

# STUDENT DEBT AND THE (DE)STABILIZATION OF HIGHER EDUCATION

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This Article examines why student loans became central to higher education finance in the United States and how they have undermined their own centrality over time.

At the core of the story is student loans' role as coalition stabilizers. Several features of student loans made them effective at uniting diverse constituencies in favor of expanded federal funding for higher education (even as support for other forms of federal funding dried up in the 1980s). Three features were especially important: their structure as demand-side subsidies that avoided federalism concerns and conflicts over university governance; their "political lightness" as credit programs that satisfied fiscal hawks and could be characterized as either government largesse or individual responsibility; and their creation of a sophisticated lobbying industry—including servicers, guaranty agencies, and for-profit colleges—that advocated for their perpetuation.

However, using loans to stabilize federal higher education support came with significant costs. The insider-driven politics of student loans involved corruption and fraud. The ideology of individual investment obscured structural labor market inequalities. The focus on demand-side subsidy contributed to a market dynamic that made higher education more unequal and more vocationalized.

By the 2010s, these costs began to destabilize the very coalitions student loans had assembled: hidden costs became increasingly evident, scandals delegitimized insider politics, and growing borrower distress fueled an outsider politics against student debt. The COVID pandemic accelerated these dynamics, leaving the politics of higher education finance profoundly unstable.

Drawing on scholarship from history, political science, sociology, economics, and legal studies, this Article provides a new framework for understanding the political economy of student loans—one that explains their endurance without treating them as inevitable. Along the way, the Article offers insights into the conditions under which higher education finance might be restabilized, whether through a reformed loan program or through a transition to more direct institutional funding and grants.

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## STUDENT DEBT AND (DE)STABILIZATION

### Introduction

Higher education became a mass phenomenon in the United States over the course of the first two-thirds of the Twentieth Century. Between 1900 and 1970 total enrollment went from around 200 thousand to around 8 million.<sup>2</sup> This was not merely a matter of population growth. Whereas before 1900 no more than one percent of 18- to 24-year-olds were in college in any given year, by 1970 that number was sixty percent.<sup>3</sup>

Student loans played almost no role in this expansion. Indeed, they hardly existed.<sup>4</sup> Some banks helped the scions of wealthy families finance their educations as loss-leading services, and a couple elite institutions set up nominal lending facilities that, because of hands-off collection practices, functioned more like grants.<sup>5</sup> The funding for expanding universities came from private donations and massive increases in expenditures from state and federal governments. State-chartered public universities were the major growth engines, and their expansion was largely funded through increased state expenditures, which made use of growing tax bases and rates.<sup>6</sup> The federal government also increased its role, with a surge in research funding during and after World War II, with GI Bill's commitment to cover tuition for veterans, and then with an evolving series of means-tested grant programs that eventually turned into Pell Grants in 1972.<sup>7</sup>

Then, during the last third of the Twentieth Century, mass higher education became dependent on debt. The expansion of loans was made possible entirely by intervention of the federal government. Federal student loans were first created in 1958 and made into a permanent program in 1965.<sup>8</sup> They were initially designed as small supplements to a system fundamentally based on direct funding to institutions and grants to lower-income students who could not cover even modest tuition charges.<sup>9</sup> However, in the 1980s, the growth in college costs began to accelerate,<sup>10</sup> state governments became less reliable funders (after a series of "tax revolts", among

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<sup>2</sup> NAT'L CTR. FOR EDUC. STATISTICS, 120 YEARS OF AMERICAN EDUCATION: A STATISTICAL PORTRAIT 75 (Thomas D. Snyder ed., 1993) [hereinafter STATISTICAL PORTRAIT]

<sup>3</sup> Claudia Goldin and Lawrence F. Katz, *The Shaping of Higher Education: The Formative Years in the United States, 1890-1940*, 13 J. ECON. PERSPECTIVES 37, 41 (1999).

<sup>4</sup> See John R. Brooks & Adam J. Levitin, *Redesigning Education Finance: How Student Loans Outgrew the "Debt" Paradigm*, 109 Georgetown L.J. 5, 17-18 (2020) (reporting that around \$3.7 million in loans were outstanding in 1947 and \$13.5 million in 1957).

<sup>5</sup> ELIZABETH TANDY SHERMER, *INDENTURED STUDENTS* 25-26 (2011) (noting that only one percent of students received loans from colleges on generous terms and non-payment rates were high).

<sup>6</sup> Goldin & Katz, *supra* note 3, at 47-50.

<sup>7</sup> STATISTICAL PORTRAIT, *supra* note 2, at 71.

<sup>8</sup> National Defense Education Act of 1958, Pub. L. No. 85-864, § 204(4)(B), 72 Stat. 1580, 1584; Higher Education Act of 1965, Pub. L. 89-329, § 431, 79 Stat. 1219, 1245. See Luke Herrine, *The Law and Political Economy of a Student Debt Jubilee*, 68 BUFFALO L. REV. 281, 294-98 (2020).

<sup>9</sup> SHERMER, *supra* note 5, at 155 (noting that the NDEA of 1958 was "written by members of Congress who did not really believe in loans, enacted by a Congress the majority of whose members did not believe in federal aid to education, and administered by a Secretary of Health, Education, and Welfare who, at the outset at least, did not believe that students would borrow"), 163-201; RYANN LIEBENTHAL, *BURDENED* 44-54 (2024).

<sup>10</sup> ROBERT B. ARCHIBALD & DAVID H. FELDMAN, *WHY DOES COLLEGE COST SO MUCH?* 83 (2011).

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other factors),<sup>11</sup> and tuition crept steadily up.<sup>12</sup> Especially as more students from lower-income families began to apply to college, federal student aid<sup>13</sup> became more important to making college affordable.<sup>14</sup> At the same time, federal loans began to exceed need-based grants.<sup>15</sup> By the 2010s, \$80 billion in loans were flowing to students each year, twice as much as was being issued in federal grants.<sup>16</sup> Indeed, loans accounted for 41% of *all* financial aid to students, including that from state grant programs and institutional scholarships.<sup>17</sup>

The shift to a loan-based system of university funding was part of a series of changes that made higher education less accessible and more hierarchical, contributing to other inequality-reproducing dynamics in labor markets and reducing the US's comparative advantage globally. The US began to fall behind other countries in producing college graduates.<sup>18</sup> It did so even as technological advances combined with outsourcing, offshoring, and deregulatory labor market policies increased demand for workers with degrees, which increased the income and wealth inequality between those with and without a college education.<sup>19</sup> Meanwhile, the university system became increasingly unequal—with highly advantaged students sorting into to wealthy colleges and disadvantaged students sorting into under-resourced and/or predatory colleges.<sup>20</sup> A growing number of colleges faced financial precarity and failure, as did a growing number of former students.<sup>21</sup> Financial distress became an

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<sup>11</sup> Robert B. Archibald & David H. Feldman, *State Higher Education Spending and the Tax Revolt*, 77 J. HIGHER EDUC. 618 (2016). *See also* Sophia Laderman, Kristen Cummings, Jason C. Lee, David Tandberg, & Dustin Weeden, *Higher Education Finance in the United States: Sources of Funding and Impacts of State Investments*, in *COMPARATIVE HIGHER EDUCATION POLITICS* (Jens Jungblut et al., eds., 2023); JENNIFER A. DELANEY, *VOLATILITY IN STATE SPENDING FOR HIGHER EDUCATION* (2023); Erin Whinnery & Tom Keily, *Paying for College: The Latest Trends in Performance-Based Funding* (Educ. Comm'n of the States, Feb. 20, 2024), <https://ecs.org/paying-for-college-the-latesttrendsin-performance-based-funding>.

<sup>12</sup> LUKE HERRINE, *THE NEOLIBERALIZATION OF HIGHER EDUCATION: CHANGES IN STATE FUNDING AND GOVERNANCE THROUGHOUT THE 20TH CENTURY* (Roosevelt Inst. Rpt., Sep. 2025); [https://nces.ed.gov/programs/digest/d23/tables/dt23\\_330.10.asp](https://nces.ed.gov/programs/digest/d23/tables/dt23_330.10.asp)

<sup>13</sup> Student aid from multiple sources became more important, and this period also saw a growth in state-level and institution-level scholarship programs. Our focus here will be on federal aid, however.

<sup>14</sup> On identity characteristics, see [https://nces.ed.gov/programs/digest/d23/tables/dt23\\_303.10.asp](https://nces.ed.gov/programs/digest/d23/tables/dt23_303.10.asp); [https://nces.ed.gov/programs/digest/d22/tables/dt22\\_306.20](https://nces.ed.gov/programs/digest/d22/tables/dt22_306.20). On income, see [].

<sup>15</sup> John R. Brooks, *Income-Driven Repayment and the Public Financing of Higher Education*, 104 GEO. L.J. 229, 248 (2016).

<sup>16</sup> College Board, *Trends in College Pricing and Student Aid 2024* 40 (fig. SA-9A) (2024), <https://research.collegeboard.org/media/pdf/Trends-in-College-Pricing-and-Student-Aid-2024-ADA.pdf>.

<sup>17</sup> *Id.*

<sup>18</sup> SUZANNE METTLER, *DEGREES OF INEQUALITY* 22 (2014).

<sup>19</sup> CLAUDIA GOLDIN & LAWRENCE F. KATZ, *THE RACE BETWEEN EDUCATION AND TECHNOLOGY* 291-93 (2008); [other labor market econ; Jerry Davis]

<sup>20</sup> Zachary Bleemer & Sarah Quincy, *Changes in College Mobility Pipeline Since 1960* (NBER Working Paper 33797, May 2025), <https://www.nber.org/papers/w33797>; BARRET J. TAYLOR & BRENDAN CANTWELL, *UNEQUAL HIGHER EDUCATION* (2019); Jonathan D. Glater, *To the Rich Go the Spoils*, 43 J.C. & U.L. 195 (2018).

<sup>21</sup> On institutional precarity see TAYLOR & CANTWELL, *supra* note 20, at 25-33; Matthew A. Bruckner, *Bankrupting Higher Education*, 91 Am. Bankr. L.J. 697 (2017). On student precarity, see, e.g., Edward Nilaj, Laura Beamer, Sultana Fouzia, Jack Landry, Mike Pierce, Sérgio Pinto, & Marshall Steinbaum, *Student Debt Cancellation: Evidence from Credit Reporting Panel Data* (JFI Working Paper, Jan. 15,

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increasingly important reason for students to drop out and worries about that potential became a disincentive to enroll.<sup>22</sup> Household debt burdens increased, which increased interpersonal stress and dampened macroeconomic demand.<sup>23</sup> Opportunistic profiteers—lenders, for-profit colleges, servicers, debt collectors, debt relief companies, etc—found ample opportunity to flourish via fraud, exploitation, and bribery.<sup>24</sup>

So why did the federal government encourage the expansion of student loans?

It has sometimes been suggested—by Jake Brooks and Adam Levitin, for example—that the growth of student loans reflects a hard limit on how far our “political culture that is averse to transfers and taxes” will go in funding education (and perhaps other quasi-public goods like healthcare and legal services).<sup>25</sup> Although the public could tolerate the amount of spending (and taxation) necessary to fund higher education in first part of the last century, once a mass system of higher education was established and once cost started to accelerate, the limits of public tolerance were reached.<sup>26</sup> But demand for higher education remained high and the social benefit did as well. By “framing educational financing as a matter of contractual debt arrangements”, student loans functioned like social security—they sacrificed optimal policy design to ensure enduring public support for federal spending by making that support look like a matter of individual responsibility (and leveraging the growth in individual demand).<sup>27</sup>

In this way of thinking about things, student loans look like an almost inevitable feature of the policy landscape absent a major source of cost reduction or a major shift in public consciousness. Indeed, they look like a variety higher education funding constrained primarily by democratic legitimacy. (If one pairs this view with the view that student loans are more efficient and fairer than grants, the story looks like one of both democratic and technocratic legitimacy.)

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2025), [https://marshallsteinbaum.org/wp-content/uploads/2025/01/nilaj\\_student\\_debt\\_cancellation\\_1\\_2025.pdf](https://marshallsteinbaum.org/wp-content/uploads/2025/01/nilaj_student_debt_cancellation_1_2025.pdf).

<sup>22</sup> SARA GOLDRICK-RAB, *PAYING THE PRICE* (2016); Jason Iuliano, *The Student Loan Bankruptcy Gap*, 70 *Duke L.J.* 497, 498 (2020) (noting that 250,000 student loan debtors were expected to file for bankruptcy in 2020).

<sup>23</sup> Aditya Aladangady, Edmund Crawley, William Gamber, Patrick Mora, & Jose Nino, *Debt Payments and Spending: Evidence from the 2023 Student Loan Payment Restart*, FEDS Notes (Sep. 5, 2025), <https://www.federalreserve.gov/econres/notes/feds-notes/debt-payments-and-spending-evidence-from-the-2023-student-loan-payment-20250905.html>; STEPHANIE KELTON, SCOTT FULLWILER, CATHERINE RUETSCHLIN, & MARSHALL STEINBAUM, *THE MACROECONOMIC EFFECTS OF STUDENT DEBT CANCELLATION* (Levy Econ. Inst. Research Rpt., Feb. 6, 2018), <https://www.levyinstitute.org/publications/the-macroeconomic-effects-of-student-debt-cancellation/>

<sup>24</sup> *Infra* Part II.A.

<sup>25</sup> Brooks & Levitin, *supra* note 4, at 12. *See also* Brooks, *Income-Driven Repayment*, *supra* note 15, at 248; John R. Brooks, *Quasi-Public Spending*, 104 *GEO. L.J.* 1057 (2016). Brooks and Levitin—and Brooks in his solo-authored work—often take a more contingency-attuned approach to history than my above-the-line reconstruction suggests. I think this is evidence of a tension in their thinking about the issue—there are at least two theories operating simultaneously. Rather than attempting to fully reconstruct their account and pull out the pieces that are more or less plausible, I am emphasizing the strand that focuses on “political culture”, because it is a theory that is frequently suggested implicitly.

<sup>26</sup> Brooks, *Income-Driven Repayment*, *supra* note 15, at 248

<sup>27</sup> Brooks & Levitin, *supra* note 4, at 12

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While it is plausible that there have been political limits on increasing federal spending, it is not at all clear that those limits emerge out of an inchoate spirit of the American public. There is ample evidence that our political institutions are biased toward the interests of some—the wealthy, sparsely populated states—rather than a representative sample of all.<sup>28</sup> With respect to higher education in particular, as recently as 2012, “81 percent of Americans [including 64 percent of Republicans] told pollsters they agreed that ‘our government needs to invest more in America’s higher education system.’”<sup>29</sup> State governments have continued to increase budgets for universities, even if they have done so unevenly and inadequately, and the federal government increased support for research throughout the 1990s.<sup>30</sup> And there were multiple changes in the structure of political will formation over this period—de-unionization, party realignment after civil rights bills, the rise of the conservative movement, and so on.

Alternatively, Suzanne Mettler has been suggested that expanded student loans resulted from the polarization of political parties (mostly by way of rightward radicalization of the Republican Party) combined with the increased role of money in politics.<sup>31</sup> Polarized politics made it impossible to reach consensus on how to reform systems of higher education finance, while rising plutocracy made it possible for student loan lobbyists to break through the stalemate to expand programs that helped them. From this perspective, student loans might be reformed or replaced so long as elected bodies became less corrupt and election rules made it easier for moderate Republicans to win elections.<sup>32</sup>

That answer gets us closer, but it relies too much on changes in political circumstances that cause student loans to expand and not enough what made student loans become entrenched in the first place. Student loans did not only respond to political circumstances. They also helped to create them. And their role in stabilizing higher education finance around a politics of individual responsibility has eroded in recent years.

Or so I will argue. In this Article, I draw on work in history, journalism, political science, sociology, economics, and legal studies to develop a new account of what made student loans so central to higher education finance. I argue that key features of student loans made them appealing to a broad but thin coalition with a diversity of views about what the federal role in higher education should be. Such a coalition was important for topping up federal support in the 1950s, 60s, and 70s, and it became increasingly central to sustaining federal support for higher education affordability when the liberal coalition in favor of “big government” fell apart by 1980.

Three (or, depending on how you count them, four) features of student loans were key to their stabilizing propensity. First, like the GI Bill and (what would become) Pell Grants, they are a demand-side subsidy that travel with students and that are made available to institutions with relatively few preconditions. Designing subsidy in this way helps diffuse federalism concerns, defer disagreements over how

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<sup>28</sup> See generally LARRY BARTELS, *UNEQUAL DEMOCRACY* (2d ed. 2016).

<sup>29</sup> METTLER, *supra* note 18, at 39.

<sup>30</sup> HERRINE, *NEOLIBERALIZATION*, *supra* note 12.

<sup>31</sup> METTLER, *supra* note 18, at 41-48.

<sup>32</sup> *Id.* at 198-200.

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to govern universities, and avoid splitting the support of universities along public/private lines. Second, it is a federal credit program, which, as Sarah Quinn has argued, is “politically light”.<sup>33</sup> Political lightness can be broken into two features. Credit programs have “fiscal lightness” insofar as they expand the federal balance sheet in a way that manages the concerns of fiscal hawks. Fiscal lightness had a particularly important role to play during the stagflationary 1970s and in the neoliberal era of (selectively) austere budget politics that followed. The student loan program was also “ideologically light.” It could be portrayed either as a form of government largesse or a form of rugged individualism, and so managed to garner support from people with very different worldviews. The rhetoric of “human capital” and individual investment in employability became an increasingly important way to fuse these two perspectives during the neoliberal era, and that rhetoric made student loans look like a natural market-friendly policy. Third (or fourth), student loans produced an industry of profiteers that lobbied hard for their own perpetuation, which, as Suzanne Mettler emphasizes, produced an insider-driven politics that sustained support across partisan lines even amidst polarization.<sup>34</sup>

However, these features of student loans also encouraged the inequality-reproducing dynamics sketched above, along with increased corruption, fraud, and borrower distress.<sup>35</sup> These costs, interacting with other changes in party politics and political economy, eventually began to undermine the coalition-stabilizing capacity of student loans. A shift in budgetary rules made the large fiscal cost of managing the student loan system—including paying for the profits of its insiders—salient, which undermined its fiscal lightness. Corruption produced scandal, especially after the global financial crisis punctured the halo of legitimacy around finance. Growing defaults, delinquencies, and distress without functional debt relief mechanisms produced a base for anti-student-debt politics, a base that began to mobilize in the post-crisis era. Meanwhile the Republican party became increasingly opposed to any compromise on any issue that might redound to the benefit of Democrats whatsoever. When COVID hit and the federal government paused student loan payments to avoid backlash, all of these tendencies accelerated, producing an increasingly volatile politics of higher education finance.<sup>36</sup>

Nowadays the basic terms of student loan repayment are constantly in flux; the legitimacy of student loans is contested within both political parties; and sustained legislative negotiation across party lines has become a near impossibility. In other words, the politics of higher education has been destabilized, in part through the knock-on effects of stabilization via student loans.

