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The Hottest Employee Benefit Of 2020: Employers Offer to Repay Employees' Student Loan Debt

Anne Kotlarz
University of Miami School of Law

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Abstract

The Student Loans Crisis has spread like wildfire reaching a whopping $1.56 trillion worth of debt. What started off as the Federal government's initiative to encourage Americans to invest in their future through obtaining secondary education, has turned into a systemic crisis that burns just as hot as global warming. Lobbyists are currently petitioning Congress to enact meaningful legislation to extinguish the flames of the growing student loan debt. Most notably, the private sector is proposing congressional reform to amend the tax code to enable employers to offer employees student loan repayment assistance tax-free. This article delves into this proposal while evaluating its level of difficulty, equity, and scope of impact within the larger context of what is currently available to student loan debtors. If Congress is forthcoming, employers may offer the most optimal and realistic solution for the millions of student loan borrowers and the nation's economy. The explosive flames of the student loan crisis may finally be extinguished.

I. INTRODUCTION

Employees used to swoon over a company's fresh and innovative perks. Can't live without ice cream? Work at Ben & Jerry's to get as much free ice cream as your heart desires.[1] Want to de-stress between business meetings with a game of ping-pong or with a dip in the swimming pool? Head on over to Google because they have what you are looking for.[2] In the mood to catch a wave and surf during your lunch break? Send that resume right on over to Patagonia it is the perfect work environment for you.[3] However, as attractive as these employment perks may seem, the days of the "oooo"s and "aahhh"s over these benefits are over. Employees and prospective hires have larger concerns than lunch break activities, and employers are beginning to catch on.

Today, 44.7 million Americans owe a whopping $1.56 trillion in student loan debt.[4] In the second quarter of 2019, student loan debt

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1 *See* Julia Gilmore, *12 Companies with the Coolest Perks*, TOP MBA (Mar. 11, 2019, 4:00 PM), https://www.topmba.com/jobs/career-trends/12-companies-coolest-perks.
2 *See id.*
3 *See id.*
4 Zack Friedman, *Student Loan Debt Statistics in 2019: A $1.5 Trillion Crisis*, FORBES (Feb. 25, 2019, 8:32 AM),

surpassed a horrific $1.6 trillion for the first time in U.S. history.[5] The burdens of such debt have both financial and political implications.[6] Among the 44.7 million, nearly two-thirds of recent graduates currently suffer from student loan debt while the average amount of an unpaid loan balance is around $29,900.[7] The financial insecurity that follows forces borrowers to push off obtaining typical hallmarks of the middle class and cultural life milestones that a secondary degree was supposed to secure.[8] By pushing off purchasing a home, saving for retirement, getting married, and having a child, the Nation's economy suffers from a lack of market stimulation.[9] Thus, it is highly unlikely that employee perks like a ping-pong table or free ice cream will catch these 44.7 million Americans' attention. As Peter DeBellis, research leader at Deloitte, points out "[t]his isn't a squeaky wheel wanting another ping-pong table or free sushi at lunch, [t]his issue affects how the employee feels."[10] Employers nation-wide are beginning to recognize the impact the student loan crisis has on their employees and the workforce at large.[11] To meet the needs of the modern workforce, employers want to help.

One solution that is gaining traction is to allow employers to offer employees and prospective hires student loan repayment assistance as part

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https://www.forbes.com/sites/zackfriedman/2019/02/25/student-loan-debt-statistics-2019/#43a2c942133f.

5 Abigail Hess, *Survey Finds That Student Debt Holders Spend 20% of Their Take-Home Pay on Loans*, CNBC (Aug. 8, 2019, 10:21 AM), https://www.cnbc.com/2019/08/08/student-debt-holders-spend-20percent-of-their-take-home-pay-on-loans.html.

6 Jillian Berman, *Here's why America's $1.5 trillion student-loan crisis has spiraled out of control*, MARKET WATCH (July 6, 2019), https://www.marketwatch.com/story/why-financial-education-wont-solve-the-15-trillion-student-loan-crisis-2019-06-27.

7 *See* Farran Powell, *What to Know About Employers That Pay Student Loans*, US NEWS (July 23, 2018, 2:09 PM), https://www.usnews.com/education/best-colleges/paying-for-college/articles/2018-07-23/what-to-know-about employer-plans-that-pay-your-student-loans; *see also* Dorian Friedman, *Encourage Employers to Help with Student Debt*, POSITIVE PROGRESSIVE INSTITUTE (May, 2019), https://www.progressivepolicy.org/wp-content/uploads/2019/05/PPI_POLICYSHORT_SLRP-V2-2.pdf.

8 Friedman, *supra* note 7.

9 *See* Ben Miller, Colleen Campbell, Brent Cohen, and Charlotte Hancock, *Addressing the $1.5 Trillion in Federal Student Loan Debt*, CENTER FOR AMERICAN PROGRESS (June 12, 2019, 5:00 AM), https://www.americanprogress.org/issues/education-postsecondary/reports/2019/06/12/470893/addressing-1-5-trillion-federal-student-loan-debt/.

10 Ryan Lane, *How some employers are helping workers pay student loans*, MARKET WATCH (Jan. 8, 2020, 9:48 AM), https://www.marketwatch.com/story/how-some-employers-are-helping-workers-pay-student-loans-2019-12-05.

11 *See* Dan Rosensweig, *There are Concrete Ways Businesses Can Lower Student Debt*, FORTUNE (Sept. 17, 2019), https://fortune.com/2019/09/17/how-business-can-help-lower-student-debt/.

of a benefits program, similar to health care or retirement savings.[12] Currently, the tax code stands in the way of this proposal because the tax code treats this repayment assistance as taxable income.[13] The unfavorable tax treatment disincentivizes employers from adopting assistance programs and may place the student loan debtor in an even worse position when it comes time for tax season.[14] Thus, Congress must amend the tax code to include student loan repayment assistance as a tax advantaged employer benefit.

This article will demonstrate that this proposal warrants Congress's attention as the crisis continues to metastasize. To best understand the proposal's force, it is vital to consider who is affected by the student loan crisis, why they are affected, and how they are affected. As such, Section II of this Article explains the landscape of the student loan crisis. Section III summarizes the relevant tax law with respect to employee benefits programs. Section III lists key pieces of pending legislation that each petition for tax reform to include employer student loan repayment assistance as a tax advantages employee benefit. Section IV discusses whether this proposal is optimal through several policy considerations. Section V draws attention to the proposal's potential limitations, while offering several recommendations to address such limitations. Section VI concludes by encouraging Congress to take action before it is too late.

II. AS HOT AS GLOBAL WARMING

Scholars have gone so far as to equate the swelling student loans crisis with the global warming crisis.[15] Taylor Nadauld, the Chief Economist at Visible Equity, explains that for both crises "[t]he threat is real, but the causes and consequences are slow moving in aggregate."[16] However slow moving student loans may seem, they are actually the fastest growing source of debt in U.S. households.[17] Who is burdened by student loan debt

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12 *See id.*

13 *See* Stephen Miller, *Time to Pass Tax Relief for Student Loan Repayment Benefits*, SHRM (May 30, 2019), https://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/pass-tax-relief-for-student-loan-repayment-benefits-shrm-says.aspx.

14 Suzanne Lucas, *Why Student Loan Repayment Is Not the Benefit You Should Offer in 2019*, INC.COM (Oct. 8, 2018), https://www.inc.com/suzanne-lucas/why-student-loan-repayment-is-not-benefit-you-should-offer-in-2019.html.

15 *See* Taylor Nadauld, *Will Student Loans be the Source of the Next Economic Crisis?*, VISIBLEEQUITY.COM (Jan., 2019), https://www.visibleequity.com/blog/will-student-loans-be-the-source-of-the-next-economic-crisis.

16 *Id.*

17 Emmie Martin, *83% of non-homeowners say student loans are the reason they can't afford to buy*, CNBC (June 28, 2019, 11:12 AM), https://www.cnbc.com/2019/06/28/83-

can be as simple as a single number—44.7 million Americans.[18] However, who specifically comprises the 44.7 million, why these individuals are affected, and how they are affected is crucial to understanding the severity of the systemic issue as a whole, and in turn, to offer effective solutions.

A. Who are the 44.7 Million Americans?

Many people often assume that student loan debtors are from disadvantaged populations or from lower income levels.[19] In reality, student loan debt spans across all genders, races, ages, and socio-economic levels.[20] That said, although education debt is universal in many senses, there are populations that struggle with repaying and managing the debt more-so than others.[21] Specifically, it is more likely that borrowers who are women, Black, low-income, and have family members who depend on them are disproportionately affected by student loan debt.[22]

First, the effects of student loan debt are not usually felt equally by men and women.[23] According to the American Association of University Women, although women comprise close to half of all college students,[24] women hold nearly two-thirds of the nation's $1.5 trillion student loan debt.[25] Millennial women are 50% more likely to have student loan debt for longer relative to their male counterparts.[26] Several scholars attribute

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percent-of-non-homeowners-say-student-loans-are-the-reason-they-cant-afford-to-buy.html.

18 Friedman, *supra* note 4.

19 *See* Beth Akers, *Forgiveness Isn't Divine When It Comes to Student Debt*, THE WALL STREET JOURNAL (Dec. 16, 2019, 6:53 PM), https://www.wsj.com/articles/forgiveness-isnt-divine-when-it-comes-to-student-debt-11576540414 ("Contrary to popular narrative, high earners bear an outsize share of student debt . . . .").

20 *See Student Loan Statistics*, CHAMBER OF COMMERCE, (2017), https://www.chamberofcommerce.org/student-loan-statistics/; *see also* Daniel M. Johnson, *What Will it Take to Solve the Student Loan Crisis?*, HBR.ORG (Sept. 23, 2019), https://hbr.org/2019/09/what-will-it-take-to-solve-the-student-loan-crisis.

21 Valerie Fontenot, *Disparities in Student Loans: How Did We Get Here and What Can We Do?*, ABA (July 6, 2019), https://www.americanbar.org/groups/litigation/committees/diversity-inclusion/articles/2019/summer2019-disparities-in-student-loans/; *see also* Daniela Kraiem, *Symposium- Student Loans The Cost of Opportunity*, 48 SUFFOLK U. L. REV 689, 699 (2015) (citing Press Release, Inst. For Coll. Access & Success, Student Loan Default Rates Show Continued Borrower Distress (Sept. 28, 2012).

22 Kraiem, *supra* note 21.

23 *See* Allan Akhtar & Hillary Hoffower, *9 Ways Student Debt Is One More Thing That's Worse for Women Than Men*, BUSINESS INSIDER.COM (Aug. 9, 2019, 10:33 AM), https://www.businessinsider.com/student-loan-debt-facts-women-versus-men-2019-8.

24 *Id.* ("[W]omen earn 57% of bachelor's degrees in the US . . . ").

