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## Article

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## THE FUTURE OF LOWER-INCOME STUDENTS IN HIGHER EDUCATION: RETHINKING THE PELL PROGRAM AND FEDERAL TAX INCENTIVES

### ABSTRACT

*As the costs of higher education have soared, the value of Pell Grants has declined, making it more difficult for lower-income students to obtain an education without being hopelessly mired in debt. This Article proposes a new system of federal funding for higher education that would require a redirection of a portion of the funds from the Pell program and a reformation of the federal tax incentives for higher education to provide free community college/vocational school for lower- and middle-income students, without the need to raise additional taxes. This Article also addresses problems that such a proposal would raise, such as access, low retention/graduation rates at community colleges, and the role of proprietary institutions. By lowering many of the barriers that lower-income students face in obtaining a higher education, this proposal would make federal funding of higher education more efficient by providing a more skilled workforce and perhaps by reducing the amount of student loans in the future.*

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*Nothing--nothing at all--matters more than trained intelligence. It is the key not only to success in life, but it is the key to meaning in life.*

Lyndon Baines Johnson<sup>1</sup>

## \*1108 I. INTRODUCTION

Higher education is crucial in today's global economy, not only to individual financial well-being,<sup>2</sup> but also to national growth and prosperity.<sup>3</sup> However, the United States currently faces two critical problems. First, despite the considerable investments of both the federal and state governments, the costs of higher education have skyrocketed, making it increasingly unaffordable for many low- and middle-income families without some form of financial assistance. Second, while human capital economy<sup>4</sup> in the United States is dominated by college-educated Whites,<sup>5</sup> the population of Blacks and Hispanics is rapidly outpacing that of Whites.<sup>6</sup> Therefore, education of \*1109 minorities and the economically disadvantaged is essential for U.S. competition in the global marketplace and ultimately, for the economy. But the education gap between Whites and minorities is growing ever wider.<sup>7</sup>

In the past, three federal programs have provided strong incentives to encourage lower-income students to enroll in college and to persist until they obtained their degrees. The most important of these has been the Pell Grant program,<sup>8</sup> which has allowed low-income students to enroll in college and complete their degrees without being mired in debt. Pell Grants, formerly known as Basic Educational Opportunity Grants,<sup>9</sup> are essentially “free money” for students because they do not have to be repaid.<sup>10</sup> The other two incentives, Perkins Loans and Subsidized Stafford Loans, are low-interest loans that require repayment.<sup>11</sup> Nevertheless, in the past, the benefits of a college education have justified the detriment of loan repayments. This sentiment, however, seems to be shared by fewer and fewer individuals \*1110 today,<sup>12</sup> and the result has been a widening of the education gap between those in the lower-income ranges and those in the higher-income ranges.<sup>13</sup> This gap will widen further over time because Pell Grants have become less meaningful,<sup>14</sup> the Perkins Loan program has expired,<sup>15</sup> and Subsidized Stafford Loans have some daunting drawbacks.<sup>16</sup>

\*1111 The United States currently spends more on education than the vast majority of the Organization for Economic Co-operation and Development (OECD) countries,<sup>17</sup> but its tertiary degree attainment rate is declining relative to those countries.<sup>18</sup> One reason for this inefficiency is the skyrocketing costs of higher education. Another reason is that while the student demographic has been rapidly changing, the needs of these students are not being adequately met.<sup>19</sup>

The Higher Education Act of 1965 (HEA)<sup>20</sup> authorizes most federal spending on higher education. The HEA generally is subject to reauthorization every five to six years, but currently it is past its due date.<sup>21</sup> While there have been several proposals to reform federal funding for higher education in anticipation of the HEA reauthorization,<sup>22</sup> this Article discusses the most comprehensive of these proposals-- President Obama's America's College Promise--and the proposal that is likely to have the most influence over federal funding for education for the foreseeable future--President Trump's America First Blueprint. However, each of these proposals has flaws--in some \*1112 cases, fundamental flaws--that will prevent the federal funding system from becoming more efficient by increasing college access and completion rates.

This Article focuses on the significant education gap between lower-income and higher-income individuals. Although students in the lower-income ranges have benefitted from low-interest student loans, an important component of federal student financial aid, this Article focuses primarily on the Pell Grant program because it is a more important incentive for low-income students since it does not have to be repaid.<sup>23</sup> The program may be imperiled under the Trump Administration.

Part II of this Article traces the evolution of the Pell Grant program. Part III compares and critiques the budget proposals for higher education of Presidents Obama and Trump. Part IV suggests an alternative plan to make federal funding for higher

education more efficient by reforming the Pell Grant program and revising the education tax incentives to make them more efficient, and to make college more affordable for lower- and middle-income families. Part V concludes.

## II. THE EVOLUTION OF THE PELL PROGRAM

### A. *The Strength of the Pell*

The decade of the 1960s was an important period in federal funding for education at all levels, especially for low-income students. During this time, the national focus shifted from gifted students and curricular interests to civil rights and the economically and socially disadvantaged. The HEA was a comprehensive act<sup>24</sup> that sought to encourage enrollment by making college more affordable for low- and middle-income students. It authorized the appropriation of \$804 million \*1113 for scholarships,<sup>25</sup> established Basic Educational Opportunity Grants (the precursor of Pell Grants),<sup>26</sup> created guaranteed low-interest student loans (the precursor of Stafford Loans),<sup>27</sup> and extended the work-study program--all to be administered by the Commissioner of Education.<sup>28</sup> This marked an important transition in the federal role from support for educational institutions to support for individual student aid.

The results were immediate and dramatic. During the Kennedy/Johnson Administrations, the fall enrollment in degree-granting, postsecondary institutions nearly doubled.<sup>29</sup> However, \*1114 there still remained a large enrollment disparity between Whites and Blacks.<sup>30</sup>

In the 1970s, military spending and other requirements of the war effort in Vietnam, combined with domestic spending, produced budget deficits that fueled inflation. This economic downturn caused Congress to question for the first time whether the unprecedented amounts being spent on education were worth the cost.<sup>31</sup>

But President Nixon had an ambitious education agenda<sup>32</sup> that was reflected in the second reauthorization of the HEA in 1972.<sup>33</sup> In this legislation, there were two new categories of grants--the State Student Incentive Grant Program and the Federal Supplemental Educational Opportunity Grant (SEOG) Program<sup>34</sup>--as well as remedial \*1115 programs for disadvantaged students.<sup>35</sup>

During the 1973-1974 academic year, the combined maximum amounts of the Basic Educational Opportunity Grant and the SEOG were sufficient to pay tuition and fees at either public or private four-year institutions.<sup>36</sup> In the fall of 1973, approximately 176,000 students received Basic Educational Opportunity Grants.<sup>37</sup>

### B. *The Gradual Decline*

By the end of the Nixon/Ford Administrations, the maximum amount of the basic grant had more than doubled,<sup>38</sup> but at the same time, tuition and fees at public, four-year institutions had increased by approximately 57%.<sup>39</sup> The average Pell Grant remained sufficient to pay tuition and related fees at those institutions, but even the maximum grant was insufficient to cover tuition and fees at four-year, private institutions.<sup>40</sup>

The Middle Income Student Assistance Act of 1978,<sup>41</sup> a reauthorization of the HEA, expanded Basic Educational Opportunity Grants to allow an additional 1.5 million students from middle-income families to qualify for federal assistance.<sup>42</sup> At that time, the average federal \*1116 grant covered approximately three-quarters of a needy student's tuition and fees.<sup>43</sup>

In 1979, there was an energy crisis that caused both oil prices and unemployment to soar.<sup>44</sup> States cut funding for education, which caused another overall increase of 8.4% in tuition and fees that fall, resulting in an almost 31% increase from fall 1977 to fall 1980.<sup>45</sup> During fall 1979 and fall 1980, the number of recent high school graduates enrolled in college dropped below 50%,<sup>46</sup> and there remained a greater than 30% enrollment disparity between higher-income and lower-income students.<sup>47</sup>

The fifth reauthorization of the HEA in 1980<sup>48</sup> increased the amount of the Basic Educational Opportunity Grants and renamed them “Pell Grants” in honor of Senator Claiborne Pell of Rhode Island, who had been the moving force behind the Basic Educational Opportunity Grant Program.<sup>49</sup> In the fall of 1980, the average amount of the Pell Grant remained sufficient to pay the average cost \*1117 of tuition and related fees at public, four-year, in-state schools.<sup>50</sup>

During the Reagan Administration, the HEA was reauthorized in the Student Financial Assistance Technical Amendments Act of 1982.<sup>51</sup> The Act restricted the amount of the Pell Grant that a student could receive in the 1983-1984 academic year<sup>52</sup> and revised the need-based criteria for SEOGs, work-study grants, and direct loans.<sup>53</sup>

In 1986, there was another reauthorization of the HEA.<sup>54</sup> This reauthorization increased the maximum Pell Grant,<sup>55</sup> extended Perkins Loans for needy students,<sup>56</sup> increased support for historically Black colleges and universities,<sup>57</sup> and created the Advisory Committee on Student Financial Assistance to increase awareness of federal, state, and institutional programs of financial assistance for low- and middle-income students.<sup>58</sup>

### *1. A Subtle Shift in Federal Funding*

The Technical and Miscellaneous Revenue Act of 1988<sup>59</sup> extended tax benefits to lower- and middle-income taxpayers to help defray the costs of higher education. It created educational savings bonds (tax-exempt to the extent the bonds are used for qualified educational expenses),<sup>60</sup> permitted a charitable deduction of 80% of contributions to \*1118 or for the benefit of an institution of higher education,<sup>61</sup> and extended the income tax exclusion for employer-provided educational assistance payments for one year.<sup>62</sup> The Act also provided an additional tax exemption for student dependents.<sup>63</sup>

From 1981 to 1988, there was an astonishing 82% increase in college tuition,<sup>64</sup> while in contrast, the average Pell Grant increased only by about 65% during this period.<sup>65</sup> By the end of Reagan's presidency, the average Pell Grant had fallen short of covering average tuition and fees at public, four-year, in-state colleges.<sup>66</sup> While it remained more than sufficient to cover tuition and fees at public, two-year, in-state colleges, it was far from sufficient to cover the costs of room and board at those colleges as well.<sup>67</sup>

During the Reagan Administration, overall college enrollment was flat.<sup>68</sup> There was a very small increase in enrollment by Black recent \*1119 high school graduates during Reagan's two terms in office, although there was a significant enrollment increase by recent high school graduates from low-income families,<sup>69</sup> primarily because of stable growth in the Stafford and Perkins Loan programs.<sup>70</sup>

While overall enrollment of recent high school graduates in the 1980s increased by a respectable 10.8%,<sup>71</sup> there was even faster growth in the enrollment rate of low-income recent high school graduates (14.2%),<sup>72</sup> although there was a marked decline in the enrollment rate of first-time, degree/certificate-seeking students (12.8%).<sup>73</sup>

In the 1990s, college costs were high,<sup>74</sup> and the rate of overall student enrollment was flat.<sup>75</sup> The high school drop-out rate among sixteen-to twenty-four-year-olds in 1990 was slightly over 12%<sup>76</sup> and had decreased by only 1% by the end of the decade.<sup>77</sup>

In the 1993-1994 academic year, the amount of the average Pell Grant declined slightly because of a large discrepancy between the amount of money authorized for the Pell program and the amount appropriated by Congress.<sup>78</sup> This was the first decrease in the average \*1120 grant since 1981.<sup>79</sup> In both fall 1994 and fall 1995, there was a decline in enrollment by low-income students.<sup>80</sup>

In 1994, Congress enacted the massive Violent Crime Control and Law Enforcement Act,<sup>81</sup> which prohibited the award of Pell Grants to any person “incarcerated in any Federal or State penal institution.”<sup>82</sup> This ensured that prisoners would not be able to further their education while in prison and thus would find it more difficult to assimilate successfully back into society upon release.<sup>83</sup>

Enrollment by low-income recent high school graduates declined during Clinton's first two years in office, although it increased during the next two years.<sup>84</sup> The fall of 1997 was the high point for college enrollment during the 1990s, as 67% of recent high school graduates enrolled<sup>85</sup> and enrollment by low-income recent high school graduates had increased by 6.6% from fall 1993,<sup>86</sup> bringing the enrollment rate for that group to 57%.<sup>87</sup> This narrowed the college enrollment gap between lower-income students and middle-income students to a record low,<sup>88</sup> although the gap between lower-income students and higher-income students remained wide.<sup>89</sup>

\*1121 But despite the enrollment increases at the end of Clinton's first term in office, by the end of his second term, there had been an enrollment decline, so that less than two-thirds of recent high school graduates were enrolled in college,<sup>90</sup> and less than half of low-income recent graduates were enrolled.<sup>91</sup>

## 2. A Major Shift in Federal Funding

Since there had been a lackluster overall college enrollment increase during President Clinton's first term in office,<sup>92</sup> important changes were made in federal spending for higher education during his second term. Although the Republicans had won control of both chambers of Congress, the Taxpayer Relief Act of 1997<sup>93</sup> was passed with bipartisan support.<sup>94</sup> This Act shifted federal funding from direct loans and work-study programs to indirect funding through the tax code.<sup>95</sup> It provided five new tax incentives \*1122<sup>96</sup> and modified others to encourage college enrollment, at an estimated cost to the federal government of \$240 billion over ten years,<sup>97</sup> although skeptics disputed this amount as being much higher.<sup>98</sup>

In 1998, the HEA was again reauthorized.<sup>99</sup> This legislation increased the maximum amount of the Pell Grant and extended the Pell program through 2004.<sup>100</sup> But consistent with Congress' earlier \*1123 view of no second chances for those convicted of criminal offenses,<sup>101</sup> it also suspended eligibility for any federal grants, loans, or work-study assistance for those convicted of drug-related offenses.<sup>102</sup>

College tuition during Clinton's second term increased 13%.<sup>103</sup> The average Pell Grant was sufficient to cover tuition and fees at public, two-year institutions, but even the maximum grant was insufficient to cover tuition and fees at public, four-year, in-state institutions.<sup>104</sup> While overall college enrollment increased during Clinton's second term,<sup>105</sup> enrollment by recent high school graduates declined across the board, regardless of ethnicity or income level.<sup>106</sup>

In George W. Bush's first term as President, the country was hit with a recession that had begun at the end of the Clinton Administration. In order to boost the economy, Bush proposed a series of tax cuts and incentives that were enacted as the Economic Growth and Tax Relief Reconciliation Act of 2001<sup>107</sup> (also known as “the Bush tax cuts”). The Bush tax cuts increased the maximum annual contribution to educational savings accounts (renamed Coverdell accounts) from \$500 to \$2,000; allowed eligible educational institutions to maintain qualified tuition programs; extended the exclusion for employer-provided educational assistance to cover graduate-level courses; eliminated the sixty-month limit on the student loan interest deduction and increased the income limitation; and provided a deduction \*1124 for higher-education expenses.<sup>108</sup> It also extended an income tax exclusion for amounts received under certain scholarships.<sup>109</sup>

In his fiscal year 2006 budget, Bush called for a slight decrease in educational spending, although he requested an increase in the maximum amount of the Pell Grant of \$100 over the next five years.<sup>110</sup> However, the Deficit Reduction Act,<sup>111</sup> passed at the end of 2005 to control mandatory federal spending, cut \$12.7 billion from student financial aid.<sup>112</sup> Although the Deficit

Reduction Act authorized Academic Competitiveness Grants for low-income students with academic ability who were interested in science or math courses,<sup>113</sup> it did not raise the level of the maximum Pell Grant, which remained at \$4,050 for the fourth consecutive year.<sup>114</sup> It was finally increased in 2007.<sup>115</sup>

### **\*1125 C. A Pell Revival?**

Toward the end of Bush's second term in office, Congress enacted the College Cost Reduction and Access Act (CCRA),<sup>116</sup> which was a major development for the Pell program. The CCRA established a ratable supplement to the Pell program that would last for ten years, funded through mandatory spending rather than through the appropriations process.<sup>117</sup> It also simplified the notoriously complex federal student loan application form, as well as the means test to determine the expected family contribution (EFC) that determined whether and what amount of a Pell Grant a student would receive.<sup>118</sup> In addition, the CCRA increased the threshold EFC income level from \$20,000 to \$30,000 in the 2009-2010 academic year,<sup>119</sup> and authorized College Access Challenge Grants for the 2008-2009 academic year.<sup>120</sup> It provided outreach activities to encourage enrollment and retention of students underrepresented in postsecondary education,<sup>121</sup> along with need-based aid to these students.<sup>122</sup>

