (2019).

60. Bankruptcy Reform Act of 1978 § 523(a)(8), 11 U.S.C. § 523(a)(8) (2018).

61. When first enacted, this only applied to federal student loans. *Id.* In 2005, Congress extended this presumption to private student loans as well. Bankruptcy Abuse Prevention & Consumer Protection Act of 2005 § 220, 11 U.S.C. § 523(a).

62. *See* Brunner v. N.Y. State Higher Educ. Servs. Corp., 831 F.2d 395, 396 (2d Cir. 1987) (creating the current "undue hardship" test that requires the three following elements: "(1) that the debtor cannot maintain, based on current income and expenses, a 'minimal' standard of living for herself and her dependents if forced to repay the loans; (2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and (3) that the debtor has made good faith efforts to repay the loans.").

63. LEWIS, *supra* note 59, at 9.

64. *Id.*; *see infra* Part IV.

65. 124 CONG. REC. 1791 (1978) (statement of Rep. Ertel) ("The purpose of this particular amendment is to keep our student loan programs intact.").

66. *Id.* at 1792 (statement of Rep. Ertel) ("After repaying [the] loan . . . money goes into a revolving fund which is then available for [future] students. . . . When [borrowers] default and do not pay, and eventually reach the bankruptcy stage . . . we are discriminating against future students, because there will be no funds available for them to get an education."); *see also id.* (statement of Rep. Mottl) ("If the student loan program is to remain viable it is imperative we pass this amendment so we insure our youngsters in the future that loan money will be available to them as it was to past generations.").

A second concern was that student borrowers would abuse the bankruptcy system by immediately filing for bankruptcy upon obtaining their degree, thereby discharging their debt at a time when "realizable assets and present income are at their lowest and . . . debt and future income are at their highest."[67] This would leave taxpayers to foot the bill while the student is able to continue to reap the economic benefits that flow from having a college degree.[68] Finally, supporters of Section 523(a)(8) argued that student loans are unique compared to other forms of consumer debt because they are not backed by any collateral, and most students have little to no assets to secure the loan.[69] In the default of a mortgage, for example, a debt collector may repossess the house and sell it, but in the default of a student loan, a borrower's degree cannot be taken away from them.[70]

III. STUDENT LOAN FORGIVENESS: EXISTING PROGRAMS AND NEW PROPOSALS

This section explores the federal programs that forgive student loan debt, PSLF[71] and Teacher Loan Forgiveness.[72] This is followed by a description of the two new broad student loan forgiveness policies that have been proposed by 2020 presidential candidates Elizabeth Warren and Bernie Sanders, respectively.[73]

A. Existing Programs for Student Loan Repayment and Forgiveness

The PSLF program applies to Direct Loans, which includes Direct Subsidized Loans, Direct Unsubsidized Loans, Direct PLUS Loans, and Direct Consolidation Loans.[74] Through PSLF, the remaining

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67. LEWIS, *supra* note 59, at 7 (quoting John A. E. Pottow, *The Nondischargeability of Student Loans in Personal Bankruptcy Proceedings: The Search for a Theory*, 44 CAN. BUS. L.J. 245, 253 (2006)).

68. *Id*.

69. 124 CONG. REC. at 1793 (statement of Rep. Erlenborn) ("The student is not like the average debtor. The average debtor has credit extended to him because he has assets. He pledges those assets plus his earning power to the payment of the debt. The student does not have assets.").

70. *Id.* at 1792–93.

71. 20 U.S.C. § 1087e(m) (2018).

72. *Id.* § 1078-10.

73. *See infra* Part III.B.

74. *Public Service Loan Forgiveness*, *supra* note 5.

balance on Direct Loans is forgiven after a borrower has made 120 monthly payments[75] under a "qualifying repayment plan"[76] while working full-time for an approved employer.[77] As of September 2019, there were 136,473 total PSLF applications submitted, but only 1,561—about 1%—had been approved.[78] The total balance discharged[79] for all borrowers with approved PSLF applications was $71.90 million, and the average discharged for each approved borrower was $63,127.[80]

The Teacher Loan Forgiveness program offers debt cancellation for borrowers who teach full-time for five consecutive years[81] in a low-income school or educational service agency.[82] For fiscal year 2018, a total of $103.2 million in Federal Family Education Loan Program ("FFEL")[83] loans were discharged for 15,700 borrowers, and a total of $280.1 million of Direct Loans[84] were discharged for 29,300 borrowers.[85]

75. "Qualifying monthly payment" is defined here as: "a payment that you make: after Oct. 1, 2007; under a qualifying repayment plan; for the full amount due as shown on your bill; no later than 15 days after your due date; and while you are employed full-time by a qualifying employer." *Id.*

76. "Qualifying repayment plan" is defined here as: "all of the income-driven repayment plans (plans that base your monthly payment on your income)." *Id.*

77. "Qualifying employer" is defined here as: "government organizations at any level (federal, state, local, or tribal); Not-for-profit organizations that are tax-exempt under Section 501(c)(3) of the Internal Revenue Code; Other types of not-for-profit organizations that are not tax-exempt under Section 501(c)(3) of the Internal Revenue Code, if their primary purpose is to provide certain types of qualifying public services[; or] Serving as a full-time AmeriCorps or Peace Corps volunteer." *Id.*

78. SEPTEMBER 2019 PSLF REPORT, *supra* note 9 (reporting data that, when calculated, shows a 1.14% acceptance rate, with 123,143 applications denied and 11,766 pending process).

79. "Total balance discharged for borrowers with approved PSLF application" is defined as: "The associated dollar value of the PSLF loan discharges processed, as reported in the National Student Loan Data System (NSLDS)." *Id.*

80. "Average balance discharged for borrowers with approved PSLF applications" is defined as: "Total balance discharged for borrowers with approved PSLF application divided by Unique Borrowers Submitting PSLF Applications [(An unduplicated count of borrowers who have submitted PSLF applications).]" *Id.* The number of "Unique Borrowers Submitting PSLF Applications" is 109,932. *Id.*

81. Teacher Loan Forgiveness Program, 34 C.F.R § 682.216(a)(2) (2019) ("[F]ive consecutive complete academic years.").

82. *Id.*; *Teacher Loan Forgiveness*, FED. STUDENT AID (Sept. 23, 2019), https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/teacher [https://perma.cc/SGU5-KVZW].

83. *Federal Family Education Loan (FFEL) Program*, U.S. DEP'T OF EDUC. (Nov. 7, 2019), https://www2.ed.gov/programs/ffel/index.html [https://perma.cc/6EJH-YLTW].