It is now an open question on what terms higher education finance will be re-stabilized. Student loans have hardly been collected for years and the terms of collection are constantly being changed. The student loan lobby is nowhere near as powerful as it once was, and it now has to contend with an increasingly organized opposition. Hiding costs has become more difficult, and, in any case, budgetary politics is no longer as dominated by the ideology of austerity.

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<sup>33</sup> SARAH QUINN, AMERICAN BONDS 11 (2019)

<sup>34</sup> *Infra* Part I.

<sup>35</sup> *Infra* Part II.

<sup>36</sup> *Infra* Part III.

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Student loans may well make a comeback, but, if they do, it will likely require a substantial restructuring of the program to stabilize a new coalition. And circumstances may now have changed sufficiently that stabilization could be had on different terms. Perhaps we have reached the moment in which we can reverse student loans' ascent in favor of a more inclusive, equal, and efficient system of higher education.

The remainder of this Article proceeds as follows. Part I identifies the stabilizing features of student loans and situates them historically. Part II explains some of the major costs of relying on loans to stabilize higher education. Part III analyzes how these costs came to undermine the stabilizing capacity of student loans. Part IV explores how higher education finance might be re-stabilized, both via a new loan program and via a switch to more direct funding.

### I. Student Loans as Stabilizers

Universities can be centers for laboratory research, for artistic experimentation, for mathematical abstraction, for arguments about translating texts, for criticism of societies past and present. They can train students and graduate students in the basic skills necessary for a wide variety of jobs and/or in critical thinking that makes for more thoughtful citizenship and/or in skills and ideas without any obvious practical relevance to society at large. They can confer skills, networks, and status that can be organized to increase social mobility, reproduce social hierarchy, or some combination of both.<sup>37</sup>

Inevitably, these various social functions give rise to a diversity of interests in and perspectives on the role of higher education in society. Firms and governments want trained employees and research they can use.<sup>38</sup> Students want to improve their job prospects, to meet new people, to party, to compete in athletic events, to find themselves, to find ways to make the world better.<sup>39</sup> Local communities want the sports teams to succeed, services to be accessible, real estate to remain affordable.<sup>40</sup> Religious institutions want to ensure that at least some schools reproduce and/or spread their practices and beliefs.<sup>41</sup>

These different interests and ideologies give rise to conflicts around how to structure and govern higher education. One might even say that universities are essentially contested institutions.<sup>42</sup> Some conflicts revolve around the question of who should go to college and how much segregation along different categories there

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<sup>37</sup> The ambiguity as to colleges' purpose is one of the motivations for Howard Bowen's influential "revenue theory of cost." HOWARD BOWEN, THE COSTS OF HIGHER EDUCATION: HOW MUCH DO COLLEGES AND UNIVERSITIES SPEND PER STUDENT AND HOW MUCH SHOULD THEY SPEND? (1980); see BRUCE KIMBALL & SARAH ILER, WEALTH, COST, AND PRICE IN AMERICAN HIGHER EDUCATION 180-205 (2023); ARCHIBALD & FELDMAN, *supra* note 10, at 100-12.

<sup>38</sup> See generally ROBERT L. GEIGER, RESEARCH AND RELEVANT KNOWLEDGE (2004).

<sup>39</sup> See generally CHRISTOPHER P. LOSS, BETWEEN CITIZENS AND THE STATE (2012); ELIZABETH A. ARMSTRONG & LAURA T. HAMILTON, PAYING FOR THE PARTY (2013); THELIN, *supra* note [].

<sup>40</sup> On some of the tensions between college and community, see DAVARIAN L. BALDWIN, IN THE SHADOW OF THE IVORY TOWER (2021).

<sup>41</sup> See THELIN, *supra* note []; LAWRENCE E. GLADIEUX & THOMAS R. WOLANIN, CONGRESS AND THE COLLEGES 10, 47 (1976).

<sup>42</sup> This phrase is a riff on Gallie's influential concept of "essentially contested concepts." W.B. Gallie, *Essentially Contested Concepts*, 56 Meetings of the Aristotelian Society 167 (1956).

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should be. Other conflicts revolve around what colleges should research and teach (whether research and teaching should be prioritized over socializing and athletics). Others revolve around who should have control over which decisions.

When setting higher education policy at the federal level, these conflicts are joined by two more: the relative role of federal and state governments in shaping institutions of higher education and the relative importance of promoting university research and education as against other potential federal priorities. While there is no explicit restriction on the federal government creating or governing colleges, nor is there an explicit constitutional permission.<sup>43</sup> In practice, nearly all public and private universities have been chartered by states and tribal sovereigns, and public universities and public university systems have nearly all been the creatures of state or tribal law.<sup>44</sup>

When the federal government has become involved with higher education policy, there has always been controversy around how far it should tread into what has long been seen as the primary domain of states.<sup>45</sup> Here as elsewhere “states’ rights” has not only been a matter of abstract federalism debates, but also a rallying cry for white supremacists (while anti-racists have sought to use federal powers to desegregate both public and private institutions).<sup>46</sup> The ideological valence of federalism has taken a different color in recent years as the Trump Administration has weaponized federal funding to attempt to impose ideological uniformity.<sup>47</sup> There have also been more subtle struggles between those who aim for nationwide uniformity and those who favor state-level experimentation and the robustness produced by multiple centers of power.<sup>48</sup>

And then there are budgetary politics. Fiscal conservatives are always skeptical of more spending. Social and economic conservatives are skeptical of more spending on public goods without imposing market and/or moral discipline. Congress is concerned with preventing too much Presidential discretion while also being able to outsource many decisions. And so on.

Evolving forms of these manifold and cross-cutting conflicts have buffeted federal higher education policy since the United States began. The difficulties of satisfying the interest of a sufficiently broad group has often whittled higher education policy (especially at the federal level) into baroque and irregular shapes. Even before the days of mass higher education, the Morrill Acts (and other land grants)<sup>49</sup> involved

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<sup>43</sup> The potential constitutional status of the federal government setting up universities has received scant attention. *But see* Rodric B. Schoen, *Nationalization of Public Education: The Constitutional Question*, 9 TEX. TECH L. REV. 63, 115 (1972).

<sup>44</sup> The exceptions are universities in Washington, D.C. and universities set up for military and/or foreign service training.

<sup>45</sup> GLADIEUX & WOLANIN, *supra* note 41.

<sup>46</sup> LOSS, *supra* note 39, at 54-66, 117-18; LIEBENTHAL, *supra* note 5, at 35-39; ADAM HARRIS, THE STATE MUST PROVIDE (2021).

<sup>47</sup> *See* Emma Green, *Degrees of Hostility*, THE NEW YORKER 12 (Oct. 20, 2025); LUKE HERRINE, INSTITUTIONAL FOUNDATIONS OF FREE SPEECH AT PUBLIC UNIVERSITIES (Roosevelt Inst. Rpt., Jan. 27, 2026), <https://rooseveltinstitute.org/publications/the-institutional-foundations-of-free-speech-at-public-universities/>.

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<sup>49</sup> Michael Banerjee, *Land-Grant Universities*, 103 WASH. U. L. REV. ONLINE 129 (2026). Banerjee treats any university that received any grant of land as a “land grant university.” Doing so might make sense for some purposes, but it also obscures important differences—such as whether the land was donated by a private party or the state or the federal government, whether the land was granted to a public or

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seizing indigenous lands in unincorporated western territories, and transferring ownership of those lands to state governments, which then parceled them up and sold them to settlers in order to raise cash to fund and/or expand universities in their states primarily for agricultural and industrial purposes.<sup>50</sup> This contestation was sporadic until the end of World War II. At that point, the GI Bill (itself a compromise measure shaped by class, race, and gender politics)<sup>51</sup> and multiple enduring commitments to research programs drew the federal government deeply into funding college at a time when college attendance was accelerating at unprecedented rates.<sup>52</sup> Between 1958 and 1980, an ascendant liberalism fumbled toward more means-tested grant funding for students alongside robust support for research at a select group of universities.<sup>53</sup> Then inflation put increasing pressure on fiscal policymaking, and Big Government liberalism lost ground to the selective austerity of neoliberalism.<sup>54</sup>

It was during this period that student loans took center stage in federal higher education finance. After they eclipsed grant aid in 1980, they expanded continuously for decades. Indeed, the politics of federal student aid increasingly became the politics of student debt.

This Part explains why that happened by identifying three features of student loans that made them coalition stabilizers.

First, student loans are loans to *students*—they subsidize colleges on the demand side. By providing funding to students to attend any (independently) accredited institution of their choosing, the student loan program has avoided questions about which types of schools or which states should receive federal support, which also initially also provided a way to avoid directly confronting segregation and white supremacy in the South. Demand-side subsidy has been a common feature of many modern federal programs to support higher education—from work-study<sup>55</sup> to GI Bills<sup>56</sup> to tax-preferred college savings plans<sup>57</sup>—in large part because of this conflict-avoidant feature.

Yet, though it avoids some conflicts, too much demand-side subsidy has raised the hackles of those worried about wasteful spending and expanding access

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private university (as we now think of those categories), whether it was granted for use of the university or for sale, and so on. The roundabout funding structure mentioned here applies primarily to federal programs for donating land to finance university growth—something that predates the Morrill Act, but does not include all of the “land grants” that Banerjee discusses.

<sup>50</sup> Robert Lee & Tristan Ahtone, *Land-Grab Universities*, HIGH COUNTRY NEWS (Mar. 30, 2020), <https://www.hcn.org/issues/52-4/indigenous-affairs-education-land-grab-universities/>; THELIN, *supra* note [], at 75-76.

<sup>51</sup> See LOSS, *supra* note 39, at 91-120; SHERMER, *supra* note 5, at 76-117; Ira Katznelson & Suzanne Mettler, *On Race and Policy History: A Dialogue About the GI Bill*, 6 PERSPECTIVES ON POLICY 519 (2008).

<sup>52</sup> GEIGER, *supra* note 38; SHERMER, *supra* note 5, 33-76; LOSS, *supra* note 39, at 19-90.

<sup>53</sup> METTLER, *supra* note 18, at 56-64; LIEBENTHAL, *supra* note 5, at 39-110; Brooks, *Income-Driven Repayment*, *supra* note 15, at 245-47.

<sup>54</sup> See [sources on the transition to neoliberalism]

<sup>55</sup> See SHERMER, *supra* note 5, at 9-79, 248.

<sup>56</sup> See *supra* note 51; <https://www.va.gov/education/eligibility/>.

<sup>57</sup> See Tax Benefits for Education 50-54 (IRS Publication 970, Nov. 15, 2024), <https://www.irs.gov/pub/irs-pdf/p970.pdf>; 26 U.S.C. § 529; Jonathan Weisman, *Obama Relents on Proposal to End ‘529’ College Savings Plans*, N.Y. TIMES (Jan. 27, 2015), <https://www.nytimes.com/2015/01/28/us/politics/obama-will-drop-proposal-to-end-529-college-savings-plans.html>.

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too widely.<sup>58</sup> Various ways to manage these worries have been devised; restricting subsidy to favored groups (e.g. veterans under GI Bills)<sup>59</sup> or based on need (e.g. means testing for Pell Grants),<sup>60</sup> hiding costs in the tax code (as with 529 savings plans),<sup>61</sup> or cutting back on programs during times of austerity.<sup>62</sup> Student loans have made it possible to make funding more broadly available in both fat and lean times through their second feature: they are *loans*. Because they were loans, initial outlays to be (at least partially) paid back, and, like many federal loan programs, much of the program administration was outsourced. In addition to meeting objections from budget hawks, this credit-ness of student loans (combined the fact that they were demand-side subsidies) was consistent with ideologies of individual responsibility and market discipline that became increasingly prominent among lawmakers during the latter half of the Twentieth Century. As sociologists Greta Krippner and Sarah Quinn have made clear, debt's ability to deflect political conflict in these ways has long been important in US policy and became increasingly important as conflicts around the federal budget crested in the 1960s.<sup>63</sup>

Third, once it got up and running, the student debt system created buy-in among many constituencies who lobbied for its continuation: colleges looking for the flexibility to raise tuition, states looking for the flexibility to cut funding to public universities when needed, student advocates looking for any way to expand access, and—most importantly—profiteers like servicers and lenders.<sup>64</sup> Especially once Sallie Mae became enormously profitable in the 1980s, lobbyists drove a huge amount of the federal politics of higher education finance—expanding access to loans while making them harder to get out of.

Let's take each of these stabilizing features in turn.

### A. Demand-Side Subsidy

There is a longstanding political dynamic in the United States in which a pro-development coalition seeks to use federal funds to increase access to higher education, while those who oppose the aggrandizement of the federal government stand in the way. It is a dynamic that originates with George Washington's failed proposal—and squandered donation—to build a national university.<sup>65</sup> Although Thomas Jefferson initially supported the proposal, his opposition to the Bank of the United States on the grounds of limited federal powers and expansive state powers made him ultimately decide it would require a constitutional amendment.<sup>66</sup> Opposition also came from “jealousy of existing colleges that feared being

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<sup>58</sup> See LIEBENTHAL, *supra* note 5, at 35-39, 75-79, 114-15.

<sup>59</sup> *Supra* note 51.

<sup>60</sup> SHERMER, *supra* note 5, at 231-41.

<sup>61</sup> On the phenomenon of using the tax code to avoid political conflict, see SUZANNE METTLER, *THE SUBMERGED STATE* (2011).

<sup>62</sup> LIEBENTHAL, *supra* note 5, at 116.

<sup>63</sup> QUINN, *supra* note 33; GRETA KRIPPNER, *CAPITALIZING ON CRISIS* (2012). See also Abbye Atkinson, *Rethinking Credit as Social Provision*, 71 *STAN. L. REV.* 1093 (2019).

<sup>64</sup> *Infra* Part II.C; METTLER, *supra* note 18, at 163-88.

<sup>65</sup> See Daniel Walker Howe, *Church, State, and Education in the Young American Republic*, 22 *J. Early Republic* 1, 2 (2002).

<sup>66</sup> *Id.*

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overshadowed” and from those who worries about cost (though Washington “willed a portion of his large estate to form a core endowment”).<sup>67</sup> Subsequent similar proposals—including, most ambitiously that of John Quincy Adams in 1825—were repeatedly rejected due to worries about constitutionality (though no amendment was offered), to worries about cost, to divides over religion, and to suspicions of an enlarged federal government (with a preference among some Republicans “to leave schooling to the marketplace of private initiative”).<sup>68</sup>

As slavery became an increasingly central divide, it also divided coalitions who might have come together around federal support for higher education. Most notably, southern Democrats sabotaged the original Morrill land grant bill.<sup>69</sup> It was not until the southern states seceded that the bill finally became law and the one-time grants were allocated to states.<sup>70</sup> The Morrill Act of 1890 extended this land grant to reintegrated Southern states only after appeasing them by allowing for segregated schools.<sup>71</sup>

The scale of funding at issue in the Morrill Acts and other land grants was minimal and sporadic compared to what was to come. As the Nineteenth gave way to the Twentieth Century, universities began to expand dramatically and to become more devoted to research.<sup>72</sup> Until World War II, nearly all of the action in funding and building out universities occurred at the state level—through a combination of private donations and public appropriations—though states were aided by the continued revenue from initial land grants.<sup>73</sup> During the war, the federal government directed unprecedentedly large amounts of funding to universities and professors to conduct research to aid the war effort. In the waning months of the war, Congress decided fund sustained peacetime research bureaucracies and began to consider additional funding to make college more affordable.<sup>74</sup> Although President Roosevelt and the labor left hoped to provide more money directly to colleges and to expand New-Deal-era work study programs, Southern Democrats and conservative Republicans again stood in the way.<sup>75</sup> They were joined by many college leaders who assumed most high school graduates would not be able to handle the work and who were worried about a loss of independence that might come with federal funding.<sup>76</sup> Congress ultimately passed a version of the (relatively conservative) American Legion’s proposal—the Serviceman’s Readjustment Act.<sup>77</sup> This “GI Bill” overcame resistance by channeling funding through students to use at any institution that would accept them, leaving nearly every regulatory question to the states and formal and

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<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 3-4.

<sup>69</sup> HARRIS, *supra* note 46, at 30-31.

<sup>70</sup> *Id.* at 31.

<sup>71</sup> *Id.* at 52-54

<sup>72</sup> GOLDIN & KATZ, EDUCATION AND TECHNOLOGY, *supra* note 19, at 248-66; GEIGER, *supra* note 38.

<sup>73</sup> See GOLDIN & KATZ, EDUCATION AND TECHNOLOGY, *supra* note 19, at 266-77.

<sup>74</sup> GEIGER, *supra* note 38; SHERMER, *supra* note 5, at 33-93.

<sup>75</sup> SHERMER, *supra* note 5, at 92; LOSS, *supra* note 39, at 111-16; Nancy Beck Young, “Do Something for the Solider Boys” *Congress, the G.I. Bill of Rights, and the Contours of Liberalism*, in VETERANS’ POLICIES, VETERANS’ POLITICS (Stephen R. Ortiz & Suzanne Mettler, eds., 2012).

<sup>76</sup> SHERMER, *supra* note 5; LOSS, *supra* note 39, at 111-16.

<sup>77</sup> Pub. L. 78-346, 58 Stat. 284 (Jun. 22, 1944).

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informal selection processes (indeed, many students chose for-profit vocational schools, resulting in a wave of scandals).<sup>78</sup> It also limited benefits to returning veterans. Veterans have long been a sympathetic constituency—and it was their “bonus march” and their surging American Legion that played central roles in producing political will to overcome conservative backlash against Roosevelt.<sup>79</sup> Encouraging them to go to college also served the macroeconomic purpose of cushioning the blow to the labor market of the sudden return of millions of previously unemployed young men.<sup>80</sup>

What resulted from this initial period of Postwar experimentation were two parallel paths for expanding federal support for higher education with an acoustic separation between them. On the one hand, competitive research grants administered by formalized peer review, with a priority for military and medical applications.<sup>81</sup> On the other, various programs to help students pay for tuition at schools of their choosing. Student debt—along with Pell Grants, GI Bills for subsequent wars, tax-preferred savings plans, and various scholarship programs—emerged on this latter path. Congress did occasionally pass bills to provide funding directly to states and/or universities, but this funding was smaller in magnitude than the other two sources and targeted to specific improvements such as libraries.<sup>82</sup>

In these early days of federal student aid, the most important political effect of channeling subsidy via the demand side was quelling the worries of states’ rights advocates and of colleges concerned about federal control (especially private colleges concerned about losing ground to publics).<sup>83</sup> Demand-side subsidy quelled some of these worries by allowing students to decide which institutions should receive the subsidy, which made it available to both public and private (including for-profit) colleges. This institutional neutrality reduced objections from colleges and reduced the likelihood of inter-state rivalry by making funding equally available to states regardless of their mix of public and private colleges (northeastern states tend to have the most private colleges and western states the fewest).<sup>84</sup>

Now, demand-side subsidy is not *inherently* institution-neutral. The federal government could have made student loans (and Pell Grants and other subsidies) only spendable at certain types of colleges. Indeed, it has imposed *some* conditions, including, notably, compliance with federal civil rights law.<sup>85</sup> But, relative to a program that channels subsidy to institutions that meet certain criteria, a program that channels subsidy to institutions at which students choose to enroll is more institutionally neutral.

