



How Qualified Student Loans Could Protect Borrowers and Taxpayers

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Last year slightly more than 1 million Americans filed for bankruptcy, as did about 40,000 businesses.¹ As has been the case since the founding of the country, bankruptcy has been an alternative of last resort for those facing severe economic hardships, such as a business failure or medical crisis, and hoping to make a fresh start.² Bankruptcy protection encourages a healthy level of risk taking and boldness by letting citizens know that their mistakes may not permanently cripple them financially.

This is cold comfort, however, for the millions of Americans and their families struggling with student-loan debt. Over the past few decades, student-loan debt has grown dramatically and now exceeds \$1 trillion, including more than \$150 billion in private student loans.³ Since the late 1970s, however, Congress has gradually made it increasingly difficult to discharge student debts in bankruptcy.⁴ Only a small number of bankruptcy cases involving student debt succeed due to a rigorous “undue hardship” provision of the bankruptcy code that generally allows these discharges only under the most extremely dire circumstances. Consider the case of Doug Wallace Jr., a graduate of Eastern Kentucky University, who shortly after finishing college became blind due to complications from diabetes. His blindness meant he was unable to work, and as a result was forced to file for bankruptcy protection. While Wallace’s medical debts were readily discharged, some \$38,000 in student-loan debt remained in limbo.⁵ As of September 2012, after six years of legal wrangling, Wallace was waiting for a federal judge to finally determine whether his employment prospects were sufficiently bleak that repaying his student loans would cause an undue hardship, resulting in a discharge of the loans through bankruptcy. He ultimately withdrew his request after reaching an agreement with his lender.⁶

Undue-hardship cases such as Wallace’s can be extremely hard to prove, and judges’ determinations on what financial circumstances can be overcome are inconsistent. The National Consumer Law Center’s Student Loan Borrower Assistance Project points to an example of a couple who successfully discharged student loans after demonstrating an undue hardship. In the cited example, both individuals were employed—one was a teacher’s aide and the other was a teacher working with emotionally disturbed children.

The couple's joint income was barely above the federal poverty level. In agreeing to discharge their student loans, the court also found that the couple had acted in "good faith"—a key component of the undue-hardship determination—because they had previously asked about the possibility of securing a more affordable repayment plan.⁷

Because the discharge of student-loan debt through a bankruptcy proceeding is an extremely rare and inconsistent option, unlike most other debts, student loans may follow borrowers—students or, in an increasing number of cases, their parents—to the grave and result in wages being garnished, tax refunds being taken, and Social Security checks being seized. Meanwhile, most other financial obligations remain dischargeable, including credit card debt and, in some cases, gambling obligations.⁸

The rationale for treating student loans so differently comes from the fact that most student loans are federally funded or insured and have built-in protections against undue financial hardship, including forbearance, deferments, and income-based repayment plans. Moreover, the dissimilar treatment also derives from a prevalent myth, which took root in the 1970s, that asserts that new graduates, especially doctors and lawyers beginning lucrative careers, would opt to declare bankruptcy instead of paying off their student loans. The thinking was that these borrowers would view the negative impacts of declaring bankruptcy as temporary and not particularly onerous when balanced against the course of a long career. In changing the bankruptcy rules in 1976 to exclude student loans, one member of Congress even argued that allowing student loans to be discharged in bankruptcy would be "specifically designed to encourage fraud."⁹

Furthermore, some lawmakers argued that because young borrowers were devoid of much credit history, the damage bankruptcy typically caused for other borrowers—including reduced access to affordable credit, as well as a negative mark on their credit record that could influence potential landlords and employers for up to 10 years—would not really affect young borrowers, allowing them to launch their careers debt free. Federal policymakers were also particularly concerned because many of these loans were made or insured by the federal government, which left taxpayers holding the bag. Yet an analysis at the time by the General Accounting Office (now the Government Accountability Office, or GAO) found that there were only a small number of delinquent borrowers obtaining discharges—typically low-income students who dropped out of poorly performing institutions and had few career options as a result.¹⁰

Over the nearly four decades since the bankruptcy rules were changed, much has changed about student loans. For example:

- The federal government disbursed \$6.2 billion in student loans in 1982—the equivalent of \$13.6 billion in 2012 dollars. Thirty years later, in 2012, federal student-loan disbursements totaled \$105 billion, more than seven times their 1982 levels after adjusting for inflation.¹¹

- Student-loan debt has grown significantly—45 percent of all American families now have student loans, including 29 percent of families with household heads who are ages 55 to 64 and 13 percent of families with household heads who are ages 65 to 74.¹²
- The average college senior graduated with more than \$26,000 in student-loan debt in 2011.¹³
- Youth unemployment and underemployment are higher too. Since the beginning of the Great Recession, the unemployment rate for young workers ages 20 to 24 has been about 40 percent to 50 percent higher than 1978 levels.¹⁴ While about one in nine white young adults ages 20 to 24 were unemployed in 2012, one in seven Latinos and one in four African American young adults were unemployed.¹⁵

The number of bankruptcies has increased significantly, but the barriers to filing for bankruptcy are higher as well. The passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 narrowed eligibility for Chapter 7 bankruptcies that ultimately forgive debts based on income and debt ratios and instead encouraged borrowers toward Chapter 13 bankruptcy, which involves writing down debts to meet a court-ordered repayment plan.