25 *Id.*

26 Just Works, *What do Millennial Workers Want?*, BENEFITS AND PERKS (Dec. 6, 2018), https://justworks.com/blog/what-do-millennial-workers-want-student-loan-repayment;

this disparate effect to the gender pay gap that is rampant in the American workforce.[27] Because women earn 27% less than similarly situated men, it takes longer to repay their debt.[28] Thus, larger portions of a woman's income will go towards paying student loan debt, unlike portions of a male's income that can be saved or diverted towards building wealth and financial independence.[29]

Similarly, the burdens of student loan debt are not evenly felt across races.[30] Up until 2010, the amount of student loans acquired by Black majority zip codes and white majority zip codes were relatively similar.[31] However, in the last decade, the loan balances of the Black majority zip codes have significantly exceeded the white majority zip codes.[32] While Hispanic majority zip codes have lower student loan balances than majority white zip codes.[33] Compared to 66% of Caucasian students, over 90% of Black students, and 72% of Latino or Hispanic students graduated with student loan debt.[34] Black students who graduated with student loan debt had a default rate close to five times higher than white students who graduated with similar types of student loan debt.[35] And while Hispanic majority zip codes have approximately a 13% chance of default, white

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see also Robert Farrington, *What is the Millennial Age Range and What Does That Mean Financially?*, COLLEGE INVESTOR (Feb. 11, 2020), https://thecollegeinvestor.com/19793/millennial-age-range/.

27 *See* Akhtar & Hoffower, *supra* note 23.

28 *Id.; see also* Fontenot, *supra* note 21 ("When women earn $0.77 for every dollar a man makes, it makes it much harder for women to meet their financial goals, particularly if they are single mothers.").

29 *See* Akhtar & Hoffower, *supra* note 23; *see also* Kraiem, *supra* note 21, at 700 (citing Jacob P.K. Gross et al., *What Matters in Student Loan Default*, 39 J. of Student Fin. Aid 22 (2009) ("more than 8% of [a woman's] income- [goes] toward their student loans.").

30 Andrew F. Haughwout, Donghoon Lee, Joelle Scally, and Wilbert van der Klaauw, *Racial Disparities in Student Loan Outcomes*, LIBERTY STREET ECONOMICS (Nov. 13, 2019), https://libertystreeteconomics.newyorkfed.org/2019/11/just-released-racial-disparities-in-student-loan-outcomes.html; *see also Racial Disparities in Student Loan Outcomes*, PNPI: FEATURED REPORTS (Nov. 21, 2019) https://pnpi.org/racial-disparities-in-student-loan-outcomes/ (noting that data limitations present challenges in exploring the disparities).

31 Haughwout et al., *supra* note 30 ("By grouping individual borrowers based on income and zip code, and then categorizing each zip code by the majority racial demographic of its inhabitants, the researchers were able to produce a rough approximation on student loan outcomes by race.").

32 *Id.*

33 *Id.*

34 National Center for Education Statistics, tbl.331.95 (Feb. 17, 2018, 10:15 AM).

35 Allana Akhtar & Hillary Hoffower, *9 startling facts that show just how hard the student-debt crisis is hurting black Americans*, BUSINESS INSIDER (Jan. 22, 2020, 1:19 PM), https://www.businessinsider.com/how-americas-student-debt-crisis-impacts-black-students-2019-7.

majority zip codes have a 9% default rate.[36] In addition, wealth gaps that exist between white families and minority families explain, in part, the impact student loan debt has on minority students.[37] A study conducted by Roosevelt Institute, found that newly formed white families had accumulated twelve times the wealth of Black families.[38] However, after eliminating student loan debt, the white family's wealth dropped to five times that of Black family's wealth.[39]

Other individuals most affected by student loan debt include borrowers with family dependents.[40] Dependent family members may include children or elderly parents.[41] In fact, for each dependent child a borrower has, the probability of default increases 4.5%.[42] It is certainly more difficult for borrowers to make timely monthly payments when considering the cost and function of living expenses for dependent family members.[43] Also, student loans can be obtained by a parent for their dependent child through programs such as "Parent PLUS Loans."[44] Parent PLUS Loans are government loans taken out in a parent's name and are used for their child's college or university cost.[45]

Additionally, the effects of student loan debt spans all age groups.[46] Whether it's a parent or a student obtaining the loan, every generation is burdened.[47] Specifically, Generation X—individuals between 39 and 54—has the most student debt, followed by the Baby Boomers—individuals between 55 and 73—who have the second-highest student loan debt, and then the Millennials—individual between 23 and 38—have the third-

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36 Haughwout et al., *supra* note 30.

37 *See id.*; *see also* Kraiem, *supra* note 21, at 700 (citing Gross et al., *supra* note 30) ("possibly reflects a combination of the following factors: higher likelihood of borrowing; higher loan burden due to lower family wealth; increased likelihood of unemployment and lower waged due to discrimination; and discrimination in the housing market.").

38 Akhtar & Hoffower, *supra* note 35.

39 *Id.*

40 Kraiem, *supra* note 21, at 699.

41 *Id.*

42 *Id.*

43 *See generally* Colleen Campbell, *The Student Loan Default Crisis for Borrowers With Children*, CENTER FOR AMERICAN PROGRESS (Nov. 15, 2017, 9:00 AM), https://www.americanprogress.org/issues/education-postsecondary/news/2017/11/15/442773/student-loan-default-crisis-borrowers-children/.

44 *See* Robert Farrington, *Parents: Stop Taking Out Loans for Your Child's College Education*, FORBES (July 14, 2014, 9:21 AM), https://www.forbes.com/sites/robertfarrington/2014/07/14/parents-stop-taking-out-loans-for-your-childs-college-education/#6483c8fe60a6.

45 *See id.*

46 *See* Stefan Lembo Stolba, *Millennials' Student Loan Debt Continues to Rise*, EXPERIAN (July 5, 2019), https://www.experian.com/blogs/ask-experian/research/millennials-and-student-loan-debt-study/.

47 *Id.*

highest student loan debt.[48] As of the second quarter of the 2019 fiscal year, there were 8.1 million borrowers ages 24 or younger and 15.1 million student loan borrowers between the ages of 25-34.[49]

B. Why Did This Happen?

Why have student loans gotten so out of hand for these 44.7 million Americans? The key to understanding why traces back to the very foundation of what we call the "American Dream."[50] The American Dream is the concept that the government will protect each individual's opportunity to pursue their own ideals of happiness.[51] As Kristine Motlagh, a clinical psychologist with $300,000 of student loan debt; shares, "If you want to have a good life, you get an education . . . [t]here's an unspoken promise that if you follow this plan, the golden doors will open; everything will be fine[.]"[52] The social contract that exists between the U.S. government and its citizens is based on the notion that a higher education represents America's great equalizer—an education is a symbol of hope, the gateway to success, opportunity, and most importantly, the middleclass.[53] The demand for higher education has risen "dramatically" over the last three decades.[54] According to the Department of Education, 20.4 million students were expected to attend college in 2017, while only about 15 million were expected in 2000.[55] This rise in the demand for higher education has caused tuition costs to increase—price jumps that

48 *Id.*

49 Wesley Whistle, *A Look at Millennial Student Debt*, FORBES (Oct. 3, 2019, 1:21 PM), https://www.forbes.com/sites/wesleywhistle/2019/10/03/a-look-at-millennial-student-debt/#448908142437.

50 *See* Friedman, *supra* note 7.

51 *See* Kimberly Amadeo, *What is the American Dream?*, THE BALANCE (updated Nov. 6, 2019), https://www.thebalance.com/what-is-the-american-dream-quotes-and-history-3306009.

52 Melanie Lockert, *Mental Health Survey: 1 in 15 High Student Debt Borrowers Considered Suicide*, STUDENT LOAN PLANNER (Sept. 4, 2019), https://www.studentloanplanner.com/mental-health-awareness-survey/.

53 *See* David Rhode, Kristina Cooke, and Himanshu-Ojha, *The Decline of the 'Great Equalizer'*, THE ATLANTIC (Dec. 19, 2012), https://www.theatlantic.com/business/archive/2012/12/the-decline-of-the-great-equalizer/266455/.

54 Hillary Hoffower, *College is more expensive than it's ever been, and the 5 reasons why suggest it's only going to get worse*, BUSINESS INSIDER (June 26, 2019, 10:23 AM), https://www.businessinsider.com/why-is-college-so-expensive-2018-4 (explaining that "[t]he demand for higher education has risen dramatically since 1985," and "once demand goes up and nothing else happens, that will raise [tuition] prices.").

55 *Id.*

many colleges and universities implement merely "because they can."[56] In fact, since the 1980s, college tuition has more than doubled.[57] According to Student Loan Hero, the cost of an undergraduate degree has risen 213% at public schools and 129% at private schools.[58]

However, it was not until after the Recession of 2008 that the increase in demand for a higher education and the increase in tuition cost became particularly problematic.[59] During that time, state legislatures made significant cuts to sustainable public funding for colleges and universities, and in turn, "[t]he easiest way for universities to make up for the cuts was to shift some of the cost to students—and to find richer students."[60] But according to the U.S. Department of Education, when capital became sparse in 2008, obtaining loans also became much harder.[61] This is when the federalization of student loans took off—under the Ensuring Continued Access to Student Loans Act, "the federal government began to purchase guaranteed student loans—loans issued by private banks, but for which the federal government assumed the risk for default."[62] Then in 2010, the federal government began issuing loans through the Department of Education instead, thereby ending programs that guaranteed private loans.[63] The federal government then became the most popular student loan lender.[64]

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56 Amanda Ripley, *Why Is College in America So Expensive? The outrageous price of a U.S. degree is unique in the world.*, THE ATLANTIC (Sept. 11, 2018), https://www.theatlantic.com/education/archive/2018/09/why-is-college-so-expensive-in-america/569884/ ("Ultimately, college is expensive in the U.S. for the same reason MRIs are expensive: There is no central mechanism to control price increases. 'Universities extract money from students because they can,' says Schleicher at the OECD. "It's the inevitable outcome of an unregulated fee structure."); *see also* Fontenot, *supra* note 21 (explaining that many scholars blame the student loan crisis on decreased public funding and the "inability of private schools to continuously raise their tuition with no repression and oftentimes no justification except to say that tuition increases every year by the same percentage no matter what.").

57 Hoffower, *supra* note 54.

58 *Id.*; *see also* Sherri Lonon, *Study Shows the Impact of Student Loans on Tuition Increases*, BUSINESS ADMINISTRATION INFORMATION (July 17, 2015), https://www.businessadministrationinformation.com/news/study-shows-the-impact-of-student-loans-on-tuition-increases (explaining the so-called "chicken-and-egg type mystery" behind student loans and rising tuition rates).

59 *See* Ripley, *supra* note 56.

60 *Id.*

61 *See* Courtney Miller, *How Uncle Sam Became the Biggest Student Lender*, NERD WALLET: PERSONAL FINANCE (Dec. 21, 2015, 5:46 AM), https://www.usatoday.com/story/money/personalfinance/2015/12/21/uncle-sam-student-college-loans-federal-government/77510578/.