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<sup>78</sup> LIEBENTHAL, *supra* note 5, at 15-26; A.J. ANGULO, DIPLOMA MILLS 58-82 (2016).

<sup>79</sup> LIEBENTHAL, *supra* note 5, at 15-26; Young, *supra* note 75.

<sup>80</sup> Young, *supra* note 75.

<sup>81</sup> GEIGER, *supra* note 38; ELIZABETH POPP BERMAN, CREATING THE MARKET UNIVERSITY 19-34 (2012)

<sup>82</sup> [titles of HEA?; ]

<sup>83</sup> LIEBENTHAL, *supra* note 5, at 28 (“The powerful network of private colleges and universities naturally opposed [the Zook Commission’s proposal to expand free higher education’s] threat to their revenue, and it was further doomed by the intransigence of Southern Democrats, who would never go along with a system that so thoroughly eviscerated segregation.”)

<sup>84</sup> Goldin & Katz, *supra* note 3, at 52-53.

<sup>85</sup>

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And Congress leaned into this feature of demand-side subsidy by building institutional neutrality into its student aid programs in many ways. Among them was deference to states and self-regulatory accrediting bodies (the so-called “program integrity triad” or simply “the triad”) to determine which institutions and programs should be eligible for federal student aid.<sup>86</sup> Another was the decision to provide aid to vocational schools, and even for-profit colleges, with (initially) minimal oversight.<sup>87</sup> This deference further reinforced the notion that federal aid would not mean federal control. It also made it possible for Congress to debate aid to colleges while avoiding debates about the purpose of college, about the relative role of public and private institutions, and the like. The acoustic separation between research funding and student aid further compartmentalized these debates.

### B. Political Lightness

Student loans succeeded more than other demand-side subsidies, including a come-from-behind victory over Pell Grants. They did so because of what the sociologist Sarah Quinn calls “political lightness of credit.”<sup>88</sup> To say that credit programs are “politically light” is to say that they make it a relatively easy lift for lawmakers to pay for policies—to support favored groups, invest in priorities, provide benefits to constituents. Quinn splits the political lightness of credit into two parts: fiscal lightness and ideological lightness. Both are quite relevant to the political endurance of student loans.

#### 1. Fiscal Lightness

Quinn refers to credit programs as “fiscally light” because they provide a way for the federal government to support various initiatives and constituencies with relatively little impact on federal budgetary politics.<sup>89</sup> Fiscal lightness makes the budgetary politics of the student loan program (and many other federal credit programs) less contested. It allows for more money to be spent on higher education—pleasing those who support such spending—without (overly) raising the hackles of budget hawks—that is, those who object to fiscal deficits and/or debt.

Some of student loans’ fiscal lightness derives from the core characteristic of credit (call it “credit-ness”): it creates a legal obligation on borrowers to repay it. Spending via credit creates requires initial outlay but, in principle, that money should be recouped over time, with interest. Of course, it is not always the case that credit programs do in fact produce net revenue. High default rates, forgiving loan terms, inflation, and the like can occur (as we will see, they have done so in the case of student loans). But, even if they are not profitable or cost neutral, they at least partially pay for themselves.

In any case, what matters from the perspective of fiscal lightness is not their actual performance as assets. Credit programs are fiscally light insofar as they make the budgetary *politics* of the substantive program in question (e.g. student aid, housing,

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<sup>86</sup> See Alexandra Hegji, *An Overview of Accreditation of Higher Education in the United States* (Cong. Rsch. Svc. Rpt. R43826, Apr. 12, 2024), <https://www.congress.gov/crs-product/R43826>.

<sup>87</sup> ANGULO, *supra* note 78, at []; LIEBENTHAL, *supra* note 5, at 80-81.

<sup>88</sup> QUINN, *supra* note 33, at 11.

<sup>89</sup> *Id.*

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farm investment) less contentious at the time when decisions are being made about issuing loans. So what matters about their budgetary impact is not the actual net gain or loss over time (which, in any case, may be unknowable and/or indeterminate, depending as it does on how one measures different costs, defines the discount rate, and the like), but rather the way the budgetary impact is understood by lawmakers when they are making the relevant spending decisions. The extent to which a credit program quells budget hawks' objections or makes it easier for a program to fit in a spending bill without triggering Congress's budgetary rules is the extent to which it is fiscally light.

The credit-ness of student loans was part of what made them politically possible initially and what helped them endure and expand over time. In the years during which Congress was debating whether to contribute funds during peacetime to make colleges more affordable, many legislators objected on grounds of fiscal impropriety. When the issue came to a head during the 1960s, macroeconomic managers were concerned about inflation and the Johnson Administration was looking for ways to avoid increasing the deficit or raising taxes.<sup>90</sup> Designing some portion of federal student aid as loans—and, in particular, as guarantees for banks' loans—made it possible to lower the assessed budgetary impact and to appease some fiscal conservatives.<sup>91</sup> Over the years, as the student loan program became more and more central to higher education finance, it remained possible to maintain the program and expand eligibility for the same reasons.

Student loan programs were further fiscally lightened through outsourcing. As originally set up, the largest federal student loan program was a set of guarantees that supported the loans issued by banks (and, later, other financial institutions).<sup>92</sup> Structuring the loan program in this way—a direct imitation of the federal mortgage guarantee program,<sup>93</sup> which in turn drew from earlier farm lending programs<sup>94</sup>—made it such that the federal government did not have to come up with the initial funds to pay students' bills.<sup>95</sup>

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<sup>90</sup> LIEBENTHAL, *supra* note 5, at 51-62.

<sup>91</sup> Elizabeth Popp Berman & Abby Stivers, *Student Loans as a Pressure on Higher Education*, in *The University Under Pressure* 129, 135 (Elizabeth Popp Berman & Catherine Paradeise, eds., 2016).

<sup>92</sup> The Higher Education Act of 1965, Pub. L. 89-329, 79 Stat. 1219 (Nov. 8, 1965). The Guaranteed Loan Program (which later became the Federal Family Education Loan Program, or FFELP) coexisted with the Perkins Loan program, which evolved from the National Defense Education Loan program, which predated the Higher Education Act. Perkins Loans were issued by universities, which drew from loan funds parceled out by state governments, which got the money to capitalize the loan funds from the federal government. Herrine, *Jubilee*, *supra* note 8, at 94. (discussing the structure and evolution of this program). Thus, though Perkins Loans were not direct loans (i.e. not issued by and owed to the government), they did involve initial government outlays, which made them similarly fiscally heavy for purposes of the present discussion. The complexity of the program might have made its budgetary impact less clear, which might have contributed to fiscal lightness. However, it seems to me that the main stabilizing function of complexity in this case is the service it performed for navigating federalism issues, discussed below.

<sup>93</sup> [Shermer?]

<sup>94</sup> Sarah Quinn, "The Miracles of Bookkeeping": *How Budget Politics Link Fiscal Policies and Financial Markets*, 123 AM. J. SOC. 48 (2017).

<sup>95</sup> Actually, there were middleman—guarantee agencies—that bought loans from lenders in case of default, and the federal bought buys the loans from the guarantee agencies only when they failed to collect.

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In principle, setting up a guaranteed lending program does not necessarily produce a net savings for the government relative to a direct lending program (in which the government issues loans itself). In fact, as we will see, guaranteed lending was eventually abandoned because it turned out to be *more* costly than direct lending.<sup>96</sup> But, again, what matters for fiscal lightness is how budgetary impact is perceived by lawmakers. At the time of the passage of the Higher Education Act of 1965—and for decades thereafter—federal budgetary rules put the full cost of direct loans on the balance sheet up front, adjusting that cost down as repayment proceeded, and put none of the cost of loan guarantees on the balance sheet until guarantees on defaulted loans had to be paid out.<sup>97</sup> Setting up a guaranteed loan program thus looked much cheaper than a direct loan program in all budgetary analyses at time of passage and to all lawmakers who relied on them. It was only when this budgetary rule was changed in 1990 that Congress seriously considered switching to direct lending.<sup>98</sup> (That switch was resisted, nearly prevented, and long delayed by that other stabilizing institution, the student loan lobby, as we will see.)

Both before and after it fully converted to a direct loan program in 2010, the student loan system outsourced other functions. Loan servicing and many coercive collection functions have always been performed by contractors.<sup>99</sup> When the federal government decided to encourage securitization of student loans to add further liquidity to the market in the 1970s, it again borrowed from mortgage finance and set up Sallie Mae, a public-private “government-sponsored enterprise” to perform that function.<sup>100</sup> Sallie Mae was later allowed to go private and to perform other functions, including lending and servicing.<sup>101</sup> Outsourcing can further reduce and/or obfuscate budgetary cost.

Each of these aspects of the fiscal lightness of student loans is similar to other credit programs explored by Quinn. But student loans also gain additional fiscal lightness based on their status as entitlements in federal budgetary law. As entitlements, the guaranteed and the direct student loan programs are the subject of mandatory appropriations (or “direct spending”), and so (mostly) avoid the annual appropriations process.<sup>102</sup> Thus, no political wrangling is required to determine the amount of money that will be paid to borrowers under the student loan program in any given year—the amount is adjusted automatically depending on how many borrowers meet eligibility criteria. Funding for student loans also avoid Congress’s self-imposed “paygo” requirements<sup>103</sup> that each new expenditure be matched with an

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<sup>96</sup> *Infra* note []

<sup>97</sup> Berman & Stivers, *supra* note 91, at 135.

<sup>98</sup> *Id.*; Brooks & Levitin, *supra* note 4, at 24 n.96.

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<sup>100</sup> Education Amendments of 1972, Pub. L. 92-318, 86 Stat. 235 (Jun. 23, 1972); Berman & Stivers, *supra* note 91; Brooks & Levitin, *supra* note 4, at 25.

<sup>101</sup> [Mitchell]; [Shermer]

<sup>102</sup> 20 U.S.C. § 661c(c)(1) (direct loans); 20 U.S.C. § 1081 (guaranteed loans). 2 U.S.C. § 900(8) (defining “direct spending”). See Megan S. Lynch, *Distinguishing Between Discretionary and Mandatory Spending*, (Cong. Rsch. Svc. Rpt. IF13124, Nov. 21, 2025).

<sup>103</sup> 2 U.S.C. §§ 900-22.

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equivalently sized source of revenue except insofar as Congress changes the student loan program in a way that requires new expenditures.<sup>104</sup>

To say that the student loan program has been relatively fiscally light is not to say that its budgetary impacts have not been scrutinized, nor that Congress let the program grow entirely of its own accord. At multiple points, Congress expanded eligibility for student loans (adding new programs, eliminating caps on borrowing) and adjusted the cost of the program by making repayment plans more or less generous to borrowers (thus increasing loan losses). Many of these expansions faced opposition from budget hawks, and some continued to be opposed and even rolled back due that opposition.<sup>105</sup> The point is just that the fiscal lightness of student debt neutralized fiscal concerns to a significant degree at multiple points in time.

### 2. Ideological Lightness

Quinn also argues that federal credit programs have an “ideological lightness”.<sup>106</sup> Like tax credits and other parts of the “submerged state”,<sup>107</sup> they “give government officials a great deal of rhetorical leeway because they combine market forms with partnerships and inducements and are used for many purposes.”<sup>108</sup> They are simultaneously a form of government spending and a reinforcement of private markets, support for a particular constituency and a new obligation on that constituency, a way to encourage personal responsibility and a form of public subsidy. “This polysemy is useful to lawmakers who must answer to multiple audiences with conflicting agendas.”<sup>109</sup> And it provides a way for lawmakers with different priorities and ideologies to interpret the same program in different ways, thereby navigating around disagreement.<sup>110</sup>

Again, Quinn’s account applies quite directly to student loans. As early as the 1920s, before federal student aid programs were seriously contemplated, college administrators and donors presented lending to students as a more virtuous alternative to charitable scholarships.<sup>111</sup> When the federal government made its first big experiment with student aid at the end of World War II (and the tail end of the New Deal), the notion that the governmental equivalent of charity would be too generous was a major point of opposition among opponents to Roosevelt’s proposals for expanding college affordability broadly.<sup>112</sup> Student loans would not yet serve as

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<sup>104</sup> 2 U.S.C. § 661c(e). These exceptions also apply to the Federal Credit Reform Act’s requirement that loans’ costs be annually appropriated. 2 U.S.C. § 661c(b).

<sup>105</sup> *E.g.* Pub. L. 119-21, § 81001, 139 Stat. 72, 334 (Jul. 4, 2025) (capping PLUS loans); Pub. L. 97-35, § 532(a), 428(a)(2), 95 Stat. 357, 451 (Aug. 31, 1981) (reimposing an income cap on subsidized Stafford loans).

<sup>106</sup> QUINN, *supra* note 33, at 13.

<sup>107</sup> METTLER, SUBMERGED STATE, *supra* note 61.

<sup>108</sup> QUINN, *supra* note 33, at 13

<sup>109</sup> *Id.*

<sup>110</sup> As Quinn points out, this ideological lightness is not inherently written into credit programs—it was itself a political accomplishment of Progressive reformers, who had to combat the notion of credit programs as inherently corrupt and paternalistic. *Id.* at 13-15.

<sup>111</sup> SHERMER, *supra* note 5, at 25. Colleges lending to students can be traced back even further, at least as far as Dartmouth’s program in the early 1800s. But college attendance did not really begin to grow until the 1920s, and it was in this period that student loan programs began to spread more widely (if still in a quite scattered way compared with what would come). *Id.*

<sup>112</sup> Young, *supra* note 75.

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the semi-charitable alternative—instead, work-study encouraged students to “earn” their aid while, under the GI Bill, conditioning benefits on military service based eligibility on a different notion of “earning”.<sup>113</sup> As the GI Bill expired, Sputnik scared lawmakers into considering peacetime support for civilian college students, but not sufficiently to motivate anything like universal higher education or to break through disagreements about whether federal funding should support racial segregation.<sup>114</sup> Channeling aid to students provided a way to avoid the desegregation debate and setting up a loan program was as far as fiscally conservative and socially elitist Republicans would go.<sup>115</sup>

When a permanent student aid program was debated during the Johnson Administration, student loans reappeared as a relatively fiscally light way to expand the student aid program further than conservatives would have otherwise been willing to go. They were seen as supportive of middle-class students who did not quite merit means-tested grants but who still needed some help making ends meet during college.<sup>116</sup> Until the 1980s, though, student loans remained the junior partner to other federal aid programs. They expanded in 1980 because they survived the Reagan Revolution’s efforts to trim back government support for redistribution and public goods. They did so because—in addition to their fiscal lightness—they supported students in a way that was consistent with social conservative narratives about the need for individual responsibility and economic conservative narratives about supporting a free market in human capital investment.<sup>117</sup>

In fact, as student loans became increasingly central to higher education finance, they helped to narrow the scope of ideologies. Political disagreements about how to fund higher education increasingly centered around disagreements as to how to reform the student loan system. Both Democrats and Republicans took for granted that most students would take on significant sums of debt in order to fund their college educations, and that doing so was not just acceptable but desirable.<sup>118</sup> For those on the progressive end of the spectrum, debt seemed desirable because it effectively served as a tax on the increased earnings that were associated with the skills, connections, and/or status bestowed by a college education. It also seemed a cost-effective way to increase access to education and the productivity and social mobility that seemed to correlate with it. For conservatives, student debt had the merits of reinforcing market mechanisms (student choice among competing colleges, students’ internalizing some of the cost of investment in their educations, and so on), of keeping cost to the government low, of encouraging responsibility, and of suppressing worker power. Disagreements focused on whether student loans should be issued directly by the government or not, whether (and to what degree) payment obligations should adjust with borrowers’ income, and whether (and to what degree) the government should regulate (mostly for-profit) colleges and others that profited

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<sup>113</sup> Before World War II, New Dealers in the Roosevelt administration developed work-study programs that also served as organizing vehicles. Providing aid via work-study was consistent with Roosevelt’s then-cautious federalism. This experiment was small scale and hated by conservatives. SHERMER, *supra* note 5, at 46-58.

<sup>114</sup> LIEBENTHAL, *supra* note 5, at 33-37.

<sup>115</sup> *Id.* at 38.

<sup>116</sup> *Id.* at 57; SHERMER, *supra* note 5, at 171-74.

<sup>117</sup> LIEBENTHAL, *supra* note 5, at 115-16; Brooks, *Income-Driven Repayment*, *supra* note 4, at 248-49.

<sup>118</sup> See Luke Herrine & Jonathan Glater, *The Student Debt Reset*, BERKELEY L. REV. (Forthcoming 2026).

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from student loans.<sup>119</sup> The ambiguity about whether student loans were part of a redistributive politics of public goods and public support for the less fortunate or a libertarian politics of investing in economic productivity via individual responsibility enabled a relatively stable bargaining process between these factions.

### C. Insider Politics and Policy Feedback

As student debt expanded, it also built a lobby for its own perpetuation. It converted previously skeptical universities and state governments; it created businesses like servicers and securitizers that depended on student loans interest and/or fees; and it expanded and empowered for-profit colleges and the profit-oriented aspects of other colleges. State governments also came to depend on student debt to make their fiscal lives easier. So the most powerful institutions in the higher education sector actively advocated for the continuation and expansion of the student loan system. Indeed, via negotiated rulemaking, they were formally incorporated into deliberations at the Department of Education.<sup>120</sup>

Although initially skeptical, colleges began to soften on student debt once they realized that federal support came with relatively few conditions.<sup>121</sup> They became partisans for it once they realized how much financial flexibility it gave them.<sup>122</sup> Because student debt covered however much tuition colleges decided to charge (up to a relatively high cap for undergraduates and no cap for graduate students),<sup>123</sup> it allowed colleges to use tuition to balance and/or expand their budgets. The fact that the government was paying students' bills (whether entirely, in the case of grants, or initially, in the case of debt) likely made students less price sensitive, which meant that colleges could increase tuition without seeing significant drops in enrollment.<sup>124</sup> That meant that increasing tuition was a relatively low-cost way for colleges to fill budgetary holes.<sup>125</sup> And pledging future tuition as collateral was a relatively low-cost way for colleges to borrow to invest in expansions.<sup>126</sup> Both public and private colleges made frequent use of these budgetary strategies, and—outside of a relatively small group of elite schools—tuition accounted for a larger and larger portion of their

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<sup>119</sup> Herrine & Glater, *supra* note 118 (discussing the emergence of this discursive space).