Some members of Congress have proposed legislation that would again permit private student loans to be discharged more readily in bankruptcy, effectively making student loans equal to credit card debt. This is a start because there are major concerns with the private loan market, including interest rates as high as 19 percent.¹⁶ But the proposal ignores the reality that not all private loans are bad and not all federal loans are ultimately good for borrowers. Case in point: Federal student loans are available for programs that have very poor employment outcomes. Moreover, not all federal loans have the same borrower protections across loan programs. Income-based repayment options, for example, which take into account a borrower's earnings and ultimately forgive the remaining balance after years of payments, often make it easier for borrowers to meet their living expenses and pay off at least a portion of their student loans. But parents using Parent Loans for Undergraduate Students, or PLUS, loans to borrow for a child's education are generally excluded from using the income-based repayment benefit.

Congress should move to make some student loans dischargeable in bankruptcy. Given the persistent myth of the young borrower declaring bankruptcy at the start of his or her career, it is understandable that no one wants to be seen as opening the floodgates to potential abuse. The way to approach this issue, however, is to establish clear and public standards for what we at the Center for American Progress refer to as Qualified Student Loans, or loans that cannot be easily discharged in bankruptcy, which has been done for other types of financial products as a way to identify safer financial products. Qualified Student Loans would include loans, both federal and private, that have reasonable repayment conditions such as low interest rates and access to favorable forbearance,

deferment, and income-based repayment options. These loans would also be qualified based on the successful track records of the institutions and programs receiving the proceeds as a way to ensure that these are programs that—by virtue of their graduate employment rates—give graduates a reasonable chance to repay. Loans not meeting both standards—borrower-friendly terms and some evidence that graduates, based on their employability, are likely going to be able to repay these loans—would be eligible for discharge in bankruptcy just as credit cards are. Other loans—Qualified Student Loans—would maintain the undue-hardship provision while at the same time benefiting from greater borrower protections.

Switching to a system of Qualified Student Loans would provide new transparency in higher education, demonstrating to students and families whether loans are reasonable. It piggybacks on the U.S. Department of Education's college scorecard, which provides summary information on college affordability and outcomes.¹⁷ Furthermore, the Qualified Student Loan system encourages more prudent student lending. This issue brief discusses the current state of student loans and the history of bankruptcy protection for student loans before laying out a more detailed plan for how Qualified Student Loans would work.

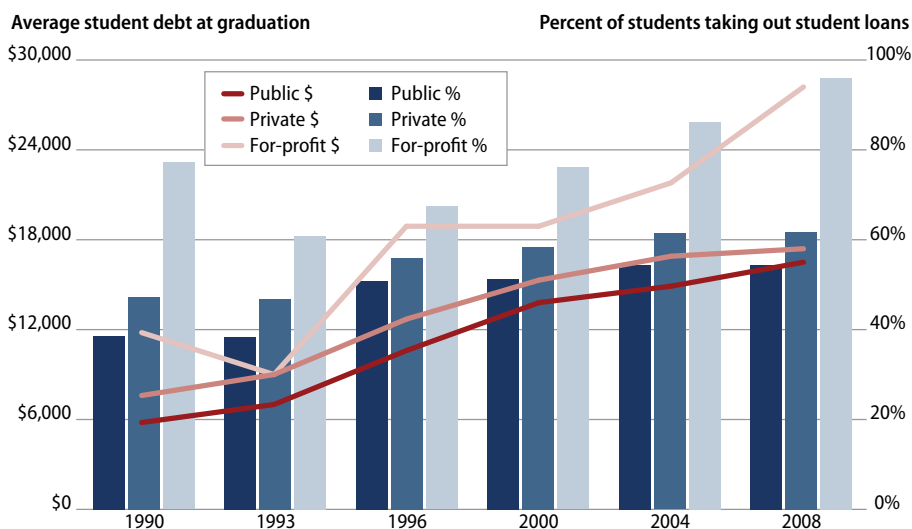
The state of student loans today

For young adults, higher education is an important investment of time and money that is expected to lead to good jobs and higher incomes. Unfortunately, however, for too many individuals the pursuit of higher education increasingly comes with higher amounts of student debt. According to the Federal Reserve Bank of New York, the total amount of student loans outstanding almost tripled between 2005 and 2012, from \$363 billion to \$966 billion, fueled by a 67 percent increase in the number of borrowers and a 58 percent increase in the average balance amount per borrower.¹⁸