In 2008, Congress again reauthorized the HEA.<sup>123</sup> This reauthorization provided an incremental increase in the amount of the maximum Pell Grant to reach \$8,000 by the 2014-2015 academic year.<sup>124</sup> It also reauthorized the Advisory Committee on Student Financial Assistance, which had been created under the Higher Education Amendments Act of 1986.<sup>125</sup> **\*1126** Despite a 30% increase in tuition during Bush's eight years in office,<sup>126</sup> there was a dramatic increase in overall college enrollment (almost 20%), with a robust increase in enrollment by low-income recent high school graduates (12%).<sup>127</sup> This was attributable to the increase in eligibility and size of Pell Grants,<sup>128</sup> combined with the financial crisis of 2008, during which many recent high school graduates could not find work and instead accepted federal aid to enroll in postsecondary institutions.<sup>129</sup> Overall, there was a 2.5% average yearly increase in college enrollment during the Bush Administration,<sup>130</sup> although enrollment by Black recent high school graduates during this time was flat.<sup>131</sup>

During the first two years of Barack Obama's presidency, the Democrats controlled both houses of Congress. The steep recession of 2008 continued, and this focused the new Administration's attention **\*1127** initially on economic recovery, as well as health care reform, in fulfillment of Obama's campaign promise. But the American Recovery and Reinvestment Act of 2009 (also called the Economic Stimulus Act),<sup>132</sup> passed along party lines, provided important incentives for higher education--among them, the authorization of \$15.6 billion for the Pell program to increase the amount of the maximum grant by almost \$500.<sup>133</sup>

In 2010, the Health Care and Education Reconciliation Act,<sup>134</sup> again passed along party lines, eliminated the Federal Family Education Loans Program and provided that all new federal education loans would be made through the William D. Ford Federal Direct Loan Program.<sup>135</sup> This meant that there would be a switch from private lending back to 100% federal lending. Since this eliminated private banks as "middlemen," the federal government estimated that it would save about \$68 billion over 11 years.<sup>136</sup> This was significant for the Pell program because much of this savings was redirected to it, allowing the increased amount of the maximum grant to be made permanent<sup>137</sup> and the grants to be indexed for inflation, beginning in 2013 and running through 2017.<sup>138</sup>

But despite the bright news for the Pell program, the 2008 recession and the increase in federal spending resulted in a decrease in state spending for education, with a concomitant rise in tuition.<sup>139</sup>

The Budget Control Act of 2011,<sup>140</sup> passed after a bitter partisan battle, ended the debt-ceiling crisis that was threatening to result in a **\*1128** sovereign default.<sup>141</sup> In addition to the balanced budget provisions, the Budget Control Act also increased funding for Pell Grants.<sup>142</sup> But despite the funding increases for the Pell program, during Obama's first term, from fall 2009 to fall 2012, enrollment by recent high school graduates fell 4.5%,<sup>143</sup> Black enrollment dropped over 13%,<sup>144</sup> and enrollment by low-income students dropped 3%.<sup>145</sup>

In October 2015, the Advisory Committee on Student Financial Assistance terminated because of a lapse in funding.<sup>146</sup> In his 2017 proposed budget, Obama requested \$61 billion in mandatory funding over the next decade for education,<sup>147</sup> but the Republican-controlled Congress failed to approve this budget.<sup>148</sup>

### III. PRESIDENTIAL PROPOSALS TO REFORM FEDERAL FUNDING FOR HIGHER EDUCATION

#### *A. America's College Promise*

In his 2015 State of the Union address, President Obama proposed several changes that would have radically altered federal funding for **\*1129** higher education. The centerpiece of his proposal was the “America’s College Promise” program,<sup>149</sup> which the President termed “a fundamental cultural shift” in higher education policy.<sup>150</sup> America’s College Promise would have provided free community college tuition for students across the country, funded by the federal government in partnership with the states.<sup>151</sup> This proposal was based on similar programs that had been implemented by several states.<sup>152</sup> It would have been available to students who were enrolled at least half-time, maintained at least a 2.5 GPA, and had adjusted gross incomes below \$200,000.<sup>153</sup> America’s College Promise also would have provided incentives **\*1130** to institutions that graduated large numbers of low-income students,<sup>154</sup> and it would have provided oversight for institutions and students that received federal aid.<sup>155</sup> The proposal was estimated to cost \$80 billion over ten years,<sup>156</sup> which the Obama Administration proposed to pay by raising taxes on wealthy Americans and financial institutions.<sup>157</sup>

More than 40% of students attending community colleges are minorities, and over 50% of community college students attend part-time while working to support their families.<sup>158</sup> Free tuition for the first two years of postsecondary education would not only give the underprivileged a start toward obtaining a college degree, but it also would likely reduce student borrowing and default in the long run.<sup>159</sup> This is due to the fact that not everyone has an interest in or aptitude for postsecondary education. Those who realize this fact after enrolling, incurring student loans, and dropping out have the highest rate of student loan defaults, particularly at for-profit institutions.<sup>160</sup> Providing the first two years of college tuition-free with conditions to maintain grades at or above a stated minimum level would help cull those who might be inclined to accept a free ride from the federal government then drop out of school. Since there is a high rate of default within this cohort, a program of free community college could pay for itself simply by reducing the rate of student loan defaults.

Although Congress rejected America’s College Promise, the Administration offered \$100 million in grants for regional partnerships between community colleges, employers, and nonprofit institutions **\*1131** not only to broaden access to education but also to enable students to obtain skills in areas of high demand.<sup>161</sup>

America’s College Promise also would have made several changes to the Pell program. First, it would have provided year-round availability of the grants to students taking full course loads to enable them to graduate on time.<sup>162</sup> Second, it would have provided two new permanent Pell Grants: the On-Track Pell Bonus and the Second Chance Pell. The On-Track Pell Bonus Grant would have added an extra \$300 bonus to the maximum grant for students who stayed on course to graduate on time.<sup>163</sup> The Second Chance Pell would have restored availability of Pell Grants to incarcerated individuals eligible for release to help them assimilate into society and acquire a job to support their families and strengthen their communities.<sup>164</sup>

Under current law, any scholarship, fellowship, or grant for education is tax-free only to the extent that it is used for qualified tuition and fees.<sup>165</sup> Thus, under current law, the Pell Grant is deemed paid first toward tuition and fees. While this provides tax-exempt status for the Pell Grant, it also reduces the tuition and fees that are considered for purposes of the refundable American Opportunity Tax Credit (AOTC) and the Lifetime Learning Tax Credits.<sup>166</sup> America’s **\*1132** College Promise would have made the Pell Grant completely tax-free, regardless of whether it was spent on tuition or on room and board, and it would have deemed the grant spent solely on nontuition items, such as room and board—even if the amount of the grant exceeded those expenses—in order to allow the Pell recipient to take advantage of the tuition tax credits.<sup>167</sup>

### *B. America First Blueprint*

In stark contrast to President Obama, President Trump's 2018 budget proposal, called "America First: A Budget Blueprint to Make America Great Again," (America First Blueprint)<sup>168</sup> contains devastating cuts to education, most of them impacting lower-income students. America First Blueprint cuts the budget of the U.S. Department of Education by 13% or \$9 billion,<sup>169</sup> eliminates the SEOG, substantially reduces the federal work-study program, and reduces the \$10.6 billion Pell program surplus by \$3.9 billion, which is to be redirected to the military and homeland security.<sup>170</sup> The proposal incongruously refers to the Pell program cut as "safeguard[ing]" the program and "leaving [it] on sound footing for the next decade."<sup>171</sup>

\***1133** The SEOG is a need-based grant funded by the federal government but administered by the schools.<sup>172</sup> Pell recipients typically are considered first in the allocation of these grants, and a participating school must provide \$1 for every \$3 contributed by the federal government.<sup>173</sup> Since there is an overlap between the Pell program and the SEOG, in essence, the abolishment of the SEOG represents a further cut to the Pell program.

America First Blueprint was referred to as an "exceptional missed opportunity."<sup>174</sup> But while this proposal is more radical, it is similar to the 2014 Discussion Draft issued by the House Budget Committee, chaired by Paul Ryan (R-WI).<sup>175</sup> The Discussion Draft was critical of the government's "varied" and "less focused" approach to aid for higher education.<sup>176</sup> In specific, the Draft criticized the expansion of aid to higher-income families, which it said would jeopardize "the federal commitment to lower-income students."<sup>177</sup> The Draft noted that since the HEA was due for reauthorization, the time was ripe for Congress to "review and reform the federal government's role in higher education," with the aim of "improving accessibility, affordability, achievement, and simplicity" by directing resources to "support ... the neediest families."<sup>178</sup>

The Budget Committee proposed to accomplish this goal by "reform[ing] and moderniz[ing] the Pell program" in redirecting money \***1134** from the SEOG to the Pell program.<sup>179</sup> The rationale for this redirection, according to the Budget Committee, was that the Pell program had grown to such proportions that it "is at risk of financial collapse" and unless it is reformed, the program "will face a shortfall of over \$2 billion by 2017."<sup>180</sup> Needless to say, this dire prophesy proved untrue.

It is noteworthy that neither the Budget Committee nor President Trump proposed to reform the federal tax incentives for higher education, which primarily benefit higher-income families and collectively cost taxpayers more than the Pell program.<sup>181</sup> But while the Budget Committee proposed to redirect funds from the SEOG back into the Pell program, Trump's proposal redirects funds into noneducational projects.<sup>182</sup> His proposal to eliminate the SEOG would leave the neediest students without additional grant aid, while leaving in place the expensive education tax incentives, which primarily benefit higher-income families.

Trump's proposed cuts to education are short-sighted in other ways as well. For instance, the federal work-study program has been shown to be effective in increasing retention and graduation rates of low-income students and in helping them find jobs after graduation.<sup>183</sup> Their contributions to the workforce and corresponding increase in income tax revenue would reap far more benefits for the \***1135** government than the amount it currently pays for the work-study program.<sup>184</sup>

Trump's proposed budget reduces the Pell safety net by more than a third. If any of this surplus is to be used currently, it should be used to allow students to attend summer school to graduate early or on time, as President Obama had proposed.<sup>185</sup> But Pell proponents argue that the surplus has accumulated over a period of years and is needed to ensure that the program remains viable.<sup>186</sup> Another deep recession like the one in 2008 could imperil the Pell program by once again sending it into a deficit.<sup>187</sup>

### **IV. AN ALTERNATIVE PROPOSAL**

America First Blueprint definitely does not put education first. It is simply a blunt instrument with little thought to the future and what the lack of an educated workforce will mean for the country. America's College Promise had many positive attributes, but it failed to address some fundamental problems of low-income students that might have rendered the plan less effective in the long term.



One such problem is inadequate information for low-income families to inform them of their options in paying for higher education. America's College Promise had the potential to alleviate this problem because low-income families would know that they would be able to obtain the first two years of postsecondary education tuition-free. However, they would need to seek funding for room, board, and incidentals if this was not provided, and they would need to seek funding if they continue their education beyond the first two years.

Another problem is that community colleges and other two-year schools often have abysmal graduation rates because these schools fail to consider the specific needs of their students. The following proposal, like America's College Promise, is based on free community college tuition, plus an additional amount for living expenses for the first two years of postsecondary education for lower-income students. This proposal, however, is more comprehensive than that of America's \*1136 College Promise, and it suggests a funding mechanism that will not involve directly raising taxes.

### ***A. Remove Barriers to Admission and Retention***

The poorest students must run a gauntlet of barriers to enter college. Often, they lack adequate information about the costs of higher education and the financial aid options available to them. While the 2008 reauthorization of the HEA improved transparency with respect to college costs,<sup>188</sup> many of the very poor cannot afford computers to access this information. Moreover, the Advisory Committee on Student Financial Assistance, established to help notify families of their financial aid choices, has lapsed from lack of funding.<sup>189</sup> Thus, lower-income students may lack adequate information as to the true cost of college, the availability of financial aid, and their eligibility for it. One study found that when high school students are provided accurate information about the costs and benefits of college, they are much more likely to aspire to further their education.<sup>190</sup> This study concluded that although such information is available online and through guidance counselors, students--particularly first-generation students--react more positively when presented with the information rather than having to seek it out themselves.<sup>191</sup>

There are different forms of financial aid--grants, work-study programs, and loans--at both the state and federal levels, and it can be a complicated process to decipher the various qualification requirements. In order to qualify for financial aid, a student must first file a Free Application for Federal Student Aid (FAFSA), which although it has been simplified, is over four times longer than the simplest tax return<sup>192</sup> and contains more than 100 questions about the student's and his or her parents' finances.<sup>193</sup> Moreover, once the form has been completed, it must be resubmitted each year that the student is in school.

\*1137 The complexity of this process causes many low-income families to forego filing for federal assistance, even though they would have been eligible for it had they done so.<sup>194</sup> A study has shown that the most effective method of increasing college access among low-income individuals is to provide personal assistance in completing and mailing the FAFSA,<sup>195</sup> particularly if the assistance is combined with another activity, such as filing a tax return.<sup>196</sup> On the other hand, providing information without assistance had no significant effect on either financial aid applications or college enrollment.<sup>197</sup>

In contrast to the complicated FAFSA process, under the once popular Social Security Student Dependent Benefit Program (Student Dependent Program),<sup>198</sup> which had been eliminated by President Reagan in 1981,<sup>199</sup> eligible students were proactively contacted before their eighteenth birthday to notify them of their eligibility.<sup>200</sup> The Student Dependent Program required students to submit only a short form to receive the benefit. The elimination of this \*1138 program had adverse effects on both college enrollment and educational attainment.<sup>201</sup>

The FAFSA can be simplified, as the Student Dependent Program illustrated. However, there is another barrier to college access. In order to qualify for both state and federal financial aid, male applicants between the ages of eighteen and twenty-five must register for Selective Service. Failure to register will result in loss of eligibility for federal assistance, including education and job training benefits. In some states, failure to register will disqualify the offender from obtaining a driver's license.<sup>202</sup>

This registration requirement has been criticized as discriminatory (women are not required to register even though they can serve in the military)<sup>203</sup> and draconian because failure to register can ruin a person's life.<sup>204</sup> Yet with so much at stake,

registration is an unnecessary requirement because conscription was eliminated in 1973 and is not likely to be reinstated.<sup>205</sup> Although the compliance rate is high,<sup>206</sup> those who fall through the cracks are likely to be high school dropouts, immigrants, minorities, the incarcerated, and the economically disadvantaged.<sup>207</sup> Thus, registration is an unnecessary barrier to education \*1139 for the neediest and the most vulnerable.<sup>208</sup>

Lawrence G. Romo, former director of the Selective Service System, argues that the registration system is necessary because, without it, the country would lose valuable time “reactivating it in the event of national emergency.”<sup>209</sup> Romo notes that “the Selective Service is a very inexpensive insurance policy.”<sup>210</sup> While this may be true, the penalty for failure to register is unforgiving, illogical, and overly harsh. Failure to register should not be tied to state or federal aid, with loss of fundamental privileges such as a driver's license and an education.

Although removing these barriers to access for low-income students would level the college access playing field, there are two downsides. First, unless Congress increases funding, as college enrollment increases so too does the likelihood of a decline in the average award of financial aid.<sup>211</sup> This would negatively affect retention and completion rates, resulting in inefficient allocation of government resources. Second, removing the barriers may encourage enrollment by those who are unqualified, thus exacerbating the first problem. So removing the barriers is likely to increase enrollment but decrease retention, without other adjustments.

### ***B. Reform Two-Year Colleges to Better Suit the Needs of Students***

While America's College Promise sounds ideal in some respects, nevertheless, there are concerns. For one, if access is increased, will community colleges be able to accommodate these students? For another, are community colleges currently successful in educating their students adequately? These colleges vary widely in quality of their faculty, programs, breadth of their curricula, and in their dropout and completion rates. Finally, will a program of free community college produce winners and losers among both colleges and students?