<sup>120</sup> 20 U.S.C. § 1098a (requiring negotiated rulemaking with broad representation, including “institutions of higher education...guaranty agencies, lenders, secondary markets, loan servicers, guaranty agency servicers, and collection agencies”). In practice, negotiated rulemakings have often included separate representation for the for-profit college industry.

<sup>121</sup> Berman & Stivers, *supra* note 91, at 137.

<sup>122</sup> JOSH MITCHELL, *THE DEBT TRAP* 167-87 (2021) (discussing the change in business model at the University of Alabama as an exemplar of other public universities in the era of high debts).

<sup>123</sup> The caps for different types of student loans changed over time. Brooks & Levitin, *supra* note 4, at 25-31; One Big Beautiful Bill Act, Pub. L. 119-21, 139 Stat. 72 (Jul. 4, 2025) (limiting PLUS loans).

<sup>124</sup> That is not to say that students never protested rising tuition (or, later, high student debt loads). Such protests were relatively common in the 1970s. But protests didn't result in students refusing to pay or transferring or dropping out, nor did they deter other students from enrolling. So they didn't hurt colleges' bottom line. Colleges mostly ignored them. GEIGER, *supra* note 37.

<sup>125</sup> HERRINE, *NEOLIBERALIZATION*, *supra* note 12.

<sup>126</sup> Lend and Rule [tk].

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budgets.<sup>127</sup> Doing so changed them as institutions. They developed sophisticated financial aid offices and contributed to national lobbying efforts.<sup>128</sup>

State government's conversion on student debt was a knock-on effect of colleges' conversion. After public universities—flagships in particular—realized they could raise tuition to fill budget gaps without experiencing (much) enrollment reductions, state governments realized they could cut funding to public universities without reducing access to education (by much). And when political opposition to tuition increases failed to coalesce, state governments came to use higher education cuts as a go-to strategy for balancing the budget. In an environment in which political opposition to deficits and to new taxes *had* coalesced, the need to find funding cuts to balance the budget became increasingly common. It became so routine for state governments to reduce allocations to public colleges during economic downturns that higher education came to be known as the “balance wheel” for state budgets.<sup>129</sup> All of this depended on student debt. State governments lobbied accordingly.

Other parts of the higher education sector depended even more intimately on student debt for their survival. Contractors such as servicers and guaranty agencies were either founded for the express purpose of helping the student loan system run or they converted most of their operations to (and derived most of their revenues from) that purpose. Sallie Mae was initially created by Congress to market securitized student loans (on the model of Fannie Mae, Freddie Mac, and Ginnie Mae in the mortgage market), and it eventually expanded to make money from many other parts of the student loan market.<sup>130</sup> For-profit colleges predated the student loan program, but they expanded massively as the program expanded. By the 1990s, small independent vocational schools had mostly been replaced by nationwide chains of publicly traded or private-equity-owned organizations set up to maximize access to federal student aid—mostly loans—at least cost.<sup>131</sup> All of these student loan profiteers invested large amounts of money on lobbying. Sallie Mae and for-profit colleges became particularly central to developing a revolving door in federal higher education policymaking.<sup>132</sup>

Together, colleges, states, and profiteers formed a powerful pro-student-debt coalition. They contributed to a deeply insider-driven politics of higher education finance, in which students' interests were mainly represented by small consumer advocacy organizations without membership bases and sometimes by veterans' groups.<sup>133</sup>

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<sup>127</sup> TAYLOR & CANTWELL, *supra* note 20, at 28-30.

<sup>128</sup> MITCHELL, *supra* note 122, at 177-81.

<sup>129</sup> See DELANEY, *supra* note 11.

<sup>130</sup> LIEBENTHAL, *supra* note 5, at 83-88, 127-28; MITCHELL, *supra* note 122, at 35-63, 90-95, 190-99.

<sup>131</sup> Charlie Eaton, Jacob Habinek, Adam Goldstein, Cyrus Dioun, Daniela García, Santibáñez Godoy, & Robert Osley-Thomas, *The Financialization of US Higher Education*, SOCIO-ECON REV. 1, (2016).

<sup>132</sup> METTLER, *supra* note 18, at 99-110; LIEBENTHAL, *supra* note 5, at 161; MITCHELL, *supra* note 122, at 114.

<sup>133</sup> Herrine & Glater, *supra* note 118; METTLER, *supra* note 18, at 99-110.

## II. The Costs of Stabilization via Debt

Between roughly 1965 and 2010, then, major political effect of student debt was clearing the fiscal space to allow higher education to continue to expand as demand expanded, even amidst tax revolts and increased skepticism of government spending. But this fiscal space was not costless. Clearing it via student loans produced several harmful political dynamics. Insider-driven politics enabled corruption and fraud. Shifting of cost and responsibility onto students enabled regressive transfers and victim-blaming ideology. Debt-funded tuition's growing role in university budgets contributed to a competitive dynamic that increased inequality between institutions while inflating tuition everywhere. Over time, these and related dynamics eroded the legitimacy of higher education, an erosion that accelerated during the labor market crisis of the 2010s.

### A. Capture

The insider-driven politics of student debt was not merely elitist. It was corrupt. Elected officials—and education committee members in particular—routinely accepted ample donations from student loan profiteers such as Sallie Mae and for-profit colleges. Political appointees to relevant positions in the Department of Education sometimes came directly from these companies and more frequently went to work for them after serving. Other interested parties, such as organizations of private and public colleges, also contributed donations and personnel, but, more importantly, they stood in solidarity with profiteers on even venal legislative and regulatory issues, lending them more legitimacy. All of this palm greasing made it easy for federal governance institutions not just to disregard the subtle and cumulative harms of growing student debt burdens, but also to cover for outright fraud against both students and the federal fisc.

#### 1. Corruption

Student debt expanded during exactly the period in which the scale and sophistication of corporate lobbying in the Capitol exploded.<sup>134</sup> And the industry that had built up around student debt were innovative practitioners of these arts.

Sallie Mae was in the vanguard. Created in 1972, Sallie Mae was designed to provide a secondary market in student debt at a time when lending was a startup industry and Pell Grants accounted for a much greater fraction of federal aid. After a failed IPO, Sallie Mae raised much of its early capital from universities.<sup>135</sup> From early on, it developed close ties with financial aid offices and university boards as well as members of Congress. In the 1980s, Sallie Mae's lobbyist, Mary Whalen, was not only

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<sup>134</sup> See LEE DRUTMAN, *THE BUSINESS OF AMERICA IS LOBBYING: HOW CORPORATIONS BECAME POLITICIZED AND POLITICS BECAME MORE CORPORATE* (2015); BENJAMIN C. WATERHOUSE, *LOBBYING AMERICA: THE POLITICS OF BUSINESS FROM NIXON TO NAFTA* (2013); DAVID VOGEL, *FLUCTUATING FORTUNES: THE POLITICAL POWER OF BUSINESS IN AMERICA* (1989).

<sup>135</sup> LIEBENTHAL, *supra* note 5, at 83. Liebenthal notes that “George Putnam, an investment banker who was the treasurer of Harvard, believed so fully in the agency’s mission that he personally took on the task of persuading universities to get on board.” *Id.*

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the most sophisticated education lobbyist in Washington—she also dated and eventually married William Ford, the Chair of the Senate HELP Committee.<sup>136</sup> Ford later referred to the federal government’s relationship with Sallie Mae during this period as “piling on bribe after bribe.”<sup>137</sup> And, indeed, Congress expanded Sallie Mae’s powers multiple times while expanding eligibility for student loans and making it harder for students to get out of debt. By 1985 Sallie Mae owned “nearly a third of federally guaranteed loans”<sup>138</sup> and, by 1990, “Sallie Mae alone held half the federal student loan market.”<sup>139</sup> And that was before it was given authority to lend itself.

When Clinton took office in 1991, his administration proposed creating a “direct lending” program through which the federal government would lend to and collect from students directly, cutting out many middlemen, and threatening Sallie Mae’s profitability. Against the White House’s resistance, Sallie Mae led a coalition of these middlemen to convince drafters to limit direct lending to a “trial” program.<sup>140</sup> It then lobbied to become a private company, a process which began in 1997, and allowed it to begin issuing both guaranteed loans and private loans.<sup>141</sup> It then bribed college officials to choose to issue guaranteed loans instead of direct loans and lobbied heavily in Congress to maintain both programs to promote “competition.”<sup>142</sup> By the 2000s, Sallie Mae outspent the rest of the financial industry on both its PAC and its lobbying, spending millions of dollars a year at the federal level alone (while also spending hundreds of thousands in campaign donations and PAC funds and hiring full-time lobbyists in multiple states).<sup>143</sup> It hired former administration officials as lobbyists,<sup>144</sup> used campaign donations to convince influential politicians to lobby against any efforts that would undermine its bottom line,<sup>145</sup> and placed its employees into regulatory positions, who then staved off regulatory scrutiny.<sup>146</sup>

For-profit colleges were similarly aggressive. In the 1990s, for-profit colleges were becoming behemoths through a combination of private equity roll-ups and

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<sup>136</sup> MITCHELL, *supra* note 122, at 58-59.

<sup>137</sup> *Id.* at 63.

<sup>138</sup> *Id.* at 58.

<sup>139</sup> LIEBENTHAL, *supra* note 5, at 128.

<sup>140</sup> MITCHELL, *supra* note 122, at 100-02; SHERMER, *supra* note 5, at 264-69

<sup>141</sup> MITCHELL, *supra* note 122, at 102-05; Berman & Stivers, *supra* note 91.

<sup>142</sup> MITCHELL, *supra* note 122, at 113-14; Jonathan D. Glater, *New York to Take Legal Action Over Steering of Students to Lender*, N.Y. Times (Mar. 23, 2007), <https://www.nytimes.com/2007/03/23/us/23loans.html>

<sup>143</sup> LIEBENTHAL, *supra* note 5, at 161; Ten Things You Didn’t Know About Sallie Mae, Jobs with Justice (May 2013), <https://www.jwj.org/wp-content/uploads/2013/05/Sallie-Mae-Top-10-FINAL.pdf>;

[https://www.nytimes.com/2010/02/05/us/politics/05loans.html?pagewanted=all&\\_r=0](https://www.nytimes.com/2010/02/05/us/politics/05loans.html?pagewanted=all&_r=0); Scott Piazza & Victor Nava, *Salle Mae and Uncle Sam* (Reason Foundation Policy Brief No. 107, Jul. 2013), [https://reason.org/wp-content/uploads/files/sallie\\_mae\\_cronyism.pdf](https://reason.org/wp-content/uploads/files/sallie_mae_cronyism.pdf)

<sup>144</sup> Eric Lichtblau, *Lobbying Imperils Overhaul of Student Loans*, New York Times (Feb. 4, 2010), [https://www.nytimes.com/2010/02/05/us/politics/05loans.html?pagewanted=all&\\_r=0](https://www.nytimes.com/2010/02/05/us/politics/05loans.html?pagewanted=all&_r=0)

<sup>145</sup> Michael Stratford, *How Kaine Helped Student-Loan Giant Fight Obama Reforms*, Politico (Oct. 3, 2015), <https://www.politico.com/story/2016/10/tim-kaine-student-loans-sallie-mae-229029>

<sup>146</sup> Paul Basken, *Suspended Education Department Official Approved 2004 Conflict Waiver for Former Employer, Sallie Mae*, The Chronicle of Higher Education (May 7, 2007), <https://www.chronicle.com/article/suspended-education-department-official-approved-2004-conflict-waiver-for-former-employer-sallie-mae/>

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IPO-funded consolidation.<sup>147</sup> They ramped up lobbying and campaign contributions extensively, leveraging the fact that they had branches across the country to place individualized pressure on legislators, who “balked at shutting a for-profit [in their district] down” even as they publicly expressed support for the Department of Education regulating the sector more tightly.<sup>148</sup> By the 2000s, for-profit colleges were collectively spending millions of dollars a year in lobbying<sup>149</sup> and hundreds of thousands of dollars a year in campaign donations, primarily to Republicans.<sup>150</sup> They often lobbied alongside Sallie Mae, in part because most of them actively collaborated with Sallie Mae to max out their students’ public borrowing limits and to top them off with ample private loans.<sup>151</sup>

For-profits were also participants in the revolving door. A few examples will illustrate. George W. Bush appointed Sally Stroup, a lobbyist for the University of Phoenix, who had also worked as an aide to the Chair of the House Committee on Education and the Workforce and, before that, at a guarantee agency, as an Assistant Secretary of Education.<sup>152</sup> After finishing her government service Stroup was appointed Executive Vice President of the Association of Private Sector Colleges and Universities (APSCU), the trade group representing for-profit colleges.<sup>153</sup> President Bush spoke at the 2012 APSCU conference.<sup>154</sup> That same year, Tony Miller left his job as Assistant Secretary of Education during the Obama Administration to become partner of a private equity firm that then acquired the University of Phoenix.<sup>155</sup> Miller was able to complete this deal because the Department of Education loosened the capital rules it had been applying to other colleges.<sup>156</sup> Another Bush-era Assistant Secretary of Education, Diane Auer Jones, criticized that transaction as “questionable and suspicious”.<sup>157</sup> Jones herself worked for multiple for-profit colleges and their

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<sup>147</sup> For-profit colleges have existed for as long as federal aid for higher education has—there were already scandals about fraud during administration of the first GI Bill. But they were mostly small businesses—some legitimate vocational schools, some fly-by-night schemes—until the roll up period of the 1990s. Eaton et al., *Financialization*, *supra* note 131; ANGULO, *supra* note 78, at 109-32.

<sup>148</sup> SHERMER, *supra* note 5, at 276

<sup>149</sup> Tyler Kingkade, *For-Profit Colleges Spending Millions on Lobbying, Nearly \$40 Million Since 2007*, HUFFINGTON POST (Aug. 30, 2012), [https://www.huffpost.com/entry/for-profit-colleges-lobbying\\_n\\_1842507](https://www.huffpost.com/entry/for-profit-colleges-lobbying_n_1842507)

<sup>150</sup> Meredith Kolodner, *For-Profit Colleges Stay Quietly on Offense*, THE HECHINGER REPORT (Oct. 12, 2016), <https://hechingerreport.org/profit-colleges-stay-quietly-offense/>; Mettler, 163-88.

<sup>151</sup> MITCHELL, *supra* note 122, at 106-09.

<sup>152</sup> *U. Phoenix Lobbyist is Apparent Choice as Bush’s Top Higher-Education Policy Maker*, CHRONICLE OF HIGHER EDUCATION (Oct. 12, 2001), <https://www.chronicle.com/article/u-of-phoenix-lobbyist-is-apparent-choice-as-bushs-top-higher-education-policy-maker/>; Stephen Burd, *The Subprime Student Loan Racket*, WASHINGTON MONTHLY (Nov. 1, 2009), <https://washingtonmonthly.com/2009/11/01/the-subprime-student-loan-racket-2/>

<sup>153</sup>

<sup>154</sup> Daniel Luzer, *Michelle Rhee and For-Profit Colleges*, WASHINGTON MONTHLY (Apr. 20, 2012).

<sup>155</sup> Scott Jaschik, *Apollo Sold to Investors with Obama Ties*, INSIDE HIGHER ED (Feb. 7, 2016), <https://www.insidehighered.com/quicktakes/2016/02/08/breaking-apollo-sold-investors-obama-ties>.

<sup>156</sup> Josh Kosman, *Obama’s Pal Catches Major Break in For-Profit College Deal*, N.Y. POST (Jan. 3, 2017), <https://nypost.com/2017/01/03/obamas-pal-catches-major-break-in-for-profit-college-deal/>

<sup>157</sup> *Id.* This example illustrates how for-profit college lobbyists have been happy to lob accusations of corruption at public figures even slightly in favor of reforms. A more egregious case involved repeated false accusations against student borrower advocate and multi-time Department of Education appointee Bob Shireman. See David Folkenflik, *For 8 Years, A “Wall Street Journal” Story Haunted His*

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trade associations after leaving government and before re-joining it during the first Trump Administration.<sup>158</sup>

Sallie Mae and for-profit colleges were the biggest players, but they were far from alone. As of 2007—before the Obama-era reforms that shifted all lending to direct lending discussed below—“the sector included three thousand lenders, thirty guarantee agencies, seventy loan servicing companies, and several clearinghouses—totals that did not include the many paid consultants who charged students and parents for advice on financing degrees.”<sup>159</sup> Many states had gotten in on the bonanza by setting up their own guarantee agencies or lenders, some of which went on to be servicers.<sup>160</sup> Many of these companies did at least some amount of lobbying and/or contributed to campaigns (while also having political connections at the state and local level), and they contributed to trade associations who lobbied, placed officials in the Department of Education, and hired them from there and from congressional staffs.

University associations, while not matching the spending of for-profit colleges and lenders, nevertheless maintained substantial lobbying operations. The American Council on Education, the National Association of Independent Colleges and Universities, and state university system associations all maintained Washington offices and employed former congressional staff and Department of Education officials. Though initially “colleges preferred direct institutional support to student aid, and within the category of student aid, preferred grants to loans”, they “rarely objected to the expansion of student loans” since those were the form of aid on offer. And as student loans became the centerpiece of federal aid—and with Sallie Mae and others bribing college administrators—traditional colleges moved from passively to actively supported their expansion. Indeed, many traditional colleges began to see their interests as fundamentally aligned with profiteers: when for-profit colleges faced regulatory scrutiny, traditional colleges often remained silent or actively opposed aggressive oversight, concerned that restrictions on one sector might eventually apply to their own operations.

### 2. Impunity

These investments in influence paid handsome dividends. These dividends came in several currencies. One was ability to engage in wrongdoing with minimal consequence. Over and over again, student loan profiteers were able to use their

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*Career. Now He Wants it Fixed*, NAT'L PUB. RADIO (Sep. 7, 2001), <https://www.npr.org/2021/09/07/1027130578/for-8-years-a-wall-street-journal-story-haunted-his-career-now-he-wants-it-fixed>. See also Timothy P. Carney, *Money Trail Connects Watchdog Group CREW to the For-profit Colleges it Defended*, WASH. EXAMINER (Sep. 2, 2014), <https://www.washingtonexaminer.com/opinion/1978832/money-trail-connects-watchdog-group-crew-to-the-for-profit-colleges-it-defended/>

<sup>158</sup> David Halperin, *DeVos Aide Tailors Decisions to the Predatory Colleges that Employed Her*, REPUBLIC REPORT (Aug. 2, 2018), <https://www.republicreport.org/2018/devos-aide-tailors-decisions-to-the-predatory-colleges-who-employed-her/>; Ltr. From Anne Harkavy, Executive Director of Democracy Forward Foundation to Diane Auer Jones (Jul. 2, 2018), *available at* <https://democracyforward.org/wp-content/uploads/2018/03/Jones-Recusal-Letter-7-2-18.pdf>

<sup>159</sup> SHERMER, *supra* note 5, at 243.

