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# Waiting on a Turnaround: The Student Loan Debt Crisis

Michelle Tinajero

Student loans in the United States have reached an alarming $1.48 trillion, $620 billion more than the total U.S. credit card debt, with about 44.2 million individuals encumbered with student loan debt.[1] As more individuals than ever are taking out student loans to finance their degrees and invest in their futures, and as tuition skyrockets, requiring individuals to borrow more money, economists find this is a trend that cannot be sustained much longer.[2] Beginning in 1980, the cost to receive higher education grew at nearly double the rate of healthcare, four and a half times as fast as the cost of food, and four times as fast as the consumer price index.[3] On April 25, 2012, student loan debt surpassed $1 trillion.[4] Remarkably, in 2015, it exceeded the gross domestic product of Australia, Ireland, and New Zealand combined.[5] Today, the default rate has climbed to 11.5 percent (90+ days delinquent or in default).[6] Perhaps, most significant is the fact that student loans cannot be discharged in bankruptcy, making it unquestionably the worst kind of debt to have.[7]

## HOW DID WE GET HERE?

The first student loan system was created at Oxford University in 1240.[8] At that time, student borrowers locked valuable items in a chest as collateral.[9]

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1 *A Look at the Shocking Student Loan Debt Statistics for 2018*, STUDENT LOAN HERO (Jan. 24, 2018), https://studentloanhero.com/student-loan-debt-statistics/.

2 Martha C. White, *Student Loan Debt Crisis: How'd We Get Here and What Happens Next?*, TIME (Feb. 4, 2013), http://business.time.com/2013/02/04/student-loan-debt-crisis-howd-we-get-here-and-what-happens-next/.

3 Gary Lapon, *The Political Economy of Student Loans*, INTERNATIONAL SOCIALIST REVIEW (Fall 2015), https://isreview.org/issue/98/political-economy-student-loans.

4 Jillian Berman & Terrence Horan, *How we got to $1 trillion in debt: An illustrated history of student loans in America*, MARKET WATCH (Mar. 24, 2017, 4:38 PM), https://www.marketwatch.com/story/how-we-got-to-1-trillion-in-debt-an-illustrated-history-of-student-loans-in-america-2017-03-21.

5 *A Visual Timeline of Student Loans*, SOFI (Nov. 22, 2016), https://www.sofi.com/blog/visual-timeline-student-loans/.

6 Zack Friedman, *Student Loan Defaults Rise – What To Do Now*, FORBES (Oct. 6, 2017, 8:02 AM), https://www.forbes.com/sites/zackfriedman/2017/10/06/student-loan-default/#7f5571b728de.

7 Lapon, *supra* note 3.

8 Berman & Horan, *supra* note 4.

9 *Id.*

In 1643, the first endowed scholarship was created at Harvard, and in 1838 the university created its own lending agency, offering zero interest loans to students.[10] The first program to solidify the government's role in student aid was the GI Bill of 1944, which provided federal funding for World War II veterans.[11] Similarly, the National Defense Act of 1958 created a federal loan system for students studying national defense in the wake of the Soviet Union's launch of Sputnik.[12]

Today, the primary law authorizing federal student aid is the Higher Education Act ("HEA") of 1965.[13] When President Lyndon B. Johnson signed the HEA, the goal was to help disadvantaged students pay for higher education and to "wipe out racial injustice and poverty."[14] Once Congress created Sallie Mae, a quasi-government agency, however, President Johnson's objective was short-lived.[15] When Republicans won control of Congress in 1994, they moved to kill the direct loan program and privatize Sallie Mae.[16] "For the first time, Sallie Mae could make private loans – ones not guaranteed by the federal government – that commanded much higher interest rates and greater profits."[17] Under this newly privatized industry, which was free of government control, the message was clear: the private market was now running the student loan industry.[18]

## NAVIENT CORPORATION

Recently, the Consumer Financial Protection Bureau ("CFPB") filed a lawsuit in Pennsylvania against the nation's largest student loan servicing company, Navient Corporation, formerly part of Sallie Mae, and two of Navient's subsidiaries, Navient Solutions and Pioneer Credit Recovery.[19] Similar suits were also filed by the Attorneys General of Illinois and Washington State, who

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10 *Id.*

11 *Id.*

12 *Id.*

13 *Id.*

14 James B. Steele & Lance Williams, *Who Got Rich Off the Student Debt Crisis*, REVEAL (June 28, 2016), https://www.revealnews.org/article/who-got-rich-off-the-student-debt-crisis/.