#### **\*1140 1. Community Colleges**

There are 1,047 public community colleges in the United States<sup>212</sup> that currently enroll approximately 38% of the nation's undergraduates.<sup>213</sup> These students tend to be first-generation college students from lower-income families, married, have children, and work part-time while going to school.<sup>214</sup> Approximately 17% of these students are single parents.<sup>215</sup> Many of them are nontraditional students, meaning they are not young, recent high school graduates who have gone straight to college.

These students fall into two general categories: those who are interested in ultimately transferring to a four-year college to obtain a bachelor's degree, and those who are interested in a certificate or an associate degree<sup>216</sup> in order to join the workforce at the end of one or two years.

Community colleges offer several advantages to both categories of students. For those interested in obtaining a bachelor's degree, the average cost of tuition and fees at community colleges is almost one-third that of four-year, in-state public colleges.<sup>217</sup> For those students who are not interested in pursuing a bachelor's degree, community \*1141 college average tuition and fees are slightly more than one-fifth of those at two-year, for-profit institutions.<sup>218</sup> Second, community colleges typically offer more flexible schedules than four-year institutions and usually are more tolerant of part-time attendance to accommodate those who are working and/or have families.<sup>219</sup> Third, in some areas, community colleges are linked closely to local businesses to provide a ready source of trained personnel and to better meet their economic needs.<sup>220</sup> For students, this means jobs. Fourth, community colleges often have open enrollment policies, so all who apply have an opportunity for an education.

There are disadvantages, however. First, the open enrollment policies, while advantageous for access, are disadvantageous for retention. Since these schools are minimally selective, some of their students will lack adequate college preparation and even the ability to complete college work.<sup>221</sup> To address this concern, community colleges offer remedial courses, which studies have

shown are highly successful if completed.<sup>222</sup> But concerns have been raised as to whether community colleges push students too frequently into remedial courses.<sup>223</sup> The problem is that such coursework generally does not count toward graduation, so students spend time and money taking \*1142 courses that will get them no closer to completion.<sup>224</sup> Since most of these students pay for their education with loans, remedial coursework will require them to borrow more money to graduate. Many of these students become discouraged and drop out before completing their degrees. In fact, the overall graduation rates at two-year colleges generally are abysmal.<sup>225</sup>

Students who drop out before completing their programs are not only burdened with student loans, but they also have no college or associate degrees to enable them to obtain higher-paying jobs. This greatly increases the chances that these students will default on their loans.

It has been proposed that community colleges partner with secondary schools to reduce the need for remediation.<sup>226</sup> Such a partnership would include early assessment to identify those students most at risk and to offer them remedial courses in their senior year in high school or in the summer before they begin college; better training for faculty at both levels on remediation techniques; and providing tutors, counselors, and learning communities.<sup>227</sup> Another proposal is to combine remedial courses with foundational courses and to offer credit for these courses.<sup>228</sup> But standards must be high enough to enable students to succeed in a four-year program if they choose to continue their education. Maintaining high enrollment and weak requirements undermines the educational experience and the value of the degree.<sup>229</sup> This results in an inefficient investment of taxpayers' money.

\*1143 Second, community colleges also have been criticized for their low retention and graduation rates. One commentator has remarked that instead of “implementing solution-oriented reform, based on the student body's characteristics and needs,” the colleges have simply used the nontraditional “characteristics of their student bodies to justify their inexcusable retention and graduation rates.”<sup>230</sup> One way in which such solution-oriented reform may be undertaken is through better guidance and career counseling.<sup>231</sup> This would enable students to be better informed about required special certificates or licenses in their area of interest, the availability and salary scale of jobs in the area, and what is expected of them in attaining their goals.

Better advice to students about which credits will transfer to four-year programs and which will not would be valuable as well, because far fewer students than expected, based on their articulated preferences, transfer to four-year colleges.<sup>232</sup> But once they transfer, they graduate at approximately the same rate as those who started out at four-year colleges.<sup>233</sup> Targeted support and mentorship for nontraditional and minority students have been suggested as solutions to increase retention and help students transfer to four-year programs.<sup>234</sup>

Third, there have been complaints that career counselors at some community colleges do not properly advise their students to enable them to obtain the most gainful employment, and some colleges do not effectively design their courses for the local job market.<sup>235</sup> The value of certificates issued by community colleges varies greatly.<sup>236</sup> Some of those colleges that have issued certificates of low value in the past have since done little to improve their value.<sup>237</sup>

\*1144 Some community colleges, however, have established successful partnerships with both secondary schools and four-year colleges to encourage their graduates to continue their education.<sup>238</sup> Others have formed partnerships with local businesses that offer input into curricular design and agree to hire students as apprentices and to help them obtain necessary certifications.<sup>239</sup>

Finally, community colleges are being surpassed by for-profit colleges for career and technical education.<sup>240</sup> Yet for-profit institutions have some distinct disadvantages that may make them the wrong choice for many students.

## 2. For-Profit Schools

Enrollment in for-profit schools increased 245.8% between 2000 and 2014.<sup>241</sup> By contrast, enrollment in public and private degree-granting postsecondary institutions increased 24.7% and 28.5%, respectively, during this period.<sup>242</sup> There are several explanations for this astonishing growth in for-profit enrollment. First, for-profit schools have made serious efforts to tailor their curricula to the needs of the workforce and to the needs of nontraditional students. Second, their course schedules are very flexible since most of their courses are offered online. Thus, nontraditional students who are older, have families, and/or are working can study at their own pace. Third, these schools have waged very successful advertising campaigns. Finally, they usually have completely open admissions policies. They are businesses that accept anyone who can pay the tuition, including those who have Pell Grants, Stafford Loans, and other state and federal aid.

For-profit schools have a role to play in higher education, especially for nontraditional students. Moreover, if the first two years of college were tuition-free, community colleges might not be able to accommodate all students. However, for-profit schools have a number **\*1145** of drawbacks. There have been complaints and criticisms that much of their successful advertising has been unscrupulous, with misrepresentations and promises made on which the schools cannot deliver.<sup>243</sup> There also have been accusations that these schools target lower-income individuals and veterans with federal education benefits.<sup>244</sup>

In 2012, the Senate Committee on Health, Education, Labor, and Pensions released a scathing report on for-profit higher education.<sup>245</sup> The crux of the Report was that these programs, in general, serve neither their students, the federal government, nor the taxpayers well. They are much more expensive than nonprofit institutions,<sup>246</sup> yet these schools spend far less per student to ensure the academic quality of their programs or the retention of their students.<sup>247</sup> Instead, much of their spending goes toward advertising, recruiting, and executive compensation, rather than student support services, full-time faculty, and curricular development.<sup>248</sup> Thus, the financial success of these schools does not correlate to student success, and this leads to higher dropout rates,<sup>249</sup> higher unemployment rates, higher student borrowing rates, and higher loan default rates.<sup>250</sup>

**\*1146** The Senate Report also found that some of these schools engage in outright deception with respect to cost of their programs,<sup>251</sup> ultimate ability to find a job,<sup>252</sup> ability to transfer to another school,<sup>253</sup> and qualifications for jobs after graduation.<sup>254</sup> Although the Senate Report was issued in 2012, these infractions continue.<sup>255</sup>

There was further evidence that many for-profit institutions increased their tuition in response to increases in student aid and that they manipulated their receipts to avoid the 90/10 rule that prohibits these school from receiving more than 90% of their funding from Title IV funds.<sup>256</sup> The federal government invests more than \$32 billion annually in for-profit schools.<sup>257</sup> According to the Senate Report, in the 2009-2010 academic year, these institutions received around 25% of total student aid funds from the U.S. Department of Education, but they enrolled only about 13% of the total student population.<sup>258</sup> Several large for-profit schools have declared bankruptcy, leaving **\*1147** their students with onerous debt and worthless degrees.<sup>259</sup> If these students can prove that they were defrauded by their schools, they would have a defense to repayment of their loans.<sup>260</sup> But the process is cumbersome, and these students have not received much help from the U.S. Department of Education.<sup>261</sup> Some have threatened to go on “debt strike” and stop repaying their loans.<sup>262</sup>

The Obama Administration promulgated a rule in 2016 to help streamline the process to protect students who had been defrauded.<sup>263</sup> However, the implementation of this rule was delayed until July 1, 2017.<sup>264</sup> The Secretary of Education, Betsy DeVos, has announced that she will further delay implementation until the resolution of a lawsuit filed by several California for-profit schools<sup>265</sup> so that the rule can be “reexamined.”<sup>266</sup> This delay has been referred to as “‘a mere pretext’ for creating a new rule ‘that will remove or dilute student rights and protections.’”<sup>267</sup> A suit for injunctive relief has been filed by the attorneys general of eighteen states plus the District of Columbia.<sup>268</sup>

In the meantime, those students who would have been eligible for relief are now on hold. The irony is that the for-profit wrongdoer may **\*1148** seek bankruptcy protection, while the student victims may not.<sup>269</sup> Students who are victimized by unscrupulous for-profit entities deserve to have their loans forgiven. The problem, however, is that the taxpayers then will be forced to pay.<sup>270</sup>

The problems with for-profit institutions are attributable to lax regulation on the part of the states and the U.S. Department of Education, as well as the accrediting bodies.<sup>271</sup> In 2015, the Obama Administration implemented a “gainful employment” test<sup>272</sup> that required a school's “typical graduate” to have loan payments of less than 20% of the graduate's discretionary income and less than 8% of the graduate's total income.<sup>273</sup> In addition, if more than 30% of the school's students within a certain class default on their loans within a few years of graduation (cohort default rate), the school risks losing federal funding.<sup>274</sup>

Although the test was criticized as “fairly weak,” of the 800 schools that failed to pass, 98% were for-profit schools.<sup>275</sup> However, under the Trump Administration, the U.S. Department of Education \*1149 has suspended application of both the defense of repayment and the gainful employment provisions.<sup>276</sup>

The House Budget Committee recommended a stronger role for for-profit institutions, despite the problems with these schools, and the indications are that under the current administration, this will occur.<sup>277</sup> Although America First Blueprint provides no clue as to Trump's policy on for-profit schools, that policy is clear from his choice of Betsy DeVos for Secretary of Education, from his disdain of regulatory constraints, from his suspension of the safeguards for students and taxpayers against predatory institutions, and from the increase in stock prices of these schools since his election.<sup>278</sup>

Without the gainful employment or some other regulation to protect students, the fraudulent behavior of these for-profit institutions will continue at the expense of students and taxpayers. In order for for-profit institutions to continue to have a meaningful role in higher education, the quality of the education offered by these institutions must improve, they must focus more on their students and less on their bottom lines, and they must be held to standards of accountability.

### 3. *Massive Online Open Courses (MOOCs)*

The Discussion Draft of the House Budget Committee recommended a focus on massive online open courses (MOOCs) as a means \*1150 to lower costs and increase access to higher education.<sup>279</sup> MOOCs are courses that have open enrollment and fora in which students can interact with each another and, when required, assess one another's work.<sup>280</sup> There is usually minimal instructor-student interaction and no cohort cohesion to create a sense of graduating with one's class, although this sense also is frequently lacking in nonselective institutions, such as community colleges.<sup>281</sup> The intellectual, social, and professional interactions that are a valuable part of a brick-and-mortar education are missing in online programs.

However, online courses have distinct advantages. They can be very successful if designed properly because they can lower costs and increase access for economically disadvantaged and nontraditional students, while allowing these students to work at their own pace. They are particularly useful for midcareer, employed individuals because these courses allow them to further their education at their own pace, without disrupting their careers. They also can be useful for remedial education, and they have shown great promise in graduate and some undergraduate-level courses.<sup>282</sup>

The problem, however, is that there are high drop-out rates in these courses, although there also are high drop-out rates in community colleges, which serve many of the same cohorts.<sup>283</sup> Successful online courses have involved academically stronger, motivated students.<sup>284</sup> In the case of academically weaker students, there generally are worse learning outcomes in online programs versus brick-and-mortar programs.<sup>285</sup> This may be due to the fact that there is less encouragement offered to students to complete an online program because there is little faculty-student or student-student interaction, usually no social or professional networking, and virtually no cohort \*1151 cohesion. Studies have shown that such courses are far less challenging than in-person courses and cannot be adapted readily to courses requiring labs or archives.<sup>286</sup>

Some for-profit schools offer their courses entirely or almost entirely online, although graduates of such programs often have difficulty finding jobs, and once employed, they tend to be paid less than those with degrees from brick-and-mortar institutions.<sup>287</sup> However, this is not true of certificate programs, where graduates must pass an exam administered by external administrators.<sup>288</sup> Since community colleges also offer certificates, MOOCs may be a solution to the access problem that may be created by offering free community college. Thus, those programs requiring certification could be offered online.

Studies also have shown that MOOCs may be very useful in remedial education.<sup>289</sup> If students who are inadequately prepared for postsecondary education are identified in their junior or senior years in secondary school, they could enroll in MOOCs offered through a community college in conjunction with the secondary school. A better-prepared student body would make the community college experience, as a whole, much more valuable and efficient.

### *C. Paying for the Program*

Another concern is how will the government pay for two free years of college? Will the investment be considered efficient if less than a majority of these students obtain certificates or associate degrees or continue on to four-year schools?

A problem with America's College Promise was its cost.<sup>290</sup> This raises political issues because a Republican-controlled Congress will not likely commit significant funds to provide free college for two years for lower-income students. A Democratic administration and Congress might be willing to commit the funds but must first determine \*1152 whether such an expenditure would be an efficient use of taxpayer funds.

President Obama proposed to pay for America's College Promise "by raising taxes on wealthy Americans and financial institutions"<sup>291</sup> --an idea that will never be popular with Republicans. But funding for America's College Promise could come from a redirection of a portion of the Pell program and from reform of the education tax incentives, without the need to raise taxes directly.

#### *1. Redirect a Portion of the Pell Program*

While the Pell program has provided an important incentive for lower-income individuals to further their education, nevertheless, over time it has become an inefficient subsidy because the value of the Pell Grant has eroded as the costs of higher education have skyrocketed.<sup>292</sup> In addition, the 2017-2018 academic year will be the last year that the Pell Grants will be adjusted for inflation, unless in the unlikely event Congress decides to extend the indexing.<sup>293</sup> Without the index, the value of the grants will further erode.<sup>294</sup>

While at present the Pell fund is financially sound, the America First Blueprint proposes to raid its surplus to address other funding needs.<sup>295</sup> If Congress approves this proposal, the safety net of the Pell \*1153 program would be diminished and eventually may disappear. If the country suffers another major recession, such as the one in 2008 in which more students became eligible for Pell Grants, the program could see a funding crisis that could threaten students in their sophomore years and beyond.<sup>296</sup> These funding issues could shake the confidence of low-income students in the viability of the program and cause them to be wary of undertaking expensive higher education while incurring multiple years of debt without any guarantee of the safety net that the Pell Grant has provided.

The decline in the value of the Pell Grants also may affect lower-income students in other ways. As F. King Alexander, president and chancellor of Louisiana State University, has observed: "[lower-income students] cost more to educate, have lower graduation rates, and have an overall negative impact on the current private magazine rating systems."<sup>297</sup> This would make some schools reluctant to accept many lower-income students, regardless of the Pell Grant. In addition, with a decline in the value of the Grant, these students will have to take out more loans. High default rates can damage the reputation of a school. If schools are reluctant to accept many low-income individuals for fear of facing higher student loan default rates, this would become even more of an access barrier for lower-income students.

The findings of several studies may not bode well for the future of the Pell program. These studies have shown mixed results in the effectiveness of the Grants in increasing college enrollment of low-income, recent high school graduates,<sup>298</sup> and little to no impact on degree completion, primarily because of state spending cuts for education.<sup>299</sup> One study found that state support for education has declined by 28% per student since 2000.<sup>300</sup> Such cuts have had a significant \*1154 effect on academic support programs, such as "tutoring, advising and mentoring,"<sup>301</sup> which directly affect the retention rate of lower-income students. Less selective institutions are particularly impacted because they are more affected by state spending cuts.<sup>302</sup>

While the Pell program is financially stable at this time, financial and political support for the program may wither in the future. The recent paltry increases in the amount of the Pell Grant have not been sufficient to keep up with the Consumer Price Index, much less with the rapidly rising costs of tuition.<sup>303</sup> If Congress approves President Trump's proposed raid on the program's surplus, and there is no further indexing for inflation, the value of the Pell Grant will continue to decline. Another recession with a significant increase in enrollment by Pell-eligible students could result in a political showdown over the future of the program. Thus, now is the time to rethink the Pell program and its efficacy.

