

WHO PAYS? HOW INDUSTRY INSIDERS RIG THE STUDENT LOAN SYSTEM—AND HOW TO STOP IT

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Americans today hold \$1.5 trillion in student debt, and recent research reveals that the effects of this outsized and growing debt are much more devastating than previously thought,^{1,a} particularly for communities of color.^{2,b} From bankruptcy protections and lower interest rates and fees to safeguards from fraudulent educational programs and even full student debt cancellation, economic justice and higher education advocates continue to ask Congress and the Department of Education to help borrowers who are trapped by student loan debt. These advocates have fought tooth and nail for even the “small” victories they’ve had. Borrower advocates, for example, have been struggling for the last four years to get the Department of Education to develop and implement a simple process to invalidate the debt of borrowers who are defrauded by their schools; Congress tasked the Department of Education with doing this nearly *25 years ago*.

The difficulty of achieving relief for borrowers is all the more frustrating given how easy it has been for others who seek—and receive—a helping hand from the federal student loan program. Other participants in the student loan system, including lenders, servicers, debt collectors, and even colleges, routinely pursue bailouts, handouts, or flexibility from Congress and the Department of Education—and most of the time, they get it. In each case, government officials justify their actions as being in the best interests of students, student loan borrowers, or taxpayers. Upon closer examination, however, these claims do not hold up.

Though today’s student loan crisis is in many ways another consequence of the soft corruption within our government by those who can buy influence, it also points to a key vulnerability for the policy and advocacy community. The student loan program operates according to a certain set of norms and guidelines about what is best for the public and for students, but research increasingly suggests that these norms are fundamentally flawed. To combat corruption and pave the way for better policymaking, advocates and researchers need to work to change the way policymakers and the public think about what is—and is not—in the best interests of students, borrowers, and taxpayers.

^a Nearly one quarter of borrowers who began college in the 1995-96 school year defaulted on a loan within 20 years of entering repayment.

^b Nearly half of African American borrowers who began college in the 2003-2004 school year defaulted on a loan.



This issue brief offers several examples to argue that powerful industry players have succeeded in procuring what they need from the student loan system while justifying extractive actions as in the best interests of students, borrowers, and taxpayers. This issue brief will then discuss how emerging evidence is challenging the assumptions that currently guide student loan policy. It will argue that expanding on this research will help us rewrite the rules on what is best for students, borrowers, and our economy as a whole. Doing so is key not only to break the stranglehold of special interests on today's student loan system, but also to push forward policies that will help borrowers who are trapped by student debt.

LESSONS FROM A DECADE OF HANDOUTS, BAILOUTS, AND BENT RULES

Americans may assume that Congress and the Department of Education are working on behalf of the public to do what's necessary to ensure that every student has the opportunity to go to college and get ahead in the workforce. But time and again, policymakers have taken actions that clearly do not serve students or their best interests. This section will examine some of the primary examples of this behavior in just the last 10 years.

ECASLA: The Student Loan Industry Bailout

Until 2010, the federal student loan program was not a government-run program at all; it was a system of privately issued loans that were guaranteed by the federal government, with a complex set of rules governing everything from interest rates to collections. And though the Troubled Asset Relief Program (TARP) is probably the most memorable bank bailout of the 2008 financial crisis, the lenders who participated in this federally guaranteed loan program actually got a bailout, too. In May of 2008, a few months before passing TARP, Congress authorized a program—the Ensuring Continued Access to Student Loans Act (ECASLA)³—to help the lenders in the federally guaranteed student loan program.

Background on the federally guaranteed loan program is useful to explain how ECASLA came about. In 2008, the Federal Family Education Loan (FFEL) program was the federal government's primary education lending program. The FFEL program offered subsidies and a government guarantee to banks and other lenders who made loans to students. Lenders had to raise capital to make the loans, but government subsidies guaranteed a certain rate of return on the loans, and if borrowers defaulted, the government paid the lender back what was owed.⁴

When the financial crisis hit, lenders found it harder to raise capital to fund their loans, so they took their case to Capitol Hill. Lenders threatened that without help from the government, they would be unable to issue more student loans, ultimately leaving thousands of students



unable to finance their educations and hundreds of tuition-dependent colleges forced to close their doors the upcoming fall. Though it is unclear whether the situation was as dire as the lenders claimed, there was certainly cause for concern: Several major lenders had announced that they would stop making FFEL loans (at least temporarily), and others had indicated that they would be more discerning about offering loans at certain types of institutions.⁵

In contrast to drawn-out policy debates over issues like health care and the society safety net, Congress acted with swiftness to address the lenders' concerns: A bill was introduced by April of 2008 and signed into law in May.⁶ The Ensuring Continued Access to Student Loans Act gave broad authority to the Department of Education to purchase student loans from FFEL lenders.⁷ The Department of Education used this authority to offer several options for lenders to either sell their existing loans directly to the federal government as a way of financing more loans or obtain financing for loans from the capital market with support from the federal government.⁸ ECASLA also raised the limits on certain student loans to give students access to even more debt, at interest rates ranging from 6 to 8 percent. At the time, the Congressional Budget Office (CBO) predicted that in 2008, the change to loan limits would increase the volume of unsubsidized loans by more than \$1 billion.⁹

Like TARP, ECASLA was not sold to the public as a bailout for banks. Rather, legislators made impassioned speeches in support of the bill, citing the need to support students and families in a time of financial distress. For example, Senator Ted Kennedy remarked, "We must draw a line there and not let the crisis in the credit markets become a crisis for students struggling to pay for college and access to the American dream."¹⁰ But if students' best interests were really at the heart of the matter, would ECASLA have been the result? At a time when families were losing their retirement savings, their jobs, and their homes, the best Congress was willing to offer in assistance was more debt. In addition, transferring loans from private lenders to the Department of Education was not without risks for the existing FFEL borrowers: The government's purchase of loans came with the potential for servicing disruptions, as well as confusion about the continuation of rights and protections afforded under the FFEL program.