84. *Subsidized and Unsubsidized Loans*, FED. STUDENT AID (Nov. 8, 2019), https://studentaid.ed.gov/sa/types/loans/subsidized-unsubsidized [https://perma.cc/84RC-GQFC].

85. TEACHER LOAN FORGIVENESS REPORT, *supra* note 9.

B. *Proposed Plans for Student Loan Forgiveness*

Warren's plan features a tiered framework in which the amount of loan forgiveness for each individual is determined by household income.[86] Under this plan, every person with a household income under $100,000 will receive up to $50,000 in debt forgiveness.[87] For those with a household income between $100,000 and $250,000, every $3 in income exceeding $100,000 reduces the basic $50,000 forgiveness amount by $1.[88] For example, a borrower with a household income of $130,000 would receive $40,000 in debt cancellation.[89] Individuals with a household income above $250,000 are excluded from receiving any amount of debt cancellation.[90] Even with these limitations, Warren expects her plan to benefit 42 million borrowers[91] and, for about 75% of student borrowers, the benefit received would be the exact same under either Sanders's or Warren's plan.[92] Additionally, all households below the 90th percentile of income will receive some amount of debt forgiveness.[93] For households in the 90th percentile of income and above, 56% will receive some benefit from this plan.[94]

The forgiven debt will not be taxed as income, unlike the current treatment of most debt upon cancellation.[95] In addition to her debt forgiveness plan, Warren also proposes a "Universal Free College" plan to eliminate tuition and fees for all public two- and four-year colleges in

86. WARREN FOR PRESIDENT, *supra* note 9.

87. *Id.*

88. *Id.*

89. *Id*.

90. *Id*.

91. *Id.*

92. Mark Huelsman, *These Are the Questions We Should Be Asking in the Student Debt Cancellation Debate*, DEMOS (July 3, 2019), https://www.demos.org/blog/these-are-questions-we-should-be-asking-student-debt-cancellation-debate [https://perma.cc/L7P3-BNQA] ("This is because three-quarters of student loan borrowers have less than $50,000 of student loan debt and have household incomes well below $250,000 a year . . . meaning both plans are functionally the same for an overwhelming majority of borrowers.").

93. Adam Looney, *How Progressive Is Senator Elizabeth Warren's Loan Forgiveness Proposal?*, BROOKINGS INST. (Apr. 24, 2019), https://www.brookings.edu/blog/up-front/2019/04/24/how-progressive-is-senator-elizabeth-warrens-loan-forgiveness-proposal/ [https://perma.cc/AT3Y-5MS9].

94. *Id.*

95. *Compare id.* ("Canceled debt will not be taxed as income."), *with* 26 U.S.C. § 61(a)(11) (2019) ("Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including . . . (11) Income from discharge of indebtedness.").

an effort to avoid student debt from accumulating in the future.[96] Warren estimates that her forgiveness plan alone would require a one-time cost of $640 billion, and the whole proposal, including the Universal Free College plan, would cost $1.25 trillion.[97] This will be funded by implementing the "Ultra-Millionaire Tax," a new wealth tax[98] proposed by Warren.[99] The Ultra-Millionaire Tax plan features a 2% annual tax on households with a net worth between $50 million and $1 billion, and a "Billionaire Surtax"[100] of 6% annual tax on households with a net worth of over $1 billion.[101] Warren estimates that this new tax regime will raise $3.75 trillion in revenue over ten years.[102]

As opposed to Warren's plan, Bernie Sanders's proposal extends uncapped forgiveness of student loan debt to every borrower regardless of income or net worth.[103] There are no eligibility requirements and he states that all debt will be cancelled within six months of his policy being implemented.[104] This student debt forgiveness plan is a only a portion of Sanders's "College for All" Act,[105] which also includes the elimination of tuition and fees at all two- and four-year public colleges and universities.[106] The cost stated for the entire Act is $2.2 trillion, which includes the $1.6 trillion for student debt cancellation specifically.[107] The Act will be funded by a "Wall Street speculation tax,"[108] which places a 0.5% tax on stock trades, a 0.1% fee on bond trades, and a 0.005% fee on

96. WARREN FOR PRESIDENT, *supra* note 9.

97. *Id*.

98. The constitutionality of this wealth tax is unclear. *See generally* Joseph Bishop-Henchman, *Unclear if Warren's Wealth Tax Proposal Is Constitutional*, TAX FOUNDATION (Jan. 25, 2019), https://taxfoundation.org/warren-wealth-tax-constitutionality/ [https://perma.cc/U64U-XVXM].

99. The plan calls for "2% annual tax on household net worth between $50 million and $1 billion; 4% annual Billionaire Surtax (6% tax overall) on household net worth above $1 billion; 10-Year revenue total of $3.75 trillion." *Ultra-Millionaire Tax*, WARREN FOR PRESIDENT, https://elizabethwarren.com/plans/ultra-millionaire-tax [https://perma.cc/Z4WE-3XN8] (last visited Jan. 12, 2020)

100. *Id*.

101. The Ultra-Millionaire Tax and the Billionaire Surtax are in addition to the existing federal taxes these households must pay. *Id.*

102. *Id.*

103. BERNIE 2020, *supra* note 9.

104. *Id*.

105. *Id*.

106. *See id.* ("We can guarantee higher education as a right for all and cancel all student debt for an estimated $2.2 trillion.").

107. *Id.* ("Cancel all student loan debt for the some 45 million Americans who owe about $1.6 trillion.").

108. *Id*.

derivative trades.[109] Sanders states that this new tax will raise $2.4 trillion over the next ten years.[110]

IV. Analysis of Proposed Student Loan Forgiveness Plans

The student loan forgiveness plans proposed by both Warren and Sanders present potential issues with their implementation and likely outcomes.[111] Some of the key problems identified are the massive funding costs, the threat posed to the continuation of the student loan system, the concerns regarding the moral fairness, the exacerbation of wealth disparities, and the negative effects on the quality of higher education.[112]

A. The Continuation of the Student Loan System

Because of the unique nature of student loans in that they have no collateral or assets to secure them, if the government pays off the loans of all student borrowers there is nothing of financial value that can be retained to help offset these substantial costs.[113] This, in combination with the hefty upfront cost of the new loan forgiveness plans, causes concerns about the source of funding and the survival of the federal student loan system entirely.[114]

1. Funding Concerns

The lack of collateral backing student loans creates special concerns revolving around the continuation of the federal student loan system.[115] As was mentioned in congressional debates surrounding Section 523(a)(8),[116] it is critical that the federal student loan programs

109. *See id*. ("This Wall Street speculation tax will raise $2.4 trillion over the next ten years. It works by placing a 0.5 percent tax on stock trades – 50 cents on every $100 of stock – a 0.1 percent fee on bond trades, and a 0.005 percent fee on derivative trades.").