There has been an ongoing debate about whether a federal investment in free community college is worthwhile.<sup>304</sup> One argument against a federal investment is that free community college is unnecessary and inefficient<sup>305</sup> because tuition at these schools is low and most, if not all, is already covered by Pell Grants for lower-income students.<sup>306</sup> Another argument is that community colleges have low \*1155 completion rates and thus should not be "rewarded."<sup>307</sup> Finally, free community college tuition would tie students to their home state and stifle competition among colleges across the country.<sup>308</sup>

The primary problem facing students today, particularly low-income students, is the high cost of college, which includes not only tuition and fees, but also books, room, board, transportation, and incidentals. A recent survey has revealed that despite working and borrowing, approximately one-in-three community college students across the country go hungry and 14% are homeless.<sup>309</sup>

The fact that community college tuition is already low does not mean that a college promise program is not worthwhile, because applying for federal aid is onerous, especially for the significant group of homeless college-age students. Many lower-income community college students still take out loans to defray expenses that are not covered by the average Pell Grant.<sup>310</sup> Many of these students are nontraditional students who have families to support. Attending community college, even part-time, may result in a decrease in their salaries that may make it difficult for them to cover any additional expenses.

A well-designed college promise program should be limited to low-and lower-middle-income families.<sup>311</sup> Ideally, such a program would provide an additional amount to help defray the costs of living expenses. Community college students, even though their debt is relatively small, default on their student loans at a higher rate than students from four-year programs.<sup>312</sup> The primary reason is that many \*1156 community college students do not complete their degrees. These students then find themselves in debt, with no degree and no prospect of finding a job that will pay sufficiently to allow them to feasibly pay off their debt.<sup>313</sup> Providing help to these students will enable them to remain in school. If they transfer to a four-year college, they should save approximately 50% in tuition and fees.<sup>314</sup> This has been the case with the highly successful Tennessee Promise Program<sup>315</sup> and similar programs that have boosted degree completion rates.<sup>316</sup> Studies of state merit scholarship programs, which require a minimum GPA to participate, have shown that financial aid tied to achievement increases graduation rates more than aid with no strings attached.<sup>317</sup> There have been similar increases observed in programs requiring students to take a minimum number of credits to graduate on time.<sup>318</sup>

The argument that competition among colleges would be stifled with a college promise program is not convincing. Lower-income students are likely to stay within their home states, rather than incur greater expense by traveling out of state to attend college. There generally are a wide variety of in-state schools from which to choose in a college promise program. For instance, under the model Tennessee Promise Program, students may choose from a number of community colleges, applied technology colleges, and public and private colleges with approved two-year programs.<sup>319</sup>

If low-income students wish to attend school out of state, the brightest students may be able to obtain merit scholarships to help defray their expenses, and the others, ideally, would still be able to use the Pell or a lower-cost loan program.

## \*1157 2. Reform the Education Tax Incentives

Late in his final term in office, President Obama proposed a tax credit for businesses called the "Community College Partnership Tax Credit,"<sup>320</sup> in which local businesses would partner with community colleges to design curricula to better train students

to meet the needs of the businesses. In return, the businesses would have to commit to hiring these graduates full-time.<sup>321</sup> Unfortunately, this proposal was never enacted. But had it been enacted, it would have had the potential to strengthen the economy by supplying a trained workforce, and for the graduates of this program, it would have offered the opportunity of higher paying jobs and a brighter future.

There are currently seventeen education tax incentives designed to help defray the increasing costs of higher education.<sup>322</sup> Numerous commentators, including this author, have noted the complexity, inefficiency, and expense of these incentives.<sup>323</sup> They primarily benefit **\*1158** the upper-middle-income quartile who would have pursued higher education without the tax incentives. Thus, the incentives do not necessarily increase college access or retention.<sup>324</sup> This makes these incentives inefficient subsidies. The sheer number of the incentives increases their complexity, so that the target beneficiary may not be aware of the availability of the incentives,<sup>325</sup> and conversely, those who are ineligible may claim them intentionally or unintentionally.<sup>326</sup> Moreover, there is a mismatch in timing between the receipt of the benefit and the payment of education expenses, which increases the likelihood that the benefit will be consumed for purposes other than education.<sup>327</sup>

However, tax incentives, if properly constructed, can play a role in increasing educational access and retention, and in improving the economy. As this author noted in an earlier article, many of the problems of the current system may be alleviated by repealing some of the costlier, inefficient incentives, such as the popular AOTC and the exclusion for contributions to and distributions from qualified tuition plans.<sup>328</sup> Instead, the rules should be changed to make education savings bonds a more viable option.<sup>329</sup> As currently constructed, education savings bonds are used by relatively few taxpayers because of severe statutory restrictions, both on the use of the proceeds and on **\*1159** the income level of the bondholder when the bonds are cashed.<sup>330</sup> But if designed properly, this vehicle could encourage lower-income families to save toward higher education without the problems presented by some of the other education tax incentives. For instance, these bonds are easy to purchase, they can be purchased in small increments, they do not have associated fees, and they present no timing problem.<sup>331</sup> Moreover, they do not fluctuate in value, and thus they are a safe investment in the federal government.<sup>332</sup> For lower-income families, the initial psychological commitment of saving for college is an important first step toward higher education.

The AOTC is the largest of the education tax incentives. For 2017, the AOTC and the Lifetime Learning Tax Credit are estimated to cost taxpayers \$19.6 billion in foregone revenue.<sup>333</sup> The total cost of the Pell program for 2017 is estimated to be almost \$22 billion.<sup>334</sup> However, the cost of the education tax credits is growing much faster than the cost of the Pell program.<sup>335</sup> If these tax credits are repealed **\*1160** and the foregone revenue is combined with a portion of the Pell funds, this would more than pay for the federal government's share of a program of free community college, in partnership with the states, without the need to directly raise taxes across the board.

## V. CONCLUSION

An investment in education is an investment in the future. This has been the bedrock of the American Dream and a fundamental principal behind federal funding for education almost since the founding of this country. Efficient federal funding for higher education should enable all Americans to obtain an education if they so desire. Under the current system, however, too many families struggle and sacrifice to obtain a college education and many simply cannot afford it at all.

Funding for education is primarily the responsibility of the state and federal governments, and in order for that funding to be efficient, the governments must act in tandem and not in the disjointed manner in which they currently operate. Under America's College Promise, the state governments would have been required to partner with the federal government to provide the first two years of higher education tuition-free. There are several states that currently have successful programs of free or greatly reduced college tuition.<sup>336</sup> Thus, such a state-federal partnership is entirely feasible, given the right political environment.

Although at present this is not the right political environment, a reauthorization of the HEA is past due, so now is an opportune time to take a closer look at federal funding for higher education to determine **\*1161** whether the federal government's investment in education is an efficient one that would improve college access and completion rates, and if not, whether there is a better solution.



The fact that the education gap between lower-income and higher-income individuals has widened,<sup>337</sup> student loan debt and defaults are at an all-time high,<sup>338</sup> and the level of educational attainment in the United States has been declining relative to other OECD countries<sup>339</sup> indicates the vast amounts that the federal government, as well as the state governments, spend on higher education has not been efficient.

The Pell Grant, which for almost sixty years has been an important incentive for lower-income individuals to further their education, has become less meaningful over time as college costs have rapidly risen and the purchasing power of the Grants has declined.<sup>340</sup> The continuation of this trend could mean the difference between a promising future and a bleak one for low-income families, and between an educated workforce and an inadequate one for the country.

President Obama's America's College Promise would have strengthened the Pell program and increased college access and retention by providing two free years of postsecondary education, and by creating two new grants specifically aimed at increasing retention and completion rates. President Trump's America First Blueprint weakens the Pell program by reducing its surplus and providing nothing in return for lower-income students or for education in general. It would leave the Pell program one recession away from instability. Ultimately this will undermine college access and retention for lower-income students.

Regardless of what happens in the future under the Trump Administration, these diametrically opposed views represent a crossroads for the Pell program and for the future of lower-income students in higher education. Unless there is thoughtful reform of the federal commitment to higher education, the Pell program ultimately **\*1162** will wither and federal support for higher education will continue to cost taxpayers billions of dollars while creating an underclass of lower-income, uneducated individuals who will be unqualified for jobs requiring skilled labor. A shortage of skilled labor will ultimately harm the American economy.


This Article suggests a plan of two free years of postsecondary education in partnership with the states, similar to President Obama's America's College Promise. But unlike America's College Promise, this proposal goes farther in that it addresses underlying issues that might have caused that program, had it been enacted, to be less successful. This proposal also suggests paying for the plan, not by raising taxes as President Obama had suggested, but through a redirection of a portion of the Pell funding and a reform of the federal tax incentives for higher education.

A redirection of a portion of the Pell funds into a college promise plan would transform a system that becomes less meaningful with each passing year into one that would provide permanence and a greater sense of security for lower-income students so that they will be able to afford higher education without being as mired in debt as those with student loans are currently. Those students who take advantage of this program and continue on to four-year programs should need to borrow less. Since this proposal, like America's College Promise, would require students to maintain a stated minimum GPA to benefit, this will help cull those who may not be suited for higher education or it will allow them to be redirected into a program better suited to their abilities.

A reform of the federal tax incentives would require a repeal of the popular AOTC and the income tax exclusion for qualified tuition plans. This would save almost as much money as the Pell program currently costs. These savings could be redirected into a college promise program to help those who are economically disadvantaged. This proposal also recognizes that while college costs continue to rise, more and more families struggle to pay. Thus, a redirection of the tax incentives should be toward educational savings bonds, which would provide a tax benefit to families in lower-income levels, as well as those in higher-income levels.<sup>341</sup> It would be a safe, secure investment, not only in education, but also in human capital, and in the country's economic future.

**\*1163** The time is ripe to reconsider the federal government's role in higher education and to redirect the Pell program and the education tax incentives into a more efficient program that inures to the benefit of all and provides greater value to the taxpaying public. If Congress continues on its present path of allowing Pell Grants to lose their value, while supporting the enormous revenue loss of the complex, inefficient, and costly education tax benefits, it will become more and more difficult for lower-income individuals to obtain a college education. This could have devastating effects on the workforce, our everyday lives, and the future of this country. It would be a rude awakening from the American Dream.

## Footnotes

- a1 Professor of Law, University of Georgia School of Law. The author gratefully acknowledges the invaluable assistance of Gracie Waldrop and T.J. Striepe. The author also benefitted greatly from the comments and suggestions of colleagues during the fall UGA Faculty Workshop.
- 1 *Lyndon B. Johnson, Remarks at Welhausen Elementary School, Cotulla, Texas*, AM. PRESIDENCY PROJECT (Nov. 7, 1966), <http://www.presidency.ucsb.edu/ws/?pid=28003> [<https://perma.cc/3KVR-XZ3P>].
- 2 In general, a typical college graduate earns about 66% more over an average working life than a high school graduate. COLL. BD., TRENDS IN HIGHER EDUCATION: LIFETIME EARNINGS BY EDUCATION LEVEL (2017), <https://trends.collegeboard.org/education-pays/figures-tables/lifetime-earnings-education-level> [<https://perma.cc/B3ER-C8F9>]. Although there are different methodologies that may be employed in evaluating lifetime earnings of individuals with different levels of education, the results consistently show that those with a college degree earn significantly more than those without. *Id.*
- 3 According to Jamie P. Merisotis, president and CEO of Lumina Foundation:  
There is a high probability that you'll be poor without some form of postsecondary education and that makes education one of the most critical factors in our nation's long-term economic growth plans. A dramatic increase in educational attainment must become a top national priority if we intend to build our labor pool and beat out other countries for the jobs of the future.  
Press Release, Georgetown Univ. Ctr. on Educ. & the Workforce, New Study Finds That Earning Power Is Increasingly Tied to Education; The Data Is Clear: A College Degree Is Critical to Economic Opportunity (Aug. 5, 2011), <https://cew.georgetown.edu/wp-content/uploads/2014/11/collegetpayoff-release.pdf> [<https://perma.cc/K52Y-26VY>].
- 4 Human capital is an economic term coined by economists at the University of Chicago. It refers to “people's collective skills, knowledge and abilities, which is key to a country's long-term economic competitiveness.” Nat Malkus, *Not As Smart As We Think*, U.S. NEWS & WORLD REP. (Mar. 29, 2016), <http://www.usnews.com/opinion/knowledge-bank/articles/2016-03-29/us-must-face-our-human-capital-deficit-compared-to-the-rest-of-the-world>.
- 5 See Tom Mortenson, *Analysis of Opportunity for Postsecondary Education*, in POSTSECONDARY EDUCATION OPPORTUNITY, THE MORTENSON RESEARCH SEMINAR ON PUBLIC POLICY, NO. 113, at 3 (Nov. 2001).
- 6 According to the U.S. Census Bureau, the 2012 U.S. demographic trends showed that as of July 1, 2011, 50.4% of American newborns were racial and ethnic minorities. Press Release, U.S. Census Bureau, Most Children Younger Than Age 1 Are Minorities (May 17, 2012), <http://www.census.gov/newsroom/releases/archives/population/cb12-90.html> [<https://perma.cc/8QGE-JPNW>]; see also Valerie Strauss, *For First Time, Minority Students Expected to Be Majority in U.S. Public Schools This Fall*, WASH. POST (Aug. 21, 2014), [https://www.washingtonpost.com/news/answer-sheet/wp/2014/08/21/for-first-time-minority-students-expected-to-be-majority-in-u-s-public-schools-this-fall/?utm\\_term=.fc8bb3dd1d29](https://www.washingtonpost.com/news/answer-sheet/wp/2014/08/21/for-first-time-minority-students-expected-to-be-majority-in-u-s-public-schools-this-fall/?utm_term=.fc8bb3dd1d29) [<https://perma.cc/6SUC-D83M>]. The 2014 projections estimate that 2044 will be the crossover point in which Whites will be in the minority. See SANDRA L. COLBY & JENNIFER M. ORTMAN, U.S. CENSUS BUREAU, PROJECTIONS OF THE SIZE AND COMPOSITION OF THE U.S. POPULATION: 2015 TO 2060, at 9 (2015), <https://www.census.gov/content/dam/Census/library/publications/2015/demo/p25-1143.pdf> [<https://perma.cc/Q2JE-WPY5>].
- 7 Although in terms of college enrollment the race gap has narrowed, this is not the case in terms of graduation rates. See Ronald Brownstein, *The Challenge of Educational Inequality*, ATLANTIC (May 19, 2016), <https://www.theatlantic.com/education/archive/2016/05/education-inequality-takes-center-stage/483405/> [<https://perma.cc/A2AE-YMUJ>].
- 8 See, e.g., Sandy Baum, *The Federal Pell Grant Program and Reauthorization of the Higher Education Act*, 45 J. STUDENT FIN. AID 23, 24 (2015), <https://publications.nasfaa.org/cgi/viewcontent.cgi?article=1587&context=jsfa> [<https://perma.cc/8CAE-9V9D>].
- 9 Educational Opportunity Grants were established in 1965 under the Higher Education Act of 1965, Pub. L. No. 89-329, 79 Stat. 1219 (codified as amended at  20 U.S.C. § 1070 (2012)); see also *infra* notes 24-26 and accompanying text.

Initially, Title IV of the Higher Education Act was opposed by Republicans and there was controversy over its passage because of President Johnson's attempt to shift the national focus from academically gifted students to economically disadvantaged students, particularly those who, according to Johnson, were "down and out." See Legacies of the War on Poverty 101 (Martha J. Bailey & Sheldon Danziger, eds. 2013). In testifying before the House Special Subcommittee on Education in 1965, Homer D. Babbidge, Jr. described Educational Opportunity Grants:

This 'educational opportunity grant' program is an integral part of the whole effort to help the disadvantaged get into the mainstream of American life. It puts the responsibility squarely on our colleges and universities to seek out those capable or potentially capable of handling college work, and work out with them a way of making college financially possible. It is not a luxury program or a gift program or anything of the sort, but an educational opportunity program.