62 *Id.*

63 *Id.*

64 *Id.*

Simply put, the last three decades evidence a "vicious" supply and demand cycle— "[t]he more students who want to attend college, the more the cost of college increases, and the more students borrow money."[65] Conversely, the supply and demand cycle has caused a decrease in the value of earning a degree because the job market is now completely oversaturated with people who have a college degree.[66] According to the New York Federal Reserve, recent graduates are more likely to be unemployed than the population as a whole, despite historically low unemployment rates.[67] Even graduates entering high salaried careers feel the toll student loans have taken on the value of a degree.[68] The return rate on the so-called "investment" in one's future has become stale, and it is now riskier than ever to rely on a degree.[69]

C. How Are The 44.7 Million Affected?

The risk behind taking out student loans has come to fruition for millions of Americans leaving a devasting impact. 60% of student loan debtors will have to continue paying off their loans until their 40s.[70] According to a study released by TD Bank that surveyed 1,000 student loan debtors between the ages of 18 and 39, on average student loan debtors are allocating more than 20% of their paychecks each month on student loan repayment.[71] Thus, according to Schwab's 2019 Modern Wealth Report, two-thirds of all millennials are living paycheck to

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[65] Hoffower, *supra* note 54.

[66] *Id.* (illustrating the diminished value of a degree by noting that "one-third of college graduates are underemployed and 13% are in a low-paying job."); *see also* Alexandre Tanzi & Katia Dmitrieva, *The job market is hot. So why are half of U.S. grads missing out?* L.A. TIMES (Feb. 20, 2020), https://www.latimes.com/business/story/2020-02-20/the-job-market-is-hot-so-why-are-half-of-u-s-grads-missing-out.

[67] Tanzi & Dmitrieva, *supra* note 66 (explaining that oddly enough earnings for high school graduates have increased while earnings for "the lower-earning half" of college graduates has not).

[68] *See* Hillary Hoffower, *The story of an orthodontist making 6 figures with $1 million in student-loan debt shows why doctors and lawyers are no longer the richest people you know*, BUSINESS INSIDER (May 30, 2018), https://www.businessinsider.com/debt-vs-cost-vs-salary-medical-dental-law-school-2018-5.

[69] Josh Mitchell, *College Still Pays Off, but Not for Everyone*, THE WALL STREET JOURNAL (Aug. 9, 2019), https://www.wsj.com/articles/college-still-pays-off-but-not-for-everyone-11565343000.

[70] Abigail Hess, *This is the age most Americans pay off their student loans*, CNBC (July 3, 2017, 1:17 PM), https://www.cnbc.com/2017/07/03/this-is-the-age-most-americans-pay-off-their-student-loans.html.

[71] Hess, *supra* note 5.

paycheck.[72] This year, millennials are predicted to comprise 50% of the U.S. workforce.[73] And by 2025, millennials will make up 75% of the country's workforce.[74] When student borrowers devote such significant portions of their paycheck to loan repayments, they are delayed from reaping the benefits that their diplomas were intended to secure.

Wealth is measured by an individual's assets, minus any debts owed.[75] Accumulating wealth and accessing middle class markers such as purchasing a home, obtaining health insurance, sending your child to college, affording a car, and saving for retirement, are all pushed off because of burdensome student loan balances.[76] For instance, according to a recent survey, 50% of millennials are planning to move back in with their parents after college—the "boomerang"[77]—and 47% will delay buying a home.[78] According to the 2019 Home Affordability Report, 83% of non-homeowners attribute their non-homeownership to student loans.[79] The Federal Reserve confirms a direct correlation between homeownership rates and rising student loans reporting that "a 10 percent increase in student loan debt causes a one to two percent point drop in the homeownership rate for student loan borrowers" within the first five years post-graduation.[80] Moreover, student borrowers are forced to ignore the

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72 Megan Leonhardt, *Millennials have an Average of $28,000 in Debt*, CNBC (updated Sept. 20, 2019, 3:22 PM), https://www.cnbc.com/2019/09/18/student-loans-are-not-the-no-1-source-of-millennial-debt.html.

73 Peter Economy, *The (Millennial) Workplace of the Future is Almost Here*, INC.COM (Jan. 15, 2019), https://www.inc.com/peter-economy/the-millennial-workplace-of-future-is-almost-here-these-3-things-are-about-to-change-big-time.html.

74 Arlene Hirsch, *Employers Explore Repaying Student Loan Debt*, SHRM (July 30, 2018), https://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/employers-explore-repaying-student-loan-debt.aspx.

75 Mitchell, *supra* note 69 (explaining that wealth is measured by a person's assets minus any debt owed).

76 Financial Samurai, *The Definition Of A Middle Class Lifestyle Is The Same As It Ever Was*, FINANCIAL SAMURAI (2019), https://www.financialsamurai.com/definition-of-a-middle-class-lifestyle-is-the-same-as-it-ever-was/ (explaining common middle class markers).

77 Melanie Lockert, *Before You Move Back Home with Your Parents*, STUDENT LOAN HERO (July 19, 2019), https://studentloanhero.com/featured/moving-back-home-with-parents-save-money-pay-off-student-loans/.

78 Zack Friedman, *50% of Millennials Are Moving Back Home With Their Parents After College*, FORBES (June 6, 2019, 8:32 AM), https://www.forbes.com/sites/zackfriedman/2019/06/06/millennials-move-back-home-college/#3919c225638a (the survey included 1,027 Generation Z (ages 15-21), 1,026 Millennials (ages 22-28), and 1,001 parents).

79 Martin, *supra* note 17.

80 David Mark, *Student Loan Repayment Relief Is Sound Fiscal Policy*, LAW360 (Mar. 19, 2019, 2:18 PM), https://www.law360.com/articles/1140442/student-loan-repayment-relief-is-sound-fiscal-policy (citing Alvaro A. Mezza, Daniel R. Ringo, Shane M. Sherlund, & Kamila Sommer, *On the Effect of Student Loans on Access to Homeownership*,

importance of investing in retirement plans as early as possible.[81] NerdWallet predicts that because of increasing student loan debt, graduates from the class of 2015 will be forced to delay retirement until the age of 75,[82] while many have not even considered contributing to a 401(k) plan.[83] Thus, when the average student loan debtor owes between $20,000 and $30,000,[84] purchasing a new car at the nationwide average of approximately $36,000[85] or financing your child's own education at an average of anywhere between $25,000 to $50,000,[86] seems unfathomable.

Furthermore, research shows that student loan debt has also had an intense and pervasive effect on economic inequality by halting social mobility—the goal that investing in an education was supposed to remedy.[87] As previously mentioned, women and minority groups are disparately affected by student loan debt.[88] These populations already struggle in regards to upward social mobility because of historic barriers to economic success.[89] However, the disparate effects of student loan debt further inhibits these populations—and future generations—from accumulating wealth and accessing middleclass socioeconomic status because their paychecks are instead going towards paying down their debt.[90]

FINANCE AND ECONOMICS DISCUSSION SERIES 2016-10 (2016), https://www.federalreserve.gov/econresdata/feds/2016/files/2016010pap.pdf.).

81 *See* Tom Anderson, *Debt-Locked: Student Loans Force Millennials to Delay Life Milestones*, NBC NEWS (Aug. 15, 2015), https://www.nbcnews.com/better/money/debt-locked-student-loans-force-millennials-delay-life-milestones-n404636.

82 Hess, *supra* note 70.

83 Anne Tergesen, *Employers Try a New Perk*, THE WALL STREET JOURNAL (Oct. 10, 2019, 8:00 AM), https://www.wsj.com/articles/employers-try-a-new-perk-matching-student-loan-payments-with-401-k-contributions-11570708801; *see also* Mark, *supra* note 80 (citing Jennifer Erin Brown, *Millennials and Retirement*, NIRSONLINE.ORG (Feb. 2018), https://www.nirsonline.org/reports/millennials-and-retirement-already-falling-short/.).

84 Melanie Pinola, *Don't Let Student Loans Keep You from Buying a House or Car*, SMART ASSET (Mar. 14, 2018), https://smartasset.com/student-loans/dont-let-student-loans-keep-you-from-buying-a-house-or-car.

85 Anna Hecht, *Car prices are increasing—here's how that can hurt Americans*, CNBC (Oct. 22, 2019, 8:30 AM), https://www.cnbc.com/2019/10/22/car-prices-are-rapidly-increasing-heres-why-thats-bad-for-americans.html.

86 Justin Song, *Average Cost of College in America: 2019 Report*, VALUE PENGUIN (last visited Jan. 28, 2019), https://www.valuepenguin.com/student-loans/average-cost-of-college.

87 *See* Kelley Holland, *The high economic and social costs of student loan debt*, CNBC (June 15, 2015, 10:39 AM), https://www.cnbc.com/2015/06/15/the-high-economic-and-social-costs-of-student-loan-debt.html.

88 *See* Fontenot, *supra* note 21; *see also* Kraiem, *supra* note 21, at 699.

89 *See* Melissa Kearney, *Intergenerational mobility for women and minorities in the Unites States*, NCBI.GOV (2006), https://www.ncbi.nlm.nih.gov/pubmed/17036545.

90 *See* Steven Chung, *If U.S. News Really Wants To Improve Social Mobility, They Need To Include Tuition In Their Ranking*, ABOVE THE LAW (Sept. 19, 2018, 11:17 AM),

In addition to these harsher financial concerns, student borrowers are also forced to delay cultural life milestones like getting married and having children.[91] In fact, 25% of student borrowers delay getting married because of student loans, and 51% of borrowers have altered their plans to have children because of their student loans.[92] The delay is either psychological—not feeling ready to move onto the next stage of life until debt is paid off—or is a result of not being able to afford the engagement ring, wedding, or child care.[93] As such, it is not shocking that the country's population growth rate has declined.[94]

Life milestones also include landing a dream job. It seems ironic that student debtors who worked relentlessly to receive a degree are now forced to either accept undesired yet high paying jobs to keep afloat with their debt repayment plans[95] or undesired public sector jobs that offer repayment eligibility.[96] As Annie Nova, CNBC economist, reiterates this irony and notes that "[t]he very debt that's taken on to allow someone to pursue their ambition can later morph into a burden that requires them to ditch those plans and grab any job that will just pay the bills."[97]

However, financial insecurities comprise only half of the turmoil underlying student loans. Recent surveys find that student loan debt is a leading cause of stress, distraction, and lowered productivity among workers.[98] Over half of these workers share that they feel worried most or all of the time about their loans.[99] This anxiety is also said to impact an individual's overall health as a result.[100] A study conducted by Cornell University revealed that individuals who suffer financial stress also suffer

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https://abovethelaw.com/2018/09/if-u-s-news-really-wants-to-improve-social-mobility-they-need-to-include-tuition-in-their-rankings/.

91 Clint Proctor, *51% of Borrowers with High Student Debt Say Student Loans Derailed Plans for Having Kids*, STUDENT LOAN PLANNER (Sept. 24, 2019), https://www.studentloanplanner.com/student-loans-marriage-divorce/.

92 *Id.*

93 *See* Mark, *supra* note 80.

94 Proctor, *supra* note 91.

95 *See* Annie Nova, *How Student Loans are Making Some People Abandon Their Dreams*, CNBC (updated July 8, 2019, 12:46 PM), https://www.cnbc.com/2019/07/08/heres-how-student-debt-can-hurt-your-career.html.

96 *See id.; see also* Rebecca Safier, *11 Great Jobs that Offer Student Loan Forgiveness*, STUDENT LOAN HERO (Nov. 2, 2018), https://studentloanhero.com/featured/student-loan-forgiveness-jobs/.

97 *See* Nova, *supra* note 95.