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One might argue that this was the best deal that Congress could get for students—that continued access to loans wasn't much, but it was what policymakers could negotiate at the time. But this cannot be true, because Congress could have written a very similar bill, one with the same effect on lenders, which would have provided billions in funding for grants or even loans with more favorable terms.



To pass ECASLA without dealing with its budgetary implications, Congress simply mandated that ECASLA's programs be implemented without any net cost to the government.¹¹ The Department of Education complied with this provision by relying on the substantial cost differential between funding student loans originated by the government itself and propping up the private industry's guaranteed loan program. In other words, by purchasing loans it had already guaranteed and ending its subsidies to private banks, the Department of Education could generate savings that more than offset any costs. In its 2011 ECASLA report, the Department of Education estimated that the government's savings under all of ECASLA's programs totaled about \$3.5 billion. This revenue did not go toward helping students; it went back to the general treasury.

Congress could have captured these savings by writing a bill that was more specific about how the Department of Education would carry out the loan purchase program. For proof of this, we can look to Congress' actions just a few years later. When it passed the Health Care and Education Reconciliation Act, Congress shifted the federal student loan program from private banks to a federally financed system, and it used the savings to fund larger Pell Grants and other federal programs.¹²

The idea that ECASLA was strictly in the best interests of students is further undermined when we consider its benefits to the student loan industry. For big lenders like Sallie Mae (now Navient), ECASLA was more than just a helping hand to get out of a tight spot—it was a way to improve their financial position. In 2009 and 2010, Sallie Mae posted gains of \$600 million on its late-2009 and 2010 transfers of loans to the Department of Education.^{13,c} Nelnet, another top FFEL lender, posted gains of more than \$70 million on FFEL transfers in the same time period.¹⁴ In addition, by raising the limits on student loans as described above, Congress expanded the potential amount of business available to lenders. The boosts to lenders' balance sheets alone clearly demonstrate that ECASLA greatly advantaged industry players over students, borrowers, and taxpayers.

Democrats and Republicans lauded ECASLA as a win for Americans who were trying to pay for education during the financial crisis. But on balance, students and their families seem to have benefited least from this arrangement. Sallie Mae and other lenders walked away with millions in gains, and the federal government walked away with billions in revenue that could have been spent on student aid. Students, however, walked away with more debt.

^c It should be noted that in 2008 and early 2009, Sallie Mae transferred loans to the Department of Education under a less generous ECASLA purchase option, and it posted losses of about \$50 million on those transfers.



STUDENT LOAN SERVICERS: A PATTERN OF SECOND (AND THIRD, AND FOURTH) CHANCES

The same lenders and guaranty agencies that participated in the Federal Family Education Loan program, many of whom also benefited from the Ensuring Continued Access to Student Loans Act, lobbied aggressively to maintain their place in the student loan industry, becoming central players in the new Direct Loan program—this time as federal contractors, servicing and collecting on government loans. Their ability to sway federal policymakers into making the student loan program work in their favor was finely honed at this point, and they exerted their influence in the Direct Loan program, too.

Student loans are collected using notoriously rigid practices. When borrowers fail to make their payments, they are subject to persistent and aggressive debt collection efforts, as well as wage, tax, and benefits garnishment—all with little hope for relief through bankruptcy. When student loan servicers owe the federal government a bunch of money, however, there is no equivalent debt collection machine; in fact, there are little to no consequences. In 2009, the Department of Education Regional Inspector General Bernard Tadley released a final audit of Navient’s (previously Sallie Mae) billing practices under the FFEL program. The report concluded that Navient had overcharged the federal government by \$22.3 million and recommended that the Department of Education require Navient to return the money.¹⁵

For reasons that have never been explained, it took the Department of Education six years to act on the inspector general’s (IG) recommendation. In 2013, the department released a “final audit determination” based on the IG’s “final audit report,” requesting that Navient return the \$22 million.¹⁶ Navient declined to return the funds and maintained that it had done nothing wrong. Again, for reasons that are unclear, the Department of Education extended the deadline for Navient to appeal its determination at least three times. Navient ultimately filed an appeal in 2016, and the Department of Education held a hearing on that appeal in April 2017.¹⁷ Based on publicly available information, it appears that Navient still has not repaid these funds. Through all of this, Navient maintained a contract to service federal student loans, worth about \$100 million per year.¹⁸

This is not the only time the Department of Education bent the rules to accommodate its loan servicers. In 2014, the Department of Education’s major student loan servicers, including Navient, came under suspicion of failing to cap student loan interest rates for military servicemembers, as required by the Servicemembers Civil Relief Act (SCRA). After the Department of Justice (DOJ) and Federal Deposit Insurance Corporation (FDIC) reached a nearly \$100 million settlement with Navient for violating the SCRA, the Department of Education was under pressure to take action against Navient and investigate other servicers’ practices.¹⁹ In 2015, the Department of Education released the results of



an investigation into servicers' practices, concluding that "in less than 1 percent of cases, borrowers were incorrectly denied the 6 percent interest rate cap required by the laws."²⁰ But several months later, when the inspector general released a report identifying serious flaws in the department's methodology (calling the department's statements about the investigation "unsupported and inaccurate"),²¹ the Department of Education was forced to admit that its findings were incorrect.