110. *Id*.

111. *See infra* Part IV.A–B.

112. *See infra* Part IV.A–D.

113. Lewis, *supra* note 59, at 7.

114. *See infra* Part IV.A.1–2.

115. *See generally id.* (discussing the lack of collateral associated with student loans).

116. Bankruptcy Reform Act of 1978 § 523(a)(8), 11 U.S.C. § 523(a)(8) (2018) (providing that student loans are not dischargeable in bankruptcy proceedings in absence of undue hardship to the borrower).

remain intact for future generations.[117] Therefore, the funding for these proposed forgiveness plans must be enough to pay off the cancellation of the student debt, and also leave enough money to continue lending to future students.[118]

The current outstanding student debt is estimated to be roughly $1.50 trillion.[119] To put that number into perspective, that is more than the federal government spent in 2018 on all of the following, combined: (1) defense; (2) outlays for natural resources and the environment; (3) general science, space, and technology; (4) general government; (5) community and regional development; (6) agriculture; (7) administrative costs of Medicare and Social Security; (8) energy; and (9) commerce and housing credit programs.[120] If the federal government—which has an existing $16.7 trillion deficit[121]—would have to finance the cancellation of $1.50 trillion of debt, it raises serious doubts regarding the availability of funds left over to loan to future students.[122]

2. Risk to Lenders

A second concern regarding the future of the student loan system is that if loans are forgiven, and therefore paid off all at once, lenders will lose out on a substantial amount of expected interest payments.[123] Since approximately 92% of student loans are issued by the U.S. government, this would further exacerbate the fear of funding for the initial loan forgiveness, as well as for the availability of future student loans.[124] Under the federal "Standard Plan," the average interest received from a

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117. 124 CONG. REC. 1792 (1978) (statement of Rep. Ertel).

118. *See infra* Part IV.D.

119. NOVEMBER 2019 QUARTERLY REPORT, *supra* note 1, at 1.

120. LEIGH ANGRES & JORGE SALAZAR, CONGR. BUDGET OFFICE, A CLOSER LOOK AT DISCRETIONARY SPENDING (2019), https://www.cbo.gov/system/files/2019-06/55344-Discretionary.pdf [https://perma.cc/4NQP-27RC].

121. BUDGET, CONG. BUDGET OFFICE (2019), https://www.cbo.gov/topics/budget [https://perma.cc/SQ32-4XKE] (last updated Aug. 21, 2019).

122. *See generally* LEWIS, *supra* note 59, at 7.

123. *See* Jack Du, *Student Loan Asset-Backed Securities: Safe or Subprime?*, INVESTOPEDIA, https://www.investopedia.com/articles/investing/081815/student-loan-assetbacked-securities-safe-or-subprime.asp [https://perma.cc/9ZYA-K4MU] (last updated July 6, 2019) (discussing the process by which student loans are securitized and portions are sold to a large number of investors who receive principal and interest payments).

124. Teddy Nykiel, *2019 Student Debt Statistics*, NERD WALLET (Sept. 20, 2019), https://www.nerdwallet.com/blog/loans/student-loans/student-loan-debt/ [https://perma.cc/VW3P-CPLC].

student attending a four-year public institution is $5,639.[125] This amount of interest is only for one public undergraduate student, so if every student was considered—especially the more costly private institutions and graduate and professional programs—the total amount of interest that would be forfeited through forgiveness would undoubtedly be immense.[126] Overall, the federal government is estimated to forfeit around $85 billion in revenue if all student loan debt is forgiven.[127]

Broad student loan forgiveness also jeopardizes lenders in the future because going forward they would be forced to assume the huge risk of possibly losing out the expected interest money at any time.[128] This problem for lenders is two-fold: they lose the monetary value of the total interest that would have been collected and also forfeit the interest functioning as a long-term stream of income.[129] Consequently, lenders would most likely not be willing to take on that increased uncertainty.[130] For lenders who do continue issuing student loans, they would have to institute methods to mitigate the risk of forgiveness such as extremely high interest rates, strict eligibility requirements, or structure the loans in a way that maximizes the chances of full repayment—all of which are undesirable to student borrowers.[131]

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125. *See Repayment Calculator*, FED. STUDENT AID, https://studentloans.gov/myDirectLoan/repaymentEstimator.action?_ga=2.157291834.1678369778.1572816048-467772737.1565722392 [https://perma.cc/7K2T-K4ZS] (last visited Nov. 3, 2019) (providing $26,946 as the average loan balance upon graduation for an individual that attended a four-year public institution, a 3.9% average interest rate on the debt, a 120-month repayment period, and $32,585 as the total amount paid including interest).

126. *Id.*

127. Zack Friedman, *If $1.6 Trillion of Student Loan Debt Is Forgiven, This Is What Happens*, FORBES (Dec. 3, 2019, 8:30 AM), https://www.forbes.com/sites/zackfriedman/2019/12/03/student-loans-debt-forgiven-impact/#610d877874e9 [https://perma.cc/K273-PF5G] (stating that this amount, which is 0.4% of GDP, is inclusive of principal, interest, and fees that would be lost in the event forgiveness were to happen).

128. *See, e.g.*, *id.*

129. *See id.*

130. *See, e.g.*, *id.*

131. Two possible ways that student loans may be restructured: 1) as an interest-only loan, requiring the borrower to pay off the interest prior to making payments on the principal, or 2) in a similar manner to permanent loans in commercial real estate, in which there are prohibitions or hefty penalties on early repayment. *See* Justin Pritchard, *Interest-Only Loans: Pros and Cons,* BALANCE (June 4, 2019), https://www.thebalance.com/interest-only-loans-315680 [https://perma.cc/97AK-SPDB] (describing interest-only loans); Adam Karnes, *Choosing a Prepayment Option: Yield Maintenance vs. Defeasance*, BSC GROUP (Dec. 2016), http://www.thebscgroup.com/article.php?id=171 [https://perma.cc/9MSQ-R8WT] ("Today's CMBS loans are typically offered with the borrower's choice of prepayment options: Yield Maintenance or Defeasance. Both are designed to give the lender a 'make-whole' for potential lost interest should the borrower choose to repay the loan early."); *see also* Gregory, *supra*

Those in support of either candidates' student loan forgiveness plan may argue that the future of the student loan system will not be an issue because both Sanders and Warren have also declared universal free college as part of their platforms.[132] However, that requires that their free college plans are permanently implemented, meaning that those plans are not ever overturned or changed in the future.[133] Additionally, even if universal free college was in effect, it would only eliminate tuition for undergraduate public institutions.[134] Therefore, student loans would still be a necessity for private schools and graduate schools, which would continue to pose problems, especially because loans for graduate students alone make up 40% of the total amount of student loans each year.[135]