98 Friedman, *supra* note 7.

99 *Id.*

100 *See* Tess Taylor, *Should Your Company Offer a Student Loan Repayment Benefit?*, BENEFITS BRIDGE (Feb. 14, 2019), https://benefitsbridge.unitedconcordia.com/should-your-company-offer-a-student-loan-repayment-benefit/; *see also* Johnson, *supra* note 20.

from illnesses like gum disease more than others without such stress.[101] Anxiety and lowered productivity levels seem minimal, however, when compared to the fact that one in every 15 student loan debtors who have contemplated suicide because of their financial troubles.[102]

Beyond the individual, the U.S. economy is greatly suffering from the massive student loan debt crisis.[103] Economists cite student loan debt as a significant contributing factor to several recent economic trends.[104] First and foremost, student loan debt suppresses consumer spending because instead of spending to keep the economy churning, borrowers are diverting their income to loan payments.[105] The country's economy relies on individuals stimulating markets through the purchasing of homes, luxury items, vacations, appliances, stocks, etc.[106] Student loan debt causes a chilling effect on market stimulation by delaying the purchasing of these items that are crucial for economic growth.[107]

III. TWO STEPS FORWARD, ONE STEP BACK

Millions of Americans are desperate for an innovative, fast acting repayment program that will help pay off loans earlier and, in the process, protect them from interest and default. In response to this desperation, employers are offering what they can to help. To meet the needs of the modern workforce, American employers are offering their employees assistance in paying off their student loan debt.[108] The basic idea is for employers to offer employees assistance when repaying their student loans as part of a benefits package similar to offering health care benefits.[109] While repayment plans will vary, the goal is to either match the employee's loan payments or contribute to the unpaid principle balance, $5,250 of which is tax-free.[110] According to Society for Human Resource

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101 *Id.*

102 Alexandre Tanzi, *The Far-Reaching Burden of America's Student Debt*, BLOOMBERG (May 5, 2019), https://www.bloomberg.com/news/articles/2019-05-05/-micro-problem-of-student-debt-spurs-suicide-thoughts-survey.

103 *See* Elyssa Kirkham, *What Are the Effects of Student Loans Debt on the Economy?*, STUDENT LOAN HERO (Oct. 28, 2019), https://studentloanhero.com/featured/effects-of-student-loan-debt-us-economy/.

104 *See generally id.*

105 *Id.*

106 Johnson, *supra* note 20.

107 *See id.*

108 *See* Ben Luthi, *Which Employers Offer Student Loan Repayment?*, U.S. NEWS (July 1, 2019), https://loans.usnews.com/which-employers-offer-student-loan-repayment.

109 *See id.*

110 Mark, *supra* note 80 (providing a hypothetical of an average borrower who refinanced their student loans— "If their outstanding balance is $44,000, and assuming a 5.7 percent

Management 2019 Employee Benefits Reports, 8% of employers are already offering student loan repayment assistance as a benefit, which is a jump from the 4% in 2018 and the 3% in 2015.[111]

However, the employers' generosity is more of a two steps forward, one step back situation. The catch is that under current tax law, any student loan repayment assistance an employee receives from his or her employer is treated as taxable income and employers cannot claim a deduction for their payments.[112] Thus, for this assistance proposal to reach its optimal success and have widespread impact, the tax code must be amended to enable employers to offer tax-free student loan assistance to their employees. To be clear, this article does not advocate for an automatic payroll deduction. The program advocated in this Article works only if employers do not reduce an employee's salary to compensate for the benefit. If an employer offers assistance but lowers the employee's salary, the program is not advantageous to the employee. Instead, the policy advanced is to allow a benefit offering on a voluntary basis.

A. Two Words: Fringe. Benefits.

A fringe benefit is an employment benefit granted by an employer that has a monetary value but does not affect basic wage rates.[113] The Internal Revenue Service's rules for exemption determine what qualifies as a fringe benefit.[114] By default, all fringe benefits are taxable unless they qualify as an exemption.[115] Examples of non-exempt fringe benefits are employee's country club memberships, season tickets to sporting events, or the use of a company car.[116] Tax exempt fringe benefits commonly offered to employees include health insurance, childcare reimbursement, education assistance, and life insurance.[117] Employers get a deduction for

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interest rate and 10-year loan term, their beginning monthly payment would be $470.35. Assuming that the borrower continued to make the regularly scheduled monthly payments, by applying $2,250 per year to this unpaid principal balance, and re-amortizing the resulting amount, the monthly payment would drop to $409.46 in the first year, $342.57 in the second year and would continue to decline going forward.").

111 Tergesen, *supra* note 83; Jessica Dickler, Sharon Epperson, & Katie Young, *This Workplace Perk Helps You Pay Down Your Student Debt and Save*, CNBC (June 24, 2019, 9:12 AM), https://www.cnbc.com/2019/06/21/this-workplace-perk-helps-you-pay-down-your-student-debt-and-save.html.

112 *See* Miller et al., *supra* note 9.

113 Julia Kagan, *What are Fringe Benefits?*, INVESTOPEDIA.COM (updated Apr. 25, 2019), https://www.investopedia.com/terms/f/fringe-benefits.asp.

114 *See id.*

115 *See id.*; Internal Revenue Service, *Publication 15-B (2020), Employer's Tax Guide to Fringe Benefits*, IRS.GOV https://www.irs.gov/publications/p15b.

116 *Id.*

117 Kagan, *supra* note 113.

tax exempt fringe benefits on tax returns and employees do not have to include them as part of earned income on taxes, whereas, taxable fringe benefits must be included in the employee's wage, and income taxes must be paid on the fair market value of the benefit received.[118] And unlike tuition assistance, student loan repayment by an employer does not qualify as a tax-exempt fringe benefit.[119] Although this has not prohibited eager employers from offering the tax-disadvantaged benefit to their employees,[120] employees are not especially receptive to gifts that they will end up paying for through taxes, and some employers are hesitant to restructure company finances.[121]

B. Awaiting Congress

The success of this assistance program resides in Congress' hands. There are four key pieces of pending legislation that are leading the crusade to amend the tax code so that employers can offer their employees student loan repayment assistance tax-free. On February 7, 2019, the Employer Participation in Repayment Act (H.R. 1043) was introduced and is co-sponsored by a bipartisan group of 142 members of the House.[122] In addition, a companion bill was reintroduced in the Senate—the Employer Participation in Repayment Act of 2019 (S. 460)—with 27 co-sponsors.[123] Both bills propose to amend the Internal Revenue Code of 1986 to extend the already existing exclusion for employer-provided educational assistance permitted under § 127 to an employer payment of qualified education loans to their employee.[124] Under section § 127 of the tax code, employers may provide tax-exempt tuition assistance up to $5,250 per employee per year.[125] This benefit—tuition assistance—is commonly offered for employees interested in obtaining a certain degree or furthering a particular skill.[126] Therefore, under these proposals, employers would be able to offer as part of a benefits program, tax-free student loan repayment up to $5,250 per year for each employee, which is the same amount

118 *Id.*
119 *See* Rosensweig, *supra* note 11.
120 *See id.*
121 *See* Lucas, *supra* note 14.
122 Employer Participation in Repayment Act of 2019, H.R. 1043, 116th Cong. (2019).
123 Employer Participation in Repayment Act of 2019, S. 460, 116th Cong. (2019).
124 *Id.*; *see also* Employer Participation in Repayment Act of 2019, *supra* note 122.
125 26 U.S.C. § 127.
126 Valerie Bolden-Barrett, *78% of Workers with Student Loan Debt Want Their Employer to Offer a Repayment Benefit*, HR DRIVE (May 3, 2018), https://www.hrdive.com/news/78-of-workers-with-student-loan-debt-want-their-employer-to-offer-a-repaym/522463/.

permitted for the tuition assistance benefit.[127] Also, like the tax advantages of the tuition assistance benefit, the student loan repayments would not be treated as taxable income for the recipient and the employer could claim deductions on the payments.[128]

Another bill introduced that proposes a very similar amendment is the Employer Participation in Student Loan Assistance Act (H.R. 795).[129] This bill proposes to amend the Internal Revenue Code to extend the tax exclusion permitted for employer-provided educational assistance to include payments of qualified education loans made by an employer to either their employee or a lender.[130]

Although a bit more restrictive, the Student Loan Repayment Assistance Act of 2019 (H.R. 655) was also introduced to allow a business-related tax credit for an employer making payments under a student loan repayment program for their employee.[131] The credit would equal 10% of the amount that the employer contributes and would be refundable for some small businesses and tax-exempt organizations.[132] However, the payments for each employee would be limited to a maximum of $500 per month.[133]

C. State Action

Awaiting Congress, states have pursued their own policies to make employer student loan repayment assistance as tax advantageous as possible for employers and employees with approximately 24 states having introduced legislation to implement or expand state tax deductions or credits for student loan debt repayment.[134]

IV. POLICY CONSIDERATIONS

For Congress and state legislatures to fully understand the necessity behind amending the tax code to equalize tax treatment of student loan assistance, a thorough examination of policy considerations is useful to gage the proposal's potential. For purposes of this article, considering the

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127 *See* Employer Participation in Repayment Act of 2019, *supra* note 122; *see also* Employer Participation in Repayment Act of 2019, *supra* note 123.

128 *See* H.R. 1043; *see also* S. 460.

129 Employer Participation in Student Loan Assistance Act, H.R. 795, 116th Cong. (2019).

130 *Id.*

131 Student Loan Repayment Assistance Act of 2019, H.R. 655, 116th Cong. (2019).

132 *Id.*

133 *Id.*

134 Miller, *supra* note 13 ("At least 36 states allow to claim a state income-tax deduction or offer a state tax credit for interest paid on student loans.").

proposal's level of difficulty, equity, and scope of impact are most useful. Upon analyzing the proposal through the lens of the three considerations, lawmakers should adopt these bipartisan pieces of legislation to encourage employers nationwide to adopt student loan assistance programs.

A. Simplicity

Economists attribute the intensification of the student loans crisis to the complexity and ineffectiveness of current repayment solutions available.[135] By enabling employers to give tax-free student loan assistance to employees, it provides a straightforward and concrete solution for both the employee and employer. Successful employer assistance programs that already exist—despite being tax disadvantaged—demonstrate how simple the program is to implement and how little maintenance it requires.

i. Simple Implementation

Much of the structure and implementation of an employer's student loan assistance program will be left to an employer's discretion. Currently, the U.S. Office of Personnel Management (OPM) poses a set of minimal requirements that businesses who adopt a loan assistance program for federally funded student loans must follow.[136] For instance, a company who offers repayment assistance must report their repayments annually to the OPM.[137] These reports contain information such as the number of employees assisted and the employee's job classification.[138] Besides these requirements, employers are free to model their student loan assistance programs after the 8% of employers who already have such programs or to create a completely different structure tailored to their capabilities and needs.

Employers also have access to a wide range of resources to aid in structuring their own benefits programs. For example, Gradifi, a firm that designs programs for employers, has helped more than 750 companies to create their own unique student loan benefit packages.[139] Also, Tuition.io, a firm that manages programs for employers, now manages student loan assistance for over 150 companies, including major corporations like

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135 *See* Amy Merrick, *Should Businesses Help Employees Pay Off Their Student Loans?*, THE ATLANTIC (May 18, 2018), https://www.theatlantic.com/education/archive/2018/05/student-debt/560315/.