The National Postsecondary Student Aid Study provides an insight into how the patterns of borrowing for undergraduate education have changed over the years. During the 1989-90 academic year, only 39 percent of fourth- and fifth-year undergraduates at public four-year colleges had accumulated student-loan debt.¹⁹ By the 2007-08 academic year, 54 percent of such undergraduates had accumulated student-loan debt.²⁰ And among fourth- and fifth-year undergraduates at nonpublic institutions during the 2007-08 academic year, 62 percent of undergraduates at private four-year colleges and 96 percent of undergraduates at four-year for-profit colleges took out student loans, compared with 47 percent and 77 percent, respectively, in 1989-90. The cumulative amounts borrowed, on average, also increased during this time period, from \$5,800 to \$16,500 for students at public four-year colleges; from \$7,600 to \$17,400 for students at nonprofit four-year colleges; and most strikingly, from \$11,800 to \$28,200 for students at for-profit four-year colleges.

Even after adjusting for inflation, cumulative student-loan debt increased by 80 percent for students at public institutions between 1990 and 2008, and about 50 percent at both private non-profit institutions and for-profit schools during the same time period.²¹ In recent years private student lending has increased dramatically as well, with total debt outstanding more than doubling between 2005 and 2011, from \$56 billion to \$140 billion.²²

FIGURE 1
Undergraduate student loans: How many borrow, and how much



Source: National Postsecondary Student Aid Study, 1990-2008, U.S. Department of Education.
Note: Not adjusted for inflation.

Student loans: How many borrow, and how much do they borrow?

The growing student-debt burden (see Figure 1) particularly affects low-income students, female students, and students of color—groups who are more likely to borrow and typically borrow higher amounts than their more affluent, white, male classmates. Overall, during the 2007-08 academic year, 58 percent of fourth- and fifth-year undergraduates borrowed to meet their postsecondary-education expenses with a cumulative average amount borrowed of slightly less than \$18,000.²³ Those undergraduates attending for-profit institutions were the most likely to borrow—96 percent—and they borrowed the most—\$28,329 on average.²⁴ African American students were more likely to borrow than other racial or ethnic groups, with 76 percent borrowing an average cumulative amount of \$22,844.²⁵ Women borrowed somewhat more than men: 61 percent of fourth- and fifth-year undergraduate women borrowed an average of \$18,353, compared to 55 percent of men, who borrowed a cumulative average of \$17,487.²⁶ Undergraduates majoring in theology or religious vocations were the most likely to borrow—75 percent—but those majoring in computer and information science borrowed the most—\$20,413 on average.²⁷

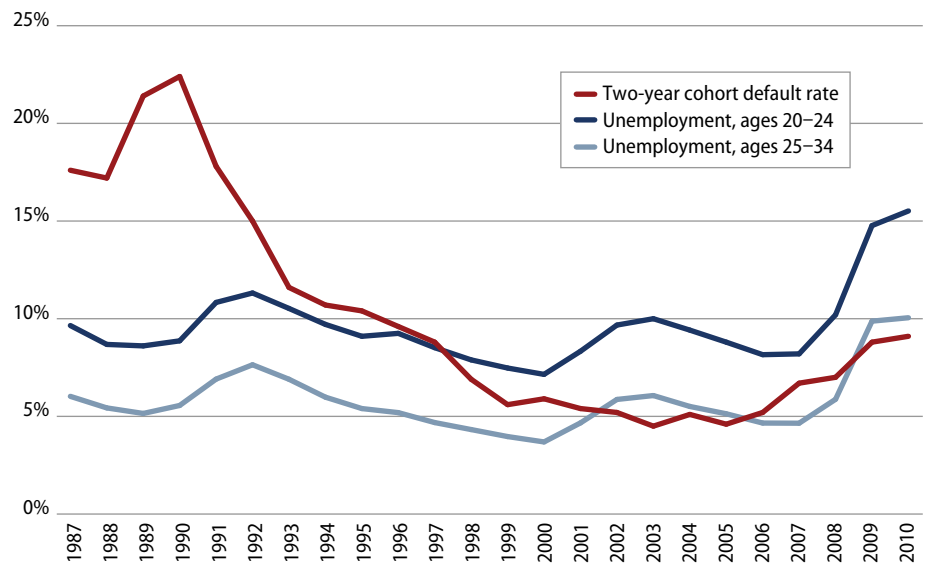
Student-loan delinquencies and unemployment rates

While borrowing has increased, however, the employment prospects of young adults have not kept pace. The unemployment rate of 16.2 percent among Americans ages 16 to 24 is more than twice the unemployment rate for people of all ages.²⁸ Meanwhile, the unemployment rate in 2010 for young people ages 20 to 24 was more than 15 percent, and it was more than 10 percent for those individuals ages 25 to 34; the rates were twice as high as the unemployment levels for both groups prior to the recession.²⁹