B. Concerns of Fairness and Moral Hazard

In addition to the concern regarding the continuation of the student loan system, there are also concerns regarding the fairness of the forgiveness plans.[136] When Congress debated if student loans should be dischargeable in bankruptcy, then-Congressman Erlenborn stated that enjoying the benefits of a college education while the taxpayers pay the expense would be "tantamount to fraud."[137] In their most simplified form, both Sanders's and Warren's plans force taxpayers to cover the costs of an individual's decision—whether good or bad.[138]

If the decision was financially prudent and the student has a well-paying job because of their degree, then the individual is able to reap the life-long rewards of that investment while also getting reimbursed for their initial investment cost.[139] If the decision was financially imprudent (e.g., the student selected an overly expensive school), the individual is

note 32, at 490 (describing the possibility of lenders raising rates and tightening credit in response to increased risk).

132. WARREN FOR PRESIDENT, *supra* note 9; BERNIE 2020, *supra* note 9.

133. LEWIS, *supra* note 59, at 7.

134. WARREN FOR PRESIDENT, *supra* note 9; BERNIE 2020, *supra* note 9.

135. Richard Pallardy, *Is the Forgiveness of All Student Loans Feasible?*, SAVINGFORCOLLEGE.COM (Apr. 15, 2019), https://www.savingforcollege.com/article/is-the-forgiveness-of-all-student-loans-feasible [https://perma.cc/AN3A-46EB].

136. Robert Farrington, *The Moral Hazard of Student Loan Forgiveness*, FORBES (June 25, 2019, 7:37 AM), https://www.forbes.com/sites/robertfarrington/2019/06/25/the-moral-hazard-of-student-loan-forgiveness/#139cac82364c [https://perma.cc/89JM-H6UW].

137. 124 CONG. REC. 1793 (1978) (statement of Rep. Erlenborn).

138. Farrington, *supra* note 136.

139. *Id.*

relieved of any accountability for making that decision.[140] Additionally, student loan forgiveness would essentially reward the borrowers who have not been honoring the loan agreement and punish the borrowers who duly budgeted, saved, and sacrificed spending money on more desirable things in order to make timely payments on their loans.[141]

The same can be said for those who diligently prepared and saved money to finance the costs of college.[142] Planning for how to pay for college makes a sizeable difference in the amount of money students borrow.[143] For the 2018–19 school year, parents that planned ahead[144] for their child's education contributed twice as much money towards their child's college costs from their income and savings than did non-planning parents.[145] This resulted in planning families borrowing less; students of planning families borrowed only 9% of college costs, while students of non-planning families borrowed 20% of costs.[146] If student loan debt was cancelled, the non-planning families who borrowed more for college costs would reap the benefits while the families who prepared and saved for college would lose out merely because they did not borrow as much.[147] This unfair outcome may also serve as a deterrent for families to use their income and savings for college costs in the future, which would have a very substantial impact; for the 2018–19 school year, family income and savings paid for 43% of college costs, making it the largest source of funding.[148]

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140. *Id.*

141. *Id.*

142. *See* SALLIE MAE & IPSOS PUB. AFFAIRS, *supra* note 35, at 19.

143. *Id.*

144. Planning families were determined to be the families surveyed that agreed that "they had a plan to pay for all years of school prior to the student enrolling." *Id.*

145. *See id.* (finding that students from planning families paid $4,458 or 15% of costs from their savings and income compared to students of non-planning families who paid $2,732 or 12% of costs).

146. *See id.* (finding that students from planning families borrowed $2,588 of college costs and non-planning families borrowed $4,678 of college costs).

147. *Id.* (stating that non-planning families borrowed more, in which it logically flows that the families that borrowed more will receive more debt forgiveness than families who borrowed less).

148. Compared to 33% of college costs paid for by scholarships, grants, and gifts, and 24% of costs paid using borrowed money. *Id.* at 3.

C. *Increasing Existing Wealth Disparities*

There is also the concern that broad student debt forgiveness magnifies existing discrepancies in wealth between various socioeconomic classes.[149] In 2018, median weekly earnings for those with only a high school diploma was $730.[150] To compare, those with a bachelor's degree had a median salary of $1,198.[151] Consequently, for the individuals with only a high school diploma and no loan debt, their net worth remains stagnant under this plan because they receive no benefit.[152] Meanwhile, the net worth of those with secondary degrees, which is on average already higher than those without a degree, increases because they will receive forgiveness of their student loan debt.[153] This result is seen under both Sanders's and Warren's forgiveness plans, although to a slightly lesser extent in Warren's because of the consideration of income in her eligibility requirements.[154]

This resulting increased discrepancy of net worth between education levels can also be seen when comparing those with a bachelor's degree to those with a graduate degree (i.e., masters, professional, or doctorate).[155] Although all borrowers are receiving some benefit from student loan forgiveness, those with advanced degrees are typically receiving a much higher amount of debt forgiven while also earning higher salaries.[156] For example, the average student loan debt for an undergraduate degree recipient is $29,200,[157] while the average loan debt

149. *See generally* Clare Lombardo, *Student Debt Forgiveness Sounds Good. What Might Happen If the Government Did It?*, NPR (July 10, 2019, 6:00 AM), https://www.npr.org/2019/07/10/738506646/student-debt-forgiveness-sounds-good-what-might-happen-if-the-government-did-it [https://perma.cc/7JQ7-DJ7J].

150. *Unemployment Rates and Earnings by Educational Attainment,* U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/emp/tables/unemployment-earnings-education.htm [https://perma.cc/G7KV-AY3K] (last updated Sept. 4, 2019).

151. *Id.*

152. *But see* WARREN FOR PRESIDENT, *supra* note 9 (showing in a graphic that borrowing households without a college degree will benefit, but does not address the households without a college degree who did not borrow any loans).

153. Berman*, supra* note 4.

154. Lombardo, *supra* note 149.

155. *See* Ryan Lane, *What Is the Average Student Loan Debt for Graduate School?*, NERD WALLET (Dec. 16, 2019), https://www.nerdwallet.com/blog/loans/student-loans/average-student-loan-debt-graduate-school/ [https://perma.cc/4JUT-Q3P6] ("The average total student loan debt of $82,800 for graduate students includes all advanced degrees. . . . The average undergraduate debt is $29,200.").

