

UNLEASHING OPPORTUNITY

————— *a project of* —————

NATIONAL AFFAIRS

3

Policy Reforms to Strengthen Higher Education

ANDREW P. KELLY

JASON D. DELISLE

KEVIN J. JAMES

MARK S. SCHNEIDER

Executive Summary

COLLEGE AFFORDABILITY HAS become a defining middle-class issue. On the one hand, some education after high school is increasingly important to economic opportunity and mobility. On the other, college costs have grown faster than just about every other good or service in the economy, driving a significant increase in student debt. Mediocre completion rates and uncertain labor market outcomes have increased the risk of investing in higher education at the same time that doing so has become more important.

American families rightfully feel trapped, left to choose between sending their children into debt to pay high tuition for degrees of uncertain value and consigning them to lives of low-wage work and little upward mobility.

For a half-century, well-intentioned federal policies have focused on expanding opportunity and protecting consumers and taxpayers. These policies have expanded access to college, but have had consequences for college costs and quality. The easy availability of federal aid dollars encourages students to enroll in any college, no matter the quality or price, providing little incentive for colleges to control tuition or ensure students achieve their goals. Low levels of transparency and information coupled with poor quality assurance fail to protect taxpayers or consumers from waste.

Policymakers' traditional answers to these problems—more money in grants and loans and more regulation of institutions—have not made college more affordable and effective, and may well have done the opposite. This approach—subsidize colleges, attach more strings, watch tuition rise, subsidize again—is not creating sufficient opportunity for students who have earned it.

Americans deserve better, from their policymakers and their institutions. On the supply side, students need more affordable and effective

post-secondary options that help them gain skills and find success in the workforce. On the demand side, they require better information to choose the colleges that best meet their needs and simpler, more flexible aid programs that help them finance that choice.

What we need is a comprehensive set of reforms for our post-secondary system that correct misaligned incentives, rein in burdensome regulations that stifle innovation, and empower students and families.

To that end, the chapters in this book explore the following higher-education policy areas, offering an array of ideas for reform, ranging from modest proposals to bolder reforms to complete overhauls:

- Federal need-based aid programs help millions of low-income students pay for college, but are plagued with inefficiencies and poor incentives. Policymakers should look to streamline these programs by easing the processes by which students apply for, receive, and use aid. Reformers should also consider providing students with more predictability and flexibility by shifting to an account-based model.
- Federal student loans and tax credits are complex, create perverse incentives, and are poorly targeted. Students borrow large sums to enroll in programs of uncertain quality, and those who drop out must navigate a maze of repayment options in order to avoid default. Reformers should work to simplify federal loan programs in both number and design. Those who wish to go further should consider replacing existing programs altogether with a simple, flexible line of credit, whereby beneficiaries repay a portion of their future income through the payroll withholding system.
- Federal accountability mechanisms for post-secondary institutions have failed to protect students and taxpayers. In turn, policymakers should consider implementing more effective tools: a risk-sharing system that would hold all colleges responsible for a portion of federal loans that go unpaid, along with a rigorous performance floor that would revoke the eligibility of institutions whose graduates do not meet a minimum loan-repayment rate.

Policy Reforms to Strengthen Higher Education

- Students and families face a dearth of clear, comparable, and useful information on postsecondary institutions. In response, reformers should provide consumers with more and better data on college costs and student outcomes—on both institutions and individual programs—by fostering better use of existing federal data and leveraging state-level data-collection efforts.
- Policies designed to reduce fraud frequently act as obstacles to innovation. Needed instead are reforms that free leaders at institutions to develop new models of teaching and learning; expand access to and raise the profile of non-traditional options like competency-based education and apprenticeships; and create space for students to choose quality and innovative options.
- Finally, schools that receive federal aid operate under a web of rules, regulation, and guidance. Reformers should not only reduce and streamline existing rules, but reform the processes by which such requirements become policy—including curbing the proliferation of regulatory guidance and launching a retrospective review of existing regulations.

Reforming Student Loans and Tax Credits

Jason D. Delisle

RESIDENT FELLOW, AMERICAN ENTERPRISE INSTITUTE

STUDENT DEBT has reached the top of the national agenda, thanks in part to the significant expansion in the stock of outstanding student loans over the past decade. There is now \$1.3 trillion in federal student-loan debt outstanding, up from \$441 billion just a decade ago. The increase is a function of rising college costs, increases in student enrollments, and the expansion of federal loan programs. Over that period, total enrollments in post-secondary education grew from 17.5 to 20.3 million students.⁵⁶

The federal role in higher-education lending has expanded significantly since the first federal loan program was authorized in 1958 as part of the National Defense Education Act. The Higher Education Act of 1965 created the Guaranteed Student Lending Program, which made low-interest loans to needy students. In 1978, the Middle Income Student Assistance Act expanded eligibility for guaranteed loans to middle-income students. In 1980, Congress created a federal loan program for parents of undergraduates (Parent PLUS), and in 1992, policymakers eliminated annual and lifetime limits on Parent PLUS loans and authorized the unsubsidized Stafford Loan program, which allows all students to borrow federal loans regardless of their financial circumstances. In 2006, Congress created the Grad PLUS loan program which effectively removed any limit on the amount graduate students could borrow.

A series of higher-education tax benefits were created as part of the Taxpayer Relief Act of 1997 (Hope Scholarship, Lifetime Learning Tax Credit, student-loan interest deduction, and others). Lawmakers have expanded these benefits many times since then, most recently with the

American Opportunity Tax Credit in 2009. The benefits now total over \$20 billion in annual aid.

The resulting system of loans and tax benefits is complex, sprawling, and increasingly important to the federal budget. The size of federal loan programs has experienced remarkable growth, thanks in large part to the proliferation of programs and the expansion of enrollments over the past decade. In the 2001-2002 school year, the Office of Federal Student Aid at the Department of Education disbursed \$36 billion (in current dollars) across 9.4 million loans. By 2011-2012, those totals had reached \$106 billion and 22.8 million. Disbursements and borrowing declined somewhat after that peak, but in 2015-2016, FSA still handed out \$94.7 billion through 17.3 million loans. Even after adjusting for inflation, the amount of federal loan disbursements increased 44% between 2004-2005 and 2015-2016.⁵⁷

More troubling are the trends in delinquency and default. There are currently more than 8 million people in default on their federal student loans, and estimates suggest that over 40% of all borrowers who are expected to repay have defaulted, are delinquent, or are in forbearance or deferment.⁵⁸ Other research shows that the “effective delinquency rate” on student loans, after eliminating borrowers who are still in school or in a grace period, is about 30%.⁵⁹

Meanwhile, tuition prices continue to increase, forcing more and more students to rely on federal loans to finance their education. The sticker price of tuition at public four-year colleges—after accounting for inflation—has more than tripled since the early 1980s. At private nonprofit colleges, the sticker price of tuition is 2.5 times higher. Net prices—what students actually pay after subtracting grant aid and tuition discounts—have not risen as much thanks to an influx of federal grant aid, but stagnant family incomes mean that the price of college is consuming a larger chunk of family incomes each year. While there is significant scholarly debate as to whether the availability of federal student loans *causes* tuition inflation, new evidence suggests that they certainly seem to enable increases in tuition.⁶⁰

In light of this sorry state of affairs, policymakers should push for reforms to the federal student-loan program that aim to achieve four main goals: simplify federal loan programs and repayment options; make the programs operate more rationally and efficiently; eliminate wasteful features, with emphasis on those that distort the higher-education marketplace; and ensure that the program distributes public

resources in a fair manner to those who need them most, especially students from low-income families.

With respect to the tax benefits for tuition, policymakers should aim to eliminate and better target the budgetary resources (i.e., forgone tax revenue) that are currently used to fund the tax benefits. We suggest a number of reforms that simplify or better target federal aid that would increase taxpayer costs; we also identify places where savings from the elimination of or a reduction in tuition tax benefits can offset those costs.

A FLAWED STUDENT-LOAN REGIME

The federal government provides several types of student loans to help promote access to higher education. The common goal among the different loans is to allow students to obtain financing for higher education at better terms than those available in the private market. The programs entitle virtually all students to loans with below-market interest rates and flexible repayment options. Furthermore, loans are available to borrowers without respect to income, choice of institution, field of study, or academic performance (except in limited cases). Loans are available for short-term certificate programs, two- and four-year undergraduate study, and graduate study.

As of 2010, all federal student loans are provided through the Direct Loan program. Loans are issued directly by the U.S. Department of Education to the institutions of higher education that borrowers attend. The loans are administered by the Department of Education and private companies with whom the department has contracted to process loan disbursements and handle loan repayments and collections.

Unsubsidized Stafford loans are available to all undergraduate and graduate students. Dependent undergraduate students can borrow up to their cost of attendance, but no more than \$5,500 in their first year, \$6,500 in the second year, and \$7,500 each year thereafter, and they cannot borrow more than \$31,000 in total. Independent borrowers are eligible to borrow \$9,500 in the first year, \$10,500 in the second, and \$12,500 in the third, with the aggregate limit set at \$57,500. In order to qualify as an independent borrower, the individual must be over the age of 24, or serve in the military, be married, or have dependents. Graduate students may borrow no more than \$20,500 each year and \$138,500 in total in Unsubsidized Stafford loans. Borrowers do not need to make payments on the loans while in school. Loans can be repaid through a variety of plans discussed more below.

Congress sets the interest rates on Unsubsidized Stafford loans. The loans carry fixed interest rates that reset for newly-issued loans each academic year.⁶¹ For loans issued in the 2016-2017 academic year, the interest rate for undergraduates is 3.76%, plus a 1.1% origination fee. For graduate students the interest rate is 5.31%, plus a 1.1% origination fee.

Subsidized Stafford loans are the same as Unsubsidized Stafford Loans, except that interest does not accrue while the borrower is in school and the borrowing limit is lower. Historically, both undergraduate and graduate students were eligible for Subsidized Stafford loans, but legislation enacted in 2011 (the Budget Control Act) made graduate students ineligible for newly issued subsidized loans as of July 2012.⁶²

A dependent undergraduate student qualifies for a Subsidized Stafford loan if his or her parents meet financial eligibility requirements. Independent undergraduate students qualify if they themselves meet financial eligibility requirements. For both dependent and independent undergraduate students, the limits for borrowing are \$3,500 for the first year, \$4,500 for the second year, and \$5,500 for subsequent years, with the aggregate limit set at \$23,000.

Interest rates are the same for Subsidized and Unsubsidized Stafford loans to undergraduates. For loans issued in the 2016-2017 academic year, the rate is 3.76%, plus a 1.1% origination fee.⁶³

Parent PLUS loans are available to parents of undergraduate students. Through the program, parents may borrow an amount up to the cost of the student's attendance, which includes tuition, housing, and other expenses. Unlike with Stafford loans, parents must satisfy a limited credit check. The loans carry fixed interest rates that reset for newly issued loans each academic year. For loans issued in the 2016-2017 academic year, the interest rate is 6.31%, plus a 4.3% origination fee.

Grad PLUS loans are available to graduate students under the same terms as PLUS loans for parents of dependent undergraduates. Grad PLUS loans are meant for borrowers who exhaust eligibility for Stafford loans. The loans carry fixed interest rates that reset for newly issued loans each academic year. For loans issued in the 2016-17 academic year, the interest rate is 6.31%, plus a 4.3% origination fee.⁶⁴

Borrowers may repay their federal student loans under a variety of repayment plans. However, all borrowers are automatically enrolled in the standard repayment plan when they leave school. They must opt into any of the others, provided they meet the eligibility criteria.

Borrowers can opt into any plan for which they are eligible at any point during repayment and generally can change options during repayment. Borrowers may also pre-pay (make larger payments than the minimum required) at any time without penalty.

Federal Student Loan Fixed Interest Rates by School Year Issued

Loan Type	2012–13 ¹	2013–14	2014–15	2015–16	2016–17
<i>Undergraduate Unsubsidized & Subsidized Stafford</i> ²	5.46%	3.86%	4.66%	4.29%	3.76%
<i>Graduate Unsubsidized Stafford</i>	6.80%	5.40%	6.21%	5.84%	5.31%
<i>Grad PLUS</i>	7.90%	6.41%	7.21%	6.84%	6.31%
<i>Parent PLUS</i>	7.90%	6.41%	7.21%	6.84%	6.31%

Source: Department of Education

¹ Last year before enactment of Bipartisan Student Loan Certainty Act of 2013.

² Average interest rate on the two loan types weighted by issuance.

The standard repayment plan is a 10-year plan in which the borrower makes 120 monthly payments that fully repay the loan and any accrued interest. Borrowers can make fixed monthly payments or payments that gradually increase over the life of the loan.

The extended repayment plan allows borrowers with balances of \$30,000 and more to repay over 25 years at fixed or gradually increasing payments.

The consolidation repayment plan, like extended repayment, allows borrowers to lengthen the term of their loans, but allows them to do so with lower balances. For balances from \$7,500 to \$9,999 the term is 12 years; for \$10,000 to \$19,999 the term is 15 years; for \$20,000 to \$39,999 the term is 20 years; for \$40,000 to \$59,999 the term is 25 years; for \$60,000 or more the term is 30 years. Borrowers can make fixed monthly payments or payments that gradually increase over the life of the loan.⁶⁵

The Income-Based Repayment (IBR) plan allows borrowers to make monthly payments based on their incomes if they meet a debt-to-income test. Borrowers may opt into IBR if their payments under that plan would be lower than payments under the standard (10-year) repayment plan. For new and recent borrowers, eligibility and payments are set at 10% of adjusted gross income after a base exemption that

increases with household size. This plan is also called “Pay As You Earn” or “REPAYE.”⁶⁶ Unpaid loan balances are forgiven after a set amount of time depending on the plan—usually 20 years, or 25 years under some circumstances. Separately, borrowers in either plan qualify for loan forgiveness after 10 years of payments if they work in a nonprofit or government job.

TUITION TAX BENEFITS

The federal government provides a number of different tax benefits to offset college-tuition costs. There are three existing tax benefits for tuition and fees available to parents of students, or to students themselves if they are independent.

The first is the American Opportunity Tax Credit. It is available to students in their first four years of school, limiting it to undergraduate students. Students must be enrolled in a degree program at least half-time. Students (or their parents) may receive a tax credit up to \$2,500, or 100% of the first \$2,000 in tuition in fees and 25% of the next \$2,000. Up to \$1,000 of this credit is refundable, meaning the tax filer can claim it even if he has no tax liability to offset. Eligibility for the full AOTC is capped for single tax filers earning \$80,000 (\$160,000 for married filers). Those earning up to \$90,000 (\$180,000 if filing jointly) can claim a partial benefit under a phase-out provision. The AOTC is in law indefinitely; it does not expire.⁶⁷

A second tuition tax offset is the Lifetime Learning Tax Credit, which allows tax filers to reduce their federal taxes up to \$2,000. The credit is equal to 20% of the first \$10,000 in tuition and fee expenses. Income limits are indexed to inflation, and are set at \$55,000 or (\$110,000 for married filers) for the full benefit, while those earning above those amounts but less than \$65,000 (\$130,000) are eligible for a partial credit as the benefit is phased out. The Lifetime Learning Tax Credit is in law indefinitely; it does not expire. Graduate and undergraduate students may claim the benefit.⁶⁸

Third, the Tuition and Fees Deduction allows students or families to deduct up to \$4,000 in tuition and fees from their incomes, reducing their taxes by their marginal tax rates (e.g. 25% of \$4,000 for those in the 25% tax bracket). Students and families do not need to itemize deductions to claim it. Income eligibility is capped at \$65,000 for single filers, or \$130,000 for married filers. Above these limits, a partial deduction

of up to \$2,000 is available for those with incomes less than \$80,000 or \$160,000, depending on marital status. The benefit has been available since 2002. It has always been temporarily authorized, but has been extended multiple times. The last extension made the credit available through 2016, and lawmakers may still act to make it available for 2017. Graduate and undergraduate students may claim the benefit.⁶⁹

THE CURRENT STATE OF
FEDERAL STUDENT LOANS AND TAX CREDITS

There are several aspects of the current federal student-loan and tuition tax-credit regime that must be well understood before reforms can be attempted. There are clear political and ethical motivations behind each of these policies, but the policies themselves often cause more harm than good.

To start, federal student loans feature very little underwriting. In the private sector, lenders assess a borrower's likely ability to repay the loan as part of the underwriting process. Federal student loans feature no such underwriting, though they do place broad limits on which institutions and types of programs are eligible to receive student loans (even though graduation and default rates indicate that those standards are quite low). PLUS loans do feature a basic test of credit-worthiness—borrowers cannot have an “adverse credit history,” including defaults, foreclosures, or bankruptcies in the last five years—but that test does not assess a parent or graduate student's ability to repay.⁷⁰ As a result, students and parents have access to easy credit, which likely distorts their incentive to be cost and quality-conscious consumers.

Federal lenders also make credit available to any program at an accredited institution regardless of the price of attendance or the value of the credential. Indeed, the amount a student and their parents can borrow is directly tied to the cost of attendance, meaning that institutions that charge more in tuition are able to capture more federal aid. There are some basic standards that institutions must fulfill, but those standards tend to be low and ineffective in weeding out low-value institutions and programs.

Luckily, Stafford Loans have annual caps on borrowing and lifetime eligibility limits, and those limits are much higher for independent students than for dependent students (because the latter can rely on Parent PLUS loans). In contrast, Parent PLUS (and Grad PLUS) loans

allow for unlimited borrowing up to the cost of attendance to cover any amount not covered by other federal aid. This gives colleges and universities greater freedom to raise tuition, and likely encourages some to do so when loan limits increase.

Though there is plenty of scholarly debate about the so-called “Bennett Hypothesis”—the notion that the availability of federal grants and loans enables colleges to increase their tuition—several recent, well-designed studies have found that access to federal loans and changes in loan limits do affect tuition prices, particularly at private nonprofit and for-profit institutions.⁷¹ The PLUS programs have received far less scrutiny when it comes to tuition inflation, but it seems plausible that the lack of annual or lifetime caps on these loans has had an effect on tuition trends.

Meanwhile, the proliferation of loan repayment options increases complexity and detracts from successful repayment. Federal Student Aid (FSA) currently lists eight different repayment plans from which eligible students can choose. The standard 10-year repayment plan is the default option, but students can choose the graduated repayment plan (where payments increase over time), the extended repayment plan (if their balance is greater than \$30,000), the Pay As You Earn (PAYE) plan, the Revised Pay As You Earn (REPAYE) plan, the Income-Based Repayment (IBR) plan, or the Income Contingent Repayment plan (ICR). The number of options adds to the complexity of the repayment process, and many of the borrowers who would most benefit from income-driven programs are deterred because they must elect into them by filling out paperwork each year to certify their income. Enrollment in income-based repayment programs has increased of late, but many students are still defaulting on moderate amounts of debt, indicating the high cost of complexity and bureaucratic hurdles.⁷²

While income-based repayment programs show promise, the benefits of such programs as they are currently designed are skewed toward high-debt borrowers with graduate degrees, raising costs but not solving problems. Existing income-based repayment programs allow all student borrowers, including graduate students with PLUS loans (which allow for unlimited borrowing), to tie payments to their incomes and have any outstanding balance forgiven after 20 years (10 if they work in a “public service” job, a category that includes most nonprofit organizations). While these plans certainly help some undergraduate borrowers smooth their consumption and avoid financial hardship, the implicit

subsidies in the program (particularly loan forgiveness) flow disproportionately to borrowers with the highest debts — most of whom are graduate students. One study found that, depending on their program of study, graduate students who plan to go into the public or nonprofit sector can quickly approach the point at which they face no marginal cost for each additional dollar borrowed thanks to the loan forgiveness they will eventually receive.⁷³ Note that the problem here is not fundamental to the idea of income-driven repayment (where payments are tied to income), but arises from the eligibility rules and loan-forgiveness provisions.

Federal student-loan borrowers who fail to repay their loans feel few consequences for a number of years. Deferments and forbearances allow borrowers to avoid payments, but interest accrues throughout. A loan is considered to be in default if a borrower fails to make a payment for 270 days, and wage garnishment does not kick in for a number of years.⁷⁴ Eventually the federal government refers the loan to a collections agency, who can tack on a surcharge of up to 25% of the loan balance.⁷⁵ Though research on the effect of these delayed consequences is non-existent, some qualitative evidence suggests that some students who do not repay are making a rational decision to pay off other debts (credit cards, auto loans, mortgages) before their federal loan because the sanctions for non-repayment kick in much faster on those other products.⁷⁶

Finally, tuition tax benefits are politically popular, but accomplish little in the way of policy, while offsetting costs for high-income families. Research using tax records from the Internal Revenue Service shows that increasing shares of higher-income individuals have claimed the benefits as they have become more generous over time.⁷⁷ The research also raises doubts about whether these benefits encourage students to pursue further education, likely because they view tax benefits as a boost to income rather than a price discount.⁷⁸ Additionally, the argument that the tax benefits pay for themselves through a high return on investment are largely without conclusive evidence.⁷⁹

THE WAY FORWARD FOR STUDENT LOANS AND TAX BENEFITS

Each group of reforms discussed here differs in the degree to which it would change the existing loan program. The first group of reforms discussed below is mostly a simplification of the existing program, with some additional changes at the margin that limit the scale and scope of

the program. It is also the most politically feasible of the three groups of proposed reforms.

The second group of reforms still leaves the existing loan program structure in place, but makes bolder and more aggressive changes—both in terms of policy and political feasibility. The third group of reforms completely replaces the federal loan program with a new system based on the logic of an income-share agreement.

The three groups of reforms are not necessarily mutually exclusive. Components could be mixed and matched, and some proposals may work in tandem as part of all three groups of reforms. For example, a policy agenda could include minor changes that simplify the existing types and terms of loans, but also incorporates policies to overhaul how loans are collected in default. Some reforms are, however, mutually exclusive. It would be difficult, for instance, to enact a loan repayment system that operates through income tax withholding without other larger reforms. Those trade-offs are discussed throughout the sections below.

This first group of proposals leaves much of the scaffolding of the current federal student-loan system in place. At the same time, they work to simplify the system, making it more transparent for borrowers, and curtail some of the perverse incentives most prone to distort the higher-education marketplace.

Under this moderate plan, the first step should be the creation of one federal loan type for undergraduates, enabled by the elimination of the Subsidized Stafford loan. Ending this loan-subsidy benefit would, among other benefits, remove a confusing and oftentimes misunderstood distinction between Subsidized and Unsubsidized Stafford Loans, and result in only one type of federal loan for undergraduates. The entire program could then be called “Stafford Loans,” dropping the Unsubsidized and Subsidized modifiers. Borrowers would then have one loan type available to them that carries one set of terms.

To understand the rationale for this reform, one must understand the origin of the Stafford loan program. Since the passage of the Higher Education Amendments of 1992, all undergraduate borrowers have been able to take out federal Stafford loans regardless of income or other need-based tests, at terms that have been generally more favorable than those in the private market.⁸⁰ Prior to the enactment of that policy, the federal loan program allowed only financially needy students to borrow. Those loans had always included an interest-free benefit under

which the loan would not accrue interest while the borrower was in school. However, when policymakers opened up the federal student-loan program to borrowers of all income backgrounds in 1992, they maintained the interest-free benefit for borrowers who met a needs analysis test that accounted for the cost of attendance at students' institutions, but did not provide a similar benefit for other borrowers.

That interest-free benefit remains the distinction between the two loan types that still exist in today's program: Subsidized Stafford loans and Unsubsidized Stafford loans for undergraduates. In other words, Subsidized Stafford loans were not created to provide benefits over and above those on Unsubsidized Stafford loans. Rather, it is a benefit that was always provided as part of the federal student-loan program. The Subsidized and Unsubsidized Stafford loan distinction remains current policy mainly due to historical circumstances.

Borrowers are eligible for the same overall borrowing limits annually and in aggregate, but they qualify for a mix of Unsubsidized and Subsidized loans within those limits. In the 2011-12 academic year, for instance, 82% of undergraduates who had a Subsidized Stafford loan also had an Unsubsidized Stafford loan.⁸¹ Adding even more complexity, students are eligible for amounts of Subsidized Stafford loans on a sliding scale, meaning every borrower has a different amount of each loan type, sowing confusion for borrowers.

Subsidized Stafford loans also do not always provide the greatest benefits to the lowest-income students. Subsidized Stafford loans are awarded to borrowers according in part to the cost of attendance of their schools. In other words, a borrower can become "needy" by attending an expensive school. A similarly situated borrower who opts to attend a low-cost institution will qualify only for Unsubsidized Stafford loans. This is why, in spite of income and assets tests targeting the aid to lower income families, 13.9% of borrowers who receive Subsidized Stafford loans come from families earning over \$100,000 per year (see nearby table).⁸²

Furthermore, the interest-free benefit is made largely redundant by the income-based repayment plan. While the interest-free benefit makes the loan more affordable by reducing the balance due at repayment, income-based repayment makes the balance irrelevant for establishing a monthly payment. For a given borrower, payments are the same: They are based on his income, no matter what the size of his loan balance.

Policy Reforms to Strengthen Higher Education

Distribution of Total Subsidized Stafford Loan Issuance by Family Income

<i>Family Income of Undergraduates (AGI)</i>	<i>Share of Total Subsidized Stafford Loan Issuance (2011–12)</i>
\$0–\$30,000	49.1%
\$30,001–\$50,000	15.9%
\$50,001–\$99,999	21.2%
\$100,000 and over	13.9%

Source: National Postsecondary Student Aid Study 2011–12.

For exactly that reason, the Obama administration recommended in 2011 that the government no longer provide Subsidized Stafford loans to graduate students going forward. Congress acted on that policy in the same year, redirecting the budgetary resources to the Pell Grant program.⁸³ The administration noted that, in addition to the income-based repayment option available to graduate and professional students, “eligibility for the interest-free benefit on Subsidized Stafford loans is based on ‘ability-to-pay’ at the time of enrollment, but the borrower realizes the benefit later—typically years later—in the form of lower loan payments after leaving school.”⁸⁴ The administration also argued that government aid should be targeted to the highest-need students. All of those arguments apply to the case for eliminating the Subsidized Stafford loan interest-free benefit for undergraduate students, particularly if IBR is the only repayment option for borrowers.

Estimates from the Congressional Budget Office have regularly shown that the benefit costs over \$3 billion per year.⁸⁵ Eliminating it would free up those resources for other uses, while IBR would ensure that the loans are affordable in repayment.

Estimated Budgetary Savings from Ending Subsidized Stafford Loan Issuance

<i>Fiscal Years</i>	<i>Savings in Billions</i>
2017–21	\$11.2
2017–26	\$26.8

Source: Congressional Budget Office, December 2016.

The next step should be to automatically enroll students in the longest repayment term for which they are eligible, but “embed” a 10-year repayment term option. More specifically, policymakers should look to automatically enroll students in the “consolidation” repayment plan (or a new, comparable plan), where repayment terms are set based on the size of borrowers’ loan balances (i.e., longer terms for larger balances).

At present, the automatic repayment plan for a federal student loan is currently the standard 10-year repayment plan. Under this plan, a borrower makes equal monthly payments in the amount necessary to pay off the entire loan, plus interest, in a 10-year period. Most borrowers are enrolled in this plan, but it is just one of many options a student can choose from. Note that it is the standard 10-year repayment plan that has the highest delinquency rate of all the repayment options. This suggests that a 10-year repayment window is unduly burdensome on some borrowers, requiring them to pay too much too soon.

Borrowers owing more than \$7,500 automatically qualify for longer terms, up to 30 years, but they must know about that benefit and fill out the necessary paperwork. Unlike loans in the private market, extending the term on a federal loan *does not increase the interest rate*—it remains the same as the original rate. Thus, longer terms are effectively a free benefit.

Borrowers can request an “extended” repayment plan that allows them to repay the loan in fixed payments over 25 years if they have a balance of more than \$30,000. Extending the term reduces the borrower’s monthly payment, but increases the interest he will accrue and pay. Extended repayment is not the only way borrowers can lengthen the term of their loans and reduce their monthly payments. They can also do so through the “consolidation” plan, the terms of which are completely different from extended repayment. As the name suggests, this option converts a borrower’s multiple loans into one (although, confusingly, he needs only one loan to be eligible for consolidation), but by far its largest benefit is that it allows borrowers longer repayment terms based on their loan balances. It allows borrowers with balances of \$7,500 to \$9,999 to pay over 12 years; borrowers with \$10,000 to \$19,999 in loans to pay over 15 years; borrowers with \$20,000 to \$39,999 in loans to pay over 20 years; borrowers with \$40,000 to \$59,999 in loans to pay over 25 years; and borrowers with \$60,000 or more in loans to pay over 30 years.

Those terms should be made automatic (and the redundant “extended” option should be eliminated). That is, a borrower entering

repayment should have the length of his repayment term set by rules for the consolidation option, or some variation of them. A borrower entering repayment with a \$13,000 balance should have his monthly payments set to a 15-year amortization schedule; a borrower with \$30,000 should have his set to a 20-year schedule, and so forth. Such a policy gives borrowers automatic access to the free benefit for which they already qualify under current law.

Some in the policy community will worry that this encourages, or even misleads, borrowers to follow longer repayment terms where they accrue more interest. Yet there is no prepayment penalty for a federal student loan, so borrowers can always pay on a faster schedule. The policy could even inform a borrower of what he would need to pay to finish his loan repayment in 10 years. Under this “embedded option,” each month a borrower receives his bill (or when he logs into the servicing website) he can also see the amount he needs to pay to stay on a 10-year repayment plan based on when he began repaying. Even so, the payment he must make according to the maximum term he was automatically enrolled in would be his “minimum monthly payment.”

This next option is meant to be budget neutral: Eliminate the above-the-line tax deduction for student-loan interest and use the savings to offset the cost of eliminating the origination fee on undergraduate student loans (Stafford loans). It nets one benefit borrowers currently receive (a tax deduction for interest) against a fee they currently pay (the origination fee) on a federal student loan. By ending both policies, the net effect leaves current policy largely unchanged, but it is vastly more simple and transparent.

Under current policy, borrowers are assessed an origination fee on undergraduate loans that is automatically rolled into the loan balance and repaid as part of the principal balance. Other federal student loans charge origination fees as well, but this proposal would leave them in place. The borrower does not pay the fee upfront like a true origination fee; it is therefore simply part of the effective interest rate on the loan. The origination fees are significantly different for Stafford and PLUS loans: 1.1% and 4.3%, respectively.

Separately, borrowers who earn less than \$80,000 (\$160,000 if filing a joint return) in adjusted gross income can deduct from their federal income taxes up to \$2,500 per year in interest they paid on their student loans. This is an above-the-line-deduction that can be claimed regardless

of whether a tax filer itemizes or claims the standard deduction. Federal and private loans qualify for the benefit, but because most outstanding debt is federal, the benefit largely applies to those loans. The estimated annual cost to taxpayers in forgone revenue from the benefit is \$1.8 billion.

These two policies, the origination fee and the interest deduction, effectively cancel each other out. Borrowers are charged higher effective interest rates through the origination fee, then are charged lower effective interest rates when they claim the deduction. These policies should be eliminated to simplify the loan program.

Another policy option would eliminate the Parent PLUS Loan Program, increase loan limits for dependent undergraduates, and end the distinction between dependent and independent undergraduate loan limits. As the cost of attending college has soared, so too have Parent PLUS loan disbursements. Like Grad PLUS loans, these loans are not subject to annual or aggregate borrowing caps. Parents can access them to pay the full cost of attendance at any school eligible for federal student aid. Additionally, “cost of attendance” is defined by the college or university, not federal statute or regulation, and thus many colleges use these loans when packaging financial aid to fill large gaps in financial-aid awards.

Because parents can borrow up to the cost of attendance at the schools their children attend—meaning that families can easily overborrow—institutions have an easy source of funds if they wish to raise tuition. Moreover, the federal government does not track or publish the rate at which parents default on PLUS loans at each institution. Lastly, the loans carry a relatively high fixed interest rate of 6.3% and origination fee over 4%, which can pose a financial risk to vulnerable families; and the loans are eligible only for the least generous income-based repayment plan—Income-Contingent Repayment.

As part of eliminating the Parent PLUS program, policymakers should partially offset the reduction in access to federal loans by increasing the amount that dependent undergraduate students can borrow. Under this proposal, the annual limits for all undergraduates would be \$6,000 for a first year student (up from \$5,500 for dependent students), \$7,000 for a second-year student (up from \$6,500 for dependent students), and \$9,000 for a third-, fourth-, or fifth-year student (up from \$7,500 for dependent students). The aggregate limit for undergraduates would be \$36,000, instead of \$31,000 under current law for dependent students.

Current policy already acknowledges that borrowing limits should be higher when parents cannot or will not borrow for their children. Students whose parents opt to apply for PLUS loans but fail the very limited credit check for these loans may borrow Unsubsidized Stafford loans at the independent student limits, which are about \$4,000 higher per year. This set of reforms would make that policy effectively universal by discontinuing Parent PLUS loans and increasing undergraduate loan limits.

This reform simplifies the federal loan program by eliminating the distinction between dependent and independent undergraduates and allowing both types of students to borrow the amounts listed above. While those limits are higher than dependent undergraduates can currently borrow on their own, they are less than what independent undergraduates can access now. The current loan limits for independent students can lead to excessive amounts of debt. As of now, an independent undergraduate student who borrows the maximum in federal loans would begin repayment with a principal and interest balance of approximately \$74,000 (which includes accrued, unpaid interest), an amount that would require fixed monthly payments of \$486 over 30 years to repay under the currently available repayment plans.

Another set of reforms would reduce the benefits provided to graduate students and high-debt borrowers through the income-based repayment program for federal student loans. The reforms to IBR include setting timelines for loan forgiveness in accordance with amounts borrowed and eliminating the maximum loan-repayment cap as well as closing a tax-filing loophole for married borrowers and addressing tax treatment for forgiven debt.

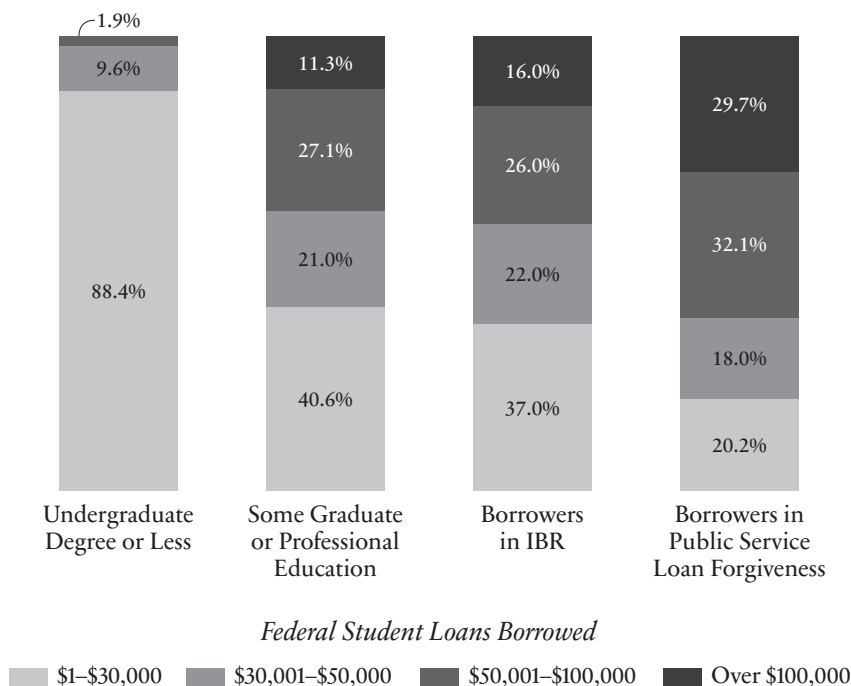
The current IBR program provides larger subsidies to borrowers who attended graduate school than it does to those who borrowed only to finance an undergraduate education. The federal loan program lets graduate students accumulate very high loan balances, but imposes low annual and aggregate limits on undergraduates. Because borrowers with large loan balances can repay their loans under the *same IBR terms as those with low and moderate balances*, the bigger the loan balance, the bigger the benefit.

What's more, the windfall graduate-school benefits are available even to borrowers earning middle and upper incomes during repayment and turn the program into a de facto tuition subsidy for graduate school.⁸⁶ That is because payments are low enough under the IBR terms, and the repayment term short enough, that earning a high income does not

guarantee that a borrower will repay his loan if he remains in IBR for the full term. Department of Education data indicate that students with debt from graduate school are heavily over-represented in the income-based repayment plan, given that the average balance in the program is \$56,384, over three times more than what an undergraduate who completes his education typically borrows.⁸⁷

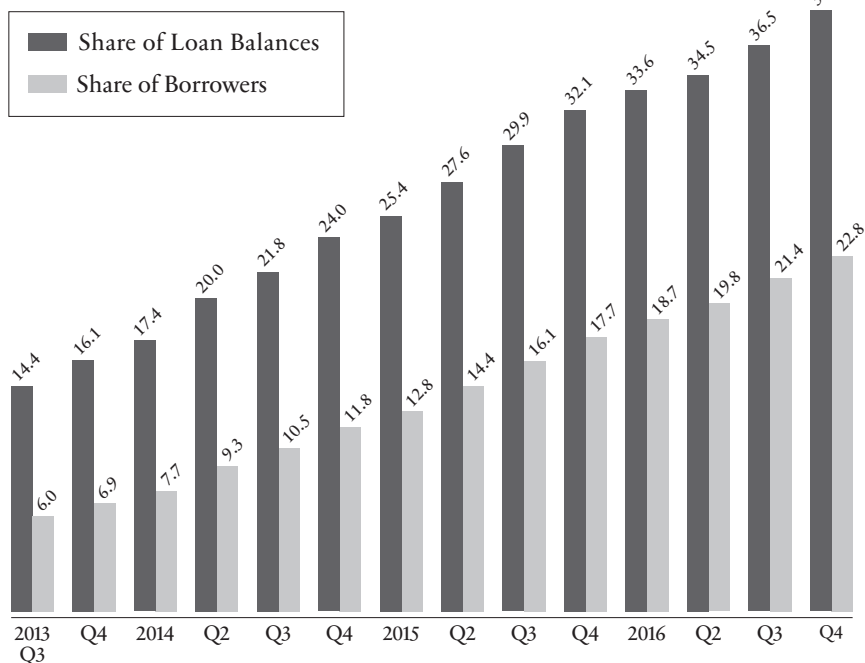
These windfall benefits were introduced in the program when the Obama administration and Congress cut borrowers payments under IBR by 33% (to 10% of discretionary income from 15% enacted in the original 2007 version of the program) and shortened the loan-forgiveness term from 25 to 20 years of payments.⁸⁸ Enrollment in IBR since the Obama administration’s changes has grown rapidly. Today 39% of loan dollars are enrolled in the program.

Thirty Percent of People Registered for Public Service Loan Forgiveness Borrowed More Than \$100,000



Sources: AEI using National Postsecondary Student Aid Study statistics on graduate and undergraduate borrowing, 2011-12; Government Accountability Office for borrowers in IBR, 2014; Department of Education Office of Federal Student Aid for PSLF balances, 2015.

Federal Student Loan Portfolio Share Enrolled in Income-Based Repayment*



* For Direct Loan portfolio only; excludes loans in the FFEL program. Includes loans repaid in the Income-Based Repayment plan, Pay As You Earn plan and REPAYE. Calculated as a share of the \$682 billion Direct Loans in repayment.

Source: AEI using U.S. Department of Education data.

The series of reforms proposed here would curtail the windfall loan-forgiveness benefits that the IBR program now provides to graduate students, but maintain its safety-net function for undergraduate levels of debt that can become *unexpectedly* burdensome for the borrower. The reforms should apply only to future borrowers, not those who have loans now or are about to start borrowing. A separate section discusses specific changes to the Public Service Loan Forgiveness benefit embedded in the IBR program.