<sup>160</sup> MITCHELL, *supra* note 122, at 60.

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connections to avoid accountability for bribery and fraud and other forms of dirty dealing.

For-profit colleges have been especially adept at avoiding consequences for their actions. Federal reports on for-profit vocational schools using deceptive and fraudulent tactics to recruit students and/or making false claims to regulators have been published as early as 1950.<sup>161</sup> Back then, most of the fraud involved fly-by-night schemes attempting to make money from the GI Bill that quickly went out of business once caught. But as the industry grew, the fraud only became more sophisticated and more profitable. Lawsuits, government reports, and congressional investigations revealed for-profit colleges enrolling students without meeting regulatory requirements and lying to students about the type of education they would receive and its cost.<sup>162</sup> Yet the money kept rolling out: “[w]ell over \$1 billion of federal student aid and guaranteed loans went to scandal-plagued for-profit institutions during the early to mid-1980s.”<sup>163</sup> Major investigations led by the Department of Education in 1988 and [title] Senator Sam Nunn in 1990 and 1995 uncovered even more misconduct and traced regulatory failures across the system.<sup>164</sup> Nevertheless, the 1990s were the year of most rapid expansion of for-profit colleges.<sup>165</sup> Congresspeople who were major recipients of campaign donations, lobbying junkets, and other favors, blunted reform efforts during moments of scandal and rolled them back when attention went elsewhere.<sup>166</sup>

Indeed, higher education expert, advocate, and former Department of Education official Bob Shireman has identified a “cycle of scandal at for-profit colleges” that repeats decade after decade.<sup>167</sup> As I put it in my earlier reconstruction of Shireman’s cycle:

“This cycle goes all the way back to the GI Bill, when for-profit vocational schools first received access to federal aid, but it took on a more regular rhythm after the 1972 amendments to the HEA first granted for-profit colleges access to student loans and other Title IV aid. Every half decade or so since then, amongst a steady trickle of lawsuits, out comes an excoriating report from one or another branch of the federal government or from enterprising investigative journalists about widespread fraud in the for-profit sector. These reports lead for calls for accountability, which are fought tooth and nail by for-profits until they result in some more-or-less tepid regulatory action. Some of these regulations have limited the outright fraud and stemmed the tide of odious debt, but only somewhat and only until a new deluge wipes them away. Once the fury dies down and the news cycle rolls elsewhere, for-profits’ lobbyists continue their usual business of neutralizing or

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<sup>161</sup> ANGULO, *supra* note 78, at 59-65.

<sup>162</sup> *Id.* at 84-90.

<sup>163</sup> *Id.* at 91.

<sup>164</sup> *Id.* at 92-108; SHERMER, *supra* note 5, at 254-62.

<sup>165</sup> Eaton et al., *Financialization*, *supra* note 131.

<sup>166</sup> Liebenthal, 159-60; [Angulo; Tandy Shermer]

<sup>167</sup> Robert Shireman, *The For-Profit College Story: Scandal, Regulate, Forget, Repeat*, THE CENTURY FOUNDATION (Jan. 24, 2017), <https://tcf.org/content/report/profit-college-story-scandal-regulate-forget-repeat/>.

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eliminating unfavorable regulations and, when enough Republicans are in Congress, gaining new regulatory favors.”<sup>168</sup>

Sallie Mae also managed to minimize the damage from revelations about its own misconduct. In 2004, Matteo Fontana, a former Sallie Mae employee who had been appointed by President Bush as General Manager of the Office of Federal Student Aid, overruled the Department’s Inspector General’s finding that Sallie Mae’s fee-collecting arrangement with student loan collection agency USA Funds was unlawful.<sup>169</sup> Although Fontana eventually resigned when it was revealed that he maintained his financial interest in another student loan lender while in office,<sup>170</sup> his decision was not disturbed—and it made Sallie Mae’s transition to a private company complete.<sup>171</sup> In 2006, when (then-reporter, now-professor) Jonathan Glater uncovered Sallie Mae’s longstanding practice of bribing campus financial aid officials to direct students to its loans, the company negotiated a slap on the wrist with the New York Attorney General—a \$2 million settlement with no admission of wrongdoing.<sup>172</sup> No federal consequences followed.

Other scandals were similarly minimized. In 2003, Department of Education researcher Jon Oberg discovered that non-profit lenders and state lenders had been receiving hundreds of millions of dollars of free money from the federal government because they were structuring the financing of their loans in such a way that they appeared to qualify for a federal subsidy that had expired in 1993.<sup>173</sup> When he raised the issue to Department higher-ups (including Sally Stroup, who had worked for one of these lenders in her many lobbying gigs), they told him to let it go.<sup>174</sup> Due to heavy lobbying by the lenders involved (Nelnet alone “was the largest corporate donor to the National Republican Congressional Committee, and its presidents and co-CEOs were the committee’s top three individual donors” during this period), it took the Department until 2007 to finally commit to making these payments.<sup>175</sup> And the Department took no action to attempt to recoup payments already made.<sup>176</sup>

In sum, student loan profiteers repeatedly engaged in illegal or borderline legal conduct and put pressure on public officials to avoid accountability.

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<sup>168</sup> Herrine, *Jubilee*, *supra* note 8, at 324.

<sup>169</sup> Basken, *supra* note 146.

<sup>170</sup> Karen W. Arenson & Jonathan D. Glater, *Federal Official Put on Leave in Student Loan Investigation*, N.Y. TIMES (Apr. 7, 2007), <https://www.nytimes.com/2007/04/07/washington/07loans.html>. The investigation that revealed Fontana’s interest also revealed that student aid officials at multiple major universities had similar investments (and, thus, similar conflicts of interest). *Id.*

<sup>171</sup> *Case Not Closed: Matteo Fontana’s Resignation Leaves Unanswered Questions*, NEW AMERICA (Sep. 29, 2008), <https://www.newamerica.org/higher-education/higher-ed-watch/case-not-closed-matteo-fontanas-resignation-leaves-unanswered-questions/>.

<sup>172</sup> LIEBENTHAL, *supra* note 5, at 163.

<sup>173</sup> LIEBENTHAL, *supra* note 5, at 166-71; Sam Dillon, *Whistle-Blower on Student Aid is Vindicated*, N.Y. TIMES (May 7, 2007), <https://www.nytimes.com/2007/05/07/washington/07loans.html>.

<sup>174</sup> LIEBENTHAL, *supra* note 5, at 167-68.

<sup>175</sup> LIEBENTHAL, *supra* note 5, at 169.

<sup>176</sup> *Id.* Oberg eventually filed a False Claims Act action, which led many of the lenders to agree to multi-million dollar settlements, but which PHEAA fought to jury trial until 2010 (which it won, because the jury concluded that the fault was with the Department of Education for ignoring wrongdoing). *Id.* at 170.

### 3. Risk Shifting

A distinct dividend that corruption paid out was an accumulation of policies that made student lending more profitable, often at students' expense.

Sallie Mae managed to cobble together coalitions to increase its bottom line over and over again. Starting its life as a government-sponsored entity with a responsibility to package government-guaranteed loans, Sallie Mae's profitability was effectively guaranteed from early on. But it was always looking for ways to expand. In the 1970s, it successfully lobbied heavily for new loan programs for medical students and for higher income students.<sup>177</sup> In 1979, it convinced Congress to pay 3.5% above borrowing costs on every student loan it purchased, increasing its guaranteed profit in a time of low profitability.<sup>178</sup> In the 1980s, it lobbied in favor of uncapped graduate and parent loans, won the right to float an IPO and to engage in several more financial activities.<sup>179</sup> In the 1990s, it beat back efforts to end the guaranteed loan program, got permission to issue private loans and to securitize them, won the right to go private, and helped keep money flowing to for-profit colleges.<sup>180</sup> Sallie Mae also lobbied in favor of removing bankruptcy protection for student borrowers, winning the "undue hardship" standard for public loans in 1998 and expanding that standard to private loans in 2005.<sup>181</sup>

Throughout its existence, Sallie Mae has also intertwined its financial interests with others in the industry, including public, private, and for-profit colleges. As discussed above, it received early investments from multiple elite colleges in its early days.<sup>182</sup> When state guarantee and lending agencies were first getting off the ground, Sallie Mae purchased their loans. When the Direct Loan program began to threaten the Guaranteed Loan program, Sallie Mae bribed student loan officers to channel students their way and encouraged them to lobby for "competition" in student loan issuance.<sup>183</sup> When for-profit colleges came under threat in the early 1990s, Sallie Mae came to their defense and set up special lending programs to help them comply with new (tepid) regulations without losing profits.<sup>184</sup> Many insiders in higher education had an interest in the profitability of Sallie Mae.

Servicers without the complexity of Sallie Mae also reaped rewards from contracts that paid fees based on volume rather than quality and from repeatedly avoiding accountability. Out of a combination of neglect and malice, relying on servicers to direct them to repayment plans that would benefit them the most were directed to inferior plans, placed into administrative forbearance, or bounced back and forth between different employees until they gave up.<sup>185</sup> When student loan

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<sup>177</sup> MITCHELL, *supra* note 122, at 50-51.

<sup>178</sup> *Id.* at 52-53.

<sup>179</sup> LIEBENTHAL, *supra* note 5, at 127.

<sup>180</sup> *Id.* at 158-62; MITCHELL, *supra* note 122, at 114; SHERMER, *supra* note 5, at 264-65.

<sup>181</sup> MITCHELL, *supra* note 122, at 114-15. *See also* Nicole Langston, *Discharging Government Debt*, 78 VAND. L. REV. 73, 100-03 (2025); Nicole Langston, *Discharge Discrimination*, 111 CAL. L. REV. 1131 (2023).

<sup>182</sup> *Supra* [tk].

<sup>183</sup> *Supra* [tk]

<sup>184</sup> MITCHELL, *supra* note 122, at 106.

<sup>185</sup> Student Loan Servicing: Analysis of Public Input and Recommendations for Reform (Consumer Financial Protection Bureau Rpt., Sep. 2015), [https://files.consumerfinance.gov/f/201509\\_cfpb\\_student-loan-servicing-report.pdf](https://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf) [hereinafter CFPB Rpt.]; Melissa Emrey-Arras, Testimony Before the Subcommittee on Government Operations,

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programs became more complicated due to compromise efforts to increase affordability, servicers were the main compass for confused debtors. But giving sound advice that took into account the idiosyncrasies of each debtor's situation was expensive, so servicers increased profits by giving inferior advice or avoiding advice altogether.<sup>186</sup>

Other student loan profiteers engaged in similar—and substantially overlapping—efforts. By the late 1990s, higher education finance was a prime example of what political scientist Suzanne Mettler refers to as “a polarized plutocracy, with a government that is fiercely divided and ineffective, with rare exceptions—aside from those instances in which powerful, wealthy industries manage to unite lawmakers across the aisle in bipartisan support of government largesse directed toward them.”<sup>187</sup> Mettler herself uses for-profit colleges as her example of this dynamic, but, for our purposes, the point is just that the insider-driven politics of student debt was a politics substantially driven by the financial interests of firms that profited from the system, with the benefit to students largely being a side effect dependent on whether they happened to coincide with those interests or not.

### 4. Tallying Harms

The corruption and the fraud and the misconduct it enabled made the experience of owing student debt more miserable for millions of people. In doing so, it increased the risks associated with going to college. Average debt per person increased—the increase was especially dramatic among students who went to for-profit colleges, which, by 2010 was approximately two million students per year (accounting for about 12% of college students).<sup>188</sup> Having student debt became a source of financial and psychological strain for many households—causing delays in many life milestones such as settling down with a life partner (via marriage or otherwise), having children, and buying a home. Default and delinquency rates steadily increased up over the course of the 1990s and 2000s, until they were consistently between 20% and 30%.<sup>189</sup>

As has often been true of credit-driven social policy, these risks were disproportionately borne by the very people from marginalized by race, class, and gender that student loans had been said to benefit.<sup>190</sup> Black and low-income households were more likely to borrow—and to borrow more—to obtain bachelor's

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Committee on Oversight and Government Reform and the Subcommittee on Higher Education and Workforce Training, Committee on Education and the Workforce, House of Representatives, Government Accountability Office, Nov. 18, 2015, <https://www.gao.gov/assets/gao-16-196t.pdf>; Tamara Cesaretti, Selected Federal and State Claims Against Student Loan Servicers, Student Borrower Protection Center (Oct. 23, 2019), [https://protectborrowers.org/wp-content/uploads/2019/12/Claims-Against-Student-Loan-Servicers\\_12.19.pdf](https://protectborrowers.org/wp-content/uploads/2019/12/Claims-Against-Student-Loan-Servicers_12.19.pdf).

<sup>186</sup> *Id.*; Brooks & Levitin, *supra* note 4, at 50-60.

<sup>187</sup> METTLER, *supra* note 18, at 167.

<sup>188</sup> See Eaton et al., *Financialization*, *supra* note 131, at 6.

<sup>189</sup> CFPB Rpt., *supra* note 185; The Volume and Repayment of Federal Student Loans (Cong. Budget Ofc. Rpt. No. 56,706, Nov. 2020), <http://www.cbo.gov/publication/56706>.

<sup>190</sup> See Abbye Atkinson, *Borrowing Equality*, 120 COLUM. L. REV. 1403 (2020); see also Louise Seamster & Raphaël Charron-Chénier, *Predatory Inclusion and Education Debt: Rethinking the Racial Wealth Gap*, 4 SOCIAL CURRENTS (2017).

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degrees<sup>191</sup> than their white and higher income counterparts.<sup>192</sup> A major factor in the growth of indebtedness among these populations was the growth of for-profit colleges, which often explicitly targeted the ‘non-traditional’ students who were otherwise alienated from the higher education system.<sup>193</sup> Growing debt burdens among households least able to bear it unsurprisingly led to disproportionate increases in delinquency and default.<sup>194</sup>

Because of the outsize inside of the lobby of student loan profiteers, as this distress grew, Congress passed laws that made it *harder* to get out of student debt. The statutory provision dictating that federal student loans can only be discharged in bankruptcy upon a showing of “undue hardship” dates back to the 1970s, when student debt was still relatively marginal, but that limitation on bankruptcy was repeatedly reaffirmed even as courts read it strictly.<sup>195</sup> In 2005, at the behest of Sallie Mae, Congress even extended the undue hardship standard to private student loans.<sup>196</sup> Bankruptcy was limited for all student debtors, but it was Black debtors who found themselves facing the strictest limits<sup>197</sup>

### B. Ideological Blindness

In addition to corruption, the fiscal lightness of student debt—and the ideology of individual investments in human capital that grew up around it—contributed to policymakers’ disregard for growing debtor distress. Policymakers made themselves comfortable with shifting risks onto students (and their families and communities) by telling themselves a story about how going to college increased those

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<sup>191</sup> It is important to separate out graduate from undergraduate debt, since the highest debt burdens have generally been borne by those who go to graduate school—and, especially, professional school. BETH AKERS & MATTHEW M. CHINGOS, *GAME OF LOANS* 29-30 (2016). That said, racial inequalities in debt burdens have also been documented at that level of education, also in part due to the rise of for-profit colleges. See Jason Delisle, *Race, Student Debt, and For-Profit Graduate Schools*, BROOKINGS (Jan. 12, 2017), <https://www.brookings.edu/articles/race-student-debt-and-for-profit-graduate-schools/>; Megan Dawe, *The Black-White Student Debt Gap Among Law School Graduates*, THE PRACTICE (Oct. 2023), <https://clp.law.harvard.edu/knowledge-hub/magazine/issues/student-debt/the-black-white-student-debt-gap-among-law-school-graduates/>

<sup>192</sup> Julie Margetta Morgan & Marshall Steinbaum, *The Student Debt Crisis, Labor Market Credentialization, and Racial Inequality: How the Current Student Debt Debate Gets the Economics Wrong* (Roosevelt Inst. Rpt., Oct. 2018), <https://rooseveltinstitute.org/wp-content/uploads/2020/07/RI-Student-Debt-Crisis-Labor-Market-Credentialization-201810.pdf>; Suzanne Kahn, Mark Huelsman, & Jen Mishory, *Bridging Progressive Policy Debates: How Student Debt and the Racial Wealth Gap Reinforce Each Other* (Roosevelt Inst., Sep. 9, 2019), <https://rooseveltinstitute.org/publications/bridging-progressive-policy-debates-student-debt-racial-wealth-gap-reinforce-each-other/>; Monnica Chan, Jihye Kwon, & Katie N. Smith, *Indebtedness Over Time: Racial Differences in Student Borrowing*, 20 *EDU. RESEARCHER* 558 (2019); Mark Huelsman, *The Debt Divide: The Racial and Class Bias Behind the “New Normal” of Student Borrowing*, DEMOS (May 19, 2025), <http://www.demos.org/publication/debt-divide-racial-and-class-bias-behind-new-normal-student-borrowing>.

<sup>193</sup> Huelsman, *The Debt Divide*, *supra* note 192; TRESSIE McMILLAN COTTOM, *LOWER ED: THE TROUBLING RISE OF FOR-PROFIT COLLEGES IN THE NEW ECONOMY* (2017).

<sup>194</sup> <https://www.pew.org/en/research-and-analysis/reports/2024/12/the-student-loan-default-divide-racial-inequities-play-a-role>

<sup>195</sup> Dalié Jiménez & Jonathan D. Glater, *Student Debt is a Civil Rights Issue: The Case for Debt Relief and Higher Education Reform*, 55 *HARV. C.R.-C.L. REV.* 131 (2020).

<sup>196</sup> SHERMER, *supra* note 5, at 277-78.

<sup>197</sup> Abbye Atkinson, *Race, Educational Loans, & Bankruptcy*, 16 *MICH. J. RACE & LAW* 1 (2010).

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students' lifetime earning capacities by increasing their productivity, which—on a competitive labor market—would be priced accordingly. For many years, they were more worried about student debtors opportunistically refusing to pay their loans and using bankruptcy to avoid the consequences (reducing federal revenues) than student debtors being unable to find sufficiently remunerative work or being preyed on by opportunistic colleges.<sup>198</sup>

Further, as policymakers became increasingly enthralled with the vision of higher education as an investment in productivity, that vision obscured other determinants of labor market outcomes and other functions of universities. The “college premium” came to be treated as almost a natural phenomenon—not something that depended on unionization rates, trade policy, macroeconomic conditions, and the race between education and technology, nor something tempered by racial discrimination, prestige hierarchies, or social networks' role in distributing opportunity. Meanwhile, it became increasingly common to denigrate “useless” areas of study without clear connections to in-demand skills in the labor market of the moment and to explore ways to replace colleges with various lower-cost technologies that would ruthlessly target marketable skills.