156. Looney, *supra* note 93.

157. Nykiel, *supra* note 124.

for a law school graduate is $145,500.[158] The median salary for someone with a bachelor's degree is $62,296, compared to the median salary for a lawyer of $120,910.[159] Further, in 2018 the unemployment rate for those with a bachelor's degree was 2.2% and for those with a professional degree,[160] 1.5%.[161]

Therefore, broad forgiveness plans provide borrowers with advanced degrees the greatest amount of debt forgiveness, despite these individuals already making higher salaries and enjoying lower unemployment levels, on average.[162] Under Sanders's plan every borrower receives full debt forgiveness, giving potentially hundreds of thousands of dollars in debt forgiveness to the individuals with doctoral degrees.[163] Even with Warren's plan placing a cap on the amount of debt forgiveness for high earners, borrowing households with a professional or doctorate degree on average will receive $30,952 of total debt relief, while borrowing households with a bachelor's degree receive an average of $23,891 of total debt relief.[164]

There is also a discrepancy in the amount of debt relief obtained between those of different income levels, with high-income households seeing the majority of the benefit from the proposed student loan forgiveness plans.[165] Under Warren's tiered eligibility plan based on income, the top 20% of households by income would receive

158. On average. NAT'L CTR. FOR EDUC. STATISTICS, THE CONDITION OF EDUCATION 2018: TRENDS IN STUDENT LOAN DEBT FOR GRADUATE SCHOOL COMPLETERS 7 (May 2018), https://nces.ed.gov/programs/coe/pdf/coe_tub.pdf [https://perma.cc/T4CV-6HSR].

159. *Unemployment Rates and Earnings by Educational Attainment*, *supra* note 150; *Lawyers*, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/ooh/legal/lawyers.htm [https://perma.cc/F7GU-NVAD] (last updated Sept. 4, 2019).

160. A professional degree "requires at least 3 years of full-time academic study beyond a bachelor's degree. Examples of occupations for which a doctoral or professional degree is the typical form of entry-level education include lawyers, physicists, and dentists." *Occupational Data Definitions*, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/emp/documentation/nem-definitions.htm [https://perma.cc/55A2-2BFN] (last updated Sept. 4, 2019).

161. *Lawyers*, *supra* note 159.

162. Looney, *supra* note 93.

163. BERNIE 2020, *supra* note 9; *see, e.g.*, NAT'L CTR. FOR EDUC. STATISTICS, *supra* note 158 (finding that the average student loan debt is $145,500 for J.D. recipients, $246,000 for M.D. recipients, and $202,400 for other health science professional practice doctorates).

164. Looney, *supra* note 93.

165. *See* Friedman, *supra* note 127 ("Wealthy Borrowers Benefit: If every borrower receives student loan forgiveness . . . then borrowers who otherwise could pay off their student loan debt (without forgiveness) won't, which could limit the economic benefit.").

approximately 27% of all annual savings,[166] while borrowers in the bottom 20% of households by income would only see 4% of annual savings.[167] Perhaps even more striking, the top 40% of households by income would receive 66% of the annual savings.[168] These results would undoubtedly be even more pronounced under Sanders's blanket forgiveness plan.[169] His proposal would greatly benefit high-income earners—since it forgives all student loan debt without consideration of income or wealth—and the majority of student debt is held by the top 40% of income earners.[170]

Student loan debt forgiveness for all households would also expand wealth disparities between White and minority families.[171] If total student loan forgiveness were to be implemented as proposed by Sanders, the wealth gap between Black and White families would increase by an additional 9%, and for Latino and White families the wealth gap would increase by 31%.[172] This is due to, comparatively, White families receiving a greater benefit from universal loan cancellation.[173] Again, even under Warren's capped forgiveness plan, the unequal distribution is still present—White families would receive 57%

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166. "Annual savings" are measured by the actual reduction in annual payments households would see. *Id.*

167. The top 20% of households includes households with an annual income above $111,000; the top 40% of households have an annual income above $68,000; and the bottom 20% of households have an annual income less than $23,000. *Id.*

168. *Id.*

169. *See* Adam Looney & Constantine Yannelis, *Is High Student Loan Debt Always a Problem?,* STAN. INST. FOR ECON. POL'Y. RESEARCH (July 2016), https://siepr.stanford.edu/sites/default/files/publications/PolicyBrief-July16.pdf [https://perma.cc/3PTM-KZFL] (stating that the top 40% of income earners hold 58.8% of debt).

170. *Id.*

171. *See* Laura Sullivan et al., *Less Debt, More Equity: Lowering Student Debt While Closing the Black-White Wealth Gap*, DEMOS, 3 (Nov. 24, 2015), https://www.demos.org/sites/default/files/publications/Less%20Debt_More%20Equity.pdf [https://perma.cc/AJL7-5G34] ("While eliminating student debt for all households regardless of income increases median net worth for young white and Black households, white families see a greater benefit likely due to a higher likelihood of completing college and graduate degree programs. Policies which eliminate all student debt for young households would expand the divide between median Black and white wealth by an additional 9 percent.")

172. Currently, the difference in wealth between White and Black families (commonly referred to as the "racial gap") is $32,201; if student loan debt is forgiven for all borrowers, that discrepancy increases to $35,200. *Id.*

173. *Id.* at 9.

of the total relief.[174] In comparison, Black families would receive 22% of the total debt relief and Latino families would receive 9%.[175]

Considered together, it is apparent that under Sanders's and Warren's broad forgiveness plans, the greatest amount of debt cancellation will be enjoyed by White, high-income, highly-educated households, thereby increasing discrepancies in wealth between different levels of educational attainment, household income, and race.[176]

D. Decline in the Quality of Higher Education

Not only are individual borrowers relieved of accountability under student loan forgiveness plans, but colleges and universities also enjoy an elimination of responsibility.[177] If student loan debt is cancelled once, it would naturally create the expectation that it will happen again.[178] Even without loan forgiveness ever taking place before, 27% of the students in the 2018–19 school year borrowing federal loans said they anticipate receiving student loan forgiveness, possibly due to the increased popularity of the topic in recent years.[179] If forgiveness did happen, it would essentially erase the factor of cost within a student's decision-making process for attending college, and as a result, greatly increase the number of individuals pursing undergraduate, graduate, and professional degrees, whether it is more beneficial for their career outcomes or not.[180]

Consequently, there would be no motivation for higher education institutions to keep their costs down, provide scholarships, or maintain a

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174. Looney, *supra* note 93.

175. *Id*.