136 *Pay & Leave Student Loan Repayment*, U.S. OFF. OF PERS. MGMT., https://www.opm.gov/policy-data-oversight/pay-leave/student-loan-repayment/ (last visited Aug. 29, 2020).

137 *Id.*

138 *Id.*

139 Dickler et al., *supra* note 111.

Hulu, Staples, Estee Lauder Companies, Inc., and Children's Hospital and Medical Center of Omaha, Nebraska.[140] However, when employers structure their programs, logistical considerations like eligibility, payment amounts, payment duration, and payment servicing, will also have to be assessed. To make these determinations, Peter DeBellis, total rewards research leader at Deloitte, encourages companies to reflect on "demographics, how your employees are feeling, what your industry is, what your financial well-being profile is," to best tailor the program to the company.[141]

Many employers have approached eligibility requirements in a myriad of ways. PricewaterhouseCoopers, one of the first companies to implement the benefit, offers assistance to full-time employees, opposed to part-time employees.[142] While other companies may offer assistance to employees who have been with the company for a certain term.[143] Other options could be to offer assistance to new hires, all current employees, or employees holding certain positions within the company.[144]

Similarly, despite tax incentives, employers are free to offer assistance in any amount for any period of time. Depending on the benefit offered, implementing and managing the program may cost nothing for the employer.[145] For instance, if an employer partners with a lender or refinancer, there is no implementation fee.[146] Or, since most student loan borrowers are not taking advantage of or participating in their employers 401(k) matching contributions, employers can redirect these funds towards the repayment assistance. If this is not the case, employers must make an assessment based on how capital there is available to allocate to the program.[147] For instance, in Clinton County, Iowa, the Clinton

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140 Powell, *supra* note 7.

141 Kathryn Mayer, *Employees Want Student Loan Benefits—but Employers Aren't Sold Yet*, EMP. BENEFIT NEWS (May 8, 2019, 3:01 PM), https://www.benefitnews.com/news/employers-arent-sold-on-student-loan-benefits.

142 Powell, *supra* note 7.

143 Tergesen, *supra* note 83.

144 *See* Robert Steyer, *Companies start paying employee student loan debt*, INVESTMENT NEWS (July 9, 2018), https://www.investmentnews.com/article/20180709/FREE/180709944/companies-start-paying-employee-student-loan-debt.

145 Kate Ashford, *Want Your Company to Help You Pay Back Student Loans? Here's How to Ask*, THE MUSE, https://www.themuse.com/advice/how-to-ask-your-company-to-pay-down-student-loans (last visited Aug. 30, 2020).

146 *Id.*

147 Taylor, *supra* note 100 ("For example, a small company of 200 workers may set up a benefit of $1,000 for each individual. In return, employees who sign up for the benefit must provide proof that they are making payments toward a current student loan. At the end of the year, the employer can send the annual benefit to the student loan agency on behalf of the employee.").

Community School District is able to offer teachers $30 per month for repayment assistance.[148] Eric Van Lancker, auditor and commissioner of elections, shares "[w]e had to make the most of what we could do with as little investment as possible."[149] On the other hand, Fidelity Investment Corporation spends a whopping $13 million per year on its benefits program.[150] These examples illustrate that employers of all sizes are willing and able to fund a repayment assistance program. In fact, most employers, are able to provide employees with an average of $100 per month.[151] Also, some employers may take into account the amount of the loan or interest rates that have accrued to decide how much they will offer their employee.[152] Moreover, if a company elects to engage in monthly payments, there will often be a cap on how long they will assist an employee.[153] Fidelity offers to repay $167 per month but for a maximum of five years.[154] PricewaterhouseCoopers will repay $1,200 a year for up to six years.[155]

Finally, although most payments are usually sent directly to a loan servicer, each employer is free to decide whether to make repayments directly to the employee, to the loan servicer, or to a third-party facilitator.[156] Many third-party vendors like Student Loan Genius exist to facilitate payments between employer and loan servicer while the employee continues making its regular payments.[157] However, some employers like Fiserv, a financial services company, allow their employees to take the points they earn for noteworthy customer service and productivity, and redeem them for cash valued items—such as gift cards—that the employee can put towards their student loans.[158]

ii. Simple Navigation

No matter how the employer decides to implement and manage their assistance program, the assistance will offer the employee a simple repayment solution juxtaposed to what is otherwise available. According to, Diane Cheng, the Research Director at the Institute for College Access and Success, shares "[t]here's a wide recognition that the system is too

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148 Lane, *supra* note 10.
149 *Id.*
150 Tergesen, *supra* note 83.
151 *Id.*
152 Powell, *supra* note 7.
153 Steyer, supra note 144.
154 *Id.*
155 *Id.*
156 *See* Powell, *supra* note 7.
157 Steyer, *supra* note 144; *see also* Hirsch, *supra* note 74.
158 Lane, *supra* note 10.

complicated, there are too many repayment programs and it's hard for borrowers to navigate."[159] Therefore, although there may be repayment options available—depending upon the type of loan and the amount owed—the quality of these options is seriously lacking.

While some borrowers are completely unaware of the type of loan they hold, borrowers either hold federal or private loans, or a combination.[160] Both federal and private lenders rely on loan servicers to facilitate the borrower's enrollment into a repayment plan and to collect payments according to the repayment plan.[161] While repayment plans for borrowers with private loans may each be unique to their specific lender, repayment options for borrowers with federal loans are available with standard benefits and protections.[162] The Standard Repayment Plan for a federal loan allows for 120 payments of the same amount made over a 10-year period.[163] However, other repayment options are available.[164] Borrowers may elect to have monthly federal loan payments limited based upon income, cancelled after 20 to 25 years, or forgiven after working in public service for 10 years.[165]

Over a decade ago, President Obama led an initiative to expand the federal loans program by allowing the Department of Education to issue loans itself instead of relying on banks to finance the federal loans.[166] As a result, Congress expanded the repayment avenues for student loan

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[159] Megan Leonhardt, *Don't Make This Common Student Loan Mistake That Can Cost You Thousands of Dollars*, CNBC (Nov. 20, 2018, 9:23 AM), https://www.cnbc.com/2018/11/30/dont-make-this-common-student-loan-mistakeit-can-cost-you-thousands.html.

[160] Elyssa Kirkham, *The Problem With Private Student Loan Repayment Options*, STUDENT LOAN HERO (May 12, 2018), https://studentloanhero.com/student-loans/paying-for-college/the-problem-with-private-student-loan-repayment-options/.

[161] Libby Nelson, *Student Loan Repayment Is So Complicated, Even A Top Expert Can't Figure It Out*, VOX (Oct. 14, 2014, 2:00 PM), https://www.vox.com/2014/10/14/6970129/student-loan-repayment-plans-bob-shireman-ibr.

[162] Melanie Lockert, *What to Do When You Can't Afford Private Student Loan Payments*, STUDENT LOAN HERO (July 16, 2018), https://studentloanhero.com/featured/how-to-lower-private-student-loan-payments/.

[163] Ryan Lane, *What Is the Standard Repayment Plan on Student Loans?*, NERDWALLET (Oct. 2, 2020), https://www.nerdwallet.com/article/loans/student-loans/standard-repayment-plan-student-loans ("For example, let's say you have a $35,000 student loan with an interest rate of 4%. With the standard repayment plan, you'd pay $354 each month and $42,523 overall.").

[164] *See id.*

[165] Rebecca Safier, *What's the Difference Between Federal Student Loans and Private Student Loans?*, STUDENT LOAN HERO (June 1, 2020), https://studentloanhero.com/blog/federal-private-student-loans-difference/.

[166] Nelson, *supra* note 161.

debtors and created income-driven repayment plans (IDRP).[167] Under IDRPs, the amount a federal student loan borrower owes monthly is determined by the individual's income.[168] Any remaining balance of unpaid debt can be cancelled after 20 to 25 years of making on time payments.[169] There are four IDRPs available: Income-Based Repayment (IBR); Pay As You Earn (PAYE); Revised Pay As You Earn (REPAYE); and Income-Contingent Repayment (ICR).[170] Around the same time as the IDRPs, the Public Service Loan Forgiveness (PSLF) solution took flight, which allows borrowers working for certain non-for-profit[171] and government jobs to make loan repayments on-time for 10-years, and then permits the remainder of their loans to be forgiven.[172]

While these programs seem effective in retrospect, they are complex and structurally flawed. Under PAYE, the borrower must demonstrate a financial need and have obtained their loan after October 1, 2007.[173] Under the REPAYE, graduate students must make payments for twenty years before potentially qualifying for forgiveness and a spouses income is included in monthly calculations for payments.[174] Finally, under the ICR, monthly payments may end up being higher than they would under a Standard Repayment Plan.[175] These IDRPs require that borrowers comply with a complicated process to re-certify their income every year, and if the borrower misses the re-certification deadline, the program stops and the borrower then owes what they would have paid under a standard 10-year repayment plan.[176] Even Bob Shireman, the "person who shaped the

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167 *See* Miller, *supra* note 13.

168 Max Fay, *Paying Back Student Loans*, DEBT.ORG (Mar. 13, 2019), https://www.debt.org/students/how-to-pay-back-loans/.

169 Ben Luthi, *The Complete Guide to Income-Driven Repayment Plans for Federal Student Loans*, STUDENT LOAN HERO (Jan. 29, 2018), https://studentloanhero.com/featured/complete-guide-income-driven-repayment-plans-federal-student-loans/.

170 *Id.*

171 Teddy Nykiel & Anna Helhoski, *How to Spot a Student Loan Scam*, NERD WALLET (July 28, 2020), https://www.nerdwallet.com/blog/loans/student-loans/how-to-spot-student-loan-scam/ ("[B]orrowers must work full-time for the government or a 501(c)(3) nonprofit organization").

172 Chris Arnold, *Exclusive: Turf War Blocked CFPB From Helping Fix Student Loan Forgiveness Program*, NPR (Oct. 15, 2019, 10:52 AM), https://www.npr.org/2019/10/15/769326896/exclusive-turf-war-blocked-cfpb-from-helping-fix-student-loan-forgiveness-progra.

173 Luthi, *supra* note 169.

174 *Id.*

175 *Id.*

176 Allie Conti, *The Hot New Solution to Student Loan Is Just Taking Money Out of Your Paycheck*, VICE (Feb. 20, 2019, 12:00 AM), https://www.vice.com/en_us/article/mbz97n/the-hot-new-solution-to-student-loans-is-

federal aid system" cannot navigate through the IDRP's complicated system.[177] What's more, for each of these IDRPs, forgiven loans may be treated as taxable income and borrowers may pay more in interest over time.[178] As such, these flawed IDRPs are not offering a viable solution to borrowers when repaying their student loan debt.

Furthermore, the PSLF has received significant criticism for its ineffectiveness.[179] The process of submitting PSLF employment certification to confirm eligibility under the program is complex and deceiving. Wendy Feliciano, a police sergeant in New York, was told she qualified for the Public Service Loan Forgiveness program, so she worked in the police force and made every monthly payment on-time for 10-years.[180] A decade later, however, she was told that none of her years' worth of work or monthly payments counted because she did not qualify.[181] Wendy Feliciano is just one of thousands of borrowers who have been treated unfairly by the PSLF program.[182] Due to "missing paperwork" and misleading deadlines, fewer than 1% of the 30,000 people who applied for PSLF last year were granted forgiveness.[183] As such, multiple lawsuits have been filed by upset borrowers.[184]

Private student loan lenders do not offer the same repayment options that are available for federal loans, and generally, there is no such thing as private student loan forgiveness.[185] Because banks and other private financial institutions typically provide private student loans, there is no standardized repayment system because each lender may have different protocols.[186] As such, options available include refinancing the private loans, begging for deference or forbearance during hard times, or simply paying off your private loans monthly.[187]

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just-taking-money-out-of-your-paycheck (asserting that loan servicers are supposed to remind borrowers to re-certify their income, but most do not).

