FIXING FOR-PROFIT FAILURES: WHY STUDENT LOANS FOR FOR-PROFIT SCHOOLS SHOULD BE DISCHARGEABLE IN BANKRUPTCY

INTRODUCTION

Meet Miguel and Rosa Cisneros. Rosa works as a waitress at a diner, and Miguel has just returned from a tour of duty as a national guardsman to work as a valet. One day, Rosa sees an ad online for ProfitTech, and she reads about how much more money they can make by going back to school. She also reads about the financial aid available to Miguel for serving in the military and available to her. After meeting with a recruiter, they enroll, and the recruiter is nice enough to help them with their student loan paperwork. Rosa wants to be a nurse, and Miguel decides to get his associates degree in criminal justice.

Two years later, Rosa has dropped out and waits tables again so they can pay their bills. Miguel graduated, but his associate's degree will not help him get a job. He, instead, works the night shift as a security guard; he did not need a degree for this job. They now have thirty-five thousand dollars in student loan debt and together only make twenty-five thousand dollars a year. Realizing their situation is desperate, the Cisneros file bankruptcy believing it will help them. However, at court, they discover that they cannot get rid of their student loans and cannot truly start over.

The discharge exception for educational loans hurts students at for-profit universities more than students at nonprofit schools. Because there is social and economic value placed on higher education, the for-profit education industry fills the gap left by traditional universities and colleges. The students at for-profits are often minorities, poor, and more recently veterans.[1] At many

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[1] S. COMM. ON HEALTH, EDUCATION, LABOR AND PENSIONS, FOR PROFIT HIGHER EDUCATION: THE FAILURE TO SAFEGUARD THE FEDERAL INVESTMENT AND ENSURE

for-profit universities, the schools take federal financial aid money and then set their students adrift with little regard for whether the students receive worthwhile degrees or even find jobs. Current regulations and other proposals falter in the face of this trend, so it is time to reexamine the discharge exception to produce market-based reform.

Allowing those burdened with student loan debt from for-profit schools to discharge that debt would help the students and help to reform the industry. Lenders currently have little incentive to evaluate whether the student will be able to repay the loan because the federal government makes the loan and forever attaches the loan to the student. However, lenders already evaluate ability to repay for small business loans, home loans, and car loans.[2] Increased lender wariness, especially as the schools are more often lenders themselves, would cause the schools to reform.

Part I of this Comment defines the scope of the problem and provides background information on student loans in general. Part II offers a solution to the problem with proposed statutory language and an explanation of how it will work. Part III argues why discharge in bankruptcy will be the most effective means of helping students overburdened by debt and reforming the for-profit industry. It also explains why bankruptcy discharge is the most effective solution by explaining what is wrong with the exception in general. Part IV explains the shortcomings of other proposals that either fall short or reach too far, such as expanding the undue hardship test, making all student loans dischargeable, and other proposed regulatory schemes. Part V summarizes the main points of the article and looks at recent events where

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STUDENT SUCCESS, S. DOC. NO. 74-931, at 96 (112th Sess. 2012) [hereinafter HELP Report], *available at* http://www.help.senate.gov/imo/media/for_profit_report/PartI-PartIII-SelectedAppendixes.pdf; Richard Fossey, *"The Certainty of Hopelessness:" Are Courts too Harsh towards Bankrupt Student Loan Debtors?*, 26 J.L. & EDUC. 29, 39 (1997).

[2] *See The Looming Student Debt Crisis: Providing Fairness for Struggling Students: Hearing Before the Subcomm. on Admin. Oversight & the Courts of the S. Comm. on the Judiciary*, 112th Cong. 6 (2012) (statement of Prof. G. Marcus Cole, The Wm. Benjamin Scott & Luna M. Scott Professor of Law at Stanford University), *available at* http://www.judiciary.senate.gov/pdf/12-3-20ColeTestimony.pdf. These loans, although often for similarly large sums of money, are often secured loans, whereas student loans are unsecured. *Id.* at 3.

student debt has gained national media and congressional attention.

I. DEFINING THE PROBLEM: WHY THERE IS SO MUCH STUDENT DEBT, ESPECIALLY AT FOR-PROFIT SCHOOLS

A. The Current Debt Burden is Enormous

It is becoming increasingly difficult to overstate the burden faced by students of for-profit schools. Total student loan debt has exceeded one trillion dollars, "more than total credit-card debt and more than total auto-loan debt."[3] Proving that student debt cannot be evaded no matter how long it is avoided, the Supreme Court has held that Social Security benefits can be garnished to pay student loan debts and that student loan collection efforts have no limit.[4]

As of 2011, ninety-six percent of students at for-profit schools took out student loans, compared to thirteen percent at community colleges.[5] Roughly half of students at four-year colleges take out loans.[6] And students at for-profit schools account for forty-seven percent of students in default.[7]

All of these student-debtors are starting to have a "ripple effect" on the rest of the economy. For example, when faced with the two prongs of educational debt and high unemployment, recent graduates are putting off home ownership.[8] The proffered reason for this delay is that educational debt is preventing

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[3] GLENN HARLAN REYNOLDS, THE HIGHER EDUCATION BUBBLE 14-15 (2012).

[4] Richard Fossey & Robert C. Cloud, *From the Cone of Uncertainty to the Dirty Side of the Storm: A Proposal to Provide Student-Loan Debtors who Attended For-Profit Colleges with Reasonable Access to Bankruptcy Court*, 272 ED. L. REP. 1, 4 (2011) (citing Lockhart v. United States, 546 U.S. 142 (2005)).

[5] HELP Report, *supra* note 1, at 112 (citing COLL. BD. ADVOCACY & POLICY CTR., TRENDS IN COLLEGE PRICING 2011 13 [sic] (2011), http://trends.collegeboard.org/sites/default/files/College_Pricing_2011.pdf).

[6] *Id.* at 112.

[7] *Id.* at 115.

[8] Jim Meyers, *USA Today: Increasing Student Loan Debt Having a 'Ripple Effect' on Economy*, MONEYNEWS.COM (Jul. 18, 2013, 1:13 PM), http://www.moneynews.com/Economy/student-loan-debt-economy/2013/07/18/id/515809 (citing CONSUMER FINANCIAL PROTECTION BUREAU, STUDENT LOAN AFFORDABILITY: ANALYSIS OF PUBLIC INPUT ON IMPACT AND SOLUTIONS 7-8 (2013), *available at* http://files.consumerfinance.gov/f/201305_cfpb_rfi-report_student-loans.pdf).

potential homebuyers from saving enough to make a down payment.[9] Further, student debt may be stifling car loans and diverting money that would otherwise go to retirement accounts.[10] Finally, the percentage of recent graduates moving back in with their parents after graduation is on the rise.[11] The inhibited financial ability of student-debtors, unlike previous generations of recent graduates, will certainly have a rippling effect on the economy.