Perhaps not surprisingly, young people are increasingly failing to make payments on their student loans. The two-year cohort default rate—a measure of recent graduates failing to make a loan payment for at least 270 days—has increased from 4.6 percent in 2005 to 9.1 percent in 2010.³⁰ (see Figure 2) The Consumer Financial Protection Bureau recently reported that more than 7 million borrowers are in default on a federal or private student loan.³¹ Borrowers in default face serious consequences, including escalating debt levels through the imposition of late fees, interest, and collection costs; losing eligibility for future student aid; a damaged credit rating; and the garnishment of wages and tax refunds.³² Moreover, nearly one-third of borrowers in repayment are currently delinquent on student debt, meaning that they have not made payments on time—a situation that can also damage a borrower’s credit rating and jeopardize access to other types of loans.³³

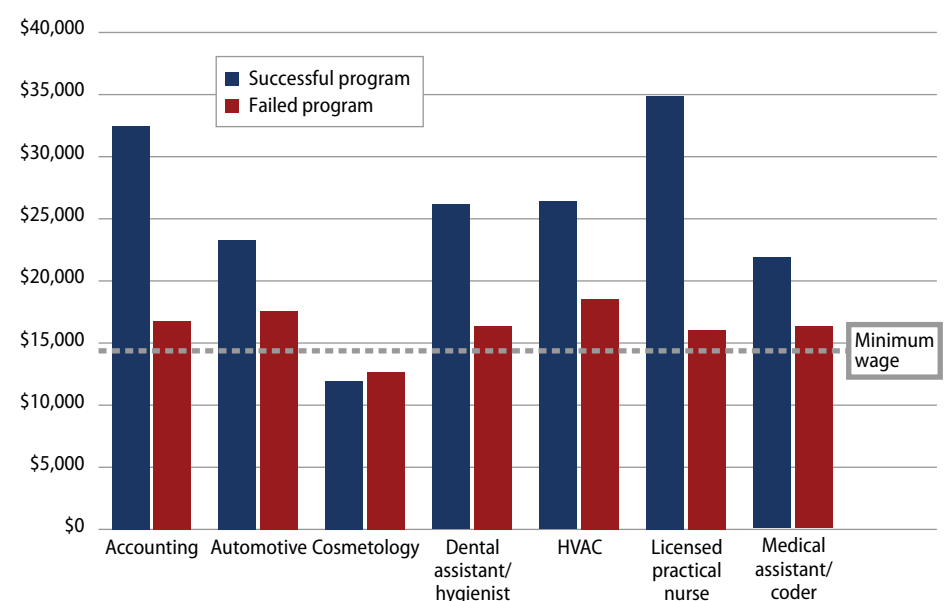
Recent data collected by the U.S. Department of Education reveals that some educational programs that are eligible for student financial aid, including student loans, are ineffective at preparing people for gainful employment in a recognized occupation.³⁴ Indeed, some programs only provide graduates with the ability to earn minimum wage or would require graduates to contribute a large share of their income above a subsistence level to repay their loans. Some borrowers, ultimately, will be forced into poverty by the very student loan that was intended to help them break out of poverty.

FIGURE 2
Student loan defaults and unemployment



Sources: U.S. Department of Education; Bureau of Labor Statistics, U.S. Department of Labor.

FIGURE 3
Student loan defaults and unemployment



Source: 2011 Gainful Employment Informational Rates, Federal Student Aid, U.S. Department of Education.

Average earnings relative to the minimum wage

Increasingly, students are relying on loans to pay for their education at institutions of higher learning. Yet employment outcomes have failed to keep pace with the growing cost of education, leaving some students in a debt trap that can have serious long-term consequences.

Figure 3 shows the average annual earnings for students in different educational programs based on whether a particular program “succeeds” or “fails” at keeping student-debt rates at a reasonable level relative to former students’ salaries. In this case, the measure of success is based on whether debt payments are less than 30 percent of former students’ discretionary incomes—that is to say, income above the federal poverty line. Participants in failing programs may have low earnings that are close to the minimum wage and are comparable to those without degrees despite having invested in education. Income-based repayment options can help, but eligible borrowers need to explicitly choose the alternative repayment programs since they are currently not the default option.³⁵

The history of student-loan discharge in bankruptcy

There are two main paths to consumer bankruptcy: A consumer’s debts are either discharged in Chapter 7 of the Bankruptcy Code—meaning that the debts may go away if incomes are below a certain threshold and other conditions are met—or debts are restructured into a three-to-five-year repayment plan in Chapter 13 before being discharged, taking into account an individual’s income.³⁶

Initially, as part of the Bankruptcy Reform Act of 1978, federally guaranteed student loans could be discharged in a Chapter 7 bankruptcy action only after a five-year waiting period or in cases of undue hardship. Congress passed a law in 1990 extending this waiting period to seven years while at the same time closing the door on restructuring federal student debt in Chapter 13. Two more laws further constrained bankruptcy as an option: As part of the Higher Education Amendments of 1998 the waiting-period option was removed, leaving only undue hardship as a reason for discharge, and in 2005 the same limitations on federal student loans were extended to private student loans as part of the Bankruptcy Abuse Prevention and Consumer Protection Act.³⁷