### 1. Narrowing Labor Regulation

Student debt's polysemy—its ability to be understood simultaneously as a subsidy and as an investment, as a benefit and as an obligation—made it easy for policymakers to shift costs onto students while framing that shift as expanding opportunity. The logic was straightforward: college graduates earn substantially more over their lifetimes than those without degrees (the “college wage premium”), so requiring students to bear more of the cost of their education merely asks them to pay for the benefits they receive. This logic gained force as the college wage premium increased substantially from the 1980s onward.<sup>199</sup> By the 2000s, the gap between the median earnings of college graduates and those with only a high school diploma had reached historic highs, seemingly justifying larger debt burdens.<sup>200</sup>

This framing had powerful political effects. It made student debt seem not just acceptable but fair—a reasonable way to allocate the costs of a benefit that accrued primarily to the individual receiving it. And it made suspicious a student debtor who sought bankruptcy relief or another accommodation to lower or eliminate debt burdens. Such a debtor must be either a failure who has squandered an incredible opportunity and should bear the cost thereof or a scammer who is perfectly capable of paying but is trying to avoid their responsibility to society. Either way, it is a debtor who is relatively privileged and who is unlikely to be deserving of help.

Thinking about higher education as an investment in social productivity through the aggregation of investments in individual productivity made the college premium seem natural, automatic: educated workers increased profits for firms because firms could produce more social benefits at less cost, and, because those firms had to compete for such skilled labor, they were forced to bid up their wages. This line of thinking obscured the way that the college premium—and job market

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<sup>198</sup> Langston, *Discharging Government Debt*, *supra* note 181.

<sup>199</sup> GOLDIN & KATZ, *EDUCATION AND TECHNOLOGY*, *supra* note 19, at 296-302.

<sup>200</sup> Morgan & Steinbaum, *supra* note 192.

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outcomes more generally—were shaped by other social forces, including other labor market policies. There is now ample evidence that wage setting does not take place in anything like a “competitive” market in which wages reflect marginal social contribution—among other things, employers have a large degree of pricing power even in relatively competitive markets.<sup>201</sup> Historically significant efforts to combat this power—such as minimum wages and (more importantly) labor unions—have been shown to be effective, reducing inequality and, incidentally, lowering the college premium.<sup>202</sup> Their erosion over the latter half of the Twentieth Century contributed to the increase in income inequality and in the college premium. Also contributing to this trend have been the spread of the “fissured workplace”, by which firms avoid taking on the full responsibilities of employer via the use of legal forms such as franchises and independent contractors,<sup>203</sup> and the investment in and adoption of technologies that rewarded highly educated workers relatively more highly.<sup>204</sup> Meanwhile, the taxation system became more regressive and less effective at tracking the income and wealth of the wealthy.<sup>205</sup> Put it together, and one has a story about how wealthy owners of corporations rewrote the rules to increase their incomes and the incomes of a relatively small number of others with fancy credentials as the incomes of everybody else stagnated.<sup>206</sup> As Marshall Steinbaum and Andrew Elrod remind us, in a world of low income taxes and low unionization rates, “research on intergenerational determinants of economic status finds that the single most important predictor, by a wide margin, is the economic status of your parents.”<sup>207</sup>

Framing college as an individual investment in future earnings made it easier not just to ignore the distributional consequences of *other* labor market policies, but also to ignore the distributional consequences of a debt-financed system of higher education. As discussed above, those consequences were substantially regressive.<sup>208</sup> Lower-income students were forced to rely more heavily on debt and, of course, had fewer resources to manage it. Moreover, as is discussed further below, lower income students were increasingly channeled toward jobs that did not pay as well as those

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<sup>201</sup> See José Azar & Ioana Marinescu, *Monopsony Power in the Labor Market: From Theory to Policy*, 6 ANN. REV. ECON. 491 (2024);

<sup>202</sup> Henry S. Faber, Daniel Herbst, Ilya Kuziemko, Suresh Naidu, *Unions and Inequality Over the Twentieth Century: New Evidence From Survey Data*, 136 Q.J. ECON. 1325 (2021); David Card, *The Effect of Unions and Wage Inequality in the U.S. Labor Market*, 54 INDUSTRIAL & LABOR RELATIONS REV. 296 (2001); Arindrajit Dube, *Minimum Wages and the Distribution of Family Incomes*, 1 AM. ECON. J.: APPLIED ECON. 268 (2019).

<sup>203</sup> DAVID WEIL, *THE FISSURED WORKPLACE* (2014).

<sup>204</sup> GOLDIN & KATZ, *EDUCATION AND TECHNOLOGY*, *supra* note 19.

<sup>205</sup> Emmanuel Saez & Gabriel Zucman, *The Rise of Income and Wealth Inequality in America: Evidence from Distributional Macroeconomic Accounts*, 34 J. ECON. PERSPECTIVES 3 (2020); Annett Alstadaeter, Niels Johannessen, & Gabriel Zucman, *Tax Evasion and Inequality*, 109 AM. ECON. REV. 2073 (2019); THOMAS PIKETTY, *CAPITAL IN THE TWENTY-FIRST CENTURY* (2014).

<sup>206</sup> See AFTER PIKETTY (Heather Boushey, J. Bradford DeLong, & Marshall Steinbaum, eds., 2019); JACOB S. HACKER & PAUL PIERSON, *WINNER-TAKE-ALL POLITICS* (2010).

<sup>207</sup> Marshall Steinbaum & Andrew Elrod, *Rebuilding American Higher Education* 19 (Higher Education Labor United & Jain Family Institute Rpt., Dec. 3, 2025), [https://marshallsteinbaum.org/wp-content/uploads/2025/12/Rebuilding-American-Higher-Education\\_FINAL.pdf](https://marshallsteinbaum.org/wp-content/uploads/2025/12/Rebuilding-American-Higher-Education_FINAL.pdf) (citing Raj Chetty et al., *Is the United States Still a Land of Opportunity? Recent Trends in Intergenerational Mobility*, 104 AM. ECON. REV. 141 (2014)). See Raj Chetty et al., *The Fading American Dream: Trends in Absolute Income Mobility Since 1940*, 356 SCIENCE 398 (2017).

<sup>208</sup> *Supra* Part III.A.

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from higher income backgrounds. Black students also borrowed at higher rates than white students, borrowed larger amounts, and faced greater difficulty repaying due to persistent racial wealth gaps and labor market discrimination. These disparities were largely invisible as long as policy discourse focused on average returns to individual investment without digging into distribution.

### 2. Vocationalizing Education

The increasing sticker price of college plus an emphasis on college as an investment in employability encouraged administrators and policymakers to focus on making a college education “worth it” by making it more professionally and vocationally relevant. If college was about earning back the investment through higher wages, then programs, disciplines, and institutions most directly connected to employment should be prioritized and programs with less clear applicability to current capitalist imperatives came to appear wasteful.<sup>209</sup> Especially when discussing “non-traditional” students for whom the risk of student debt was highest, it became increasingly important to make sure that education show return on investment.<sup>210</sup>

This tendency of thought was perverse. It contributed to a series of changes in higher education governance that produced worse overall labor market outcomes for students and increased inequality by making it much more likely that students from disadvantaged backgrounds would attend institutions that were associated with relatively inferior labor market outcomes.

One way it did so is by making for-profit colleges especially attractive to policymakers. For-profit colleges were originally created as vocational schools and, even as they expanded, they mostly marketed themselves—to students and to policymakers—as focused on job training and career preparation.<sup>211</sup> They claimed to be more responsive to employer needs than traditional colleges. Most of their programmatic offerings were narrowly tailored toward inculcating the skills that would be relevant to a given career path (video game designer, IT professional, nurse).<sup>212</sup>

Yet for-profit colleges have produced worse outcomes for students on exactly the terms they claimed superiority. During their heyday in the early 2000s, they made their students financially *worse off* on average.<sup>213</sup> Many of the most profitable for-profit

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<sup>209</sup> Michael Simkovic, *A Value-Added Perspective on Higher Education*, 7 U.C. IRVINE L. REV. 123 (2017).

<sup>210</sup> A key example of how this type of thinking influenced policy was the adoption of “gainful employment” standards by Congress and the Department of Education. There has been much back-and-forth about what exactly these standards should require, but the basic idea shared by all is that vocational schools should only have access to aid if they can demonstrate that their programs consistently produce positive returns on investment. *See* Financial Value Transparency and Gainful Employment, 88 Fed. Reg. 70004 (Oct. 10, 2023).

<sup>211</sup> ANGULO, *supra* note 78; COTTOM, *supra* note 193, at 113-40.

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<sup>213</sup> Stephanie Riegg Cellini & Nicholas Turner, *Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students Using Administrative Data* (Nat’l Bureau of Econ. Research, Working Paper No. 22287, 2016), [http://www.nber.org/papers/w22287?utm\\_campaign=ntw&utm\\_medium=email&utm\\_source=ntw](http://www.nber.org/papers/w22287?utm_campaign=ntw&utm_medium=email&utm_source=ntw); Adam Looney & Constantine Yannelis, *A Crisis in Student Loans? How Changes in the Characteristics of Borrowers and in the Institutions They Attended Contributed to Rising Loan Defaults* (Brookings Institute, Working Paper, 2015), [https://www.brookings.edu/wp-content/uploads/2016/07/ConferenceDraft\\_LooneyYannelis\\_StudentLoanDefaults.pdf](https://www.brookings.edu/wp-content/uploads/2016/07/ConferenceDraft_LooneyYannelis_StudentLoanDefaults.pdf).

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colleges were engaged in massive fraud operations.<sup>214</sup> Even students who did relatively well after attending for-profit colleges' programs found themselves in jobs that were, at best, in the middle of the income spectrum, but with debt levels similar to those who had completed bachelors' or even graduate degrees.<sup>215</sup> Thus, they were not increasing their relative social position.

All of this was overlooked for years because the vocational focus seemed aligned with what policymakers thought low-income students needed.

The same logic also supported prioritizing funding for community colleges, particularly on distributional grounds.<sup>216</sup> Community colleges were cheaper and more accessible than four-year institutions, and they emphasized career and technical education. Channeling more low-income students and students of color to community colleges seemed like an efficient and maximally redistributive way to expand access to higher education and to the labor market returns associated with it.

But this channeling contributed to institutional stratification and inequality. As Zachary Bleemer and Sarah Quincy have documented, the teaching-oriented public universities, community colleges, and for-profit institutions where lower-income students have been increasingly concentrated have experienced relative declines in resources and outcomes compared to the selective universities that serve predominantly higher-income students.<sup>217</sup> Lower-income students are not only channeled into different types of institutions but into institutions that provide systematically less value—lower completion rates, fewer resources per student, less valuable credentials in the labor market.

### 3. Devaluing Education

Framing college as an individual investment in employability also diverted our collective attention away from the other things that make institutions of higher education valuable.<sup>218</sup> Education does not just develop job-related skills, but also skills related to other aspects of individual and social life, familiarity with basic scientific and mathematical reasoning that may be relevant for any number of decisions from healthcare to childcare to home repair, critical reading skills necessary to navigate confusing information environments, historical knowledge relevant to political decisions that all will be somewhat responsible for in a democracy, and so on. Universities do not just provide educations, but also research—including in areas not immediate relevant to (and, indeed, even challenging to) profit-oriented firms—and

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<sup>214</sup> Gregory D. Katz, *For-Profit Colleges: Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practices*, U.S. GOV'T ACCOUNTABILITY OFF. (Aug. 4, 2010, 10:00 AM), <http://www.gao.gov/new.items/d10948t.pdf>; David Halperin, *Law Enforcement Investigations and Actions Regarding For-Profit Colleges*, REPUBLIC REPORT (Apr. 9, 2014), <https://www.republicreport.org/2014/law-enforcement-for-profit-colleges/> (last updated Jan. 9, 2020).

<sup>215</sup> *Supra* note 213.

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<sup>217</sup> Bleemer & Quincy, *supra* note 20. See also Timothy Bartik & Brad Hershbein, "Degrees of Poverty: Family Income Background and the College Earnings Premium," 23 Employment Research Newsletter (2016).

<sup>218</sup> There is a large literature making arguments along these lines. E.g. Herrine, *Jubilee*, *supra* note 8, at 320; WENDY BROWN, UNDOING THE DEMOS 175-200 (2012).

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a variety of social services and spaces for preserving culture and nurturing its development. Narrowing higher education to employability preparation involves denigrating these aspects of universities—at the extreme producing the fraud-prone pedagogical minimum of for-profit colleges.

### C. Status Competitions and Inequality

The fact that demand-side subsidy helped neutralize states' and universities' opposition to federal involvement with higher education also came with a dark side. Since demand-side subsidy works through tuition, student debt encouraged tuition reliance. Among other things, increased reliance on tuition encouraged colleges to compete more heavily for students who could pay tuition. This competitive dynamic (combined with other competitive dynamics around status and research dollars)<sup>219</sup> deepened inequality between institutions—elite schools became more and more selective, spending enormous resources on mostly wealthy students, while schools dedicated to serving a broader population found themselves in more and more precarious financial circumstances (or, in the case of for-profits, circumstances that were lucrative for executives but tenuous for everybody else).<sup>220</sup> As this competitive dynamic played out, tuition went up everywhere—at several multiples of overall inflation—while funding channeled upward.<sup>221</sup> Inequality among institutions reinforced inequality among students.

Higher education researchers have documented a “shift in college and university operations” around 1980 in which administrators began to “prioritize competitions for status and resources as well as—or, in some cases in place of—fulfillment of their traditional missions.”<sup>222</sup> Colleges had previously been relatively sheltered from competitive forces due to the huge growth in enrollment paired with huge growth in state funding—the lion's share of students went to public universities that were part of state-level university *systems* designed to (attempt to) balance maximal access for in-state students with the promotion of mobility and the selection for excellence.<sup>223</sup> Cross-state and international recruitment was a relatively marginal phenomenon and, even at many private institutions, tuition accounted for a relatively small amount of revenue, which made competition for students between institutions relatively weak.

Several factors conspired to cause university costs to go up while state-level support and began to waver and federal research funding stopped growing as rapidly as it had.<sup>224</sup> Both public and private institutions, reluctant to cut costs, had to fill in

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<sup>219</sup> Of course, status competition and competition for research dollars is a longstanding feature of higher education. See THELIN, *supra* note [], at 277-80 (describing competition for the first wave of postwar federal research dollars in the 1950s). The point here is only that, whereas many of those competitive dynamics had been cabined through state systems and preferences for in-state students at midcentury, the shift to tuition dependence encouraged more cross-state and international competition along the lines described.

<sup>220</sup> TAYLOR & CANTWELL, *supra* note 20; Eaton et al., *Financialization*, *supra* note 131.

<sup>221</sup> [tuition data]; Bleemer & Quincy, *supra* note 20

<sup>222</sup> TAYLOR & CANTWELL, *supra* note 20, at 24

<sup>223</sup> HERRINE, NEOLIBERALIZATION, *supra* note 20.

<sup>224</sup> TAYLOR & CANTWELL, *supra* note 20, at 24-27; GEIGER, *supra* note ; [note on whether state funding dropped]

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funding elsewhere. Once it was discovered that raising tuition did not scare students away, tuition became an increasingly important source of revenue stabilization.<sup>225</sup> As public universities became unmoored from state systems, they also began to compete more heavily for locations within various status hierarchies and—at least among the small group of schools with elite research facilities—for research funding (they also became more sophisticated investors of their endowments).<sup>226</sup> Private universities, the most elite of which were already oriented toward competing on these dimensions, pushed the competitive dynamics further.

Student recruitment became an increasingly important facet of university management as these competitions heated up. Recruiting larger applicant pools allowed the universities who could manage it to move up status hierarchies by becoming more selective.<sup>227</sup> For public universities, that meant recruiting much more heavily from out of state—for all universities it meant recruiting more heavily internationally.<sup>228</sup> Increasing “merit” scholarships allowed colleges to attract students with characteristics (academic achievement, athletic prowess, likelihood of becoming a donor) that would allow them to maintain or improve their US News and/or athletic rankings, while judicious use of “need-based” scholarships allowed them to promote their accessibility and commitment to inclusion.<sup>229</sup> Expanding class size allowed universities to increase tuition revenue on the extensive margin, while recruiting wealthy students from low-achieving academic backgrounds via promises of a robust party life allows them to increase tuition (and likely donations and real estate revenues) on the intensive margin.<sup>230</sup> More and more universities (often with the help of high-paid consultants) integrated recruitment, admissions, financial aid, and advising into “enrollment management” departments that allowed them to determine the best combination of these strategies for their revenue and status goals.<sup>231</sup>

The expansion of administrators, amenities, and financial services necessary to run these strategies pushed up cost further.<sup>232</sup> And the competitions they were engaged widened the inequality between institutions. Institutions that started with larger endowments grew their endowments faster.<sup>233</sup> Institutions that started high in the hierarchy of research funding reaped most of the rewards of increased research funding in the 1990s.<sup>234</sup> High status institutions tended to have the easiest time with enrollment management strategies. Put it together, and elite institutions (both private and public) became much richer and more selective than even their near-elite

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<sup>225</sup> DELANEY, *supra* note 11.

<sup>226</sup> SHEILA SLAUGHTER & LARRY L. LESLIE, *ACADEMIC CAPITALISM* (1999); SHEILA SLAUGHTER & GARY RHOADES, *ACADEMIC CAPITALISM AND THE NEW ECONOMY* (2009).

<sup>227</sup> ARMSTRONG & HAMILTON, *supra* note 39.

<sup>228</sup> Ozan Jaquette, *State University No More: Out-of-State Enrollment and the Growing Exclusion of High-Achieving, Low-Income Students at Public Flagship Universities* (Jack Kent Cooke Foundation, May 2017), [https://www.jkcf.org/wp-content/uploads/2018/06/Cooke\\_Foundation\\_State\\_University\\_No\\_More.pdf](https://www.jkcf.org/wp-content/uploads/2018/06/Cooke_Foundation_State_University_No_More.pdf)

<sup>229</sup> Steinbaum & Elrod, *supra* note 207.

<sup>230</sup> MITCHELL, *supra* note 122, at 167-88; ARMSTRONG & HAMILTON, *supra* note 39

<sup>231</sup> TAYLOR & CANTWELL, *supra* note 20, at 34.

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<sup>234</sup> [Geiger]

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counterparts, while institutions without ample endowments sunk into lower status and financial precariousness.<sup>235</sup>

By the 2010s, universities had sorted into tiers, with the wealthiest institutions generally serving the wealthiest students and the poorest (and most vocationally-focused) institutions serving the poorest. Resources thus concentrated toward educating the already well-resourced.

Student debt was not the sole or even the central cause of these dynamics, but it did grease their wheels. Its most important contribution was in helping to make it possible for universities to continuously raise tuition without sacrificing applications or enrollment. Students who could finance their education with loans could pay for high tuition even if their (and their family's) wealth and income could not. Once universities discovered that they could raise tuition to fill in funding gaps, they were less likely to object to those gaps. Thus, state governments looking for room in their budget found it easier to cut funding for public universities, which also made them less likely to object to the expansion of federal aid. Separately and less concretely, increased reliance on tuition reinforced the idea that higher education should be seen as a "market" in which competition between schools and between students would result in optimal matching. It was exactly these competitions that produce the inequality-reinforcing dynamics just described.