B. Students Are Unable to Get Relief in Bankruptcy Court Because of the Nondischargeability of Student Loans

Federal student loans have existed since 1958,[12] but the Stafford Loan program was created, under another name, when Congress passed the Higher Education Act of 1965.[13] In 1972, for-profits became eligible to receive federal financial aid money.[14] Originally, these loans were dischargeable in bankruptcy. However, the Education Amendments of 1976 changed that. Student loans would not be dischargeable within five years of their coming due, unless it would place an undue hardship on the student-debtor.[15] Congress passed the Education Amendments in response to a frenzied perception of abuse by students. Newspapers encouraged the myth, publishing "high profile cases typically involving doctors, lawyers, and other professionals who had benefitted from their publicly financed education and used the bankruptcy laws to avoid their student loan obligations."[16] In

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[9] *Id.* ("Most first-time home buyers rely on savings to cover a down payment, and student loan debt could be keeping prospective home buyers from saving enough for the payment.").

[10] *Id.*

[11] *Id.* ("The percentage of men ages 25 to 34 living in their parents' home rose from 13.5 percent in 2005 to nearly 17 percent last year . . . .").

[12] B.J. Huey, *Undue Hardship or Undue Burden: Has the Time Finally Arrived for Congress to Discharge Section 523(a)(8) of the Bankruptcy Code?*, 34 TEX. TECH. L. REV. 89, 95 (2002) (discussing the enactment of the National Defense Education Act in 1958 marking the beginning of student loans).

[13] *Id.* at 96. Funding for federal financial aid comes from the Department of Education and is referred to as title IV. *See infra* note 103 and accompanying text.

[14] HELP Report, *supra* note 1, at 132.

[15] Huey, *supra* note 12, at 99.

[16] *Id.* at 98. "The General Accounting Office (GAO) conducted a study to determine the level of abuse . . . [of bankruptcy] by students" in 1970. *Id.* The GAO study "'acknowledged that student loan abuse was more perception than reality.'" *Id.*

1986, Congress included the student loan discharge exception in Chapter 12 bankruptcies at the same time it created the Chapter.[17] In 1990, the discharge exception was extended from five years to seven.[18] In 1998, the seven year period was extended indefinitely; now student-debtors are always subject to the undue hardship test.[19] In 2005, Congress made private student loans nondischargeable as well,[20] increasing the burden on student-debtors.[21]

The current language of 11 U.S.C. section 523(a)(8), the student loan exception to discharge, makes it virtually impossible for students to discharge student loan debt[22] and includes almost every form of student loan.[23] This makes the fresh start for the honest and unfortunate student-debtor an illusion. The undue hardship test has been frequently criticized by those seeking reform as being too harsh on debtors and applied inconsistently. In 2011, the Second Circuit affirmed the denial of discharge of student loans for an unemployed attorney who had moved back in with his mother and who's only income was fifteen hundred dollars a month in Social Security benefits.[24] He had several

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(quoting NAT'L BANKR. REVIEW COMM'N, BANKRUPTCY: THE NEXT TWENTY YEARS (1997), *reprinted in* 1 REPORT OF THE NATIONAL BANKRUPTCY REVIEW COMMISSION: OCTOBER 20, 1997 209 (2000)).

[17] *See, e.g.,* Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554, 100 Stat. 3088 (1986). The current language of the statue explicitly applies to Chapters 7, 11, 12, and 13. *See* 11 U.S.C. §523(a) (2012).

[18] *See* Crime Control Act of 1990, Pub. L. No. 101-647, 104 Stat. 4789 (1990).

[19] *See* Higher Education Amendments of 1998, Pub. L. No. 105-244, 112 Stat. 1581; Huey, *supra* note 12, at 101.

[20] This Comment uses the term nondischargeable to describe the status of student loans in bankruptcy for simplicity's sake. The author recognizes that, in truth, student loans are conditionally dischargeable based on the undue hardship test.

[21] *See* Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, § 220, 119 Stat. 23, 59.

[22] The undue hardship exception is not at issue in this article. However, it imposes a very high standard for debtors to meet to have their student loans discharged; students rarely meet the standard.

[23] *See* 26 U.S.C. § 221(d)(1) (2006) ("The term 'qualified educational loan' means any indebtedness incurred by the taxpayer solely to pay qualified higher education expenses."); *see also id.* § 221(d)(2) (making no distinction between for-profit and nonprofit institutions when referring to "[q]ualified higher education expenses").

[24] Adam Brown, *Debtor Denied Discharge from Student Loans After Failing to Prove Undue Hardship*, BLOOMBERG LAW, http://about.bloomberglaw.com/law-reports/debtor-denied-discharge/ (last visited Nov. 7, 2013).

mental medical disorders and the Connecticut Department of Social Services had determined that he was "unable to work long-term," but the Second Circuit, the district court, and the bankruptcy court all thought this was not enough to meet the undue hardship test.[25] Different studies have tried to pinpoint the factors that distinguish successful discharge from those that are unsuccessful. For example, one article identified "medical problems, dependents [and whether the debtor has] a college degree."[26] Another identified: "(1) whether the debtor has a medical hardship, (2) whether the debtor is employed, and (3) the debtor's income the year before filing bankruptcy."[27] Regardless of which factors may weigh in favor of or against a discharge, the test itself exists to limit discharge.

The unhindered growth of student loan debt resembles an economic bubble, and many economists have compared the higher education bubble to the 2008 housing bubble.[28] "Bubbles form when too many people expect values to go up forever. Bubbles burst when there are no longer enough excessively optimistic and

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[25] *Id.*

[26] Huey, *supra* note 12, at 117.

[27] Jason Iuliano, *An Empirical Assessment of Student Loan Discharges and the Undue Hardship Standard*, 86 AM. BANKR. L.J. 495, 501 (2012).