*Higher Education Act of 1965: Hearings on S. 600 Before the S. Subcomm. on Education of the S. Comm. on Labor and Public Welfare*, 89th Cong. 642 (1965) (statement of Homer D. Babbidge, Jr., President, Univ. of Conn.).

10 See *Grants and Scholarships: Federal Pell Grants*, FED. STUDENT AID, <https://studentaid.ed.gov/sa/types/grants-scholarships/pell> [<https://perma.cc/WQY2-AB4B>].

11 See *Types of Aid: Loans*, Fed. Student Aid, <https://studentaid.ed.gov/sa/types/loans> [<https://perma.cc/SW3Q-WNAY>].

12 Most Americans today think that higher education is becoming increasingly unattainable, despite its importance to individual financial security. See Brandon Busted & Stephanie Kafka, *Most Americans Say Higher Education Not Affordable*, GALLUP (Apr. 16, 2015), <https://news.gallup.com/poll/182441/americans-say-higher-education-not-affordable.aspx> [<https://perma.cc/8NE6-8G4B>].

13 See, e.g., Eduardo Porter, *Education Gap Between Rich and Poor Is Growing Wider*, N.Y. TIMES (Sept. 22, 2015), <https://www.nytimes.com/2015/09/23/business/economy/education-gap-between-rich-and-poor-is-growing-wider.html?r=0>; Martha J. Bailey & Susan M. Dynarski, *Gains and Gaps: Changing Inequality in U.S. College Entry and Completion* (Nat'l Bureau of Econ. Research, Working Paper No. 17633, 2011) (noting a 4% increase in college completion rate of low-income cohorts and an 18% increase in high-income cohorts).

14 Initially, Pell Grants covered the full costs of either public or private four-year, instate colleges. Today, they cover less than a third of the cost of a public, four-year, in-state college, and after 2017, they will no longer be indexed for inflation. Thus, over time they will become less and less meaningful. See discussion *infra* text accompanying notes 292-304.

15 See Federal Perkins Loan Program Extension Act of 2015, Pub. L. No. 114-105, 129 Stat. 2219 (extending program through September 2017). The Perkins Loan program, enacted in 1958, was the oldest student loan program. It was enacted under the National Defense Education Act of 1958, Pub. L. No. 85-864, 72 Stat. 1580, as "emergency" legislation in response to the Russian launch of Sputnik, the world's first orbiting satellite, and the perceived notion that the United States was losing "the race for space." The National Defense Education Act directed an unprecedented amount of federal funds into the public schools to bolster international economic competition by strengthening the schools and promoting interest in higher education.

Initially, the bill provided for grants rather than loans, but Congress deleted this provision in favor of loans because some members thought it was socialistic and sent the wrong message to give students a "free ride" at the expense of taxpayers. See *Sputnik Spurs Passage of the National Defense Education Act*, U.S. SENATE (Oct. 4, 1957), [http://www.senate.gov/artandhistory/history/minute/Sputnik\\_Spurs\\_Passage\\_of\\_National\\_Defense\\_Education\\_Act.htm](http://www.senate.gov/artandhistory/history/minute/Sputnik_Spurs_Passage_of_National_Defense_Education_Act.htm) [<https://perma.cc/7QAG-3DDD>].

The program expired on September 30, 2017, despite the introduction of a bipartisan bill to extend it. See Andrew Kreighbaum, *Perkins Loan Extension Blocked in House, Senate*, INSIDE HIGHER ED (Sept. 29, 2017), <https://www.insidehighered.com/quicktakes/2017/09/29/perkins-loan-extension-blocked-house-senate> [<https://perma.cc/K28J-BRRA>].

16 First, these loans are not available to graduate students. During debates leading to the Budget Control Act of 2011, Congress decided to cut Subsidized Stafford Loans for graduate students in lieu of cutting the Pell Grant program. This was estimated to save the government \$18 billion over 10 years. See Katy Hopkins, *Grad Students to Lose Federal Loan Subsidy*, U.S. NEWS & WORLD REP. (Mar. 13, 2012), <https://www.usnews.com/education/best-graduate-schools/paying/articles/2012/03/13/grad-students-to-lose-federal-loan-subsidy>. Second, there are annual and cumulative limits on the amounts that may be borrowed under the Stafford Loan program, whether the loans are subsidized or unsubsidized; however, these limits are lower for subsidized loans. There are also similar limits on Perkins Loans, but the limits generally are higher with Perkins Loans than with Subsidized Stafford Loans. Third, there is a fee on loans disbursed after October 1, 2016 and before October 1, 2017. Fourth, there is a six-month grace period before repayment under the

Stafford program, whereas there is a nine-month grace period under the Perkins program. Fifth, the length of time in which a student may continue to obtain Subsidized Stafford Loans varies with the student's program of study. Sixth, under certain circumstances, there may be an acceleration of interest on the loan. *See Subsidized and Unsubsidized Loans*, FED. STUDENT AID, <https://studentaid.ed.gov/sa/types/loans/subsidized-unsubsidized#how-much> [<https://perma.cc/G234-6BFU>].

- 17 In terms of spending per student, the United States ranks third among the 35 OECD countries, surpassed significantly by Luxemburg and Switzerland. *See* OECD INDICATORS, EDUCATION AT A GLANCE 2016, at 180 fig.B1.1, <http://www.oecd.org/education/skills-beyond-school/education-at-a-glance-2016-indicators.htm> [<https://perma.cc/RND6-Y3C6>].
- 18 *See* OECD INDICATORS, EDUCATION AT A GLANCE 2016: UNITED STATES 1, [http://www.keepeek.com/Digital-Asset-Management/oecd/education/education-at-a-glance-2016/united-states\\_eag-2016-86-en#.WO0ggme1u70#page1](http://www.keepeek.com/Digital-Asset-Management/oecd/education/education-at-a-glance-2016/united-states_eag-2016-86-en#.WO0ggme1u70#page1) [<https://perma.cc/63VR-PS52>]; James Marshall Crotty, *Why Asian Nations Dominate Global Education Rankings*, FORBES (May 21, 2014), <https://www.forbes.com/sites/jamesmarshallcrotty/2014/05/21/why-asian-nations-dominate-global-education-rankings/> [<https://perma.cc/9TMU-B4YZ>] (explaining that the United States “leads the developed world in per pupil education spending” but its low college graduation rates rank it 20th in the world); Porter, *supra* note 13 (noting that 5% of Americans ages 25 to 34 whose parents did not finish high school have a college degree, compared to a 20% average across 20 wealthy OECD countries).
- 19 *See infra* text accompanying notes 21212-40.
- 20 Higher Education Act of 1965, Pub. L. No. 89-329, 79 Stat. 1219.
- 21 The last reauthorization of the HEA was in 2008. Many of its provisions expired at the end of 2013, although they have been extended each year. *See* Danielle Douglas-Gabriel, *Can Alexander and Murray Recapture Bipartisan Magic to Pass Higher Education Legislation?*, WASH. POST (Feb. 6, 2016), <https://washingtonpost.com/news/grade-point/wp/2016/02/09/can-alexander-and-murray-recapture-bipartisan-magic-to-pass-higher-education-legislation/?utmterm=.d074b18d3ee5> [<https://perma.cc/BA8H-RF6R>].
- 22 *See, e.g.*, Financial Aid Simplification and Transparency Act of 2015, S. 108, 114th Cong. (2015); Strengthening Transparency in Higher Education Act of 2015, H.R. 3178, 114th Cong. (2015); Higher Education Affordability Act of 2014, S. 2954, 113th Cong. (2014).
- 23 Although student loan debt is a serious problem, student loans will be discussed in a third companion article, currently in progress. The federal education tax incentives, which this article addresses, were discussed in more depth in an earlier article. *See generally* Camilla E. Watson, *Reforming the Tax Incentives for Higher Education*, 36 VA. TAX REV. 83 (2017).
- 24 The HEA provided financial assistance for teacher preparation and training programs, as well as funds to help struggling institutions obtain modern teaching materials, increase library collections, and strengthen “developing institutions” that had not yet met the minimum requirements for accreditation. Title II authorized appropriation of funds for teacher quality and library enhancements; Title III authorized aid for developing institutions; Title IV provided student assistance, such as Basic Educational Opportunity Grants, merit-based scholarships, and low-interest loans with loan forgiveness for teachers and others who chose to serve in areas of national need; Title V authorized aid for teacher programs and fellowships; Title VI authorized funding to improve undergraduate programs.
- 25 *See* Robin L. Capt, *Analysis of the Higher Education Act Reauthorizations: Financial Aid Policy Influencing College Access and Choice*, 3 ADMIN. ISSUES J., no. 2, 2013, <https://files.eric.ed.gov/fulltext/EJ1057076.pdf> [<https://perma.cc/2M9Y-MML6>].
- 26 Higher Education Act of 1965, Pub. L. No. 89-329, § 401, 79 Stat. 1219 (codified at 20 U.S.C. § 1070b (2012)). Basic Educational Opportunity Grants were to be the foundation of a needy student's financial aid package, with other financial aid added to that. The grants were appropriated to the educational institutions, which would award the grants to students on the basis of demonstrated need. The initial grants could not exceed the lesser of \$800 or one-half of the amount of the student's financial aid provided by the institution, plus the amount of any scholarship provided by the state or by a private institution or organization. If in the preceding academic year the student's grades placed him/her in the top half of the class, another \$200 was to be added to the award. *Id.* § 402.

- 27 *Id.* §§ 421-435. These were later called “Federal Family Education Loans.” This program was a partnership between the federal government and the states and nonprofit institutions, whereby the states and nonprofits would provide loans that would be guaranteed by the federal government. Private lenders received subsidies from the government to maintain interest rates at federally mandated levels and to defray other costs. *Id.* § 421.
- 28 The HEA was reauthorized in 1968, at the end of Johnson's second term in office. This reauthorization extended guaranteed student loans through 1971. It also required the Secretary of the Department of Health, Education, and Welfare to submit a report to Congress prior to March 1, 1970 on whether any practices of lending institutions discriminated against particular classes or categories of students. *See* Higher Education Amendments Act of 1968, *Pub. L. No. 90-575*, 82 Stat. 1014.
- 29 *See* U.S. DEP'T OF EDUC., NAT'L CTR. FOR EDUC. STATISTICS, DIGEST OF EDUCATION STATISTICS 2015, at 460 tbl.303.10 (2016) [hereinafter NCES DIGEST 2015]. In the fall of 1961, there were 4,145,065 students enrolled, while in the fall of 1969, there were 8,004,660 enrolled. *Id.* This was an increase of 93%. Enrollment data is not available for fall 1960 because up until 1963, data was reported every other year. In 1961, 67% of all students enrolled in degree-granting postsecondary institutions were attending full-time. *Id.* This number had increased to 69% by the fall of 1969. *Id.* Among first-time, degree-seeking students, 77.5% were attending full-time in 1969. *Id.* at 488 tbl.305.10. There also was a 93.2% increase in enrollment of first-time, degree/certificate-seeking students in degree-granting colleges from 1961, when Kennedy took office, to 1969, when Johnson left office. *See id.* In the fall of 1968, 40.4% of those enrolled were female. This was an increase of 3% from 1961, when 37.6% of enrolled students were female. *Id.* at 460 tbl.303.10. However, among first-time, degree-seeking students, there was only a 1% increase in female enrollment. *Id.* at 488 tbl.305.10. Forty-three percent of all first-timers attended four-year public institutions; 33% attended four-year private institutions; 41% attended two-year public institutions; and 3% attended two-year private institutions. *Id.* The average percentage increase in enrollment per year during the eight years of the Kennedy/Johnson Administrations was 8.625%. There also was an increase in college enrollment of 161% in the number of first-time, degree/certificate-seeking students who were not recent high school graduates. *See id.* This was an average increase of 20% per year for the eight years of the Kennedy/Johnson Administrations. During this period, there was a 5.3% increase in recent high school graduates enrolling in postsecondary institutions. *Id.* at 450 tbl.302.10. *But see* David Card & Thomas Lemieux, *Going to College to Avoid the Draft: The Unintended Legacy of the Vietnam War*, 91 AM. ECON. REV. 97, 97 (2001) (“Between 1965 and 1975 the enrollment rate of college-age men in the United States rose and then fell abruptly.”).
- 30 In 1967, 26.9% of Whites ages 18- to 24-years old were enrolled in degree-granting institutions, while only 13% of Blacks of the same age were enrolled. *See* U.S. DEP'T OF EDUC., NAT'L CTR. FOR EDUC. STATISTICS, DIGEST OF EDUCATION STATISTICS 2013, at 395 tbl.302.60 (2015) [hereinafter NCES DIGEST 2013]. By 1969, this disparity had lessened slightly, with 28.7% of 18- to 24-year-old Whites enrolled and 16% of Blacks of the same age enrolled. *Id.*
- 31 *See* N.Y. STATE DEP'T OF EDUC., FEDERAL EDUCATION POLICY AND THE STATES, STATES' IMPACT ON FEDERAL EDUCATION POLICY PROJECT, 1945-2009: A BRIEF SYNOPSIS 24 (Jan. 2006, revised Nov. 2009), [http://www.archives.nysed.gov/common/archives/files/ed\\_background\\_overview\\_essay.pdf](http://www.archives.nysed.gov/common/archives/files/ed_background_overview_essay.pdf) [<https://perma.cc/UGJ7-H9C7>].
- 32 Nixon had requested an expansion of federal aid to students enrolled in postsecondary institutions, so that eligible students would be able to receive enough federal assistance to “make up the difference between his college costs and what his family is able to contribute.” President Richard Nixon, *Statement on Signing the Education Amendments Act of 1972*, AM. PRESIDENCY PROJECT (June 23, 1972), <http://www.presidency.ucsb.edu/ws/?pid=3473.E> [<https://perma.cc/GM94-TSMH>].
- 33 Education Amendments of 1972, *Pub. L. No. 92-318*, 86 Stat. 235 (codified as amended at  20 U.S.C. §§ 1681-1688 (2012)).
- 34 The Student Incentive Grants were to be administered by the states, which also provided partial funding. The program provided a one-time grant of up to \$1,500 to be awarded on the basis of “substantial financial need” to undergraduates enrolled in college on a full-time basis. *Id.* §§ 415A, 415C(b)(2), 425C(b)(3). SEOGs were to be awarded to those enrolled in undergraduate programs who demonstrated evidence of “academic or creative promise and capability of maintaining good standing in this course of study,” plus exceptional need. These grants were in addition to the Basic Educational Opportunity Grants. *Id.* §§ 413A, 413C(2)(B), 413C(2)(C). The maximum amount of the SEOG was the lesser of \$1,500 or one-half of the total amount of financial aid awarded by the institution to the student. *Id.* § 413B. The

maximum amount of the Basic Educational Opportunity Grant (also referred to as the Basic Grant) in 1972 was \$1,400 for a full-time student, less the expected family contribution (EFC). *Id.* § 411(2)(A)(i).

35 *Id.* §§ 417A, 417B. This act also provided stipends and fellowships for graduate students, *id.* §§ 961, 962, grants for law school clinical programs, *id.* § 191, as well as loan forgiveness for those who chose to enter certain areas of public service, *id.* § 465. This included teaching in elementary or secondary schools with a majority of low-income students, teaching handicapped students, and serving in the military in dangerous areas. *Id.*


36 During the 1973-1974 academic year, tuition and fees at public, four-year, in-state educational institutions averaged \$503, and at private, four-year institutions, the average cost of tuition and fees was \$1,948, while the maximum amount of the combined Pell Grants and SEOGs was \$1,952. NCES DIGEST 2015, *supra* note 29, at 698 tbl.330.10; *see Pell Grant Historical Figures*, FINAID, <http://www.finaid.org/educators/pellgrant.phtml> [<https://perma.cc/VBL7-H244>] (outlining Pell Grant amounts); *see also supra* note 34 (discussing SEOG maximum grant).