177 Nelson, *supra* note 161.

178 *See id.*

179 *See* Arnold, *supra* note 172.

180 *Id.*

181 *Id.*

182 *Id.*

183 Conti, *supra* note 176.

184 *See* Arnold, *supra* note 172.

185 Safier, *supra* note 165; Teddy Nykiel, *Can I Get Private Student Loan Forgiveness?*, NERDWALLET (Oct. 2, 2020), https://www.nerdwallet.com/article/loans/student-loans/private-student-loan-forgiveness.

186 *See* Safier, *supra* note 165.

187 Shannon Insler, *6 Alternatives to Private Student Loan Forgiveness (That Actually Work)*, STUDENT LOAN HERO (Jan. 24, 2020), https://studentloanhero.com/featured/looking-for-private-student-loan-forgiveness-heres-where-you-can-find-help/.

While refinancing private loans seems like a viable option, one must qualify and be approved for such relief, and this is rarely the case for student loan borrowers because of tainted credit scores.[188] During times of financial trouble, deferment and forbearance may seem helpful, but it would only temporarily afford the borrower relief.[189] Also, although the borrower may temporarily escape default, interest will likely accrue that will leave the borrower owing more than before.[190] And when private borrowers—and even federal borrowers—seek protections such as refinancing, deferment, and forbearance, they struggle because the application process is unduly complicated.[191] Furthermore, private lenders may not even offer each of these repayment solutions.[192] With monthly payments left as the only remaining option available, borrowers are likely to struggle from private loans variable interest rates that fluctuate based on the overall market rates.[193]

The already shaky student loan repayment industry has reached new lows with the predominance of bad actors and loan servicing scams.[194] A trend has immerged where deceptive loan serving companies are luring vulnerable student loan borrowers by promising debt relief, when in reality, the companies are charging borrowers for merely enrolling them in free federal programs.[195] While some of these operations may not be necessarily illegal, many have risen to deceptive trade practices.[196] The Consumer Finance Protection Bureau (CFPB) has issued several warnings about common deceptive practices when borrowers look for help with student loans.[197] For example, in 2015, Rohit Chopra, the former CFPB

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188 *See* Andrew Josuweit, *Best Banks to Refinance and Consolidate Student Loans in 2020*, STUDENT LOAN HERO (Sept. 1, 2020), https://studentloanhero.com/featured/5-banks-to-refinance-your-student-loans/ (To qualify, a student loan borrower must meet the requirements for credit score, annual income, savings, and college degree.).

189 Kat Tretina, *Student Loan Deferment and Forbearance*, STUDENT LOAN HERO (Sept. 19, 2019), https://studentloanhero.com/featured/student-loan-forbearance-and-deferment-repayment/.

190 *Id.*

191 *See* Emily Guy Birken, *Deferment vs. Forbearance: What's the Best Way to Pause Student Loan Payment*, STUDENT LOAN HERO (Aug. 16, 2019), https://studentloanhero.com/featured/deferment-vs-forbearance-student-loans/.

192 *See id.*

193 *See* Josuweit, *supra* note 188.

194 Richard Read & Teddy Nykiel, *Feds Point Fingers as 'Debt Relief' Companies Prey on Student Loan Borrowers*, NERD WALLET (June 14, 2017), https://www.nerdwallet.com/blog/loans/student-loans/debt-relief-companies-prey-student-borrowers/.

195 *Id.*

196 *See* Nykiel & Helhoski, *supra* note 171.

197 Robert Farrington, *Top Student Loan Scams*, THE COLLEGE INVESTOR (Aug. 10, 2020), https://thecollegeinvestor.com/317/top-student-loan-scams/.

student loan ombudsman, warned Google that several loan servicing companies misleading displayed online advertisements.[198] Chopra wrote, "[w]hile we have warned consumers about these scams, we are concerned that unscrupulous companies may be using aggressive advertising through search products to lure distressed borrowers."[199] These concerns were confirmed in 2017, when the Federal Trade Commission announced that student loan debtors in 11 states were scammed out of $95 million in connection to their loan repayment plans.[200]

With the current framework in shambles, employer repayment assistance programs can wake student borrowers up from this nightmare. By allowing employers to assist their employees pay down their loans tax-free, the employer's contributions could pay off the loan balance early and could potentially save the employee from interest rates, default, and devastating loan scams.

B. Equity

Equity refers to the "principle of fairness," while inequity refers to "unfair policies or programs" that contribute to inequality in intended outcomes.[201] Equitably sound policies identify disparities and introduce solutions to compensate for those disparities.[202] For the employer student loan assistance policy to be equitable, it must offer an effective solution to remedy the inequities present within the student loans crisis.[203]

The fundamental goal of student loan programs is to "make college education possible for every dedicated mind[.]"[204] And while student loan programs are successfully creating fair and equal access to college for millions of Americans, it is necessary to recognize that current repayment options available aim to effectuate relief for certain populations, while leaving disadvantaged borrowers with few viable options and high default rates.[205] This inability to create policies and options for all types of student loan debtors halts social mobility and contributes to a less diverse

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198 Nykiel & Helhoski, *supra* note 171.
199 *Id.*
200 *FTC, State Law Enforcement Partners Announce Nationwide Crackdown on Student Loan Debt Relief Scams*, FTC.GOV (Oct. 13, 2017), https://www.ftc.gov/news-events/press-releases/2017/10/ftc-state-law-enforcement-partners-announce-nationwide-crackdown.
201 *Equity*, THE GLOSSARY OF EDUCATION REFORM (last updated Apr. 21, 2016), https://www.edglossary.org/equity/.
202 *Id.*
203 *See* Miller et al., *supra* note 9.
204 Haughwout et al., *supra* note 30.
205 *Id.*

workforce.[206] That said, enabling employers to contribute to employee's student loan payments tax-free has the direct opposite effect.[207]

As the data of the heterogeneity of student loan borrowers demonstrates, borrowers are equally as likely to be from lower-income zip codes than higher-income zip codes, with relatively similar outstanding student loan balances.[208] However, it is during repayment that the heterogenous outcomes for student borrowers differ with a greater number of women, racial minorities, and older borrowers having a tougher time paying off their loans.[209] This assistance solution will provide these disadvantaged populations a way of staying up to date with their monthly payments while preserving what they can of their paycheck.

Additionally, this proposal is unique because it benefits essentially the 44.7 million student loan debtors who are currently in the workforce or who are seeking employment—the employment that was the intended goal of the education in the first place. Among the employers who currently offer the student loans benefit program, all types of industries and professions are represented and offer their employees student loan assistance.[210] For example, companies like Hulu, Staples, Estée Lauder, and Sotheby's, none of which are in the same industry, are all offering to assist their employees with repaying their student loan debt. [211] Even the health care industry has quickly adopted this benefit "to lure" health care professionals.[212] The assistance is not limited to "high-paying industries" or particularly "lucrative jobs"[213]—so whether an individual is a sale's representative or an engineer, assistance is already offered from a wide range of employers.[214] Some companies are even offering assistance to employees who have borrowed for spouses and children.[215] However, what has become apparent is that a majority of the employers who already

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206 Patricia McGuire, *Risks and Costs in the Quest for Social Mobility through Higher Education*, AAUP (2020), https://www.aaup.org/article/risks-and-costs-quest-social-mobility-through-higher-education#.XkMS6i2ZPOQ.

207 Hirsch, *supra* note 74.

208 Haughwout et al., *supra* note 30.

209 Fontenot, *supra* note 21.

210 David Klein & Edmund Murphy III, *The student debt burden: Congress is closer than you think to solving it*, THE HILL (June 18, 2019, 8:50 AM), https://thehill.com/blogs/congress-blog/politics/449020-the-student-debt-burden-congress-is-closer-than-you-think-to; *see also* Kathryn Mayer, *Employees want student loan benefits—but employers aren't sold yet*, BENEFIT NEWS (May 8, 2019, 3:01 PM), https://www.benefitnews.com/news/employers-arent-sold-on-student-loan-benefits.

211 Mayer, *supra* note 210; Powell, *supra* note 7.

212 Powell, *supra* note 7.

213 Klein & Murphy, *supra* note 210.

214 *See id.*

215 Tergesen, *supra* note 83.

offer loan assistance seek to offer the assistance to all, regardless of the employee's particular circumstance.[216]

With a wide array of employers offering assistance, student loan borrowers across all genders, races, income levels, ages, and socio-economic backgrounds will find a solution, especially those who are disproportionally affected by student loan debt. The employer assistance programs don't only benefit individual borrowers; they benefit the economy as a whole. As loans are paid off faster or in smaller month-to-month amounts, borrowers have more money to spend on goods and services, remain active members of the economy, and invest in their future wealth. The more companies to offer such programs the greater the benefit. Amending the tax code will motivate more companies to adopt these programs, and the economy will reap the benefits. This will expand the range of employers offering assistance at all different levels of employment.

C. Scope of Impact

Allowing employers to assist their employees repay their student loans tax-free offers a simple solution that is equitable for all student loan debtors. And while $5,250 of tax-free assistance per-employee per-year may seem minimal when compared to the $1.6 trillion of student loan debt owed, it would in reality have a significant impact on millions of Americans struggling with loans and would have a profound impact on employers and the economy.

i. The Employee

From the outset, the extent the employee will benefit from allowing employers to assist their employees in student loan repayment may seem rather obvious. Part of this impact is obvious— student loan debtors are receiving help to repay their debt. For the borrowers most affected by their debt, they will no longer be forced to choose between payments, rent, heat, or food. But the extent of how far this assistance reaches for others and the unique impact it has on borrower's lives is far less obvious. If amended as tax-free, employer assistance will have a significant impact on the financial security and overall well-being of millions of Americans.

As stated, the majority of borrowers are graduating with five-to-six figures of student loan debt with entry-level salaries that barely cover the accumulated interest.[217] Student loan borrowers are forced to dedicate

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[216] Lila MacLellan, *It's time to talk about the mental health effects of student loan debt*, QUARTZ AT WORK (Oct. 28, 2019), https://qz.com/work/1732070/the-emotional-toll-of-student-loan-debt-at-work/.

[217] *See* Tanzi & Dmitrieva, *supra* note 66.

large sums of their paychecks to their monthly loan payments, leaving little left to save and spend as they please. However, once an employer assists in payments, this will lessen the burden month-to-month for the employee and will help lower their debt faster. The assistance will provide a safety net for borrowers who hit an unexpected bump in the road that requires financial attention—an unexpected medical issue or a car breaks down, for example. This will lessen the likelihood of default where the government could have otherwise taken up to 15% of your paycheck through wage garnishment.[218] And for borrowers with built up interest, this will be especially helpful when paying off the principal balance of the loan. [219] In turn, borrowers will be able to buy a house, get married, have a child, and save for retirement sooner.