[28] *See* Daniel Wagner, *CFPB: Private Student Loans Parallel Subprime Mortgage Lending*, HUFFINGTON POST MONEY (Jul. 20, 2012, 2:03 PM), http://www.huffingtonpost.com/2012/07/20/cfpb-private-student-loans-subprime-mortgage_n_1688771.html; George Leef, *LEEF: Burst the Higher-Education Bubble*, WASH. TIMES (Jul. 10, 2012), http://www.washingtontimes.com/news/2012/jul/10/burst-the-higher-education-bubble/?page=all; Antony Davies & James R. Harrigan, *Why the Education Bubble Will Be Worse than the Housing Bubble*, U.S. NEWS (Jun. 12, 2012), http://www.usnews.com/opinion/blogs/economic-intelligence/2012/06/12/the-government-shouldnt-subsidize-higher-education. *But cf.* Nicole Goodkind, *College Debt Isn't a Bubble About to Burst - It's Something Different*, YAHOO! FINANCE THE DAILY TICKER (May 28, 2013, 8:10 AM), http://finance.yahoo.com/blogs/daily-ticker/college-debt-isn-t-bubble-burst-something-different-121024309.html (opining that student debt is not a bubble because as Robert Archibald, an economics professor, put it, education is not "a financial asset increasing unreasonably in value" because degree-holders still earn more over their lifetime than non-degree-holders); Joshua Zumbrun & Craig Torres, *Bankers Warn Fed of Farm, Student Loan Bubbles Echoing Subprime*, BLOOMBERG (May 7, 2013), http://www.bloomberg.com/news/2013-05-07/bankers-warn-fed-of-farm-student-loan-bubbles-echoing-subprime.html (quoting Ben Bernanke, the chairman on the advisory board to the Federal Reserve's Board of Governors, stating that there is less financial instability with student debt rather than mortgage debt because the debt is held by the federal government rather than financial institutions).

ignorant folks to fuel them."[29] According to the Federal Advisory Council, like the housing bubble, (government) lenders created "significant growth of subsidized lending in pursuit of social good . . . ."[30] Before it was home ownership; now it is higher education.[31] Again, the "government did by force what no private lender would have ever done by choice":[32] make sub-prime student loans.

C. For-Profit Schools Circumvent Current Regulations and Do Little to Help Their Students Succeed

The current regulations have allowed for-profit schools to take advantage of their students. While other levels of regulation have fallen down such as accreditation and state-level oversight,[33] specifically the federal regulations are addressed in this article. The "two primary Federal checks on for-profit colleges" are the 90/10 rule and the cohort default rate (CDR),[34] and the schools have found ways to evade them.

The 90/10 rule requires schools to keep a certain ratio of federal financial aid money to other revenue for educational purposes. Schools must receive at least ten percent of their total educational revenue from sources other than Title IV program funds.[35] Ninety/ten rule apologists argue that it ensures students share a stake in the outcome of their education and that this student self-interest will "prevent[] low-quality schools from obtaining federal student aid."[36] Opponents of the rule argue that students at for-profit schools are mostly low-income students and unable to afford ten percent of their education.[37] They also argue the 90/10 rule does not correlate to the quality of education because schools can simply raise tuition when more aid becomes available.[38]

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29 REYNOLDS, *supra* note 3, at 2-3.
30 Zumbrun & Torres, *supra* note 28.
31 *Id.*
32 Davies & Harrigan, *supra* note 28.
33 HELP Report, *supra* note 1, at 122-31.
34 *Id.* at 137.
35 *Id.*
36 *90/10 Rule*, FINAID!, http://www.finaid.org/loans/90-10-rule.phtml (last visited Nov. 7, 2013).
37 *Id.*
38 *Id.*

The CDR limits eligibility to federal financial aid money to schools that have less than twenty-five percent of their students default on their loans within two years, although this will change to thirty percent measured over three years in 2014.[39] A federal educational loan is in default if payments are more than 270 days delinquent.[40] Further, many argue that the CDR is flawed because it inappropriately calculates deferments and forbearances and serves as a short-term measurement of defaults that is easily "influenced by factors beyond a college.s [sic] control, such as unemployment rates and changes in interest rates."[41]

The experiences of seven students who enrolled in the Medical Assisting program at Virginia College are demonstrative of the need these students have.[42] Just like the Cisneros above, these students wanted to better themselves and make more money, but instead, they found that their for-profit school did not deliver on its promises. Tiffeny Anderson left her job as a waitress to become a phlebotomist, but after graduation with honors, Anderson "is not qualified to be a phlebotomist, because she lacks the practical experience and minimum number of live blood draws and sticks."[43] She currently works as a certified nursing assistant, making $8.50 an hour, only slightly more than minimum wage.[44] Dianna Bond was told during a visit to the admissions office before enrollment that medical assistants make between $14 and $15 an hour.[45] After graduation, Bond was also "not qualified to be a phlebotomist because she lacks the practical experience and

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[39] HELP Report, *supra* note 1, at 150-51.

[40] *Cohort Default Rates*, FINAID!, http://www.finaid.org/loans/cohortdefaultrates.phtml (last updated Dec. 21, 2010). The 270-day threshold has been expanded twice: first from 120 to 180 days in 1985 and again in 1998 from 180 to 270 days. *Id.*

[41] *Id.*

[42] Anderson v. Virginia College, LLC, No. 3:12CV503TSL-MTP, 2012 WL 4052198, at *1-2, *6 (S.D. Miss. Sept. 13, 2012). The experiences of these students are taken from a suit for fraud filed against Virginia College on the students' behalf by the Mississippi Center for Justice. *Id.* While it is unclear from the record whether any of these students have filed for bankruptcy, if they do, it is unlikely they will be able to discharge the loans they took out to pay for an inadequate education. The case was dismissed to arbitration. *Id.*

[43] Complaint and Demand for Jury Trial at 19, Anderson v. Virginia College, LLC, (S.D. Miss. Sept. 13, 2012) (No. 3:12CV03TSL-MTP).

[44] *Id.* at 19.

[45] *Id.* at 20.

minimum number of blood draws and sticks."[46] The story is similar for Veronica Boyd, Crystal Larkin, Sharonda Nixon, Barbara Turner, and Shirley Washington, the other students in the suit.[47]

Virginia College told the students their education would cost between $20,000 and $26,000.[48] This amounts to a little less than a year's pay for these students at their post-graduation jobs, but not all of the students were able to find jobs of any kind.[49] At the time of filing, Anderson's, Bond's, and Larkin's loans were in deferment;[50] Washington was unable to make any payments on her loans.[51] These seven students eventually sued Virginia College for fraud, but their suit was dismissed to arbitration.[52]

II. PROPOSING A SOLUTION: A "FRESH START" FOR FOR-PROFIT STUDENTS

Amending 11 U.S.C. section 523(a)(8) to make student loans for for-profit educational institutions dischargeable in bankruptcy after three years would benefit the overburdened students and reform the for-profit education industry.