The federal government's oversight of its loan servicers and debt collectors has been so lax that states have had to step in to try to protect their constituents. But here again, the Department of Education has gone to great lengths to shield these companies from responsibility—and in doing so, deprives borrowers of potential remedies to their debt. States like Massachusetts, Connecticut, California, and Illinois have taken steps toward greater accountability for loan servicers, by either passing new legislation requiring servicers to be licensed by the states or pursuing litigation against servicers under current state laws.²² But early in 2018, the Department of Education moved to stop these efforts. In January, it filed a statement of interest in a lawsuit brought by Massachusetts Attorney General Maura Healey against federal student loan servicer Pennsylvania Higher Education Assistance Agency, arguing that federal law preempted the state's claims against PHEAA.²³ In March, the Department of Education issued preemption guidance to all states, making clear its position that state attempts to protect their constituents are in conflict with federal law, guaranteeing that such attempts are therefore preempted by it.²⁴

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The contrast between the draconian punishments for student loan borrowers and the impunity of federal student loan contractors would be merely ironic, if not for the fact that the government's oversight toward servicers' behavior is, in many cases, hurting borrowers. Although the Consumer Financial Protection Bureau (CFPB), the DOJ, and the FDIC eventually secured some justice for servicemembers who were cheated by Navient, many of those who were harmed by other servicers will not be made whole. And shielding contractors from regulation by states deprives borrowers of much-needed protection and assistance from state-level watchdogs.

It is hard to read these examples as anything other than giveaways to powerful industry participants. But once again, the Department of Education justified its actions by invoking the best interests of borrowers. In 2014, when asked why Navient had not been punished



or removed as a servicer based on various infractions, then-head of Federal Student Aid (FSA) James Runcie, explained that transferring loans away from Navient could result in a “dislocation” of borrowers that could harm them.²⁵ The department also invoked both borrower and taxpayer welfare in justifying shielding servicers from state regulation, arguing that it could increase the cost of administering the student loan program and reduce uniformity of servicing in ways that could hurt borrowers—without offering any evidence to support these claims.²⁶

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THE CORINTHIAN COLLEGES BAILOUT

Like lenders and servicers, colleges have also sought to dodge or bend the rules of the student loan program—and in some cases, the government has helped them do it. Policymakers often point out that colleges bear very little responsibility for the outcomes of the student loan program, so it may be surprising to hear that they have needed to bend the rules. But in fact, colleges have gotten a pass on even the most fundamental requirements of participation in the student loan program, like not cheating students and keeping their loan defaults at a moderate level.

Under federal law, for example, colleges are required to keep their cohort default rate (CDR)—which is the proportion of borrowers that default within three years of leaving college—below 30 percent, or else they face losing the right to participate in the student loan program.^{27,d} In 2014, however, the Department of Education announced that it would adjust the cohort default rate calculation for certain schools that would have otherwise lost eligibility, excluding from the calculations certain borrowers and effectively absolving the colleges of responsibility for these borrowers’ defaults.²⁸ The Department of Education’s reason was that these colleges were victims of “split-servicing,” in which student loan borrowers have loans with multiple servicers. Borrowers with split-servicing are more likely to default, so the Department of Education reasoned that institutions should not be punished for an issue caused by the allocation of loans to servicers. The Department of Education, however, failed to acknowledge that borrowers themselves are victims of split-servicing, and it did not take any steps to alleviate the consequences of default for them.²⁹

^d Institutions lose eligibility to participate in federal student aid programs if they have a cohort default rate of 30 percent or greater for three consecutive years or 40 percent in a single year.



Corinthian Colleges, a for-profit college chain company that derived a majority of its revenue from federal grants and loans (about \$1.4 billion a year), came under suspicion in 2013 for fraudulent grades and job placement rates.³⁰ In June of 2014, after multiple requests to examine documents related to inconsistencies in its job placement rates, the Department of Education instituted “heightened cash monitoring” for Corinthian, including delaying disbursement of financial aid for 21 days.³¹ Corinthian responded by stating that its finances were so dependent on the flow of federal aid that the 21-day delay would result in the imminent closure of its campuses.

Under normal circumstances, this is where the story would end: Corinthian would shutter its campuses, and students would get the option to transfer to another university or get a “closed school discharge”—the cancellation of any student loans incurred at the closed campus. Instead, the Department of Education went to great lengths to keep Corinthian open. On June 23, 2014, just a few days after it sought to limit Corinthian’s access to federal aid, the Department of Education announced that it would release \$16 million in federal student aid to Corinthian, in exchange for Corinthian’s commitment to develop a plan to wind down its operations over six months.³²

On July 8, 2014, the Department of Education announced yet another deal with Corinthian. Under a new operating agreement, Corinthian would institute plans to allow students to complete their programs “without material interruption.”³³ The plan included the transfer of an additional \$35 million in student aid to Corinthian, as well as a commitment to sell 85 campuses and close the remaining 12.³⁴

The only problem with this plan was that Corinthian could not find a buyer for its campuses. And once again, rather than letting Corinthian deal with the fallout, the Department of Education stepped in to bail the school out, brokering a sale.³⁵ ECMC, a non-profit debt collector, was willing to open its own college chain, Zenith Education Group, and take on 53 of the Corinthian campuses, provided that the government could guarantee extremely favorable terms, including immunity from liability for Corinthian’s misdeeds. Ultimately, the Department of Education negotiated the sale of 53 of Corinthian’s campuses to Zenith Education Group, and Corinthian shut down its remaining 30 campuses after determining that they could not be sold “due to pending [f]ederal and [s]tate investigations.”³⁶