In 2014, the Obama administration proposed to roll back some of the changes it had made to IBR to “better target” benefits. But none of these adjustments have been enacted. The initial estimate of budget savings for

the Obama administration's changes was about \$600 million a year. But the administration raised that estimate in 2016 to about \$5 billion a year.

The most important of this set of reforms would link the loan forgiveness timeframe in IBR to the amount borrowed. It would maintain the new forgiveness timeframe of 20 years of payment, but only for borrowers whose loan balances when they enter repayment do not exceed \$40,000. Borrowers with higher initial balances would qualify for loan forgiveness after 25 years of repayment. Policymakers might also consider creating a loan-forgiveness threshold earlier than 20 years for borrowers with balances below \$20,000.

Reforms to IBR should also eliminate the maximum-payment cap in the program so that borrowers must always pay on an income-based formula, no matter how high their incomes. The current program bases a borrower's payments on his income until they reach what he would pay if he repaid his initial loan balance according to a 10-year fixed payment plan. For example, a borrower whose payment under a 10-year fixed payment is \$200 is assured under the current IBR program that he would never pay more than he would under IBR, even if his income rises steadily during his repayment term.⁸⁹ That provision works to increase how much loan-forgiveness borrowers receive.

IBR also allows borrowers to make payments based only on their individual income even if they are married, by filing a separate income-tax return or filing "alternative documentation" with a loan servicer.⁹⁰ Policymakers should close this loophole and require that payments be calculated on combined household income even if borrowers file separate income tax returns. This change should make an exception for borrowers in families where each spouse has federal student loans and each repaid through IBR. To avoid double-counting their incomes, IBR payments should be based on one half of the combined household income.

As long as the above reforms are enacted, policymakers can then address a quirk in the tax treatment of forgiven debt under IBR. Under current law, the forgiven amounts (principal or interest) are considered taxable income in the year they are forgiven, as is the case for most debt that is forgiven. This provision runs contrary to the purpose of IBR, which is to ensure that student-loan payments never exceed a set share of income, and should be repealed. However, policymakers must first address the other flaws in the program that provide benefits to middle- and upper-income borrowers and those who have high amounts of graduate-school

debt before altering the taxability of forgiven debt. Otherwise, they will make the program even more generous for that group of borrowers.

Another policy that should be addressed is the Public Service Loan Forgiveness (PSLF) benefit. Policymakers should limit the amount of debt that can be forgiven under PSLF.

PSLF works in tandem with IBR and allows borrowers working in a qualified public-service job to receive loan forgiveness after they pay for only 10 years (120 cumulative payments) under IBR. There is no limit to the amount that can be forgiven, and all amounts forgiven are considered tax-free income.⁹¹ PSLF effectively amplifies all of the problems with IBR discussed above simply by making the loan-forgiveness term much shorter at 10 years.

Additionally, the law defines “public service” so broadly that it captures 25% of the U.S. workforce.⁹² The nature of the job is irrelevant for eligibility; only the status of the employer matters. Employment at any 501(c)(3) tax-exempt nonprofit qualifies, as does any government position (state, federal, local, and tribal). For example, an accountant at a nonprofit hospital would qualify for PSLF. In other words, borrowers who might not be considered employed in traditional public-service jobs will in fact qualify for loan forgiveness after 10 years.⁹³

The program should include a \$30,000 limit on the amount a borrower can have forgiven. That is based on the principle that the federal government should provide no more in aid to someone with a master’s or professional degree (really the only people who can get large benefits under PSLF due to loan limits and having to make 10 years of payments) for working in a “public service” job than it does to students from the poorest families in the form of Pell Grants to pay for an undergraduate education. The Obama administration has proposed a \$57,500 limit based on the logic that undergraduates can borrow up to that amount in federal student loans.⁹⁴ However, very few undergraduates borrow even near that much, and \$57,500 in loan forgiveness for attending graduate school will strike many as an excessive and regressive government benefit.

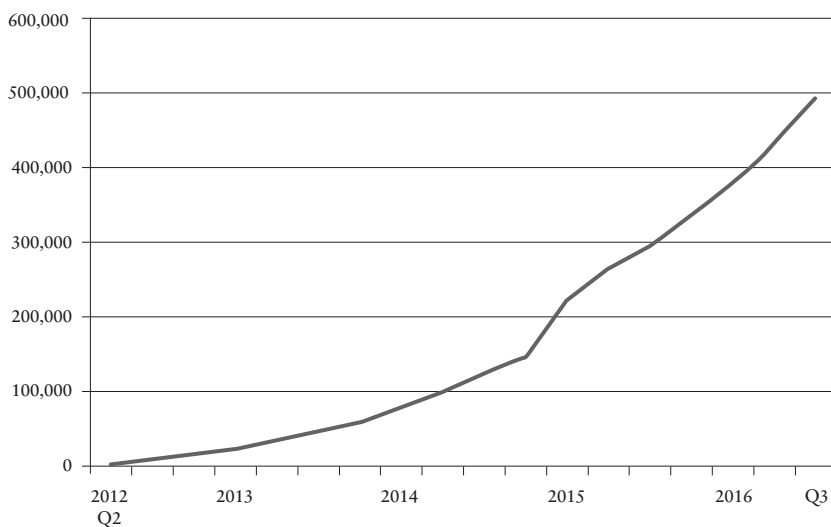
Many of the criticisms about PSLF and the justifications for limiting it also make the case for ending the program altogether. This is true, particularly given that IBR allows people to make affordable payments on their loans regardless of income, making PSLF unnecessary. It is IBR that allows borrowers with high debt to pursue lower-paid public-service jobs because it sets their *payments as a fixed share of income*.

The amount of debt that stands to be forgiven under the program is alarming. For example, take a borrower who has an outstanding federal loan balance of \$100,000 with an average interest rate of 6.5% from graduate studies. He earns a starting salary of \$60,000 (adjusted gross income equivalent of \$54,000) and a 6% annual salary raise every year. In 10 years his salary is therefore \$87,000. He works at a 501(c)(3) tax-exempt nonprofit organization for those 10 years. After his 10th year of payments, he has \$119,000 forgiven, the remaining balance on his federal student loans at that point. Despite his moderate income level, IBR never requires that he even make principal payment or even cover all the interest on his debt.

Again, the Department of Education reports that 30% of borrowers who are making progress toward PSLF borrowed more than \$100,000 in federal student loans. Over half of them borrowed more than \$50,000.⁹⁵ Enrollment in the program in the form of pre-certifications is growing rapidly, despite the fact that the program is not well-known.

The only study to project the effects of IBR and PSLF reveals that the benefits are large enough that it could become common for the government to pay for a student’s entire graduate education via loan forgiveness under PSLF, especially in some professions.⁹⁶ That is

Cumulative Public Service Loan Forgiveness Certifications



Source: AEI using statistics from Government Accountability Office and Department of Education.

because the debt levels at which borrowers bear no incremental cost in borrowing more when using IBR and PSLF are low relative to what many graduate and professional degrees cost and to what students already borrow in federal loans. Even typical levels of debt will result in substantial amounts of loan forgiveness for borrowers earning more than most of their peers. In short, IBR and PSLF are likely to have a significant impact on what students opt to borrow and what institutions of higher education charge for many degree programs.

IBR and PSLF provide substantial benefits to borrowers with typical debt loads who earn median or even high incomes for their professions. For example, a teacher with a master's degree who borrows typically leaves school with \$42,000 in federal debt from undergraduate and graduate studies combined. If he earns at the 75th percentile for his age over his first 10 years of repayment, he will have \$32,711 forgiven. In other words, a teacher with a master's degree who has a typical debt load, who earns an above average income, has over \$30,000 forgiven under IBR and PSLF. Put another way, having at least \$30,000 forgiven if you are a teacher with a master's degree stands to become the norm if you make use of IBR and PSLF.

Even if policymakers end the Grad PLUS program (as discussed later), limiting PSLF is still important. Based on cases profiled in a 2014 study, borrowers in many professions are likely to qualify for substantial loan forgiveness using Stafford loans alone, well before they reach debt levels where they would have to access Grad PLUS loans.⁹⁷ This is even more the case if a borrower enters graduate school with federal debt from undergraduate studies and repays the combined balance through IBR. For example, a dependent student who borrows the maximum in undergraduate loans over five years would enter graduate school with a balance of about \$34,000 (including accrued interest and assuming he did not make any payments). If he attends graduate school for two years and borrows the maximum in Stafford loans, his combined loan balance (including accrued interest from both sets of loans) would total approximately \$80,000.

Finally, it is important to keep in mind that, under this proposal, once a borrower has received his *limited* loan forgiveness for public service, he can still make payments on any remaining balance using income-based repayment and still qualify for loan forgiveness after IBR's other forgiveness benefits kick in (after 10 or 15 more years of

payments). That is why the final loan forgiveness (after 20 or 25 years) in IBR should be left without a limit. That is how the program provides a safety net. If you haven't repaid by that length of time, your debt is forgiven. Putting a limit on it would obviate that function. PSLF is not a safety net; IBR is the safety net.

This moderate proposal would also disallow Parent PLUS loans from repayment under the Income-Contingent Repayment plan. Currently, Parent PLUS loans may be repaid through that program if they are "consolidated"—a free benefit for which nearly all Parent PLUS loan borrowers are automatically eligible. This loophole should be closed, particularly if policymakers do not eliminate the Parent PLUS loan program going forward. But it should also be closed even if Parent PLUS is eliminated, because it will prevent the outstanding stock of those loans from taking advantage of this loophole.

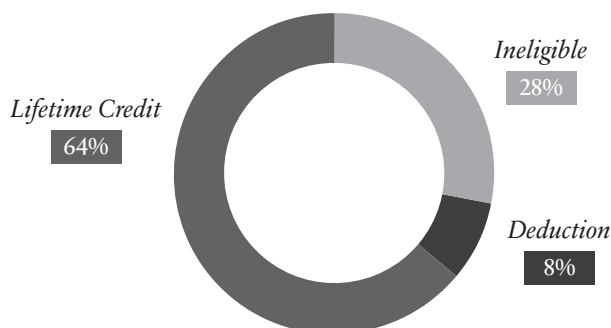
Under current law, all future and recently issued Parent PLUS loans can be repaid through the Income-Contingent Repayment (ICR) plan. ICR is a predecessor program to IBR and is far less generous. Payments are equal to 20% of a borrower's income in excess of 100% of the federal poverty guidelines, and loan forgiveness occurs after 25 years of payments (federal student loans are also forgiven when the borrower dies.) Even though ICR is not a very generous program, when combined with Parent PLUS loans, it invites abuse. Parents can borrow unlimited amounts and then can cap their loan payments as a share of their incomes and ultimately qualify for loan forgiveness after 25 years of payments.

More troubling still, borrowers repaying through ICR can exclude non-taxable income (such as Social Security retirement benefits, Supplemental Security Income, child support, etc.) from their income calculations. Parent PLUS borrowers are far more likely to collect untaxed income for a substantial portion of their loan repayment term than someone who more recently completed an undergraduate degree. Someone living entirely off untaxed income, such as Social Security retirement benefits, would qualify for \$0 payments under ICR. And even parents with some taxable and some non-taxable income would qualify for very low or \$0 payments.

Consider a Parent PLUS loan borrower who collects \$1,300 a month in Social Security benefits and earns another \$950 a month in taxable income from another source. The income reported on his federal tax return—which is made up of only the \$950 a month—is still below the

poverty threshold. Enrolling in ICR would result in a \$0 monthly payment for this borrower. (Note that the borrower can exclude a spouse's income from the ICR calculation by filing separate taxes or through the "alternative documentation" process.)

Tax Benefit Eligibility of Graduate Students (2011–12)



Source: Delisle, *A New Look at Tuition Tax Benefits*.

Finally, ending two tax benefits for graduate and professional school—the Lifetime Learning Tax Credit and the Tuition and Fees Deduction—would free up resources to be redirected to undergraduate students through grant aid or other programs. Roughly 72% of graduate students are eligible for one of these tax benefits.⁹⁸

First graduate and professional students are eligible for the Lifetime Learning Tax Credit. It allows filers to reduce their federal taxes up to \$2,000. The credit is equal to 20% of the first \$10,000 in tuition and fee expenses. Income limits are indexed to inflation, and are set at \$65,000 (\$130,000 for joint filers) for 2015. The benefit can be claimed for an unlimited number of years. This benefit is permanently authorized. Repealing it for graduate students would save approximately \$2 billion annually.⁹⁹

Second, the Tuition and Fees Deduction allows graduate students to deduct up to \$4,000 in tuition and fees from their incomes, reducing taxes by their marginal tax rates (e.g., 25% of \$4,000 for those in the 25% tax bracket). Students and families do not need to itemize deductions to claim it. Income eligibility is capped at incomes less than \$80,000 (\$160,000 joint filers) for 2015. The benefit has been available since 2002. It has always been temporarily authorized, but has been extended multiple times. The last extension made the credit available through 2016,

and lawmakers have until the end of 2017 to extend it for that tax year.¹⁰⁰ Extending it costs approximately \$300 million per year.

A BOLDER PROPOSAL

There are other avenues of reform that are bolder than those just outlined. These proposals include more aggressive reforms to the existing federal student-loan program. They could be implemented with much of the current federal loan program in place. Many could be adopted alongside reforms listed in the section above. In other cases, these reforms are extensions of the proposal outlined above, such as eliminating Grad PLUS loans in addition to Parent PLUS loans. Others, where indicated, would only work if other specific reforms are enacted.

Under such an agenda, reformers would eliminate all existing repayment plans and require borrowers to repay through either a new income-based repayment program that replaces the existing plans or a fixed 10-year repayment term. This proposal reduces the repayment plan options in the federal student-loan program to just two—mainly it eliminates the extended and consolidation plans that let borrowers extend their loan terms. Borrowers would repay either under an income-based repayment option or a 10-year fixed-payment term, and could switch between the two annually if they desired. Taken alone, this reform simplifies the federal student-loan program, but when coupled with an origination-fee model discussed below, it offers even more improvements.

The income-based repayment option under this plan would mirror the reforms outlined above. Payments would be set to 10% of a borrower's discretionary income; loan forgiveness is available after 20 years of payments for those who enter repayment with \$40,000 or less, and after 25 years of payments for those who enter with more; payments would be set off a borrower's household income no matter how he filed his taxes; payments would always track income, as there is no payment cap based on a 10-year repayment term.

Reformers should also eliminate the interest rate charged on federal student loans and replace it with a one-time origination fee added to the loan balance when the loan is disbursed. This policy works best when implemented in tandem with the above proposal to establish only two repayment plans for borrowers: an income-based plan and a 10-year fixed-payment plan. Note that the proposal to eliminate origination fees in the first set of reforms outlined in this chapter is meant to

simplify the loan program. In this case, eliminating interest rates on the loans completely and replacing them with an origination fee simplifies the program, while also better targeting benefits (explained below).

To ensure that the origination fee fluctuates with changes in the interest rates in the economy, it should be linked to interest rates on 10-year U.S. Treasury securities. Specifically, when rates on the bonds are 1.5% and below when the loans are issued, it should be a 25% fee; between 1.5% and 3%, it should be a 30% origination fee; between 3% and 4%, it would be a 35% origination fee. For each additional 1 percentage-point increase in the interest rates on 10-year Treasury bonds when the student loans are issued, the fee would increase by 5 percentage points.

While those rates seem high at first, they are quite similar to the annual interest rates charged under the current system. Currently, a student who borrows \$10,000 at an interest rate of 5% over four years pays about \$14,000 in principal and interest over a 10-year fixed-payment term. This proposal simply makes the initial loan balance \$14,000 from the start (the \$10,000 loan plus the \$4,000 origination fee added to the balance). This proposal is designed to be approximately budget-neutral, but changing the size of the origination fee can make it more or less costly relative to the current student-loan program.¹⁰¹

This approach has a number of advantages over the current system of annual interest rates, especially when combined with the two-option repayment-plan approach. First, it is *more* transparent. The borrower knows exactly how much he owes and will pay on the loan from day one. The balance cannot grow if he uses income-based repayment and his payments are low. Every single payment he makes always reduces his balance because interest is never accruing. And borrowers would not see interest accrue and their loan balances rise while they are in school—they would no longer be surprised by the amount that was eventually due when they enter repayment compared with what they borrowed when they entered school.

Another advantage of this approach compared with charging annual interest rates is that it better targets subsidies to borrowers who need them most. If all the interest is added at once and does not accrue, then the longer a student takes to repay his loan, the lower the “effective” interest rate on the loan. Because under this system there are only two repayment options (10-year and income-based), the only way to extend the term on the loan and reduce the effective interest rate is for the borrower

to enroll in the income-based repayment option. And that plan will only lengthen his loan term if his income is low relative to his debt load for a prolonged period of time. Conversely, a higher-income borrower would pay down his debt faster by using income-based repayment, thereby increasing his effective interest rate. Of course, he may use the 10-year fixed-payment plan instead, but that is the longest term he can opt into.

To see this effect, consider the earlier example of the borrower who pays for 10 years with that \$4,000 origination fee. Recall that he pays the same amount as someone who had a loan with an annual interest rate of 5%. But if he paid off the entire loan during the first year, his effective interest rate is 9%. If he took 20 years to repay using income-based repayment, his effective interest rate would be as low as 2%. Under this system, the interest-rate subsidy is more closely correlated with the borrower's income during repayment than under the current system.

Policymakers should also end the Grad PLUS loan program. This program allows graduate and professional students to borrow up to the full cost of attendance at an institution of higher education, with no time or aggregate limit. Such a policy, especially when coupled with loan forgiveness and income-based repayment, can discourage prudent pricing on the part of institutions and prudent borrowing by students. This policy leaves in place the annual limit on Unsubsidized Stafford loans for graduate students at \$20,500 (and an aggregate limit of \$138,500), but the annual limit could be raised as part of this proposed reform.

The Grad PLUS program was enacted in 2006 and since then, the debt that students have been taking on for graduate schools has grown rapidly.¹⁰² A report that uses the National Postsecondary Student Aid Study shows that median debt grew from \$40,000 in 2004 to \$58,000 in 2012, after adjusting for inflation.¹⁰³ A separate study that used a different dataset—the Survey of Consumer Finances—found similarly large increases in graduate-school debt, increases that were much larger and more rapid than debt for undergraduate studies.¹⁰⁴ In fact, an estimated 40% of all outstanding student debt is from graduate and professional studies, not undergraduate degrees.¹⁰⁵

If institutions can no longer rely on PLUS loans to fund their tuition programs and if the private market is responsive to the ability of borrowers to repay, then graduate schools may have to set their pricing based, in part, on students' expected earnings. Since those in graduate school already have an undergraduate degree and are preparing for a profession, it

is more reasonable to expect that loans above the Stafford limits be based on prospective ability to repay. Underwriters will likely focus most intently on institutional characteristics to determine risk. Consequently, programs that poorly prepare students to repay their debts will find that their students cannot access much credit in the private market, which should change institutional behavior in terms of quality and pricing.

In the same spirit, reformers should also replace Stafford loans for graduate students with a subsidized private-market program. The case for a heavily subsidized student-loan program for graduate and professional students is much weaker than it is for undergraduate students. At the same time, the now-defunct Federal Family Education Loan (FFEL) program—the Department of Education’s main program for issuing federal Direct loans to undergraduate and graduate students from 1993 to 2010—was a flawed model for incorporating private-market actors in the federal loan program for a number of reasons. Mainly, it set subsidies for lenders through a political process, not through market signals and competition.

But, private lenders could play a more constructive role in a new loan program for graduate students only. By definition, private lenders have access to key information about the creditworthiness of graduate students that they do not have for undergraduate students. Graduate students are all over the age of 18, have had the opportunity to work and establish a credit history, and *already have four-year college degrees*. Moreover, statistics show that they have a low likelihood of default.¹⁰⁶ Thus, there is little need to make unlimited, heavily subsidized credit available to graduate students.

Policymakers may, however, see a need for a smaller, more selective, and less subsidized graduate student-loan program. For example, they may see the benefit of providing limited amounts of government-backed credit for certain types of graduate credentials. Or they may want to guard against the under-provision of credit during times of economic recession, which is exactly the time that enrollment in graduate school increases and may be the most productive time for students to enroll. In that case, they could enlist private lenders in the effort through the following policy.

Policymakers would first eliminate all federal loan programs for graduate and professional education, leaving only the loans for undergraduates as those issued directly by the federal government. The government would

then partially guarantee against default loans that private lenders make to graduate students so long as those loans meet certain guidelines. For example, the loans must carry basic protections and be subject to borrowing limits, but the program would not dictate the specific terms of the loan (i.e., interest rate) and would allow lenders flexibility in deciding to whom they would lend and how much, up to the limit. Private lenders would thus underwrite the loans, and the partial default guarantee would ensure that they bear sufficient risk in the transaction and lend prudently. Lenders would own the loans as assets and retain any interest income that they earn.

This approach stands in contrast to the defunct FFEL program in a number of ways. First it enlists private lenders as underwriters — a task for which the government is particularly ill-suited. That means students are *not* entitled to loans at terms set by the government as they are today and were under the FFEL program. Lenders in the FFEL program did not, and could not, underwrite. They simply issued loans at terms dictated by the government to borrowers who were entitled to the loans.

This proposed approach also requires lenders to take much more risk in making the loans because it only offers partial insurance against default. Under the FFEL program, lenders received a 97% guarantee against default and a guaranteed quarterly interest rate. Those policies were appropriate given that lenders could not underwrite, turn away less credit-worthy borrowers, or issue loans with terms that matched the risk profile of the borrowers.

The amount of the guarantee under the proposed program should be set through a competitive bidding process, not set in law at an arbitrary level like the subsidies in the FFEL program. One way to structure that process is for the government to grant exclusive rights for two or three lenders to make the new graduate student loans to a group of schools for a set number of years. Lenders would compete for the right to make the loans by bidding on a guarantee rate they would require to make loans that met the general guidelines set by the government. The government would select the second-lowest bids (if there were to be two winners) on the guarantee, and then those two lenders would compete for business among graduate students attending each group of graduate schools. This is similar to an auction approach outlined in a 2007 law that became moot when lawmakers ended the FFEL program in 2010.¹⁰⁷

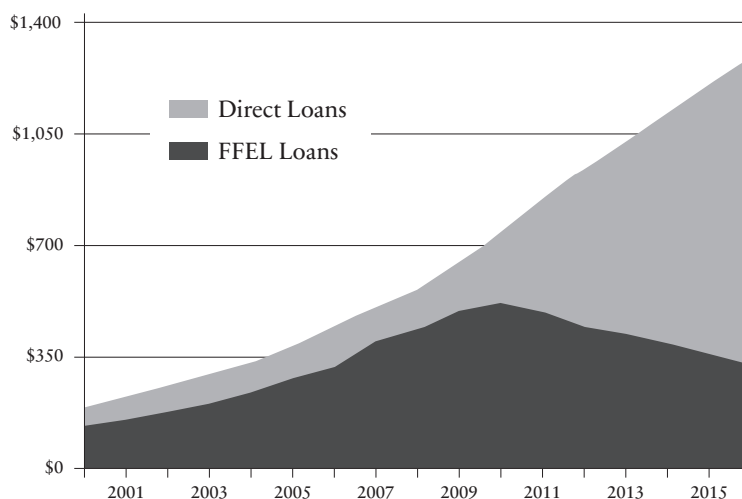
Policymakers should also overhaul policies for delinquent and defaulted loan collection and reform forbearance benefits. More specifically,

Policy Reforms to Strengthen Higher Education

reformers should look to charge small fees for late loan payments; initiate wage garnishment earlier in the repayment process; end the seizure of defaulted borrowers' Earned Income Tax Credits and Social Security payments; and impose stricter time limits on loan forbearance. These reforms would make loan repayment and collections processes more effective, fair, and rational for students and taxpayers alike.

Of the borrowers whose loans have come due (i.e., the borrowers who are not in school), over 40% are not making payments on their loans.¹⁰⁸ About half of that group is in default, having not made a payment for nearly a year, and the other half is delinquent or enrolled in a forbearance or deferment option. The loans accrue interest while borrowers postpone payments, and in the case of default, collection agencies can add fees up to 20% to the loan balance. Due to these trends, the federal loan portfolio is now growing due only to accrued and unpaid interest, as fewer students are borrowing today, and when they do, they are borrowing less than in the past.

Outstanding Federal Student Loans (in billions)

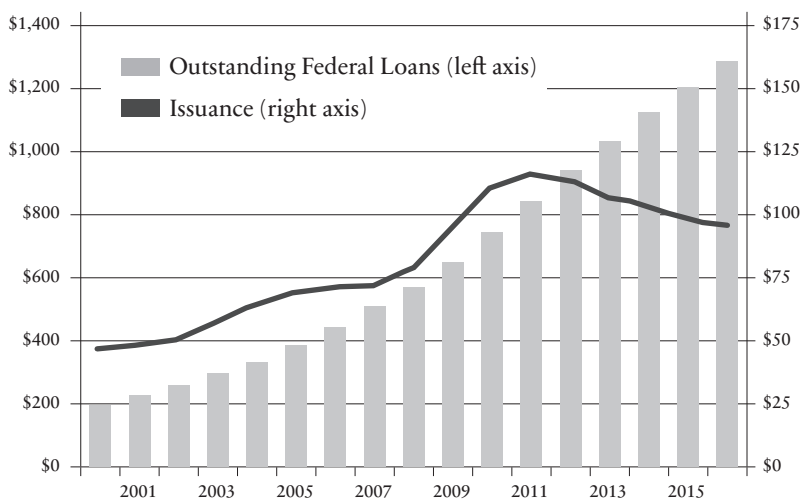


Source: AEI using U.S. Department of Education data.

Policymakers have built much flexibility and leniency into the loan-repayment terms, but this also encourages borrowers to make student loans a low priority, fueling the rise in loan balances. The forbearance

benefit, for example, lets borrowers postpone payments for up to three years. Over 10% of borrowers with loans due were enrolled in forbearance in late 2015.¹⁰⁹ Loan-servicing companies have a lot of discretion to grant forbearances, and getting one takes only a phone call on the part of the borrower. Forbearance also cures the delinquency status on a loan. Payments cease and the loan is put in good standing. When the loan finally comes due, however, the monthly payment will be higher than the payment the borrower originally found too difficult to pay, thanks to accruing interest. Forbearances are thus a double-edged sword. They help borrowers keep their loans in good standing, but they also preclude borrowers from making progress on paying down their debts, putting borrowers in worse standing.

Federal Student Loans:
Outstanding Debt vs. Issuance (in billions)



Source: AEI using U.S. Department of Education and College Board data.

While official budget projections show that the federal government collects about 80% of the value of defaulted loans, no data is available to confirm those figures. The Congressional Budget Office estimated in 2007 that the collection rate was only 50% of the value of the defaulted loans.¹¹⁰ Countless stories in the news media have profiled borrowers with debt from decades ago.¹¹¹ One recent article reports, “Education Department

officials note that some defaulted loans are from prior decades and, unlike private lenders, the government is severely limited in its ability to write them off and remove them from the books. . .[and they] acknowledge that a large pool of borrowers have essentially fallen off the radar.”¹¹²

Participants in a series of focus groups in 2014 explained that often years had lapsed before the government imposed consequences punitive enough that they began making payments on their loans. They also noted that years lapse between when they stop making payments and have their wages garnished. Some even expressed that, at the time, the penalties for default felt more manageable than making the required monthly payment. These experiences differ from the perception within the policy community that the consequences for defaulting on a federal student loan are swift, severe, impossible to evade, and always a borrower’s worst option.¹¹³

Loan servicers for federal student loans generally do not charge a penalty for late payments, per instructions from the U.S. Department of Education, until the loans are in default. Interest continues to accrue, however, and the borrower’s credit score suffers. Even when a late fee is assessed, it is not as severe as for other types of debt. The student-loan servicer can never increase the interest rate on the loan, which is common for credit cards, nor repossess an asset, nor shut off a vital service.

There are a number of reforms policymakers can implement to address this repayment and collections crisis. These reforms are meant to make the loan repayment and defaulted collections process more effective, but also more fair and rational for both borrowers and taxpayers. The proposals are based on the principle that penalties and collection efforts should happen faster, but be less severe. And the myriad opportunities borrowers have to postpone payments should be curtailed to discourage borrowers from assigning low priorities to their student loans and going deeper into debt due to accruing interest.

First, the government should charge small late fees for missed payments on a federal student loan. In exchange, it should reduce the fees it charges on defaulted student loan. This remedies the current flaw in the program that allows borrowers to delay payment with impunity, but then imposes extremely harsh penalties (a fee up to 25% of the loan balance) after nearly a year of missed payments. This results in a “bait-and-switch” feeling among borrowers and discourages them from repaying once the high fees are accessed.

Second, policymakers should initiate wage garnishing much earlier in the default process. Borrowers and officials at the Department of Education say that wage garnishing is the most effective way to bring a borrower back to repaying his loan. Yet they also say it is the last option the government uses, often waiting years while a borrower accrues more interest on this loan. Wage garnishing is hardly punitive given that borrowers have a percentage of their discretionary income garnished, meaning it is effectively an income-based repayment program. Moreover, it only affects borrowers who are working, by definition.

Third, policymakers should end the practice of seizing Earned Income Tax Credits from borrowers who have loans in default. While offsetting federal income-tax refunds is a sound policy to recover a federal debt—it nets \$1.9 billion a year—the EITC is a wage supplement to keep working families with children out of poverty.¹¹⁴ In fact, many borrowers who qualify for an EITC almost surely qualify for a \$0 payment under IBR (due to the exemption it provides of 150% of the federal poverty guidelines adjusted for household size), but have not brought their loans into good standing to enroll. They may not even know about the benefit.

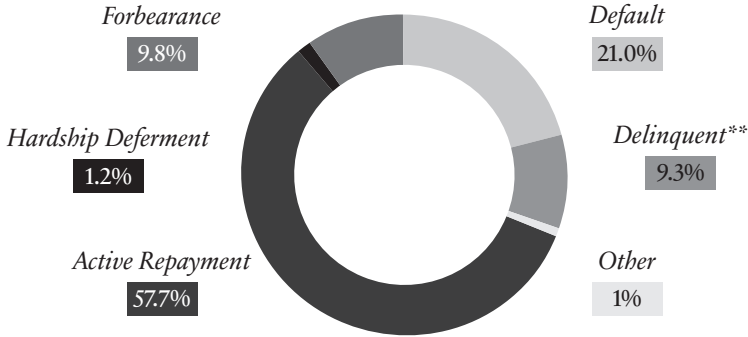
Fourth, policymakers should change the practice of garnishing Social Security payments for borrowers in default.¹¹⁵ A new process could be implemented to check whether the borrower would qualify for a \$0 payment on the student loan under IBR. If so, the government should suspend the garnishing. The vast majority of borrowers who receive income from Social Security retirement benefits likely qualify for \$0 student-loan payments under the income-based repayment program, but they do not know it. That is because Social Security retirement benefits are generally excluded from someone's adjusted gross income on a federal tax return—and IBR bases payments on adjusted gross income. Nevertheless, if a borrower does not know that and does not take action to put his loan in good standing and enroll in IBR, his Social Security benefits, which are exempt from income under a federal formula for student-loan payments, *are seized to pay his student loan*.

Fifth, policymakers should impose stricter time limits on forbearances. The current limit is three years, far too long for a program that offers so many options to reduce and extend payments, such as income-based repayment. A six-month limit would be a big improvement over the current system and help discourage borrowers from postponing

Policy Reforms to Strengthen Higher Education

payments and accruing additional interest. Forbearance is an important benefit in many cases and should be maintained, particularly because borrowers can use it while transitioning from delinquency to a new repayment plan, but it should be a more limited benefit.

Federal Loan Portfolio, Borrowers in Repayment* Q4 2016

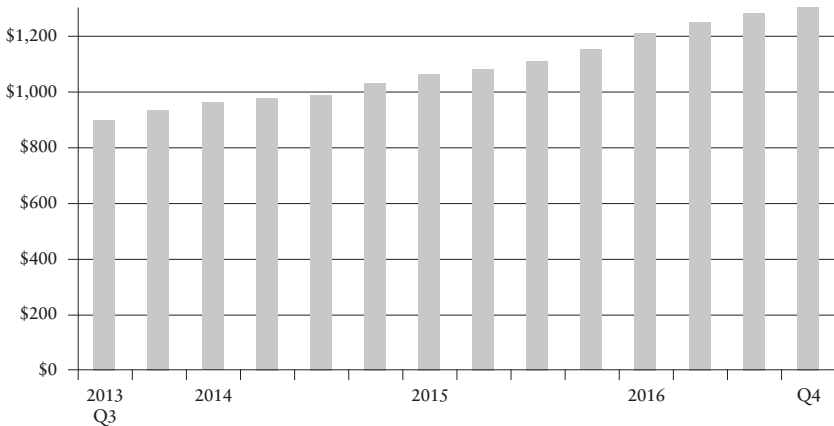


* Based on the 39 million borrowers and \$976 billion in loans that have come due and are not in in-school deferment. Includes duplicated accounts for borrowers with loans in both Direct and FFEL programs.

** Excludes loans in the FFEL program.

Source: AEI using U.S. Department of Education data.

Outstanding Federal Student Loans in Default (in billions)



Source: AEI using U.S. Department of Education statistics.

Sixth, under current law, default is defined as 270 days without payment. In practice, it can be closer to 360 days. As is the case with the forbearance benefit, this timeframe drags out the process for the borrower while he goes deeper into debt. Policymakers should move up the default timeframe to no longer than six months, which is still about twice as long as what the private loan market considers default.

TOTAL REFORM FOR FEDERAL STUDENT LOANS

A third set of reforms represents an entirely new approach to the federal student loan system. It gives students access to a simpler, more flexible student-aid program built around income-share agreements that avoid many of the worst qualities and shortcomings of loans. It also targets benefits to the lowest-income families and does not subsidize upper-income families. These reforms are meant to be implemented together and would not necessarily work if adopted in part or alongside the existing federal student-loan program.

To start, reformers would replace all federal student loans and borrowing limits with a \$50,000 account for each student that is repaid as an income-share agreement. Those who tap into this funding repay with a percentage of their incomes proportional to the amount they accessed. Students would repay 1% of their future income for every \$10,000 that they draw down for 25 years. The most someone would ever pay would be 5% of his income, because the maximum amount available in the account is \$50,000. Someone who used only \$5,000 would repay half of one percent of his income.

Those payment amounts are generally lower than what borrowers pay today relative to their incomes. Multiple studies have shown that median student-loan payments over the past fifteen years have ranged from 5% to 7% of household income.¹¹⁶ That is one reason why the repayment term for this program is relatively long at 25 years. The proposal stretches out the loan term to keep payments at a very low share of income.

First-year, full-time students could draw down up to \$10,000. After that, they would be free to draw down the account at any rate. (Students attending schools where graduates have strong repayment records could be exempt from that first-year limit.) That is in contrast to the current federal loan program, which provides fixed disbursements for every semester a student enrolls and includes annual loan limits that increase as a student progresses.

The \$50,000 account could be used for any level of post-secondary education from a short-term certificate to a master's degree. In some respects, that allows students more financing than under the current system. It is \$19,000 more than most undergraduates can borrow now, and the first year limit of \$10,000 is \$4,500 more than dependent undergraduates can borrow now and \$500 more than independent undergraduates can borrow now. It is, however, less than what graduate students can borrow under the existing federal loan program — which allows graduate students to borrow unlimited sums. Median student-loan debt for all types of students who borrow was \$19,647 in 2014, suggesting that \$50,000 does increase the amount of financing available to students relative to current policy.¹¹⁷

The proposed program would not charge interest. But, in a way, it charges an effective interest rate because borrowers could still end up repaying more than the principal that they borrowed. However, payments will still be lower for most borrowers than under the current student-loan program, except for those earning higher incomes.

There would be no “loan balance” for a borrower to repay under this design. Rather, the factors that dictate payment are the percentage of income and the 25-year repayment term. However, the plan can include a maximum payment cap of 1.75 times the amount drawn down. That is an upside cap to assure that students who go on to earn high incomes do not pay disproportionately more than they used to finance their educations. (Students today in the federal loan program will typically pay about 1.5 times what they borrowed after making interest payments over the life of the loan.)

Consider an example comparing the proposed income-share agreement with the current student-loan program's income-based repayment plan. A borrower under the current system with a \$10,000 loan at 5% interest and an initial adjusted gross income of \$35,000 makes monthly payments of \$103. If her income grows at 5% annually, she will pay a total of \$11,361, discounted present value (2.5% discount rate). Under the income-share agreement, she would make initial monthly payments of just \$25 and make total payments over the life of the agreement of \$9,978, discounted present value. The income-share agreement is a better deal for her; she receives a larger subsidy.

Now consider a different borrower. She has a \$50,000 loan balance (with a 5% interest rate) from attending graduate school. Her income

when she begins repaying under the existing income-based repayment plan is \$60,000 (adjusted gross income), and she receives an 8% annual raise. Her initial monthly payment is \$353 and in total she will repay \$58,562, discounted present value. Under the income-share agreement, her initial monthly payment is lower at \$250, but she pays more overall, \$66,212. Because her income grows rapidly from a \$60,000 starting point, she hits the 1.75 times payment cap in her 16th year of repayment, meaning she no longer needs to make payments at that point.

One difficult issue that policymakers must address as part of this income-share agreement plan is how to treat the income of married borrowers. The federal income-tax system generally treats married borrowers as one unit. That poses complications for this system. If one earner in a married household does not have an income-share agreement and the other does, both would have to make adjustments on their payroll withholding. Furthermore, if the income-share agreement is meant to be linked to the return on the investment it financed, then it logically follows that only the recipient's income should be used to repay the obligation. Therefore, the simplest solution is to base the recipients' payments for the income-share agreement on one half of the household's income. Joint tax filers who each have an income-share agreement would each make payments on one half of their household income. While this solution will create both marriage "bonuses" and "penalties," it is still preferable to a complicated process that assigns income to each tax filer on a joint return.

Note also that there are key distinctions between IBR and the income-share agreement proposals that justify the opposite treatment of income from married households. For one, federal student loans repaid in IBR do not have the same kind of "upside risk" for the borrowers as an income-share agreement. Once a borrower repays the principal balance on a loan in IBR, he is done repaying; under the income-share agreement he could pay more than if he had a loan. It makes more sense in the case of IBR for student loans to capture household income because that approach guards against windfall benefits for high-debt borrowers with middle- and high-incomes, a problem that arises in the current program due to its generosity. The income-share agreement already guards against such windfall benefits by linking payments closely to the amount of financing accessed, by limiting the amount of financing to \$50,000, and by requiring that higher-income borrowers pay

more in total on the loan than under the current income-based repayment system. Therefore, the income-share agreement can be based only on an individual's income rather than household income — without causing the same problems as the income-based repayment program.

Policymakers should establish an exemption for low-income individuals and families for payments under the income-share agreement. Low-income borrowers would be exempt from making payments under two provisions: Tax filers who qualify for the Earned Income Tax Credit would have their obligations reduced or cancelled that year, and anyone who earns too little to file federal income taxes would also owe nothing. These two provisions are meant to align with a payment-collection system for the income-share agreements that operate as part of federal income-tax collection. The income-share agreement proposal outlined here could operate with a servicing and collections system like the one that exists for the federal student-loan program today. But there are major advantages to a withholding approach like the one that exists for federal income taxes, which is discussed in a subsequent section.