15 *Id.*

16 *Id.*

17 *Id.*

18 Steele & Williams, *supra* note 14.

19 *CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment*, CONSUMER FINANCIAL PROTECTION BUREAU (Jan. 18, 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-nations-largest-student-loan-company-navient-failing-borrowers-every-stage-repayment/.

also teamed up with the CFPB to investigate Navient's loan servicing practices.[20] These lawsuits allege that, for years, Navient "created obstacles to repayment by providing bad information, processing payments incorrectly, and failing to act when borrowers complained," leading borrowers to make late payments or default.[21] The harsh consequences of being behind or in default can negatively affect a borrower's credit score for years, making it more difficult and costly to take out a mortgage or a car loan, get favorable terms on credit cards, and obtain financing to start a business.[22]

These lawsuits highlight longstanding problems in the student loan repayment system, such as borrowers being uncertain as to how many loans they have, not knowing how to correctly repay loans under a repayment plan, and, most notably, being uninformed of how to take advantage of programs that can assist borrowers when they run into trouble repaying their loans.[23] Adding to the confusion and complexity of the repayment system is the loan servicer-lender distinction; while loan servicers, such as Navient, are the companies a borrower makes payments to every month, often times these companies are not the same ones that originally lent money to a borrower.[24]

Astoundingly, more than 8,000 complaints were filed against Navient in 2017, demonstrating that loan servicers may not always act in a borrower's best interest, making it vital for borrowers to remain vigilant in staying informed about how their loan repayment plan operates.[25] In doing so, experts suggest borrowers request an amortization schedule from the servicing company, which will show when a loan will be paid off based on the current repayment schedule.[26] As underlined by the recent Navient lawsuits, borrowers should never assume servicing companies are going to tell them everything they need to know.[27] The best way to become (and stay) informed is to read the terms of the loan, understand the pros and cons, and, whenever necessary,

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20 Steve Rosen, *Navient Student Loan Lawsuit Bears Watching*, CHICAGO TRIBUNE (Oct. 22, 2017, 2:30 PM), http://www.chicagotribune.com/business/yourmoney/sns-201710201833—tms—kidmoneyctnsr-a20171022-20171022-story.html.

21 *CFPB Sues Nation's Largest Student Loan Company*, *supra* note 19.

22 Rosen, *supra* note 20.

23 Rosen, *supra* note 20.

24 *Id.*

25 Lorie Konish, *What The Lawsuit Against Navient Means For Your Student Loans*, NBC (Oct. 6, 2017, 10:35 AM), https://www.cnbc.com/2017/10/06/what-the-lawsuit-against-navient-means-for-your-student-loans.html.

26 Rosen, *supra* note 20.

27 *Id.*

ask questions.[28] In the event borrowers encounter problems with their loan servicer, they should reach out to the CFPB.[29]

## HOW THE PROSPER ACT COULD IMPACT STUDENT LOANS

Late last year, House Republicans proposed the PROPSER Act, a major reform of the current federal student loan program, HEA.[30] The bill eliminates Pay as You Earn ("PAYE"), Revised Pay as You Earn ("REPAYE"), Income Based Repayment ("IBR"), and Public Service Loan Forgiveness ("PSLF") for all new borrowers starting July 1, 2019.[31] All of these programs are ones that graduate and professional students heavily rely on, especially PSLF, a federal program created by Congress in 2007 that forgives debt after ten years of full-time work in public service if the borrower makes 120 qualified monthly payments.[32]

If the GOP House bill were to become law, it would have serious implications for how students pay for higher education.[33] For one thing, it would make it especially difficult to recruit police officers, nurses, attorneys, teachers, and firefighters, all of which are essential employees in the public sector.[34] Law school graduates pursuing public interest careers are likely to make between $40,000 and $60,000 in fellowship positions right out of law school.[35] Keeping in mind, these students also can have as much as $140,000 in loans.[36] By eliminating this component of financing, and therefore making debt a major factor in the type of employment an individual pursues, future students could

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28 *Id.*

29 Konish, *supra* note 25.

30 Travis Hornsby, *House GOP's PROSPER Act Would Eliminate Student Loan Forgiveness*, STUDENT LOAN PLANNER (Dec. 3, 2017), https://www.studentloanplanner.com/prosper-act-house-gop/.