Throughout this process, the Department of Education maintained that it was acting on behalf of Corinthian’s students.³⁷ Under Secretary of Education Ted Mitchell noted that “[s]tudents and their interests have been at the heart of every decision the [d]epartment has made regarding Corinthian.” But there was another reason to keep Corinthian afloat: The more students who finished their degree programs, the smaller the Department of Education’s obligation to cancel loans through its closed school discharge authority.³⁸ Any benefit to students graduating from



institutions that had very publicly misrepresented students' outcomes and were on the brink of failure—rather than cutting their losses and walking away from their debt—seems, at best, dubious. But the benefit to the Department of Education in limiting its financial exposure is pretty clear. When the Department of Education signed the operating agreement, there were 72,000 students on Corinthian campuses, many of whom had student loans.

Even the sale of Corinthian campuses to Zenith Education Group did not align with the Department of Education's pledge to keep students "at the heart of every decision." At the time, Under Secretary Mitchell described the sale as a move to "help students transition from a problematic for-profit company to a non-profit that is committed to giving students a new start and more opportunities for success." In reality, the sale to ECMC—a company with no previous experience in postsecondary education—did not do much to enhance students' opportunities for success. After the late-2014 purchase, approximately 33,000 Corinthian students were enrolled at ECMC's Zenith. By early 2016, Zenith was down to 10,000 students.³⁹ A 2016 Associated Press investigation (that Zenith disputes) revealed that Zenith maintained many of the same executives who oversaw Corinthian's unsavory business practices, required students to waive their right to sue in a class action, just like Corinthian, and even used the very same ads that Corinthian used to recruit students.⁴⁰ Yet, even as the Corinthian-Zenith deal failed students, it was still a win for the Department of Education's student debt liabilities: Zenith estimates it saved the department \$435 million in potential student loan discharges by keeping students enrolled.⁴¹

RETHINKING WHAT'S BEST FOR STUDENTS, BORROWERS, AND TAXPAYERS

The examples above show that policymakers are making decisions that serve industry players—often at the expense of student loan borrowers. They are able to justify these decisions as good for borrowers, students, and taxpayers, and therefore avoid significant scrutiny or accountability for industry bailouts and handouts.

In many of these cases, advocates pushed back against the government's actions, but to no avail. It is difficult to do so for two reasons: First, the colleges, servicers, and lenders involved in these decisions have a powerful grip on government officials. Second, it is hard to combat the notion that these decisions are in the public's best interests because they are based on fundamental assumptions that are deeply embedded in our government's approach to student loan policy. In order to break the stranglehold of special interests on the student loan system and lay the foundation for policies that give meaningful relief to student loan borrowers, we need to slow the revolving door in the student loan policy ecosystem and rewrite the rules about what's best for students, borrowers, and taxpayers.



Slowing the Revolving Door

When borrower advocates go to Capitol Hill and the Department of Education to argue for debt relief for borrowers, they are armed with compelling facts and rational arguments. When lenders, servicers, and colleges meet with government officials, they arrive with high-paid professional lobbyists. The difference shows in the outcomes. To illustrate the magnitude of companies' efforts to exert influence over key policy decisions, here are a few examples:

- Between 2007 and 2008, when Congress was considering and implementing the ECASLA bailout (as well as other fundamental changes to the student loan program), Sallie Mae reported lobbying expenditures of over \$7 million. NelNet, another large student lender, spent more than \$1.5 million in that same period.⁴²
- Between 2015 and mid-2016, while the Department of Education was investigating servicers' violations of the Servicemembers Civil Relief Act, Navient spent \$3.7 million on lobbying.⁴³
- When Corinthian Colleges filed for bankruptcy in 2015, its list of creditors revealed an array of influential lobbying firms, public relations professionals, and D.C.-based policy groups, including Crossroads G.P.S. (a political strategy group co-founded by Karl Rove, a former senior advisor to President George W. Bush), theGroup D.C. (a public affairs firm), lobbying firm APCO Worldwide, the U.S. Chamber of Commerce, and the American Legislative Exchange Council (ALEC).⁴⁴

Spending money is one way to influence policymaking, but there are other, more subtle ways to shape policy outcomes in one's favor. One popular method involves placing industry representatives in influential government positions—a phenomenon commonly referred to as “the revolving door,” which is attributed to private employees entering government service or government officials leaving public service for the private sector—and this tactic has been applied liberally in the student loan industry. Kathleen Smith, the Deputy Chief Operating Officer (COO) at Federal Student Aid—the individual who issued guidance to try to preempt state's protections for student loan borrowers—is not only a former employee of a large student loan servicer, but she also led the Education Finance Council, a lobbying group representing student loan industry participants.⁴⁵ Matthew Sessa, Smith's predecessor as Deputy COO, came to Federal Student Aid from the Pennsylvania Higher Education Assistance Agency, one of the government's primary student loan contractors. Smith and Sessa are just two examples; across both Democratic and Republican administrations, there is a pattern of filling high-level positions at FSA with individuals who have deep ties to the student loan industry.



There are some simple, but crucial, steps that Congress could take to limit the influence of the student loan industry on government officials. In a recent report,⁴⁶ the Roosevelt Institute outlined key policy changes that could slow the revolving door, decrease the influence of lobbyists, and give average Americans a stronger voice in policymaking. For example, Congress could require government officials to recuse themselves from any decision that would benefit former employers. Eliminating government officials who are too cozy with the student loan industry would help stem the tide for borrowers and also lay the groundwork for more even-handed evaluations of policy options.