Some individuals and families are not required to file federal income taxes because they earn too little or earn no taxable income (individuals earning approximately \$10,000 or less and joint filers earning \$20,000 or less are not required to file). The income-share agreement plan should exempt those borrowers from payments in any year that they do not need to file income taxes, but it would still give those borrowers credit for that year toward their 25 years of payments.

Another provision would target lower-income families with children by linking an exemption to the Earned Income Tax Credit (EITC), a refundable tax credit for low-income families. These families would have their payments toward the income-share agreement cancelled or rebated up to 15% of the value of the EITC for which they are eligible that year. The rebate would be halved for married households in which only one individual owes on the income-share agreement to align with the rule that married tax filers make payments on one half of household income. This approach creates a means-tested, household-size adjusted exemption from payments. The EITC provides refundable credits based on a tax filer's earned income and the number of children in the household. It phases out gradually as income increases. Linking an exemption to the EITC closely tracks the current exemption structure of income-based repayment in the federal loan program, which is 150% of federal poverty guidelines.

For example, a married couple with two children and a combined income of \$30,000 would receive a federal EITC of \$4,201, exempting them from \$630 in payments due on the income-share agreement that year.¹¹⁸ Assume only one member of the household had used \$20,000 of the income-share agreement years ago (about the median amount of student debt borrowers use today). He would owe \$300 for the year on the agreement (2% of half the household income because he is married), but that is less than the \$315 exemption (half of \$630) for which he qualifies based on his EITC, and he therefore owes nothing.

Earned Income Tax Credit Limits and Amounts, 2016

	No Children	One Child	Two Children	Three Children +
<i>Maximum Credit</i>	\$506	\$3,373	\$5,572	\$6,269
<i>Income Limit (single, head of household, widowed)</i>	\$14,880	\$39,296	\$44,648	\$47,955
<i>Income Limit (married)</i>	\$20,430	\$44,846	\$50,198	\$53,505

Source: Internal Revenue Service.

Reforms should also include handling all repayment of the new income-share accounts through income-tax withholding and the income-tax payments system. The income-share proposal is well suited to a repayment system designed around the existing income-tax process. The income-share agreements are an obligation owed to the federal government and payments are based on the recipient's income, similar to an income tax. Moreover, unlike a loan, the income-share agreement does not have a balance or an interest rate, which makes it easier to repay through the tax-collection system, as it avoids issues of tracking and crediting payments in real time. The tax-collection system cannot currently track cash flows on a monthly or even quarterly basis, as would be required to properly track and credit loan payments.

The payment process under this new system would operate in the following manner: The IRS form W-4 that employees file with employers instructing them on how much to withhold for federal income taxes would be modified to incorporate payments on an income-share agreement. Currently, the form includes a step-by-step worksheet by which an employee calculates the number of exemptions he should claim,

thereby determining how much his employer will withhold. (Self-employed individuals undertake a similar process when they file their estimated quarterly tax payments.)¹¹⁹

To incorporate income-share agreement payments, the form would include a question about whether the filer has an income-share obligation. If he does, then the form would instruct him to make the necessary adjustment to the number of exemptions he claims or any additional amounts he has withheld. Those adjustments would be calibrated to the amount of the income-share agreement. An individual who used \$5,000 of the \$50,000 account, and therefore owes an additional 0.5% of his income on his withholding, may not need to have his withholding adjusted at all given how small the amount is. He would simply receive a smaller refund when he files his tax return. Someone who used the full \$50,000, however, would owe an additional 5% of his income and would be instructed to reduce the number of exemptions he claims accordingly or withhold an additional nominal sum.

About 80% of tax filers already over-withhold on their federal income taxes and are due refunds. For 2015, the average refund was over \$3,000.¹²⁰ That suggests that even if a tax filer did nothing to adjust his withholding for an income-share agreement, he would withhold sufficient additional income to cover the obligation. For example, an individual with an adjusted gross income of \$50,000 who used \$30,000 of the income-share agreement account would owe \$1,500 for the year, less than half the typical tax refund. For that reason, it is important that this system set payments at a low share of an individual's income to reduce the likelihood that he would underpay his income-share agreement in a given year.

Anyone with an income-share agreement under this plan would reconcile the amount he had withheld with the amount he owed as part of the annual tax-filing process. His payments and obligation would be figured on a schedule or a line on the IRS form 1040.¹²¹ Over-payments would be included in any tax refund for the year. Under-payments would be treated exactly like underpaid federal income taxes. Up to a certain amount, filers would pay the amount due without penalty as a lump sum when they file their income taxes. Amounts over the safe-harbor exemptions for underpaid taxes would be subject to the existing penalties and interest and the IRS collections processes.

There would be only a very limited need for administrative overhead under this system. The existing federal student-loan system relies

on federal employees, numerous private contractors, and collections agencies to service the loans, costing taxpayers \$3 billion a year.¹²² This proposed system would piggyback off the existing tax-collection system, reducing the need for loan servicers and collections agencies. Some administrative overhead will still be necessary. For example, an agency must still disburse the funds from the accounts, track how much students had drawn down, and track an individual's progress toward fulfilling the obligation during repayment.

Another advantage of using the tax-collection system in this manner is that it all but eliminates the delinquencies and defaults that are rampant in the existing federal student-loan program. Some 8 million borrowers are currently in default on their federal loans. Payments would be withheld by employers and remitted to a federal agency with tax receipts rather than billed monthly to the borrower. That feature also makes income-based payments automatic, and payments track income in real time. Compare that with the current loan program where income-based repayment is opt-in, requires an annual renewal process along with much paperwork, and bases payments on a borrower's income from at least a year earlier, or even two years earlier.

To be sure, individuals with the new income-share agreements can still effectively default just as they can under-withhold federal income taxes, fail to file a tax return, or fail to pay an amount due on their taxes at the end of the year. Even so, Americans are less likely to owe back taxes than they are to default on a federal student loan—mainly because payments are withheld regularly from their paychecks.

Ideally, borrowers with existing federal loans could convert their loans into an obligation under the income-share agreement, but wouldn't be required to. While the proposed program is envisioned for new students going forward, policymakers could allow borrowers with federal loans under the old system who have left school to opt in. Under this arrangement, borrowers would convert their existing loan balance to an obligation under the new system. Borrowers would then receive the same terms as if they were accessing the new program. For example, if a borrower converts a \$35,000 loan balance into the new system, he would repay 3.5% of his income for no longer than 25 years or 1.75 times the balance (\$61,250), whichever occurred first. Borrowers with high loan balances would likely not opt into the new system as the existing terms on federal student loans are more generous, and they would have already

made progress toward the requisite number of payments to receive loan forgiveness. Opting into the new system would also mean they start over on a new repayment term—25 years in the new system.

In addition, reformers should eliminate all tuition tax benefits, redirecting those budgetary resources to the new income-share agreement system, helping to keep payments a low share of income. Because the income-share agreements are more subsidized for the typical student than the current system, policymakers will need to enact budget offsets to keep the plan budget neutral if that is the desired effect. An ideal and logical place to achieve the offsetting savings is by eliminating the federal tax credits and deductions for tuition, the American Opportunity Tax Credit (AOTC) and the Lifetime Learning Credit. Some of those savings would occur automatically in the case of the deduction for student-loan interest. Because the income-share agreements do not charge interest, the deduction would cease to reduce federal revenue and therefore produce savings relative to current law. (The tuition and fees deduction expires under current law, so there would be no savings from that provision.)

The AOTC and Lifetime Learning Credit together account for about \$19 billion per year in forgone revenue and refundable tax credits.¹²³ They are logical benefits to move into the income-share agreements because they are federal benefits for paying tuition. A subsidized income-share agreement is as well (it is even figured on an individual's income taxes). In other words, both policies provide federal aid to help families finance a higher education through the tax system. Maintaining both policies is redundant, and the tax benefits can be eliminated in order to keep the subsidy on the income-share agreement larger than it would be otherwise—and slightly more generous than the current system for low- and middle-income borrowers.

Policy Reforms to Strengthen Higher Education

- 1, 2011, the school in which the student is enrolled has a cohort default rate, calculated under either subpart M or subpart N of 34 CFR part 668, of less than 15 percent for each of the three most recent fiscal years for which data are available.”
54. The College Board’s Rethinking Student Aid Study Group’s report called for using three years’ worth of income information in needs analysis. See College Board, *Fulfilling the Commitment*.
 55. Robert Kelchen and Sara Goldrick-Rab, “Accelerating College Knowledge: Examining the Feasibility of a Targeted Early Commitment Pell Program,” (working paper, University of Wisconsin, Madison, 2012), www.insidehighered.com/sites/default/server_files/files/Kelchen%20Goldrick-Rab%20Early%20Commitment%20Paper%20with%20summary.pdf.

REFORMING STUDENT LOANS AND TAX CREDITS

56. Reflects total enrollment in degree-granting postsecondary education institutions from 2005-2015. See National Center for Education Statistics, “Table 303.10. Total Fall Enrollment in Degree-Granting Postsecondary Institutions, by Attendance Status, Sex of Student, and Control of Institution: Selected Years, 1947-2025,” February 2016, http://nces.ed.gov/programs/digest/d15/tables/dt15_303.10.asp?current=yes.
57. College Board, “Table 6: Number of Borrowers and Average Amount Borrowed through Federal Loan Programs in Current Dollars and in 2014 Dollars, 1995-96 to 2014-15,” <http://trends.collegeboard.org/student-aid/figures-tables/federal-loans-current-constant-dollars-over-time-all-postsecondary-undergraduate-graduate>.
58. Rohit Chopra, “A Closer Look at the Trillion,” Consumer Financial Protection Bureau, August 5, 2013, www.consumerfinance.gov/about-us/blog/a-closer-look-at-the-trillion/; U.S. Department of Education, “Federal Student Loan Portfolio,” 2016, <https://studentaid.ed.gov/sa/about/data-center/student/portfolio>.
59. Meta Brown et al., “Just Released: Press Briefing on Household Debt and Credit,” Federal Reserve Bank of New York, *Liberty Street Economics Blog*, February 2013, <http://libertystreeteconomics.newyorkfed.org/2013/02/just-released-press-briefing-on-household-debt-and-credit.html#.V31dIfkrKig>.
60. For instance, see David O. Lucca, Taylor Nadauld, and Karen Shen, *Credit Supply and the Rise in College Tuition: Evidence from the Expansion in Federal Student Aid Programs*, Federal Reserve Bank of New York, July 2015, www.newyorkfed.org/medialibrary/media/research/staff_reports/sr733.pdf; Stephanie Riegg Cellini and Claudia Goldin, “Does Federal Student Aid Raise College Tuition? New Evidence on For-Profit Colleges” (working paper, National Bureau of Economic Research, February 2012), www.nber.org/papers/w17827; and Grey Gordon and Aaron

- Hedlund, “Accounting for the Rise in College Tuition” (working paper, National Bureau of Economic Research, February 2016), www.nber.org/papers/w21967.
61. *The Bipartisan Student Loan Certainty Act*, Public Law 113-28, 113th Cong., 1st sess. (August 9, 2013), www.congress.gov/113/plaws/publ198/PLAW-113publ198.pdf.
 62. *Budget Control Act of 2011*, Public Law 112-25, 112th Cong., (August 2, 2011), www.congress.gov/112/plaws/publ25/PLAW-112publ25.pdf.
 63. See U.S. Department of Education, “Subsidized and Unsubsidized Loans,” <https://studentaid.ed.gov/sa/types/loans/subsidized-unsubsidized>.
 64. See U.S. Department of Education, “Direct PLUS Loans,” <https://studentaid.ed.gov/sa/types/loans/plus>.
 65. See U.S. Department of Education, “Repayment Plans,” <https://studentaid.ed.gov/sa/repay-loans/understand/plans>.
 66. See 34 CFR § 685.209(a), “Income-Contingent Repayment Plans,” www.law.cornell.edu/cfr/text/34/685.209; and 20 USC § 1087e, “Terms and Conditions of Loans,” www.law.cornell.edu/uscode/text/20/1087e.
 67. The benefit was made permanent as part of the *Protecting Americans from Tax Hikes (PATH) Act of 2015*, Public Law 114-113, 114th Cong., 1st sess. (December 18, 2015), www.gpo.gov/fdsys/pkg/PLAW-114publ113/pdf/PLAW-114publ113.pdf.
 68. First established in the *Taxpayer Relief Act of 1997*, Public Law 105-34, 105th Cong., 1st sess. (August 5, 1997), www.gpo.gov/fdsys/pkg/PLAW-105publ34/html/PLAW-105publ34.htm.
 69. The benefit was first established in the *Economic Growth and Tax Relief Reconciliation Act of 2001*, Public Law 107-16, 107th Congress, 1st sess. (June 7, 2001), www.gpo.gov/fdsys/pkg/PLAW-107publ16/content-detail.html. It was most recently extended in the *Protecting Americans from Tax Hikes (PATH) Act of 2015*.
 70. See 34 CFR § 685.200(b) (2013).
 71. For instance, see Cellini and Goldin, “Does Federal Student Aid Raise College Tuition?”; See also Lucca, Nadauld, and Shen, *Credit Supply and the Rise in College Tuition*. For a study that does not find a causal link between federal student aid and tuition, see Adam Stoll, David H. Bradley, and Shannon M. Mahan, *Overview of the Relationship between Federal Student Aid and Increases in College Prices*, Congressional Research Service, August 22, 2014, <http://c.yimcdn.com/sites/www.ncher.us/resource/collection/1CFB07FA-74C6-4F0A-8E79-3ADB2C453546/R43692.pdf>; See also Alisa Cunningham et al., *Study of College Costs and Prices, 1988-89 to 1997-98, Volume I*, National Center for Education Statistics, December 2001, www.ihep.org/sites/default/files/uploads/docs/pubs/studycollegecostsv1.pdf. A summary of the research debate can be found in *Regulation* magazine: see Robert B. Archibald and David H. Feldman, “Does Federal Aid Drive College

Policy Reforms to Strengthen Higher Education

- Tuition?” *Regulation*, Summer 2016, <http://object.cato.org/sites/cato.org/files/serials/files/regulation/2016/6/regulation-v39n2-4.pdf>.
72. As of Q3 2016, over 20% of borrowers and 36.5% of the outstanding federal student debt in repayment are enrolled in IBR; see Jason Delisle, “The Coming Public Service Loan Forgiveness Bonanza,” The Brookings Institution, September 22, 2016, www.brookings.edu/research/the-coming-public-service-loan-forgiveness-bonanza/#_ednref20. Also, the average outstanding balance for a Direct Loan borrower in default is \$16,200, compared to \$30,900 for a borrower in current repayment; see Preston Cooper, “Never Let a Student Loan ‘Crisis’ Go To Waste,” *Forbes*, August 30, 2016, www.forbes.com/sites/prestoncooper2/2016/08/30/never-let-a-student-loan-crisis-go-to-waste/#294bfd6343eb.
 73. Jason Delisle and Alexander Holt, *Zero Marginal Cost: Measuring Subsidies for Graduate Education in the Public Service Loan Forgiveness Program*, New America, September 2014, www.edcentral.org/wp-content/uploads/2014/09/ZeroMarginalCost_140910_DelisleHolt.pdf.
 74. Statute and regulation do not clearly spell out when garnishment kicks in. See 34 CFR § 34.4: “Notice of Proposed Garnishment,” www.law.cornell.edu/cfr/text/34/34.4:

“(a) We may start proceedings to garnish your wages whenever we determine that you are delinquent in paying a debt owed to the United States under a program we administer. (b) We start garnishment proceedings by sending you a written notice of the proposed garnishment. (c) At least 30 days before we start garnishment proceedings, we mail the notice by first class mail to your last known address. (d)(1) We keep a copy of a certificate of service indicating the date of mailing of the notice. (2) We may retain this certificate of service in electronic form.”
 75. U.S. Department of Education, “Collection Costs,” <https://myeddebt.ed.gov/borrower/collectionCostsNavigate>.
 76. Jason Delisle and Alexander Holt, *Why Student Loans Are Different: Findings From Six Focus Groups of Student Loan Borrowers*, New America, March 2015, www.luminafoundation.org/files/resources/why-student-loans-are-different.pdf.
 77. Stephen Burd, *Moving On Up: How Tuition Tax Breaks Increasingly Favor the Upper-Middle Class*, Education Sector, 2012, http://educationpolicy.air.org/sites/default/files/publications/TaxCredit_CYCT_RELEASED.pdf.
 78. Caroline Hoxby and George Bulman, “The Effects of the Tax Deduction for Postsecondary Tuition: Implications for Structuring Tax-Based Aid” (working paper, National Bureau of Economic Research, Cambridge, MA, September 2015), www.nber.org/papers/w21554.pdf.

79. George Bulman and Caroline Hoxby, “The Returns to Federal Tax Credits for Higher Education.” (working paper, National Bureau of Economic Research, Cambridge, MA, January 2015), www.nber.org/papers/w20833.pdf.
80. Enacted under the *Higher Education Amendments of 1992*, Public Law 102-325, 102d Cong., 2d sess., (July 23, 1992), www.gpo.gov/fdsys/pkg/STATUTE-106/pdf/STATUTE-106-Pg448.pdf.
81. National Center for Education Statistics, *2011-12 National Postsecondary Student Aid Study*, U.S. Department of Education, August 2013, <https://nces.ed.gov/pubs2013/2013165.pdf>.
82. *Ibid.*
83. See the *Budget Control Act of 2011*.
84. U.S. Department of Education, “Fiscal Year 2012 Congressional Budget Justifications, Student Loans Overview,” <https://www2.ed.gov/notclamped/about/overview/budget/budget12/justifications/s-loansoverview.pdf>.
85. Congressional Budget Office, *Options for Reducing the Deficit: 2017 to 2026*, December 2016, www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/52142-budgetoptions2.pdf.
86. Jason Delisle and Alex Holt, *Safety Net or Windfall: Examining Changes to Income Based Repayment*, New America, October 2012, www.newamerica.org/education-policy/policy-papers/safety-net-or-windfall/.
87. The median cumulative amount borrowed in federal loans for undergraduates who completed a degree in 2011-12 was \$16,856, see National Center for Education Statistics, *2011-12 National Postsecondary Student Aid Study*.
88. See 20 USC § 1098e(e), “Income-Based Repayment,” www.law.cornell.edu/uscode/text/20/1098e; Implementing regulations can be found in 34 CFR § 685.221, “Income-Based Repayment Plan,” www.law.cornell.edu/cfr/text/34/685.221; For the original 2007 version of the program, see the *College Cost Reduction and Access Act*, Public Law 110-84, 110th Cong, 1st sess., (September 27, 2007): title II § 203(a), 121 Statute 784, 792, www.gpo.gov/fdsys/pkg/PLAW-110publ84/html/PLAW-110publ84.htm. The law set the effective date on and after which borrowers could enroll at July 1, 2009. Also note: The Obama administration used the authority under a provision added to the Higher Education Act in 1993 that allows the secretary of education to offer an income-contingent repayment plan within certain parameters, see 20 U.S.C. § 1087e, “Terms and Conditions of Loans.” A “new borrower” for purposes of the plan is someone who takes out a federal student loan for the first time on or after the specified date. For the Pay As You Earn plan, the borrower must also have taken out a loan on October 1, 2011 or after. Someone who borrowed initially prior to that

Policy Reforms to Strengthen Higher Education

- date but repaid the earlier loans in full before borrowing again on or after that date is also considered a new borrower.
89. See 34 CFR § 685.221(d)(1)(i)-(ii), “Income-Based Repayment Plan”: “Changes in the payment amount. (1) If a borrower no longer has a partial financial hardship, the borrower may continue to make payments under the income-based repayment plan, but the Secretary recalculates the borrower’s monthly payment. The Secretary also recalculates the monthly payment for a borrower who chooses to stop making income-based payments. In either case, as result of the recalculation — The maximum monthly amount that the Secretary requires the borrower to repay is the amount the borrower would have paid under the standard repayment plan based on the amount of the borrower’s eligible loans that were outstanding at the time the borrower began repayment on the loans under the income-based repayment plan; and The borrower’s repayment period based on the recalculated payment amount may exceed 10 years.”
 90. See 34 § CFR 685.221(a)(1), “Income-Based Repayment Plan”: “For a married borrower filing jointly, AGI includes both the borrower’s and spouse’s income. For a married borrower filing separately, AGI includes only the borrower’s income.”
 91. See *College Cost Reduction and Access Act*.
 92. Consumer Financial Protection Bureau, *Public Service and Student Debt: Analysis of Existing Benefits and Options for Public Service Organizations*, August 2013, http://files.consumerfinance.gov/f/201308_cfpb_public-service-and-student-debt.pdf.
 93. See 34 CFR § 685.219, “Public Service Loan Forgiveness Program,” www.law.cornell.edu/cfr/text/34/685.219.
 94. White House Office of Management and Budget, *Fiscal Year 2016 Budget*, www.whitehouse.gov/sites/default/files/omb/budget/fy2016/assets/budget.pdf.
 95. Barbara Hoblitzell, Ian Foss, and Dan Weigle, “Public Service Loan Forgiveness,” (presentation, U.S. Department of Education, 2015 FSA Training Conference for Financial Aid Professionals, December 2015), <http://fsaconferences.ed.gov/conferences/library/2015/2015FSACConfSession5.ppt>.
 96. Delisle and Holt, *Zero Marginal Cost*.
 97. Ibid.
 98. Jason Delisle and Kim Dancy, “Graduate Students and Tuition Tax Benefits: New Analysis,” *New America*, December 2, 2015, www.newamerica.org/education-policy/edcentral/gradtaxbenefit/.
 99. White House Office of Management and Budget, “Chapter 14 Tax Expenditures,” *Analytical Perspectives: Budget of the United States Government, Fiscal Year 2017*, www.whitehouse.gov/sites/default/files/omb/budget/fy2017/assets/ap_14_expenditures.pdf.

100. *Protecting Americans from Tax Hikes (PATH) Act of 2015*.
101. The examples in this section are based on those developed by Alexander Holt of New America, see Alexander Holt, “Student Loans Don’t Need Interest Rates,” New America, February 13, 2015, www.edcentral.org/eliminateinterestrates/.
102. *Deficit Reduction Act of 2005*, Public Law 109-171, 109th Cong., 2nd sess., (February 8, 2006): 20 USC § 8005.
103. Jason Delisle, *The Graduate Student Debt Review: The State of Graduate Student Borrowing*, New America, March 2014, <https://static.newamerica.org/attachments/750-the-graduate-student-debt-review/GradStudentDebtReview-Delisle-Final.pdf>.
104. Beth Akers and Matthew M. Chingos, *Is a Student Loan Crisis on the Horizon?*, The Brookings Institution, June 2014, www.brookings.edu/~media/research/files/reports/2014/06/24-student-loan-crisis-akers-chingos/is-a-student-loan-crisis-on-the-horizon.pdf.
105. Recent disbursal figures for a complete academic year suggest graduate loans comprise approximately 36% of federal loans; because those loans are typically larger and borrowers enroll in extended repayment terms, the graduate-loan share of the entire outstanding federal student-loan portfolio is likely closer to 40%.
106. U.S. Department of Education, “Fiscal Year 2017 Congressional Budget Justifications, Student Loans Overview,” <https://www2.ed.gov/about/overview/budget/budget17/justifications/q-sloverview.pdf>.
107. See the *College Cost Reduction and Access Act*; See also the FFEL Program Parent PLUS Auction for the 2009-2010 Award Year, “Questions and Answers,” <https://ifap.ed.gov/eannouncements/attachments/033009FFELProgramParentPLUSAuctionforthe2009.doc>.
108. U.S. Department of Education, Office of Federal Student Aid, “Federal Student Loan Portfolio,” <https://studentaid.ed.gov/sa/about/data-center/student/portfolio>.
109. *Ibid.*
110. Congressional Budget Office, *Guaranteed Versus Direct Lending: The Case of Student Loans*, June 2007, www.cbo.gov/sites/default/files/110th-congress-2007-2008/workingpaper/2007_09_studentloans_0.pdf.
111. Danielle Douglas-Gabriel, “U.S. Marshals Arrest This Man Over A Three-Decade-Old Student Loan,” *Washington Post*, February 16, 2016, www.washingtonpost.com/news/grade-point/wp/2016/02/16/u-s-marshals-arrested-this-man-over-a-three-decade-old-student-loan/.
112. Josh Mitchell, “More Than 40% of Student Borrowers Aren’t Making Payments,” *Wall Street Journal*, April 7, 2016, www.wsj.com/articles/

Policy Reforms to Strengthen Higher Education

- more-than-40-of-student-borrowers-arent-making-payments-1459971348.
113. Delisle and Holt, *Why Student Loans Are Different*.
 114. U.S. Government Accountability Office, *Inability to Repay Student Loans May Affect Financial Security of a Small Percentage of Retirees*, September 2014, www.gao.gov/assets/670/665709.pdf.
 115. See regulations that cover garnishing Social Security benefits, 31 C.F.R. §285.4(e), “Offset of Federal Benefit Payments to Collect Past-Due, Legally Enforceable Nontax Debt,” www.law.cornell.edu/cfr/text/31/285.4.
 116. For instance, see Adam Looney and 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,” (conference draft, The Brookings Institution, September 10, 2015), www.brookings.edu/~media/projects/bpea/fall-2015_embargoed/conferencedraft_looneyyannelis_studentloandefaults.pdf; and Akers and Chingos, *Is a Student Loan Crisis on the Horizon?*
 117. Looney and Yannelis, *A Crisis in Student Loans?*
 118. Numbers estimated using the Center on Budget and Policy Priorities’ “Earned Income Tax Credit Estimator” for tax year 2015. See Center on Budget and Policy Priorities, “The Earned Income Tax Credit Estimator,” www.eitcoutreach.org/home/outreach-tools/the-eic-estimator/.
 119. See Internal Revenue Service, “Form W-4 (2017),” www.irs.gov/pub/irs-pdf/fw4.pdf.
 120. Internal Revenue Service, “Tax Refunds Reach Almost \$125 Billion Mark; IRS.gov Available for Tax Help,” February 26, 2015, www.irs.gov/uac/newsroom/tax-refunds-reach-almost-125-billion-mark-irs-gov-available-for-tax-help.
 121. See Internal Revenue Service, “Form 1040,” www.irs.gov/pub/irs-pdf/f1040.pdf.
 122. Congressional Budget Office, *March 2016 Baseline Projections for the Student Loan Program*, www.cbo.gov/sites/default/files/51310-2016-03-StudentLoan.pdf.
 123. White House Office of Management and Budget, “Chapter 14 Tax Expenditures.”

REFORMING ACCOUNTABILITY POLICY

124. Senate Task Force on Federal Regulation of Higher Education, *Recalibrating Regulation of Colleges and Universities*, 2015, www.help.senate.gov/imo/media/Regulations_Task_Force_Report_2015_FINAL.pdf.
125. See 34 CFR § 668, Subpart L, “Financial Responsibility,” www.law.cornell.edu/cfr/text/34/part-668/subpart-L.
126. National Association of Independent Colleges and Universities, *Report of the NAICU Financial Responsibility Task Force*, November 2012, www.naicu.edu/docLib/20121119_NAICUFinan.Resp.FinalReport.pdf.
127. *Ibid.*, 7.

Reforming Accountability Policy

Kevin J. James

FOUNDER & CEO, BETTER FUTURE FORWARD

THE FEDERAL GOVERNMENT relies on what is known as the regulatory “triad” to determine institutional eligibility for federal student aid. Colleges that wish to participate in Title IV programs must meet the following criteria: They must be certified by the Department of Education; accredited by a private, voluntary accreditation agency that is recognized by the secretary of education; and authorized to operate in the state where they are physically located.

The triad is designed to set minimum standards for eligibility, and although there is some overlap, each player fulfills a particular role. The Department of Education is supposed to ensure that the institution is financially sound and has the capability to administer the Title IV programs in which it participates. The states are largely supposed to focus on consumer protection, providing adequate means for consumers to register complaints and sue under applicable state laws. And the accreditors are supposed to focus on ensuring that the institution provides an education of sufficient academic quality to lead to student learning. At the same time, consumers’ ability to “vote with their feet” via portable vouchers (in the form of Pell Grants and low-interest student loans) is supposed to create market pressure that encourages institutions to focus on the value of the education they provide.

In theory, one virtue of this approach is that it keeps federal regulators out of core academic and governance questions. Over the years, however, the federal government has imposed a number of requirements directly on institutions wishing to participate in federal financial-aid programs. These requirements are intended to weed out institutions that fail to meet certain standards designed to assess, through various proxy measures, an institution’s quality and financial health. In addition, federal policymakers have placed increasing demands on accreditation agencies.

In the 1950s, for example, accreditation agencies had to meet five basic criteria to gain recognition from the Commissioner of the Office of Education in the Department of Health, Education and Welfare. These days, federal requirements on accreditation agencies fill nine pages of the Higher Education Act, and the federal application for recognition as an accrediting agency is nearly 90 pages long.¹²⁴

The federal government has even sought to dictate standards for state oversight of institutions. What was originally a requirement that institutions meet state authorization criteria (to the extent that states had such criteria) has evolved into minimum standards for state authorization that institutions must meet to remain eligible for Title IV. Indeed, while the federal government cannot force states to change their authorization processes, the federal government threatens each institution in a state with loss of Title IV eligibility if a state's process doesn't meet federal guidelines.

Notwithstanding the efforts of these regulatory bodies and the increasing degree of oversight of institutions, the results for students are worse than ever. Students are paying more for an education and are less likely to graduate. Employers routinely report that a college degree is not a reliable signal of a person's readiness for the demands of a job. Worse, with the rising cost of education and rising student-loan volume, the rates of student-loan delinquency and default have reached alarming levels — which puts both students and taxpayers at risk.

The federal government can do better for students and taxpayers. This section examines the status quo in federal accountability policy and outlines potential reforms that could better align the incentives of colleges, students, and taxpayers.

THE STATUS QUO IN FEDERAL ACCOUNTABILITY POLICY

The federal government has a number of policies designed to ensure that student-aid dollars flow toward worthwhile options.

One set of policies maintains financial-responsibility standards. Institutions must pass a financial-responsibility test primarily built around a series of accounting ratios designed to assess an institution's financial health. In addition to those ratios, the institution must meet several additional requirements, including having sufficient cash on hand to meet refund requirements and being current on all debt obligations.

Institutions participating in federal student-aid programs must

maintain compliance with a set of financial-responsibility standards established under section 498(c) of the Higher Education Act (HEA) and implemented under 34 CFR 668 Subpart L.¹²⁵ Congress enacted these standards almost three decades ago to try to prevent financially unsound institutions — ones that might be at risk of abrupt closure — from accessing federal aid dollars.¹²⁶

The Department of Education developed the most recent regulations for the financial-responsibility provisions in HEA in 1996-97.¹²⁷ Under those regulations, the standards center primarily on a composite score, ranging from -1 to +3, with which private nonprofit and for-profit institutions must comply. (A public institution is not subject to the composite-score calculation if it submits evidence that it is a public institution and is backed by the full faith and credit of the state in which it is located.) Institutions scoring above a 1.5 pass this portion of the financial-responsibility test. The Department of Education generates the composite score using a weighted combination of three different ratios: primary-reserve ratio, equity, and net income.

The primary-reserve ratio is calculated by dividing the expendable net assets by the organization's total expenses. In essence, it measures the resources an institution has available to support itself absent outside revenues. Equity is calculated by dividing the institution's net assets (its assets minus claims by outside parties) by its total assets, providing a measure of the organization's actual equity and thus its ability to borrow and raise capital. Net income is calculated by dividing the difference between total revenue and expenses by the institution's total revenue. In other words, the ratio is measuring the degree to which the institution is operating within its means.

Separate from the composite score, all institutions must demonstrate that they have sufficient cash reserves on hand to cover the return of Title IV funds if a student withdraws.¹²⁸ An institution can meet this standard by either participating in a state tuition-recovery fund or by demonstrating that it completed its Title IV fund returns in a timely manner for the two preceding fiscal years. Furthermore, all institutions must be current on all of their debt payments and not have any statements from auditors expressing doubt about their survival or about the institution's financial statements.¹²⁹

If an institution fails to meet one of these standards, it does not automatically lose eligibility for federal aid. Instead, the institution has

several alternative pathways to maintain its eligibility under Title IV: a letter of credit, a “zone alternative,” or a provisional certification. For the first, an institution can provide an irrevocable letter of credit to the department providing coverage for at least 50% of the federal student-aid funds the institution received in the most recent fiscal year. The zone-alternative option allows an institution with a composite score between 1.0 and 1.5 to be deemed fiscally responsible and remain eligible for Title IV for up to three fiscal years in exchange for being subject to closer monitoring by the department.

For an institution to maintain its eligibility through a provisional certification, it must submit to the department an irrevocable letter of credit providing coverage for at least 10% of the federal student-aid funds it received in the most recent fiscal year. The institution is also subject to enhanced monitoring by the department, including the monitoring that would apply for the “zone alternative” status. Finally, provisional status limits the institution’s ability to add new locations and also narrows the institution’s administrative rights in the event the department wants to eliminate the school’s Title IV eligibility.

Finally, the Department of Education has not always made its annual financial responsibility list public. It began doing so in 2010, publishing the list for fiscal year 2008-09 showing that 149 private nonprofit institutions had failed the test for that year. According to more recent data from 2013-14, 159 degree-granting private colleges failed the financial responsibility test; 93 are nonprofit and 66 are for-profit.¹³⁰ The publication of the scores has generated some criticism from institutions, which argue that the public and media often misinterpret the results, seeing them as something akin to a ranking of institutions by financial health rather than a binary indication of pass or fail.¹³¹ These institutions argue that because the financial indicators incorporated into the measure can fluctuate for a variety of reasons that are not necessarily reflective of an institution’s financial health, viewing the list as a ranking can lead to misleading conclusions.

Another way the government ensures that federal student-aid funds are used only at appropriate institutions is the 90/10 Rule. For-profit institutions participating in federal aid programs are required to receive at least 10% of their revenue from non-Title IV sources in order to maintain eligibility. This rule was enacted into law as part of the Higher Education Amendments of 1998 (PL 105-244), replacing a previous version of the rule known as 85/15 that was created as part of the Higher

Education Amendments of 1992 (PL 102-325).¹³² Policymakers implemented the rule in response to a default rate at proprietary schools that reached 41% in 1990, with the goal of weeding out institutions that weren't offering an education of sufficient quality that some students would be willing to pay for it out of pocket.¹³³

The Department of Education's regulations for the implementation of the 90/10 Rule are available at 34 CFR 668.28.¹³⁴ One of the basic parameters of 90/10 is that institutions must use a cash basis of accounting, recording revenues when they are received rather than when they are earned. Institutional loans, for example, can only count as revenue as the payments are received.¹³⁵ In addition, institutions cannot count institutional grants and tuition waivers toward the numerator because they do not represent a true inflow of revenue from outside the organization. Finally, institutions must apply Title IV funds toward a student's institutional charges prior to other funds, with the exception of grant funding from non-federal public agencies or other private sources independent of the institution, prepaid tuition plan funds, and certain government agency job-training contracts.¹³⁶

The consequences of an institution failing the 90/10 Rule are fairly straightforward. A school that fails to meet this standard in a single year will enter into a provisional status. If the school fails for a second year in a row, it will lose its eligibility for Title IV aid for the subsequent two fiscal years.¹³⁷

The cohort default rate is another tool the government uses to make sure its money is used wisely. Congress enacted the Cohort Default Rate (CDR) provision in the late 1980s in response to a rise in the rate of student-loan defaults on federal loans.¹³⁸ Under the CDR rule, institutions must maintain cohort default rates — measured as the percentage of an institution's students who enter repayment in a given year and default within three years¹³⁹ — below a certain level in order to maintain eligibility for federal aid funds. All institutions — public, nonprofit, and for-profit — are subject to the CDR rule, though institutions with high default rates can appeal those rates to avoid sanction under certain circumstances. For example, an institution with high low-income-student enrollment and a graduation rate above a certain threshold can avoid sanction under the CDR rule.

The Department of Education's regulations for the implementation of CDR are primarily located at 34 CFR 668 Subpart N.¹⁴⁰ Those regulations

spell out in more detail how institutions must comply with the rule's requirements. Specifically, under the current structure of the rule, an institution whose cohort default rate rises above 40% in a single year or 30% in the three most recent years will lose eligibility for federal aid (absent a successful appeal under several exemptions).¹⁴¹ Aside from sanctions, the CDR rule also provides a number of benefits for institutions with low default rates, largely focused on affording institutions more flexibility in terms of how they disburse Title IV funds to students.¹⁴²

In some cases, the Department of Education also accounts for the share of a school's alumni who find well-paying jobs after graduation to determine eligibility. All non-degree programs, as well as most programs at proprietary institutions, must meet a new regulatory standard called "gainful employment" built around measures of student debt relative to discretionary income and annual earnings. More specifically, in the first half of 2009, the Obama administration announced its intention to pursue a rulemaking process that would, among other things, establish measures to determine if certain post-secondary programs were preparing their students for "gainful employment in recognized occupations." The department's Notice of Proposed Rulemaking from July 2010 spells out the basis for the regulation:

Section 102(b) and (c) of the HEA defines, in part, a proprietary institution and a postsecondary vocational institution, respectively, as institutions that provide an eligible program of training that prepares students for gainful employment in a recognized occupation. Section 101(b)(1) of the HEA defines an institution of higher education, in part, as any institution that provides not less than a one-year program of training that prepares students for gainful employment in a recognized occupation. . . .

Under the proposed regulatory framework, to determine whether these programs provide training that leads to gainful employment, as required by the HEA, the Department would take into consideration repayment rates on Federal student loans, the relationship between total student loan debt and earnings, and in some cases, whether employers endorse program content.¹⁴³

The department would spend the next year working through the rulemaking procedures, ultimately publishing a final rule on October

29, 2010, with the regulations taking effect in July 2011.¹⁴⁴ The rule ultimately did not come into effect, however, due to a successful court challenge by the Association of Private Sector Colleges and Universities. Specifically, in June 2012, a U.S. District Court judge ruled that the department had not adequately justified the formula used to measure institutions' loan-repayment rates. Because that component of the rule was interrelated to others, the ruling ultimately had the effect of scuttling the major components of the regulation.¹⁴⁵

The department pursued a new version of the regulation in 2013 with a new set of negotiated rulemakings. The negotiated rulemakings were not successful, so the department subsequently proposed its own rules in March 2014 and, after soliciting public comments, finalized those rules in October 2014. The new gainful-employment regulations took effect on July 1, 2015. The Department of Education has released an initial set of earnings and debt-to-income data for gainful-employment programs.¹⁴⁶ The rule may affect for-profit institutions to a larger degree than public institutions according to the earnings data and the debt-to-income data, which revealed that nearly one-tenth of vocational programs — 98% of which were for-profit schools — failed to meet gainful employment thresholds.¹⁴⁷ In its final rule, the department predicted that 74% of programs would pass the rule, while another 17% would be in the “zone” between passing and failing.¹⁴⁸

The gainful-employment rule has three requirements: First, the school must certify that the gainful-employment program complies with all accreditation requirements as well as state-level licensing requirements. Second, the program is subject to two debt-to-earnings tests, one looking at students' loan payments relative to their total earnings and a second looking at those loan payments relative to students' discretionary income.¹⁴⁹ To calculate these ratios, the Department of Education requests mean and median earnings data, by program, from the Social Security Administration each year. Third, the rule sets forth an extensive disclosure regime, requiring disclosures of data to students and the department to increase transparency about the program's outcomes. Institutions must disclose information on loan-repayment rates, median loan debt, annual earnings rates, completion rates, and a variety of other measures, and must notify students about whether the gainful-employment program complies with the debt-to-earnings tests.