31 *Id.*

32 Farran Powell, *Proposed Student Loan Changes May Deter Law Applicants*, U.S. NEWS (Feb. 14, 2018, 9:00 AM), https://www.usnews.com/education/best-graduate-schools/paying/articles/2018-02-14/proposed-student-loan-changes-may-deter-law-school-applicants.

33 Andrew Kreighbaum, *GOP Seeks to Shift Accountability for Colleges*, INSIDE HIGHER ED (Dec. 4, 2017), http://insidehighered.com/news/2017/12/04/republican-bill-would-reshape-how-colleges-are-held-accountable.

34 Brandon Hanson, *How the PROSPER Act Hurts Graduate and Professional Students*, HUFFPOST (Dec. 18, 2017, 1:27 PM), https://www.huffingtonpost.com/entry/how-the-prosper-act-hurts-graduate-and-professional_us_5a38084be4b02bd1c8c60907.

35 Powell, *supra* note 32.

36 *A Look at the Shocking Student Loan Debt Statistics for 2018*, *supra* note 1.

be deterred from pursuing careers as prosecutors, public defenders, and legal-aid jobs – jobs at the "core center of the justice system."[37]

Lawyers doing public interest work report the highest levels of happiness.[38] This certainly holds true for Christine Castro who will soon be joining the Cook County State's Attorney's Office.[39] It was a judicial internship with a Federal Magistrate Judge that first exposed her to cases done by attorneys in the public sector and paved the way from one government internship after another.[40] Being surrounded by passionate and driven attorneys who genuinely enjoy what they do, she too finds herself drawn to the work, making her decision to stay in the public sector rewarding, despite having to take an inevitable pay cut.[41] For individuals like Ms. Castro, the work being done in the public sector goes beyond earning a paycheck; it is about being committed to furthering the public good, striving to effect societal change, supporting public causes, and embodying a strong desire to serve.[42] Given what can be a huge gap between private sector and public interest salaries, dismantling PSLF and flexible repayment options could be an significant factor in prospective students taking and staying in these meaningful and invaluable public interest jobs.[43]

While the GOP House bill is still in its early stages, President Donald Trump's proposed 2019 budget also supports terminating the program for future borrowers and curbing federal financial aid spending.[44] Specifically, the PROSPER Act calls for restricting federal student loan borrowing to $28,500 a year.[45] Under the current Direct Loan system, law students can borrow up to $20,500 a year in direct unsubsidized Stafford loans and up to the cost of attendance with Graduate Plus loans (a federally guaranteed loan that can be used to cover the full costs of graduate school).[46] The PROSPER Act would eliminate the Stafford and PLUS loans and create the Federal ONE Loan.[47]

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37 Powell, *supra* note 32.

38 Sally Kane, *The Advantages and Benefits of Public Service Work*, THE BALANCE (Jan. 22, 2018), https://www.thebalance.com/advantages-of-public-service-work-2164663.

39 Interview with Christine Castro, Social Security Judicial Law Clerk at U.S. District Courts, in Chicago, IL (Mar. 30, 2018).

40 *Id.*

41 *Id.*

42 Kane, *supra* note 38.

43 Susan Shain, *Public Service Loan Forgiveness Might Cost $24 Billion – But Who's Paying for It?*, STUDENT LOAN HERO (Aug. 10, 2017), https://studentloanhero.com/featured/public-service-loan-forgiveness-changes/.

44 Powell, *supra* note 32.

45 *Id.*

46 *Id.*

47 *Id.*

Forcing students to take out private loans would not only eliminate the protections federal loans provide (such as income-driven loan repayment options), but would also prevent student borrowers without the financial resources to obtain private loans from attending graduate or professional school.[48]

## MOVING FORWARD

Given the government's ability to borrow money at low interest rates and then lend to students at higher rates, student loan debt has become an enormous moneymaker for the federal government, giving it little incentive to create a fairer and more efficient student loan program.[49] In fact, federal loans issued between 2007 and 2012 are projected to generate $66 billion of income.[50] As long as the government and loan industry continue their pursuit of profit, student loan borrowers will continue to be failed.[51]

48 Hanson, *supra* note 34.

49 Steele & Williams, *supra* note 14.

50 *Id.*

51 *Id.*