176. *See* FED. RESERVE SYS., RECENT TRENDS IN WEALTH-HOLDING BY RACE AND ETHNICITY: EVIDENCE FROM THE SURVEY OF CONSUMER FINANCES (2017), https://www.federalreserve.gov/econres/notes/feds-notes/recent-trends-in-wealth-holding-by-race-and-ethnicity-evidence-from-the-survey-of-consumer-finances-20170927.htm [https://perma.cc/XP69-K38N] (reporting in 2016 that median household net worth was $171,000 for White families and $17,600 for Black families); *see also Status and Trends in the Education of Racial and Ethnic Groups*, NAT'L CTR. FOR EDUC. STATISTICS (2019), https://nces.ed.gov/programs/raceindicators/indicator_RFA.asp [https://perma.cc/8949-VBU3] (finding that 35% of White adults age 25 and older had a Bachelor's degree or higher, compared to 21% of Black adults of the same age).

177. Farrington, *supra* note 136.

178. Kevin Carey, *Canceling Student Loan Debt Doesn't Make Problems Disappear,* N.Y. TIMES (June 25, 2019), https://www.nytimes.com/2019/06/25/upshot/student-loan-debt-forgiveness.html [https://perma.cc/752B-24KT].

179. *See* SALLIE MAE & IPSOS PUB. AFFAIRS, *supra* note 35, at 10.

180. Farrington, *supra* note 136.

high quality of education.[181] In fact, there would be a financial incentive for institutions to accept more students and provide more programs, even in the absence of adequate means to support these additions, ultimately leading to a decline in the quality of education provided.[182] This issue would persist even if Sanders's or Warren's tuition-free college plan were implemented because the proposals only remove tuition for two- and four-year public institutions, so the aforementioned concerns would still occur for private institutions and graduate programs.[183]

Overall, both of the broad student loan forgiveness plans proposed by Sanders and Warren pose a multitude of issues.[184] The most obvious concern is the source of funding for proposals of such enormous costs.[185] Because of this, broad loan forgiveness threatens the continuation of the federal student loan system entirely.[186] Additional issues revolve around the moral hazard of complete loan forgiveness by removing personal accountability, and providing no benefit to those who did pay off their loans or used income and savings to fund their college costs.[187] There are also concerns with the unfair results that are produced by the plans, such as increasing the wealth disparities between various socioeconomic groups.[188] Lastly, the implementation of these proposals could worsen the quality of higher education institutions because it would provide the financial incentive for colleges and universities to raise costs while also accepting more students and adding more programs, even without having the adequate faculty and resources to do so.[189]

V. ALTERNATIVES TO STUDENT LOAN FORGIVENESS PROGRAMS

There is no denying that student debt is a problem that needs to be solved, however, the massive accumulation of loan debt is merely a symptom of a much larger problem: the U.S. higher education system is flawed. There are several issues with the current system, including

181. *Id.*
182. *Id.*
183. *Id.*
184. Carey, *supra* note 178.
185. Zack Friedman, *Bernie: 5 Key Questions for Student Loan Forgiveness*, FORBES (July 2, 2019, 8:32 AM), https://www.forbes.com/sites/zackfriedman/2019/07/02/student-loan-debt-forgiveness-questions/#59187ce469df [https://perma.cc/XY9H-F768].
186. *See supra* Part IV.A.
187. *See supra* Part IV.A.
188. Farrington, *supra* note 136.
189. *Id.*

constant increases in attendance costs, ineffective and poorly managed federal repayment plans and forgiveness programs,[190] a lack of encouragement and funding for alternative career paths,[191] and inadequate guidance and information provided to families prior to pursuing a college degree.[192] Further, many of these issues have available solutions that are not as costly as the proposed broad student loan forgiveness plans.[193] In fact, some of these alternative ideas have been proposed in different ways by two other 2020 presidential candidates—Joe Biden and Donald Trump.[194]

A. Improve and Restructure Existing Financial Aid Programs

The federal government currently has several forgiveness programs and repayment options for student loans, though in their current state they have not been very fruitful.[195] A prime example is the most recent application process for the PSLF program, which had an acceptance rate of 1.14%.[196]

Both Biden and Trump propose to restructure the PSLF program and the federal income-driven student loan repayment system.[197] Biden would change the current system to a program in which the percentage of discretionary income that an individual has to contribute to monthly payments varies based on the individual's income level.[198] For example, those who have an annual income greater than $25,000 would have to pay just 5% of their discretionary income as monthly student loan payments, as opposed to the current system where the most generous rate is a monthly payment of 10% of discretionary income.[199] Trump's plan

190. *See infra* Part V.A.
191. *See infra* Part V.B.
192. *See infra* Part V.C.
193. *See supra* Parts IV–V.
194. THE WHITE HOUSE, *supra* note 14; *The Biden Plan for Education Beyond High School*, *supra* note 14.
195. *See* COMM. OF EDUC. & LABOR, 166TH CONG., BROKEN PROMISES: HOW THE DEPARTMENT OF EDUCATION FAILED AMERICA'S PUBLIC SERVANTS (Oct. 2019), https://edlabor.house.gov/imo/media/doc/PSLF%20PHEAA%20OVERSIGHT%20REPORT%20FINAL.pdf [https://perma.cc/7GB8-MD5S] ("The Department has passively watched as its loan servicers . . . provide borrowers with misleading or false information about PSLF year after year, ultimately causing systemic program failures.").
196. *Public Service Loan Forgiveness*, *supra* note 5.
197. THE WHITE HOUSE, *supra* note 14; *The Biden Plan for Education Beyond High School*, *supra* note 14.
198. *The Biden Plan for Education Beyond High School*, *supra* note 14.
199. *Id*.

describes a consolidation of the five different existing federal income-driven repayment plans into one single plan, which would have a cap on monthly payments at 12.5% of discretionary income.[200] An additional change that both candidates' plans include is forgiveness of any remaining amount of a student's loans after timely repayment is made for a specified period of time: for Trump's plan, after fifteen years, and for Biden's plan, after twenty years.[201]

Trump's plan states that this alteration of the income-drive repayment plan is aimed at eliminating the administrative complications of PSLF, as well as PSLF's inherent "bias" in that only borrowers who go into public service careers are eligible for forgiveness.[202] It is unclear if Trump is planning on this reformed income-driven repayment system to replace PSLF or if it is meant to be a supplement to PSLF for the students who do not go into public service.[203] As for Biden's plan, it is apparent that the PSLF program would be kept intact, but its current forgiveness process would be materially altered.[204] His reformed PSLF forgives each approved applicant $10,000 of loan debt for each year of public service, for up to five years.[205]

Lastly, evidence shows that increased availability of student loans is correlated with increases in college tuition.[206] In light of this finding, it would be advantageous to impose limits on the amount that can be borrowed through federal student loans.[207] This is especially pertinent for federal loans to be used for advanced degree programs, considering the amount borrowed by graduate students for education costs—often around $100,000 or more—is significantly higher than that of most undergraduates, which makes repayment obligations much more

200. THE WHITE HOUSE, *supra* note 14.

201. *Id.*; *The Biden Plan for Education Beyond High School*, *supra* note 14.