37 *See Pell Grant Historical Figures*, *supra* note 36. This was 5.75% of recent high school graduates who enrolled in college that fall. *See* NCES DIGEST 2015, *supra* note 29, at 450 tbl.302.10.

38 *See Pell Grant Historical Figures*, *supra* note 36. In 1973-74, the maximum grant, adjusted for inflation, was \$452. In 1976-77, the maximum grant was \$1,089. *Id.*

39 *See* NCES DIGEST 2015, *supra* note 29, at 698 tbl.330.10. In current dollars, tuition in 1968 and fees at public, four-year colleges averaged \$683, while in the 1975-1976 academic year, they had risen to an average of \$1,073. *Id.*

40 *See id.* The maximum grant during the 1978-1979 academic year was \$1,600, although the average grant was only \$814. *Id.* Tuition and fees at four-year, public institutions during that academic year averaged \$688, while at four-year, private institutions, the average was \$2,958. *Id.* Average tuition and fees at two-year, private institutions was \$1,831. *Id.*

41 Pub. L. No. 95-566, 92 Stat. 2402 (codified as amended at  20 U.S.C. §§ 1001 (2012)).

42 Families with incomes up to \$250,000 were eligible. In determining the amount of EFC, the Middle Income Student Assistance Act provided that no more than 10.5% of a family's discretionary income could be considered. *Id.* § 2(a); *see also* NAT'L ASS'N OF COLLEGE & UNIV. BUS. OFFICERS, HIGHER EDUCATION TIMELINE TUTORIAL (Khesia Taylor ed., 2016).



43 In the fall of 1978, the average cost of college tuition and fees was \$1,073 (\$1,397 at four-year institutions and \$411 at two-year institutions), *see* NCES DIGEST 2015, *supra* note 29, at 698 tbl.330.10, while the average Pell Grant was \$814, *see Pell Grant Historical Figures*, *supra* note 36. Thus, the average grant covered slightly more than three-quarters of the average cost of college tuition and fees. Total average college cost with room and board was \$2,587, while the amount of the maximum grant was \$1,600. *Pell Grant Historical Figures*, *supra* note 36. Thus, the maximum grant covered almost 62% of the total cost, while the average grant covered only 31% of the total cost. *See id.*

44 Unemployment rose to just under 8%. *See* David Coleman, *Unemployment Rates by President, 1948-2016*, HISTORY IN PIECES: RESEARCH, <http://www.historyinpieces.com/research/us-unemployment-rates-president> [<https://perma.cc/44HX-P76F>].

45 *See* NCES DIGEST 2015, *supra* note 29, at 698 tbl.330.10. This was an increase of 24% at public, in-state institutions and 33.3% at private institutions. *Id.*

46 *Id.* at 450 tbl.302.10. This is the last time that the enrollment of recent high school graduates has been below 50%. *See id.*

47 In 1979, there was a decline in enrollment across of the board of 0.9% by recent high school graduates from low-income families, 1.1% by students from middle-income families, and 0.8% by students from high-income families. *Id.* at 452 tbl.302.30. In 1980, there was a 2% increase in enrollment by low-income recent high school graduates, an enrollment decline of 0.7% by middle-income recent graduates, and a 2% increase in enrollment by high-income recent graduates. *Id.* This was a 32.7% enrollment discrepancy between low-income and high-income recent high school graduates. While there was a 1.5% increase in Hispanic enrollment during this period, there also was a 6.8% decrease in the rate of Black enrollment, *id.* at 451 tbl.302.20, perhaps attributable, at least in part, to declining support for historically Black institutions of higher education. There was also a 1% decline in White enrollment during this period. *Id.*

- 48 Education Amendments Act of 1980, Pub. L. No. 96-374, 94 Stat. 1367.
- 49 *Id.* § 402 (codified at  20 U.S.C. § 1070a (2012)).
- 50 The average Pell Grant in the 1980-1981 academic year was \$882, a slight decrease of \$47 from the previous academic year. *See Pell Grant Historical Figures, supra* note 36. The average cost of tuition and related fees at four-year, public institutions was \$804. NCES DIGEST 2015, *supra* note 29, at 698 tbl.330.10.
- 51 Pub. L. No. 97-301, 96 Stat. 1400.
- 52 This amount was a maximum of \$1,800 or 50% of the cost of attendance. *Id.* § 2.
- 53 *Id.* §§ 2, 10, 11, 14.
- 54 Higher Education Amendments Act of 1986, Pub. L. No. 99-498, 100 Stat. 1268.
- 55 *Id.* § 411, 100 Stat. at 1309.
- 56 *Id.* §§ 461-478, 100 Stat. at 1439-70.
- 57 *Id.* §§ 301-355, 100 Stat. at 1290-1306.
- 58 *Id.* § 491, 100 Stat. at 1492. This was to be an objective, nonpartisan committee whose stated purpose was “to provide extensive knowledge and understanding of the Federal, State, and institutional programs of postsecondary student assistance; ... to provide technical expertise with regard to systems of needs analysis and application forms; and ... to make recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students.” *Id.* § 491(a)(2).
- 59 Pub. L. No. 100-647, 102 Stat. 3342. The Act was the culmination of years of pleas for tax benefits for middle-income taxpayers to help defray the costs of higher education. Until this point, these pleas had been ignored because both the Treasury Department and the Executive Branch had opposed such benefits. *See* Lawrence E. Gladieux, *Federal Student Aid Policy: A History and an Assessment* (Oct. 1995), <https://www2.ed.gov/offices/OPE/PPI/FinPostSecEd/gladieux.html> [<https://perma.cc/F7NG-CU3S>].
- 60 Technical and Miscellaneous Revenue Act of 1988, Pub. L. No. 100-647, § 6009, 102 Stat. 3342, 3688-90 (codified at  26 U.S.C. § 135 (2012)). This provision applies to Series EE and I savings bonds. Qualified higher education expenses are defined as tuition and fees. *Id.* § 6009, 102 Stat. at 3689. The tax benefits were intended to be available only to lower- and middle-income taxpayers, so there was a phase-out of the exclusion beginning at \$40,000 of modified adjusted gross income for taxpayers filing a single return and \$60,000 for those filing a joint return. *Id.* § 6009(a), 102 Stat. at 3688. Modified adjusted gross income was defined as adjusted gross income with certain additions, such as the partial exclusion for Social Security and Tier I Railroad Retirement income, the interest on the educational savings bond itself, and the exclusion for citizens and residents living abroad. *Id.* § 6009, 102 Stat. at 1389. For single taxpayers, the phase-out range was \$40,000 to \$55,000 and for married taxpayers filing jointly, the range was \$60,000 to \$90,000. *Id.* § 6009(a), 102 Stat. at 3688.
- 61 *Id.* § 6001, 102 Stat. at 3683-84. The charitable deduction was permitted even though the donor may have obtained a benefit from the contribution by obtaining seating or the right to purchase seating in the institution's athletic stadium. *Id.* § 6001, 102 Stat. at 3684.
- 62 *Id.* § 4001, 102 Stat. at 3643.
- 63 26 U.S.C. § 152(c)(1)(B), amended by Technical and Miscellaneous Revenue Act of 1988, § 6010, 102 Stat. 3691. This provision extended the dependent exemption age from 19 to 24 for student dependents, beginning in taxable years starting in 1989. *Id.* § 6010(b).
- 64 *See* NCES DIGEST 2015, *supra* note 29, at 698 tbl.330.10.
- 65 *See Pell Grant Historical Figures, supra* note 36.

- 66 The average Pell grant during the 1988-1989 academic year was \$1,399, while average tuition and fees at public, four-year institutions was \$1,646. *Id.*; *see also* NCES DIGEST 2015, *supra* note 29, at 699 tbl.330.10.
- 67 Average tuition and fees at public, two-year colleges in 1988-89 was \$730; with room and board, it was \$3,183. *Id.*
- 68 Overall enrollment increased by an average of 0.9% per year. *Id.* at 460-61 tbl.303.10. There was an almost 6.6% increase during Reagan's second term, but because enrollment had been so low during his first term, this amounted to a 5.5% increase during his two terms in office. *Id.* Enrollment at two-year institutions increased over 3.3%, while part-time enrollment increased by 1%. *Id.* at 460, 463 tbs.303.10, 303.25. In addition, almost 78% of students were enrolled in public institutions while almost 22% were enrolled in private institutions; over 54% of those enrolled in public institutions were in four-year programs while over 45% were enrolled in two-year programs. Of those enrolled in private institutions, 91% were enrolled in four-year programs while 9% were enrolled in two-year programs. *See* U.S. DEPT OF EDUC., NAT'L CENTER FOR EDUC. STAT., 120 YEARS OF AMERICAN EDUCATION: A STATISTICAL PORTRAIT 89 (Thomas D. Snyder ed., 1993); NCES DIGEST 2015, *supra* note 29, at 460-61 tbl.303.10.
- 69 From 1981 to 1988, college enrollment by Black recent high school graduates increased by only 1.7%, while Hispanic enrollment increased by about 5% and White enrollment increased by 6.2%. NCES DIGEST 2015, *supra* note 29, at 451 tbl.302.20. Also, during this period, there was an 8.9% increase in enrollment by recent high school graduates from low-income families, an approximately 5.5% increase by middle-income recent graduates, and a 5.2% increase by high-income recent graduates. *Id.* at 452 tbl.302.30. At the same time, however, there was a 30.3% enrollment disparity between high-income recent high school graduates and low-income recent graduates. *Id.*
- 70 *See* Matthew B. Fuller, *A History of Financial Aid to Students*, 44 J. STUDENT FIN. AID 42, 56 (2014).
- 71 *See* NCES DIGEST 2015, *supra* note 29, at 452 tbl.302.30.
- 72 *Id.* There was an 11.9% increase in enrollment by middle-income recent high school graduates, and an 11.4% increase in enrollment by high-income recent graduates. *Id.*
- 73 *See id.* at 488 tbl.305.10.
- 74 From the fall of 1993 to the fall of 1996, college tuition increased over 19%. *See* NCES DIGEST 2015, *supra* note 29, at 698-701 tbl.330.10.
- 75 *See id.* at 461 tbl.303.10. There was an overall enrollment increase of only 1.1% during the entire decade of the 1990s. *See id.*
- 76 *See* U.S. DEPT OF EDUC., NAT'L CTR. FOR EDUC. STATISTICS, THE CONDITION OF EDUCATION 2015, at 178 (2015), <https://nces.ed.gov/pubs2015/2015144.pdf> [<https://perma.cc/3QU3-SQ5V>] [hereinafter NCES Condition of Education 2015]. The dropout rate was highest among Hispanics (32.4%), then American Indian/Alaska Natives (16.4%) and then Blacks (13.2%). The lowest dropout rate was among Asian/Pacific Islanders (4.9%). U.S. DEPT OF EDUC., NAT'L CTR. FOR EDUC. STATISTICS, THE CONDITION OF EDUCATION 2012, at 82 (2012), <https://nces.ed.gov/pubs2012/2012045.pdf> [<https://perma.cc/KU9M-S2J5>].
- 77 NCES CONDITION OF EDUCATION 2015, *supra* note 76, at 178.
- 78 The amount of the decline in the average grant during the 1993-1994 academic year was \$37. *See Pell Grant Historical Figures*, *supra* note 36. In the most years, there was a discrepancy between the amount of the maximum grant authorized and the amount appropriated, but usually it amounted to a few hundred dollars. In 1993, however, the discrepancy between the amount authorized and the amount of the actual maximum grant was \$1,400. *Id.*
- 79 *Id.*
- 80 In fall 1994, there was a 7.1% decline and, in fall 1995, there was a decline of 9.1%. *See* NCES DIGEST 2015, *supra* note 29, at 452 tbl.302.30.
- 81 Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796.



82

*Id.* § 20411, 108 Stat. at 1828 (codified at [20 U.S.C. § 1070a](#) (2012)).

83

This went beyond incarceration. For a possession offense, this suspension would last from the date of the conviction until one year from that date for a first offense, two years from the date of conviction for a second offense, and indefinite suspension for a third offense. For those convicted of the sale of a controlled substance, the suspension period would run from the date of the conviction until two years from that date and the period would be indefinite for any subsequent conviction. Higher Education Amendments of 1998, [Pub. L. No. 105-244](#), § 483, [112 Stat. 1581](#), 1735.

84

From fall 1993 to fall 1994, there was a decline in enrollment by low-income individuals of 7.1%; from fall 1994 to fall 1995, there was another decline of 9.1%. NCES DIGEST 2015, *supra* note 29, at 452 tbl.302.30. From fall 1995 to fall 1996, there was an increase of 14.4%; from fall 1996 to fall 1997, there was another increase of 8.4%. *Id.*

85

*Id.*

86

*Id.* In contrast, enrollment by middle-income students during this four-year period increased 3.8% while overall enrollment by recent high-income students increased 2.9%. *Id.* There were similar enrollment increases in the rate of Black recent high school graduates (2.9%) and Hispanics (3.4%) during this time. *Id.* at 451 tbl.302.20. The overall rate of increase in college enrollment during this period was 4.4%. *Id.*

87

*Id.*

88

*Id.* The enrollment gap between lower-income recent high school graduates and middle-income recent graduates was only 3.7%. *Id.*

89

This gap was 25.2%. *Id.*

90

*Id.* It was not until 2004 that the enrollment level of recent high school graduates reached two-thirds again. *Id.*

91

During fall 1993, after Clinton became President, college enrollment by recent high school graduates in the lower-income bracket reached 50% for the first time. However, this enrollment rate dropped below 50% for the remainder of Clinton's first term. During his second term, it was only in 1997 that more than 50% of low-income students were enrolled. *See id.*

92

There was a decline in total enrollment during Clinton's first two years in office and only a slight increase (below 1%) in his next two years. *See id.* at 460 tbl.303.10. However, there was a steady increase in enrollment in for-profit institutions during his first term, which reached nearly 10% in his fourth year in office. *Id.* During the last two years of Clinton's first term, there was a 4.4% increase in enrollment by recent high school graduates. *Id.* at 462 tbl.302.30.

93

Taxpayer Relief Act of 1977, [Pub. L. No. 105-34](#), [111 Stat. 788](#) (codified as amended in scattered sections of 26 U.S.C. (2012)).

94

The Act was passed in August 1997, shortly before Congress went into recess. In truth, both parties could get behind tax incentives--Republicans approved of them because they represented a tax cut, while Democrats approved because the Act increased funding for education. *See Watson, supra* note 23, at 90-91.

95

There were, however, other education acts passed during Clinton's second term that provided direct funding. These included the 1998 reauthorization of the Carl D. Perkins Vocational and Technical Education Act of 1998, which provided federal funding at the secondary and postsecondary levels to promote vocational, technical, and career-oriented education. *See* Carl D. Perkins Vocational and Technical Education Act of 1998, [Pub. L. No. 105-332 § 2](#), [112 Stat. 3076-77](#). This program was administered by the Department of Education. *See generally id.*; *see also The Carl D. Perkins Vocational and Technical Education Act*, [Pub. Law 105-332](#), U.S. DEPT. OF EDUC. (July 26, 2002), <https://www2.ed.gov/offices/OVAE/CTE/perkins.html> [<https://perma.cc/3SDW-6N6S>]. The reauthorization of the Higher Education Act in 1998 included a directive to the Department of Education to make available to students and parents information on college tuition, fees, and yearly increases. Higher Education Amendments of 1998, [Pub. L. No. 105-244 § 131\(b\)](#), [112 Stat. 1581](#), 1603, 1742. It also authorized a minimum Pell Grant of \$400 and increased the grant by \$300 per year through 2002-2003, at which time it would increase by \$400 in the following year. *Id.* at § 401(a), [112 Stat. at 1651](#). It eliminated schools with high cohort default rates from eligibility to receive Pell Grants; created a new extended repayment option under the Federal Family Education Loan Program for borrowers who accumulate \$30,000 or more in loans; authorized the cancellation of up to \$5,000 in subsidized and unsubsidized loans for those who entered

the teaching profession for five years; and extended the Academic Achievement Incentive Scholarship Program for low-income students. *Id.* at §§ 406A, 413E(b), 424, 462, 112 Stat. at 1663, 1686, 1699, 1722.