Policy Reforms to Strengthen Higher Education

The table below summarizes the various relevant thresholds for the debt-to-earnings measures. A program must pass just one of the measures in order to maintain its eligibility to participate in Title IV programs. A program can lose its eligibility by failing both measures for two out of any three consecutive years. It can also lose eligibility by remaining at failing or zone levels for four consecutive years.

	Discretionary Income Rate	Annual Earnings Rate
<i>Passing</i>	≤ 20%	≤ 8%
<i>Zone</i>	> 20% and ≤ 30%	> 8% and ≤ 12%
<i>Failing</i>	> 30%, or discretionary earnings negative or zero	> 12%, or annual earnings is zero

Furthermore, programs that are a year away from losing eligibility must provide a warning disclosure to their students designed to emphasize the risks they are taking on by enrolling in the program.

ROOM FOR IMPROVEMENT

There are a number of problems with the current accountability system for Title IV aid. For one, the financial-responsibility standards have not kept pace with current accounting standards. The Department of Education has not updated the standards to reflect changes in generally accepted accounting practices. For instance, as many institutions faced endowment losses in the wake of the financial crisis, the department interpreted these losses a day-to-day expenses for the purposes of the financial-responsibility test, despite the fact that they don't reflect actual operational expenditures incurred by institutions.¹⁵⁰

As a result, institutions face the risk of failing the financial-responsibility test even if an independent auditor following accepted principles would declare the institution to be in good financial health. These discrepancies have led to many institutions — including nationally-recognized institutions like Georgetown University that have sizable endowments — being classified as nearing the point of financial failure even as institutions that truly face financial woes — some being forced to lay off staff, for instance — receive strong scores under the financial-responsibility test.¹⁵¹

Furthermore, the financial-responsibility test has no established and

consistent process for appeals. Schools have reported that the department is inconsistent in its interpretation of the financial-responsibility standards across regions, and that agency staff across the country differ in their willingness to allow institutions to contest disagreements over interpretation.

The 90/10 Rule is a poor measure of quality and has unintended consequences for institutions enrolling large numbers of low-income students. Mark Kantrowitz, a student-aid expert, has examined 90/10 and argues that the rule is more of a proxy for the *ability* of an institution's students to pay out-of-pocket rather than their *willingness* to do so.¹⁵² As a result, the rule may not be effective at truly identifying low-quality institutions.

Moreover, because in most cases it makes financial sense for students to exhaust their Title IV aid sources before turning to other ways to pay for school—such as savings or private loans—students often have little incentive to pay for programs through means other than federal aid. Combined with the near-universal student eligibility for Title IV aid, there are simply few populations for which Title IV is not, or should not be, the means for paying for college. As a result, many institutions with strong outcome measures routinely get between 80% and 89% of their revenue from Title IV sources.

It's also not clear that the rule has had a significant effect in terms of limiting access to Title IV for underperforming institutions. To this point, a 2005 analysis by the Congressional Research Service found that for the three years of data that were publicly available at the time, only two institutions had lost their eligibility as a result of the rule.¹⁵³ Furthermore, according to more recent data released by the Department of Education, between 2007 and 2014 only seven institutions lost their eligibility for federal aid programs as a result of the 90/10 Rule.¹⁵⁴

At the same time, the rule's focus on indirect measures of quality may lead to a number of unintended consequences, particularly for institutions serving disproportionate shares of low-income students. In his analysis, Kantrowitz argues that institutions charging below \$8,000 are at a greater risk of violating the rule. In short, he argues that the regulation creates adverse incentives for institutions to discriminate against high-risk populations and raise their tuition. Many other analysts, including representatives from the for-profit sector, have made similar claims about the adverse impacts of 90/10.

As for the cohort default rate, over time the measure has become less effective at catching underperforming loans. The initial passage of the CDR rule led to the closure of low-quality or fraudulent institutions that weren't able to maintain their eligibility for federal aid.¹⁵⁵ Default rates, measured initially over two years rather than three, dropped steadily from their peak of 22% in 1990 to just over 4% in 2003 (though there may be numerous factors that contributed to this development, most notably changes in economic conditions). After 2003, however, default rates rose steadily and peaked in 2013 at a rate of 10% (14.7% for the new three-year CDR measures that began in 2012).¹⁵⁶

The recent rise in defaults has increased the focus on the shortcomings of the CDR rule. Some critics have focused on the ability of schools to manage their default rates by encouraging borrowers into repayment options like deferment and forbearance—options that help students avert default in the first several years of repayment but that increase their burden and likelihood of default later in the payment cycle. In the same vein, increased usage of repayment options like income-based repayment has led some critics to question whether default rates are still an adequate measure of whether students are earning enough to cover their loan obligations. Under an income-driven repayment plan, for example, a student may be able to avoid default even if he is not paying enough to cover the balance on the loan. In these cases taxpayers will be left with any amounts unpaid at the end of payment term.

Others have criticized the short window in which defaults are measured, arguing that the window should be longer—potentially even encompassing the entire loan cycle. In answer to such criticisms, in the Higher Education and Opportunity Act of 2008 Congress extended the default measurement window for each cohort from two years to three.¹⁵⁷ Even this extension may be insufficient, however: Researchers at the New York Federal Reserve Bank studied default rates for federal and private student loans over a longer time window and estimated that roughly a quarter of each cohort defaulted on their loans between five and ten years after leaving school.¹⁵⁸

Another problem with the CDR rule is that it only passes or fails, rather than providing consistent incentives for institutions at all levels of performance. While CDR serves as a floor for poorly performing institutions, it creates no incentive for mediocre institutions that are still performing above that floor to improve. For example, an institution with

a default rate of 31% will face strong incentives to reduce its default rate to avoid losing access to federal aid programs. However, an institution with a 25% default rate faces no sanctions despite having a default rate that is not significantly different from that of the institution that does face sanction.

The CDR rule also includes a number of exemptions that allow high-default institutions to avoid sanction even if they have default rates in excess of the thresholds, potentially harming both students and taxpayers. For instance, the provisions in the statute governing CDR provide an exemption for Historically Black Colleges and Universities and Tribal Colleges and Universities because of their historical role in serving large numbers of disadvantaged populations. Similarly, the law allows institutions to appeal a high CDR if a small fraction of their student population takes out loans, if they can demonstrate that federal loan servicers failed to form specific tasks related to effective servicing, or if a certain proportion of their student population is low-income and they have a placement or completion rate that exceeds certain standards.¹⁵⁹ While there may be certain circumstances that justify exemptions, there is also a risk that, by allowing high-default institutions to continue to enroll students and accept federal loans and grants, these exemptions are harming both taxpayers and students.

Additionally, many institutions have opted not to participate in the federal loan program, citing the risk of failing the CDR rule (and thus losing their access to Pell Grants). According to one study, over one million community-college students don't have access to federal loans because their institutions choose not to participate for fear that they would run afoul of the CDR rule.¹⁶⁰ In this case, institutions are not concerned about their access to federal loans—they are obviously choosing not to participate in the loan program—but to Pell Grants: If they have a default rate that is over 30% for the three most recent years, they will lose access to both federal loans and Pell Grants. Many low-cost institutions like community colleges express particular frustration that they are unable to limit the amounts students are able to borrow for living expenses, and argue that if they were able to do so they could do a better job of ensuring students are taking on reasonable amounts of debt.

Finally, the gainful-employment regulation only applies to a subset of institutions. The gainful-employment regulation has been one of President Obama's most contentious initiatives in the area of higher education.

While many of the technical details of the rule were individually subject to disagreement, the most common broad, philosophical criticism of the gainful-employment rule is that it was largely targeted at the for-profit sector rather than setting a uniform standard to which all higher-education institutions would be subject. That is, if policymakers are concerned about students taking on unmanageable debt at post-secondary programs, they should focus on a performance floor that holds each institution to a repayment standard independent of tax status.

MODEST REFORMS

There are several different ways to approach reforms to accountability policies for higher education, ranging from solutions that would largely maintain the existing system with improvements to those designed to make more comprehensive changes.

A set of modest reforms that would improve the current system would begin with the establishment of an appeals process for the financial-responsibility standards. Policymakers could construct a uniform appeals process allowing institutions, regardless of region of the country, to challenge a particular interpretation of the standards and regulations for the financial-responsibility test. For example, Congress or the department could establish a process like the following: When an institution disagrees with the composite-score calculation submitted as part of its annual audit, the department would send a detailed letter setting forth the accounting interpretations it used. Then, within 45 days of receipt of the letter, the institution could request a formal review, submitting the basis for its accounting treatment of the disputed items and explaining why it believes the department's treatment is inconsistent with Generally Accepted Accounting Principles and Generally Accepted Government Auditing Standards. An administrative judge or an outside accounting expert would then review the matter and make a decision. Such decisions could be published in a searchable database so institutions are better able to know the proper accounting treatment for entries in the future.

Reformers should establish an independent accounting advisory panel to oversee financial-responsibility standards. Such a government advisory panel of accounting experts would help the Department of Education keep its regulations in line with generally accepted accounting practices. The primary task of such a committee would be periodically reviewing the

department's existing policies and procedures and then issuing recommendations about changes needed to keep them in line with developments in accounting practices more broadly. This advisory group could also provide guidance and training to department staff to help ensure staff are applying the department's policies consistently and fairly across different circumstances and regions of the country. It could also potentially play a role in helping to adjudicate appeals brought by institutions. A board of this nature would be consistent with the department's use of advisory committees in a variety of other areas of education policy.¹⁶¹

Policymakers interested in tightening the CDR rule could explore limiting or eliminating some of the exemptions offered to high-default institutions that would otherwise be considered failing. For instance, policymakers should consider eliminating the "participation-rate index" challenge that allows institutions to avoid sanction if a small fraction of their student population has taken on loans. The justification for such a change would be that those students who take on loans still default at a higher rate. Furthermore, while an institution may have a low rate of student borrowing, if it has a high number of overall enrollments—such as a large community-college system—then the absolute number of student borrowers may still be higher than that of many other smaller institutions that do not have a similar exemption available.

Similarly, policymakers should consider eliminating the "economic-disadvantage" exemption. The point is not to punish these institutions or the students they serve, but instead to ensure that all students, regardless of background, are protected from taking out loans to attend institutions where they face a high likelihood of default. That is, while access to higher education is important, access to an institution that is not serving its students well is a questionable type of access.

In thinking through how to tighten accountability policies, however, policymakers should also address concerns raised by institutions that they lack control over the amounts their students are borrowing but risk losing eligibility for federal loans and Pell Grants if those students ultimately default. Under current law, all students can borrow up to federal limits (or cost of attendance, if it is less) regardless of their specific circumstances. While schools have the ability to exercise professional judgment to reduce an individual student's borrowing,¹⁶² schools have reported that the Department of Education has actively discouraged institutions from trying to counsel students out of borrowing the

maximum. The most direct way to address this concern, however, is to allow institutions to set tighter limits over how much different classes of students can borrow — such as students who are enrolled part-time, those who are enrolled in online programs, or those who are studying in fields with lower prevailing wages.

Reformers should look to the results of an ongoing “experimental sites” initiative, under which the department has allowed 28 colleges to reduce by up to \$2,000 the amount that particular categories of students can borrow.¹⁶³ Results from that experiment can inform the creation of new policies that empower all institutions to limit borrowing.

The Department of Education should convene a series of technical review panels under National Center for Education Statistics (NCES) to identify key metrics and develop a common methodology for calculating those metrics. Wherever possible, higher-education regulation should be based on evidence of effectiveness rather than measures of inputs and auditing of processes. To do so, regulators need consistent definitions of key metrics and clear methodologies for calculating those metrics. This is not currently the case in higher education. Different parts of the triad have different definitions and methodologies for the same basic outcomes. An accreditor may define completion rate based on one cohort of students while a state defines it another way. Metrics like job-placement rate or licensure-passage rate vary greatly between states as well.¹⁶⁴ In some cases, the department may have different definitions across two of its own data systems. In one example, the Integrated Postsecondary Education Data System (IPEDS) defines students in accelerated adult programs as full-time, but they are labeled part-time for purposes of the Fiscal Operations Report and Application to Participate (FISAP).¹⁶⁵

The federal government could play an important role in defining key metrics that most regulators already use but whose definitions often vary. NCES has an established process for defining key variables and establishing a consistent methodology for measuring those variables: the technical review panel.¹⁶⁶ These panels bring together different stakeholders and experts to inform the process — thereby ensuring that the decisions reflect the viewpoints of members of the community, not just of NCES employees.

Congress could charge NCES with holding a series of technical review panels to develop consistent definitions and methodologies for a limited number of key outcome measures on which regulators often

rely. Note that these panels should not develop federal *standards* on those measures — development of standards should be left to other entities — but consistent *definitions* for those measures and acceptable methodologies for calculating them. Measures could include completion rates, retention rates, job placement and earnings, debt-to-income ratios, repayment rates, student learning gains, or licensure pass rates. Whether the other entities that regulate access to Title IV programs should adopt these definitions would be up to Congress to decide.

BOLDER REFORMS

A second, bolder set of reforms would take more aggressive steps toward making the accountability system fairer and ensuring that resources are used efficiently. In pursuing these more aggressive reforms, policymakers should start by including secondary factors in the federal assessment of financial responsibility. In the past few years — and as shown in the period immediately following the Great Recession — the composite score that measures financial responsibility often labels schools with momentary hiccups in finances as “not responsible” despite long histories of prudent management and existence.

The law states that the secretary of education must examine the “total financial circumstances” of institutions that fail the financial-responsibility tests prior to requiring an institution to get a letter of credit.¹⁶⁷ Unfortunately, the department has been quick to judge an institution as financially at risk based solely on the composite scores.¹⁶⁸

Reformers should create a flexible system where the composite score (with tweaks discussed in this report) would serve as a warning light that would lead to further inquiry before the imposition of any letters of credit. Only after an examination of secondary factors would the department impose letters of credit or additional obligations on schools. Some of these factors would include operating expenses and operating margins, tuition dependency and enrollment trends, discount rate (the percentage discount off tuition offered to students), and the number of students. By examining year-over-year changes and three-year trends on these indicators, the department should be able to identify schools that are truly at risk and focus time and resources on those schools.

Furthermore, reformers should shift from an accountability system based solely on cohort default rates to one based on default and loan-repayment rates. There is good reason to consider incorporating a measure

of repayment—rather than just defaults—into the existing accountability system with the goal of more directly assessing borrowers' progress in paying down their loans. By including a measure of repayment progress, such a standard would capture borrowers who haven't defaulted but have been taking advantage of forbearance, deferment, and income-driven repayment options. In taking into account additional information, however, such evaluations should not neglect to include defaults: A default is still an adverse event for borrowers and taxpayers, so defaults should still be incorporated into a standard of performance.

One way to structure such a measure is to assess, in addition to defaults, the proportion of students who are not making progress in paying down their loan balance, even at a relatively slow pace. For example, a very simple metric would calculate the fraction of a cohort that has not paid a single dollar toward their loan principals. The formula for such a calculation would be as follows:

<the number of borrowers in the cohort who defaulted or failed to pay at least \$1 toward principal over the measurement time period>

<the number of borrowers in the cohort>

This formula would provide a basic indication of progress in loan repayment and would be straightforward to calculate. On the other hand, making progress does not ensure that students will be able to repay their loans in any reasonable timeframe. Many students may be able to pay at least a modest amount toward their principal balance while still falling well short of what is required to pay the debt in a timeframe that is comfortable for policymakers.

A somewhat stricter standard would be to assess the proportion of borrowers who are not making enough progress to repay their loans within a certain number of years. For example, policymakers could develop a metric that looks like the following:

<the number of borrowers in the cohort who default or whose payment amounts to date indicate they are not on track to fully repay their loan in [ten] years>

<the number of borrowers in the cohort>

This metric would ensure that schools are getting credit only for students who are making sufficient progress on their loan, rather than any progress at all. That said, there are two major challenges in devising a standard like this. The first challenge is determining the time period in which borrowers must be on track to repay their loans. While it is tempting to choose ten years given that that time period is the length of the standard repayment option, this is problematic in the sense that the federal loan program allows borrowers, through a variety of repayment options, to repay their loans over terms as long as 30 years. Thus, if one chooses ten years as the time period in which students are expected to repay their loans, a school could get a failing score with this repayment metric simply because a certain number of its former students have chosen long-term payment plans. Furthermore, federal loans have a number of income-driven plans that have variable terms. In light of these various plans, the best approach would be to choose, in the case of borrowers in a fixed-term repayment period, the length of the student's chosen payment plan, and in the case of borrowers in a variable-term plan, the length of the forgiveness term for that plan.

The second challenge is determining the calculation to use to assess whether a student is on track to repay within the chosen period. A basic approach to this question would simply choose the payment amounts needed to fully repay the loan if it were amortized over the student's chosen payment term (or, in the case of income-driven plans, the forgiveness term). However, if a student is in a graduated or income-driven repayment plan, his payments will likely be lower in the earlier periods of the payment term and higher near the end. This would not necessarily be indicative of a problem but could cause a school to fail this repayment metric simply because many students' payments would fall short of the amount necessary to repay the loan under a fixed-payment plan. A better approach would be to count a student as meeting the repayment standard if he is on track to pay the loan according to a fixed-payment plan, or in cases where the student is enrolled in an income-driven plan, is on track to pay the loan within the forgiveness window given some assumed rate of growth for his income.

Both of the aforementioned measures would hold schools accountable for ensuring borrowers are making a certain amount of progress, with the second setting a higher bar by focusing on whether students are on track to pay within a certain time period. Neither approach,

however, would reflect differences in loan balances across borrowers or the differing degrees to which borrowers might be making progress on their loans. For example, under the previous two measures, an institution might pass if it has a majority of students successfully repaying small debts, even if a sizeable number of its graduates are struggling with very large debts. A measure of repayment progress that assesses the percentage change, positive or negative, in a cohort's cumulative loan balance would address this challenge by measuring how a cohort as a whole is performing in repayment.

One concern institutions might raise about such measures is that some students simply choose not to make payments on their loans even when they can afford to do so. Thus, a rule based on defaults and repayment progress is measuring both students' ability to repay their loans as well as their willingness to do so. One way to address this issue is to use a debt-to-earnings or debt-to-income measure—similar to those used in the gainful-employment rule—that simply looks at a ratio of students' after-school income or earnings compared to the debt levels they've taken on to attend the institution. Using this approach has the advantage of more directly measuring students' ability to repay their loans independent of whether they decide to make payments or not. That said, some may view this same characteristic as a downside because it means that the rule holds schools accountable without consideration for the actual repayment performance of their former students.

While there are trade-offs involved in each approach, given that a comprehensive repayment-rate standard has never been implemented, it might be prudent for policymakers to opt for the simplest measure—the fraction of an institution's former students who default or fail to repay a dollar of principal within a given time period—and revise as necessary. As mentioned earlier, even this simple measure would be a more effective tool than our current CDR metric because schools would be assessed on whether students are making progress on their loans—not whether they were able to avoid default.

It's important to note that policymakers need not set a criterion-referenced threshold for this standard when determining which institutions will maintain eligibility for federal aid. That is, it's possible to use a norm-referenced threshold, which would compare each institution's performance to the national average (or some other measure) for all institutions. For example, institutions with repayment rates that are more

than two standard deviations below the national median could face restrictions on their access to Title IV aid, while those who are farther below could suffer a loss of eligibility. Using this approach could alleviate concerns about setting an arbitrary cutoff, particularly for a standard that is still relatively new and untested. In addition, a norm-referenced standard would adjust with fluctuations in the economy and other trends that impact the performance of the higher-education system as a whole.

In addition to choosing the elements that make up this metric as well as the standard for eligibility, policymakers should also consider the number of years after which to measure a cohort's repayment rate. The window for CDR is three years, and this length of time seems appropriate for a repayment-rate standard as well. Specifically, the goal of a performance floor is to cut off institutions that are performing extremely poorly from federal aid. Therefore, it's important that the window be on the shorter side so as to limit such institutions' access to federal funds quickly. Doing so will help protect both students and taxpayers.

Policymakers should consider creating separate standards and accountability systems for Pell Grant and loan eligibility. First and foremost, separate standards would help ensure that institutions continue to be held accountable for their participation in the Pell Grant program even if they drop out of the loan program. Furthermore, creating a separate standard for Pell focused on the goals of that program would help to address concerns raised by institutions that are worried that, if they fail to meet the CDR standard, they risk losing their eligibility for Pell Grants as well. As higher-education scholar Robert Kelchen has argued, this concern is particularly acute at low-cost institutions like community colleges where the fraction of students taking out loans is often quite low, and thus CDR may be a suboptimal accountability measure for the Pell program.¹⁶⁹

When it comes to Pell Grants, institutions should share in the risk that low-income students may not succeed and the reward when they do. (Government and taxpayers benefit from students' success through more tax revenue from higher rates of employment and less social spending on Pell Grant recipients who are employed.)

On the risk side, eligibility for Pell Grants could be tied to a number of measures, such as the retention and graduation rates for Pell Grant recipients, as well as the number of degrees awarded to students in that category (as Kelchen proposes). An alternative approach that would

protect against lowering standards and ensure that institutions get credit for students that learn key skills but do not graduate would be to tie Pell eligibility to a measure of poverty among alumni. For instance, policymakers could use an earnings threshold, such as the federal poverty line or the minimum wage, and require that a certain fraction of an institution's alumni be earning above that threshold in order for the school to maintain its Pell eligibility. Some will raise the concern that we shouldn't solely focus on earnings when looking at institutional outcomes. But given that the Pell Grant program is first and foremost about opportunity, institutions should not be able to maintain their eligibility if they have not demonstrated an ability to help a reasonable fraction of their graduates live above the poverty line.

Many institutions will respond to stronger accountability measures by changing practices and program offerings to better ensure that students are prepared for life after graduation. Others will simply refuse to take as many low-income students or close their doors altogether. This is not entirely a bad thing: In general, it would be better for students to attend institutions that are focused on providing a quality education at an affordable price.

However, to help ensure that hard-working, disadvantaged students can continue to access such programs, policymakers must also consider the reward side of the ledger. Specifically, the Department of Education could pay a bonus to institutions for each Pell Grant recipient that they graduate. Such a bonus would help institutions cover the additional costs that typically come with helping Pell students enroll and graduate, and would create a financial incentive to continue to enroll such students. Critically, the size of the bonus should be inversely proportional to the student's EFC (an average of their EFCs over a set number of years would be best). Institutions would get the largest bonus by helping the poorest students graduate, and that bonus would phase out as Pell-eligible students' income grows. This would help avoid creating a stark threshold effect where students just below the Pell cut-off are much more valuable to schools than those just above it, which could create an incentive to compete for one set of students and ignore "near poor" students just above the cut-off.¹⁷⁰

Some may raise concerns that basing a Pell bonus payment on graduation might encourage institutions to inflate grades. This is a valid concern. However, because the bonus would be limited to a subset of

each institution's overall student enrollment, institutions would likely face only small incentives to inflate grades. And if the bonus was implemented in concert with a baseline standard for eligibility tied to post-enrollment success in the labor market, then institutions that lower standards and hand out diplomas should stand out on those measures.

Policymakers should turn their attention to accreditation agencies as well, and give them clear authority to adopt a "risk-based" approach. In general, accreditation agencies review most institutions within their purview on the same schedule and with the same intensity, even though some of those colleges perform at a consistently high level while others struggle financially and academically. This imposes unnecessary costs on high-functioning institutions and distracts accreditation agencies from providing the scrutiny needed to detect poor performance and the guidance needed to help remedy it. And because accreditation is a binary variable, the set of schools that successfully renew their accreditation are all categorized under the "accredited" category despite meaningful differences in the level of risk they entail for students and taxpayers.¹⁷¹

Many have argued that a differentiated or risk-based review process would be more efficient and effective in that it would focus accreditor time, resources, and intervention on institutions that struggle to meet accreditor standards and reduce the burden on schools that excel. One proposal along these lines, from two members of the National Advisory Committee on Institution Quality and Integrity (the independent accreditation watchdog), calls for the creation of an expedited review process for previously accredited institutions, provided they can provide audited proof of their financial sustainability and key measures of quality.¹⁷²

Unfortunately, as a Senate task force on regulation argued in December 2015, "there is disagreement as to whether accrediting agencies can use a 'differentiated review' process to review institutions with a record of stability and successful performance."¹⁷³ A Department of Education guidance letter from April 2016 attempted to clarify that accreditors retain the flexibility under current law to employ a risk-based approach, stating that the intent of the guidance was "to encourage accrediting agencies to focus their resources most heavily on standards that are particularly important to student achievement and on institutions of particular concern."¹⁷⁴ The department explained that differentiation could be in terms of the time and resources spent on different campuses or the terms of recognition.

To allay any further confusion, Congress should clearly spell out in

legislation accreditors' power to engage in differentiated review while also working to reduce the number of requirements imposed on accreditation agencies by the Department of Education. Regulators at the Department of Education, in their periodic reviews of accreditation agencies, should acknowledge agencies that have developed a differentiated process and ensure that regulations that might conflict with differentiated review are repealed.¹⁷⁵

Although accreditors should have the ultimate say in determining which institutions earn an expedited review (such as lengthening the time period between renewals and requiring a simple notice for substantive changes like adding a location or increasing a degree level), accreditors could differentiate between institutions based on demonstrable, verified evidence that an institution's student outcomes meet certain thresholds. For example, an institution that individually or in combination demonstrates that its students persist in school over three consecutive semesters, graduate from college, transfer to another institution, or achieve job placements or scores on licensure or graduate-school exams (such as the NCLEX, MCAT, or LSAT) above national averages deserves flexibility and relaxed oversight. This will also allow accreditors to have additional time to concentrate on those schools that, while meeting accreditation standards (and thus are not worthy of being placed on probation or some other warning status), are not helping students achieve the results we want from our institutions of higher education.

RADICAL REFORM

There is yet another set of reforms that would go much further, removing entirely the flawed standards of the current system and replacing them with far more useful ones that would serve students, institutions, and taxpayers far better.

To start, reformers should replace 90/10, CDR, and GE with a minimum repayment-rate standard and a risk-sharing system for federal student loans. As highlighted earlier, the 90/10, CDR, and GE rules all have significant flaws that limit their effectiveness and, particularly in the case of 90/10, create unintended consequences. The 90/10 Rule is built around the source of institutional revenues, a poor proxy of institutional quality. And while GE relies on improved proxies of quality, the rule only applies to a subset of institutions and programs, most notably the entire for-profit sector. Finally, measuring defaults through CDR

is quickly becoming a dated measure of loan-repayment performance as more students opt to take advantage of forbearance, deferment, and income-driven repayment options.

Instead of trying to tweak each of these rules, then, policymakers should consider replacing them with a new system with two components: a repayment-rate standard that governs eligibility for student aid (discussed above) and a risk-sharing requirement for institutions that meet the minimum standard. Under a risk-sharing (or “risk retention”) system, institutions would share in the risk of loss on the federal loans that their students take on. More specifically, institutions would take on some portion of the first losses on federal loans their students either default on or fail to make sufficient progress on repaying. When students do not pay back their loans in a timely fashion, it costs the government money. Institutions should therefore bear some responsibility to remunerate the government for those losses. Combined with a bonus for Pell Grant recipients who graduate and a separate standard for Pell Grant eligibility (see both proposals above), a systemic accountability reform of this nature would offer greater incentives to all schools, particularly those performing just above the minimum standards, to be cognizant of the debts their students are taking on and of steps they can take to ensure students will be able to repay those obligations.

The federal Perkins Loan program, which is a campus-based aid program, already features such risk retention. Institutions must provide one-third of the loan principle that students borrow under Perkins (the feds provide the other two-thirds), and the institution bears the full financial responsibility when students do not repay the institutional portion.¹⁷⁶ As the head of the National Association of Financial Aid Administrators has remarked, “institutions have shown great commitment” to the “decades-old, successful program.”¹⁷⁷ Presumably, one reason the program functions so well is that it requires the feds, the schools, and the students to share in the risk of taking on the loans.

One approach to setting up a risk-sharing system then would be to mimic the Perkins structure as closely as possible. That is, institutions are responsible for some fraction of the losses the federal government ultimately incurs on its loans. This approach would most directly represent the core idea of risk sharing.

The first consideration in extending a risk-sharing system to other

federal loan programs is the point in time at which the policy should evaluate the repayment progress of a particular cohort for the purposes of assessing financial liability. There is a practical challenge here, however: It can take the government decades to determine whether some loans have made a profit or loss. Specifically, borrowers who have defaulted or simply chosen a long-term repayment option can be on the government's books for 20 or 30 years—or even longer in the case of defaulted loans. This time horizon may simply be impractical for many institutions to manage. As an alternative, policymakers could choose an earlier point in time—ten years, for instance—and use a formula at that point to identify loans that appear likely to generate losses for the government.

Other risk sharing proposals opt for even shorter timelines: For example, Temple University economist Doug Webber put forth a proposal that calculates a risk-sharing penalty two years into the repayment process.¹⁷⁸ A proposal by Kristin Blagg and Matt Chingos of the Urban Institute goes even further, arguing for a risk-sharing system based on graduation rates because of the strong relationship between degree completion and default rates, as well as the fact that a cohort's completion rate is known within a short time period after students' enrollment.¹⁷⁹

In addition to choosing the point in time at which institutions will be evaluated, policymakers must also devise a formula to determine the portion of the delinquent loan balances that an institution will have to reimburse in order to cover the government's losses. The options for choosing which borrowers' loans will be included in an institution's penalty calculation mirror the options discussed previously for creating a repayment measure in a performance-floor metric. That is, policymakers could include all borrowers who haven't repaid a dollar of principal within the risk-sharing measurement window. For example, legislation introduced by Senators Jeanne Shaheen and Orrin Hatch, the Student Protection and Success Act (S. 1939), calculates risk-sharing penalties based on the balances of borrowers who have not paid a dollar of principal in the three years since their loans entered repayment.¹⁸⁰ In addition to measuring the number of borrowers who haven't paid a dollar of principal, policymakers could also include the balances of borrowers who have defaulted. (To see another proposal built around both cohort repayment and default rates, see Nick Hillman's "Designing and Assessing Risk-Sharing Models for Federal Student Aid")¹⁸¹

Policymakers must also define a structure of penalties for the

risk-sharing system. A basic way to do this would be to require institutions to repay a flat percentage of the unpaid balances for any borrowers who have defaulted or who are on track to receive forgiveness according to the formula defined earlier. For example, institutions could be required to repay 5% of the unpaid balances for borrowers identified in the formula. A flat penalty structure would be straightforward and would put pressure evenly on all institutions to reduce defaults. The downside to this approach is that policymakers may be hesitant to impose penalties on institutions with relatively low default rates. Alternatively, policymakers could create a sliding scale of penalties, an approach that would be more punitive for institutions with poorer repayment performance. In this case, it would be best to avoid cliffs—default- or repayment-rate points at which penalties suddenly jump rather than increasingly continuously—that would result in institutions with very similar repayment performance being treated very differently, something that could encourage gaming behavior on the part of institutions. A number of recent risk-sharing proposals incorporate a sliding scale of penalties.¹⁸²

Given that a risk-sharing system would be a new addition to the Title IV accountability system, policymakers should probably start with a simpler design and lower penalty rates until they have developed more experience with the system. For example, policymakers could choose a relatively short timeframe, such as five years, and require that institutions pay penalties for any borrowers' loan balances that are in default (and have not been rehabilitated) or where a borrower has not repaid a single dollar of principal over that time window. For the penalty rate, policymakers could choose a fixed rate, such as 5%, or a norm-referenced rate. In the latter case, policymakers might take the difference between the average repayment performance across all institutions in a broad sector (two-year or four-year colleges) and an institution's specific repayment performance. The result could be divided by a constant (10, for example) to arrive at a penalty rate that ranges between 0% and 10%. Finally, to address macroeconomic fluctuations, policymakers could exempt a proportion of the loan balances subject to penalty that is equal to the national unemployment rate at the time (or an average of such rates over some number of years prior).

Aside from setting the terms of a risk-sharing system, there is one significant administrative design decision that policymakers should consider. Specifically, policymakers must decide whether institutions will

continue to receive all of their federal aid funding upfront and then be required to make penalty payments in the future (if required), or whether a certain fraction of an institution's federal aid will be withheld upfront and only paid out once it becomes clear that an institution will not be subject to penalty under the risk-sharing system. To be clear, in the latter case, where payments are withheld, students would still receive the full amount of aid they deserve to cover the price of attendance. But a portion of those federal dollars would be held in escrow to cover any risk-sharing payments in the future. The benefit of the former approach is that institutions will not face a potential cash-flow crisis if they do not have enough cash on hand to handle a reduction in federal aid, even if temporary. The downside, however, is that the federal government may not fully recover penalty amounts if poorly-run institutions close their doors with insufficient cash reserves to cover their penalty obligations.

One middle-ground approach would be to vary the amount of money that is withheld based on an institution's past performance. That is, institutions with a poor track record would have most of the potential penalties withheld and only paid to them after a cohort has demonstrated adequate repayment performance. Institutions with strong repayment performance, on the other hand, could have the benefit of receiving all of their federal aid upfront. Such a mechanism would create an additional accountability mechanism for poor-performing institutions by forcing them to borrow in private markets (or petition state governments) to meet their immediate liquidity needs, something that would be difficult to do if markets felt that the institution was not sustainable under the risk-sharing program. Another variation of this approach is a risk-sharing proposal by the Manhattan Institute's Beth Akers that would require institutions to pay a premium upfront that varies based on institutions' previous cohorts' performance in repaying their loans.¹⁸³

One way to phase in such a system would be to start with a risk-sharing demonstration project, under which the secretary would waive other accountability measures (CDR and 90/10) for institutions that are willing to sign onto a risk-sharing agreement and updated accountability metrics with the Department of Education. Such an experiment would allow the department to identify unforeseen implementation challenges and unintended consequences, thereby informing future rounds of policymaking. Regulators could evaluate cohort repayment at multiple points in time (five years, 10 years, and 15 years out),

acknowledging that the payoff to college sometimes takes years to materialize. Each year, then, a given institution might be responsible for three cohorts of students—those who entered repayment five years prior, 10 years prior, and 15 years prior. Such a system would provide an opportunity for institutions to recoup some penalties if, say, a cohort that lagged behind at five years performed above average at ten and 15 years.)

FRAMING REFORM

Finally, a point on framing. In pursuing reforms around the accountability metrics highlighted above or a risk-sharing system, it is important to distinguish between efforts to measure institutional quality and those designed to protect taxpayers and students. Many institutional representatives will rightly argue that the outcomes of a repayment-rate metric or risk-sharing system are not direct indications of academic quality—that is, they are not directly measuring student gains in knowledge. That doesn't mean these reforms are without value, however. Instead, these tools are designed to protect students from assuming loan obligations they may not be able to repay, and to uphold a fiduciary obligation to taxpayers with respect to the oversight of the federal loan program. Framing the reforms in this manner—rather than as “quality assurance”—will help avoid misunderstandings about the underlying goals of the policy.

Along with replacing the current accountability standards with a minimum repayment-rate standard and a risk-sharing system for federal student loans, ambitious reformers should revise the criteria for recognition of accreditation agencies to focus on educational effectiveness. They should also eliminate existing requirements that are unrelated to educational effectiveness.

The Department of Education itself has admitted that, “[w]hile an accreditor must assess institutions or programs for all of the required factors as well as for the agency’s own standards and policies....there are certain factors ‘that we believe are the most relevant to ensuring quality education,’ and on which the Department will ‘focus with more depth.’”¹⁸⁴ This raises the question of why there are so many more “required factors” beyond those that are “most relevant.” It suggests a need to rewrite—and simplify dramatically—what Congress expects of accreditors. Specifically, Congress should use the reauthorization of the Higher Education Act

to provide a much clearer mandate that accreditation agencies' primary job is assuring the educational effectiveness of an institution or program through the examination of quantitative and qualitative evidence of student achievement and measures of student learning.

In the process, Congress should clear out many of the requirements that the feds have placed on accreditation agencies over the years. Reformers should focus in particular on the requirements that call on accreditors to focus on questions of financial sustainability and responsibility,¹⁸⁵ to assess whether institutions are complying with federal rules governing Title IV aid,¹⁸⁶ and to ensure consumer protection.¹⁸⁷ The first two requirements are the purview of the federal government, while the third should be the responsibility of the state where the provider is authorized. Clarifying what Congress expects of accreditors and eliminating requirements that they are ill-suited to enforce—coupled with reforms that allow new organizations to act as accreditors (see next section)—could refocus accreditor energy on what used to be their core business: certifying educational quality.

Policy Reforms to Strengthen Higher Education

- more-than-40-of-student-borrowers-arent-making-payments-1459971348.
113. Delisle and Holt, *Why Student Loans Are Different*.
 114. U.S. Government Accountability Office, *Inability to Repay Student Loans May Affect Financial Security of a Small Percentage of Retirees*, September 2014, www.gao.gov/assets/670/665709.pdf.
 115. See regulations that cover garnishing Social Security benefits, 31 C.F.R. §285.4(e), “Offset of Federal Benefit Payments to Collect Past-Due, Legally Enforceable Nontax Debt,” www.law.cornell.edu/cfr/text/31/285.4.
 116. For instance, see Adam Looney and 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,” (conference draft, The Brookings Institution, September 10, 2015), www.brookings.edu/~media/projects/bpea/fall-2015_embargoed/conferencedraft_looneyyannelis_studentloandefaults.pdf; and Akers and Chingos, *Is a Student Loan Crisis on the Horizon?*
 117. Looney and Yannelis, *A Crisis in Student Loans?*
 118. Numbers estimated using the Center on Budget and Policy Priorities’ “Earned Income Tax Credit Estimator” for tax year 2015. See Center on Budget and Policy Priorities, “The Earned Income Tax Credit Estimator,” www.eitcoutreach.org/home/outreach-tools/the-eic-estimator/.
 119. See Internal Revenue Service, “Form W-4 (2017),” www.irs.gov/pub/irs-pdf/fw4.pdf.
 120. Internal Revenue Service, “Tax Refunds Reach Almost \$125 Billion Mark; IRS.gov Available for Tax Help,” February 26, 2015, www.irs.gov/uac/newsroom/tax-refunds-reach-almost-125-billion-mark-irs-gov-available-for-tax-help.
 121. See Internal Revenue Service, “Form 1040,” www.irs.gov/pub/irs-pdf/f1040.pdf.
 122. Congressional Budget Office, *March 2016 Baseline Projections for the Student Loan Program*, www.cbo.gov/sites/default/files/51310-2016-03-StudentLoan.pdf.
 123. White House Office of Management and Budget, “Chapter 14 Tax Expenditures.”

REFORMING ACCOUNTABILITY POLICY

124. Senate Task Force on Federal Regulation of Higher Education, *Recalibrating Regulation of Colleges and Universities*, 2015, www.help.senate.gov/imo/media/Regulations_Task_Force_Report_2015_FINAL.pdf.
125. See 34 CFR § 668, Subpart L, “Financial Responsibility,” www.law.cornell.edu/cfr/text/34/part-668/subpart-L.
126. National Association of Independent Colleges and Universities, *Report of the NAICU Financial Responsibility Task Force*, November 2012, www.naicu.edu/docLib/20121119_NAICUFinan.Resp.FinalReport.pdf.
127. *Ibid.*, 7.