Not only will borrowers start their financial independence in a better place, they will also start their professional lives on a more positive note. Newly graduated borrowers who prefer careers in the corporate or private sector will no longer feel forced into public service or government jobs to qualify for the Public Service Loan Forgiveness program, and graduates who want to work in the public sector or for a non-profit will not feel obligated to land a lucrative position at a high paying job. Instead of employees feeling forced into careers for the wrong reasons, they will be free to choose their employer based on their passions and interests.

ii. The Employer

The impact student loan assistance will have on the employee will instantaneously reflect the impact felt by the employer. When employees are happy, business thrives. Studies show that when employees are happy, their productivity levels rise well above that of unhappy employees.[220] And for the unhappy employees who cite financial stress as a significant contributing factor to their happiness, these employees not only have lowered productivity levels, but also have increased absences and more healthcare claims.[221] Therefore, the most immediate impact felt by employers will be a more productive, present, and healthy workforce.

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218 Kelsey Sheehy, *Student Loan Wage Garnishment: How Default Can Gut Your Paycheck*, NERDWALLET (Aug. 24, 2020), https://www.nerdwallet.com/article/loans/student-loans/wage-garnishment-student-loan-default.

219 *See* Hoffower, *supra* note 68 ("Though [borrower] has a lowered interest rate of 7.25%, his loan balance has grown by $148,948, escalating to over $1 million today.").

220 Camille Preston, *Promoting Employee Happiness Benefits Everyone*, FORBES (Dec. 13, 2017, 8:00 AM), https://www.forbes.com/sites/forbescoachescouncil/2017/12/13/promoting-employee-happiness-benefits everyone/#770b00fa581a.

221 Rosensweig, *supra* note 11.

In addition to a happier and more productive workforce, an employer can attract a more talented and skilled workforce. Graduates and prospective hires are seeking out student loan debt assistance from potential employers now more than ever.[222] In fact, 78% of most workers with student loan debt wish that their current workplace offered student loan repayment assistance.[223] Many employers see the incredible edge that they can have against competing employers by offering this assistance to new hires and current employees.[224] And while the demand for student loan assistance is abundant, so is the demand for higher-level skills and knowledge in the nation's tight job market.[225] With unemployment rates at a historic low, the war for talent is fierce. This is especially true for smaller companies that struggle to compete with larger companies for top talent. Offering assistance is a creative public relations opportunity for these employers to attract the best of the best. By luring in talented prospective hires with student loan assistance, these employers are meeting the demands of the modern workforce while beating out competing employers who have yet to adopt such a program. Moreover, employers offering assistance have a great potential of attracting individuals who struggle with student loan debt the most—women, minorities, and individuals with dependents. The most talented and skilled of these groups will flock to employers offering assistance. In turn, this will spur employer diversity initiatives and lead to a more creative and innovative company workforce.

However, the program goes beyond attracting diverse talent—it keeps the most talented around. Approximately 86% of employees say they would commit to an employer for 5 years if they offered to assist with student loan repayment.[226] As such, this program is extremely advantageous to employers because turnover is a serious financial issue for a company as the average cost of an employee leaving a company is

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[222] *See id.;* Megan Leonhardt, *Nearly 90% of recent grads want jobs with this one perk—but here's how to tell if it's worth it*, CNBC (updated May 15, 2019, 12:16 PM), https://www.cnbc.com/2019/05/15/questions-you-should-ask-about-student-loan-repayment-benefits.html (90% of workers with student loan debt would like to work for a company that provided assistance).

[223] Powell, *supra* note 7 (Statistic is from a recent Common Bond report that surveyed over 1,500 employees at the age of 22 and above).

[224] Jaime Catmull, *How Businesses Are Helping Their Employees Ditch Student Loan Debt*, FORBES (Dec. 18, 2018, 12:24 PM), https://www.forbes.com/sites/jaimecatmull/2018/12/18/how-businesses-are-helping-their-employees-ditch-student-loan-debt/#3370c6e52257.

[225] *See* Shann Grewal, *5 reasons employers should offer student loan repayment benefits*, BENEFIT NEWS (Oct. 17, 2019, 1:29 PM), https://www.benefitnews.com/list/5-reasons-employers-should-help-with-student-loans.

[226] *Id.*

nearly one-third of that employee's annual earning.[227] Fidelity cites that adopting such a program has led to a remarkable 75% reduction in employee turnover.[228]

Also, employers are contributing to a more skilled and intelligent employee pool for tomorrow's workforce. SHRM President and CEO Johnny Taylor, Jr., explains that in today's workforce there exists a large "skills gap" that holds back both employees and workers.[229] However, "[w]hen employers are able to help workers pay off student debt, more people will have confidence to pursue higher education and be better prepared to fill high-skilled fields."[230] And with 40% of student loans already being used to afford graduate and professional school,[231] the number of highly skilled professionals will continue to increase for tomorrow's workforce.

In addition to the impact the student loan assistance will have on business for the employers, it will also serve as a substantial emotional reward for employers and employees. The impact of a program like this goes beyond financial benefits—these employers are meeting the needs of the modern workforce and are creating happier employees, workplaces, and communities.

iii. The Economy

The potential for nation-wide impact is just as abundant because the rising debt burden impedes economic growth for the individual and the country. Jerome Powell, the Federal Reserve Chairman, confirms that the exasperating student loan debt is a significant factor that is holding back the country's economic growth.[232] Therefore, when borrowers become liberated of their loans earlier than expected because of their employer's assistance, the economy will feel the impact.

Naturally, the less borrower's paychecks are dedicated towards loan payments or the faster their loans are paid off, the more wealth borrowers accumulate. With more wealth comes the liberty to contribute to the most prominent markets in the U.S. economy. Individuals can stop holding off financing a mortgage, purchasing luxury items, going on vacations, buying

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227 *Id.*

228 Tergesen, *supra* note 83.

229 Miller, *supra* note 13 (SHRM is fighting hard for tax reform. On March 20, 2019, SHRM members lobbied lawmakers on Capitol Hill to co-sponsor the Employer Participation in Repayment Act (H.R. 1043).).

230 *Id.*

231 *See* 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/.

232 Merrick, *supra* note 135.

stocks, and otherwise making financial decisions that feed the economy. Furthermore, entrepreneurship and small business formation that are now stifled by the student loans crisis, [233] will take off once employers help employees get on their feet. Entrepreneurs spur economic growth by creating new products and services in already existing markets or open the doors to completely new markets.[234] Small businesses improve local communities by fostering their economies and providing opportunities for neighbors.[235] However, burdensome student loan balances redirect the means necessary for successful entrepreneurship and small businesses towards monthly loan payments. This diversion can be lessened if more student debtors have their loans paid off earlier. Enabling employers to chip away at the student loan crisis at large will allow the U.S to continue to compete globally with a strong workforce and solid economy.

VI. LIMITATIONS, CRITICISM, AND RECOMMENDATIONS

There exist few limitations to allowing employers to assist their employees with student loan repayment. Three of the most notable limitations and critiques include the principal balance issue, potential free-riders, and angered non-student loan debtors. Although each limitation poses valid concern, this article gives several recommendations for effectively addressing these potential negative effects.

A. Principal Balance Issue

Because student loan debt comes in all shapes and sizes—low or high monthly payments, unpaid interest or no interest at all, federal or private loans—critics argue that while generous in retrospect, employers may leave their employees worse off, or at least with higher monthly payments.[236] In other words, although the employer's intention may be to assist their employee in paying off the principal balance of their loan, this may not be the case.

Under a standard repayment plan, loan payments first cover outstanding fees, then to outstanding accrued interest, and finally to the

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233 *See* Kirkham, *supra* note 103; *see also* Kraiem, *supra* note 21, at 727.

234 Shobhit Seth, *Why Entrepreneurship Is Important to the Economy*, INVESTOPEDIA (July 22, 2019), https://www.investopedia.com/articles/personal-finance/101414/why-entrepreneurs-are-important-economy.asp.

235 Devra Gartenstein, *Reasons Why Small Businesses are Important*, CHRON (Jan. 28, 2019), https://smallbusiness.chron.com/reasons-small-businesses-important-54131.html.

236 Ross Riskin, *Evaluating the Effectiveness of Employer-Provided Repayment Assistance Programs*, ONEFPA.ORG: JOURNAL OF FINANCIAL PLANNING at 36 (Feb. 2019), https://www.onefpa.org/journal/Pages/FEB19-Evaluating-the-Effectiveness-of-Employer-Provided-Student-Loan-Repayment-Assistance-Programs.aspx.

principal balance.[237] If an employer makes a payment for an employee in excess of what is due, the excess will carry over to the next month's payment and will not reduce the principal balance of the loan unless a written request is submitted.[238] Employees with high unpaid interest rates pose the most significant risk for this.[239] Furthermore, employees who have payment plans under the IDRPs pose a similar potential for issues.[240] If employees under these programs have their employer pay in excess of their monthly loan obligation, they will be in "paid ahead status" which will consider any payment made as not qualified under the program.[241] If the borrower does not submit the written request mentioned above, the next month when the employee or employer goes to pay the remaining balance, the remaining balance will not be a qualified payment.[242]

A similar problem results under IDRPs when the employee's income tax increases because of their employer's contribution.[243] As previously mentioned, any contribution an employer makes to an employee's monthly payment will be counted towards their taxable income.[244] As a result, when these borrowers re-certify their income it will have increased because of their employer's contributions.[245] Under IDRPs, an increased income results in higher monthly payments.[246] However, if the tax code is amended, the contributions will no longer be counted towards an employee's taxable income.[247]

To avoid principal balance issues, employers—or program managers the employer hires—should be in contact with the respective loan servicer to ensure that the instructions for the repayment plan are fully understood. Employers should also encourage employees to be honest about any unpaid interest so that employers and financial advisers can set the monthly payments accordingly and contract around potential issues.

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237 *Id.*

238 *Id.*

239 *Id.*

240 *Id.*

241 *Id.*

242 *Id.*

243 *See Income Driven Repayment Options*, NAT'L CONSUMER L. CTR., https://www.studentloanborrowerassistance.org/repayment/payment-plans/income-based-options/ (last visited Feb. 14, 2020).

244 *See* Hirsch, *supra* note 74.

245 *See Nat'l Consumer L. Ctr.*, *supra* note 243 (explaining that there is an initial calculation that is conducted based on the borrower's income and family size; however, payments can be adjusted annually based on changes in income and family size).

246 *See id.*

247 Friedman, *supra* note 7.

B. Free Riders

Critics also warn that enabling employers to assist in student loan repayment creates an incentive for more students to acquire more loans and gives student loan debtors an easy way out.[248] The worry is that students will take out more loans to go to the more expensive option for college or drag out their loans to stay in college for longer in reliance on the growing popularity of employers assisting in loan payments.[249] Similarly, critics argue that if bankruptcy courts allow student borrowers to discharge their student debt, the change will pave an easy escape route for borrowers.[250] Consequently, there would be an influx of student loans and a slew of adversary proceedings in bankruptcy courts.