96

These included the Hope and Lifetime Learning Tax Credits under I.R.C. § 25A, estimated to be the highest cost tax incentives at \$31.6 billion over 5 years and \$76 billion over 10 years; education savings accounts (ESA) under I.R.C. § 530; a deduction for interest paid on student loans under I.R.C. § 221; and penalty-free withdrawals from IRAs for purposes of education under I.R.C. § 72(e)(9). The total cost of ESAs and penalty-free withdrawal was estimated to be \$7.1 billion for the first five years. *See generally* Patrick Fleenor, *Special Report, Bottom Line on the Taxpayer Relief Act of 1997*, TAX FOUND., no. 71, Sept. 1997, at 1, <https://taxfoundation.org/bottom-line-taxpayer-relief-act-1997> [<https://perma.cc/FM7P-UQR7>]. In addition, the Act extended qualified tuition programs under I.R.C. § 529 to apply to room and board and provided a five-year average for gift tax purposes for contributions to such plans that exceeded the annual per donee gift tax exclusion. It also extended the exclusion for employer-provided educational assistance under I.R.C. § 127 through May 31, 2000 and extended the exclusion for student loan forgiveness under I.R.C. § 108(f) to apply to forgiveness by tax-exempt charitable organizations, except where services are required to be rendered to the educational institution or to the source of the funds. In addition, it provided a credit to holders of qualified educational zone academy bonds. *See* Taxpayer Relief Act of 1977, Pub. L. No. 105-34 §§ 211, 221, 225, 226, 111 Stat. 788-821. Most of the incentives became effective for higher education expenses paid after December 31, 1997. *Id.* § 221(e), 111 Stat. 809.

97

CONG. BUDGET OFFICE, AN ECONOMIC ANALYSIS OF THE TAXPAYER RELIEF ACT OF 1997, at 1 (2000), <https://www.cbo.gov/sites/default/files/106th-congress-1999-2000/reports/tpa97.pdf> [<https://perma.cc/WTE6-RY8Z>].

98

One estimate was \$400 billion over ten years. *See* CITIZENS FOR TAX JUSTICE, BRIEF DESCRIPTION OF AND COMMENTS ON THE 1997 TAX ACT 1 (1997), <https://www.ctj.org/pdf/desc97.pdf> [<https://perma.cc/TJ8J-8DT8>].

99

Higher Education Amendments Act of 1998, Pub. L. No. 105-244, 112 Stat. 1581. The Act extended the Academic Achievement Incentive Scholarship Program for low-income students; provided loan forgiveness for those who taught at the primary or secondary levels in low-income schools; and allowed the cost of a personal computer to be considered a qualified education expense. *Id.* at §§ 406A, 428J, 460, 471, 112 Stat. at 1663, 1698, 1719, 1729. It also reduced Stafford Loan interest rates by 0.8%, and provided Unsubsidized Stafford Loans to any student, regardless of income level. 112 Stat. at 1674.

Borrowers were given four months to refinance their loans at the new rate, although the Administration had proposed a longer extension of the refinancing period. It was estimated that this would save the average student borrower around \$700 over a ten-year period. *See* Press Release, U.S. Office of Press Sec'y, The Higher Education Amendments of 1998: Five Victories for the Clinton-Gore Administration (Oct. 7, 1998), <https://govinfo.library.unt.edu/npr/library/news/100798.html> [<https://perma.cc/EXJ2-KGCB>].

100

Higher Education Amendments Act of 1998, Pub. L. No. 105-244, § 401, 112 Stat. 1581.

101

*See supra* text accompanying notes 81-83.

102

Higher Education Amendments Act of 1998, Pub. L. No. 105-244, § 483(f), 112 Stat. 1581.

103

*See* NCES DIGEST 2015, *supra* note 29, at 698 tbl.330.10.

104

*Pell Grant Historical Figures*, *supra* note 36; NCES DIGEST 2015, *supra* note 29, at 698 tbl.330.10. The amount of the average grant during the 2000-2001 school year was \$2,070, while tuition and fees at public, two-year institutions was \$1,333. *Id.* The amount of the maximum grant was \$3,300, while tuition and fees at public, four-year, in-state institutions was \$3,501. *Id.*

105

*See id.* at 460 tbl.303.10. This was an increase of almost 5.6% from fall 1997 to fall 2000. *Id.*

106




*Id.* at 451-52 tbls.302.20, 302.30. Overall enrollment by recent high school graduates declined 3.7% from 1997 to 2000; enrollment by low-income recent high school graduates declined 7.3%; enrollment by middle-income recent high school

graduates declined 1.2% and enrollment by high-income recent graduates declined 5.3%. *Id.* at 452 tbl.302.30. Black enrollment declined by 3.6%, while Hispanic enrollment declined by 12.7%. *Id.* at 451 tbl.302.20.

For-profit institutions, on the other hand, saw an enrollment increase of almost 37%. *See id.* at 460 tbl.303.10. Enrollment in two-year, for-profit institutions increased 19%, while enrollment in four-year, for-profit institutions increased almost 66%. *Id.* at 463 tbl.303.25.

107 Economic Growth and Tax Relief Reconciliation Act of 2001, [Pub. L. No. 107-16](#), [115 Stat. 38](#). The Act reduced income tax rates, eliminated the marriage penalty, increased the earned income tax credit, and repealed the estate and generation skipping taxes. *Id.* §§ 101, 301, 303, 501.

108 *Id.* §§ 401, 411, 412, 431.

109  [Section 117\(c\) of the I.R.C.](#) provides that any amounts received under an excludable scholarship or fellowship that represents “payment for teaching, research, or other services by the student required as a condition for receiving the qualified scholarship or qualified tuition reduction” shall be included in income and subject to tax.  [I.R.C. § 117\(c\) \(1\) \(2017\)](#). The 2001 Act provided an exception for such amounts received under a National Health Service Corps Scholarship Program or Armed Forces Health Professions Scholarship and Financial Assistance program. Economic Growth and Tax Relief Reconciliation Act of 2001, [Pub. L. No. 107-16](#), [§ 413](#), [115 Stat. 64](#) (codified as amended at  [26 U.S.C. § 117\(c\) \(2012\)](#)).

110 Bush requested a decrease in spending for education of 0.9%. His request for an increase in the amount of the maximum Pell Grant amounted to a budget increase of \$834 million, which combined with new mandatory funding would have increased the maximum amount of the Pell Grant to \$4,150. *Fiscal Year 2006 Budget Summary*, U.S. DEPT OF EDUC. (Feb. 7, 2005), [www2.ed.gov/about/overview/budget/budget06/summary/edlitesection1.html](http://www2.ed.gov/about/overview/budget/budget06/summary/edlitesection1.html) [<https://perma.cc/Y3B8-ELCY>].

111 Deficit Reduction Act of 2005, [Pub. L. No. 109-171](#), [120 Stat. 4](#).

112 *See History of Student Financial Aid*, FINAID, [www.finaid.org/educators/history.phtml](http://www.finaid.org/educators/history.phtml) [<https://perma.cc/C7C3-UPZY>].

113 Deficit Reduction Act of 2005, [Pub. L. No. 109-171](#), [§ 8003](#), [120 Stat. 4](#). These awards were called “Academic Competitiveness Grants” for the first two years of undergraduate education. Afterward, they were known as “National Science and Mathematics Access to Retain Talent” grants, also known as “SMART Grants.” In specific, they were awarded to those students eligible for Pell Grants who also were majoring in the “physical, life, or computer sciences, mathematics, technology, or engineering (as determined by the Secretary pursuant to regulations); or ... a foreign language that the Secretary, in consultation with the Director of National Intelligence, determines is critical to the national security of the United States.” *Id.* A requirement of the grant was that the student maintain a cumulative grade point average of at least 3.0 or the equivalent. *Id.* The amount of the award varied from \$750 to \$4,000, depending on the year of undergraduate study, but in no event could the amount, when combined with the amount of the Pell Grant, exceed the total cost of attendance. *Id.* Only about 10-12% of Pell Grant recipients were eligible. *See* SUSAN P. CHOY ET AL., U.S. DEPT. OF EDUC., *ACADEMIC COMPETITIVENESS AND NATIONAL SMART GRANT PROGRAMS: 2006-07 THROUGH 2008-09*, at 11 (2011) <https://www2.ed.gov/rschstat/eval/highered/smart-grant/acg-smart-grant-report-year-third-final.pdf> [<https://perma.cc/9VBS-MUF3>].

114 *See Pell Grant Historical Figures*, *supra* note 36.

115 The Revised Continuing Appropriations Resolution Act, 2007, [Pub. L. No. 110-5](#), [§ 20633](#), [121 Stat. 36](#), increased the grants by \$260 to \$4,310, ending a consecutive four-year run of no increases. *Pell Grant Historical Figures*, *supra* note 36.

116 College Cost Reduction and Access Act of 2007, [Pub. L. No. 110-84](#), [121 Stat. 784](#).

117 *Id.* §§ 101-102. The Act also authorized Teach Grants of \$4,000 per year for teachers in postsecondary institutions who teach in the areas of “mathematics ... science ... a foreign language ... bilingual education ... special education ... as a

reading specialist; or ... another field documented as high-need by the Federal Government, State government, or local educational agency.” *Id.* § 104.

118 *See id.* §§ 601-602.

119 *Id.* § 602(a)(2)(A).

120 *Id.* § 801.

121 *Id.*

122 *Id.*

123 Higher Education Opportunity Act of 2008, [Pub. L. No. 110-315](#), 122 Stat. 3078.

124 *Id.* § 401. Pell Grants initially were \$6,000 for the academic year 2009-2010. *Id.*

125 *Id.* § 491; *see supra* note 58 and accompanying text. The stated purpose of the reauthorization was: [T]o provide knowledge and understanding of early intervention programs, and to make recommendations that will result in early awareness by low- and moderate-income students and families ... of their eligibility for assistance; ... and ... to the extent practicable, of their eligibility for other forms of State and institutional need-based student assistance; ... to make recommendations that will expand and improve partnerships among the Federal Government, States, institutions of higher education, and private entities to increase the awareness and the total amount of need-based student assistance available to low- and moderate-income students; and ... to collect information on Federal regulations, and on the impact of Federal regulations on student financial assistance and on the cost of receiving a postsecondary education .... Higher Education Opportunity Act of 2008, [Pub. L. No. 110-315](#), § 494C, 122 Stat. 3078 (codified at 20 U.S.C. § 1098(a) (2012)).

126 *See* NCES DIGEST 2015, *supra* note 29, at 698 tbl. 330.10. This was tuition and fees for all institutions, calculated in constant 2016-2017 dollars.


127 *See id.* at 452, 460 tbls.302.30, 303.10. However, there was only a 6.8% increase in overall enrollment by recent high school graduates. *See id.* at 452 tbl.302.30. There was an enrollment increase of 8.8% by middle-income recent high school graduates and a 1.9% increase by high-income students, although this increase brought enrollment by high-income recent high school graduates to 81.9% in 2008-09, as opposed to 55.9% enrollment by low-income recent high school graduates. *Id.* Hispanic enrollment increased 12.2% during this period, although enrollment by Blacks barely increased (0.7%). *Id.* at 451 tbl.302.20.

128 *See Pell Grant Funding and History*, NEW AM., <https://www.newamerica.org/education-policy/policy-explainers/higher-ed-workforce/federal-student-aid/federal-pell-grants/pell-grant-funding/> [<https://perma.cc/R5PM-A664>]. In specific, the EFC formula was changed to allow more students to become eligible and there was a year-round Pell Grant offered to encourage students to graduate earlier. *Id.*





129 *See, e.g.*, Bridget Terry Long, *The Financial Crisis and College Enrollment, How Have Students and Their Families Responded?*, in *HOW THE FINANCIAL CRISIS AND GREAT RECESSION AFFECTED HIGHER EDUCATION* 210-13 (Jeffrey R. Brown & Caroline M. Hoxby eds., 2015); Roger L. Geiger, *Impact of the Financial Crisis on Higher Education in the United States*, 59 INT’L HIGHER EDUC. 9, 9-10 (2010).

130 NCES DIGEST 2015, *supra* note 29, at 460 tbl.303.10.

131 Black enrollment by recent high school graduates during the 8-years of the Bush administration increased by only 0.7%. *See id.* at 451 tbl.302.20. However, enrollment in for-profit institutions increased 178% during this time. *Id.* at 463 tbl.303.25. This was due to a primarily to deregulation by the Bush Administration. *See, e.g.*, Abby Jackson, *How One Memo from 2002 May Have Helped Launch the For-Profit College Boom*, BUS. INSIDER (July 2, 2015), <https://www.businessinsider.com/president-bush-incentivized-the-for-profit-college-business-2015-7> [<https://perma.cc/9M83-6VRU>]; Mike Lillis, *GAO: Bush-Era Rules Helped Schools Evade Banned Practices*, HILL (Oct. 10, 2010), <http://thehill.com/policy/healthcare/123551-gao-bush-era-rules-helped-for-profit-schools-evade-recruitment-lending-rules> [<https://perma.cc/3EUZ-NKXX>].

- 132 American Recovery and Reinvestment Act of 2009, [Pub. L. No. 111-5](#), 123 Stat. 115.
- 133  [20 U.S.C. § 1070a \(2012\)](#). This increased the amount of the maximum Pell Grant to \$4,860. *Id.* However, critics called the increase “anemic,” stating that it would not keep pace with inflation and the rising costs of tuition. *See* Tracey D. Samuelson, *Student Loan Reform: What Will It Mean for Students?*, CHRISTIAN SCI. MONITOR (Mar. 30, 2010), <https://www.csmonitor.com/Business/2010/0330/Student-loan-reform-What-will-it-mean-for-students> [<https://perma.cc/HUS6-E6NY>].
- 134 Health Care and Education Reconciliation Act of 2010, [Pub. L. No. 111-152](#), 124 Stat. 1029.
- 135 *Id.* §§ 2201, 459B.
- 136 Chuck Marr & Gillian Brunet, *Student Loan Reform in Health Bill Would Save More Than \$60 Billion and Invest in Access to College*, CTR. ON BUDGET & POL’Y PRIORITIES (Mar. 20, 2010), <https://www.cbpp.org/research/student-loan-reform-in-health-bill-would-save-more-than-60-billion-and-invest-in-access-to> [<https://perma.cc/2ZHJ-2YXA>].
- 137 Health Care and Education Reconciliation Act of 2010, [Pub. L. No. 111-152](#), § 2101, 124 Stat. 1029. The amount of the maximum grant was increased to \$5,550 in 2013. The Act provided that the grant would increase each year up to \$5,975 by 2017. *Id.*
- 138 *Id.*
- 139 Between 2008 and 2011, tuition rose almost 14.5%. *See* NCES DIGEST 2015, *supra* note 29, at 698. For a discussion of the overall effect of the state cutbacks, see Long, *supra* note 129, and Geiger, *supra* note 129.
- 140 Budget Control Act of 2011, [Pub. L. No. 112-25](#), 125 Stat. 240.
- 141 *See* Budget Control Act, INVESTOPEDIA, <https://www.investopedia.com/terms/b/budget-control-act.asp> (last visited Apr. 13, 2017); *see also* Jack M. Balkin, *The Not-So-Happy Anniversary of the Debt-Ceiling Crisis*, ATLANTIC (July 31, 2012), <https://www.theatlantic.com/politics/archive/2012/07/the-not-so-happy-anniversary-of-the-debt-ceiling-crisis/260458/> [<https://perma.cc/Z7EW-32MN>].
- 142 Budget Control Act of 2011 [Pub. L. No. 112-25](#), § 501, 125 Stat. 240. However, it eliminated the year-round Pell Grant.
- 143 *See* NCES DIGEST 2015, *supra* note 29, at 451 tbl.302.20. But overall enrollment increased 1.6%. *Id.* at 460 tbl.303.10.
- 144 *See id.* at 451 tbl.302.20.
- 145 *See id.* at 452 tbl.302.30. Hispanic enrollment, on the other hand, increased 11%. *See id.* at 451 tbl.302.20. There was also a 4% increase in enrollment in for-profit institutions. *See id.* at 460 tbl.303.10.
- 146 *See Advisory Committee for Student Financial Assistance (ACFSA)*, U.S. DEPT OF EDUC., <https://www2.ed.gov/about/bdscomm/acfsa/index.html> [<https://perma.cc/KE74-JNRD>]; *see also supra* text accompanying notes 58, 125.
- 147 Obama proposed to use this money “to advance educational equity and excellence, support teachers and school leaders, and promote college access, affordability and completion.” Press Release, U.S. Dep’t of Educ., President Obama’s 2017 Budget Seeks to Expand Educational Opportunity for All Students (Feb. 9, 2016), <https://www.ed.gov/news/press-releases/president-obamas-2017-budget-seeks-expand-educational-opportunity-all-students> [<https://perma.cc/U2CA-APKV>].
- 148 Instead, Congress passed a continuing resolution to fund the federal government up to December 9, 2017 at previous levels to avoid a government shut-down. *See* Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriation Act, 2017, and Zika Response and Preparedness Act, [Pub L. No. 114-223](#), 130 Stat. 857, 909-10 (2016). After the 2016 presidential election, another continuing resolution was passed to fund the government at the same levels through April 28, 2017 to allow the incoming Trump Administration to influence the budget. Further Continuing and Security Assistance Appropriations Act, 2017, [Pub. L. No. 114-254](#), 130 Stat. 1005, 1006 (2016).