That leaves student-loan borrowers with only the undue-hardship claim, which is not clearly defined. Some, but not all, of the bankruptcy courts have adopted the three-factor Brunner test, which assesses whether the debtor:

- Can maintain, based on current income and expenses, a “minimal” standard of living for the debtor and the debtor’s dependents if forced to repay the student loans

- Has additional circumstances that exist indicating that this current financial situation is likely to persist for a significant portion of the repayment period of the student loans
- Has made good-faith efforts to repay the student loans³⁸

Supporters of placing limits on student-loan bankruptcy protection have long argued that students and recent graduates may have stronger incentives to file for bankruptcy at the start of their work lives, knowing that the effects of bankruptcy—including potentially having less access to credit or paying higher interest rates—are temporary over the course of a long career. But evidence that student-loan borrowers would strategically flock to bankruptcy protection remains weak. Indeed, in 1977 the GAO analyzed the bankruptcy filings of borrowers whose student loans were discharged and found that the student loans themselves were generally not the cause.³⁹ In a random study of bankruptcy discharges of student loans prior to the reforms of the late 1970s, only 8 percent of bankruptcy filers with student loans had no other outstanding debts. Most borrowers had significant unsecured debts other than student loans: On average, student loans were only 29 percent of all debts reported by these bankruptcy filers.⁴⁰

In the early 1990s another GAO review of student-loan performance looked at factors that influence default rates for Stafford loan borrowers. Generally, student-loan borrowers with the highest default risks were often from vulnerable populations. They were frequently low income and/or unemployed, sometimes lacking even a high school diploma, and they may not have actually completed an educational program. Their schools, too, were often poor-quality vocational or trade schools.⁴¹ Given their poor outcomes, they would likely be strong candidates for bankruptcy—if they had access to it.

How Qualified Student Loans could protect borrowers and allow limited bankruptcy protection

Several bills have been proposed that would once again make bankruptcy protection available to borrowers who have private student loans. In the U.S. Senate, Sen. Richard “Dick” Durbin (D-IL) introduced the Fairness for Struggling Students Act of 2013 (S. 114), and in the House of Representatives, Rep. Steve Cohen (D-TN) introduced the Private Student Loan Bankruptcy Fairness Act of 2013 (H.R. 532).⁴² Both bills would reverse the actions Congress took in 2005 when it passed the Bankruptcy Abuse Prevention and Consumer Protection Act, which made private student loans nondischargeable in bankruptcy for the first time unless the borrower could satisfy the same undue-hardship provision as federal student loans. This would be a valuable first step, given the lack of consumer protections for private student loans.

But a bolder approach would be to identify the characteristics of both the student loans and the educational programs that are helpful or harmful to borrowers. Evidence abounds that not all federal student loans are used to support high-quality educational programs—educational experiences that lead to strong employment outcomes. Just as true is the fact that not all private student loans charge high fees and interest rates. Indeed, a number of private student-loan options have no upfront fees and feature fixed interest rates comparable to federal loans.⁴³ Instead of a one-size-fits-all approach, Congress and regulators could establish definitions for student loans that have a reasonable chance of being repaid—and offer bankruptcy discharges, outside of undue hardship, for loans that do not meet this definition.

To that end, Congress and regulators could establish parameters for a new financial product—what we call a Qualified Student Loan. Such a financial product would need to meet established, reasonable standards regarding affordable interest rates, flexible repayment options, and death and disability protections. It would also need to meet minimum disclosure standards so consumers are able to clearly understand their student-loan burdens when making choices about higher education. Loans meeting these criteria would still be subject to the existing bankruptcy laws that only allow student debt to be discharged in cases of undue hardship. But loans fitting this definition would be available only for institutions of higher education and programs that meet minimum standards in terms of completion, or graduation, rates, job placement, and evidence-based future salary projections—programs that can assure that their graduates have a reasonable chance of repaying their student loans.

These Qualified Student Loan standards would include the following:

- **Reasonable interest rates and fees.** The recently enacted Bipartisan Student Loan Certainty Act of 2013 caps interest rates on federal loans at 8.25 percent for undergraduate students, 9.5 percent for graduate students, and 10.5 percent for PLUS loans, which are also commonly used for graduate programs.⁴⁴ Because interest rates moving forward will be pegged to 10-year Treasury rates up to these maximum rates, borrowers this fall face actual rates ranging from 3.9 percent to 6.4 percent.⁴⁵ Interest rates in excess of the caps established by Congress make it more likely that a borrower's student-loan repayment will cause an undue economic hardship.
- **Deferment and forbearance provisions similar to today's federal loans.** To help keep student-loan repayment manageable, federal student loans allow borrowers to postpone repayment, though the borrower may need to pay interest in the meantime and loan balances may increase.⁴⁶ Lenders are required to grant deferment or forbearance in some circumstances, including for medical and dental school graduates in internship and residency programs and for borrowers active in the military or in national service. Forbearance may also be available in cases of economic hardship.