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There's something else we can do to improve advocates' ability to influence student loan policy. Student loan borrowers may not have millions to spend on lobbying, but they have something equally, if not more, powerful: millions of voices. There are 44 million student loan borrowers in the United States. That's about the same number of retired Americans receiving Social Security.⁴⁷ If student loan borrowers—and even those who are concerned about borrowing trends now or in the future—organize and make their voices heard, they could exert significant influence, too. One key factor in exerting this kind of influence is finding a solution that borrowers can rally around and push forward, together.

Rewriting the Rules of Student Loan Policy

The federal student loan program has hundreds, if not thousands, of rules governing eligibility, repayment, and default. But there are two unwritten rules that guide our government's current approach to student loan policy that are allowing policymakers to assert the narrative that their decisions are in the best interests of borrowers and the public—even when, upon closer scrutiny, the benefits to these groups are far more dubious. Right now, advocates for student loan borrowers are challenging each of these extractive and biased policy decisions one at a time.

First, policymakers and officials who implement the student loan program operate under the assumption that student loans are, by and large, both helpful and harmless: They are a helpful tool in improving access to higher education and giving students a better future, and they are harmless to our economy. According to this view, student loans are only harmful to a small portion of borrowers who either attended a poor-quality institution or failed to complete their degree programs. Evidence of this assumption can be found in the Department of Education's priorities, which emphasize getting access to student aid to the broadest group possible and tightening accountability standards for poor-performing institutions.⁴⁸ It can also be found in



the testimony and research of leading voices in higher education policy, including economist Sandy Baum: “This is an investment that pays off really well... Student debt is really creating a lot of opportunities for people. People wouldn’t be able to go to college otherwise.”⁴⁹

The problem is, the more researchers dig into data on the student loan program, the less defensible the “helpful and harmless” assumption looks. In the past few years, the government and other data sources like credit reporting agencies have opened up unprecedented access to information about the outcomes of the federal student loan program, allowing researchers to answer questions about the long-term effects of student debt—both on individuals and our economy at large. Now that we can see how borrowers deal with student loan debt over the life of their loans, it is clear that it’s not merely a tiny slice of borrowers who are harmed by their debt burdens. A study of borrowers who entered school in the 1995-96 school year found that nearly *one quarter* defaulted on their loans within 20 years—this figure does not even count those who became delinquent but managed to make a payment within 270 days, or those who had to enter into deferments and forbearances to avoid default.⁵⁰ A similar analysis of borrowers who entered college in the 2003-04 school year examined the impact of debt on communities of color and found that almost 50 percent of African American borrowers defaulted on a loan within 12 years.⁵¹ Default negatively affects borrowers’ credit and can expose them to wage, Social Security, and tax refund garnishment. These studies show that we need to look more closely at how student loan policy disadvantages borrowers overall, but we must also explore how the hidden rules of race⁵² exacerbate the effects for borrowers of color.

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Reflecting back on decades of student loan policy, it is also not clear that it is achieving the government’s overall goal of providing greater access to higher education for those who cannot afford it. The difference in college graduation rates between the top and bottom income groups has actually widened by nearly 50 percent over two decades.⁵³ Further, an emerging body of research raises questions as to whether student debt is as harmless for the economy as policymakers have presumed. Studies suggest that student debt is leaving borrowers unable to buy homes, save for retirement, and participate fully in the economy.⁵⁴

The second notion guiding student loan policy is just as worthy of scrutiny. Policymakers operate under the assumption that it is in taxpayers’ best interests to spend as little as possible on the student loan program. That means setting interest rates and fees in a way that makes the program self-sustaining and ensuring that the vast majority of money lent through the student loan program gets paid back.



This idea is peppered throughout press releases and policy positions from the Department of Education and members of Congress. The desire to avoid costs to taxpayers appears to be a substantial motivator in several of the examples cited above, including the Department of Education’s inaction in the face of servicer misconduct, or its efforts to avoid student loan discharges in the case of Corinthian Colleges. Just last year, the Department of Education issued a press release announcing changes that would make borrowers who were defrauded by their schools shoulder more of their debt, asserting that the changes were necessary to “protect taxpayers from being forced to shoulder massive costs that may be unjustified.”⁵⁵ Other cases—such as ECASLA, the decision to change cohort default rate (CDR) calculations—are embedded in public discourse, at least in part, by the fact that (in theory) they do not cost taxpayers any money. ECASLA ensured that taxpayers would be held harmless within the bill’s text, requiring the government to implement its programs at no net cost. Federal Student Aid’s announcement that it would absolve colleges of responsibility for defaults caused by split-servicing made clear that this relief would not extend to borrowers—thereby ensuring its actions would not carry a cost.

Further, even positive policy developments are crafted to avoid taxpayer costs. For the better part of President Barack Obama’s tenure, the Department of Education fought to develop and implement the “gainful employment rule,” a policy that protects both students and taxpayers by revoking career education programs’ eligibility for future student loans and grants when they leave students with debt they cannot repay. Though the gainful employment rule is a win-win for future students and taxpayers, it does nothing for the students who ended up mired in debt by those career education programs—as spending taxpayer money to relieve those students would violate the unwritten rules.

The government does have a responsibility to taxpayers, but squeezing every last dollar out of student loan borrowers is not necessarily the way to honor that responsibility.