A. How It Will Work

Dischargeability will make student loans riskier for lenders. This increased risk will manifest in fewer overall loans. The schools who best prepare their students to find jobs to be able to repay their loans will have more students able to receive financial aid because these students are likely to repay their loans. While the argument circles back on itself slightly, the schools that are unable to prepare their students for the workforce and to repay their loans will find their access to federal financial aid money quickly drying up.

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46 *Id.* at 22.
47 *Id.* at 22-32.
48 *Id.* at 17, 27.
49 Boyd, Nixon, Turner, and Washington were unemployed at the time of filing the complaint. *Id.* at 24, 28, 30, 32.
50 *Id.* at 19, 22, 26.
51 *Id.* at 32.
52 *See id.* at 45-46; *see also* Anderson v. Virginia College, LLC, No. 3:12CV503TSL-MTP, 2012 WL 4052198, at *6 (S.D. Miss. Sept. 13, 2012).

And those schools that are already doing the best they can for their students and helping them to succeed should see very little impact from allowing dischargeability. After all, it only applies when a student files for bankruptcy, not merely when the loans come due.

While the specter of abuse by students still lingers over the whole of discharge, it is a remote possibility. However, there is no reason to believe that the bankruptcy system would be subject to any greater attempt at abuse than it was in 1970[53] when the discharge exception was originally added. Furthermore, Congress in 2005 enacted sweeping legislation aimed at preventing abuse of the bankruptcy system in general.[54]

B. Proposed Statute

Instead of scrapping the discharge exception entirely, the addition of a new paragraph B could accomplish the goal of making these loans dischargeable.[55] To initiate this change, the statutory language of section 523(a)(8) would read:

> (8)(A) except as provided in paragraph (B), and unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—
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> (i)(a) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or

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[53] *See supra* note 16 and accompanying text.

[54] *See generally* Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (2005).

[55] The proposal modifies another recently proposed solution, where student loans would be dischargeable after five years, returning to the 1978 terms that first imposed the undue hardship standard for discharge. *See* Fossey & Cloud, *supra* note 4, at 14-15. However, five years is too harsh. The Department of Education monitors the default rate of students after graduation for three years, and these students should not be under such financial scrutiny longer than the schools themselves. *See supra* notes 39-41 and accompanying text (describing the CDR). After three years, student loan debt should be dischargeable, regardless of whether the student faces an undue hardship.

> (b) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or
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> (ii) any other educational loan that is a qualified educational loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual.
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> (B) If the debt is incurred for an institution that qualifies for funding under Title IV but is not an institution of higher education as defined in 20 U.S.C. §1001(a), the debt shall be excepted from discharge for three years unless excepting such debt from discharge would impose an undue hardship on the debtor and the debtor's dependents.

Subsection A immediately sets up the undue hardship standard and then defines the types of loans that are subject to it. Subsection A(ii) serves as a catchall for almost any other type of educational loan made, including private loans.

III. WHY IT WILL WORK

A. Discharge Provides an Immediate Benefit to Students

Making these loans dischargeable would treat the real problem: the students overburdened by debt. The sad state of affairs of the for-profit education industry is well recognized by Congress.[56] Ninety-six percent of students who attend for-profits borrow money for their education, and they borrow more money than their counterparts at nonprofit schools.[57] Moreover, the default rates of for-profit students are more than double those at nonprofit schools.[58]

In 2011, the Consumer Financial Protection Bureau called for those with student loans to tell their stories online.[59] While few

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[56] *See generally* HELP Report, *supra* note 1 (considering the failures of the for-profit education industry in guaranteeing student achievement and federal investment).

[57] *See generally id.* at 112-13.

[58] *See generally id.* at 115. In 2008, for-profits had a three-year default rate of 22.3% compared with 9.7% and 6.8% for public and private colleges, respectively. For 2005, the figures were 17.2% for for-profits, 7.1% for public colleges, and 4.2% for private colleges. *See id.*

[59] *CFPB Aims to Shed Light on the Private Student Loan Industry*, CONSUMER FINANCIAL PROTECTION BUREAU (Nov. 16, 2011),

stories of debt are ever happy, the worst of these student experiences surfaced to the top.[60] One student originally borrowed $80,000, but the loan grew to $135,000.[61] Now the student can only manage the $700 per month interest payments.[62] Another originally borrowed $60,000 but after graduation could not manage the $1,300 per month payments.[63] After becoming disabled from a work related injury, the student now "walk[s] around the public areas of town collecting cans and bottles. . . . get[ting] groceries at the local food bank."[64] These tales of desperation further illustrate the need of current and future students who are mortgaging their financial future to pay for an education.

The immediate benefits of relieving these student-debtors of their educational debt are both financial and emotional. A survey of students in May 2012 found that "money concerns ranked second in student stressors."[65] "Shame/guilt and denial about problems" was also on the list.[66] The emotional effects of debt, such as stress, fear, panic, anger, and depression can have a large impact.[67] Moreover, the impact of so much debt on individual financial decisions can be huge. Student-debtors are delaying or unable to buy home or cars or save for retirement.

Imagine Rosa and Miguel sitting at home, afraid to open their bills or answer the phone because of their student loan creditors. Miguel has trouble sleeping, and their relationship is

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http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-aims-to-shed-light-on-the-private-student-loan-industry/.

[60] Mandi Woodruff, *9 Unbelievable Student Loan Horror Stories*, YAHOO FINANCE (Nov. 26, 2012 12:47 PM), http://finance.yahoo.com/news/9-unbelievable-student-loan-horror-stories-165512874.html?page=1. Only two of these stories explicitly state the student attended a for-profit school. *Id.*

[61] *Id.*

[62] *Id.*

[63] *Id.*

[64] *Id.*

[65] Amy Novotney, *Facing Up to Debt*, AMERICAN PSYCHOLOGICAL ASSOCIATION, http://www.apa.org/gradpsych/2013/01/debt.aspx. (last visited Aug. 29, 2013). A May 2012 study found that sixty-four percent of the students surveyed reported that "concern over finances and debt interferes with their optimal functioning." *Id.* The study surveyed 438 psychology graduate students. *Id.*

[66] *Id.*

[67] *See generally The Emotional Effects of Debt*, DEBT.ORG, http://www.debt.org/advice/emotional-effects/ (last visited Aug 30, 2013).

suffering. Rosa's car is on its last leg, and she wants to buy a new one before it breaks down completely. Because of the educational debt they have both taken on, their financial hiccups are magnified and more stressful than they otherwise would be if they didn't have so much debt or were able to discharge it.