- **Access to income-based repayment.** The federal student-loan programs offer a range of repayment options beyond the standard 10-year repayment plan, including extended repayment as well as repayment plans that fluctuate based on a borrower's income. Income-based repayment generally involves paying a fixed percentage of one's discretionary monthly income—that is, income above the federal poverty level—toward student loans for 20 or 25 years, with any remaining balance being forgiven at the end of that period. The federal government recently introduced the Pay As You Earn repayment plan, which allows student-loan borrowers taking out loans after 2011 to pay 10 percent of their monthly discretionary income rather than the 15 percent income requirement for student loans prior to 2011. These repayment options provide borrowers with the ability to manage their student-loan debt responsibly, even when their incomes are lower than expected.
- **Reasonable likelihood of repayment.** To be eligible for federal student loans, a borrower must be enrolled in a college or university that is accredited by an agency recognized by the U.S. Department of Education—a mechanism intended to ensure that federal loans only go toward high-quality programs of study. Evidence suggests, however, that some students are able to borrow for educational programs that do not lead to gainful employment in a recognized occupation. In the average medical-assistant or medical-coder program, for example, students would need to devote 84 percent of discretionary income to student-loan payments.⁴⁷ As a result, these borrowers are not likely to repay their student loans.

In line with the Obama administration's proposal for measuring gainful employment, several measures may ultimately track whether intended beneficiaries are able to repay. One measure is whether at least 35 percent of an institution's or a program's former students are repaying their loans. Another is whether annual student-loan payments are equal to or below 12 percent of a borrower's total annual earnings, or 30 percent of his or her discretionary income—that is, income above the federal poverty level.⁴⁸

Nonqualified student loans, on the other hand, would not need to meet any of these criteria. These loans, unlike their qualified counterparts, would be dischargeable in Chapter 7 bankruptcy after a specified waiting period—as was the law for federal loans prior to 1998.⁴⁹ This would allow for greater flexibility for institutions and students. Institutions would be able to obtain funding for students in programs that have not demonstrated that completers have been successful in entering the workforce. Students could benefit from being able to obtain a loan to attend such a program, without the loan being nearly impossible to discharge through the bankruptcy process—thus transferring some of the risk back to the issuer of the loan—or through some risk-sharing arrangement with the institution offering the program.

Qualified and nonqualified student loans do not necessarily fit in the current divide between federal and private student loans. Some private loans have borrower protections or support programs with a strong repayment history. Some federal loans support weak or high-cost programs even though graduates may not be able to repay their debts. Having a student-loan system that carefully scrutinizes both the loan and the educational institution would provide transparency for borrowers, an exit strategy for the most vulnerable, and strong incentives for institutions and—in the case of private loans, lenders—to improve performance.

Moving toward a system of Qualified Student Loans would have the following advantages:

- **Bankruptcy for those who need it most.** By making private student loans nearly impossible to discharge in bankruptcy, lenders have a strong incentive to make loans to students rather than loans to the general public that could be dischargeable. While this has some benefit, as it brings private capital into higher education, it also provides a powerful incentive to be overly aggressive in making student loans. This has caused some lenders to engage in predatory practices in making student loans. There is an important distinction, however, between productive student debt that is associated with favorable outcomes—in terms of both career growth and repayment—and student debt that may not lead to these preferred outcomes. For the former, the undue-hardship standard may be unduly harsh and in need of reform, but the principle is sound. For the latter, student loans are more akin to consumer debts. It makes no difference whether the loan went toward education or toward the purchase of shoes if it is unproductive debt. Some will argue that this distinction does not go far enough, but it is a valuable starting point.
- **Transparency about borrowing and repayment choices for consumers.** Building off the Department of Education’s recently unveiled college scorecard, a Qualified Student Loan definition would fit within the Consumer Financial Protection Bureau’s student-outreach mission and its role in promoting improved disclosures across the spectrum of financial products. In addition to clearly explaining student-loan terms and conditions, as well as educational outcomes for the institution, these disclosures can identify whether student loans are qualified or if they are higher-risk loans that would be eligible for bankruptcy discharge.
- **A race to the top for lenders and institutions.** The potential for bankruptcy discharges may steer both lenders and institutions in multiple directions. Some may seek to alter their academic programs or lending structures to neatly fit within the definition of a Qualified Student Loan by ensuring stronger educational outcomes or providing for more flexible repayment plans. Others may accept nonqualified student-loan status, but lenders may require institutions to retain some of the risk for these loans to cover potential bankruptcy losses.

These changes would likely also help address the rate of inflation in higher education by tailoring loans to the amounts that borrowers may reasonably be expected to repay, which in turn could mean that tuition increases are smaller. What's more, institutions may look closer at functions not central to building future employment, and those deemed as not being key to employment outcomes may fall out of favor. Indeed, there may ultimately be effects on higher-education access. Clearly, a Qualified Student Loan system would result in a higher-education system that provides high-quality loans for borrowers in high-quality programs and, for the first time in decades, a reasonable exit strategy through bankruptcy for borrowers whose loan programs may not be up to par.