202. THE WHITE HOUSE, *supra* note 14.

203. *Id*.

204. *The Biden Plan for Education Beyond High School*, *supra* note 14.

205. *Id*.

206. DAVID O. LUCCA, TAYLOR NADAULD & KAREN SHEN, FED. RES. BANK OF N.Y., CREDIT SUPPLY AND THE RISE IN COLLEGE TUITION: EVIDENCE FROM THE EXPANSION IN FEDERAL STUDENT AID PROGRAMS 30 (2015), https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr733.pdf [https://perma.cc/NY4T-M4R7].

207. *See id.*; *see also* THE WHITE HOUSE, *supra* note 14 ("The current system provides institutions of higher education with few incentives to control costs and saddles parents and graduate students with debt with little attention to borrowers' likely ability to repay.").

burdensome.[208] The Trump proposal attempts to addresses this concern by advocating for Congress to impose limits on Parent and Grad PLUS loans.[209]

B. Promoting Community Colleges, Training Programs, and Apprenticeships

Another approach to slowing the increase in student debt is to promote, fund, and expand career preparation paths that do not require a four-year degree.[210] This can be achieved through community colleges, high-quality training programs, and apprenticeships.[211] The narrative that everyone needs to obtain a four-year degree not only deprives the community of many types of skilled laborers, but it also pressures many individuals to incur a large amount of debt to obtain a degree that is not necessary for a successful, well-paid career.[212] It is projected that in 2020, 36% of jobs will not require a degree beyond high school, and it is vital that there are qualified people available to fill these roles.[213]

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208. *See* Kenneth E. Redd*, Why Do Students Borrow So Much? Recent National Trends in Student Loan Debt*, ERIC DIGEST 5 (2001), https://files.eric.ed.gov/fulltext/ED451759.pdf [https://perma.cc/MF3C-2CPE] ("[R]epayment obligations are much more difficult for professional school students, who often leave their institutions with debt of $100,000 or more.").

209. THE WHITE HOUSE, *supra* note 14.

210. *See, e.g.*, Ann Gillespie, *Apprenticeships a Solution to Skyrocketing Student Debt*, CHICAGO BUS. (May 9, 2019, 8:30 AM), https://www.chicagobusiness.com/opinion/apprenticeships-solution-skyrocketing-student-debt [https://perma.cc/JLM2-ZDWJ].

211. *See, e.g.*, THE WHITE HOUSE, *supra* note 14 ("[H]igh-quality, short-term programs . . . will help more Americans access programs that provide them with the skills needed to secure well-paying jobs in high-demand fields more quickly than traditional 2-year or 4-year degree programs."); *The Biden Plan for Education Beyond High School*, *supra* note 14 ("These funds will create and support . . . to identify in-demand knowledge and skills in a community and develop or modernize training programs . . . that lead to a relevant, high-demand industry-recognized credential."); *see also* Angela Hanks, *Now Is the Time to Invest in Apprenticeships*, CTR. FOR AM. PROGRESS (Nov. 18, 2016, 9:01 AM), https://www.americanprogress.org/issues/economy/reports/2016/11/18/292558/now-is-the-time-to-invest-in-apprenticeships/ [https://perma.cc/6YBA-ZCK7] ("[With] soaring college costs and when many students [have] large amounts of student debt, apprenticeship can offer a debt-free credential.").

212. Kenneth Rapoza, *In 2019, Blue-Collar Workers Disappearing and in Hot Demand*, FORBES (Dec. 16, 2018, 5:00 PM), https://www.forbes.com/sites/kenrapoza/2018/12/16/in-2019-blue-collar-workers-disappearing-and-in-hot-demand/#7f2b912b441b [https://perma.cc/BKQ9-7JVQ].

213. Anthony P. Carnevale, *Recovery: Protections of Jobs and Education Requirements Through 2020*, GEO. U.: GEO. PUB. POL'Y INST. (June 2013), https://cew.georgetown.edu/wp-content/uploads/2014/11/Recovery2020.FR_.Web_.pdf [https://perma.cc/EUX6-J7JH].

Biden and Trump both have provisions in each of their respective proposals to promote alternative education paths, though their methods of doing so differ.[214] Biden's plan eliminates tuition for two years of community colleges and other "high-quality training programs," and also invests $50 billion in career preparation programs (i.e., apprenticeships, community college, and business partnerships).[215] Alternatively, Trump's plan expands the current Pell Grant system, a need-based grant program for low-income students,[216] to include high-quality programs for licenses, certifications, or credentials for in-demand career fields.[217] Trump's proposal also includes the implementation of a pilot program that will "increase access to market-driven workforce development programs," looking to the private sector to create non-traditional career preparation tracks.[218]

Regardless of which approach is used, the underlying goal of expanding options for alternative career paths while simultaneously lowering or eliminating the costs of attendance would contribute to a decrease in the amount of money needed to be borrowed by students overall.[219] Because of this, it is important that the narrative emphasizing that everyone needs to attend college and the stigma around not attending college is stopped.[220] Instead, as a society, we should promote and encourage these alternative career paths.[221]

C. Increasing Awareness of Existing Programs and Educating

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214. THE WHITE HOUSE, *supra* note 14; *The Biden Plan for Education Beyond High School, supra* note 14.

215. *The Biden Plan for Education Beyond High School, supra* note 14.

216. U.S. DEP'T OF EDUC., FEDERAL PELL GRANT SYSTEM (2015), https://www2.ed.gov/programs/fpg/index.html [https://perma.cc/74K8-NWC8] ("The Federal Pell Grant Program provides need-based grants to low-income undergraduate and certain postbaccalaureate students to promote access to postsecondary education.").

217. THE WHITE HOUSE, *supra* note 14.

218. *Id.*

219. *See, e.g.*, Ann Gillespie, *supra* note 210.

220. Mark T. Williams, *How to Finally Address the US's out-of-Control Student-Loan Crisis, According to a Finance Professor*, BUS. INSIDER (Mar. 15, 2019, 1:37 PM), https://www.businessinsider.com/how-address-student-loan-crisis-finance-professor-2019-3 [https://perma.cc/UUH4-Z8A4] ("The stigma of not attending college also should be erased by acknowledging and supporting high-school students that aspire and whom could benefit from alternative career paths.").