B. Bankruptcy Courts Allow for a Market-Based Reform

Allowing discharge of these loans in bankruptcy will increase the risk of making these loans in the first place. Today, these loans present an extremely minimized risk[68] to the lender because the student will always be obligated to pay it back. However, if making student loans becomes riskier, lenders will be forced to consider the ability of the students to repay their loans after graduation and whether the student will graduate at all before making the loan.

1. Lending or Spending?

A strong counterargument of this market theory is that the government itself makes the lion's share of the loans directly, rather than guaranteeing them through a third party lender. However, the impetus behind the federal student loan program may not stand up to scrutiny. The loan program encourages lower income individuals to continue their education with relatively easy-to-qualify-for money, but it does not allow them to later avoid these obligations in bankruptcy, in a way, trapping them in debt. If the loan program is meant to help lower income individuals, the discharge exception does not accomplish this, but if the loan program is meant to serve as a form of income for the government, through interest and repayment, then the discharge exception works just fine. Thinking of the federal student loan program in terms of a spending program, rather than a lending program, ostensibly would serve its purpose of providing educational opportunities better.

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[68] Lenders are still subject to the possibility that despite his or her best efforts a student may never be able to or a student may choose never to pay back a loan.

2. Riskier Lending Will Lead to Fewer Loans and Fewer For-Profit Students

Allowing more bankruptcy discharges should demonstrate to both private lenders and the federal government the increased likelihood that student loans will not be paid back. Upon realizing this, the government and private lenders should tighten up the eligibility requirements for receiving student loans, leading to a decrease in the overall number of student loans made. Lenders should look to the quality of the education to be received and the potential to find employment to repay the loan in determining eligibility.

When there are fewer student loans for for-profit schools, fewer students will attend for-profit schools, causing a decrease in revenue for these schools. The financial loss will signal to the schools that they need to improve their programs to produce a quality education that will prepare their students to find employment in their area of study and be able to repay their student loans. Improvement in the quality of education will lead to a more favorable review of the student's ability to receive and then repay a student loan.

3. Dischargeability Was a Form of Protection

Dischargeability itself was a form of protection against abuse of the federal financial aid program by the schools.[69] Today, the discharge exception hurts the taxpayers who fund the federal financial aid program more than it helps. When the public believed student-debtors were abusing the bankruptcy process, the government missed an opportunity. Raising the standards for eligibility would have helped to avoid the higher education bubble by offering more guidance to students at the beginning of their postsecondary education, rather than at the end. The government attacked the problem with a sledgehammer, making the loans nondischargeable. A more nuanced approach to eligibility would have been to look at the likelihood a student could repay the loan

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[69] Craig A. Gargotta, *Congress Amends §523(A)(8) to Eliminate Seven-Year Discharge Provision for Student Loans*, AM. BANKR. INST. J., Nov. 1998, at 8, 17 (interpreting the statutory change as "suggest[ive] . . . that Congress now views 'undue hardship' not as a *debtor* protection, but rather as a *creditor* protection.").

and that would have kept more students out of bankruptcy in the first place.

The schools were the real beneficiaries of nondischargeability. As the federal government has increased the amount of money a student can borrow, the schools have consistently raised tuition to match the offered loans. And from the schools' perspective, why should they not peg tuition to the availability of loan money when the student will be obligated to repay it no matter the amount? In this way, nondischargeability has hurt the students and led us to the higher education bubble. Bubbles form when people are overly optimistic about the value of what they are receiving. The federal government has fueled this bubble by guaranteeing the flow of money and emphasizing the desirability of a postsecondary education.[70]

4. The Danger Presented by the Higher Education Bubble

The higher education bubble distressingly mirrors the recent housing bubble, and the similarity invites unavoidable comparison.[71] Both home ownership and college graduation were trappings of the middle class the federal government encouraged everyone to pursue as part of the American Dream.[72] But, like all intangible pursuits, it cannot and should not be forced.

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[70] President Obama said in a speech at the University of Texas in 2010, "I want us to produce 8 million more college graduates by 2020, because . . . America has to have the highest share of graduates compared to every other nation." *Full Text of President Obama's Speech in Austin*, HOUSTON CHRONICLE (Aug 9, 2010), http://blog.chron.com/txpotomac/2010/08/full-text-of-president-obamas-speech-in-austin/.

[71] April A. Wimberg, *Comparing the Education Bubble to the Housing Bubble: Will Universities Be too Big to Fail?*, 51 U. LOUISVILLE L. REV. 177, 190 (2012) ("The characteristics of the government programs created to encourage growth in these two markets are very similar, and the intended beneficiaries of these programs are also comparable); CONSUMER FINANCIAL PROTECTION BUREAU, PRIVATE STUDENT LOANS 18, 22 (2012) http://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf ("A large portion of student loan volume during the boom was funded by asset-backed securities . . . . In this respect, the private student loan market resembled the subprime mortgage market. . . . During the securitization boom, the [student loan asset-backed securities] market was similar to the residential mortgage-back securities market in another respect: credit criteria.").

[72] Wimberg, *supra* note 71, at 179, 184.

Students unqualified for traditional universities turned to the for-profit schools.[73] Despite their federal loan money, students at for-profit schools have abysmal graduation dropout statistics. The Senate Committee on Health, Education, Labor, and Pensions (HELP) looked at the retention rates of thirty for-profit schools and found:

> 54 percent of students who started at a for-profit college examined by [HELP] in 2008-9 left without a degree by mid-2010. In total, almost 600,000 students left the colleges without a degree. Among 2-year Associate degree seekers, 63 percent, almost 300,000 students, departed without a degree. Among 4-year Bachelor's degree seekers, 54 percent, or over 200,000 students, left by mid-2010. Completion rates were significantly better across most colleges for shorter duration Certificate or diploma programs: just 38.5 percent of students seeking those credentials left.[74]

Whether students complete their programs or not, their student loans are nondischargeable.

Federal financial aid programs "have stimulated the demand for education," while other government programs "led to an unsustainable increase in home purchases."[75] Just like before, "an extremely profitable and fiscally irresponsible market for education has developed."[76] One of the reasons the market has become so profitable is the soaring cost of college tuition, increasing 900% in the last twenty years, and the availability of federal aid has matched tuition dollar for dollar in increases.[77] Almost no one will find college unaffordable in the short term.

Perhaps the most distressing similarity between the housing bubble and the higher education bubble has been in customer

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[73] *Id.* at 186-87 ("These schools tend to enroll the students who were not in the top 25% of their high school classes and would be unlikely to enroll or be successful at other types of institutions.").