Like the first rule, this second rule deserves reconsideration. The government does have a responsibility to taxpayers, but squeezing every last dollar out of student loan borrowers is not necessarily the way to honor that responsibility. Nor does this behavior recognize that student loan borrowers are taxpayers, too. Equating taxpayers’ best interests with student loan repayment is an extremely narrow way to view the relationship between the public and the student loan program. There are many other facets of student debt that have an impact on taxpayers; for example, rising student debt is having negative effects on consumption



and the growth of our economy, which is a major concern for all citizens. If the costs of rising student debt were taken into account, ECASLA might have been viewed differently: It was considered to have no net cost to taxpayers, but according to the Congressional Budget Office, the bill added about \$1 billion in loans to federal balance sheets. This increased debt has an effect on our economy that affects the lives of all Americans.

In addition, recent research from the Levy Economics Institute suggests that, if we take a broader view of what's in taxpayers' best interests, we might end up with a very different assumption about whether canceling student debt is too big a cost for taxpayers to bear. A paper released this year by Levy shows that canceling all outstanding student debt provides benefits to our economy that can counterbalance the hefty price tag that the government would have to shoulder.⁵⁶

By targeting the norms that guide the student loan system, advocates could not only combat poor decision-making, but they could also lay the groundwork for policies that would meaningfully improve the lives of those with student debt.

The “rules” described here are not formal rules at all—they are norms and assumptions that have permeated student loan policymaking and student loan institutions. By targeting the norms that guide the student loan system, advocates could not only combat poor decision-making, but they could also lay the groundwork for policies that would meaningfully improve the lives of those with student debt. Part of that reversal would build on emerging research, so that the policy community has a strong foundation of evidence to show how to best support access to higher education while also serving borrowers and taxpayers well. Researchers are particularly well positioned to do this now, as there are more data resources to draw upon than there have ever been before. Rewriting the rules will help advocates push back on deals that serve the student loan industry and other detrimental policies, and it will also help them situate meaningful policy changes, including stronger consumer protections, student debt cancellation, and policies that limit future borrowing—all in the context of the needs of the public and students. Getting policymakers and the public to come to terms with the fact that rising student debt is harmful to individuals and to our economy and society at large is a key step in paving the way for solutions. And any policy solution that eases the weight of student debt—from an interest rate reduction to wholesale cancellation—will come at a cost, so understanding the relationship between taxpayers' best interests and reductions in student debt will be a key step, too.



CONCLUSION

Right now, the student loan program meets the needs of industry insiders, but borrowers rarely receive the help and support that is necessary. Given the influence that powerful groups have been able to exert over Congress and the Department of Education, it is obvious that rooting out corruption and undue influence could go a long way to address this imbalance. But as long as government officials and policymakers believe that the student loan program is bound by the assumptions that spending money on borrowers hurts taxpayers and that expanding debt is harmless, the set of policies that they are willing to consider will be bound, too. We need to change the way that the student loan program operates, but it is critical that we change the way we think about it, too.



REFERENCES

- 1 Dunlop Velez, Erin. 2018. "Newly Released Student Loan Data Bust Several Myths about Student Loan Repayment." *The EvoLLLution*, May 9, 2018. https://evollution.com/attracting-students/todays_learner/newly-released-student-loan-data-bust-several-myths-about-student-loan-repayment/.
- 2 Kelchen, Robert. 2017. "New Data on Long-Term Student Loan Default Rates." *Kelchen on Education*, October 6, 2017. <https://robertkelchen.com/2017/10/06/new-data-on-long-term-student-loan-default-rates/>.
- 3 Ensuring Continued Access to Student Loans Act of 2008, H.R. 5715, 110th Congress (2007-2008).
- 4 Hegji, Alexandra. 2017. "The Higher Education Act (HEA): A Primer." Congressional Research Service. <https://fas.org/sgp/crs/misc/R43351.pdf>.
- 5 Cho, David, and Maria Glod. 2008. "Credit Crisis May Make College Loans More Costly," *The Washington Post*, March 3, 2008. <http://www.washingtonpost.com/wp-dyn/content/article/2008/03/02/AR2008030202213.html>.
- 6 Ensuring Continued Access to Student Loans Act of 2008.
- 7 Congressional Budget Office. 2008. "Cost Estimate: H.R. 5715, Ensuring Continued Access to Student Loans Act of 2008." Accessed June 20, 2018. <https://www.cbo.gov/sites/default/files/110th-congress-2007-2008/costestimate/hr571500.pdf>.
- 8 Federal Student Aid. 2017. "FY 2017 Annual Report." Accessed June 20, 2018. <https://www2.ed.gov/about/reports/annual/2017report/fsa-report.pdf>.
- 9 Congressional Budget Office, "Cost Estimate: H.R. 5715, Ensuring Continued Access to Student Loans Act of 2008."
- 10 110 Cong. Rec. E773 (daily ed. April 30, 2008). <https://www.congress.gov/congressional-record/volume-154/extensions-of-remarks-section/page/E773>.
- 11 Congressional Budget Office, "Cost Estimate: H.R. 5715, Ensuring Continued Access to Student Loans Act of 2008."
- 12 Elmendorf, Douglas. 2010. Letter to the Honorable Nancy Pelosi. Congressional Budget Office. <http://www.cbo.gov/sites/default/files/amendreconprop.pdf>.
- 13 Securities and Exchange Commission. "Sallie Mae Form 10-K for Fiscal Year Ended December 31, 2010." Accessed June 20, 2018. https://www.navient.com/assets/about/investors/shareholder/annual-reports/BOW80795BOW034_BITS_N_0938.pdf.
- 14 Securities and Exchange Commission. "Nelnet Form 10-K for the Fiscal Year Ended December 31, 2010." Accessed June 20, 2018. <http://d18rn0p25nwr6d.cloudfront.net/CIK-0001258602/eca2fcbd-e982-4dcf-adf0-eb68fa288104.pdf>.
- 15 Nasiripour, Shahien. 2015. "Education Department Lets Student Loan Contractor Off The Hook For Money Owed To Taxpayers—Again." *Huffington Post*, November 2, 2015. https://www.huffingtonpost.com/entry/navient-corp-student-loans_us_5637e796e4b00a4d2e0b95cf.
- 16 Securities and Exchange Commission. "Navient Corporation Form 10-K for the Fiscal Year Ended December 31, 2017." Accessed June 20, 2018. <https://navientcorporation.gcs-web.com/static-files/6f82a782-724f-44ff-aa39-4489cfdcf012>.
- 17 Ibid.
- 18 Federal Student Aid. 2017. "Loan Servicing Contracts." Accessed June 20, 2018. <https://studentaid.ed.gov/sa/about/data-center/business-info/contracts/loan-servicing>.
- 19 Zibel, Alan, and Andrew Grossman. 2014. "Sallie Mae, Navient Reach Student-Loan Settlement With U.S. Government." *Wall Street Journal*, May 13, 2014. <https://www.wsj.com/articles/sallie-mae-navient-reach-student-loan-settlement-with-u-s-government-1400003534>.
- 20 U.S. Department of Education. 2015. "U.S. Department of Education Completes Review of Major Student Loan Servicers." Press Office. Accessed June 20, 2018. <https://www.ed.gov/news/press-releases/us-department-education-completes-review-major-student-loan-servicers>.
- 21 Tighe, Kathleen. 2016. Letter to the Honorable Patty Murray, the Honorable Elizabeth Warren, and the Honorable Richard Blumenthal. U.S. Department of Education, Office of Inspector General. Accessed June 20, 2018. <https://www2.ed.gov/about/offices/list/oig/misc/scrareport02292016.pdf>.
- 22 Douglas-Gabriel, Danielle. 2018. "Education Dept. Opens Door for Student Loan Companies to Ignore State Authority." *Washington Post*, March 9, 2018. <https://www.washingtonpost.com/news/grade-point/wp/2018/03/09/education-dept-tells-student-loan-companies-to-ignore-state-authority/>.