128. U.S. Department of Education, 2009-2010 *Federal Student Aid Handbook, Volume 2: School Eligibility and Operations*, March 31, 2009, 135, <https://ifap.ed.gov/fsah-andbook/attachments/0910FSAHbkVol2ChIIFinancial.pdf>.
129. *Ibid.*, 134.
130. Andy Thomason, “159 Private Colleges Fail Education Dept’s Financial-Responsibility Test,” *The Chronicle of Higher Education*, March 11, 2016, www.chronicle.com/blogs/ticker/160-private-colleges-fail-education-dept-s-financial-responsibility-test/109400.
131. Kent Chabotar, “Will Your Institution Pass the Financial Responsibility Test?” *Trusteeship* 19, no. 4, (July/August 2011), <http://agb.org/trusteeship/2011/julyaugust/will-your-institution-pass-the-financial-responsibility-test>.
132. See *Higher Education Amendments of 1998*, Public Law 105-244, 105th Cong., 2d sess. (October 7, 1998), www.gpo.gov/fdsys/pkg/PLAW-105publ244/pdf/PLAW-105publ244.pdf.
133. Rebecca R. Skinner, *Institutional Eligibility and the Higher Education Act: Legislative History of the 90/10 Rule and Its Current Status*, Congressional Research Service, January 19, 2005, <http://research.policyarchive.org/1904.pdf>.
134. See 34 CFR § 668.28, “Non-Title IV Revenue,” www.ecfr.gov/cgi-bin/text-idx?SID=f794f5aaf2c5e2f332a9c276ec76fce1&mc=true&node=se34.3.668_128&rgn=div8.
135. U.S. Department of Education, 2009-2010 *Federal Student Aid Handbook, Volume 2*, 30.
136. Skinner, *Institutional Eligibility and the Higher Education Act*.
137. U.S. Department of Education, 2009-2010 *Federal Student Aid Handbook, Volume 2*, 30.
138. Charmaine Jackson, *Student Loan Cohort Default Rates: Exemptions for Certain Minority Serving Institutions*, Congressional Research Service, March 8, 2004, <http://ftp.oswego.edu/~ruddy/Educational%20Policy/CRS%20Reports/Student%20Loan-Defaut%20Rates.pdf>.
139. Prior to fiscal year 2012, student-loan defaults were tracked over two years rather than three.
140. See 34 CFR § 668, Subpart N, “Cohort Default Rates,” www.ecfr.gov/cgi-bin/text-idx?SID=58c451abba8a544fb0ca1b9832d60ff&mc=true&node=sp34.3.668.n8&rgn=div6.
141. U.S. Department of Education, *Cohort Default Rates Guide*, September 2015, <http://ifap.ed.gov/DefaultManagement/guide/attachments/CDRMasterFile.pdf>.
142. *Ibid.*
143. For the U.S. Department of Education’s proposed rule, see *Program Integrity: Gainful Employment*, Federal Register 75, no. 142 (July 26, 2010): 13615-43708,

Policy Reforms to Strengthen Higher Education

- <https://www2.ed.gov/legislation/FedRegister/proprule/2010-3/072610a.html>.
144. U.S. Department of Education, “Negotiated Rulemaking for Higher Education 2009-10,” <https://www2.ed.gov/policy/highered/reg/hearulemaking/2009/negreg-summerfall.html>.
 145. Paul Fain, “Now What?” *Inside Higher Ed*, March 21, 2013, www.insidehighered.com/news/2013/03/21/gainful-employments-future-uncertain-after-court-ruling.
 146. U.S. Department of Education, Federal Student Aid, “Gainful Employment Information,” <https://studentaid.ed.gov/sa/about/data-center/school/ge>.
 147. Andrew Kreighbaum, “Overburdened with Debt,” *Inside Higher Ed*, January 10, 2017, www.insidehighered.com/news/2017/01/10/federal-data-show-hundreds-vocational-programs-fail-meet-new-gainful-employment.
 148. U.S. Department of Education, *Program Integrity: Gainful Employment*.
 149. U.S. Department of Education, “Fact Sheet on Final Gainful Employment Regulations: Details on the Final Regulations and Its Impact,” October 30, 2014, <https://www2.ed.gov/policy/highered/reg/hearulemaking/2012/gainful-employment-fact-sheet-10302014.pdf>.
 150. National Association of Independent Colleges and Universities, *Report of the NAICU Financial Responsibility Task Force*.
 151. Ry Rivard, “Scores of Problems,” *Inside Higher Ed*, March 10, 2014, www.insidehighered.com/news/2014/03/10/can-us-government-tell-colleges-poor-financial-shape-those-are-not.
 152. Mark Kantrowitz, “Consequences of the 90/10 Rule,” Student Aid Policy Analysis, August 19, 2013, www.edvisors.com/media/files/student-aid-policy/20130819-90-10-rule.pdf.
 153. Skinner, *Institutional Eligibility and the Higher Education Act*.
 154. Author’s calculations based on data from the U.S. Department of Education, see U.S. Department of Education, “Proprietary School 90/10 Revenue Percentages,” <https://studentaid.ed.gov/sa/about/data-center/school/proprietary>.
 155. Doug Lederman, “A More Meaningful Default Rate,” *Inside Higher Ed*, November 30, 2007, www.insidehighered.com/news/2007/11/30/defaults.
 156. Edvisors Network, Inc., “Student Loan Default Rates Drop,” Student Aid Matters, September 2014, www.edvisors.com/blog/default-rates-drop-09-2014/.
 157. Lederman, “A More Meaningful Default Rate.”
 158. Meta Brown et al., “Looking at Student Loan Default Rates through a Larger Window,” Federal Reserve Bank of New York, *Liberty Street Economics Blog*, February 19, 2015, http://libertystreeteconomics.newyorkfed.org/2015/02/looking_at_student_loan_defaults_through_a_larger_window.html#VzTi9PmDGko.
 159. U.S. Department of Education, *Cohort Default Rates Guide*.

160. The Institute for College Access and Success, *At What Cost? How Community Colleges that Do Not Offer Federal Loans Put Students at Risk*, July 2014, <http://ticas.org/content/pub/what-cost-how-community-colleges-do-not-offer-federal-loans-put-students-risk>.
161. U.S. Department of Education, “Federal Advisory Committees,” Laws & Guidance, <https://www2.ed.gov/about/bdscomm/list/com.html>.
162. See *Higher Education Amendments of 1998*, Public Law 105-244, 105th Cong., 2d sess. (October 7, 1998), www.gpo.gov/fdsys/pkg/PLAW-105publ244/pdf/PLAW-105publ244.pdf; “Refusal or adjustment of loan certifications—On a case-by-case basis, an eligible institution may refuse to certify a statement that permits a student to receive a loan under part B or C of this subchapter, or may certify a loan amount or make a loan that is less than the student’s determination of need (as determined under this part), if the reason for the action is documented and provided in written form to the student. No eligible institution shall discriminate against any borrower or applicant in obtaining a loan on the basis of race, national origin, religion, sex, marital status, age, or disability status.” The 2009-2010 *Federal Student Aid Handbook* elaborated on this point. See U.S. Department of Education, “Chapter 6: Stafford/PLUS Loan Periods and Amounts,” 2009-2010 *Federal Student Aid Handbook, Volume 3: Calculating Awards and Packaging*, <https://ifap.ed.gov/fsa-handbook/attachments/0910FSAHbkVol3Ch6Sept30.pdf>; “On a case-by-case basis, you may refuse to certify/originate the loan for a borrower. Similarly, you may certify/originate a loan for an amount less than the borrower’s maximum eligibility. However, you must ensure that these decisions are made on a case-by-case basis, and do not constitute a pattern or practice that denies access to borrowers because of race, sex, color, income, religion, national origin, age, handicapped status, or selection of a particular lender or guarantor. Also note that your school cannot engage in a practice of certifying Stafford loans only in the amount needed to cover the school charges, or to limit unsubsidized Stafford borrowing by independent students. When you make a decision not to certify/originate a loan or to reduce the amount of the loan, you must document the reasons and provide the explanation to the student in writing.” See also 20 § USC 1087tt(c), “Discretion of Student Financial Aid Administrators,” www.law.cornell.edu/uscode/text/20/1087tt.
163. See Federal Register 76, No. 208 (October 27, 2011): 66704, www.gpo.gov/fdsys/pkg/FR-2011-10-27/pdf/FR-2011-10-27.pdf.
164. Rooney Columbus, *Report and Disclose: State Oversight of Institutional Performance in Higher Education*, American Enterprise Institute, November 2016, www.aei.org/wp-content/uploads/2016/10/Report-and-Disclose-State-Oversight-of-Institutional-Performance-in-Higher-Education.pdf.

Policy Reforms to Strengthen Higher Education

165. Senate Task Force on Federal Regulation of Higher Education, *Recalibrating Regulation of Colleges and Universities*.
166. See Integrated Postsecondary Education Data System, “Technical Review Panel,” https://edsurveys.rti.org/ipeds_trp/.
167. See 20 USC § 1099c, “Eligibility and Certification Procedures,” www.law.cornell.edu/uscode/text/20/1099c: “Notwithstanding paragraph (1), if an institution fails to meet criteria prescribed by the Secretary regarding ratios that demonstrate financial responsibility, then the institution shall provide the Secretary with satisfactory evidence of its financial responsibility in accordance with paragraph (3). Such criteria shall take into account any differences in generally accepted accounting principles, and the financial statements required thereunder, that are applicable to for-profit, public, and nonprofit institutions. The Secretary shall take into account an institution’s total financial circumstances in making a determination of its ability to meet the standards herein required.”
168. Senate Task Force on Federal Regulation of Higher Education, *Recalibrating Regulation of Colleges and Universities*.
169. Robert Kelchen, *Proposing a Federal Risk-Sharing Policy*, Lumina Foundation, September 2015, www.luminafoundation.org/files/resources/proposing-a-federal-risk-sharing-policy.pdf.
170. Sarah Turner, *Providing Information, Avoiding Distortions: Challenges for the Postsecondary Information System*, Ed Policy Works, University of Virginia, January 2014, http://curry.virginia.edu/uploads/resourceLibrary/21_Turner_Chall_Info_Rating_System.pdf.
171. To be sure, accreditors sometimes issue a warning to colleges or place them on probationary or “show cause” status. But these changes in status are not always clear to consumers and may not even catch the attention of federal regulators.
172. Anne Neal and Arthur Rothkopf, *Alternative to the NACIQI Draft Final Report*, American Council of Trustees and Alumni, March 16, 2012, www.goacta.org/images/download/alternative_to_NACIQI_draft.pdf.
173. Senate Task Force on Federal Regulation of Higher Education, *Recalibrating Regulation of Colleges and Universities*, 55.
174. U.S. Department of Education, *Flexibility in Application of Accrediting Agency Review Processes; and Emphases in Departmental Review of Agency Effectiveness*, April 2016, www.insidehighered.com/sites/default/server_files/files/042216_ED_Accreditation%20Letter.pdf.
175. In the words of the Senate’s Task Force on Federal Regulation of Higher Education, “Provide unequivocal authority to accreditors for ‘Differentiated

- Review.” See Senate Task Force on Federal Regulation of Higher Education, *Recalibrating Regulation of Colleges and Universities*.
176. The school’s matching share (or ICC) is one-third of the FCC, or is 25% of the combined FCC and ICC; however, schools participating in the Expanded Lending Option (ELO) are required to provide a dollar-for-dollar match with the FCC. “To participate in the Federal Perkins Loan program, an institution shall enter into a participation agreement with the Secretary. The agreement provides that the institution shall use the funds it receives solely for the purposes specified in this part and shall administer the program in accordance with the Act, this part and the Student Assistance General Provisions regulations [...] The agreement further specifically provides, among other things, that— (a) The institution shall establish and maintain a Fund and shall deposit into the Fund— (2)(i) ICC equal to at least three-seventeenths of the FCC described in paragraph (a)(1) of this section in award year 1993-94; and (ii) ICC equal to at least one-third of the FCC described in paragraph (a)(1) of this section in award year 1994-95 and succeeding award years.” See 34 CFR § 674.8 (a), “Program Participation Agreement,” www.law.cornell.edu/cfr/text/34/674.8.
177. Justin Draeger, “Calls for ‘Skin in the Game’ in Higher Education Ignore an Existing, Effective Program,” *The Hill*, August 31, 2015, <http://thehill.com/blogs/congress-blog/education/252052-calls-for-skin-in-the-game-in-higher-education-ignore-an>.
178. Doug Webber, “Risk-Sharing in Higher Education: A Policy Proposal to Improve Outcomes for Students and Reduce the Taxpayer Burden of Student Loan Debt,” (working paper, Temple University, December 2016), www.doug-webber.com/risk%20sharing%20proposal.pdf.
179. Kristin Blagg and Matthew M. Chingos, *Getting Risk Sharing Right: Creating Better Incentives for Colleges and Universities*, The Urban Institute, December 2016, www.urban.org/sites/default/files/publication/86556/getting_risk_sharing_right.pdf.
180. See *Student Protection and Success Act*, S. 1939, 114th Congress, August 5, 2015, www.congress.gov/bill/114th-congress/senate-bill/1939.
181. Nicholas W. Hillman, “Designing and Assessing Risk-Sharing Models for Federal Student Aid” (working paper, University of Wisconsin-Madison, Madison, Wisconsin, December 19, 2016), www.wiscapedocuments/wp018.pdf?sfvrsn=10.
182. Ben Miller and CJ Libassi, *Sharing the Risk: A Plan for Colleges to Participate in the Costs of Student Loan Failure*, Center for American Progress, December 19, 2016, www.americanprogress.org/issues/education/reports/2016/12/19/295187/

Policy Reforms to Strengthen Higher Education

- sharing-the-risk/; Jorge Klor de Alva and Mark Schneider, *A Risk-Sharing Model to Align Incentives and Improve Student Performance*, Nexus Research & Policy Group, December 2016, <http://nexusresearch.org/wp-content/uploads/2016/12/Risk-Sharing-Model.pdf>; and Lindsay Ahlman, Debbie Cochrane, and Jessica Thompson, *A New Approach to College Accountability: Balancing Sanctions and Rewards to Improve Student Outcomes*, The Institute for College Access & Success, December 2016, http://ticas.org/sites/default/files/pub_files/ticas_risk_sharing_working_paper.pdf.
183. Beth Akers, “Risk-Sharing: An Efficient Mechanism For Funding Student Loan Safety Nets,” (conference draft, The Brookings Institution, December, 19, 2016), www.brookings.edu/research/risk-sharing-an-efficient-mechanism-for-funding-student-loan-safety-nets/.
184. U.S. Department of Education, *Flexibility in Application of Accrediting Agency Review Processes; and Emphases in Departmental Review of Agency Effectiveness*.
185. See 34 CFR § 602.16.1, “Accreditation and Preaccreditation Standards,” www.law.cornell.edu/cfr/text/34/602.16: “The agency’s accreditation standards effectively address the quality of the institution or program in the following areas... (v) Fiscal and administrative capacity as appropriate to the specified scale of operations.”
186. *Ibid.*: “The agency’s accreditation standards effectively address the quality of the institution or program in the following areas... (x) Record of compliance with the institution’s program responsibilities under Title IV of the Act, based on the most recent student loan default rate data provided by the Secretary, the results of financial or compliance audits, program reviews, and any other information that the Secretary may provide to the agency.”
187. *Ibid.*: “The agency’s accreditation standards effectively address the quality of the institution or program in the following areas... (vii) Recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising... (ix) Record of student complaints received by, or available to, the agency.”

REFORMS TO INCREASE TRANSPARENCY IN HIGHER EDUCATION

188. This extremely narrow window is slowly being opened.
189. For additional information, see College Measures, “College Measures: Improving Higher Education Outcomes in the United States,” www.air.org/center/college-measures.
190. Michael Hurwitz and Jonathan Smith, *Student Responsiveness to Earnings Data in the College Scorecard*, Social Science Research Network, May 2016, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2768157.

Reforms to Increase Transparency in Higher Education

Mark S. Schneider

VICE PRESIDENT, AMERICAN INSTITUTES FOR RESEARCH

HIGHER EDUCATION IS one of the biggest investments that individuals make over the course of a lifetime. To help students make the most of this investment, federal higher-education policy supports portable grants, loans, and tax credits available to prospective students and allows them to choose from a diverse array of providers. When the system was designed, policymakers assumed that providing voucher-like Pell grants, for example, and future tax benefits to students and allowing them to choose would reward schools that offer high-quality programs and punish those that fall short. In the aggregate, it was hoped, these choices would create market forces that would hold colleges and universities accountable for what they charge and the quality of the education they deliver.

Market competition works best when consumers can find and use clear, comparable information about the costs and quality of different offerings. If such information is lacking, either because it does not exist or because it is difficult to find and use, then market competition will be based on other attributes that may or may not be related to the key dimensions that enhance quality and efficiency. In the case of higher education, that means students might judge campuses based on their proximity to home, amenities (lazy rivers, climbing walls, top chefs), or, in some cases, tuition costs (as a proxy for quality). In the aggregate, choices based on these dimensions might reward campuses that have a geographic monopoly or those that inflate their tuition, stunting the ability of market forces to improve the system as a whole.

To be sure, evaluating the quality of post-secondary institutions and programs is a difficult task, even when information is plentiful. Part of

this is because of the nature of the good: A post-secondary education is an “experience good,” meaning it is difficult to assess a school’s value until after you’ve actually enrolled. In some cases, the true value is not recognized until many years in the future when graduates learn how much their degree is rewarded in the labor market. And most students only purchase a post-secondary education once or twice, meaning they have little opportunity to learn from experience.

Consumers also face a dearth of clear, comparable data on the cost and quality of different offerings. Some basic pieces of information, such as the actual out-of-pocket costs for a given student at a given institution, are available only at the very end of the college-application process, after students have settled on a set of choices (and schools often change the terms of their financial-aid packages from year to year).

Other information is incomplete: Federal graduation rates, which provide a basic measure of the likelihood of completing a credential, are currently based on first-time, full-time students only, which excludes students who transfer in and complete a credential or transfer out and complete one somewhere else.¹⁸⁸ Data on how much students learn is largely non-existent. And information on how graduates of particular programs fare after finishing school—in terms of finding a fulfilling job, repaying loans, and contributing to society—is also not systematically available outside of a handful of states or institutions. Popular private rankings suffer from the same limitations.

The federal government, in concert with the states and institutions, could do more to increase transparency and enhance market accountability in higher education. More effectively reporting data that it already collects and collecting better data on basic measures of cost, quality, and value would provide a number of benefits.

First, students could use the information to avoid investing in schools or programs that do not provide a positive return on investment and to discover options that they may have eliminated on the basis of incomplete or faulty information. For instance, while many argue that a bachelor’s degree is the only surefire path to the middle class, a closer look at the earnings of workers with associate’s degrees or certificates in technical fields, or those who complete apprenticeships, reveals that there are many other affordable, worthwhile opportunities to consider.¹⁸⁹

Second, researchers and policymakers could more readily judge where investments in federal aid are paying off and where reforms

could improve efficiency and reduce waste. Though the Office of Federal Student Aid sits on millions of student-level records that measure the receipt of grants and loans, completion or separation status, and loan repayment, very little of that data is used to inform the policymaking or budgeting process. And almost none of those administrative data are made available to researchers who could help answer pressing questions.

Third, private firms could use new, more granular data to come up with all manner of rankings and ratings to reflect the unique preferences of different students. The most popular rankings tend to reward admissions selectivity and spending over actual measures of student learning or value-added. Better data on post-graduation outcomes would provide a fuller picture of institutional quality and, eventually, encourage institutions to compete on how well their graduates do after graduation rather than how well they scored on their entrance exams. Early evidence suggests that the earnings data released on the newly revamped College Scorecard affected student choices.¹⁹⁰

Fourth, private lenders and funders could use labor-market outcome data to improve underwriting and extend credit on the basis of a student's potential rather than the student's past experience with credit products. Without reliable data on the likely return on investment to different options, lenders are forced to rely on credit scores and the availability of credit-worthy co-signers. These measures exclude students who may have high potential but no credit history.¹⁹¹

While there are opportunities to enhance transparency, it is important to place clear restrictions on what federal regulators can use such data for, to make sure these efforts are designed to serve a specific audience and to protect students' privacy.

THE STATUS QUO IN FEDERAL DATA COLLECTION

While slow and “under the radar” changes are always occurring in federal data collection, perhaps the most visible attempt to rewrite the federal role was the Obama administration's failed attempt to build a Postsecondary Institutional Rating System (PIRS). This effort serves as an important reference point for assessing the challenges and opportunities facing federal data efforts in post-secondary education.

In 2013, the White House decided that the nation needed a rating system that would evaluate the approximately 7,000 post-secondary

institutions that participate in federal student-aid programs. To its detriment, PIRS was straddling two different tasks from the very beginning. On the one hand, PIRS was going to produce data and a data tool that could be used by consumers to evaluate the quality, accessibility, and affordability of post-secondary institutions, allowing them to make better-informed choices. But, as a second goal, and far too ambitiously, the White House sought to link performance on PIRS with eligibility for continued Title IV funding.

The tie to Title IV funding was inevitably abandoned and the College Scorecard, when released, was an adequate, but not great, consumer information site. Perhaps the most important aspect of the rollout of the Scorecard was the fact that the Department of Education made public a large database, only some of which was actually used in the Scorecard itself.¹⁹²

The explicit purpose of this data release (with accompanying instructions on how to access it using APIs¹⁹³) was to allow researchers and others easy access to a treasure trove of data. This was an acknowledgement that the Department of Education, while having perhaps a unique ability to collect data, did not have a unique ability to deploy it.

There are at least three lessons from this effort that should be kept in mind as any new administration approaches the need for better data on post-secondary institutions. First, the power of existing institutions of higher education — and their top lobbying organization, the American Council on Education (ACE) — is formidable. While not as powerful or uniformly opposed to good data and good measurement as in the past, the opposition of the higher-education “industry” to ratings and to the administration’s plan to tie ratings to Title IV funding helped weaken PIRS.

Second, the federal government must be careful about mixing consumer information tools and regulatory tools. While there may be overlap in the information consumers need and the information policymakers need, mixing the two creates problems. And the way in which data are collected, curated, and displayed varies greatly depending on the primary focus of the effort.

Finally, we must recognize that the data that the federal government has to measure student outcomes is limited. Ultimately, the success of students and institutions should be measured by how much students earn after they leave school and how much they learned while

attending. There is some agreement on assessing labor-market outcomes. In contrast, there is little to no agreement on how to measure what many would call the most basic product of higher education: student learning. For instance, a recent report by ETS argued that there is a need for a “systematic, data-driven, comprehensive approach to understanding the quality of post-secondary education ... with direct, valid, and reliable measures of student learning.” In that report, ETS explores the challenges of creating such a measurement system — including the difficulty of defining the different dimensions that should be included in such a measure of student learning, ranging from workplace skills to academic expertise and encompassing both “hard skills” as well as so-called “soft skills,” such as teamwork and creativity.¹⁹⁴ Given the breadth of these different demands, little consensus now exists on how to move forward. In turn, it is probably misguided for the federal government to invest scarce time and resources at this point trying to develop measures of learning outcomes for post-secondary education.¹⁹⁵

The absence of data on student learning and the relative paucity of good data on student earnings highlight the limits of federal data systems. At the same time, an established infrastructure for other measures of student success exists with clearer means for improvement.

To start, the federal government’s primary source of data on post-secondary education is the Integrated Postsecondary Education Data System (IPEDS), which requires institutions that participate in federal student-aid programs to fill out a series of surveys each year. The surveys focus on 12 distinct topics, including the following: institutional characteristics, institutional prices, admissions, enrollment, student financial aid, degrees and certificates conferred, student persistence and success, and institutional resources.¹⁹⁶ This extensive coverage of so many aspects of higher education — the topics covered, the very questions asked, and the mixing of consumer and regulatory information — is the result of a long process of accretion whereby legislation demands that new pieces of data be collected but never acts to eliminate questions or whole surveys that have outlived their usefulness (if they ever had any to begin with).

In IPEDS, the collected data are aggregated at the institution level, providing a snapshot of an institution’s enrollments, finances, staffing, prices, and some student outcomes in a particular year. IPEDS is the only source of comparable institution-level data on student outcomes like retention and graduation rates. Much of IPEDS data are extensive but flawed. For

example, graduation-rate data have historically been based on the cohort of first-time, full-time beginning students, therefore lacking any ability to track the success of students who transfer. The finance-data collection is also of limited utility, since the data are at the institution level and not related to activities or costs associated with those activities. The Human Resources survey is hardly ever used—and almost universally nominated as the most expendable of the IPEDS surveys.

In addition to formal reporting requirements, institutions must disclose information on a number of topics to prospective students and the public. The latest reauthorization of the Higher Education Act (in 2008) contained 40 separate disclosures (nine of which only had to be disclosed to loan borrowers).¹⁹⁷ However, there is evidence that compliance with those disclosure requirements is spotty.¹⁹⁸

Disclosure requirements range from essential aspects of institutional activity—student financial-aid information, student outcomes, and health and safety—to peripheral aspects—availability of voter-registration forms and information about intercollegiate athletic programs. The disclosure requirements are often extensive and detailed. Take, for example, the disclosure requirements regarding student financial-aid information:

Each institution must notice all enrolled students of all the need-based and non-need-based federal, state, local, private, and institutional student financial assistance programs available to students who enroll in the institution; the terms and conditions of all available federal loans; the criteria for selecting recipients and for determining amount of award; eligibility requirements and procedures for applying for aid; methods and frequency of disbursements of aid; rights and responsibilities of students receiving federal student aid, including criteria for continued student eligibility and standards for satisfactory academic progress; terms of any loan received as part of the financial aid package, sample loan repayment schedule, and the necessity for repaying loans; a statement that enrollment in a program of study abroad approved for credit by the home institution may be considered enrollment in the home institution for purposes of applying for federal student financial aid; general conditions and terms applicable to employment provided as part of financial aid package; the exit counseling information the institution provides and collects.¹⁹⁹

In addition to institution-focused data efforts, the National Center for Education Statistics (NCES) conducts a handful of surveys of representative samples of students. These surveys are a key source of information about post-secondary education trends and the determinants of college access and success. Given the large federal investment in student aid, the National Postsecondary Student Aid Survey (NPSAS), which examines how students and their families pay for post-secondary education, is likely the most important.

NPSAS includes nationally representative samples of undergraduate, graduate, and first-professional students in public and private institutions ranging from community colleges to major research universities. Students who do not receive financial aid also are included in NPSAS. NPSAS is usually conducted on a four-year cycle and combines student surveys with administrative records. It is a good overall survey and can be disaggregated to different sectors (e.g., public or private) and different levels (e.g., community colleges or four-year colleges). But NPSAS cannot provide any information on individual institutions or even smaller categories of schools (e.g., Ivy League, community colleges in New York). And it is administered as one giant survey usually every four years. This time gap can be too long to capture fast-changing economic conditions.²⁰⁰ Recently, NCES announced a new, biennial NPSAS Administrative Collection, which will allow for representative financial-aid estimates on the national and state levels. The data will be made available to researchers in 2019.²⁰¹

NPSAS provides the sampling frame for longitudinal studies, such as the Beginning Postsecondary Students Longitudinal Study (BPS). BPS surveys cohorts of first-time, beginning students at the end of their first year and then three and six years after starting post-secondary education. It collects data on items such as student demographics, school and work experiences, persistence, transfer, and degree attainment.²⁰²

NPSAS also provides the sampling frame for the Baccalaureate and Beyond Longitudinal Study (B&B). This study focuses on the education and work experiences of graduates after they complete a bachelor's degree, with a special emphasis on the experiences of new elementary and secondary teachers. The most recent B&B cohort was drawn from the 2008 NPSAS sample and approximately 19,000 students were contacted again in 2009 and again in 2012.²⁰³

These longitudinal data are primarily designed for academic

researchers, and there is little evidence that the information contained in them is used by policymakers or by consumers.

Beyond data collection and reporting, the Department of Education also provides a number of consumer-facing tools, which have proliferated in recent years. The department has grouped many of them under one umbrella: The College Affordability and Transparency Center (CATC).²⁰⁴

Links take the user to several different consumer-oriented department sites: College Navigator, College Scorecard, Net Price Calculator Center, the College Affordability and Transparency List, 90/10 Information, and State Spending Charts. Many of these linked sites sit on top of more complicated databases that can help (savvy and motivated) consumers investigate various aspects of colleges with varying degrees of ease. The College Navigator is a semi-user friendly interface to IPEDS data; the State Spending Charts display a very limited slice of IPEDS expenditure/revenue data, but the intended audience seems a bit opaque. The 90/10 Information center lists all proprietary schools that receive more than 90% of their funds from the federal government—though it is entirely unclear how a prospective student would use such information in making a choice.

Consumers actually use some of these resources, especially the College Navigator and the College Scorecard. But these tools are no better than their underlying data. As noted above, much of the IPEDS data is fundamentally flawed, and the College Scorecard earnings data are arguably at the wrong level of aggregation: They report earnings at the institution level, when there is far more variation across different departments within a college than across colleges.²⁰⁵

The Education Department also maintains federal student-aid databases. As a function of administering the student-loan programs, the department's Office of Federal Student Aid (FSA) tracks student-loan borrowers via the National Student Loan Data System (NSLDS), a student-level database. The database provides information to students on the status of their federal aid. FSA also has a data center that provides public information on the federal student-loan program, including the aggregate performance of the federal student-loan portfolio, institutions' loan performance (loan volume per institution, cohort default rates, gainful-employment information), and reports on lenders and guaranty agencies. FSA also uses the NSLDS to monitor institutional compliance with federal aid programs.²⁰⁶

The NSLDS contains five main types of data: demographic information about a student, records of a student's financial-aid history (types of aid, when they received it, and college attended), information on when a student left a school (graduated or withdrew), information about student-loan repayment (loan servicer, loan status, and outstanding balance), and information from the FAFSA and the student's dependency status.²⁰⁷

There are two other FSA databases: the Central Processing System (CPS) and the Common Origination and Disbursement (COD) system. CPS stores information about student-aid applicants such as dependency status, parental information, and income, as well as the calculations run on a student's aid application—namely the expected family contribution (EFC). The COD system assists in sending aid money to schools; it stores data on disbursement amounts and student demographics. Data in CPS and COD link with NSLDS; the latter serves as long-term storage for all information on federal financial aid.²⁰⁸

Because the FSA data are at the student level, they potentially have far more value than the data collected by IPEDS. But there is a fundamental difference in how the data are handled by FSA and NCES. As a federal statistical agency, NCES has in its mission and culture the goal to share its data as widely as possible, while still protecting the privacy of our nation's citizens. FSA has been classified as a Performance Based Organization (PBO), focused on administering aid programs, not reporting data or facilitating research. In other words, FSA is essentially a bank, and its culture does not support expanding access to its data.

AREAS FOR IMPROVEMENT

Despite being the object of constant tinkering, federal data collection and reporting still fail to answer basic questions regarding the purpose of higher education—and regarding the return on the huge investments made by students and taxpayers. Among the most important questions that are still difficult to answer: What can students expect to pay out of pocket (the net price after grants and scholarships)? How do students fare in the labor market after leaving college, and what's their return on investment? How do they fare on other important metrics of student success (student persistence, degree completion, loan repayment)?

The first challenge is measuring the price of an education. Though the sticker price of tuition tends to garner the most media coverage, only a

fraction of students actually pay that price. Most pay less thanks to grants, scholarships, and tuition discounts. Institutions use their access to fine-grained financial information to price discriminate, or tailor tuition prices to individual students' ability and willingness to pay. As such, sticker prices (which are readily available) might be misleading vis-à-vis what any given student will actually be charged. Unfortunately, most students don't know what they'll actually have to pay until after they've applied for admission and financial aid, been accepted, and received a financial-aid offer letter. In other words, they don't know their real out-of-pocket costs until long after they've narrowed their choices to a handful of institutions.

The federal government has made progress on this front, requiring each college that receives Title IV aid to create a "net price calculator" that provides students with an estimate of what students who share their income and academic profile actually pay. Institutions are also required to report average net prices by income quartile as part of the IPEDS survey. However, both of these efforts are flawed. The net-price estimates in IPEDS are based on students who received any grant aid, which leaves out large numbers of students in the middle and higher income groups.²⁰⁹ They are also averages, meaning fluctuations from year to year may reflect changes in the distribution of students within an income category rather than changes in the net price any one student is charged.²¹⁰ And early analyses of net-price calculators have found significant variation in the information required from students and in the way net prices are displayed, making it difficult for students to compare across colleges.²¹¹

Another troubling fact is that very few institutions make multi-year commitments of financial aid (or of a fixed tuition cost). Sometimes financial aid is "front loaded"—offering an attractive first-year award to lure a student to register.²¹² Even if a student is making good academic progress, increases in tuition or decreases in financial aid can change the out-of-pocket (net) costs of attending—and usually not in a direction favorable to the student. Information on this is close to non-existent.

The next challenge is measuring the earnings of students after they leave school. While the federal government collects lots of data on post-secondary education—and even though the College Scorecard published data about the earnings of students enrolled in post-secondary institutions six and 10 years after enrolling, much of the data that are available to measure the labor-market success of students is inadequate. Most notably, the earnings measures in the Scorecard were based on students

who received federal financial aid, and they were also aggregated at the institutional rather than the program level. As a result, the main source of post-secondary earnings data does not measure much of the variation in outcomes. In addition, the Scorecard data lump all incoming Title IV students together, which does not distinguish between students who completed credentials and those who did not.

As a result, we know very little about how students from different institutions and different programs of study fare after college. This makes it impossible to adequately measure the return on investment (ROI) of students or taxpayers, raising significant questions about what we are actually getting for the billions of dollars that the federal government, state governments, and families invest in post-secondary education. While we know that, on average, post-secondary education is a good investment, ROI varies widely across colleges and universities — and even more across different fields of study.²¹³

To measure ROI at the institution and program level, one would need to merge two different sets of data. The first are individual student-level “transcript” data that show the year a student completed a course of study, the institution that awarded the post-secondary credential, and the field of study (this is the federal Classification of Instructional Program code, known as the CIP code). The second are wage data. At present, these wage data mostly come from state unemployment insurance (UI) wage systems, although the Scorecard used the more comprehensive unduplicated W-2 wage data from the IRS.

Merging student-level data with either source of wage data uses Social Security Numbers, and the merging is usually done by the agency that holds the wage data (to protect privacy). The individual-level data are never made public. Rather the data are aggregated at the program level, inspected to suppress any small programs (as a rule of thumb, programs that contain fewer than 10 cases are suppressed), and returned to the education agency that provides the transcript-level data.

There are currently no nationwide standards governing how these data are used. For example, to minimize the number of missing programs caused by small enrollments, states that release merged transcript/wage data often combine several cohorts. Practices across states differ somewhat, but this is a technical issue that could (and should) be resolved by the federal government.

There is also a question about what to do with students who enroll

in but do not complete a program. Most states are focused on the wages of completers, but, as is well known, large numbers of students never finish. The federal Scorecard data tracked cohorts of students, but did not distinguish between completers and leavers. The transcript data can also include demographic information (e.g., race or gender). This could provide valuable information about the differential success of different types of students, but adds complexity to the aggregated data.

Yet another challenge is the level of data needed by the federal government to assess student success. As noted, the Scorecard used data only on students who participated in a Title IV program. Because the Department of Education must know whether or not students are in good standing with an institution of higher education in order to know when students must begin repaying their loans, the NSLDS maintains detailed records of the enrollment of students receiving federal aid in any Title IV approved institution. This effectively creates a student-level data system for the majority of students in the nation—despite the existing ban on the federal government holding such data. Moreover, Title IV student-level data actually chart the path of the students in which the nation's taxpayers are investing the most money. And there is certainly a compelling federal interest in knowing the extent to which Title IV students are succeeding in the pursuit of post-secondary credentials.

The federal Scorecard only reported wage data at the institution level, the only level at which the NSLDS can currently collect data. The Department of Education may overcome this flaw in the next several years because institutions must now report to FSA information on the programs in which students are enrolled. (This information is needed because the 150% Subsidized Loan Limitation provisions are based on the borrower's enrollment in a specific program.) Because student outcomes vary greatly across programs of study both within and across institutions, these program-level data are essential. In short, to the extent to which FSA collects student-level indicators of success at the program level for students who have received federal student loans and/or Pell Grants, the nation has the potential to better measure the payoff of the large investment the nation is making in its post-secondary students.

While these data improvements are taking hold at FSA, the venerable and outdated IPEDS data system is also expanding its measurement of student outcomes. Starting in the 2015-2016 academic year, institutions will have to report more detailed information about the success of transfer and

part-time students. Schools will be required to report completion data for four cohorts of degree/certificate-seeking students: full-time, first-time students; part-time, first-time students; full-time, non-first-time entering students; and part-time, non-first-time entering students.²¹⁴ These data are valuable and IPEDS should continue to refine and expand its student-outcome measures. But the changes in FSA data, if properly shared with the public, can dwarf the benefits of the expanded IPEDS data.

As noted above, FSA has been classified as a PBO since the 1998 reauthorization of the Higher Education Act. Its orientation is essentially that of a bank, focused solely on the administration of financial aid programs rather than reporting data or facilitating research. Title I, Part D of the 1998 HEA lays out seven priorities for FSA as a PBO (hereafter called “Purposes as a PBO”):

- A. to improve service to students and other participants in the student financial assistance programs authorized under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, including making those programs more understandable to students and their parents
- B. to reduce the costs of administering those programs
- C. to increase the accountability of the officials responsible for administering the operational aspects of these programs
- D. to provide greater flexibility in the management and administration of the Federal student financial assistance programs
- E. to integrate the information systems supporting the Federal student financial assistance programs
- F. to implement an open, common, integrated system for the delivery of student financial assistance...
- G. to develop and maintain a student financial assistance system that contains complete, accurate, and timely data to ensure program integrity.²¹⁵

Under its current mandate, FSA is primarily concerned with its core jobs: assessing eligibility for aid, disbursing the aid, and tracking repayment. FSA is required to report some basic data on loan-default rates, and its data center provides access to aggregate data on loan

disbursements; the distribution of repayment plans; the frequency of forbearance, deferment, and delinquency; and institution-level data on defaults, program reviews, and financial responsibility scores.²¹⁶ However, as a PBO, FSA has often been less than responsive to requests for data and research that would benefit the rest of the nation. This presents a clear opportunity for reform.

IMPROVING THE CURRENT SYSTEM

There are several paths potential reformers could take to improve transparency in our higher-education system. The most modest of these paths should start with the FSA, by inserting new goals into FSA's "Purposes of the PBO" that call for a more active role in reporting on NSLDS data, assessing the effectiveness of federal investments, and facilitating research.

Higher-education observers have long argued that FSA should be more engaged in data reporting and research. Inserting such goals can help reformers enlist FSA and its wealth of data in the effort to boost transparency. While its role as a bank and originator of direct federal student loans must remain paramount, its structure as a PBO provides an opportunity to make FSA more responsive to the dissemination of data. Specifically, the chief operating officer must create an annual performance plan for FSA in consultation with students, institutions, Congress, lenders, and others. That plan should include the development and dissemination of data measuring the results of the taxpayers' \$130 billion annual investment in student financial aid. A formal revision of FSA's "Purposes as a PBO" could make this a core part of FSA's mission.

For starters, point (G) could be revised to include other uses for FSA data besides program integrity, such as "to develop and maintain a student financial assistance system that contains complete, accurate, and timely data to provide updates on the state of the federal loan portfolio, assess the effectiveness of federal investments, and ensure program integrity." Reformers could also add a requirement that FSA take an active role in informing the policymaking process in Congress and the executive branch.²¹⁷ Finally, reformers might consider adding a goal related to producing or facilitating new research using FSA data.²¹⁸ In exchange for these additions, reformers could delete goals (E) and (F), which seem to be outdated.