This approach is consistent with the regulation of other types of financial products. Financial products, similar to other consumer products, should have clear labels that help consumers make smart decisions. Bank accounts and credit-union accounts bear a label from the Federal Deposit Insurance Corporation, or FDIC, or the National Credit Union Administration reminding consumers that their deposits are safe and guaranteed. Meanwhile, investment products will often disclaim that they are “not FDIC insured and may lose value.” Consumers are given a choice and can weigh safety and risk accordingly.

The qualified mortgage rule recently finalized by the Consumer Financial Protection Bureau follows the same dynamic for mortgage lenders, limiting lenders' liability in cases where they follow sound underwriting, document a borrower's ability to repay mortgage loans by pegging them to a maximum percentage of income, and limit fees at closing, among other provisions.⁵⁰ Qualified Student Loans would follow this same precedent: defining a loan that is safe for the borrower and has a reasonable chance of being repaid.

Conclusion

American consumers and businesses have long used bankruptcy as a tool to get out of their most severe debts and get their lives back on track, yet borrowers inundated with student loans have not had access to the same opportunity. The rise in income-based repayment opportunities for federal student loans is a starting point to keep loan payments manageable, but for many borrowers—both federal and private—student-debt burdens may not be readily repaid, leading to dire consequences. Including some student loans in bankruptcy reforms and expanding borrower protections through Qualified Student Loans will ultimately maintain bankruptcy as the narrow path of last resort it was designed to be, while giving those burdened by student debt a chance for a fresh start.

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Endnotes

- 1 U.S. Courts, "Table F-2. U.S. Bankruptcy Courts—Business and Nonbusiness Cases Commenced, by Chapter of the Bankruptcy Code, During the 12-Month Period Ending September 30, 2012," available at http://www.uscourts.gov/uscourts/Statistics/BankruptcyStatistics/BankruptcyFilings/2012/0912_f2.pdf (last accessed August 2013).
- 2 Article 1, Section 8 of the U.S. Constitution explicitly gives Congress the authority to enact bankruptcy laws.
- 3 Consumer Financial Protection Bureau and U.S. Department of Education, "Private Student Loans" (2012), available at http://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf.
- 4 Duke Chen, "Student Loans in Bankruptcy" (Washington: Congressional Research Service, 2007), available at http://assets.opencrs.com/rpts/RS22699_20070726.pdf.
- 5 Douglas A. Wallace, Jr. v. *Educational Credit Management Corporation*, U.S. Bankruptcy Court for the Southern District of Ohio, December 1, 2010; Ron Lieber, "Last Plea on Student Loans: Proving a Hopeless Future," *The New York Times*, August 31, 2012, p. A1.
- 6 Electronic court records for U.S. Bankruptcy Court, Southern District of Ohio, Case 06-55479 (Adv. Pro. No. 06-02735), Douglas A. Wallace Jr. v. Citibank et al., Doc. 61 (filed January 23, 2013), available at <http://www.pacer.gov>.
- 7 Student Loan Borrower Assistance, "Bankruptcy," available at <http://www.studentloanborrowerassistance.org/bankruptcy/> (last accessed July 2013).
- 8 Christine Dugas, "Graduates saddled with debt, student loans can't easily turn to bankruptcy," *USA Today*, May 15, 2009, available at http://usatoday30.usatoday.com/money/perfi/2009-05-12-studentloans13_N.htm.
- 9 Rafael I. Pardo and Michelle R. Lacey, "Undue Hardship in the Bankruptcy Courts: An Empirical Assessment of the Discharge of Educational Debt," *University of Cincinnati Law Review* 74 (2) (2005): 405–529.
- 10 General Accounting Office, "Guaranteed Student Loan Program Bankruptcies" (1977).
- 11 Center for American Progress analysis of U.S. Department of Education 1994 Student Loan Data Book appendix tables. U.S. Department of Education, "Federal Student Loan Data Book FY94-FY96," available at <http://www2.ed.gov/finaid/prof/resources/data/fslpdata94-96/index.html> (last accessed August 2013); CAP analysis of U.S. Department of Education, *Student Loans Overview: Fiscal Year 2014 Budget Proposal* (2013), available at <http://www2.ed.gov/about/overview/budget/budget14/justifications/s-loansoverview.pdf>.
- 12 Jesse Bricker and others, "Changes in U.S. Family Finances from 2007 to 2010: Evidence from the Survey of Consumer Finances," *Federal Reserve Bulletin* (98) (2) (2012): 1–80, available at <http://www.federalreserve.gov/pubs/bulletin/2012/pdf/scf12.pdf>.
- 13 The Project on Student Debt, "Student Debt and the Class of 2011" (2012), available at <http://projectonstudentdebt.org/files/pub/classof2011.pdf>.
- 14 U.S. Bureau of Labor Statistics, *Current Population Survey* (U.S. Department of Labor, 2013).
- 15 Sarah Ayres, "The High Cost of Youth Unemployment" (Washington: Center for American Progress, 2013), available at <http://www.americanprogress.org/issues/labor/report/2013/04/05/59428/the-high-cost-of-youth-unemployment/>.
- 16 Consumer Financial Protection Bureau and U.S. Department of Education, "Private Student Loans."
- 17 U.S. Department of Education, "College Affordability and Transparency Center," available at <http://collegecost.ed.gov> (last accessed August 2013).
- 18 Federal Reserve Bank of New York, "Student Loan Debt by Age Group," available at <http://www.newyorkfed.org/studentloandebt/> (last accessed August 2013).
- 19 CAP analysis of National Postsecondary Student Aid Study data. National Center for Education Statistics, "National Postsecondary Student Aid Study (NPSAS)," available at <http://nces.ed.gov/surveys/npsas/> (last accessed August 2013).
- 20 Ibid.
- 21 Ibid.
- 22 Consumer Financial Protection Bureau and U.S. Department of Education, "Private Student Loans."
- 23 CAP analysis of National Postsecondary Student Aid Study data. National Center for Education Statistics, "National Postsecondary Student Aid Study (NPSAS)."
- 24 Ibid.
- 25 Ibid.
- 26 Ibid.
- 27 Ibid.
- 28 Ayres, "The High Cost of Youth Unemployment."
- 29 U.S. Bureau of Labor Statistics, *Current Population Survey*.
- 30 U.S. Department of Education, "FY 2010 2-Year Official National Student Loan Default Rates," available at <http://www2.ed.gov/offices/OSFAP/defaultmanagement/default-rates.html> (last accessed August 2013).
- 31 Rohit Chopra, "A closer look at the trillion," Consumer Financial Protection Bureau blog, August 5, 2013, available at <http://www.consumerfinance.gov/blog/a-closer-look-at-the-trillion/>.
- 32 Federal Student Aid, "Understanding Default," available at <http://studentaid.ed.gov/repay-loans/default> (last accessed August 2013).
- 33 Donghoon Lee, "Household Debt and Credit: Student Debt" (New York: Federal Reserve Bank of New York, 2013), available at <http://www.newyorkfed.org/newsevents/mediaadvisory/2013/Lee022813.pdf>.
- 34 CAP analysis of Federal Student Aid, "2011 Gainful Employment Informational Rates," available at <http://studentaid.ed.gov/about/data-center/school/ge> (last accessed August 2013).
- 35 David Madland, "Making Our Middle Class Stronger: 35 Policies to Revitalize America's Middle Class" (Washington: Center for American Progress, 2012), available at <http://www.americanprogress.org/issues/economy/report/2012/08/01/12034/making-our-middle-class-stronger/>.
- 36 Administrative Office of the U.S. Courts, "Bankruptcy Basics" (2011), available at <http://www.uscourts.gov/uscourts/FederalCourts/BankruptcyResources/bankbasics2011.pdf>.
- 37 Chen, "Student Loans in Bankruptcy."
- 38 *Brunner v. New York State Higher Educ. Servs. Corp.*, 831 F.2d 395 (2d Cir. 1987).
- 39 General Accounting Office, "Guaranteed Student Loan Program Bankruptcies."