### III. Stabilization Becomes Destabilization

These costs of the student debt system eventually ate away at the system's stabilizing mechanisms. Ensuring the profits of the student loan industry kept costs high, and once budgetary rules and borrower advocates made those costs visible, they made student loans less fiscally light. Once the extent of the student loan industry's corruption and fraud began to be revealed, it had a more difficult time relying on that corruption and fraud to preserve an insider politics. As borrower distress grew and mechanisms for debt relief narrowed, an outsider politics against student debt began to take shape.

These and related dynamics were accelerated by the financial crisis of 2007—which increased distress, tarnished the legitimacy of the financial industry, and generally opened up space for more populist politics on both left and right. In the wake of that crisis, Democratic-Party-controlled Congresses passed laws that nationalized most student loan issuance and that attempted to make student loan payments more affordable by keying payment amount to income. These initiatives failed to quell the growing populist opposition to student loans, but they did reduce the power of the student loan lobby, increase the complication and cost of student loan administration, and increase the salience of the redistributive politics of student loans. Meanwhile, growing radicalization of the Republican Party and the growth of a more vocal progressive caucus in the Democratic Party shrunk the constituencies for cross-partisan compromise on anything. Centrifugal forces strengthened during the COVID emergency—which, among other things, led to a three-and-a-half year pause in student loan payments and the Biden Administration's efforts to cancel large swathes of debt and reconstruct the program on more comprehensively affordability-

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<sup>235</sup> TAYLOR & CANTWELL, *supra* note 20, at 3.

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focused grounds, most of which were halted by increasingly right-wing courts and then by the increasingly authoritarian second Trump Administration.

We now have a policy landscape in which many households have not paid their student loans for years and have no idea when consistent repayment will start again or on what terms, in which Congress can be counted on for almost nothing, in which the approach to higher education finance shifts wildly with each change in party control over the White House. In sum, federal higher education finance become profoundly unstable in large part *because of* student loans. They have not only lost many of their coalition-knitting properties, they have gained coalition-splitting properties.

### A. Fiscal Heaviness

Student loans' fiscal lightness wore off in stages. First, the cost of outsourcing was made salient through reports and changes in budgetary rules. Then, after student loan administration began to be insourced and efforts to relieve borrower distress began to accumulate, the cost of student loan administration increased and was less effectively hidden. Meanwhile, the political salience of balanced budgets and the willingness to look for compromises faded—conservative opposition shifted to intentional obstruction of the Democratic Party, while, after the financial crisis, the Democratic Party became less beholden to the ideology of austerity.

The first stage began in 1989. It was then that Senator Sam Nunn initiated a series of investigations into the administration of student loans that revealed, among other things, the previously neglected costs of incentivizing for-profit financial companies to run most of the student loan program.<sup>236</sup> These costs of outsourcing motivated a relatively ideological diverse coalition of Congresspeople to begin to consider “cutting out the middlemen” by replacing the guaranteed loan program with a direct loan program.<sup>237</sup> The Federal Credit Reform Act of 1990 put wind in their sails by changing the budgetary rules that had deferred the cost of guaranteed loans until the payment of the guarantees into rules that required the government to include an estimate of the expected cost of guarantees in the budget during the year of issuance.<sup>238</sup> Now the fact that the expected cost of direct loans would be registered up front was no longer a disadvantage, and the large and growing cost of lining the pockets of financial industry executives was easier to see.<sup>239</sup>

Intense lobbying defeated the initial bill that would have replaced guaranteed lending with direct lending.<sup>240</sup> Instead, the Direct Loan program was forced to coexist with guaranteed lending until the financial crisis of 2007 loosened the industry's stranglehold on Congress. Then, in a 2010 omnibus reconciliation bill, a

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<sup>236</sup> SHERMER, *supra* note 5, at 254-56.

<sup>237</sup> SHERMER, *supra* note 5, at 254-67.

<sup>238</sup> Federal Credit Reform Act of 1990, Pub. L. 101-508, § 502(5)(C), 104 Stat. 1388-610 (Nov. 5, 1990), codified as 2 U.S.C. § 661a(5); Berman & Stivers, *supra* note 91, at 133.

<sup>239</sup> In principle, the relative cost of a loan program versus direct support to universities paired with a more progressive taxation system would have also been more legible, but nothing like that was seriously considered in a moment of reaction against “Big Government”.

<sup>240</sup> SHERMER, *supra* note 5, at 254-67; MITCHELL, *supra* note 122, at 86-88.

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Democratically controlled Congress finally ended the guaranteed loan program, placing the costs of lending squarely on the government's books.<sup>241</sup>

At the same time, the cost of student loan administration was going up. Rising delinquency and default rates, much of which was driven by the channeling of lower-income and “non-traditional” students into less resourced or (in the case of many for-profit colleges) outright predatory institutions, made the average revenue collected from each loan lower and the average cost of administering it higher.<sup>242</sup> Growing borrower distress also inspired experimentation with income-driven repayment programs and rules that provide for debt cancellation in a variety of circumstances, including total and permanent disability and misconduct by schools.

As with direct lending, these programs had little impact until the financial crisis disrupted business as usual. That crisis both created an immediate political environment in which previously lobbyist-stifled efforts at reform could finally pass and a more enduring shift in the politics of student loans (discussed below) in which a more populist politics became possible. For purposes of budgetary lightness, the important result was the growth of programs aimed at reducing burdens of debtors that reduced expected revenue and increased the cost of program administration. At the same time, student loan administrators realized that a light-touch regulatory approach enabled fraud and rising defaults, but reducing fraud—at least in the short-term—meant increasing the cost of program administration by developing accountability systems.

By the late 2010s, student loans had entered a “crisis of non-repayment”, with more and more student loans running up balances higher than when originated.<sup>243</sup> When COVID-19 caused mass death and shutdowns in 2020, President Trump and Congress paused student loan payments altogether.<sup>244</sup> This payment pause formally lasted until 2023, but efforts to restart payments have repeatedly run aground, leaving many borrowers without formal repayment obligations and without a clear sense of how much they will be expected to pay moving forward.<sup>245</sup> The Biden Administration's efforts to restructure the student loan program to be more efficiently administered and more fully progressive ran into the buzzsaw of an increasingly ideologically intransigent Supreme Court, producing further confusion about repayment and thus revenue.<sup>246</sup> The Trump Administration's own efforts to simplify

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<sup>241</sup> Health Care and Education Reconciliation Act of 2010, Pub. L. 111-52, § 2201, 124 Stat. 1029, 1074 (Mar. 30, 2010). METTLER, *supra* note 18, at 145-61 SHERMER, *supra* note 5, at 281-84. There remained various forms of outsourcing. Billions of dollars of guaranteed loans remained outstanding and direct loans were still serviced by contractors.

<sup>242</sup> The Volume and Repayment of Federal Student Loans (Cong. Budget Ofc. Rpt. No. 56,706, Nov. 2020), <http://www.cbo.gov/publication/56706>

<sup>243</sup> Marshall Steinbaum, The Student Debt Crisis as a Crisis of Non-Repayment (Jain Family Institute Working Paper, Nov. 17, 2020), <https://marshallsteinbaum.org/wp-content/uploads/2024/09/msd4-2020-student-debt-crisis-is-a-crisis-of-non-repayment.pdf>

<sup>244</sup> Kevin M. Lewis, Sean Stiff, and Jay B. Sykes, President Trump's Executive Actions on Student Loans, Wage Assistance, Payroll Taxes, and Evictions: Initial Takeaways, Congressional Research Service, Aug. 10, 2020, <https://crsreports.congress.gov/product/pdf/LSB/LSB10532>; Herrine & Glater, *supra* note 118.

<sup>245</sup> Herrine & Glater, *supra* note 118.

<sup>246</sup> *Id.*

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student loan while making them less progressive has only added to the confusion, not least because the Administration is also exploring options for re-outsourcing.<sup>247</sup>

Even as the budgetary visibility of student loans changed, so did the lenses through which political parties viewed budgetary politics. Beginning with Newt Gingrich's "Contract with America" in 1994, the Republican Party became increasingly committed to a politics of obstructionism and "starving the beast" of the federal government rather than a politics of compromise and budgetary balancing.<sup>248</sup> The fact that a policy would reduce costs to the government simply did not matter as much in picking up votes from Republicans. With the rise of Trump and the "Make America Great Again" movement, the Republican Party has shifted almost completely to a politics of authoritarianism, with the political logic of "efficiency" and "cost cutting" deployed opportunistically to thwart political enemies and to shut down programs that do not align with ideological priorities.<sup>249</sup> The Democratic Party's leadership has been slow to adjust to this change, but the Party has added more progressives since the financial crisis who are skeptical of budget-balancing arguments.<sup>250</sup> Thus, budgetary lightness has simply lost importance in producing political coalitions.

### B. Outsider Politics

Many of these changes also tore at the insider politics of student loans. Direct lending, of course, was a direct threat the profits and the power of lenders, especially Sallie Mae, which (unlike most banks) made most of its money through student lending. It was out of fear of this threat that Sallie these lenders invested so heavily preventing the full replacement of the guaranteed lending program.<sup>251</sup> Once they finally lost in 2010, the Congress did not need to worry as heavily about how a change to a student lending program might affect willingness to lend—the government was doing the lending, whether profitable or not. And, of course, reduced revenues meant reduced resources for lobbying.

A second major blow to the student loan lobby was steady drumbeat of investigations into—and, eventually, lawsuits and enforcement actions focused on—their corruption and misconduct. Such investigations played an important role in the legislative wrangling that led to the direct lending pilot program in 1991, which was passed alongside an initial effort to restrain the predatory conduct of for-profit colleges as well.<sup>252</sup> But reforms were mostly defanged until the investigations picked up again around 2005.<sup>253</sup> Journalists, state attorney generals, whistleblowers, and private litigants publicized corruption and fraud amongst lenders, servicers, for-profit colleges, and college financial aid departments.<sup>254</sup>

As these investigations reached a crescendo, the financial crisis hit. That crisis dramatically increased the appetite for investigations into wrongdoing in consumer

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<sup>247</sup> *Id.*

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<sup>251</sup> *Supra* note 240.

<sup>252</sup> *Id.*

<sup>253</sup> SHERMER, *supra* note 5, at 269-80; Brooks & Levitin, *supra* note 4, at 29.

<sup>254</sup> Many of these investigations are cited *supra* Part III.A.

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lending markets and the public attention to the details. It also inspired many debtors to begin to join together to fight against the narrative that household financial distress was a result of individual irresponsibility and push for systemic responses. During the Obama Administration, multiple for-profit college chains found themselves hit with multiple lawsuits, leading to several bankruptcies. For-profit college student debtors began to organize to began cancellation of their debts.<sup>255</sup>

Through these and other efforts, an outsider politics of student debt was born. Insider politics began more difficult to perpetrate with a skeptical public attending to it. And debtors and their advocates found ways to make their voices heard—through protests, lawsuits, lobbying, participation in regulatory proceedings, and so on.

Initial efforts to quell discontent took the form of investigations into profiteers, and some increased regulation and enforcement against perpetrators of wrongdoing.<sup>256</sup> Alongside these investigations were reforms of income-driven repayment and the adoption of public-service loan forgiveness, both passed in the name of making student loans more affordable.<sup>257</sup> The latter also pushed back against the logic of investing in earning capacity by acknowledging the value of having highly educated people do service work that is not as highly rewarded on the marketplace.

By the time of the COVID crisis, the outsider politics of student debt had developed sufficiently that Congress and the President could imagine what would have previously considered impossible: pausing all payments on student loans. As discussed above (and in previous work), this payment pause had disrupted both the administration and the politics of student loans. It encouraged the left-wing outsider politics of debt cancellation and affordability. It also helped inspire a radicalization of right-wing politics with respect to higher education.<sup>258</sup>

### C. Ideological Heaviness

Especially as reforms to the student loan system progressed, the system lost much of its ideological lightness. Recall that that lightness had depended, to a substantial degree, on the ambiguity as to whether student loans were a social investment or the facilitation of an individual investment. As student loan repayment plans became increasingly progressive (at least on paper),<sup>259</sup> the student loans appeared increasingly redistributive. As debt cancellation became a serious policy option—and a reality for many<sup>260</sup>—the notion that loans were an individual responsibility lost some plausibility. As the 2010s progressed, the center-left and

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<sup>255</sup> Herrine & Glater, *supra* note 118.

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<sup>257</sup> College Cost Reduction and Access Act, Pub. L. 110-84, 121 Stat. 784 (2007) (creating PSLF and IBR); Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152, § 2213 124 Stat. 1029 (Nov. 5, 2010) (amending IBR to make terms more generous); 77 Fed. Reg. 66,088 (Nov. 1, 2012) (creating “PAYE” through the ICR authority to create an even more generous IDR program); 80 Fed. Reg. 67,204 (Oct. 30, 2015) (creating “REPAYE” to expand the terms of PAYE retroactively).

<sup>258</sup> Herrine & Glater, *supra* note 118; *supra* note 244-247 and accompanying text.

<sup>259</sup> Problems with implementation, driven in part by failures to regulate servicers, have consistently plagued efforts to make income-driven repayment effective. Brooks & Levitin, *supra* note 4, at 48-66.

<sup>260</sup> Initial cancellation was mostly available to defrauded for-profit college students and those who were eligible for write downs at the end of income-driven repayment plans.

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center-right visions of student loans pulled apart. The center-left was increasingly committed to the idea of adjusting repayment obligations depending on income, on public service, and on other indications of ability to pay.<sup>261</sup> The center-right did embrace some notion of income-driven repayment but remained devoted to the importance of individual responsibility and protecting “taxpayers”.<sup>262</sup>

The growing commitment to making repayment plans more progressively structured emerged in part because of the growing evidence of the unequal impacts of student loan debt, including the concentration of defaults and distress among lower-wealth and lower-income households, which meant concentration among Black households in particular.<sup>263</sup> This evidence also called into question the simpler versions of the human capital justifications for mass indebtedness that had provided an important shared ideological ground for agreement. For many households—especially those with members who went to for-profit colleges—taking on debt to go to college turned out *not* to be worth it, on net. For other households, the net benefit was uncomfortably low. And once attention to the distributional impact increased (with the greater attention to inequality post-2010 and racial justice post-2020) and labor economists developed evidence on monopsony and the role of countervailing power in reducing it, the story of college making everybody better off and reducing inequality became harder to tell. Both left-wing and right-wing versions of “post-neoliberal” labor and industrial policy politics took root, alongside more centrist efforts to rescue student loans by making them less regressive and more affordable (which, as just mentioned, helped widen the split).<sup>264</sup>

Of course, these splits internal to student loan policy and ideology took place in the context of a more general deepening of the divide between the Democratic and Republican Parties and the political movements that buffet each. As mentioned above, Republicans became increasingly oppositional starting in the 1990s. They also became increasingly ideologically extreme.<sup>265</sup> The Democrats also moved somewhat to the left (to a lesser degree) and developed internal divisions. As efforts to reform student loan systems progressed over the 2010s and 2020s, these divisions became more deeply entrenched, in part because Republicans’ backlash politics dictated a more oppositional position as Democrats became more committed to reform.<sup>266</sup> Indeed, Republicans have moved so far to the right that they are now attempting to condition funding to colleges on ideological compliance.<sup>267</sup>

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<sup>261</sup> Brooks & Levitin, *supra* note 4.

<sup>262</sup> Sandy Baum & Jason D. Delisle, *Income-Driven Repayment of Student Loans: Options for Reform*, Urban Institute (Apr. 13, 2022), <https://www.urban.org/sites/default/files/2022-04/Income-Driven%20Repayment%20of%20Student%20Loans%20Options%20for%20Reform.pdf>.

<sup>263</sup> [https://www.naacpldf.org/wp-content/uploads/Civil-Rights-Principles-for-Student-Loan-Debt\\_Hamida-Labi.pdf](https://www.naacpldf.org/wp-content/uploads/Civil-Rights-Principles-for-Student-Loan-Debt_Hamida-Labi.pdf)

<sup>264</sup> <https://www.hks.harvard.edu/centers/wiener/programs/economy/our-work/reimagining-economy-blog/future-us-industrial-policy>; OREN CASS, *THE ONCE AND FUTURE WORKER* (2018).

<sup>265</sup> See Christopher Hare & Keith J. Poole, *The Polarization of Contemporary American Politics*, 46 *POLITY* 411 (2014); Andreas Schedler, *Rethinking Political Polarization*, 138 *POL. SCI. Q.* 335 (2023); Richard H. Pildes, *Why the Center Does Not Hold: The Causes of Hyperpolarized Democracy in America*, 99 *CAL. L. REV.* 273 (2011).

<sup>266</sup> Herrine & Glater, *supra* note 118.

<sup>267</sup> Green, *supra* note 47.

## IV. Possibilities for Restabilization

Today the federal higher education finance system is in a state of profound uncertainty. Repayment has been entirely or partially paused for going on six years.<sup>268</sup> The terms of repayment have been rewritten multiple times, with multiple efforts at simplification coming to ruin.<sup>269</sup> As of this writing, the (second) Trump Administration is contemplating ending the Department of Education and privatizing much of the system while attempting to impose ideological controls, without a clear unifying strategy and with little regard for governing law.<sup>270</sup> Legislative compromise across party lines has become difficult to imagine—which means that any legislative majority for reform will have to come almost entirely from one party and lasting reforms will likely require a sustained shift in political coalitions.

In other words, we are in a period of extended destabilization, and the path toward restabilization has not yet made itself clear. Even if we cannot predict the future with any confidence, we can outline how conditions for stabilization have changed. This Part does so by considering two plausible versions of restabilization: one in which student loans again become normalized, with some set of reforms, and one in which student loans are mostly or entirely replaced with direct funding to universities and grants to supplement.<sup>271</sup> Exploring the former scenario will allow us to consider how student loans' stabilizing mechanisms have changed and which reforms might make them more effective again. Exploring the latter will allow us to consider how different mechanisms for coalition stabilization would have to be arrived at.

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<sup>268</sup> U.S. Department of Education Delays Involuntary Collections Amid Ongoing Student Loan Repayment Improvements, U.S. Dept. of Educ. (Jan. 16, 2026), <https://www.ed.gov/about/news/press-release/us-department-of-education-delays-involuntary-collections-amid-ongoing-student-loan-repayment-improvements> (announcing a pause on collections—although not on the obligation to repay—to follow an announcement of a restart of collections given the need to adjust to new payment plans); Adam S. Minsky, *Education Department Officially Kills SAVE Plan for Student Loans*, *Forbes* (Dec. 9, 2025), <https://www.forbes.com/sites/adamminsky/2025/12/09/education-department-officially-kills-save-plan-for-student-loans/> (reviewing the administrative forbearance that applied to borrowers during pending litigation over the lawfulness of the Biden Administration's efforts to reform repayment); Herrine & Glater, *supra* note 118 (discussing the COVID payment pause and the litigation pauses thereafter).