[74] HELP Report, *supra* note 1, at 73-74 (citations omitted); *see also* Wimberg, *supra* note 71, at 187 ("Less than 25% of their students graduate within six years, compared to graduation rates of 55% and 64% at public and private nonprofit institutions, respectively.").

[75] Wimberg, *supra* note 71, at 191.

[76] *Id.*

[77] *Id.* at 189.

service and complaint handling.[78] "Nearly two-thirds of the 2,857 complaints filed . . . had to do with repayment issues, including complaints about fees, billing, deferment, forbearance and fraud. Thirty percent . . . were about problems facing borrowers unable to pay. Few were related to getting a loan."[79] The problem is particularly noted among students at for-profit schools.[80]

C. Treating For-Profit and Nonprofit Schools the Same Doesn't Make Sense

Treating for-profit and nonprofit schools as equal creditors does not make sense. The comparison should be based on profit motive, rather than whether they are both educational institutions. The majority of a for-profit school's income comes from tuition; whereas, nonprofit colleges draw also from "donations, research grants, and, in the case of public schools, state aid."[81] More than eighty-five percent of for-profits' revenue comes from tuition.[82] In comparison, private colleges derive only thirty-six percent from tuition, and only seventeen percent at public colleges.[83] Because of their profit motive, for-profits engage

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[78] *See* CONSUMER FINANCIAL PROTECTION BUREAU, ANNUAL REPORT OF THE CFPB STUDENT LOAN OMBUDSMAN 13-14 (2012) [hereinafter CFPB STUDENT LOAN OMBUDSMAN REPORT], *available at* http://files.consumerfinance.gov/f/201210_cfpb_Student-Loan-Ombudsman-Annual-Report.pdf; *see also* Catherine New, *Consumer Financial Protection Bureau Finds Student, Mortgage Lenders Have 'Uncanny Resemblance,'* HUFFINGTON POST (Oct. 16, 2012, 12:01 AM), http://www.huffingtonpost.com/2012/10/16/consumer-financial-protection-bureau-private-student-loan_n_1968232.html?utm_campaign=101612&utm_medium=email&utm_source=Alert-money&utm_content=FullStory (reporting on CFPB STUDENT LOAN OMBUDSMAN REPORT).

[79] New, *supra* note 78

[80] CFPB STUDENT LOAN OMBUDSMAN REPORT, *supra* note 78, at 11.

[81] Vasanth Sridharan, *The Debt Crisis in For-Profit Education: How the Industry Has Used Federal Dollars to Send Thousands of Students into Default*, 19 GEO. J. ON POVERTY L. & POL'Y 331, 334 (2012).

[82] *Id.* at 335 (citing DANIEL L. BENNETT, ADAM R. LUCCHESI & RICHARD K. VEDDER, CTR. FOR COLL. AFFORDABILITY & PRODUCTIVITY, FOR-PROFIT HIGHER EDUCATION: GROWTH, INNOVATION, AND REGULATION 21 (2010) [hereinafter FOR-PROFIT HIGHER EDUC.], *available at* http://www.centerforcollegeaffordability.org/uploads/ForProfit_HigherEd.pdf).

[83] *Id.*

in aggressive and predatory marketing and recruiting tactics,[84] frequently targeting students who are already financially vulnerable.

Unfortunately for the students, the for-profit education industry has been plagued by accusations of fraud and unethical behavior.[85] Particularly, Congress addressed recruiting practices in a 1992 statute banning incentive-based compensation for recruiters,[86] but the change does not seem to have made much of a difference. A Government Accountability Office (GAO) investigation in 2010 found that all fifteen of the schools it investigated "used questionable statements" in their recruiting information, and some omitted information in violation of federal law.[87] Because enrollment and revenue are so closely intertwined, the goal of these schools is to enroll more students. One author asserts that this profit-motive "causes the institutions to do unethical and illegal things."[88] He also points out that the "real victims" of these practices are the students "who should not have been in the programs in the first place, end up dropping out and defaulting on their loans."[89]

D. Current Regulations are Unable to Control the Behavior of For-Profits and Attempts to Reform them in the Past Have Failed

The current regulatory scheme has allowed the behavior of for-profits to get out of control, and a well-funded industry heavily opposes further refining these regulations.[90] Attempts by the Department of Education to eliminate regulatory sidestepping have proved ineffective.

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[84] *See id.* at 335-36; *see also* Joseph Sipley, *For-Profit Education and Federal Funding: Bad Outcomes for Students and Taxpayers*, 64 RUTGERS L. REV. 267, 277-78 (2011).

[85] *See* Sridharan, *supra* note 81, at 335-39.

[86] *Id.* at 336 (citing FOR-PROFIT HIGHER EDUC. *supra* note 82, at 40).

[87] *Id.* at 338.

[88] *Id.*

[89] *Id.* at 338-39.

[90] *See generally* Amanda Harmon Cooley, *The Need for Legal Reform of the For-Profit Educational Industry*, 79 TENN. L. REV. 515, 533-51 (2012) (highlighting the recent litigation surrounding for-profits and the lobbying efforts to challenge the current regulations).

The 90/10 rule and the CDR do not effectively curb the abuses of the for-profit schools as a whole.[91] Many come close to the 90/10 bar, meaning that they receive almost ninety percent of their revenue from educational purposes as federal financial aid.[92] And, they work to stay below the limit, recruiting veterans whose aid is exempted from this calculation and loaning directly to the students.[93] HELP identified nine strategies that for-profit schools use to avoid running afoul of the 90/10 rule.[94] Two strategies involve reorganizing the structure of the individual campuses as identified by the Department of Education to avoid any one group from receiving more than the limit.[95] In addition, military education benefits do not count in the ninety percent, and for-profits "have aggressively pursued" service members and their families.[96] Fake outside scholarships, increased tuition, hindering loans for living expenses beyond tuition, duplicitously structured institutional loans, and conversion to nonprofit status make up the rest of the identified strategies that for-profits employ to avoid having more money on the books than permitted.[97]

The CDR requires that less than "[twenty-five] percent of students default on their loans within [two] years of entering repayment, which typically occurs [six] months after a student graduates or withdraws."[98] Here again HELP identified strategies that for-profit schools employ to stay within the regulatory limit. The schools encourage students to request deferment and forbearance on their loans because loans that are deferred or in forbearance do not count in the CDR.[99] And, there is evidence that schools are encouraging these options regardless of the students'

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91 *See supra* note 34 and accompanying text.

92 HELP Report, *supra* note 1, at 137-38. In 2009, thirty-seven percent of all for-profits had federal aid income over eighty percent of their total income. *Id.*

93 *Id.* at 137-50; Sridharan, *supra* note 81, at 344-45.