- 23 Burke, Thomas. 2018. "Department of Justice: Massachusetts's Claims Against PHEAA Preempted By Federal Law." *Consumer Finance Monitor*, January 9, 2018. <https://www.consumerfinancemonitor.com/2018/01/09/departement-of-justice-massachusetts-claims-against-pheaa-preempted-by-federal-law/>.
- 24 "Federal Preemption and State Regulation of the Department of Education's Federal Student Loan Programs and Federal Student Loan Servicers." *Federal Register* 83, no. 48 (March, 12, 2018). <https://www.federalregister.gov/documents/2018/03/12/2018-04924/federal-preemption-and-state-regulation-of-the-department-of-educations-federal-student-loan>.
- 25 Nasiripour, Shahien. 2014. "U.S. Knew Sallie Mae Cheated Service Members On Student Loans, But Still Renewed Contract." *Huffington Post*, April 29, 2014. https://www.huffingtonpost.com/2014/04/28/sallie-mae-servicemembers_n_5229312.html.
- 26 *Federal Register*, "Federal Preemption and State Regulation of the Department of Education's Federal Student Loan Programs and Federal Student Loan Servicers."
- 27 U.S. Department of Education. 2017. "U.S. Department of Education Releases National Student Loan FY 2014 Cohort Default Rate." Press Office. Accessed June 20, 2018. <https://www.ed.gov/news/press-releases/us-department-education-releases-national-student-loan-fy-2014-cohort-default-rate>.
- 28 Baker, Jeff. 2014. "Adjustment of Calculation of Official Three Year Cohort Default Rates for Institutions Subject to Potential Loss of Eligibility." Federal Student Aid. Accessed June 20, 2018. <https://ffap.ed.gov/eannouncements/092314AdjustmentofCalculationofOfc3YrCDRforInstitutSubtoPotentialLossofElig.html>.
- 29 Nasiripour, Shahien. 2014. "Colleges Win, Student Borrowers Lose In Obama Administration Absolution." *Huffington Post*, September 25, 2014. https://www.huffingtonpost.com/2014/09/24/split-servicing-federal-student-loans_n_5879012.html.
- 30 U.S. Department of Education. 2014. "U.S. Department of Education Heightens Oversight of Corinthian Colleges." Press Office. Accessed June 20, 2018. <https://www.ed.gov/news/press-releases/us-department-education-heightens-oversight-corinthian-colleges>.
- 31 See id.
- 32 U.S. Department of Education. 2014. "U.S. Department of Education Signs Plan to Protect Students by Avoiding Immediate Closure of Corinthian Colleges." Press Office. Accessed June 20, 2018. <https://www.ed.gov/news/press-releases/us-department-education-signs-plan-protect-students-avoiding-immediate-closure-corinthian-colleges>.
- 33 Securities and Exchange Commission. 2014. "Operating Agreement." Accessed June 20, 2018. https://www.sec.gov/Archives/edgar/data/1066134/000110465914050216/a14-16628_1ex10d1.htm.
- 34 Ibid.
- 35 Fain, Paul. 2014. "Feds Respond to Criticism of Bid by ECMC to Buy Most of Corinthian." *Inside Higher Ed*, December 9, 2014. <https://www.insidehighered.com/news/2014/12/09/feds-respond-criticism-bid-ecmc-buy-most-corinthian>.
- 36 U.S. Department of Education. 2017. "Federal Student Aid's Processes for Identifying At-Risk Title IV Schools and Mitigating Potential Harm to Students and Taxpayers." Office of Inspector General. Accessed June 20, 2018. <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2017/a09q0001.pdf>.
- 37 U.S. Department of Education. 2014. "U.S. Department of Education Signs Plan to Protect Students by Avoiding Immediate Closure of Corinthian Colleges." Press Office. Accessed June 20, 2018. <https://www.ed.gov/news/press-releases/us-department-education-signs-plan-protect-students-avoiding-immediate-closure-corinthian-colleges>.
- 38 Stratford, Michael. 2015 "Debt Relief for Corinthian Students?" *Inside Higher Ed*, March, 5 2015. <https://www.insidehighered.com/news/2015/03/05/us-weighs-whether-relieve-loan-debt-profit-colleges-student-borrowers>
- 39 Fain, Paul. 2016. "Next Act for Corinthian Campuses." *Inside Higher Ed*, July 28, 2016. <https://www.insidehighered.com/news/2016/07/28/zenith-education-gets-new-leader-250-million-it-seeks-turn-around-former-corinthian>.
- 40 Horwitz, Jeff. 2016. "Trouble Remains Following Failed For-Profit Schools' Revival." *AP News*, March 13, 2016. <https://apnews.com/fe5ef895b70d4b0ebecac9d5f6ab583a/trouble-remains-following-failed-profit-schools-revival>.
- 41 Douglas-Gabriel, Danielle. 2018. "Monitor Raises Questions about Successor to Corinthian Colleges." *Washington Post*, February 1, 2018. <https://www.washingtonpost.com/news/grade-point/wp/2018/02/01/monitor-raises-questions-about-successor-to-corinthian-colleges/>.
- 42 Open Secrets. N.d. "Lobbying Spending Database - SLM Corp, 2008." Accessed June 20, 2018. <https://www.opensecrets.org/lobby/clientsum.php?id=D000022253&year=2008>.