<sup>269</sup> Herrine & Glater, *supra* note 118; Brooks & Levitin, *supra* note 4.

<sup>270</sup> Herrine & Glater, *supra* note 118.

<sup>271</sup> A third path is worth considering: federal higher education finance falls apart, or at least drastically reduces. Such a path would most occur, for example, were the Trump Administration to move forward with a sell-off of the student loan portfolio and a shutdown of the Department of Education, which might then be ratified by a Republican-controlled Congress eliminating federal student aid. Then, at least until a new coalition were to come together to create a new federal higher education finance system, it would be up to states and private lenders to support colleges, which would likely cause a massive drop in attendance and bankruptcy of many already precarious colleges. I do not rule out this possibility. However, it seems to me the least likely, because dismantling federal higher education aid has not been articulated as a priority by Republicans, because accessible higher education remains broadly popular, and because it seems to me the power of this version of the Republican Party has already reached its zenith. I also do not analyze it at any length here because, under such a scenario, there would be no stabilizing mechanisms for federal student aid. And stabilizing mechanisms are our focus here.

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### A. Reestablishing Loans?

Despite everything, student loans have staying power. They remain the centerpiece of federal student aid. As entitlements, they continue to expand without any need for legislative compromise, and they avoid the increasingly frequent budgetary brinksmanship through which most legislative action now takes place.<sup>272</sup> That element of budgetary lightness remains essential. Since demand for college remains high and tuition continues to rise,<sup>273</sup> millions of students continue to take out tens of billions of dollars in loans to finance their college educations each year.<sup>274</sup> The government continues to issue them as a matter of course. Colleges, states, and many others continue to depend on the existence of this program for their functioning.

Student loans also continue to have inertia on their side. As Suzanne Mettler emphasizes, when polarization makes legislative coalitions difficult to form, incumbent policies win out by default, with makeshift coalitions agreeing to minor tweaks periodically.<sup>275</sup> Perhaps the most important reason for such “policy drift” is that any major change requires forming a coalition around a new vision, a much more difficult task than simply leaving things as they are or finding a small area of compromise.<sup>276</sup> This type of muddling along can last even if student loan policy remains incoherent and delegitimized, and even if lobbyists no longer shape the policyscape unchallenged.

That said, continued efforts at remaking the student loan system may damage it beyond repair. For instance, if the Trump Administration ends up selling off much of the portfolio and moves administration of the remainder to another agency while also attempting to restructure payment schedules and rewrite other regulations while also cutting staff to the bone, errors might well to accumulate: misapplied payments, lost documentation, mistaken identity, fraud, bribery, and so on. Then litigation would surely accumulate, and, at some point, the process for issuing and collecting on loans might become so ineffective that it has effectively failed.

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<sup>272</sup> See Rohan Grey, *Administering Money: Coinage, Debt Crises, and The Future of Fiscal Policy*, 109 KY. L.J. 229, 253-260 (2021) (recounting the increasing frequency of budgetary brinksmanship); Gillian Metzger, *Taking Appropriations Seriously*, 121 COLUM. L. REV. 4 (2021).

<sup>273</sup> Over the past couple decades, it has become increasingly common for colleges to charge a high “sticker price” while offering ample scholarships so that most students pay significantly less than the nominal price of tuition—which often results in a relatively progressive payment schedule. Many observers have touted this phenomenon as evidence that we should not be worried about increased tuition, because it is only really being paid by those who can afford it. However, as Steinbaum and Elrod note, this position fails to account for how high cost institutions are accepting relatively fewer students from lower-income backgrounds (and it also fails to account for increased costs after the first year of tuition, during which scholarships tend to reduce). Steinbaum & Elrod, *supra* note 207.

<sup>274</sup> Daniel Mangrum & Crystal Wang, *Student Loan Balance and Repayment Trends Since the Pandemic Disruption*, Liberty Street Economics (Mar. 26, 2025), <https://libertystreeteconomics.newyorkfed.org/2025/03/student-loan-balance-and-repayment-trends-since-the-pandemic-disruption/>.

<sup>275</sup> Mettler, *supra* note 18, at 45; see also Daniel J. Galvin & Jacob S. Hacker, *The Political Effects of Policy Drift: Policy Stalemate and American Political Development*, 34 Stud. in Am. Pol. Dev. 216 (2020).

<sup>276</sup> Galvin & Hacker, *supra* note 275, at 219 (“Drift does not require active blocking. Given how hard it is to update policies, policymakers may simply lack a sufficiently large support coalition to overcome the many hurdles thrown up by American political institutions, or they may prioritize other policy changes, leading to deferred maintenance.”)

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Should student loan administration break down altogether, then muddling through would no longer suffice. Congress would have to draft a new plan for higher education finance that would bring together a majority and not be immediately repealed by a different majority.

In such a scenario (and of course, other scenarios for change short of total failure could be imagined), inertia would not count for as much, although it would still count for some. There are many people who are expert on how the student loan system worked with ideas for how to reform it, while nobody knows for sure how federal support for free public colleges would work (an expanded system of Pell Grants is somewhere in between).<sup>277</sup> Setting up a new version of student lending would require less new thinking, less new competency building, and less coalition building. Many of the main constituencies—college administrators and state governments, most notably—are accustomed to the student loan system and likely to be cautious about any alternative. At the level of popular consciousness, dissatisfaction with student loans has not (yet) led to widespread questioning of the logic of higher education as an investment in employability.<sup>278</sup> The Trump Administration’s attacks on research and protest and academic freedom may have created an opening for this broader questioning, but it would take a movement with a new vision to turn questioning into a deeper change in perspective.

Moreover, even with the increased partisan polarization and even with a Republican Party that is increasingly dedicated to attacking independent institutions of higher education, there remains a surprising amount of elite support for a simplified version of student lending with some version of income-driven repayment. Perhaps the best bit of evidence for this is the fact that, in a moment in which most student loan reforms have proceeded through administrative initiative and in which Republicans have mostly deferred to Trump’s Executive Branch to remake the federal government, relatively major student loan reforms made it through Congress with slim Republican majorities. The “One Big Beautiful Bill Act of 2025” included multiple student loan provisions.<sup>279</sup> Most notably for present purposes, it would (if it lasts) dramatically simplify repayment plans by pushing all borrowers into one standardized or one income-driven “Repayment Assistance Plan” (that is much less generous than most income-driven plans that had previously been on offer).<sup>280</sup> Meanwhile, many Democrats continue to express support for some version of student loans with income-driven repayment.<sup>281</sup> Even amidst our political ructions, one could imagine a legislative compromise amidst these legislators.

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<sup>277</sup> There has been a fairly detailed proposal put forward by a group of progressive legislators, but that proposal has not been subject to extended analysis. <https://www.sanders.senate.gov/wp-content/uploads/AEG25324.pdf>

<sup>278</sup> Interestingly, the most recent polling indicates that those who have favorable views about higher education are now less likely to attribute their views to higher education’s role in vocational training or income earning than they used to be. Jeffrey M. Jones, *U.S. Public Trust in Higher Ed Rises from Recent Low*, Gallup (Jul. 16, 2025), <https://news.gallup.com/poll/692519/public-trust-higher-rises-recent-low.aspx>. Such polling should be taken with a large grain of salt, of course.

<sup>279</sup> Pub. L. 119-21, 139 Stat. 72 (Jul. 4, 2025).

<sup>280</sup> Adam Looney, Jordan Matusdaira, & Clare McCann, *How OBBA Reshapes Student Lending*, Brookings (Jan. 28, 2026), <https://www.brookings.edu/articles/how-obbba-reshapes-student-lending/>.

<sup>281</sup> *Gillibrand Announces Legislation to Protect Historic Student Loan Debt Relief; Urges Borrowers to Apply for “SAVE Plan”*, Kirsten Gillibrand (Apr. 2, 2024),

## STUDENT DEBT AND (DE)STABILIZATION

One might sum all this up by saying that student loans have entrenched themselves, and this entrenchment gives them a distinct advantage at beating out potential alternatives during a transitional moment. But they have also had many of their stabilizing features weakened.

Given reforms in budgetary accounting, experience with the cost of contractors, the likely role(s) of student loans in pushing up the tuition and the high cost of making student loans affordable through progressive payment structures (and, in the alternative, of defaults when loans are not affordable), the cost savings of student loans are less clear than ever. Marshall Steinbaum and Andrew Elrod argue that, as a first order approximation, if the cost of unpaid loans plus some of the inefficiency in research funding were transformed into direct payments to public universities on the condition that they make tuition free, one would already have made it much of the way toward the federal cost of free higher education.<sup>282</sup> This may even be an underestimate: it leaves out the costs of paying contractors and padding the pockets of for-profit college executives (and then paying to investigate their misconduct), among others.

Meanwhile, even with continued support for a reformed student loan system in both political parties, bringing together a coalition for reform is a tall order. Anti-debt and pro-free-college politics has become more influential, especially on the left wing of the Democratic party, while anti-college or at least pro-confrontation-with-colleges has become more influential on the ascendant right wing of the Republicans. Especially in scenarios in which student lending is running aground, there is a real possibility that either or both of these coalitions would make a simple restorationist agenda impracticable. Even among the wings of each party inclined to favor a reformed student loan system, there is now a deep tension between making the system more affordable and progressive—which will increase cost—and making the system impose more responsibility on individuals. This tension will only grow as defaults pile up and student loan administration continues to be confusing. Re-establishing legitimacy will require a real effort.

Lobbyists used to provide much of the glue that held these factions together, but they have lost much of their adhesiveness. There simply are not as many lobbyists in this domain as there used to be, the lobbyists that remain have become weaker and more scandalous, and they must now navigate around an outsider politics of anti-corruption and even anti-debt. The switch to Direct Loans eliminated a major source of profit and a major impetus for continued lobbying. Given reforms and shake-ups at the Department of Education, servicers have not made the same level of profits that they once did, and they have become more fearful of losing contracts if caught misbehaving. For-profit colleges continue to spend amply on influence, but they are not as mighty as they once were and their reputation is substantially worse. A small group of advocates and organizers have, meanwhile, made headway in Washington in opposing these lobbyists and proposing alternatives. And that coalition seems likely to expand as faculty unions and radicalized researchers build capacity in the aftermath of the Trump Administration's attacks on higher education.

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<https://www.gillibrand.senate.gov/news/press/release/gillibrand-announces-legislation-to-protect-historic-student-loan-debt-relief-urges-borrowers-to-apply-for-save-plan/>.

<sup>282</sup> Steinbaum & Elrod, *supra* note 207.

## B. Establishing New Coalitions for Free College?

We should not rule out the possibility that this ascendant outsider politics of higher education finance culminates in replacing (or minimizing) the student loan system in favor of direct funding for public colleges. As things stand today, the most likely version of such a transition would involve the Democratic Party winning the Presidency and commanding majorities in both chambers of Congress with the promise of a transformational agenda to repair the damage of the authoritarian Trump Administration. Led by Elizabeth Warren and Bernie Sanders, congressional progressives already put forward a bill that would have substantially shifted toward free public college during the Biden Administration.<sup>283</sup> Although that bill never stood a chance of passing when it was first proposed, the Trump Administration's openly law-flouting authoritarianism has changed political conditions sufficiently that the next Democratic Administration (should it be elected into office and allowed to sit) seems likely to try many things that would have recently been considered absurdly radical.<sup>284</sup> And if that agenda is at all successful, it may well lead to a generational political realignment that locks in many of its significant legislative accomplishments.

All of this is highly speculative, of course. Even should a Democratic landslide and accompanying political realignment take place, it might not prioritize making big changes to higher education finance. And, even if it does commit to free college, it will have to fight against the inertia described in the preceding Subpart.

But our goal here is not prediction. Rather, it is to explore what the conditions for stabilization might be moving forward should the political momentum for deeper reforms suffice to push them through. In doing so, it is worth separating out the coalitions that will be needed to get a major reimagining of higher education Congress *enacted* from the coalitions that will be necessary to *sustain* that funding over time. The latter is what made student loans so important, and the question we want to begin to ask is whether the task can be accomplished without them (or with them playing a much smaller role).

It is first worth reminding ourselves that universities are generally seen as good and worthy of support by the general public, with the major source of popular dissatisfaction being their lack of affordability.<sup>285</sup> Notwithstanding the Trump Administration's ideological policing of research funds (which is itself unpopular),<sup>286</sup> there is broad and bipartisan support for universities as engines of knowledge creation.<sup>287</sup> At the federal level, research funding has (at least until the recent Trump crackdown) been at least as stable as student aid, with significantly less political controversy.<sup>288</sup> There is also broad support for universities as trainers in marketable

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<sup>283</sup> <https://www.sanders.senate.gov/wp-content/uploads/AEG25324.pdf>

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<sup>285</sup> Kim Parker, *Growing Share of Americans Say the U.S. Higher Education System is Headed in the Wrong Direction*, PEW RESEARCH CTR. (Oct. 15, 2025), <https://www.pewresearch.org/short-reads/2025/10/15/growing-share-of-americans-say-the-us-higher-education-system-is-headed-in-the-wrong-direction/>.

<sup>286</sup> Jocelyn Gecker & Linley Sanders, *Most Americans Disapprove of Trump's Treatment of Colleges*, *New AP-NORC Poll Finds*, ASSOC. PRESS (May 9, 2025), <https://apnews.com/article/poll-college-trump-harvard-higher-education-109dae2e19d5fe570a7c02e105bab6e6>.

<sup>287</sup> Parker, *supra* note 285.

<sup>288</sup> *But see* Dan Traficonte, Research Policy Feedback (Draft on file with author).

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skills and—although this cashes out quite differently for people on the ideological right than everybody else—for the need for exposure to new perspectives and the ability to express one’s views freely.<sup>289</sup>

Further, the initial obstacles to federal support for higher education have been cleared. States and universities have become accustomed to receiving federal aid and following federal rules in order to do so. Indeed, one of the main sources of friction to a transition to a system of free public higher education is likely to be private universities that will not survive if federal support is withdrawn (and states in the northeast with high relative numbers of private colleges).

That said, the conditions that come—or fail to come—with federal aid will give rise to new sources of division. Conservative state legislatures that have been limiting talk about race, gender, and oppression and eroding tenure protections will surely cry foul if federal aid comes with the condition that universities have a minimum of tenure protections and not impose gag rules.<sup>290</sup> Civil rights groups and faculty unions will cry foul if federal aid does not come with those conditions. Battles will surely roil around civil rights and affirmative action, around military recruitment, and so on. Student loans had successfully avoided many of these issues by deferring them to other levels of governance. That strategy is not likely to be as effective (or as desirable) with direct aid.

The fact that there will be controversy over the conditions of aid does not mean that coalitions will inevitably split apart. Rather, it means that the details of the conditions will affect which coalitions can be formed. Not requiring recipients of federal aid to recognize faculty unions will lose some support from faculty unions, but it may make it easier to gain support from states dominated by anti-union politicians. How one makes these tradeoffs will require considering both substantive goals (faculty unions, y/n?) and the relative importance of different constituencies to producing sustained support for high levels of federal funding.

Reliable constituencies to support—and lobby for—high levels of federal funding for public universities are likely to be: the leadership of those universities, employees of those universities (faculty and staff), state-level politicians, and various progressive groups that favor education and affordability. These groups have not historically been as successful at shaping federal student aid. During the student loan era, these groups were mostly reacting to the dominance of by Sallie Mae and for-profit colleges. It possible they could step up—especially if the acoustic separation between research funding and student aid were broken and all federal support were on the table at once—but the conditions for political stabilization would be stronger were they able to rely on other constituencies as well.

The most obvious constituencies to loop in are businesses that can profit—and non-profit institutions that can benefit—from the technologies and the talent that universities develop. Historically, local and regional businesses lobbied state governments for expansions to public university systems in order to have institutions nearby from which ideas could be gleaned and employees hired. During expansionary periods, local boosters have sought to locate new campuses in their area in order to

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<sup>289</sup> Parker, *supra* note 285; Jones, *supra* note 278.

<sup>290</sup> See PEN America Index of Educational Gag Orders, <https://pen.org/educational-censorship/index-of-educational-gag-orders/>.

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stimulate development and attract residents.<sup>291</sup> Perhaps these lobbying forces could be rekindled if research funding was not separated from student aid and if higher education funding were more directly tied to other industrial policy decisions.

The largest opposition to any of this will likely be constituencies worried about the price tag and constituencies worried about campuses being too left wing. The former worries can always be sidelined by a large enough coalition in support, but techniques to create budgetary lightness can help as well. One possibility would be to do what the student loan program does and structure funding to universities as a form of mandatory spending, not subject to the yearly appropriations process.<sup>292</sup> Doing so would require arriving at a formula that would keep funding at adequate levels (something that is currently accomplished by leaving it to student demand to determine those levels, given certain per-student limits). Making it possible for yearly appropriations to top up the mandatory sum in a given year might make it easier to avoid underspending. Another possibility would be to tie student loan funds to a particular stream of revenues—perhaps even a particular tax, perhaps even a tax on higher education. Of course, as Jake Brooks and Adam Levitin have pointed out, a free college education funded by a progressively structured tax on education would begin to approximate an income-driven student loan with automated collection by the IRS.<sup>293</sup> It would bring with it nearly all the above consideration about using student loans as stabilizers. But that is not the only option for a dedicated revenue stream. A third possibility—one that does not borrow from the student loan playbook—would be to tie at least some funding for higher education to other forms of politically stable funding. Funding for research already partakes of this strategy, because much research funding comes from the military for military uses. Veterans' benefits have a similar parasitic structure of political stabilization. Perhaps one might achieve a similar effect if one set aside some funding for universities in rural areas under the guise of support for rural America or imposed some non-financial obligations on college graduates such as providing a year of service.

These are only the beginning of a set of complex considerations. Which of these techniques would be most effective—and in which combination, and how to deal with tradeoffs—is well beyond our scope here. In any case, arriving at the mix that will bring together the winning coalition will require trial and error. After all, nobody designed student loans with a long-term plan for coalition building in mind.

## V. Conclusion

Student loans stabilized (the politics of) mass higher education finance for the past half century. For the first half century of mass higher education, stabilization was achieved through other means. Which was the aberration? Now is a moment not just to find out but to decide.

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<sup>291</sup> See JOHN AUBREY DOUGLASS, *THE CALIFORNIA IDEA AND AMERICAN HIGHER EDUCATION* (2000); ETHAN W. RIS, *OTHER PEOPLE'S COLLEGES* (2022).

<sup>292</sup> *But see* Matthew B. Lawrence, *Disappropriation*, 120 COLUM. L. REV. 1 (2020).

<sup>293</sup> Brooks & Levitin, *supra* note 4.