Next, reformers should revise the College Scorecard to fix its flaws and improve its accuracy, and then commit to maintaining it. The

Obama Administration created the College Scorecard in 2013 and revamped it dramatically in 2015. By then, the administration had abandoned its proposal to create a system of federal college ratings and instead released a host of previously unavailable outcomes data on the Scorecard. The Department of Education released institution-level data on loan-repayment rates, alumni earnings at various points up to 10 years after enrollment, and the proportion of alumni earning less than \$25,000 a year. To produce the earnings data—the first federal effort of its kind—the department worked with the IRS to match financial-aid records with wage records for particular cohorts of students.

While a positive step in many regards, the Scorecard suffers from some significant shortcomings. First, it only covers students who received federal financial aid, leaving out a substantial number of students. Second, its earnings variables aggregate those who completed a degree with those who did not, which obviously produces a misleading picture of the value of completing a degree. Third, the data are not disaggregated at the level of program of study, even though earnings vary dramatically across majors (often more than they vary across institutions). Last, because the Scorecard was an Obama administration creation (and not mandated in statute or regulation), there is no guarantee that it will be maintained or updated.²¹⁹

An incoming administration should commit to fixing the existing flaws that it can, most obviously disaggregating earnings data according to whether the student graduated from the school and according to the program of study. In addition, shifting the Scorecard to NCES would give it a permanent home with an agency that exists to provide educational data. Doing so would also enable NCES to undertake a series of technical review panels to decide, with input from the higher-education sector, how to consistently measure the metrics of interest.

Reformers should also streamline the department's consumer-facing information resources. The College Scorecard is just one of many consumer-facing college tools that the federal government now runs. The creation and maintenance of NCES' College Navigator is required under the Higher Education Act (20 U.S.C. 1015a), and the 2008 reauthorization of the law also required the creation of the College Affordability and Transparency Center (CATC).²²⁰ This has unfortunately added unnecessary complexity to the system, especially when different data sources may have different answers to the same question due to differences in methodology or timeframe.

The jumble of consumer-facing information sources should be simplified into one comprehensive tool with consistently defined measures on the quantities that matter. The Strengthening Transparency in Higher Education Act, passed by a bipartisan majority of the House Committee on Education and Workforce in 2014, would revise Section 132 of the Higher Education Act (20 U.S.C. 1015a) to create a single set of institutional dashboards containing relevant consumer-facing data (called the “College Dashboard”). It would also require the secretary to publish on these dashboards several additional data points: completion rates for students who receive a Pell Grant, those who take on a federal student loan, those who receive Defense Department or veterans education benefits, and those who receive no federal aid; the average federal student-loan debt of graduates who borrowed; and a link to national and regional data from the Bureau of Labor Statistics (BLS) on starting salaries in “major occupations.”²²¹

The proposed College Dashboard would take the place of the College Navigator and the CATC. The College Scorecard, as noted, is not required by statute or regulation, is not mentioned in the bill, and could remain active as long as desired by the sitting administration and Congress.

Though House Republicans are reticent to embrace the College Scorecard given its association with the Obama administration, rather than create an entirely new tool (at additional expense), the most cost-effective approach may be to build the proposed dashboard on the existing Scorecard interface (and to include some of the useful data currently on the Scorecard, like loan-repayment rates). The legislation’s other recommendations—that students be provided with a link to the dashboard of any college they name on the FAFSA—would still be possible.

As this effort goes forward, federal policymakers need to confront a basic decision: Should this be a regulator-facing dashboard or a consumer-facing one? While much of the underlying data may be the same, how the data are displayed, the ease with which users can compare (and rank) programs and colleges, and the very choice of which data to highlight in the dashboard will in part be determined by that decision. The mishmash of purposes makes for the mishmash of programs collected in the CATC.

FURTHER STEPS

For reformers wishing to go further, there are a series of bolder policies to pursue. Allowing researchers access to FSA data extracts would be a good place to start. The National Center for Education Statistics

(NCES) allows access to restricted-use data to qualified researchers via an established application process. Researchers can access student-level data from NCES sample surveys, which facilitates research that in turn informs our understanding of federal investments and student outcomes. Access is tightly controlled; researchers must have an approved security plan and violations of federal privacy rules are punishable by a \$250,000 fine.²²² The public can access some of NCES's data through its Datalab. Depending on the question, the public can access information using QuickStats, PowerStats, or TrendStats. Each of the three "Stats" programs (and their underlying data) have been carefully constructed so that no personally identifiable information can be uncovered — yet analysts can address valuable and important questions.

There are no such routes to de-identified data from NSLDS. Yet the few studies that have been able to use NSLDS data have been invaluable in uncovering important trends and problems in federal aid programs. One such study, which merged a sample of NSLDS data with tax-return information from the Treasury Department, found that subsets of students who attended open-access institutions were struggling mightily to pay back their federal loans, often because they failed to complete a credential. Five-year loan-default rates were far higher than published three-year rates among for-profit and community colleges.²²³ Such studies can help to inform the policymaking process by identifying problems more clearly and helping to target solutions.

In April 2016, the Department of Education started exploring ways to allow researchers access to federal data for studies that "can inform and advance policies and practices that support students' post-secondary success and strengthen repayment outcomes for borrowers."²²⁴ The first researchers to get access to these data will be from the Federal Reserve Board, who will be able to match student-aid data files with other data. This policy focus will hopefully leverage data to increase efficiency, transparency, and accountability.²²⁵

An incoming administration could continue these efforts by adopting some of the recommendations offered by Matthew Soldner and Colleen Campbell in a recent paper on the subject.²²⁶ First, a new administration could direct FSA and NCES to collaborate on adding de-identified data extracts from FSA's different data systems to the list of datasets available to analysts with a restricted-use data license. Analysts could then access those data extracts via the standard application procedure. Second, a

new administration could leverage the Education Department's newly created Enterprise Data Warehouse and Analytics (EDWA) project to facilitate researcher access. Soldner and Campbell recommend adopting the Census Bureau's "Research Data Centers" model, where researchers can access restricted Census data only after having a research plan approved and traveling to one of dozens of secure physical sites.

Further, policymakers should allow the use of IRS Form 1098T to calculate key measures of cost and student outcomes. Form 1098T is an under-used tool for improving data and transparency, as it facilitates the claiming of higher education tax benefits. Colleges fill out a 1098T for every student they enroll that has a "reportable transaction;" the form provides the IRS with information on the student's institution, their enrollment intensity (more than half time) and level (graduate or undergraduate), the amount of tuition paid, and the amount of scholarship aid received. Students and/or their families also receive a copy for use in filing their taxes.²²⁷

Observers have noted that the 1098T could be useful in providing information on net price and, with some augmentation, program-level degree completion and program-level post-college earnings. The Department of Education could use the information reported on tuition and scholarships to calculate an average net price by income group for students who received federal aid, thus obviating the need for institutions to create their own net-price calculators.

Measuring student outcomes would require a more sizable revision. Grover "Russ" Whitehurst, founding director of the Institute for Education Sciences, has proposed the addition of two boxes to the 1098T—one that captures degree completion and one that captures the program of study (using the CIP code). Institutions already have to report both pieces of information to the Department of Education as part of Title IV compliance, so reporting them on form 1098T should not constitute an additional burden. Measuring earnings would require linking these 1098T data with earnings data from tax returns at some point in the future. But note that this linkage would occur within one agency (the IRS) and not entail any data sharing. Perhaps the most important strength of the 1098T approach is that it is a "minor change to an existing process" and "does not entail repealing a legislative prohibition on a unit-record system that is endorsed by certain stubborn constituencies."²²⁸

Reformers should also work to facilitate state access to earnings data

beyond their own borders. The federal government should immediately help states obtain IRS tax data (with the appropriate concerns for protecting privacy). Whether the IRS has the statutory authority to share these data with the states is contentious, and several requests from states have been shuffled off to bureaucratic never-never land. There is interest in using the U.S. Census Longitudinal Employer-Household Dynamics data, although the ultimately successful negotiations between LEHD and the University of Texas system took years to complete.²²⁹

A weaker alternative is to invigorate the existing Wage Record Interchange System (WRIS 2).²³⁰ WRIS 2 is a voluntary consortium of states that have agreed to answer data queries from other member states. Forty-three states, the District of Columbia, and Puerto Rico participate in WRIS 2.²³¹ It works like this: A member state needs a particular set of data, but has not found a set of students in its own state Unemployment Insurance (UI) wage database. It submits a list of the Social Security numbers of these missing students to the WRIS 2 consortium clearinghouse. The members of the consortium then run these records against their own UI data and return to the WRIS 2 clearinghouse earnings data on the records they have matched. The clearinghouse combines all the data received from member states and returns the earnings data to the requesting state. This is designed to overcome the interstate mobility of Americans, who may not live or work in the state in which they were educated and hence would not be found in their “home” state’s UI database. Obviously, this is a rather circuitous and burdensome route—and many states in the consortium have reported disappointingly low match rates.

In the meantime, efforts continue to try to improve and increase use of the WRIS 2 system. The number of states in the consortium continues to grow. Recently, the state of Iowa’s Workforce Development office has offered to submit the records of any school in Iowa to the WRIS 2 system, widely advertising and systematizing efforts to increase the use of WRIS 2. But, again, this is not the most efficient way to tap into the earnings data of individuals who work in states other than the one where they attended school.

REVOLUTIONARY REFORMS

A new administration could take a far more aggressive approach, replacing current policies that don’t work with streamlined federal efforts to collect data for the benefit of both students and taxpayers.

Such a plan would start by using federal policy to foster state-level data-collection efforts.

States invest large amounts of money in their post-secondary systems because post-secondary education is viewed as a human-capital investment that will help the state remain economically competitive. At the current time, states also “own” the student-level data (often built with support from federal-state longitudinal data system, or SLDS, monies). In addition, even as the federal government has expanded its role in education, state and local governments retain the lion’s share of legal and regulatory power over post-secondary education. So even while the federal government’s share of dollars flowing into colleges and universities is larger than the state and local investment, most of the federal dollars come through Title IV student-aid programs—a blunt instrument for effecting change. In contrast, most post-secondary students are enrolled in public colleges and universities, meaning that cultivating state partnerships is essential to future reforms.

But what should those partnerships look like? One option would be to condition the flow of federal money on states meeting certain standards or engaging in certain activities. The federal government, for example, gave hundreds of millions of dollars to states to build longitudinal data systems.²³² From the program’s inception until almost all the money in the grant had been spent, the federal government did not have a “use requirement” as a condition of the award. As a result, hundreds of millions of dollars were spent on building data warehouses that allowed very little public access. This is an example of what the federal government should *not* do. But it also contains a lesson that could direct future funding. Any new funding to support state data work must include a use requirement to make the data available to the public (again, with privacy protections in place).

Partnerships could also be built around more efficient ways of measuring the earnings outcomes of students. As noted above, the WRIS 2 system allows states to access earnings data for students no longer working in the state. However, the WRIS 2 consortium is an inefficient method for doing this. The federal government could facilitate states’ access to IRS tax data by entering into cooperative agreements with state agencies.

This approach offers several advantages. State data systems already record students’ programs of study—and the matched data would be at the student level rather than the institution level used in the Scorecard.

Further, state data systems already encompass students without federal aid. And finally, state data systems usually cover far earlier cohorts of students than any data held by the federal government. All of this would allow far deeper, far longer, and far more meaningful reporting of wage outcomes than the federal government will be able to provide any time in the near future. (One downside: most state systems do not contain information about students in private schools—but that is slowly changing, and that trend could be accelerated with federal incentives.)

Such cooperative agreements would allow states to tailor these wage-outcome data for their own policy purposes (including, for example, performance-based budgeting), would cut several years off the federal timetable for gathering program-level data, and could cover all students, especially those in public institutions, rather than just Title IV students.

Ideally, policymakers would replace current federal data-collection efforts with a federal data system capturing student-level information. This is the single most important change and the one that is least likely to happen. This idea has gone by many names: SUR (Student Unit Records), SURS (Student Unit Record Systems), and SURDS (Student Unit Record Data Systems). Not only are these acronyms ungainly, but they are also guaranteed to set off political debates, falling along all too predictable ideological lines (see the response to the Department of Education’s efforts to allow researchers to access FSA data, noted earlier). There seems to be no easy path forward. The Know Before You Go Act introduced in 2015 by Senators Wyden, Rubio, and Warner seems like a reasonable strategy but has received no more traction than the 2013 Wyden-Rubio proposal.²³³

The most aggressive actions to spread consumer-oriented information may no longer fall exclusively under the jurisdiction of the Education Department. Most notably, the Consumer Financial Protection Bureau is taking aim at many practices in higher education, including the absence of data. For example, the CFPB, under a “Know Before You Owe” rubric, has issued a financial-aid shopping sheet that gives students guidance about how much they could reasonably borrow, and helps students identify schools that use the shopping sheet (while castigating those schools that do not).²³⁴ And the Obama administration has pushed new data strategies forward through executive action (see especially the College Scorecard).

However, a new, more conservative administration would not likely pursue these executive branch-based approaches. The way past the

current deadlock over data seems to be two-fold. First, more states need to be brought into the national policy discussion; states are already leading the way in developing detailed student-level data systems that merge multiple existing data systems to provide information to students about the costs and rewards of their college choices. Whether working individually or in consortia, states should be supported and encouraged in these efforts. And innovative states, such as Tennessee and Texas, should have the support of the next administration as they try to crack open the bottleneck on wage data.

Second, somehow, the concerns for privacy and data security need to be addressed head-on. All too often these concerns are used by entrenched interests in higher education to protect themselves from inconvenient truths about costs, debt, and rewards. So long as the federal government suffers humiliating data breaches, opponents of better data systems built on the bedrock of student-level data will win, and students and taxpayers will be stuck with unmanageable debt and schools that don't get their students across the finish line.

Policy Reforms to Strengthen Higher Education

- sharing-the-risk/; Jorge Klor de Alva and Mark Schneider, *A Risk-Sharing Model to Align Incentives and Improve Student Performance*, Nexus Research & Policy Group, December 2016, <http://nexusresearch.org/wp-content/uploads/2016/12/Risk-Sharing-Model.pdf>; and Lindsay Ahlman, Debbie Cochrane, and Jessica Thompson, *A New Approach to College Accountability: Balancing Sanctions and Rewards to Improve Student Outcomes*, The Institute for College Access & Success, December 2016, http://ticas.org/sites/default/files/pub_files/ticas_risk_sharing_working_paper.pdf.
183. Beth Akers, “Risk-Sharing: An Efficient Mechanism For Funding Student Loan Safety Nets,” (conference draft, The Brookings Institution, December, 19, 2016), www.brookings.edu/research/risk-sharing-an-efficient-mechanism-for-funding-student-loan-safety-nets/.
184. U.S. Department of Education, *Flexibility in Application of Accrediting Agency Review Processes; and Emphases in Departmental Review of Agency Effectiveness*.
185. See 34 CFR § 602.16.1, “Accreditation and Preaccreditation Standards,” www.law.cornell.edu/cfr/text/34/602.16: “The agency’s accreditation standards effectively address the quality of the institution or program in the following areas... (v) Fiscal and administrative capacity as appropriate to the specified scale of operations.”
186. *Ibid.*: “The agency’s accreditation standards effectively address the quality of the institution or program in the following areas... (x) Record of compliance with the institution’s program responsibilities under Title IV of the Act, based on the most recent student loan default rate data provided by the Secretary, the results of financial or compliance audits, program reviews, and any other information that the Secretary may provide to the agency.”
187. *Ibid.*: “The agency’s accreditation standards effectively address the quality of the institution or program in the following areas... (vii) Recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising... (ix) Record of student complaints received by, or available to, the agency.”

REFORMS TO INCREASE TRANSPARENCY IN HIGHER EDUCATION

188. This extremely narrow window is slowly being opened.
189. For additional information, see College Measures, “College Measures: Improving Higher Education Outcomes in the United States,” www.air.org/center/college-measures.
190. Michael Hurwitz and Jonathan Smith, *Student Responsiveness to Earnings Data in the College Scorecard*, Social Science Research Network, May 2016, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2768157.

191. For more information on the private student loan market and its loan underwriting methods, see Andrew P. Kelly and Kevin J. James, *Looking Backward or Looking Forward: Exploring the Private Student Loan Market*, American Enterprise Institute, June 2016, www.aei.org/wp-content/uploads/2016/05/Looking-Backward-or-Looking-Forward.pdf.
192. See U.S. Department of Education, “College Scorecard Data,” <https://collegescorecard.ed.gov/data/>.
193. Application programming interfaces (APIs) define how different pieces of software can readily access data held, for example, in a data library. This allows, for example, the data released along with the federal government’s own Scorecard website to be repurposed by others.
194. Carol A. Dwyer, Catherine M. Millett, and David G. Payne, *A Culture of Evidence: Postsecondary Assessment and Learning Outcomes*, Educational Testing Service, June 2016, <http://files.eric.ed.gov/fulltext/ED500004.pdf>.
195. The specter of a testing regime for colleges and universities that would immediately be compared to the mandatory tests of No Child Left Behind should alone be enough to give the government pause.
196. See U.S. Department of Education, National Center for Education Statistics, “IPEDS 2016-17 Data Collection System – 2016-17 Survey Materials,” <https://surveys.nces.ed.gov/ipeds/VisResults.aspx?mode=results>.
197. See U.S. Department of Education, National Center for Education Statistics, National Postsecondary Education Cooperative, *Information Required to Be Disclosed under the Higher Education Act of 1965: Suggestions for Dissemination*, November 2009, <http://nces.ed.gov/pubs2010/2010831rev.pdf>.
198. Kevin Carey and Andrew P. Kelly, *The Truth Behind Higher Education Disclosure Laws*, Education Sector, November 2011, http://educationpolicy.air.org/sites/default/files/publications/HigherEdDisclosure_RELEASE.pdf.
199. See the *Higher Education Opportunity Act*, Public Law 110-315, 110th Cong., 2d sess., (August 14, 2008): Sec. 488(a)(1)(B), www.gpo.gov/fdsys/pkg/PLAW-110publ315/pdf/PLAW-110publ315.pdf; and 34 CFR § 668.41-668.43, “Institutional and Financial Assistance Information for Students,” www.law.cornell.edu/cfr/text/34/part-668/subpart-D.
200. U.S. Department of Education, National Center for Education Statistics, “National Postsecondary Student Aid Study,” <http://nces.ed.gov/surveys/npsas/>.
201. U.S. Department of Education, “National Postsecondary Student Aid Study: What’s New,” 2017, <https://nces.ed.gov/surveys/npsas/whatsnew.asp>.
202. U.S. Department of Education, National Center for Education Statistics, “Beginning Postsecondary Students Longitudinal Study,” <http://nces.ed.gov/surveys/bps/>.

Policy Reforms to Strengthen Higher Education

203. U.S. Department of Education, National Center for Education Statistics, “Baccalaureate and Beyond Longitudinal Study,” <http://nces.ed.gov/surveys/b&b/>.
204. U.S. Department of Education, “College Affordability and Transparency Center,” <https://collegecost.ed.gov/index.aspx>.
205. Mark Schneider, *Higher Education Pays: But a Lot More for Some Graduates Than for Others*, American Institutes for Research, September 2013, www.air.org/sites/default/files/Higher_Education_Pays_Sep_13.pdf.
206. U.S. Department of Education, “Office of Federal Student Aid Data Center,” <https://studentaid.ed.gov/sa/data-center>.
207. Ben Miller, *Building a Student-Level Data System*, Institute for Higher Education Policy, May 2016, www.ihep.org/sites/default/files/uploads/postsecdata/docs/resources/building_a_student-level_data_system.pdf.
208. Ibid.
209. Chris Farrell, “Net Price Calculators: Be Wary,” Marketplace, October 21, 2011, www.marketplace.org/2011/10/21/life/makin-money/net-price-calculators-be-wary.
210. Sarah Turner, “Providing Information, Avoiding Distortions: Challenges for the postsecondary Information Rating System” (working paper, University of Virginia, Charlottesville, VA, January 2014), http://curry.virginia.edu/uploads/resourceLibrary/21_Turner_Chall_Info_Rating_System.pdf.
211. The Institute for College Access & Success, *Adding It All Up 2012: Are College Net Price Calculators Easy to Find, Use, and Compare?*, October 2012, http://ticas.org/sites/default/files/legacy/files/pub/Adding_It_All_Up_2012.pdf.
212. Timothy Pratt, “College ‘Bait and Switch,’” *The Hechinger Report*, April 26, 2016, <http://hechingerreport.org/in-a-college-bait-and-switch-financial-aid-often-declines-after-freshman-year-2/>.
213. See the various reports and databases at College Measures, www.air.org/center/college-measures.
214. See U.S. Department of Education, “Changes to the 2015-16 IPEDS Data Collections,” https://surveys.nces.ed.gov/ipeds_py/VisChangesForNextYear.aspx.
215. 20 U.S. Code § 1018, “Performance-Based Organization for Delivery of Federal Student Financial Assistance,” www.law.cornell.edu/uscode/text/20/1018.
216. For its most recent annual report, see U.S. Department of Education, Federal Student Aid, *2016 Annual Report*, 2016, <https://www2.ed.gov/about/reports/annual/2016report/fsa-report.pdf>.
217. Email communication from former Department of Education staffer Ben Miller, June 2016. For more detail, see Miller’s testimony: Ben Miller, Testimony to U.S. House of Representatives Education and the Workforce Committee

- and U.S. House of Representatives Committee on Oversight and Government Reform, November 18, 2015, http://edworkforce.house.gov/uploadedfiles/testimony_miller.pdf.
218. For instance, one recent paper suggested that experts in FSA's new Data Office could make themselves available to respond to ad hoc research requests and/or solicit a Request for Information that would allow outside researchers and policymakers to suggest topics of interest. See Matthew Soldner and Colleen Campbell, *Using—and Improving—Federal Student Aid Data Systems to Support Policy Analysis*, Institute for Higher Education Policy, May 2016, www.ihep.org/sites/default/files/uploads/postsecdata/docs/resources/using_and_improving_fsa_data_systems.pdf.
219. See Grover Whitehurst and Matthew M. Chingos, *Deconstructing and Reconstructing the College Scorecard*, The Brookings Institution, October 15, 2015, www.brookings.edu/research/papers/2015/10/15-deconstructing-reconstructing-college-scorecard-whitehurst-chingos.
220. See 20 U.S. Code § 1015a, “Transparency in College Tuition for Consumers,” www.law.cornell.edu/uscode/text/20/1015a.
221. *Strengthening Transparency in Higher Education Act*, HR 4983, 113th Congress, 2d session, (June 26, 2014), http://edworkforce.house.gov/uploadedfiles/h.r._4983_-_ans_-_final.pdf.
222. See U.S. Department of Education, “Restricted Use Data Procedures Manual,” August 2011, <https://nces.ed.gov/pubs96/96860rev.pdf>.
223. Adam Looney and 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,” (conference draft, The Brookings Institution, September 10, 2015), www.brookings.edu/wp-content/uploads/2016/07/ConferenceDraft_LooneyYannelis_StudentLoanDefaults.pdf.
224. The White House, “Taking Action to Help More Americans Manage Student Debt,” April 28, 2016, www.whitehouse.gov/the-press-office/2016/04/28/fact-sheet-taking-action-help-more-americans-manage-student-debt.
225. Perhaps not surprisingly, this announcement was not greeted warmly by everyone. Privacy concerns can be overstated to thwart many needed efforts to improve performance, but these concerns are real, especially given major data breaches involving government data. For example, see Jane Robbins, “The Feds Call It ‘Research.’ We Call It Violating Child Privacy,” *Townhall*, May 6, 2016, <http://townhall.com/columnists/janerobbins/2016/05/06/the-feds-call-it-research-we-call-it-violating-child-privacy-n2158642>.
226. Soldner and Campbell, *Using—and Improving—Federal Student Aid Data*

Policy Reforms to Strengthen Higher Education

Systems to Support Policy Analysis.

227. See Internal Revenue Service, “Form 1098T, Tuition Statement,” www.irs.gov/uac/form-1098-t-tuition-statement.
228. Whitehurst and Chingos, *Deconstructing and Reconstructing the College Scorecard*.
229. University of Texas System, “UT System Partners with U.S. Census Bureau to Provide Salary and Jobs Data of UT Graduates Across the Nation,” (press release, September 22, 2016), www.utsystem.edu/news/2016/09/22/ut-system-partners-us-census-bureau-provide-salary-and-jobs-data-ut-graduates-across.
230. The original WRIS system was focused on tracking the earnings outcomes of participants in workforce training programs. WRIS 2 opened up the system to educational institutions. See U.S. Department of Labor, “Wage Record Interchange System 2,” https://doleta.gov/performance/wris_2.cfm.
231. U.S. Department of Labor, “WRIS2 Membership,” https://doleta.gov/performance/pfdocs/WRIS2_Status_Map.pdf.
232. For more information see U.S. Department of Education, “Frequently Asked Questions on the Statewide Longitudinal Data Systems (SLDS) Grant Program,” https://nces.ed.gov/programs/slds/faq_grant_program.asp.
233. *Student Right to Know Before You Go Act of 2015*, S.1195, 114th Congress, (May 5, 2015), www.congress.gov/bill/114th-congress/senate-bill/1195/text.z.
234. U.S. Department of Education, “Shopping Sheet,” http://collegecost.ed.gov/shopping_sheet.pdf; Consumer Financial Protection Bureau, “Does Your College Help You Know Before You Owe?” October 25, 2013, www.consumerfinance.gov/about-us/blog/does-your-college-help-you-know-before-you-owe/.

PROMOTING INNOVATION IN HIGHER EDUCATION

235. The views expressed here are those of the authors and do not reflect those of their employers.
236. See National Center for Education Statistics, “Digest of Education Statistics 2014: Table 303.45; Table 303.50,” http://nces.ed.gov/programs/digest/d14/tables_3.asp; Anthony P. Carnevale et al., *Learning While Earning: The New Normal*, Georgetown University Center on Education and the Workforce, 2015, <https://cew.georgetown.edu/wp-content/uploads/Working-Learners-Report.pdf>.
237. I. Elaine Allen and Jeff Seaman, “Grade Change: Tracking Online Education in the United States,” Babson Survey Research Group, January 2014, www.onlinelearningsurvey.com/reports/gradechange.pdf.
238. *Higher Education Act Amendments of 1998*, Public Law 105-244, 105th Cong., 2d sess. (July 18, 1997): Section 488, <https://www2.ed.gov/policy/highered/leg/hea98/sec488.html>.

Promoting Innovation in Higher Education

*Andrew P. Kelly*²³⁵

Kevin J. James

FOUNDER & CEO, BETTER FUTURE FORWARD

ADVANCES IN TECHNOLOGY, concerns about costs, and a changing population of students have combined to drive innovation in higher education. Online learning has enabled students across the country to enroll in and complete a college degree; competency-based programs allow students to earn credit based on what they can show they have learned, allowing some to progress to a degree much faster than is possible under a traditional academic calendar; and new models of delivery are providing targeted, short-term training that is directly tied to the labor market. Meanwhile, age-old models like apprenticeships are garnering renewed attention but remain on the periphery.

Some of this is occurring outside of traditional higher education, but existing institutions have also taken it upon themselves to create new delivery models and credentials. Despite these innovations, and despite the new demands on colleges and universities to provide an affordable, valuable education, most of post-secondary education looks much the way it did when federal financial-aid policies were created a half-century ago. The majority of students choose a traditional degree program at a traditional institution, working over the course of two or four or six years to earn the 60 or 120 credit hours necessary to receive an associate's or a bachelor's degree. Those courses are organized around a traditional academic calendar and a time-based model of learning. This model works quite well for many traditional students — and the payoff to a bachelor's degree has grown. But the growing group of nontraditional students, many of which must juggle school, work, and family, often need more flexibility.

Federal policy also favors traditional degree programs and often

excludes the kind of targeted occupational training and workplace-learning opportunities that can serve as an on-ramp to the labor force. Too often, advocates dismiss such offerings as “dead ends” because graduates might not go on to earn as much as degree-holders over the long term. Our policies and political culture reflect these biases. Students who engage in workplace learning like apprenticeships, or who pursue industry-recognized credentials, are often ineligible for federal aid.

In other words, well-intentioned federal policies designed to limit fraud often serve as key obstacles that discourage innovation in post-secondary education. Outdated federal definitions lock us into time-based notions of what qualifies as post-secondary education, which biases the system against models that award credit on the basis of student learning or workplace learning. Aggressive new federal regulations have raised transaction costs for providers trying new things and have constrained those that might have considered innovation. Reliance on accreditors as gatekeepers of federal aid makes it difficult for new institutions to compete on a level playing field. The result is a system that must serve an increasingly diverse group of students but has been slow to change, in part because of existing federal policies.

What’s needed is an agenda to promote innovation in post-secondary education by freeing leaders at existing institutions to develop new models of teaching and learning; expanding access and raising the profile of nontraditional options like apprenticeships; and creating space for students to choose innovative options that promote student learning. Such an agenda should include three main goals: Reform rules that enshrine a time- and place-based model of post-secondary education; use federal levers to encourage experimentation and flexibility while protecting taxpayers and students; and create an outcomes-based path to aid eligibility that creates space for innovative models to compete.

THE STATUS QUO

Significant changes on two fronts have affected the post-secondary market over the past decade. First, the number of non-traditional students — independents with dependent children and those over the age of 25, many of whom work while enrolled — has increased. According to data from the National Center for Education Statistics, students over the age of 25 make up more than 30% of all undergraduates today. Roughly 25% of full-time college students are also working full-time,

and over 35% of students enroll part-time.²³⁶ These students often have needs that are quite different from those of a traditional undergraduate who lives on campus at a four-year university. Many prefer—or require—a more flexible program that allows them to learn whenever they have a free moment and perhaps move through the material at their own pace.

Second, advances in technology, coupled with regulatory reforms, have led to significant growth in opportunities to learn online or in blended programs. As of 2013, 7.1 million students—or one-third of enrollments—were taking at least one online course, an increase of more than 5 million students over the previous decade. Ninety percent of college leaders surveyed thought it likely or very likely that by 2018 a majority of students would take at least one online course.²³⁷

Key decisions by policymakers accelerated these trends. In the 1998 amendments to the Higher Education Act, Congress created the “Distance Education Demonstration Project” (DEDP), which authorized the secretary to waive statutory and regulatory requirements related to online learning for a select number of institutions.²³⁸ Specifically, the demonstration program waived the so-called “50% rule,” which required that schools receiving Title IV aid could not enroll more than 50% of their students in distance education or offer more than 50% of their courses through distance education.

Based on the findings from the DEDP, the Department of Education recommended expanding the project, eliminating the 50% rule, and allowing students enrolled in two- and four-year degree programs to receive two Pell Grants if they attended year-round.²³⁹ The Higher Education Reconciliation Act of 2005 repealed the 50% rule for so-called “telecommunications courses” (those offered online), opening up new opportunities for place-bound students to use federal aid for online programs (year-round Pell was created in 2009, but repealed shortly after).²⁴⁰

While online learning has expanded access for new students, it does not seem to have affected tuition prices. In fact, one survey found that more than 90% of colleges that offer both online and in-person courses charge the same tuition price or higher for the online versions.²⁴¹ And while online opportunities provide more flexibility for non-traditional students, programs are still largely required to adhere to standard academic calendars and the time-based rules that govern federal student aid (and, often, state licensure).

In other words, most online programs look an awful lot like traditional programs. This is true, in part, because federal policy insists on it. A growing number of providers have sought ways to break out of these constraints by offering “competency-based” programs that award credit for what students can prove they’ve learned (via a validated assessment) rather than the amount of time they have spent in class. Western Governors University, a nonprofit founded in the 1990s by 19 governors of western states, is a pioneer in this area. Students pay a flat fee (\$6,000) for six months of access to learning materials, assessments, mentors (who play a faculty role), and other supports. Students can earn as many competencies as they can in a six-month period.²⁴² Many institutions—public and private—have worked to develop their own competency-based programs, despite an uncertain regulatory environment.

Others are broadening the definition of what constitutes education after high school. Online course providers like edX, Udacity, and StraighterLine provide low-cost courses and exams, some of which are transferable to traditional colleges while others serve as a signal to the labor market.²⁴³ A number of in-person “boot camps” have set out to prepare individuals with the technical skills necessary for employment in the tech industry, providing intense, short-term training programs in areas like web development, data science, and user-experience design. These programs advertise high apparent rates of success, but have run into regulatory issues at the state level.²⁴⁴ Like the online providers, these schools exist entirely outside of federal Title IV, so students must pay out of pocket (or borrow privately) to access them.

Other programs have developed as a bridge between high school and college or the workforce. Year Up provides high-school graduates with a blend of training in basic job-related skills and an internship with a corporate sponsor. At the end of that year, students can choose to either go onto college or to join the workforce.²⁴⁵ Bridge.edu has a similar model.²⁴⁶

Finally, older alternative models like apprenticeship and short-term occupational training and certification are getting another look. A rigorous evaluation of the Department of Labor’s Registered Apprenticeship program found that it delivers \$58,888 more in benefits than it costs to operate for each additional apprentice enrolled in the program over the medium-term.²⁴⁷ Data from state higher-education systems suggest that the short-term returns to technical certificates in applied manufacturing and some allied health jobs are larger than short-term returns to degrees.²⁴⁸

Many of these options could help students earn a good job or further education. But federal policies governing financial aid are premised on a traditional notion of education, one offered on a brick-and-mortar campus organized around credit hours, degree programs, and academic calendars. Accreditors — the primary gatekeepers of federal aid — are risk-averse and mainly evaluate schools on the basis of inputs and processes. These policies can preclude low-income students from accessing worthwhile opportunities and constrain higher-education leaders who wish to innovate. The result is a system that continues to grow more expensive but is not sufficiently responsive to the needs of today’s students.

ROOM FOR IMPROVEMENT

Federal financial aid policy is governed by a set of rules that are designed to prevent waste, fraud, and abuse. In order to be eligible to receive federal financial aid, institutions must offer programs that conform to traditional notions of higher education — they must be delivered in “credit hours,” they must match existing time-based definitions of degrees and certificates, and they must involve “regular and substantive” interaction between students and faculty members.²⁴⁹ Over the past eight years, federal regulators have passed a number of new regulations — mostly targeted at for-profit colleges — designed to ensure that federal dollars are well spent.²⁵⁰

These rules are supposed to protect against diploma mills — an important goal. But the means by which they do so actually constrain institutions that have alternative methods of awarding credit and innovative approaches to teaching and learning. For instance, in 2009 the Department of Education’s new “program integrity” regulations provided, for the first time, a federal definition of the credit hour:

[A] credit hour is an amount of work represented in intended learning outcomes and verified by evidence of student achievement that is an institutionally established equivalency that reasonably approximates not less than —

(1) One hour of classroom or direct faculty instruction and a minimum of two hours of out of class student work each week for approximately fifteen weeks for one semester or trimester hour of credit, or ten to twelve weeks for one quarter hour of credit, or the equivalent amount of work over a different amount of time; or

(2) At least an equivalent amount of work as required in paragraph (1) of this definition for other academic activities as established by the institution including laboratory work, internships, practica, studio work, and other academic work leading to the award of credit hours.²⁵¹

The requirement that programs must award credit based on time—or on other criteria that must be mapped to quantities of time—creates obstacles for competency-based programs that award credit on the basis of what students can prove they’ve learned on an assessment. These models allow students who wish to accelerate their progress toward a degree to earn credits more quickly than they would be able to in a traditional program based on standard measures of the credit hour. Though regulators attempted to maintain sufficient space for awarding credit based on student assessment (“amount of work represented in intended learning outcomes” that “reasonably approximates” a traditional credit hour), higher-education leaders argue that it has had a “chilling effect” on colleges’ ability to innovate.²⁵²

Likewise, while the 2005 Higher Education Reconciliation Act explicitly allowed programs that use “direct assessment” of student learning as an alternative to the credit hour to receive Title IV aid, the rules governing financial-aid disbursement use time-based definitions of academic year, term length, and “satisfactory academic progress.”²⁵³ Student aid awards are determined according to the number of credit hours a student enrolls in (12 hours or more is full-time, nine is three-quarter time, and so on). But students in direct-assessment programs can move through the assessments as quickly as they are able, which simply does not lend itself to these time-based regulatory measures. Likewise, in order to remain eligible for federal financial aid, students must have made satisfactory academic progress, which must include a measure of the pace of student progress by comparing the number of credit hours completed to the number of credit hours attempted.²⁵⁴ It is not clear how you would measure such progress in a purely competency-based program in which students do not attempt a set number of credit hours in a year.

In each of these cases, institutions that award credit based on learning have to map student progress back to credit hours, an uncertain process that leaves them open to scrutiny from the Department of

Education. As two experts wrote in 2014, “several institutions of higher education have had their efforts to develop competency-based educational programs delayed, or derailed, due to uncertainty as to how they can comply with the federal financial aid eligibility rules.”²⁵⁵

Similarly, rules governing program eligibility are based on length. Short-term programs offered by post-secondary vocational institutions must provide a certain number of clock or semester hours over 10 or 15 weeks of instruction, and that instruction must prepare students for “gainful employment in a recognized occupation.”²⁵⁶ Programs that provide short-term instruction that is not geared towards a recognized occupation, or those that are shorter than 10 weeks, are not eligible for financial aid at all, regardless of whether they provide a valuable education.

In addition to the time-based eligibility requirements, courses and programs must be “for-credit”—meaning they count toward an eligible degree or certificate program—to be eligible for federal aid. Many colleges, particularly at the two-year level, offer non-credit courses that are focused on occupational training. Some of these non-credit offerings are designed to prepare students for an industry-recognized credential.

Why do institutions offer non-credit courses if they’re not eligible for federal aid? According to the National Skills Coalition,

Institutions generally choose to offer programs on the noncredit side because of the flexibility they permit. Unlike for-credit programs, these programs are generally not subject to the lengthy and arduous state licensing, accreditation, and federal certification process, and thus, can be adjusted on a moment’s notice to respond to changing industry or labor market conditions.²⁵⁷

In other words, students who cannot pay out of pocket for non-credit courses may be missing out on worthwhile pathways to employment and mobility.

In fact, some evidence suggests that excluding such programs from federal financial aid may lead individuals who are only in search of particular skills to sign up for longer, aid-eligible program. In a large study of California community-college students, Peter Bahr identified a subset of students (“skills builders”) who take a limited number of courses in job-related fields, pass those courses, and then drop out prior to earning a degree or certificate.²⁵⁸ These skills builders represented

about one in seven incoming community-college students, and generally experienced an increase in earnings after enrollment. Such students would be better served if federal-aid programs enabled them to sign up for the skill building courses they need rather than an entire degree program that they do not want.²⁵⁹

In order to receive federal financial aid, an institution must be accredited by an organization that the secretary of education recognizes. In order to get accredited, an institution usually must have been in existence for five years and must have graduated at least one class of students.²⁶⁰ However, most students are reliant on federal financial aid. As Sylvia Manning, former head of the Higher Learning Commission (one of the six regional accreditors), has written,

if you want to launch a new college or university, you may face an insurmountable problem: having students is a prerequisite for accreditation, but it is difficult to attract them without access to financial aid. We therefore face a classic chicken-or-egg dilemma.²⁶¹

This barrier to entry limits the kind of new firm creation that has driven innovation in other sectors.

Moreover, accreditation agencies focus primarily on inputs (faculty qualifications, facilities) and processes (for example, does the institution have a process for assessing student learning?). As Manning explains, accreditation agencies “unapologetically consider inputs and student outcomes” and “approach with caution any radical elimination of the basic conditions that have underpinned sustainable institutions.”²⁶² These basic conditions do appear to promote student learning in many contexts, but accreditors tend to assume that the traditional model is the only way to provide a quality education, and that innovative models should therefore be viewed with caution. The recent closures of large, fully accredited institutions indicate the limits of this assumption. In the aftermath of those closures, one veteran of President Obama’s Department of Education warned that these failures result from some accreditors’ “mindless checklist” approach to quality assurance.²⁶³

Federal policy also marginalizes work-based learning like apprenticeships. Employers who provide apprenticeship training—which yields significant financial returns to taxpayers—bear all or most of the cost of apprenticeship training, including paying wages to the

apprentice and in many cases covering the cost of related instruction.²⁶⁴ Apprentices who enroll in otherwise-eligible programs at accredited institutions can receive federal aid, but because they often enroll part-time or in non-credit courses, those resources do little to defray the cost to students or employers.