40 Ibid.

41 General Accounting Office, "Characteristics of Loan Defaulters" (1991).

42 Office of Sen. Dick Durbin, "As Student Loan Debt Surpasses \$1 Trillion, Senators Introduce Legislation to Address Crisis," Press release, January 23, 2013, available at <http://www.durbin.senate.gov/public/index.cfm/pressreleases?ID=adad47a3-9b82-4c46-b971-57bb9dc11044>; Office of Rep. Steve Cohen, "Cohen/Davis Introduce Legislation to Restore Fairness in Student Lending," Press release, February 6, 2013, available at <http://cohen.house.gov/press-release/cohendavis-introduce-legislation-restore-fairness-student-lending>.

43 FinAid, "Private Student Loans," available at <http://www.finaid.org/loans/privatestudentloans.phtml> (last accessed July 2013).

44 Public Law 111-28, August 9, 2013.

45 Jeremy W. Peters and Ashley Parker, "Unusual Feat in Congress: Student Loan Bill Breezes On," *The New York Times*, August 1, 2013, p. A10.

46 Federal Student Aid, "Deferment and Forbearance," available at <http://studentaid.ed.gov/repay-loans/deferment-forbearance> (last accessed August 2013).

47 CAP analysis of Federal Student Aid, "2011 Gainful Employment Informational Rates."

48 Federal Student Aid, "2011 Gainful Employment Informational Rates."

49 Chen, "Student Loans in Bankruptcy."

50 Consumer Financial Protection Bureau, "What the new Ability-to-Repay rule means for consumers" (2013), available at http://files.consumerfinance.gov/f/201301_cfpb_ability-to-repay-rule_what-it-means-for-consumers.pdf.