As such, employees may feel that they won the golden ticket when their employer matches monthly payments while they slack off, meet the bear minimum at work, or even decide to go back to school and acquire more loans. For example, what should happen to an employee who agreed to remain at a company for a set of years to be eligible for assistance, voluntarily decides to terminate their position and then leaves the company, or an employee who is involuntarily released from the company due to misconduct or poor performance? However, safeguards must be implemented to protect employers under these circumstances. Employers should create service agreements and legally binding contracts to hold employees accountable. The OPM requires employers who repay federal student loans to have each employee sign a service agreement.[251] If an employee voluntarily leaves a company or is involuntarily asked to leave, it must reimburse the employer for all benefits received.[252] This is a logistical consideration for employers to consider when structuring their programs.

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248 *See* Lucas, *supra* note 14.

249 *See id.*

250 *See* Carron Armstrong, *Common Myths About Filing Bankruptcy*, THE BALANCE (last updated June 25, 2019), https://www.thebalance.com/common-myths-about-filing-bankruptcy-4160969; *see also* Steven Chung, *A Senator Proposes to Allow Student Loans to be Dischargeable in Bankruptcy—But is That a Good Idea?*, ABOVE THE LAW (June 12, 2019), https://abovethelaw.com/2019/06/a-senator-proposes-to-allow-student-loans-to-be-dischargeable-in-bankruptcy-but-is-that-a-good-idea/ ("You borrowed the money so you should do whatever it takes to pay it back like a responsible, dignified human being. Otherwise, those who sacrificed to pay off their loans look like suckers. And there is usually no collateral for creditors to attach to minimize loss.").

251 *See Pay & Leave*, *supra* note 136.

252 *See id.*

C. Non-Student Loan Debtors

Finally, some may argue that by allowing employers to assist their employees in paying back student loans, they are rewarding individuals who take out education loans while punishing those who did not decide to obtain loans. Maybe the employee without student loans would have obtained a higher degree or gone to the more expensive school. And while this argument is difficult for many compensation experts to justify,[253] employers can do many things to even the playing field. For example, employers could give these employees more vacation days or offer them free dental care.

V. LET EMPLOYERS HELP

Despite the political stalemate present in this hyper-partisan Congress, policymakers must divert their attention to the student loan crisis before it's too late. By 2023, approximately 40% of all student loan borrowers are expected to default.[254] As such, 2023 could be the year that pushes the nation into the next recession and officially shrinks the middle class.[255]

A. Fundamentally Broken

To date, the federal government has the burden of being the largest holder of non-revolving consumer debt in America.[256] On top of this unsurmountable burden, the government has failed to offer safe and effective student loan repayment solutions to fix these broken systems or to find alternative solutions to remedy their failures.[257] Congress has already allocated large sums to correct the federal repayment systems that has been a complete waste.[258] For example, in recognition of the glaring

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253 *See* Lucas, *supra* note 14.

254 Zack Friedman, *40% Of Borrowers May Default On Their Student Loans*, FORBES (Nov. 5, 2018, 7:32 AM), https://www.forbes.com/sites/zackfriedman/2018/11/05/student-loans-default-strategy/#5e8707da17c6.

255 *See* Terry Turner, *Student debt will be the next bubble to burst. Tell Congress to forgive student debt.*, CHANGE.ORG, https://www.change.org/p/student-debt-will-be-the-next-bubble-to-burst-tell-congress-to-forgive-student-debt (last visited Oct. 1, 2020).

256 Miller, *supra* note 61.

257 *See* Michael Stratford, *Top DeVos aid quits for Senate bid, endorses canceling student loan debt,* POLITICO (Oct. 24, 2019, 4:05 PM), https://www.politico.com/news/2019/10/24/devos-wayne-johnson-loans-debt-education-056792.

258 *See* Jessica Dickler & Annie Nova, *This fix to public service loan forgiveness hasn't helped very much,* CNBC (Sept. 5, 2019, 12:26 PM), https://www.cnbc.com/2019/09/05/this-fix-to-public-service-loan-forgiveness-hasnt-helped-very-much.html.

issues with the PSLF program, Congress authorized $700 million to reform the program.[259] The $700 million was allocated to expand the program to include more borrowers and give a second chance to debtors who had already been denied loan forgiveness due to repaying their debt in a disqualifying plan. Only 1% of applicants have been approved under this expanded program.[260] By allocating attention and resources haphazardly, Congress is merely putting lipstick on a pig.

B. New Solutions

Instead of continuing to reshape current loan programs, Congress needs to attack the crisis in a different fashion. However, with most of all outstanding student debt being attributed to the federal government, it is astonishing that Congress is not grabbing at any helping hand that offers to alleviate some of the government's burden of solving the student loan crisis. Wayne Johnson, who oversaw the Education Department's student loan portfolio, found it astonishing as well noting that, "[i]f this was a medical problem, it would be a pandemic, and the whole country would be figuring out how to inculcate against it."[261] Thus, similar to a vaccine providing a hopeful solution in a pandemic, Congress must find that same hopefully solution in this student loans crisis.

The crisis is definitely not a result of a lack of new solutions being offered as there exists a larger movement—beyond the private sector—of other sectors of society petitioning for Congressional reform in order to do their part. Bankruptcy courts are one example of a sector that has petitioned Congress to effectuate change that is necessary for courts to tackle the student loan crisis.[262] Policymakers are proposing reform to stringent bankruptcy laws so that student loan debt can be discharged in appropriate circumstances.[263] Currently introduced before Congress is the Student Borrower Bankruptcy Relief Act of 2019, which is one of many pieces of legislation attempting to combat student loans.[264] Senator John Katko shares that, "Americans struggling financially should have the

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259 *Id.*

260 *Id.*

261 Geoffrey Kabaservice, *Could the US student debt crisis unite Republicans and Democrats?* THE GUARDIAN (Oct. 28, 2019), https://www.theguardian.com/commentisfree/2019/oct/28/could-the-us-student-debt-crisis-unite-republicans-and-democrats

262 *See* Jillian Berman & Andrew Keshner, *Bankrupt student loan borrowers could finally get a break*, MARKET WATCH (Apr. 15, 2019, 9:24 AM), https://www.marketwatch.com/story/bankrupt-student-loan-borrowers-could-finally-get-a-break-2019-04-12.

263 *See id.*

264 Student Borrower Bankruptcy Relief Act of 2019, S. 1414, 116th Cong. (2019).

option to discharge their student loans during bankruptcy as a last resort[.]"[265] In 1985, Congress enacted the 11 U.S.C. 523(a)(8) but left the "undue hardship" open to interpretation.[266] A precedent has developed in the aftermath that is often called the "Brunner Test," which makes it nearly impossible to establish an undue hardship burden.[267] However, in the wake of the rising levels of student loan debt, bankruptcy courts have begun to question whether a less stringent standard should be applied.[268] In October of 2019, the U.S. Bankruptcy Court in the Middle District of Florida went so far as to create a program for debtors and their student loan lenders to reach repayment agreements through a student loan management program.[269]

Furthermore, many other circuits have heroically trudged ahead despite Congressional action, similar to employers offering student loan assistance without tax advantages.[270] Take Kevin Rosenberg, a former attorney once buried in student loan debt, for example.[271] Kevin graduated college and law school with $220,000 of federal loans and $180,000 of private loans.[272] After struggling with private lenders who would lose his paperwork and ignore his cries for assistance, he defaulted under his IBRP,

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265 Annie Nova, *It Could Become Easier for People with Student Debt to File for Bankruptcy*, CNBC (May 11, 2019, 9:00 AM), https://www.cnbc.com/2019/05/10/it-could-become-easier-for-student-loan-borrowers-to-file-bankruptcy.html.

266 11 U.S.C. § 523(a)(8) (2019).

267 *See* Brunner v. New York State Higher Educ. Servs. Corp., 831 F.2d 395 (2d Cir. 1987) (The Brunner test requires a showing that "1) the debtor cannot maintain, based on current income and expenses, a "minimal" standard of living for the debtor and the debtor's dependents if forced to repay the student loans; 2) additional circumstances exist indicting that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and 3) the debtor has made a good faith effort to repay the loans."); *see also Bankruptcy*, NAT'L CONSUMER L. CTR., https://www.studentloanborrowerassistance.org/bankruptcy/.

268 *See* NAT'L CONSUMER L. CTR., *supra* note 267.

269 Second Amended Administrative Order Prescribing Procedures for Student Loan Management Program, FLMB-2019-4 (2019) (The "portal" was created through the student loan management program which is "a forum for debtors and lenders to discuss consensual repayment options for student loans. The goal of the [program] is to facilitate communication; exchange information in an efficient and transparent manner; and to encourage the parties to finalize a feasible and beneficial agreement under the administrative oversight of the United States Bankruptcy Court for the Middle District of Florida.").

270 *See* Berman & Keshner, *supra* note 262.

271 Steven Chung, *An Interview with Kevin Rosenberg Where He Explains How He Successfully Discharged His Student Loans in Bankruptcy Court*, ABOVE THE LAW (Jan. 15, 2020, 10:32 AM), https://abovethelaw.com/2020/01/an-interview-with-kevin-rosenberg-where-he-explains-how-he-successfully-discharged-his-student-loans-in-bankruptcy-court/?rf=1.

272 *Id.*

which greatly affected his credit score.[273] This meant that Kevin was unable to obtain loans to expand his business or even refinance his already existing loans.[274] Helpless, Kevin decided to file a *pro se* Chapter 7 bankruptcy petition.[275] Over one year later, the judge presiding over Kevin's case granted his summary judgement motion and discharged his student loan debt because he or she found that he met the Brunner test.[276] Stories like Kevin's should encourage Congress to allow businesses to make up for current repayment program's and bankruptcy court's shortcomings.

C. Correct Solution

While many solutions to end the student loans crisis have been proposed by politicians on both sides of the aisle, these solutions are costly and very complex. Unlike restructuring the education system or granting a universal bailout of all student loan debt, the employer assistance tax-free program would require little of the government. In terms of financial contributions, all that is needed from the federal government is to exclude the repayment assistance from taxes. According to the Joint Committee on Taxation, making employer student loan assistance tax-free is estimated to cost approximately $3.6 billion over 10 years, [277] as opposed to canceling $640 billion worth of debt. As the federal government and taxpayers are already suffering financially from defaulted loans and forgiven public service and income-driven plans, changing the tax code to encourage employer loan assistance at this small cost will lower default rates and improve debt repayment rates nation-wide so that the federal government will get paid more. Congress must consider fast-acting and effective solutions to aid student loan debtors as soon as possible.

VI. CONCLUSION

If Congress does not pass legislation soon that aims towards eliminating student loans, the burden of such loans will continue to fall in the hands of American taxpayers and, in the worst-case scenario, will lead to the nation's next recession. While it is clear that there does not exist a one-size-fits-all solution to end the student loan crisis, Congress should enable and encourage the private sector to help in any way. By accepting a helping hand from American employers under the tax-free program,

273 *Id.*
274 *Id.*
275 *Id.*
276 *Id.*
277 Friedman, *supra* note 7.

Congress is relieving millions of employees, revitalizing the economy, and reinvigorating the deteriorating sentiment of the American Dream. This is a true win for employees, employers, and the federal government that comes at a small cost for taxpayers and lawmakers. While tax-free employer assistance programs may not confront the student loans crisis on a macroeconomic scale, they do address the forces that led us here and creates a viable solution that chips away at the crisis—one employer at a time.