OPPORTUNITY FOR REFORM

There are a number of reforms to federal policy that would grant more flexibility to existing institutions and create more options for students, all while ensuring that taxpayer dollars flow to valuable programs. The options range from modest improvements to more dramatic change.

A modest approach to reform might begin with appointing a task force to examine federal policy to weed out obstacles to institutional innovation. The Senate recently commissioned a Task Force on Federal Regulation of Higher Education to examine the regulatory burden accompanying participation in federal programs. This worthwhile effort focused mainly on reporting and compliance requirements that govern existing institutions. While one section of the report examined state authorization of distance education programs, other rules and regulations that limit innovation were not examined in detail.²⁶⁵

A parallel task force should scour statute and regulation and interview stakeholders to identify areas where federal policy has stunted institutions' ability to innovate. Such a task force should feature representatives from existing colleges and universities, institutions that serve non-traditional students via innovative models, and educational organizations that operate largely outside of the federal Title IV system. Congress could then decide which task force recommendations to adopt in the next reauthorization of the Higher Education Act.

With regard to units of academic credit, the Obama administration's effort to define the credit hour has been roundly criticized by higher-education institutions and professional associations as stifling innovation. In 2011, 70 higher-education organizations petitioned congressional leaders to repeal the credit-hour definition, citing an "almost total lack of evidence of a problem in either the credit hour or the state authorization context."²⁶⁶ The House of Representatives has voted to repeal the credit-hour regulation and the state authorization requirements (which have now been vacated by the courts) via the Protecting Academic Freedom

in Higher Education Act.²⁶⁷ But the legislation has not received a vote in the Senate, and the regulation remains on the books.

The Department of Education has also recently finalized a revised rule on state authorization. The rule requires “institutions offering distance education or correspondence courses to be authorized by each state in which the institution enrolls students.”²⁶⁸ In 2010, a federal court struck down an earlier version on procedural grounds.²⁶⁹ Shortly thereafter, in anticipation of future rulemaking, a voluntary consortium of states came together to establish state reciprocity agreements governing distance education. The National Council for State Authorization Reciprocity Agreements (NC-SARA) allows institutions authorized in a SARA state to serve students via distance education in other SARA states.²⁷⁰ That way, institutions do not have to go through full authorization processes in all of the states where its students reside. This voluntary process reduces the regulatory burden on institutions in member states. To date, NC-SARA covers 42 states and the District of Columbia, with roughly 1,150 participating institutions.²⁷¹

The department’s new rule acknowledges SARA, noting that states can meet federal requirements for authorization through “participation in a state authorization reciprocity agreement.” But there’s a catch: It also stipulates reciprocity agreements must not “prevent a state from enforcing its own laws.”²⁷² That means states can regulate out-of-state institutions in excess of SARA requirements, setting back efforts to provide a common authorization framework for SARA member states and regulatory relief for providers.²⁷³ At present, the rule stands on uncertain ground with an incoming administration given the date on which it was enacted.²⁷⁴ Federal policymakers should rework the rule to respect this state-driven initiative to streamline interstate regulation of distance education.

Reformers should also take advantage of the experimental-sites authority to fund and study new ideas. The 1992 reauthorization of the Higher Education Act created “Experimental Sites Authority,” or “ex sites.”²⁷⁵ The authority empowers the secretary of education to “periodically select a limited number of additional institutions for voluntary participation as experimental sites to provide recommendations to the Secretary on the impact and effectiveness of proposed regulations or new management initiatives.”²⁷⁶

Specifically, the provision allows the secretary to waive, for existing

accredited institutions that sign up for an ex-sites project, any requirements related to the disbursement of financial aid, such as “innovative delivery systems for modular or compressed courses” or “entrance and exit interviews” for loan counseling.²⁷⁷ The secretary is then required to review and evaluate the experiments and, on a biennial basis, to report on those experiments to Congress and make recommendations based on the findings.

Past administrations have used experimental-sites authority to varying degrees. Projects have included competency-based education and direct-assessment programs, allowing institutions to limit borrowing for particular categories of borrowers, short-term job training, changes to exit counseling, and others. The most recent ex-sites initiative will enable students to use some of their financial aid at providers that are not accredited so long as they are partnered with an existing, Title IV-eligible institution and are certified by an independent “quality assurance entity.”²⁷⁸

In short, ex-sites authority provides the department with authority to foster experimentation at existing institutions. One strength of this approach is that the authority already exists and does not require an act of Congress. It also allows the government to test out potential reforms on a smaller scale first and to learn from the results before deciding which, if any, should be brought to scale. One drawback is that the experimentation is limited to existing accredited colleges and requires the waiver of existing financial-aid rules, which largely excludes innovation that occurs outside of traditional colleges.

That said, an incoming administration should ensure that pre-existing experiments continue until they can be rigorously evaluated and the results made public. They should also use the authority to experiment with other ideas. For instance, an experimental-sites project could relax the requirement that students in apprenticeships can receive Pell Grants and work-study funds only if they are in an aid-eligible degree or certificate program. Apprentices could then use federal aid to enroll in non-credit courses or to earn recognized industry certifications.²⁷⁹ Another experimental site could allow a set of institutions to develop aid-eligible, low-cost, accelerated routes to required general-education courses. These pathways might not lead to a degree or to gainful employment, but they could be transferred to a degree program.

Whatever the experiment, policymakers should ensure that

experimental-sites projects are evaluated according to the What Works Clearinghouse standards and that the results are made public.²⁸⁰

PUSHING FURTHER

Reformers not satisfied with these relatively modest steps may prefer a bolder set of reforms to better enable innovation in education delivery. To start, they could broaden eligibility for the Workforce Investment Act (administered by the Department of Labor) to cover all Registered Apprenticeships. In some states, certain apprenticeship programs do not qualify for Workforce Investment and Opportunity Act (WIOA) funding because those occupations are not designated by the state as “high-skilled occupations.”²⁸¹ This restriction leaves out high-demand, high-wage jobs based on outdated assumptions about the level of technical expertise and knowledge required to perform the job. In order for states to receive WIOA funding, they should be required to recognize all registered apprenticeship programs as high-skilled occupations and include them as eligible WIOA participants.²⁸²

Reformers should also encourage the expansion of apprenticeship programs via federal tax credits. Although the secretary of education has confirmed that apprentices who enroll in eligible academic programs can receive grants and loans, because they are paid wages, generally attend college less than full-time, and often enroll in non-credit courses, it is unlikely that an apprentice will qualify for a full Pell grant. Therefore, instead of handing out partial Pell Grants to apprentices, the federal government should provide companies that sponsor Registered Apprenticeship programs an annual tax credit for each apprentice they hire. Tax credits are preferable to grant programs because the complexity of federal grant programs may be too difficult and burdensome for small and mid-size companies to navigate. Because all companies deal with significant and complex tax burdens, adding a tax credit would not impose additional burdens. The cost of this tax credit will be offset by the taxes paid by apprentices for wages earned during the program as well as savings in the Pell Grant program.

How large should the credit be? One proposal along these lines is the Leveraging and Energizing America’s Apprenticeship Program (LEAP) Act, introduced by Senators Tim Scott and Cory Booker. The bill would amend Chapter 1 of the Internal Revenue Code of 1986 (Normal Taxes and Surtaxes) to provide a tax credit to businesses that hire new

apprentices that are registered with the Department of Labor or a state apprenticeship agency. The bill defines “apprentice” as an employee who is employed in an officially-recognized apprentice-able occupation pursuant to an apprentice agreement registered with the Office of Apprenticeship in the Employment and Training Administration in the Department of Labor or a recognized state apprenticeship agency. Firms would receive a credit of \$1,500 for apprentices under the age of 25, and \$1,000 for those over 25.

Federal policymakers can also create space for innovation through demonstration projects, which allow the secretary to waive particular statutory and regulatory obligations in order to study a given reform idea. The idea is to create a federally sanctioned, controlled experiment that exempts a subset of providers from existing rules so that they can try new things in exchange for transparency and documentation of the outcomes. Unlike *ex sites*, where regulatory relief is limited to accredited institutions, Congress could use a demonstration project to expand the range of providers. A demonstration project requires an act of Congress but can be designed to be budget neutral.

Policymakers could adopt this approach to study the feasibility of letting students use some portion of federal aid on options that federal rules currently discourage or exclude, including competency-based education, exam-based credits, short-term training, “microcredentials,” and “unbundled” models (where students earn credits from multiple providers and, with the help of a credentialing organization, stack them into a credential). They could also use a demonstration project to experiment with new quality-assurance entities, empowering the secretary to recognize organizations that certify schools based on the student learning they produce, not what they look like.

A good starting point is competency-based education, as it has already gained traction in Congress. Representatives Matt Salmon and Jared Polis have proposed such demonstration projects in the past, and one passed the House of Representatives with a huge bipartisan majority.²⁸³ But these proposals have yet to become law. An incoming administration could build on these prior proposals to introduce its own version of a competency-based demonstration project for inclusion in the reauthorization of the Higher Education Act.

To experiment with alternative authorizers, policymakers could waive the existing recognition requirements for accreditation agencies

and allow the Department of Education to recognize a third-party organization (or set of organizations) that would be tasked with approving innovative offerings based primarily on their demonstrated outcomes. The recognition could automatically sunset after five years, providing policymakers with a chance to evaluate the model but limiting the risk to taxpayers and students. Existing accreditors could apply to be recognized under such a plan, but so could other private entities like professional associations, consortia of employers, or community-based organizations.²⁸⁴ (A similar idea is expanded in the next section).

Congress could also waive the requirement that organizations be accredited in order to receive Pell Grants and set up an alternative certification process based on audited evidence of a provider's student outcomes (including student learning) and financial sustainability. Organizations—including traditional institutions—with a proven track record of success could apply for aid eligibility via this expedited path. Such a project could also waive credit-hour and program-length requirements to maximize flexibility. Any authorization could be time-limited to two to three years. (One potential drawback of this approach is that it would put the department in a powerful position to make these approvals even though it may lack the capacity and objectivity to do it well).

Policymakers should consider a demonstration that allows some students to use Pell Grants for non-credit occupational programs that have substantial support from local employers and are willing to be held accountable for student outcomes in the labor market.²⁸⁵ As a condition of eligibility, providers that want to participate could be obligated to secure a financial commitment from local employers that benefit from the training—a surety bond, perhaps—proportional to the Pell Grant funding that will flow to the program. That bond could cover losses in the event a program fails to reach established labor-market outcomes.

Critically, any demonstration projects should include clear research and evaluation requirements, preferably a call for independent, third party evaluation that adheres to the What Works Clearinghouse's evidence standards. Such evaluations may require additional funding to cover administrative costs, but the resulting research will be better able to guide future decisions about changes to Title IV eligibility.

A new administration could also allow institutions that meet performance standards to apply for waivers. Instead of targeting specific innovations designed at the federal level (as they are with ex sites and

demonstration projects), the feds could also consider a model similar to Medicaid waivers. Under Section 1115 of the Social Security Act, states can apply to the Centers for Medicare and Medicaid for the freedom to implement reforms designed to improve service and efficiency as long as they are budget neutral.²⁸⁶ The goal of the waiver authority is to “demonstrate and evaluate policy approaches” by “[giving] states additional flexibility to design and improve programs.” State proposals must satisfy some “general criteria”: projects must expand coverage, increase efficiency, improve health outcomes, or strengthen provider networks.²⁸⁷ Waivers are typically good for a five-year period, at which point states can apply for a three-year extension.

Importing this logic to higher education, the department could consider granting flexibility to institutions that propose an innovative program or disbursement model that would run afoul of current federal rules but is designed to promote some basic, agreed-upon goals. To determine eligibility, Congress could set clearly defined standards on objective measures of student outcomes and financial responsibility. Unlike a traditional ex site or demonstration project, where Congress or the executive branch develops the project from Washington, a waiver model would allow new ideas to bubble up from the institutions themselves.

AGGRESSIVE REFORMS

A future administration may conclude that the time is right for more aggressive reforms that would lower barriers to innovation by remaking the current higher-education accreditation system.

Some have argued that it is time to end accreditation’s role as gatekeeper to federal student aid entirely. Anne Neal and Arthur Rothkopf of the National Advisory Committee on Institutional Quality and Integrity (NACIQI) have proposed “breaking the link” between accreditation and federal financial aid and replacing it with stricter federal financial-responsibility standards and enforcement and much greater transparency about basic outcome information. In addition, Neal and Rothkopf’s proposal would require institutions to post a statement from an independent auditor that the institution has “sufficient resources to ensure that all enrolled students can be supported to the completion of their degrees.”²⁸⁸ Students could then use their federal financial aid at the provider of their choice using the information available, and those choices would inject market discipline.

The clear drawback of this approach is the potential for fraud and abuse in a market with low barriers to entry and low-information consumers. As such, decoupling accreditation and federal financial aid should only be considered in concert with the reforms proposed in the sections on Accountability and Transparency.

The states already play a sizable role in federal higher-education policy; institutions must be authorized in states where they are active in order to receive financial aid. One option for accreditation reform, therefore, is to devolve responsibility for recognizing accreditation agencies (currently reserved for the secretary of education) to state governments that apply for and are granted such authority by the secretary of education. State policymakers would then use this authority to recognize an accreditation agency (or agencies) that was empowered to approve organizations to receive federal Title IV aid.

One such proposal is the Higher Education Reform and Opportunity (HERO) Act, introduced by Senator Mike Lee. States would be required to enter into an agreement with the secretary of education to determine the accreditation agency within the given state, the criteria used to evaluate institutions and programs, and the specific reporting requirements to maintain accreditation. The bill would explicitly allow these state-sanctioned entities to authorize apprenticeship programs, curricula, and individual courses (in addition to institutions of higher education). The state and the secretary of education would also agree on an appeals process for an institution or program that is denied accreditation.

Under the HERO Act, states choosing to create their own accreditation agencies would be required to articulate their own definitions of a post-secondary certification, credential, and a degree. This would also require states to determine the goals of these institutions and the programs and methods through which to evaluate entities' progress towards meeting those goals. Just as financial assistance is provided to institutions of higher education for accreditation-reporting requirements under the current system, so too would assistance be provided for states choosing to initiate an alternative accreditation system.²⁸⁹

One strength of this approach is that state agencies are already engaged in higher-education quality assurance (thanks to their state authorization responsibilities), meaning that this new role could be grafted onto an existing institution. Other proposals (see below) would rely on the emergence or creation of new authorizing entities.

An additional strength is that states are closer to the ground than either the federal government or the current accreditation agencies. In theory, that puts them in a better position to know what the state needs when it comes to post-secondary offerings. However, research on state authorization suggests that state capacity to evaluate educational organizations varies dramatically, and that few states actually judge providers on the basis of their student outcomes.²⁹⁰

A third alternative approach is to create a parallel path to federal aid eligibility built on a “Pay-for-Success” model.²⁹¹ The key idea here is that federal policy could grant educational organizations limited eligibility to receive federal aid money (Pell Grants) under a reimbursement model. After a basic review of financial sustainability, providers who agree to particular terms could sign on to serve Pell-eligible students under a performance contract, but would not receive that grant money upfront. Instead, they would be reimbursed based on whether they reach agreed-upon outcome targets. Pay-for-success models have garnered bipartisan attention because they provide an opportunity to try new models of service provision while protecting taxpayers.

When it comes to a pay-for-success model in the context of federal financial aid, policymakers could structure such a program in a couple different ways. One version would import the social-impact-bond model, where the government contracts with an intermediary who funds a direct-service organization to provide a public service. If the project meets agreed-upon goals (spelled out in the contract), the intermediary is reimbursed for the funding. In a classic social-impact bond, if the project exceeds expectations, the intermediary reaps a return that goes to investors.

In higher education, such an approach would give the secretary the power to recognize intermediary organizations (existing accreditors, state governments, nonprofit or for-profit organizations) as gatekeepers of access to federal need-based aid. Those organizations would then have the power to certify particular educational programs as eligible to receive federal Pell Grant money. Rather than disburse those student-aid dollars upfront when a student enrolls, however, the intermediary would provide the necessary funding and be reimbursed by the Department of Education on the basis of the outcomes achieved by the educational organization.

Specifically, reimbursement would be based on the provider’s success rate in reaching externally validated outcomes that are explicitly

spelled out in the contract between the Department of Education and the intermediary—examples include passage rates on licensure exams and prior learning assessments, accumulation of transferable credit, and job placement and increase in earnings. In order to be reimbursed, program outcomes would have to be independently evaluated and validated by a third-party auditor or research organization.

Educational organizations that wished to open their program to Pell-eligible students with financial need would have to partner with an intermediary that was responsible for providing sufficient funding to cover the Pell Grant money withheld by the federal government. Said funding could come from the intermediary themselves or from investors that the intermediary coordinated. In return for taking on the upfront financial risk, the providers would have complete flexibility when it came to program content and structure.

Intermediaries might include nonprofit foundations, state governments that wish to underwrite innovative offerings at their public institutions, or existing accreditation agencies. Intermediaries could require the organizations themselves to assume some of the risk of failure as well, thereby aligning the incentives of all parties involved. Intermediaries that consistently performed well under the reimbursement model could incrementally move toward receiving more of the federal aid upfront but would always retain a sizable percentage of the risk.

To prevent against cost inflation, policymakers could set a fixed reimbursement rate for different types of services (degree programs versus short-term training versus unbundled online coursework), thereby capping the amount of money that a provider could receive for a successful outcome.²⁹² The agreement should also fix the tuition rate a provider could charge aid-eligible students. Students who opted for a provider certified under this parallel path would be subject to the same spending caps, and the aid spent on a given offering would be subtracted from their lifetime eligibility (or from their need-based account).

A simpler approach would not use intermediaries but would allow providers to sign onto pay-for-success contracts with the Department of Education directly. In this model, the providers would have to front some portion of the money and be reimbursed based on their performance on agreed-upon outcomes. Providers who were successful could work their way into receiving more of the money upfront. One drawback of this particular model is that it might exclude nonprofit

or public organizations that have promising ideas but likely lack the resources to put the money up themselves and may have a difficult time raising capital from the private market.

A pay-for-success approach would encourage innovation while protecting taxpayer dollars in a number of ways. First, because intermediaries or providers themselves would be reimbursed for success rather than paid for enrollments, they would bear the upfront risk instead of taxpayers. This reimbursement model also limits the risk of allowing public dollars to flow to innovative offerings that are promising but uncertain.

Second, by forcing organizations to rely on a source of capital other than federal aid in the short term, the model would inject greater discipline into the system. Intermediaries with skin in the game would have incentive to seek out partners who are capable of achieving the agreed-upon outcomes, and would not partner with those that are not up to the task. Third, to the extent that the reimbursement rate does not cover the full cost of tuition, aid-eligible students would have to spend their own money or find a private financing option, adding another layer of market discipline that is often lacking.

Senators Michael Bennet and Marco Rubio introduced an innovative proposal built on a pay-for-success model in 2015 (the Higher Education Innovation Act). The bill would empower the secretary to recognize new “innovation authorizers” who would certify educational programs as eligible to receive Pell Grants based on their performance on specified metrics: student learning, completion, and affordability and value. Educational offerings with five or more years of evidence for their success would receive the full value of the Pell Grant upfront; those with between three and five years would receive 50% of the Pell Grant funding and be required to put up matching funds or a bond for the other 50% and be reimbursed based on how many students completed the program; those with less experience would receive less of the money upfront, and so on.²⁹³

Policy Reforms to Strengthen Higher Education

Systems to Support Policy Analysis.

227. See Internal Revenue Service, “Form 1098T, Tuition Statement,” www.irs.gov/uac/form-1098-t-tuition-statement.
228. Whitehurst and Chingos, *Deconstructing and Reconstructing the College Scorecard*.
229. University of Texas System, “UT System Partners with U.S. Census Bureau to Provide Salary and Jobs Data of UT Graduates Across the Nation,” (press release, September 22, 2016), www.utsystem.edu/news/2016/09/22/ut-system-partners-us-census-bureau-provide-salary-and-jobs-data-ut-graduates-across.
230. The original WRIS system was focused on tracking the earnings outcomes of participants in workforce training programs. WRIS 2 opened up the system to educational institutions. See U.S. Department of Labor, “Wage Record Interchange System 2,” https://doleta.gov/performance/wris_2.cfm.
231. U.S. Department of Labor, “WRIS2 Membership,” https://doleta.gov/performance/pfdocs/WRIS2_Status_Map.pdf.
232. For more information see U.S. Department of Education, “Frequently Asked Questions on the Statewide Longitudinal Data Systems (SLDS) Grant Program,” https://nces.ed.gov/programs/slds/faq_grant_program.asp.
233. *Student Right to Know Before You Go Act of 2015*, S.1195, 114th Congress, (May 5, 2015), [www.congress.gov/bill/114th-congress/senate-bill/1195/text.z](http://www.congress.gov/bill/114th-congress/senate-bill/1195/text/z).
234. U.S. Department of Education, “Shopping Sheet,” http://collegecost.ed.gov/shopping_sheet.pdf; Consumer Financial Protection Bureau, “Does Your College Help You Know Before You Owe?” October 25, 2013, www.consumerfinance.gov/about-us/blog/does-your-college-help-you-know-before-you-owe/.

PROMOTING INNOVATION IN HIGHER EDUCATION

235. The views expressed here are those of the authors and do not reflect those of their employers.
236. See National Center for Education Statistics, “Digest of Education Statistics 2014: Table 303.45; Table 303.50,” http://nces.ed.gov/programs/digest/d14/tables_3.asp; Anthony P. Carnevale et al., *Learning While Earning: The New Normal*, Georgetown University Center on Education and the Workforce, 2015, <https://cew.georgetown.edu/wp-content/uploads/Working-Learners-Report.pdf>.
237. I. Elaine Allen and Jeff Seaman, “Grade Change: Tracking Online Education in the United States,” Babson Survey Research Group, January 2014, www.onlinelearningsurvey.com/reports/gradechange.pdf.
238. *Higher Education Act Amendments of 1998*, Public Law 105-244, 105th Cong., 2d sess. (July 18, 1997): Section 488, <https://www2.ed.gov/policy/highered/leg/hea98/sec488.html>.

239. U.S. Department of Education, Office of Postsecondary Education, *Third Report to Congress on the Distance Education Demonstration Program*, February 2005, <https://www2.ed.gov/programs/disted/DEDP-thirdreport.pdf>.
240. *Higher Education Reconciliation Act of 2005*, Public Law 109-171, Section 8002 (Modification of 50/50 Rule), (February 8, 2006), http://ocap.org/Partners/Legislation/Documents/HERA_Provisions.pdf.
241. Russ Poulin, “Should Online Courses Charge Less? It Just Doesn’t Happen,” WCET Frontiers, March 22, 2012, <http://wcetblog.wordpress.com/2012/03/22/should-online-courses-charge-less/>.
242. Western Governors University, “Tuition and Financial Aid,” www.wgu.edu/tuition_financial_aid/overview.
243. The Arizona State Global Freshman Academy is designed to allow students to earn an entire freshman year’s worth of credits through edX courses (after paying a credit transfer fee), see edX, “Global Freshman Academy,” www.edx.org/gfa; Udacity has developed “nanodegrees”—sequences of online courses and assessments informed by industry—that result in credentials that students can use to signal skills to employers, see Udacity, “Get Job Ready,” www.udacity.com/nanodegree.
244. Andrew P. Kelly and David Deschryver, *Beyond Bootcamps: Policy Considerations for Accelerated Learning*, Whiteboard Advisors, March 2015, https://ga-core.s3.amazonaws.com/cms/files/files/000/002/750/original/General_Assembly_Beyond_Bootcamps_Policy_Report.pdf.
245. Year Up, “About Us,” www.yearup.org/about-us/?location=national-us/.
246. Bridge Education Group, “Bridge.edu,” <http://bridge.edu/>.
247. Debbie Reed et al., *An Effective Assessment and Cost-Benefit Analysis of Registered Apprenticeship in 10 States*, Mathematica Policy Research, July 25, 2012, https://wdr.doleta.gov/research/FullText_Documents/ETAOP_2012_10.pdf. Estimate of the net social benefit of the Registered Apprenticeship program for an additional apprentice over the medium-term found in “Table V.7: Social Costs and Benefits: Medium-Term and Career Under Baseline Assumptions (Dollars).”
248. Mark Schneider, *Higher Education Pays: But a Lot More for Some Graduates than for Others*, American Institutes for Research, September 2013, www.air.org/sites/default/files/Higher_Education_Pays_Sep_13.pdf.
249. Section 481 of the *Higher Education Act* (20 U.S.C. § 1088) defines an academic year as requiring a minimum number of weeks of instructional time and defines minimum program length of an “eligible program” in terms of clock or credit hours over a minimum number of weeks. In 2009, the Department of Education issued new regulations based on this section that included a federal

Policy Reforms to Strengthen Higher Education

definition of the credit hour. Section 103 (20 U.S.C. § 1003) defines “distance education” as education that uses a specified technology “(i) to deliver instruction to students who are separated from the instructor; and (ii) to support regular and substantive interaction between the students and the instructor, synchronously or asynchronously.”

250. These new regulations include: setting a federal definition of the credit hour (traditionally left up to accreditors and institutions); regulating the ability of colleges to use incentive-based compensation with employers or contractors; and requiring that institutions offering distance learning programs obtain authorization in every state where they enroll students (as opposed to where they are located). The so-called State Authorization rule was vacated by a federal court, but the Obama administration has signaled a desire to revisit it in the waning months of the second term.
251. Regulators were responding to apparent abuses where aid-eligible institutions were awarding large amounts of credit for a short-term course. See 34 C.F.R. § 600.2, “Definitions,” www.law.cornell.edu/cfr/text/34/600.2.
252. Molly Corbett Broad, *Molly Corbett Broad to Virginia Foxx, July 17, 2013*, Letter, From American Council on Education, www.acenet.edu/news-room/Documents/Letter-HR2637-FoxxKlineHastings-071713.pdf.
253. See 34 C.F.R. § 668.10, “Direct Assessment Programs,” www.law.cornell.edu/cfr/text/34/668.10.
254. See 34 C.F.R. § 668.34, “Satisfactory Academic Progress,” www.law.cornell.edu/cfr/text/34/668.34: “(a) Satisfactory academic progress policy. An institution must establish a reasonable satisfactory academic progress policy for determining whether an otherwise eligible student is making satisfactory academic progress in his or her educational program and may receive assistance under the title IV, HEA programs. The Secretary considers the institution’s policy to be reasonable if – (5) (i) The policy specifies the pace at which a student must progress through his or her educational program to ensure that the student will complete the program within the maximum timeframe, as defined in paragraph (b) of this section, and provides for measurement of the student’s progress at each evaluation; and (ii) An institution calculates the pace at which the student is progressing by dividing the cumulative number of hours the student has successfully completed by the cumulative number of hours the student has attempted. In making this calculation, the institution is not required to include remedial courses.”
255. Geraldine Muir and Michael B. Goldstein, “Establishing Federal Financial Aid Eligibility for Competency-Based Education,” *Career Education Review*, February 2014, www.cooley.com/files/GoldsteinCER.pdf.

256. See 34 C.F.R. § 668.8, “Eligible Program,” www.law.cornell.edu/cfr/text/34/668.8.
257. Angela Hanks, *Making Pell Work: How America’s \$30 Billion Investment in Need-based College Aid Can Be More Job Driven*, National Skills Coalition, July 2015, www.nationalskillscoalition.org/resources/publications/file/2015-07-Making-Pell-Work-How-Americas-30-Billion-Investment-in-Need-Based-College-Aid-Can-Be-More-Job-Driven.pdf.
258. Kathy Booth and Peter Bahr, *The Missing Piece: Quantifying Non-Completion Pathways to Success*, WestEd and Learning Works, October 2013, www.learningworksca.org/wp-content/uploads/2013/10/MissingPiece_05.pdf.
259. Hanks, *Making Pell Work*.
260. For an example of an accreditor’s standards for accreditation, see New England Association of Schools and Colleges, *Becoming Accredited: A Guide for New England Institutions*, 2012, https://cihe.neasc.org/downloads/PUBLICATIONS/NE_Becoming_Accredited_NE_Candidacy_Guide-.pdf.
261. Sylvia Manning, *Launching New Institutions: Solving the Chicken-or-Egg Problem in American Higher Education*, American Enterprise Institute, October 2014, www.aei.org/publication/launching-new-institutions-solving-chicken-egg-problem-american-higher-education/.
262. *Ibid.*, 3.
263. Robert Shireman, “A Mindless Checklist Approach to Accreditation,” *The Century Foundation*, June 15, 2016, <https://tcf.org/content/commentary/mindless-checklist-approach-accreditation/>.
264. For evidence on the effectiveness of apprenticeships, see Reed et al., *An Effective Assessment and Cost-Benefit Analysis of Registered Apprenticeship in 10 States*. The authors thank Diane Auer Jones of the Urban Institute (and former assistant secretary for postsecondary education during the George W. Bush administration) for providing insights on how to promote apprenticeships via federal policy reforms.
265. Senate Task Force on Federal Regulation of Higher Education, *Recalibrating Regulation of Colleges and Universities*.
266. Molly Corbett Broad, *Molly Corbett Broad to John Kline, April 26, 2011*, Letter, From American Council on Education, www.naicu.edu/docLib/20110429_House-CredHrStateAuthLtr4-26-11.pdf.
267. *Protecting Academic Freedom in Higher Education Act*, H.R. 2117, 112th Cong., 1st sess. (June 3, 2011), www.congress.gov/bill/112th-congress/house-bill/2117.
268. See U.S. Department of Education, “Education Department Announces Final Rule on State Authorization of Postsecondary Distance Education, Foreign Locations,” (press release, December 16, 2016), www.ed.gov/news/press-releases/

Policy Reforms to Strengthen Higher Education

- education-department-announces-final-rule-state-authorization-postsecondary-distance-education-foreign-locations; 34 CFR § 600, “Institutional Eligibility Under the Higher Education Act of 1965,” www.law.cornell.edu/cfr/text/34/part-600.
269. *Career College Association v. Arne Duncan, U.S. Department of Education*, 0138 D.D.C. 28 (2011), https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2011cv0138-28.
270. See National Council for State Authorization Reciprocity Agreements, “About,” <http://nc-sara.org/about>.
271. National Council for State Authorization Reciprocity Agreements, “State Actions Regarding SARA,” <http://nc-sara.org/stateactions/state-actions-regarding-sara>; and correspondence with staff of NC-SARA, October 14, 2016.
272. U.S. Department of Education, “Education Department Announces Final Rule on State Authorization of Postsecondary Distance Education, Foreign Locations.”
273. SARA advocates provided this analogy in response to the new rule: “If it applied to drivers’ licenses, each state would need to establish testing centers at the state line to assure that every driver authorized to drive by another state could pass the local state’s examination.” See Paul E. Lingenfelter and Marshall A. Hill, “New Rules from the U.S. Department of Education (ED) Affecting State Authorization of Distance Education,” letter to U.S. Department of Education, December 20, 2016, www.nc-sara.org/files/docs/Response_EDRules_122016_final.pdf.
274. Carl Straumsheim, “Is Distance Ed Rule DOA?” *Inside Higher Ed*, December 21, 2016, www.insidehighered.com/news/2016/12/21/state-authorization-rule-long-works-faces-opposition-new-congress.
275. *Higher Education Amendments 1992*, Public Law 102-325, 102d Cong., 2d sess. (July 23, 1992): Section 487A(b), 20 U.S.C. 1094a(b), www.gpo.gov/fdsys/pkg/STATUTE-106/pdf/STATUTE-106-Pg448.pdf.
276. See 20 U.S.C. § 1094a(b) (2010), www.gpo.gov/fdsys/pkg/USCODE-2010-title20/html/USCODE-2010-title20-chap28-subchapIV-partF-sec1094.htm.
277. *Ibid.*: The secretary can waive “any requirements in this subchapter and part C of subchapter I of chapter 34 of title 42, including requirements related to the award process and disbursement of student financial aid (such as innovative delivery systems for modular or compressed courses, or other innovative systems), verification of student financial aid application data, entrance and exit interviews, or other management procedures or processes as determined in the negotiated rulemaking process under section 1098a of this title, or regulations prescribed under this subchapter and part C of subchapter I of chapter 34 of title 42.”

278. See *Educational Quality through Innovative Partnerships (EQUIP)*, Federal Register 80, no. 200 (October 16, 2015): 62525-62526, www.gpo.gov/fdsys/pkg/FR-2015-10-16/pdf/2015-26344.pdf.
279. U.S. Department of Labor, Employment and Training Administration, *The Federal Resources Playbook for Registered Apprenticeship*, www.doleta.gov/oa/federalresources/playbook.pdf.
280. See Institute for Education Sciences, “What Works Clearinghouse: Procedures and Standards Handbook (Version 2.1),” https://ies.ed.gov/ncee/wwc/pdf/reference_resources/wwc_procedures_v2_1_standards_handbook.pdf.
281. National Governors Association, *Workforce Innovation and Opportunity Act: An Overview*, July 10, 2014, www.wa.gov/esd/1stop/docs/wioa/Tab4_WIOA_Overview_and_Appendices_9-15-14.pdf.
282. Diane Auer Jones, personal communication, July 2016.
283. For example, see the *Advancing Competency-Based Education Demonstration Project Act of 2014*, H.R. 3136, 113th Cong., 1st sess. (September 19, 2013), http://edworkforce.house.gov/uploadedfiles/h.r._3630_-_ans_-_final.pdf.
284. This idea has been floated on the left and the right. In his run for the Republican presidential nomination, Senator Marco Rubio promised to recognize a new accreditor within 100 days. See Paul Fain, “Rubio Wants to Take on Higher Education Cartel,” *Inside Higher Education*, July 8, 2015, www.insidehighered.com/quicktakes/2015/07/08/rubio-wants-take-higher-education-cartel; Entrepreneur Steve Klinsky and David Bergeron of the Center for America Progress are working to create “Modern States,” a new accreditation agency for innovative offerings, and have argued that the Education Department should recognize it as an accreditor. See the Modern States Educational Alliance, “About,” <https://modernstates.org/about-us/who-we-are/>.
285. The National Skills Coalition has recommended allowing “demand-driven” non-credit programs to receive Pell Grants, but has not spelled out a mechanism to ensure that this criteria is met. See Hanks, *Making Pell Work*.
286. For more information, see www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/Waivers.html.
287. www.medicaid.gov/medicaid-chip-program-information/by-topics/waivers/115/section-115-demonstrations.html.
288. Neal and Rothkopf, *Alternative to the NACIQI Draft Final Report*.
289. *Higher Education Reform and Opportunity Act of 2015*, S.649, 114th Cong., 1st Sess. (March 4, 2015), www.congress.gov/bill/114th-congress/senate-bill/649/all-info.
290. Andrew P. Kelly, Kevin J. James, and Rooney Columbus, *Inputs, Outcomes, Quality*

Policy Reforms to Strengthen Higher Education

Assurance: A Closer Look at State Oversight of Higher Education, American Enterprise Institute, August 2015, www.aei.org/wp-content/uploads/2015/08/Inputs-Outcomes-Quality-Assurance.pdf; Rooney Columbus, *Report and Disclose: State Oversight of Institutional Performance in Higher Education*, American Enterprise Institute, November 2016, www.aei.org/wp-content/uploads/2016/10/Report-and-Disclose-State-Oversight-of-Institutional-Performance-in-Higher-Education.pdf.

291. For more on Pay for Success, see U.S. Government Accountability Office, *Pay for Success: Collaboration among Federal Agencies Would Be Helpful as Governments Explore New Financing Mechanisms*, September 2015, www.gao.gov/assets/680/672363.pdf.
292. Others have called for setting a uniform cost of attendance for the purposes of federal aid eligibility, which would have a similar effect to capping reimbursements. See Andrew Gillen, *Introducing Bennett Hypothesis 2.0*, Center for College Affordability and Productivity, February 2012, <http://files.eric.ed.gov/fulltext/ED536151.pdf>.
293. Higher Education Innovation Act, S.2111, 114th Congress, 1st session, (September 30, 2015), www.govtrack.us/congress/bills/114/s2111/text/is.

REGULATORY REFORMS FOR HIGHER EDUCATION

294. The views expressed here are those of the author and do not reflect those of his employer.
295. See Vanderbilt University, *The Cost of Federal Regulatory Compliance in Higher Education: A Multi-Institutional Study*, October 2015, <https://news.vanderbilt.edu/files/Regulatory-Compliance-Report-Final.pdf>.
296. See Carlo Salerno, “The Challenges of Information Collection Burden in Higher Education,” in Appendix IV of Senate Task Force on Federal Regulation of Higher Education, *Recalibrating Regulation of Colleges and Universities*, 2015, www.help.senate.gov/imo/media/Regulations_Task_Force_Report_2015_FINAL.pdf.
297. See Table 1 in U.S. Government Accountability Office, *Higher Education: Experts Cited a Range of Requirements as Burdensome*, Report to Congressional Requesters, April 2013, www.gao.gov/assets/660/653663.pdf.
298. Senate Task Force on Regulation of Higher Education, *Recalibrating Regulation of Colleges and Universities*.
299. *Ibid.*, 10.
300. See 34 CFR 668.14, “Program Participation Agreement,” www.law.cornell.edu/cfr/text/34/668.14.
301. U.S. Government Accountability Office, *Higher Education*.

Regulatory Reforms for Higher Education

*Andrew P. Kelly*²⁹⁴

COLLEGES AND UNIVERSITIES that receive Title IV aid operate under a web of rules and regulations. In light of the \$150 billion in grants, loans, and tax credits that the federal government hands out, some regulation of how institutions disburse that money, and the information they must publish about their product, is reasonable and inevitable. As with many areas of federal policy, however, both the density and reach of federal rules governing participating colleges and universities have grown tremendously since the birth of the programs in the 1960s and 1970s. Some of this growth has been productive; greater transparency around student outcomes and the implementation of basic fiduciary standards have helped to reduce fraud and abuse and target policy responses to poorly performing institutions.

But much of the growth reflects the fact that each reauthorization of the Higher Education Act layers new requirements on the higher-education system but rarely subtracts any existing requirements that may have outlived their usefulness (if they were ever useful to begin with). The Department of Education then writes rules to execute those new statutory requirements or, as is increasingly the case, initiates rulemaking that is not related to recently enacted legislation but is designed to promote the administration's priorities. Add in the sub-regulatory guidance that inevitably follows the regulatory process, and the end result is a system that imposes significant costs on colleges and universities, often with questionable benefits.

Hard and fast estimates of regulatory burden are hard to come by given the wide range of institutions and opaque institutional budgeting practices, but colleges who have conducted self-studies have found that they invest significant time and money in complying with federal

requirements.²⁹⁵ Many of those costs are then passed on to the consumer in the form of higher tuition. For its part, the department tends to underestimate the administrative burden associated with new regulations.²⁹⁶

And because agency officials can effectively make policy through new regulations and sub-regulatory guidance—and have considerable discretion in targeting institutions for regulatory action—the system is also plagued by uncertainty and overreach. When control of the executive branch changes, colleges are left to wonder whether sub-regulatory guidance issued by one administration is still in effect under a new one. All of this leads to risk aversion and a compliance mentality on the part of institutions, which increases the amount of time and money they spend to ensure that they are not running afoul of federal policy.