221. *Id.*

Families on Financial Preparation Methods

There seems to be confusion and a lack of information surrounding college financing before, during, and after a student attends college. There are several college saving plans that currently exist, such as a 529 plan,[222] where parents can put money in an account that has tax-free growth and tax-free withdrawals when used for college expenses—yet only 3% of Americans invest in a 529 or similar account.[223] Additionally, fewer than one in five families researched financial aid eligibility early in the college planning process.[224] Of those who received a financial aid award offer, one in five families stated that they did not feel confident they understood it.[225] This unfamiliarity persists even after student loans have been taken out, as seen by a recent survey finding that only 32.2% of student borrowers were aware of federal income-driven repayment plans.[226]

To combat this lack of education and awareness prior to starting college, information should be provided to parents and students earlier, more often, and with greater detail.[227] There needs to be helpful resources and information available to high school students and their families for how to most efficiently save for college, as well as how to apply for scholarships, grants, or aid.[228] However, this could be extended to

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222. A 529 plan is a "tax-advantaged savings plan designed to encourage saving for future education costs." *An Introduction to 529 Plans,* U.S. SEC. & EXCH. COMM'N (Mar. 29, 2018), https://www.sec.gov/reportspubs/investor-publications/investorpubsintro529htm.html [https://perma.cc/8M8T-RXDV].

223. Hua Hsu, *Student Debt Is Transforming the American Family*, NEW YORKER (Sept. 2, 2019), https://www.newyorker.com/magazine/2019/09/09/student-debt-is-transforming-the-american-family [https://perma.cc/L25U-T57B].

224. SALLIE MAE & IPSOS PUB. AFFAIRS, *supra* note 35, at 2.

225. *Id*.

226. Drew M. Anderson et al., *The State of Financial Knowledge in College: New Evidence from a National Survey* 13 (RAND Labor & Population., Working Paper WR-1256, 2018), https://www.rand.org/content/dam/rand/pubs/working_papers/WR1200/WR1256/RAND_WR1256.pdf [https://perma.cc/834U-GPNH].

227. *See* Wiliam G. Tierney et al., *Helping Students Navigate the Path to College: What High Schools Can Do*, INST. OF EDUC. SCI. 38 (Sept. 2009), https://ies.ed.gov/ncee/wwc/Docs/PracticeGuide/higher_ed_pg_091509.pdf [https://perma.cc/QA8B-PEAY] ("High schools can ensure that students take the necessary steps to obtain financial aid by educating students and their parents early in high school about college affordability and the availability of financial aid and by helping them identify potential sources of aid.").

228. *See generally Working with Your High School Counselor for College Success*, C. BOARD: BIG FUTURE https://bigfuture.collegeboard.org/get-started/building-a-support-network/working-with-your-high-school-counselor-for-college-success [https://perma.cc/AA4L-UX6Q] (last visited Feb. 6, 2020).

students and parents in middle school as well to start the planning and preparation process even earlier.[229] Raising awareness could be as simple as sending out regular emails to parents of middle and high school students with information about how to best save for college and describing financing options for college costs.[230]

There should also be improved guidance for high students, especially while they are deciding on what to do after graduation.[231] Alternative career paths should be better explored and encouraged during this time, and if the student does choose to pursue a four-year degree, there should be information available to help decide what college to attend and what area of study to pursue.[232] The more knowledge students and families have about their options, the more financially responsible decision they can make.[233] A college education is ultimately an investment in a future career, so it is critical that students are fully informed when making the decision of whether or not to attend college, and if so, what college to attend.[234] For instance, information about the cost breakdown and financial outcomes of different types of colleges should be provided to students, such as comparisons between community college versus four-year institution, or public versus private, and in-state versus out-of-state.[235] There could also be information presented regarding facts and statistics on the typical career outcomes of various college majors.[236] A student is certainly entitled to pursue any area of study, but they should have the information available to make a responsible and fully-informed choice.[237]

229. *Id*.

230. Tierney et al., *supra* note 227.

231. Williams, *supra* note 220.

232. Jillian Berman, *Here's What It Would Take to Make College Tuition-Free*, MARKETWATCH (Oct. 5, 2018, 3:27 PM), https://www.marketwatch.com/story/heres-what-it-would-take-to-make-college-tuition-free-2018-10-05 [https://perma.cc/68XD-QLEQ].

233. *See, e.g.*, SALLIE MAE & IPSOS PUB. AFFAIRS, *supra* note 35, at 19 (finding that students from planning families paid $4,458 or 15% of costs from their savings and income compared to students of non-planning families who paid $2732 or 12% of costs).

234. Tierney et al., *supra* note 227.

235. Williams, *supra* note 220.

236. Berman, *supra* note 232.

237. Tierney et al., *supra* note 227.

VI. CONCLUSION

The rise of student loan debt in the United States is a problem that will only continue to grow in the coming years.[238] It is evident that substantial student debt can have a negative impact on an individual borrower's financial outlook, as well as the economy as a whole.[239] However, the broad forgiveness plans proposed by Elizabeth Warren and Bernie Sanders cause more harm than good.[240] Both plans require massive funding costs, which raises concerns about the source of funding and how the federal student loan system will have any money remaining to continue lending to future generations of students.[241] Furthermore, the sweeping cancellation of all student debt presents a moral hazard, in that the students who borrowed less for college and diligently paid off their student loans receive no benefit, while the students who borrowed more and have not fulfilled their loan repayment obligations are rewarded.[242]

Additionally, both Sanders's and Warren's plans are predicted to provide the most benefit, comparatively, to individuals with advanced degrees and high-income households, in addition to widening the racial wealth gap.[243] Lastly, the new proposals are expected to produce a decline in the quality of higher education institutions.[244] However, it is imperative that the discussion does not stop here—there are alternative solutions to combatting the ever-increasing U.S. student debt.[245] These solutions include improving the existing federal financial aid programs, promoting and increasing career paths that do not require a four-year degree, and increasing awareness and knowledge surrounding college attendance and financing options.[246]

238. Liz Frazier, *2019 Student Loan Study Shows Numbers Are Still Massive, and Still on the Rise*, FORBES (Aug. 14, 2019, 8:00 AM), https://www.forbes.com/sites/lizfrazierpeck/2019/08/14/2019-student-loan-study-shows-numbers-are-still-massive-and-still-on-the-rise/#6d4a6a3b42c9 [https://perma.cc/L2V4-S3DG]; *see also* Byrne, *supra* note 12 ("As long as the overall population continues to grow and as college tuition costs continue to rise, US student debt will keep growing.").

239. *See supra* Part II.

240. *See supra* Part IV.

241. *See supra* Part IV.A.

242. *See supra* Part IV.B.

243. *See supra* Part IV.C.

244. *See supra* Part IV.D.

245. *See supra* Part V.

246. *See supra* Part V.

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