- 43 Warren, Elizabeth. 2016. Letter to James Runcie, Chief Operating Officer, Office of Federal Student Aid. U.S. Senate. Accessed June 20, 2018. <https://www.warren.senate.gov/files/documents/2016-05-10%20Letter%20to%20ED%20Navient%20re%20Lobbying%20Spending.pdf>.
- 44 Fang, Lee. 2015. "Corinthian Colleges Secretly Funded D.C. Think Tanks, Dark Money Election Efforts." *The Intercept*, May 4, 2015. <https://theintercept.com/2015/05/04/bankruptcy-filing-shows-corinthian-colleges-secretly-funded-d-c-think-tanks-dark-money-election-efforts/>.
- 45 Oberg, Jon. 2017. "Three Capitals: Iron Triangles, Part I." Three Capitals, December 2017. <http://viewfromthreecapitals.blogspot.com/2017/12/pubad-101401.html>.
- 46 Chopra, Rohit, and Julie Margetta Morgan. 2018. "Unstacking the Deck: A New Agenda to Tame Corruption in Washington." Roosevelt Institute. <http://rooseveltinstitute.org/unstacking-deck/>.
- 47 Social Security Administration. 2018. "Monthly Statistical Snapshot, May 2018." Accessed June 20, 2018. https://www.ssa.gov/policy/docs/quickfacts/stat_snapshot/.
- 48 Federal Student Aid, "FY 2017 Annual Report."
- 49 Sanchez, Claudio. 2016. "Is the Student Loan Crisis Fact or Fiction?" *NPR*, July 28, 2016. <https://www.npr.org/sections/ed/2016/07/28/487032643/is-the-student-loan-crisis-fact-or-fiction>.
- 50 Erin Dunlop Velez, "Newly Released Student Loan Data Bust Several Myths about Student Loan Repayment."
- 51 Robert Kelchen, "New Data on Long-Term Student Loan Default Rates."
- 52 Flynn, Andrea, Dorian Warren, Felicia Wong, and Susan R. Holmberg. 2017. *The Hidden Rules of Race: Barriers to an Inclusive Economy*. New York: Cambridge University Press.
- 53 Luhby, Tami. 2011. "College Graduation Rates: Income Really Matters." *CNNMoney*, November 28, 2011. http://money.cnn.com/2011/11/21/news/economy/income_college/.
- 54 McCarthy, Ryan. 2014. "The Student Debt Domino Effect: The CFPB's Rohit Chopra on How It's Holding Back Our Economy." *The Washington Post*, June 10, 2014. <https://www.washingtonpost.com/news/wonk/wp/2014/06/10/the-student-debt-domino-effect-the-cfpbs-rohit-chorpa-on-how-its-holding-back-our-economy/>.
- 55 U.S. Department of Education. 2017. "Improved Borrower Defense Discharge Process Will Aid Defrauded Borrowers, Protect Taxpayers." Press Office. Accessed June 20, 2018. <https://www.ed.gov/news/press-releases/improved-borrower-defense-discharge-process-will-aid-defrauded-borrowers-protect-taxpayers>.
- 56 Fullwiler, Scott, Stephanie A. Kelton, Catherine Ruetschlin, and Marshall Steinbaum. 2018. "The Macroeconomic Effects of Student Debt Cancellation." Levy Economics Institute. http://www.levyinstitute.org/pubs/rpr_2_6.pdf.



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