94 HELP Report, *supra* note 1, at 137.

95 *Id.* at 138-39. The Department of Education does not account for funding to the schools as a whole; rather, it assigns identification numbers to campuses or groups of campuses to monitor their compliance with the 90/10 rule separately. *Id.*

96 Sridharan, *supra* note 81, at 344. This money, although federal, does not count because it originates from either the Departments of Defense or Veterans Affairs, rather than the Department of Education. HELP Report, *supra* note 1, at 147.

97 HELP Report, *supra* note 1, at 140-49.

98 *Id.* at 150.

99 *Id.* at 150-59; Fossey, *supra* note 4, at 8-10.

best interests. Deferment and forbearance often merely delay the inevitable default and can hurt the student more than help; interest still accrues on many deferred loans.[100] The schools have also turned to "[t]hird-[p]arty [d]efault [m]anagement [v]endors," who counsel students on avoiding default.[101] However, these default managers more often than not counsel deferment or forbearance, rather than achieving repayment.[102]

The industry has resisted efforts to increase regulation and has achieved a loosening of the restraints in some areas. For example, until 1998, the 90/10 rule was the 85/15 rule, and in 2002, the industry's lobbying efforts resurrected a form of incentive-based pay for campus recruiters.[103] The proposed gainful employment rule would have begun to turn back the tide, although many saw it as inadequate,[104] but a federal court struck it down.[105] The district court only upheld a requirement for schools to disclose graduation rates to students pre-enrollment.[106]

IV. Why Other Solutions Won't Work as Well

Other proposed changes are more stopgaps than solutions, and they each fail in some way to treat the whole problem. Helping the students burdened by inescapable debt and reforming the for-profit education industry can and should happen concurrently.

A. Expanding the Undue Hardship Test Falls Short

Expanding the judicial discretion exercised through the undue hardship exception seems unlikely to succeed. While the Ninth Circuit considers the value of the education received in its

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100 HELP Report, *supra* note 1, at 153.
101 *Id.* at 154-55.
102 *Id.* at 153-54.
103 *Id.* at 134.
104 Sridharan, *supra* note 81, at 347-48.
105 Ass'n. of Private Colls. & Univs. v. Duncan, 870 F. Supp. 2d 133, 154-58 (D.D.C. 2012) (striking down the debt-to-income and debt repayment standards as arbitrary and striking down the reporting rule and program approval rule as justified only by the previous rules).
106 *Id.* at 155-56.

undue hardship test,[107] the Second and Seventh Circuits have already rejected outright the use of such a factor.[108]

Even if more factors were considered, student-debtors would still have to prove:

> (1) that the debtor cannot maintain, based on current income and expenses, a "minimal" standard of living for herself and her dependents if forced to repay the loans; (2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and (3) that the debtor has made good faith efforts to repay the loans.[109]

The test in practice assumes the debtor is acting in bad faith to discharge the loans, and unsurprisingly, many student-debtors are unable to meet it. Further, as has been suggested by one study, the overwhelming majority of student loan debtors do not attempt to discharge their student loan debt,[110] so making the undue hardship standard easier to meet may not have a broad effect.

B. Making All Student Loans Dischargeable Reaches Too Far

While the majority of the argument focuses on limiting the discharge exception to nonprofit schools, there are many arguments that loans for public and private nonprofit schools should be treated like other unsecured creditors, too.[111] The

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[107] The majority of jurisdictions apply this test, and it comes from *Brunner v. N.Y. State Higher Educ. Servs. Corp.*, 831 F.2d 395, 396 (2d Cir. 1987) and from the later educational value interpretation in *United States Aid Funds, Inc. v. Pena*, 155 F.3d 1108, 1114 (9th Cir. 1998). *See* Amy E. Sparrow, *Unduly Harsh: The Need to Examine Educational Value in Student Loan Discharge Cases Involving For-Profit Trade Schools*, 80 TEMP. L. REV. 329, 344-45 (2007).

[108] Sparrow, *supra* note 107, at 349.

[109] *Id.* at 348 (quoting *Brunner*, 831 F.2d at 396).

[110] Iuliano, *supra* note 27, at 501. Iuliano blames the perceived failure of the undue hardship test on a lack of application for discharge. The author says a mere "0.1 percent of student loan debtors in bankruptcy sought to discharge their educational debts." *Id.* at 499.

[111] *See* John A.E. Pottow, *The Nondischargeability of Student Loans in Personal Bankruptcy Proceedings: The Search for a Theory*, 44 CAN. BUS. L.J. 245 (2006-07) (exploring six possible policy rationales for maintaining the discharge exception for student loans and finding them all insufficient); Huey, *supra* note 12 (proposing that student loans should be dischargeable with the total repeal of section 523(a)(8)).

discussions of the higher education bubble are not limited to for-profit schools and their loans; the discussions focus on the postsecondary education system as a whole.[112] Nonprofit schools borrow hundreds of thousands of dollars to finance an education often without any greater guarantee of gainful employment after graduation than at for-profit schools.

However, the decades long history of making student loans increasingly difficult to discharge in bankruptcy up to the 2005 amendments that made even private student loans nondischargeable evinces a rigid adherence to the discharge exception by Congress that can only be dismantled piece by piece. Furthermore, there are enough differences between what the public and private nonprofit universities and the for-profit schools offer to merit differentiating between the two.

This article has argued why for-profit schools are less deserving of the discharge exception than nonprofit schools.[113] However, there are other reasons why nonprofit schools may be deserving of discharge, for now. For example, many students at nonprofit schools pursue degrees in more erudite and intangible areas; whereas, students at for-profits often seek training in vocational skills. Students who obtain liberal arts degrees can be said to have entered the arrangement with their eyes open and should not be surprised by the lack of opportunities for philosophers and music theorists. But, the expectation that there would be more jobs available for nurses and electricians is reasonable.

C. Proposed Regulatory Schemes Vary between the Two

Proposed regulatory schemes only treat half the problem–the actions of the schools but not the student debt–and may not be effective. Among the recently proposed regulatory reforms, several focus on strengthening existing regulations, such as the 90/10 rule[114] or the CDR requirements.[115] While some of the proposed improvements for the current regulations, such as including

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[112] *See generally* REYNOLDS, *supra* note 3 (discussing the repercussions of students' inability to pay back student loans for all types of schools).

[113] *See supra* Part III, subsection B.

[114] Sridharan, *supra* note 81, at 332, 348-50; *see* Cooley, *supra* note 90, at 558-59.