Efforts to cut through the thicket of federal regulation are not new; every few years another task force or commission publishes a study of federal requirements and proposes changes.²⁹⁷ But new requirements continue to accumulate, and the Department of Education continues to push policy goals through the regulatory process whether or not those goals reflect legislative intent. Needed is an effort to not only reduce and streamline existing rules and requirements, but to reform the processes by which such requirements become policy. With some exceptions, this paper focuses mainly on reforms to the regulatory process rather than the reform or repeal of specific regulations. For more on specific regulations that merit attention, see the report of the 2015 Senate Task Force on federal regulation of higher education.²⁹⁸

THE STATUS QUO IN REGULATION

In order to participate in federal student-aid programs, institutions must comply with thousands of pages of statute, regulation, and sub-regulatory guidance on everything from financial aid to file sharing to campus crime. As the Senate Task Force report pointed out:

The Department's 2013-14 Federal Student Aid Handbook, a guidebook for administering student aid that amplifies and clarifies the formal regulations, is more than 1,050 pages. The Department's Handbook for Campus Safety and Security Reporting (also known as the "Clery Handbook") contains approximately 300 pages, and will soon expand significantly in light of new regulations issued in 2014.²⁹⁹

Many of these requirements are embedded in statute, while others are the result of subsequent regulation. The Obama administration issued new rules governing federal loan programs, gainful employment, incentive compensation, state authorization, teacher-preparation programs, campus crime, credit hours, and other topics. Department officials also put out hundreds of “Dear Colleague” letters, some of which have often imposed on colleges new requirements that are not rooted in statute or existing regulation.

Given the amount of taxpayer money at stake, it is not surprising—indeed it’s reasonable—that the feds impose some rules on how aid is awarded and disbursed. To be eligible to receive federal grant and loan dollars, institutions must be certified as eligible by Department of Education and must sign onto a Program Participation Agreement (PPA) with the Office of Federal Student Aid (FSA), under which the institution pledges that it will abide by all laws, rules, and requirements related to the administration of aid programs and will act as the fiduciary responsible for administering aid funds. Eligibility depends on accreditation, state authorization, and suitable performance on cohort default rate measures. Certification and recertification also require that institutions fulfill administrative-capability and financial-responsibility requirements.³⁰⁰

Once certified, the rules governing aid disbursement are especially burdensome.³⁰¹ Studies of federal regulation have highlighted verification of FAFSA and a requirement called Return to Title IV as especially complicated.

The FAFSA verification process begins each year with FSA selecting a number of students for verification of the information they provided on their FAFSA.³⁰² Institutions are required to conduct this verification, which entails working with individual families to provide necessary documentation within a particular time frame. The items that an institution may be asked to verify are published in the *Federal Register* each year (for 2017-18, the list includes 12 items).³⁰³ The verification process is burdensome and costly for institutions; a study of 13 community colleges found that these schools together spent around \$2 million on verification efforts during the 2007-2008 school year.³⁰⁴

Under Return to Title IV (known as “R2T4”), institutions must return a portion of the Title IV money awarded to a student who withdraws before completing 60% of the semester.³⁰⁵ Institutions must pro-rate the amount returned by the amount of aid money that the

student “earned,” which is proportional to the amount of the semester the student actually attended. Of course, if a student drops out but does not formally withdraw, and if the institution does not take attendance, school officials must do their best to calculate the amount to be returned. Schools also have to complete the calculations even if it is known at the outset that no refund will be due to the government. The resulting regulations are quite complex, clocking in at over 6,500 words.³⁰⁶ Institutional representatives that took part in Government Accountability Office (GAO) focus groups said that the complexity of R2T4 regulations made it difficult to return the money on required timelines and that the complexity increased the risk of audit findings.³⁰⁷

In addition to the detailed rules that govern the disbursement of student aid, the Higher Education Act also requires colleges to collect and report data on dozens of different areas. Some of that data must be reported to the federal government, while other pieces of information must be disclosed to current students, current employees, prospective students, and/or the public at large. The latest reauthorization of the Higher Education Act (in 2008) contained 40 separate disclosures (nine of which had to be disclosed only to loan borrowers).³⁰⁸ Since then, new “gainful employment” regulations from the Department of Education require institutions to disclose more than 30 pieces of information for each eligible program.³⁰⁹

Some of these required disclosures are excessively burdensome, and of dubious value, to consumers or policymakers. When the GAO asked experts and higher-education representatives about the most burdensome federal regulations, the most frequently cited consumer disclosures were the Clery Act campus-security and crime-statistics disclosure requirements.³¹⁰ The crimes that institutions are required to report do not match the definitions used by other government agencies, which causes confusion. In some cases, institutions must solicit crime statistics from other cities and foreign governments to adequately cover facilities that the institution leases to house students.³¹¹

Colleges are also obligated to report “placement of, and types of employment obtained by, graduates,” as well as the “types of graduate and professional education in which graduates of the institution’s four-year degree programs enroll.”³¹² Because the federal government does not collect such data systematically, and because there is no agreed-upon definition of job placement, the methods campuses use to provide such

information range from alumni surveys to administrative data supplied by a state agency.³¹³ Therefore, students cannot use the disclosed data to compare colleges.³¹⁴

The Department of Education issues both formal regulations and sub-regulatory guidance. In issuing new regulations, the department is required to use “negotiated rulemaking,” a process designed to allow stakeholders from different areas of higher education to come together and develop a proposed rule. The department typically announces that it is going to have a negotiated rulemaking, hosts a series of hearings to solicit opinions on the issue, and posts a notice in the *Federal Register* calling for nominations for committee members. The department then selects negotiators from those nominations, and the “neg-reg” committees can be quite large. The negotiated-rulemaking committee must come to a unanimous consensus across all of the issues under consideration in order to compel the department to adopt the committee’s proposed rule; in the absence of unanimity, the department writes its own proposed rule. That proposed rule then goes through the standard notice and comment process.³¹⁵

Outside of traditional rulemaking, department officials regularly release sub-regulatory guidance — so-called “Dear Colleague” letters — to clarify, and in some cases re-interpret, existing regulations. Unlike with formal rulemaking, stakeholders do not have an opportunity to comment on guidance documents before they are released. Though letters do not technically have the force of law, institutions that depend on federal aid programs feel forced to comply for fear of department sanctions.

To enforce its regulations, the department has a few monitoring mechanisms at its disposal (see the Accountability section for more details on accountability measures and corresponding sanctions). Each institution is subjected to an annual audit by a third-party auditor that assesses the institution’s financial statements and compliance with Title IV rules. The department can choose to target institutions for sanctions or corrective action on the basis of those audit results.

The secretary also has the power to conduct “program reviews” designed to assess an institutions’ ability to administer federal student-aid programs with fidelity. The statute lists a number of ways an institution can trigger a program review, but FSA has considerable discretion in choosing which institutions to review.³¹⁶ FSA conducts the program review and allows the institution a chance to respond and correct errors,

after which the department can issue a provisional certification, take “corrective action,” or impose sanctions. The institution must work to fix any problems identified in a program review.

The department has a number of enforcement mechanisms to use when institutions break federal rules, fail to abide by their PPA, or misrepresent their offerings. The department can levy fines of up to \$35,000 for each violation.³¹⁷ It can also limit its access to Title IV funds or suspend the institution for a set period of time. Eventually, it can revoke an institution’s eligibility entirely, after which the institution cannot reapply for Title IV for 18 months.³¹⁸

ROOM FOR IMPROVEMENT

The problem of regulatory burden is not only that some regulations are particularly burdensome, but that the incessant layering of new regulations on top of existing ones adds up over time. The findings of a 2013 GAO study “indicate that the burden reported by school officials and experts not only stems from a single or a few requirements, but also from the accumulation of many requirements.”³¹⁹ These requirements are rarely revisited. The accumulation of rules is not just a Department of Education problem; Congress also bears some responsibility. The disclosures are a case in point; the number of required disclosures grew significantly with the 2008 reauthorization, but it is not clear that Congress evaluated the value of the new disclosures or the utility of the disclosures already on the books.

In addition, colleges are required to do a number of things unrelated to education, finance, or campus safety. Students must be registered with Selective Service to receive Title IV aid; if their status is unclear, it falls on the institution to verify that registration. Schools must also provide students with voter-registration forms within a specified time frame, must report on foreign gifts, must educate students about peer-to-peer file sharing, and must ensure that they have an alcohol- and drug-abuse program in place.³²⁰ These requirements have little to do with education or safety, but colleges must comply or risk losing access to Title IV.

This disparate list of responsibilities reflects, in part, the fact that there are few incentives for agencies to review existing rules. A 2011 executive order tried to create one, calling on federal agencies to conduct retrospective reviews of their regulations.³²¹ The Department of Education’s final review plan described its goal of identifying regulations “that may be

outmoded, ineffective, insufficient, or excessively burdensome, as well as regulations that can be modified, streamlined, expanded, or repealed to be more effective and efficient, achieve better outcomes for students, and be easy to understand.”³²² Unfortunately, the department’s final review plan for higher education focused mostly on “expanded” regulations, touting a handful of *new* rules (gainful employment, state authorization, and incentive compensation) as evidence of their retrospective efforts. The plan also included changes to FAFSA filing and verification that did streamline processes and reduce burden. But the net effect of the changes cited in the review was an increase in regulation.

Furthermore, many of the last administration’s regulatory efforts in higher education failed to reach a consensus during the negotiated-rule-making phase. Administrative law expert Jeffrey Lubbers cites a number of reasons that neg-reg processes often fail to reach consensus.³²³ First, the Department of Education has tended to bundle several issues together even if they are not related to one another. In 2010, one neg-reg committee was asked to consider 14 different issues in the third round of negotiations under the broad umbrella of “Program Integrity.”³²⁴ This bundling makes it difficult to choose a panel that is expert across all issues and makes it difficult to come to a unanimous conclusion.

Second, the department has tended to “stack the deck” with negotiators who fall on one side of the particular policy debate (the side that political appointees at the department sympathize with). In the 2016 borrower defense-to-repayment neg-reg, 10 primary and alternate panel members represented various consumer interests (from student groups, lawyers that represent students, state attorneys general, military student groups, and consumer advocates), while two primary and alternate negotiators represented for-profit colleges.³²⁵ Stacking the deck makes consensus harder to come by.³²⁶

Third, the department has tended to rely on practitioners like financial-aid directors who have specific expertise that may not translate to other issues under consideration. One former department official argued that having representation from business officers, academic officers, risk officers, and legal counsel would enhance the rulemaking process.³²⁷

Though the process has its flaws, rulemaking at least provides opportunity for public input. “Sub-regulatory guidance,” which regulators are supposed to use to clarify the meaning of existing regulations, is often used to make policy despite lacking the public input required under the

Administrative Procedures Act (APA). When complex regulations take effect, institutions often have questions about how to implement them in a way that complies with the law. Sub-regulatory guidance is one tool that regulators can use to make such clarifications (they can also post a “clarification and additional information” in the *Federal Register*).

But so-called “Dear Colleague” letters often go beyond clarifying existing regulation to actively making policy. And because they are not subject to the public-notice and comment requirements of the APA, Dear Colleague letters are issued directly from department officials and essentially have the force of law. Stakeholders do not have any say before the change takes effect, and they are difficult to challenge in court.³²⁸ This grants considerable power to unelected bureaucrats. In addition, the repeated use of Dear Colleague letters creates significant uncertainty. Institutions are left to wonder when political appointees will change the rules again. The volume of Dear Colleague letters has increased over time; as the American Council on Education has noted, “In 2012 alone, through electronic announcements and Dear Colleague letters, the Department issued no less than 270 regulatory updates or modifications—more than one change per work day.”³²⁹

The Department of Education’s certification and program-review processes also lack transparency. The department has considerable discretion over a number of its monitoring and enforcement mechanisms, and agency decision-making is not sufficiently transparent. It has the freedom to grant some institutions a “provisional certification” to participate in federal aid programs; such a certification lasts for up to three years and imposes other restrictions on institutions. Provisional certification is always granted when a school is applying for the first time, is reapplying after its certification has lapsed, or is undergoing a change in ownership. But the department may impose a provisional certification at its discretion for a number of reasons, including if the institution has an open program review, the timing of which is controlled by the department itself.³³⁰

It has a similar level of discretion in launching program reviews. While the statute lists the types of institutions that the department should prioritize in conducting its program reviews, there is no set of transparent triggers that prompts a program review, and the department’s decision-making is not transparent. As one group of observers wrote in 2015, “[the Department of Education] currently does not publish how it selects the

institutions to undergo program reviews.”³³¹ As such, institutions are left to wonder whether they will be one of the hundreds of program reviews conducted each year. The lack of a transparent, risk-based process creates uncertainty and may allow regulators to target particular types of institutions to promote their political agenda.

In short, the density of federal rules and requirements placed on colleges and universities increases year in and year out, and the processes by which it does so are less transparent and accountable than they should be. The following reform ideas focus on changing specific regulations and making changes, where possible, to the regulatory process.

SUGGESTIONS FOR REFORM

A first set of reforms a new administration might consider would make sensible changes to the existing rules. Many of these ideas are drawn from the report of the Senate-appointed Task Force on Federal Regulation of Higher Education. See their report, *Recalibrating Regulation of Colleges and Universities*, for more detail.

First, Congress should eliminate requirements that have crept into the Higher Education Act that really have nothing to do with education, financial responsibility, or student safety. Those requirements include Selective Service, peer-to-peer file sharing, voter registration, foreign gifts, and drug- and alcohol-abuse programs.

Next, Congress should require that any proposed reporting requirement or consumer disclosure be subjected to an independent review by the National Center for Education Statistics (NCES). A parallel effort should study existing disclosures and reporting requirements to identify those that are not currently used so that they can be improved upon or eliminated. In general, Congress should limit the number of disclosures it adds to the law and focus instead on ensuring that institutions report on a much smaller number of important items related to education, financial responsibility, and student safety.

Further, the Department of Education is the only cabinet agency that is legally required to engage in negotiated rulemaking. Unfortunately, that requirement does not seem to have played out as planned, with the bundling of topics and one-sided committee recruitment leading to deadlocked decision-making. The failure to effectively use neg-reg to build a consensual proposed rule wastes time and effort. Rulemaking expert Lubbers recommends two reforms: first, Congress should relax

the requirement that the department use negotiated rulemaking in almost all circumstances. Second, Congress should direct the department to disaggregate issues by topic when engaged in rulemaking. If negotiators were allowed to vote topic by topic, negotiators would reach consensus far more often, producing regulations with adequate buy-in from regulated entities.³³²

FURTHER STEPS

Bolder reformers who want to push further should consider two steps. First, the borrower defense-to-repayment rule (BDTR), published in the last months of the Obama administration, needs revision to limit the risk to taxpayers. Second, Congress should establish more transparent criteria for launching program reviews.

The Department of Education's BDTR regulation is an attempt to provide a process for borrowers to discharge their loans based on misconduct by their former colleges and to provide certain financial protections for the taxpayer to shield it from losses stemming from discharged loans.³³³ This rule, which is based on a brief provision in statute, is an attempt to apply the Federal Trade Commission's Holder Rule to direct loans.³³⁴ The little-used provision came to the fore after federal sanctions precipitated the sudden closure of Corinthian Colleges in 2015.

Former Department of Education deputy general counsel Dennis Cariello sums up the problems with the final rule as follows:

The established process for borrower defense suffers from two main flaws. First, the department's use of its "substantial misrepresentation" regulation would make colleges liable for inaccuracies provided to students that students "reasonably rely on," even if provided by accident.³³⁵ Second, the proposed "group process" creates a class-action procedure without any of the procedural trappings of more typical class actions (like Rule 23 in the federal court system).³³⁶ Indeed, the secretary can include everyone that went to a college—without regard to how long ago—within a group if the secretary believes common facts would make up the borrowers' cases. Worse, the borrowers would not even have to fill out forms letting the department know they want to proceed with the matter, and they wouldn't have to assemble the facts of their cases.

The result of all this will be that plaintiff's lawyers and "debt counselors" will find "group representatives" and file suits in court against schools on behalf of large groups based on dubious "misrepresentations" (such as problems in misreporting of annual crime statistics or slight deviations in job-placement reporting), while maintaining a group process with the Department of Education. The department will then do the work of certifying the group and making the determination on the alleged misrepresentation, and, when complete, the lawyer will take the decision to the court and settle the action in order to get a fee.³³⁷

The likely result: a deluge of lawsuits against colleges that subject taxpayers to great risk. And because the rule taps Department of Education officials to adjudicate borrower defense claims, there will be significant pressure to make decisions that reflect the preferences of political leadership.³³⁸

Cariello suggests three changes. First, the department should recognize borrower defenses that require the institution to have affirmatively done something for which it is culpable. Requiring some intent — whether intentional behavior or recklessness — will ensure institutions do not face closure over honest mistakes or training failures. Second, the department should not have a group process; at most, it should have a group process only to determine facts that are common across the group. Once determined, however, individuals attempting to assert a defense to repayment must file a separate form requesting relief and stating the nature of their defense to repayment. Third, borrowers should be questioned in a proceeding before an administrative-law judge who is not an employee of the Department of Education and, as such, would not be subject to pressures within the department — or political pressures from Congress and activists.³³⁹

The BDTR regulation arose, in part, because the department's existing processes for detecting problems are inadequate. In the next reauthorization of the Higher Education Act, Congress could specify in more detail the conditions that trigger a program review from the Department of Education. The triggers should be based on objective measures: loan defaults, fluctuations in loan or grant volume, persistently low graduation rates, complaints and corrective action by state regulatory agencies, and accreditation sanctions. The colleges that entail

the most risk to taxpayers should receive the closest scrutiny from regulators. Making the triggers more transparent and predictable would help institutions avoid review and would prevent the department from using program-review power inappropriately.

For its part, the department should also be obligated to make public its reasoning in launching a program review so that policymakers and other institutions can see the kinds of scenarios that trigger a review.

REGULATORY OVERHAUL

A new administration will be in a rare position to truly reform the regulatory system that guides higher education if it so chooses (see the sections on Accountability and Innovation for more on regulatory reform). Three opportunities stand out: taking steps to rein in the use of sub-regulatory guidance, launching a true retrospective review of existing regulations, and revising the bankruptcy provision in the Higher Education Act.

As a starting place, Congress and the executive branch should rein in the use of sub-regulatory guidance to change policy. An incoming secretary of education should create an advisory board to determine whether any sub-regulatory guidance constitutes a substantive change to existing law or regulation and, if so, would submit such guidance through the Administrative Procedure Act's notice and comment process. Said policy should reflect the GAO's 2012 decision that what constitutes a "rule" under the Congressional Review Act "is expansive and specifically includes documents that implement or interpret law or policy."³⁴⁰ Sub-regulatory guidance that fits this description should be open to public comment before publication. In fact, if the department receives a certain level of public comment about a given piece of guidance, such comments should serve as evidence of the substantive nature of the change. This sort of comment process could be part of a review process that evaluates proposed sub-regulatory letters according to this standard.

Congress should also assert its prerogatives here. Lawmakers could formally adopt the GAO's definition of "rule" and require that the department submit sub-regulatory guidance under the CRA and clarify that the APA applies to such guidance. Congress could also require the Department of Education to use the notice and comment process on guidance that fits the definition, and consider issuing a "Sense of Congress" resolution when it feels the department has changed policy

without providing the public with an opportunity to comment on the proposed change.³⁴¹

Reining in the use of sub-regulatory guidance would help to slow the accumulation of new rules. But a true retrospective review of existing regulations, and ensuring that any new regulations include an explicit plan for retrospective review, is necessary to find the appropriate scope and scale for higher-ed regulation. The Senate Task Force has called on Congress to evaluate the Department of Education's compliance with Executive Order 1356, a worthwhile step. Higher-education reformers should also support proposals for government-wide regulatory review, like the bipartisan Regulatory Improvement Act introduced by Senators Roy Blunt (R-MO) and Angus King (I-ME) in 2015, which would create a blue-ribbon commission to evaluate existing regulations and make recommendations to Congress.³⁴²

In the absence of congressional action, though, the department should embrace the spirit of the Regulatory Improvement Act by appointing a series of special commissions to review existing regulations in specific subject areas—financial aid, quality assurance, consumer information and disclosures, and others. Each commission should include a bipartisan roster of subject-matter experts, administrative-law experts, and those with experience in regulatory cost-benefit analysis. These commissions could then recommend the repeal, replacement, or reform of specific regulations to Congress, preferably prior to the reauthorization of the Higher Education Act.

The secretary should also insist that any new regulations include explicit plans for review in the future. The Regulatory Studies Center at George Washington University has identified five criteria that new regulations should include to facilitate retrospective review once the regulation has been implemented: a clear statement of the regulation's expected outcomes, metrics to measure those outcomes, a plan to link those outcomes to the regulation, a commitment to collecting data necessary to assess those outcomes, and a timeframe for measuring those outcomes.³⁴³ The center's analysis of 22 new significant regulations promulgated in 2014 found that none of them included more than three of the prerequisites (including two from the Department of Education). Going forward, the secretary should require that any new significant regulation include a plan for retrospective evaluation—including stated outcomes, metrics, and necessary data collection. The

Smarter Regs Act, introduced in 2015 by Senators Heitkamp (D-ND) and Lankford (R-OK), provides one possible model.³⁴⁴

Reformers should also consider revising the bankruptcy provision in the Higher Education Act. The 1992 reauthorization of the Higher Education Act revised the definition of “institution of higher education” to exclude any institution that has filed for bankruptcy or experienced involuntary bankruptcy.³⁴⁵ As such, if an institution of higher education that relies on federal aid were to restructure through bankruptcy, it would immediately and permanently lose its eligibility for Title IV aid, which would essentially put that institution out of business.³⁴⁶

While there were good reasons for this provision to be enacted as part of the Higher Education Act in 1992, the rule has the effect of making debt restructuring in higher education exceedingly difficult. Observers have noted that the sanction — permanent loss of eligibility — puts bankruptcy on par with being convicted of fraud involving Title IV funds, which also carries a permanent ban.³⁴⁷ For context, institutions who lose aid eligibility due to poor performance — high default rates or loss of state authorization — can re-apply for eligibility. The threat of a permanent ban after bankruptcy leaves institutions mired in debt with few options whether they provide a quality education or not.

It is also unclear what the bankruptcy prohibition in HEA accomplishes beyond what is already in the law. In 1990, Congress updated the Bankruptcy Code to create special exceptions for institutions of higher education. In particular, Congress revised the code so that the “automatic stay” that kicks in when an organization declares bankruptcy does not apply to sanctions from the Department of Education, accreditors, or state authorizers. In other words, by law a bankruptcy proceeding could not stay an action by the department; federal regulators could revoke Title IV eligibility whenever they wished, whether the institution was in bankruptcy or not. As law professor Scott Norberg has argued, “the provision barring eligibility of an institution that files for bankruptcy adds very little to the Code exemption, while altogether precluding a college or university from using bankruptcy to address other debt problems.”³⁴⁸ Perversely, Norberg notes, having to manage those other “debt problems” in the absence of bankruptcy protection may lead institutions to take steps that would compromise educational quality as they work to pay off mounting debts. If that institution winds up closing suddenly, students are eligible for loan forgiveness, leaving taxpayers holding the tab.

An increasing number of colleges are in financial trouble, creating potential for significant disruption and taxpayer liabilities in the future.³⁴⁹ Bankruptcy protection would give institutions that have maintained program quality but took on too much debt a path forward, albeit a path under the watchful eye of a bankruptcy court and the Department of Education. The department (and accreditors and state governments) would reserve the right to step in at any time to protect taxpayer interests. And a revised bankruptcy provision could ensure that debts owed the Department of Education remain on the books even if an institution declares bankruptcy.

Congress should therefore consider revising the bankruptcy provision. Former Department of Education counsel Cariello has argued that such a revision be informed by key safeguards.³⁵⁰ First, institutions that declare bankruptcy must be required to honor any debts owed to the Department of Education. Second, institutional leadership (or ownership in the for-profit context) at these colleges must change as part of the restructuring process. Lastly, students must be able to complete their educations without “delay, or significant hardship,” due to a bankruptcy proceeding. In other words, institutions must meet their obligation to serve current students through graduation.

Without an option to restructure through bankruptcy, financially struggling institutions will work to stay afloat until they are forced to close suddenly, disrupting students’ lives and leaving taxpayers on the hook for loan forgiveness. Revising the permanent ban while keeping important taxpayer protections in place will reduce the likelihood of such problems in the future.

Policy Reforms to Strengthen Higher Education

Assurance: A Closer Look at State Oversight of Higher Education, American Enterprise Institute, August 2015, www.aei.org/wp-content/uploads/2015/08/Inputs-Outcomes-Quality-Assurance.pdf; Rooney Columbus, *Report and Disclose: State Oversight of Institutional Performance in Higher Education*, American Enterprise Institute, November 2016, www.aei.org/wp-content/uploads/2016/10/Report-and-Disclose-State-Oversight-of-Institutional-Performance-in-Higher-Education.pdf.

291. For more on Pay for Success, see U.S. Government Accountability Office, *Pay for Success: Collaboration among Federal Agencies Would Be Helpful as Governments Explore New Financing Mechanisms*, September 2015, www.gao.gov/assets/680/672363.pdf.
292. Others have called for setting a uniform cost of attendance for the purposes of federal aid eligibility, which would have a similar effect to capping reimbursements. See Andrew Gillen, *Introducing Bennett Hypothesis 2.0*, Center for College Affordability and Productivity, February 2012, <http://files.eric.ed.gov/fulltext/ED536151.pdf>.
293. Higher Education Innovation Act, S.2111, 114th Congress, 1st session, (September 30, 2015), www.govtrack.us/congress/bills/114/s2111/text/is.

REGULATORY REFORMS FOR HIGHER EDUCATION

294. The views expressed here are those of the author and do not reflect those of his employer.
295. See Vanderbilt University, *The Cost of Federal Regulatory Compliance in Higher Education: A Multi-Institutional Study*, October 2015, <https://news.vanderbilt.edu/files/Regulatory-Compliance-Report-Final.pdf>.
296. See Carlo Salerno, “The Challenges of Information Collection Burden in Higher Education,” in Appendix IV of Senate Task Force on Federal Regulation of Higher Education, *Recalibrating Regulation of Colleges and Universities*, 2015, www.help.senate.gov/imo/media/Regulations_Task_Force_Report_2015_FINAL.pdf.
297. See Table 1 in U.S. Government Accountability Office, *Higher Education: Experts Cited a Range of Requirements as Burdensome*, Report to Congressional Requesters, April 2013, www.gao.gov/assets/660/653663.pdf.
298. Senate Task Force on Regulation of Higher Education, *Recalibrating Regulation of Colleges and Universities*.
299. *Ibid.*, 10.
300. See 34 CFR 668.14, “Program Participation Agreement,” www.law.cornell.edu/cfr/text/34/668.14.
301. U.S. Government Accountability Office, *Higher Education*.

302. See 34 CFR 668, Subpart E, www.law.cornell.edu/cfr/text/34/part-668/subpart-E.
303. U.S. Department of Education, 2017-2018 *Federal Student Aid Handbook: Application and Verification Guide*, <https://ifap.ed.gov/fsahandbook/attachments/1718AVG.pdf>.
304. The Institute for College Access and Success, “Green Lights & Red Tape: Improving Access to Financial Aid at California’s Community Colleges,” December 2007, http://ticas.org/sites/default/files/pub_files/Green_Lights_Red_Tape.pdf; Recent improvements to the Data Retrieval Tool (DRT), which allows families to import data to their FAFSA directly from the IRS, have streamlined the process somewhat, and moving toward a model that eliminates the FAFSA and relies on the IRS directly would reduce this burden dramatically. See reforms discussed in the chapter on need-based financial aid. Also, see U.S. Department of Education, “Simple Steps to Transfer Tax Information Into Your FAFSA,” <https://studentaid.ed.gov/sa/resources/irs-drt-text>. DRT has recently experienced issues around privacy and fraud, and is temporarily offline.
305. See 20 U.S.C. § 1091b, “Student Eligibility,” www.law.cornell.edu/uscode/text/20/1091; and 34 CFR 668.22, “Treatment of Title IV Funds When a Student Withdraws,” www.law.cornell.edu/cfr/text/34/668.22.
306. 34 CFR 668.22.
307. U.S. Government Accountability Office, *Higher Education*.
308. See U.S. Department of Education, National Center for Education Statistics, National Postsecondary Education Cooperative, *Information Required to Be Disclosed under the Higher Education Act of 1965: Suggestions for Dissemination*.
309. Senate Task Force on Federal Regulation of Higher Education, *Recalibrating Regulation of Colleges and Universities*.
310. U.S. Government Accountability Office, *Higher Education*.
311. 34 CFR § 668.46 defines “noncampus building or property” as “any building or property owned or controlled by an institution that is used in direct support of, or in relation to, the institution’s educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution.” See 34 CFR § 668.46, “Institutional Security Policies and Crime Statistics,” www.law.cornell.edu/cfr/text/34/668.46.
312. See 34 CFR 668.41(d)(5) and 34 CFR 668.41(d)(6), “Reporting and Disclosure of Information,” www.law.cornell.edu/cfr/text/34/668.41.
313. RTI International, “Technical Review Panel No. 34 Calculating Job Placement Rates — Final Actions,” https://edsurveys.rti.org/IPEDS_TRP_DOCS/prod/documents/TRP34_Final_Action.pdf.
314. Kevin Carey and Andrew P. Kelly, *The Truth Behind Higher Education Disclosure*

Policy Reforms to Strengthen Higher Education

- Laws*, Education Sector, November 2011, http://educationpolicy.air.org/sites/default/files/publications/HigherEdDisclosure_RELEASE.pdf.
315. U.S. Department of Education, “The Negotiated Rulemaking Process for Title IV Regulations – Frequently Asked Questions,” <https://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html>.
316. After listing specific triggers (high cohort default rates, significant fluctuations in loan and grant volume, high drop-out rates, or reported deficiencies from state agencies or accreditors), 20 USC 1099c-1 adds “such other institutions that the Secretary determines may pose a significant risk of failure to comply with the administrative capability or financial responsibility provisions of this subchapter...” See 20 USC 1099c-1, “Program Review and Data,” www.law.cornell.edu/uscode/text/20/1099c-1.
317. 34 CFR 36.2 raises the civil penalty for violations of 20 USC 1082 & 20 USC 1094 to \$35,000 from the previous amount of \$27,500. See 34 CFR 36.2, “Penalty Adjustment,” www.law.cornell.edu/cfr/text/34/36.2.
318. Alexandra Hegji, *Institutional Eligibility for Participation in Title IV Student Aid Programs*, Congressional Research Service, January 15, 2015, https://digital.library.unt.edu/ark:/67531/metadc812888/m2/1/high_res_d/R43159_2015Jan15.pdf; See also 34 CFR 668.96(b)(1), “Reinstatement After Termination,” www.law.cornell.edu/cfr/text/34/668.96.
319. U.S. Government Accountability Office, *Higher Education*.
320. For a full description of required disclosures under the Higher Education Act, see National Center for Education Statistics, National Postsecondary Education Cooperative, *Information Required to Be Disclosed Under the Higher Education Act of 1965: Suggestions for Dissemination*.
321. Barack Obama, *Improving Regulation and Regulatory Review*, Executive Order 13563, January 18, 2011, www.whitehouse.gov/the-press-office/2011/01/18/executive-order-13563-improving-regulation-and-regulatory-review.
322. U.S. Department of Education, *Plan for Retrospective Analysis of Existing Regulations*, August 22, 2011, <https://ed.gov/policy/gen/reg/retrospective-analysis/plan.pdf>.
323. For a detailed diagnosis of the problems in the Department of Education’s use of negotiated rulemaking, as well as potential solutions, see Jeffrey Lubbers, *Enhancing the Use of Negotiated Rulemaking by the U.S. Department of Education*, Social Science Research Network, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2764954.
324. U.S. Department of Education, “Negotiated Rulemaking for Higher Education 2009-10 – Team I—Program Integrity Issues,” <https://www2.ed.gov/policy/>

- highered/reg/hearulemaking/2009/integrity.html.
325. U.S. Department of Education, “Borrower Defenses Negotiated Rulemaking Committee 2016,” February 10, 2016, <https://ed.gov/policy/highered/reg/hearulemaking/2016/borrower-defenses-negotiators-2016.pdf>.
326. Lubbers, “Enhancing the Use of Negotiated Rulemaking.”
327. Dennis Cariello, email communication, July 2017.
328. Walter Olson, “Rule by ‘Dear Colleague’ Letter: The Department of Education’s Stealth Regulation,” *Cato At Liberty*, April 10, 2015, www.cato.org/blog/rule-dear-colleague-letter-time-end-stealth-regulation-department-education.
329. Molly Corbett Broad, *Letter from Molly Corbett Broad to John Kline, George Miller, Virginia Foxx, and Ruben Hinojosa*, American Council on Education, August 2, 2013, www.acenet.edu/news-room/Documents/HEA-Reauthorization-Recs-080213.pdf.
330. U.S. Department of Education, “Chapter 2: Applying for Participation in the FSA Programs,” 2015-2016 *Federal Student Aid Handbook, Volume 2: School Eligibility and Operations*, <https://ifap.ed.gov/sfahandbooks/attachments/Vol2Ch20809.pdf>.
331. Arthur L. Coleman, et al., *Getting Our House in Order*, Education Counsel, March 2015, www.luminafoundation.org/files/resources/getting-our-house-in-order.pdf.
332. Jeffrey Lubbers identifies three conditions under which the Secretary should be free to recommend notice and comment rulemaking: when the department proposes and amendment that does not increase regulatory burden, when delay would require expenditure of public funds, and when there is a short statutory timeline. See Lubbers, *Enhancing the Use of Negotiated Rulemaking*, 22.
333. See 34 CFR § 685.206, “Borrower Responsibilities and Defenses,” www.law.cornell.edu/cfr/text/34/685.206.
334. See 16 CFR § 433.2, “Preservation of Consumers’ Claims and Defenses, Unfair or Deceptive Acts or Practices,” www.law.cornell.edu/cfr/text/16/433.2; and Eric B Epstein and Jessica D. Mikhailevich, “The Student Borrower Defense Rule – And A Misconception,” Dorsey & Whitney LLP, July 13, 2015, www.law360.com/articles/678655/the-student-borrower-defense-rule-and-a-misconception.
335. 34 CFR 685.222(d), “Borrower Provisions,” www.gpo.gov/fdsys/pkg/FR-2016-11-01/pdf/2016-25448.pdf#page=158; John R. Przyppyszny and Jonathan D. Tarnow, *U.S. Department of Education Issues Final Rule on Borrower Defense to Repayment*, DrinkerBiddle, November 7, 2016, www.drinkerbiddle.com/insights/publications/2016/11/us-department-of-education-issues-final-rule; and Paul Fain, “Nonprofits Are Valuable, Too,” *Inside Higher Ed*, July 11, 2016, www.insidehighered.com/news/2016/07/11/proposed-federal-rules-student-debt-for-giveness-worry-some-nonprofit-colleges.

Policy Reforms to Strengthen Higher Education

336. 34 CFR 685.222(g) and (h); Rule 23, “Class Actions,” www.law.cornell.edu/rules/frcp/rule_23.
337. Dennis Cariello, email communication, July 2017. See also Przepyszny and Tarnow, *U.S. Department of Education Issues Final Rule on Borrower Defense to Repayment*.
338. Cooley LLP, “All Institutions Face New Risks under ED’s Final Borrower Defense Rule,” November 10, 2016, www.cooley.com/news/insight/2016/2016-11-10-all-institutions-face-new-risks-under-ed-final-borrower-defense-rule.
339. Dennis Cariello, email communication, July 2017.
340. Lynn H. Gibson, *Letter from Lynn H. Gibson to Orrin Hatch and Dave Camp*, U.S. Government Accountability Office, September 4, 2012, <http://gao.gov/assets/650/647778.pdf>.
341. For more information on “Sense of Congress” resolutions, see Christopher M. Davis, “*Sense of*” *Resolutions and Provisions*, Congressional Research Service, May 16, 2016, <https://fas.org/sgp/crs/misc/98-825.pdf>.
342. *Regulatory Improvement Act of 2015*, S. 708, 114th Congress, March 11, 2015, www.congress.gov/bill/114th-congress/senate-bill/708.
343. Sofie E. Miller, “Learning From Experience: Retrospective Review of Regulations in 2014,” (working paper, The George Washington University Regulatory Studies Center, November 2015), https://regulatorystudies.columbian.gwu.edu/sites/regulatorystudies.columbian.gwu.edu/files/Retrospective-Review-in-2014-MillerS-II_2.pdf.
344. *Smarter Regs Act of 2015*, S. 1817, 114th Congress, July 21, 2015, www.congress.gov/bill/114th-congress/senate-bill/1817.
345. *Higher Education Amendments of 1992*, PL 102-825, 102nd Congress, July 23, 1992, www.gpo.gov/fdsys/pkg/STATUTE-106/pdf/STATUTE-106-Pg448.pdf.
346. In 2012, despite warnings from the Department of Education, Lon Morris College (a private nonprofit four-year institution in Texas), declared bankruptcy and immediately lost Title IV eligibility. The institution challenged the Department’s ruling but a judge upheld it. See Will Hueske, “School’s Out Forever: Lon Morris College, Section 525(a), and Revocation of Title IV Eligibility for Institutions of Higher Education,” Weil Bankruptcy Blog, April 2013, <https://business-finance-restructuring.weil.com/government/schools-out-forever-lon-morris-college-section-525a-and-revocation-of-title-iv-eligibility-for-institutions-of-higher-education-in-bankruptcy/>.
347. Writing in *Trusteeship Magazine* in September/October 2016, Michael Goldstein and Jay Indyke noted: “The irony is striking: An institution that avails itself of a statutory right (derived from Article I, Section 8, Clause 4 of the Constitution,

- which authorizes Congress to establish uniform laws on bankruptcy) to regain its financial stability under the supervision of a federal judge is treated in precisely the same way as a college or university that has been convicted of (or pled “no contest” to) committing fraud involving Title IV funds. Perfect symmetry.” See Michael B. Goldstein and Jay Indyke, “Bankruptcy Benefits,” *Trusteeship Magazine*, September/October 2016, www.agb.org/trusteeship/2016/septemberoctober/bankruptcy-benefits.
348. Scott F. Norberg, “Bankruptcy and Higher Education Institutions,” *American Bankruptcy Institute Law Review* 23 (Winter 2015): 385-399, http://ecollections.law.fiu.edu/cgi/viewcontent.cgi?article=1227&context=faculty_publications.
349. For instance, see Kellie Woodhouse, “Closures to Triple,” *Inside Higher Ed*, September 28, 2015, www.insidehighered.com/news/2015/09/28/moodys-predicts-college-closures-triple-2017; Nick Anderson, “In Moody’s U.S. College Credit Ratings, Downgrades Far Outnumber Upgrades,” *Washington Post*, July 11, 2014, www.washingtonpost.com/local/education/moodys-us-college-credit-ratings-downgrades-far-outnumber-upgrades/2014/07/11/4248f474-06c5-11e4-bbfb-cc51275e7f8f_story.html?utm_term=.54e7c086fe10; and Jeff Denneen and Tom Dretler, *The Financially Sustainable University*, Bain & Company and Sterling Partners, 2012, www.bain.com/Images/BAIN_BRIEF_The_financially_sustainable_university.pdf.
350. Dennis Cariello, “Allow Universities to Restructure Themselves through Bankruptcy,” *The Hill*, January 22, 2015, <http://thehill.com/blogs/congress-blog/education/230282-allow-universities-to-restructure-themselves-through-bankruptcy>.