[115] Cooley, *supra* note 90, at 558-61.

military funding in the 90/10 rule[116] and tying incentive-based executive pay to the CDR,[117] certainly could force some change on the industry, the for-profit schools would heavily resist implementation. Many of the proposals are unfortunately vague and require clearer, more detailed statutes and more data on the schools and their students.

Proposed new rules vary in kind and specificity, but they largely push reform through either a governmental agency or industry self-regulation. Several of the proposed rules would provide incentives for for-profits to perform better and give the students more information about what kind of education they are getting, such as increasing the accreditation standards for for-profit schools.[118] Some of the proposed industry-controlled regulations include providing more information to the students, such as faculty credentials and disclaimers on forward-looking advertisements, and maintaining a greater support staff for the students enrolled in the programs.[119] However, these rules can only look forward, and they offer little guarantee of enforcement or consequences if a school violates them.

D. Income-Based Repayment Plans are Inadequate

The Federal Consumer Protection Bureau and the Student Loan Ombudsman[120] emphasize using an income-based repayment plan in their 2012 reports, where students make payments on their student loans capped at a certain percentage of their net income.[121] However, private student loans are not

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116 *Id.* at 559.

117 Sipley, *supra* note 84, at 292 (showing that with incentive-based executive pay to the CDR, bonuses are "claw[ed] back" in years when a school exceeds the CDR).

118 Cooley, *supra* note 90, at 563-66.

119 Aaron N. Taylor, *"Your Results May Vary": Protecting Students and Taxpayers Through Tighter Regulation of Proprietary School Representations*, 62 ADMIN. L. REV. 729, 770 (2010).

120 "The Dodd-Frank Wall Street Reform and Consumer Protection Act established an ombudsman [for student loans] within the Consumer Financial Protection Bureau," who is required to make annual reports. CFPB STUDENT LOAN OMBUDSMAN REPORT, *supra* note 78, at 3.

121 *Id.* at 19. Currently, students pay fifteen percent of their "monthly discretionary income . . . for a period of [twenty-five] years," and at the end of the period, the unpaid balance is forgiven. Richard Fossey & Robert C. Cloud, *Economic Hardship Deferment and Income-Based Repayment Plans: Band-Aids on the Tumor of the Student Loan*

eligible for the government income-based repayment plan and neither are any loans that are cosigned, an increasing practice with student loans.[122] Furthermore, this plan provides for forgiveness of the loans after either twenty-five years of payments through the plan or ten years of payment while working as a public servant.[123]

Further, the period of repayment under this plan is the same, regardless of how long ago the debt was incurred, leading to some almost inconceivable results. For example, in a 2011 case, *In re Stevenson*,[124] the court ordered Stevenson, a "single female in her mid-fifties,"[125] to enter an income-based repayment plan where she would pay down her student loan over twenty-five years.[126] Stevenson had graduated from college in 1976 and, at the time of the case, she owed $114,680.69 on her student loans.[127] Based on the court's decision, she will have borne this debt for sixty years before all is said and done.[128]

These overlong payment plans are a Band-Aid on a gashed artery and smack heavily of modern day indentured servitude.[129] The income based repayment plan is not available for every type of loan, and a student may end up paying more interest under the repayment plan.[130] While the income-based repayment plan helps

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Crisis, TEACHERS COLLEGE RECORD (Aug. 9, 2012), http://www.tcrecord.org/content.asp?contentid=16842. Soon, the program will shift to 10 percent paid over 20 years. *Id.*

[122] U.S. Dep't of Educ., *Income-Based Plan*, FEDERAL STUDENT AID, http://studentaid.ed.gov/repay-loans/understand/plans/income-based (last visited Nov. 7, 2013).

[123] *Id.*

[124] 463 B.R. 586 (D. Mass. Bankr. 2011).

[125] *Id.* at 587.

[126] *Id.* at 599.

[127] *Id.* at 588-89.

[128] In its decision, the court chose the "equitable result" of discharging any remaining debt at the end of the life of the income-based repayment plan. *Id.* at 598-99. The court fashioned this decision based on its authority under 11 U.S.C. § 105 and in order to avoid the tax liability that would have been imposed if the remaining debt were forgiven at the end of the income-based repayment plan. *Id.*

[129] In *In re Bene*, the court characterized the debtor's options as either discharging the student loan debt or "*indenturing* herself to the [income-based repayment plan] for the next [twenty-five] years." 474 B.R. 56, 58 (W.D.N.Y. Bankr. 2012) (emphasis added).

[130] U.S. Dep't of Educ., *supra* note 122.

those with student loan debt avoid default, it is of no help if the student is suddenly unable to make even those payments.

CONCLUSION

In the summer of 2013, student loans held the national public eye for a few weeks because student loan interest rates doubled on July 1, 2013.[131] Several weeks later, Congress passed a bill restoring the previous interest rate, and it was signed into law.[132] Congressional leaders and President Obama took the opportunity to state that the bill was the first among many in a "broad and aggressive strategy . . . to tackle the spiraling cost of a college education."[133] On August 22, 2013, President Obama outlined a plan to reform higher education costs by linking federal aid to a "college costs" rating system, where more frugal schools would be rated higher.[134] The plan also aims to "encourag[e] schools to innovate and compete for students, and help[] students manage their loan debts."[135] Hopefully, this reform will come and look both to making higher education more affordable and the now requisite debt more manageable after class has let out. Hopefully, student-debtors who have already taken out their loans, like the Cisneros, will not be forgotten.

Adopting the proposed statute would take a step forward in helping students at for-profit schools. Looking backward to those students who have been cheated and defrauded or merely misinformed about the advantages their education would bestow, discharge allows them to escape permanent financial burden. Looking forward to those students who will attend for-profit schools in the future hoping to improve their lives and their

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131 Josh Lederman & Phillip Elliot, *Obama Signs Student Loan Bill Lowering Interest Rates*, THE ASSOCIATED PRESS (Aug. 9, 2013, 4:09 PM), http://www.nbcnews.com/business/obama-signs-student-loan-bill-lowering-interest-rates-6C10887330.

132 *Id.*

133 *Id.*

134 David Jackson, *Obama Unveils Plan on College Affordability*, USA TODAY (Aug. 22, 2013, 2:06 PM), http://www.usatoday.com/story/news/politics/2013/08/22/obama-college-affordability-bus-tour-buffalo-syracuse/2684331/.

135 *Id.*

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financial status, discharge encourages for-profit schools to live up to the students' expectations and deliver on their recruiting promises. Debt and higher education have become entwined, but hopefully the knot can be untangled for for-profit students.

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