- 149 The America's College Promise Act, H.R. 2962, 114th Cong. (2015) was introduced to implement this Program. The bill was referred to the House Subcommittee on Higher Education and Workforce Training on November 16, 2015, while related bills were introduced in the Senate. *See* America's College Promise Act, S. 1716, 114th Cong. (2015) (referred to the Senate Committee on Health, Education, Labor, and Pensions); In the Red Act, S. 2677, 114th Cong. (2016) (referred to the Senate Committee on Finance).  
The America's College Promise program was modeled after both the Tennessee Promise Program, implemented by Republican Governor Bill Haslam, and a Chicago free community college program, implemented by Mayor Rahm Emanuel. Minnesota and Oregon also have similar programs, and another twelve states have legislation under consideration. In addition, there are some local programs similar to Chicago's to create free community college programs. *See Free Community College*, NAT'L CONF. OF STATE LEGISLATURES, (Apr. 25, 2016), <https://www.ncsl.org/research/education/free-community-college.aspx>; EXEC. OFFICE PRESIDENT, AMERICA'S COLLEGE PROMISE: A PROGRESS REPORT ON FREE COMMUNITY COLLEGE (2015) [hereinafter EXEC. OFFICE REPORT], <https://obamawhitehouse.archives.gov/sites/default/files/docs/progressreportoncommunitycollege.pdf>.
- 150 *See* Michael Stratford, *Middle-Class Economics for Tuition*, INSIDE HIGHER ED (Jan. 21, 2015), <https://www.insidehighered.com/news/2015/01/21/obama-pitches-free-community-college-higher-education-tax-credits-state-union> [<https://perma.cc/L88Q-JP8F>].
- 151 Under this plan, the federal government would cover three-quarters of the cost of tuition, with the states covering the remainder. *See* H.R. 2962 § 102.
- 152 *See supra* note 149. Under the bill, the community colleges were required to pass federal eligibility requirements, in addition to other restrictions imposed by the states. For instance, some of the legislation pending in other states would require students to maintain a stated minimum GPA and remain in the state for a certain period of time after graduation. Most of the pending legislation would cover only tuition and fees. However, the state of Washington's legislation, the Washington Promise Program, offers a stipend of up to \$1,500 for books and other related expenses for needy students. *See Washington Promise Program*, LEGIS. NEWS (Feb. 10, 2017), <https://www.sbctc.edu/blogs/legislative-news/2017/february/2017-02-10.aspx> [<https://perma.cc/86PJ-GTQ7>]. The bills establishing this program of free community college for all are designed to expand Washington's Promise Program, which provides financial assistance to needy, academically worthy students. *See* WASH. REV. CODE, § 28B.119 (2002); *see also* S.B. 6481, 64th Leg., Reg. Sess. (Wash. 2016); H.B. 2820, 64th Leg., Reg. Sess. (Wash. 2016); WASHINGTON PROMISE BILL COMPARISON, LEAGUE OF ED. VOTERS (Jan. 28, 2016), <https://www.educationvoters.org/2016/01/28/side-by-side-comparison-of-washington-promise-program-bills-proposed-in-the-house-and-senate/>.
- 153 H.R. 2962 § 106. *See* U.S. DEPT' OF ED., BUDGET OVERVIEW, FISCAL YEAR 2016 BUDGET: SUMMARY AND BACKGROUND INFORMATION 60 (2015), <https://www2.ed.gov/about/overview/budget/budget16/summary/16summary.pdf>; Press Release, White House, Remarks by the President in State of the Union Address (Jan. 20, 2015), <https://www.whitehouse.gov/the-press-office/2015/01/20/remarks-president-state-union-address-january-20-2015> [<https://perma.cc/N4U8-DN95>]; *see also* Jordan Weissmann, *Obama's Free Community College Program Has a Catch*, Slate (Feb. 2, 2015), [https://www.slate.com/blogs/moneybox/2015/02/02/obama\\_free\\_community\\_college\\_program\\_wealthy\\_kids\\_need\\_not\\_apply.html](https://www.slate.com/blogs/moneybox/2015/02/02/obama_free_community_college_program_wealthy_kids_need_not_apply.html) [<https://perma.cc/NGG2-ZXG7>].
- 154 *See* OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 2017, at 37 (2016), [https://www.whitehouse.gov/sites/default/files/omb/budget/fy2017/assets/fact\\_sheets/EmpoweringAllAmericanswiththeEducationan](https://www.whitehouse.gov/sites/default/files/omb/budget/fy2017/assets/fact_sheets/EmpoweringAllAmericanswiththeEducationan).
- 155 *See* Alan Greenblatt, *Free Community College Gets Financial Aid from White House*, GOVERNING STATES & LOCALITIES (Apr. 25, 2016), <https://www.governing.com/topics/education/gov-white-house-community-college-grant.html>.
- 156 H.R. 2962. Approximately \$10 billion of this amount would have been allocated for grants to help improve completion rates and student outcomes at historically Black colleges and universities and other minority-serving institutions that enrolled at least 35% low-income students. *Id.*
- 157 *See* Stratford, *supra* note 150. The Administration asked for approximately \$60 billion to cover the initial cost of the program. *Id.*

- 158 EXEC. OFFICE REPORT, *supra* note 149, at 2, 11-12.
- 159 *See infra* text accompanying notes 309-17.
- 160 *See Education Tax Incentives and Tax Reform: Hearing Before the S. Comm. on Fin.*, 112th Cong. 44 (2012) (statement of Dr. Susan Dynarski, Professor of Public Policy and Education, Univ. of Mich.).
- 161 America's College Promise would have limited Pell Grants for individuals who repeatedly enroll in programs that do not earn academic credit. It would have strengthened academic progress requirements and provided bonus grants to encourage students to graduate on time. It also would have provided bonus grants to colleges that successfully enroll and graduate low-income students. *See* America's College Promise Act, H.R. 2962, 114th Cong. (2015).
- 162 *See* Nick Anderson, *Obama Proposes Expansion of Pell Grants to Spur College Completion*, WASH. POST (Jan. 19, 2016), <https://www.washingtonpost.com/news/grade-point/wp/2016/01/19/obama-proposes-expansion-of-pell-grants-to-spur-college-completion/?utmterm=.2245dcd18bce> [<https://perma.cc/SEW2-4A6K>].
- 163 *See* H.R. 2962. These students would have to take at least 15 credit hours per semester. This program was estimated to benefit 2.3 million students. *Id.*; *see also* *College Affordability and Completion: Ensuring a Pathway to Opportunity*, U.S. DEP'T OF EDUC., <https://www.ed.gov/college> [<https://perma.cc/P8JD-RP5P>].
- 164 *See* Press Release, U.S. Dep't of Educ., President Obama's 2017 Budget Seeks to Expand Educational Opportunity for All Students (Feb. 9, 2016), <https://www.ed.gov/news/press-releases/president-obamas-2017-budget-seeks-expand-educational-opportunity-all-students>. The Violent Crime Control and Law Enforcement Act, Pub. L. No. 103-322 §20411, 108 Stat. 1796 (1994), overturned § 401(b)(8) of the Higher Education Act, making incarcerated individuals ineligible to receive Pell grants. *See supra* text accompanying notes 81-83. The Second Chance Pell program was a pilot program of the Department of Education. *See* Press Release, U.S. Dep't of Educ., U.S. Department of Education Launches Second Chance Pell Pilot Program for Incarcerated Individuals (July 31, 2015), <https://www.ed.gov/news/press-releases/us-department-education-launches-second-chance-pell-pilot-program-incarcerated-individuals> [<https://perma.cc/49WV-UQUN>].
- 165  I.R.C. § 117(b)(2) (2012). A “qualified” scholarship, fellowship, or grant is tax-exempt to the extent that it is used for tuition and related fees. *Id.*
- 166 *See*  I.R.C. § 25A(a)(2),  (c) (2012) (Lifetime Learning Tax Credit);  I.R.C. § 25A(i) (2012) (AOTC).
- 167 This issue was noted by a bipartisan working group of the Senate Finance Committee, which compared America's College Promise to the AOTC and Consolidation Permanence Act, S. 835, 113th Cong. (2013), introduced by Senator Charles Schumer. This proposal would have deemed an allocation of the Pell Grant to non-tuition items only to the extent such items were actually paid. However, as the report noted, “at current Pell levels, this may be a difference without a consequence, as generally an individual's living expenses in any given year are estimated to exceed the maximum Pell Grant amount.” U.S. SENATE COMM. ON FIN., INDIVIDUAL INCOME TAX BIPARTISAN WORKING GROUP REPORT 29 n.48 (2015).
- 168 *See* OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, AMERICA FIRST: A BUDGET BLUEPRINT TO MAKE AMERICA GREAT AGAIN (2017) [hereinafter AMERICA FIRST BLUEPRINT], [https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/2018\\_blueprint.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/2018_blueprint.pdf).
- 169 *Id.* at 17.
- 170 *Id.* at 18; *see also* Alicia Parlapiano & Gregor Aisch, *Who Wins and Loses in Trump's Proposed Budget*, N.Y. TIMES (Mar. 16, 2016), <https://www.nytimes.com/interactive/2017/03/15/us/politics/trump-budget-proposal.html> [<https://perma.cc/CCR3-RVWW>] (discussing the effects of the proposal). Trump also proposed deep cuts to the TRIO and the Gaining Early Awareness and Readiness for Undergraduate (GEARUP) Programs that help low-income students prepare for college. TRIO provides tutoring, mentoring, and research opportunities for low-income and first generational students to help prepare them for college. Trump's proposed budget would cut \$193 million from this program. GEARUP, which also offers college preparatory opportunities to low-income elementary, middle, and secondary students, would be cut by a third and the program would have to undergo

a “rigorous evaluation” before new awards could be granted. See Marcella Bombardieri et al., *Trump's Higher Education Budget Robs More Than \$5 Billion From Low-Income Students*, CTR. FOR AM. PROGRESS (Mar. 17, 2017, 2:59 PM), <https://www.americanprogress.org/issues/education/news/2017/03/17/428554/trumps-higher-education-budget-robs-5-billion-low-income-students/> [<https://perma.cc/A8R5-QK3B>].

171 AMERICA FIRST BLUEPRINT, *supra* note 168, at 18.

172 See *supra* text accompanying notes 33-34. It provides anywhere from \$100 to \$4,000 to the neediest students. Currently, 1.6 million low-income students receive a SEOG. See Aria Bendix, *Trump's Education Budget Revealed*, ATLANTIC (Mar. 16, 2017), <https://www.theatlantic.com/education/archive/2017/03/trumps-education-budget-revealed/519837/> [<https://perma.cc/XV87-55PM>].

173 See *Federal Supplemental Educational Opportunity Grant (FSEOG) Program*, U.S. DEPT OF EDUC. [hereinafter *FSEOG Program*], <https://www2.ed.gov/programs/fseog/index.html> [<https://perma.cc/RL9P-JAT6>].

174 Andrew J. Rotherham, *No Imagination for Education*, U.S. NEWS & WORLD REP. (Mar. 16, 2017), <https://www.usnews.com/opinion/knowledge-bank/articles/2017-03-16/donald-trumps-budget-proposal-for-education-is-small-and-unimaginative>. Trump's proposal has also been called “abnormal, vapid and senseless.” Peter Fenn, *The Chaos Budget*, U.S. NEWS & WORLD REP. (March 16, 2017), <https://www.usnews.com/opinion/thomas-jefferson-street/articles/2017-03-16/donald-trumps-budget-and-its-abundance-of-extreme-cuts-is-cruel>.

175 HOUSE BUDGET COMMITTEE, DISCUSSION DRAFT, EXPANDING OPPORTUNITY IN AMERICA (July 24, 2014) [hereinafter DISCUSSION DRAFT]. According to Ryan, the discussion draft is a “set of ideas that are meant to start a conversation regarding which federal programs work to encourage economic opportunity, and which programs fail to accomplish their intended purposes.” *Education*, PAUL RYAN, <http://www.paulryan.house.gov/issues/issue/?IssueID=9972> (last visited Apr. 13, 2017). A key tenet of this proposal was focused on “improving access to high quality education.” *Id.*

176 DISCUSSION DRAFT, *supra* note 175, at 44.

177 *Id.*

178 *Id.*

179 *Id.* at 45-46.

180 *Id.* at 45. The draft went on to say that “a large amount of aid goes to non-profit private colleges, which typically enroll a much smaller share of low-income students than public or proprietary schools.” *Id.* It noted that “Bunker Hill Community College receives about one-tenth the amount of SEOG funds than Harvard University.” *Id.* This statement, however, is meaningless. The amount of SEOG funds that are allocated to the schools depends upon a statutory formula that considers the school's previous SEOG funding level and the aggregate need of students in the previous funding year. Any unused funds must be returned and if an institution returns more than 10% of the funds it receives, its funding may be cut the following year. See *FSEOG Program*, *supra* note 173.

181 See Margot L. Crandall-Hollick, *Higher Education Tax Benefits: Brief Overview and Budgetary Effects*, CONG. RES. SERV. 12 (Feb. 1, 2016), [https://fas.org/sgp/crs/misc/R41\\_967.pdf](https://fas.org/sgp/crs/misc/R41_967.pdf) (noting total lost revenue from top eleven tax incentives is estimated to be \$33.8 billion in 2016); COLL. BD., TRENDS IN HIGHER EDUCATION: TOTAL PELL GRANT EXPENDITURES AND NUMBER OF RECIPIENTS OVER TIME (2018), <https://trends.collegeboard.org/student-aid/figures-tables/pell-grants-total-expenditures-maximum-and-average-grant-and-number-recipients-over-time> [<https://perma.cc/YWQ5-5M8H>] (\$26.6 billion in Pell grants distributed in 2015-2016).

182 See text accompanying *supra* note 170; see also Donovan Stack & Gregory Korte, *Trump's First Budget Slashes Education, Health Spending to Make Way For Military Buildup*, USA TODAY (Mar. 16, 2017), <https://www.kusatoday.com/story/news/politics/2017/03/16/trump-first-budget-proposal-dramatic-cuts-fund-military-buildup/99212718/>.



- 183 *But see* Bendix, *supra* note 172 (noting that the program has been criticized as disproportionately benefitting private institutions).
- 184 This program costs around \$1 billion and provides additional funding to approximately 700,000 low-income students. *See* Paul Fain, *Making Work-Study Work*, INSIDE HIGHER ED (July 31, 2015), <https://www.insidehighered.com/news/2015/07/31/federal-work-study-pays-best-students-public-colleges-increases-debt-loads> [<https://perma.cc/ZP6A-LUN6>].
- 185 *See id.* This was called the “Year-Round Pell.”
- 186 *See* Andrew Kreighbaum, *Protecting Pell? Critics Say Budget Wouldn't*, INSIDE HIGHER ED (Mar. 16, 2017), <https://www.insidehighered.com/news/2017/03/17/proposed-us-budget-would-imperil-pell-and-low-income-students-critics-say> [<https://perma.cc/LT3M-H2FA>].
- 187 *Id.*
- 188 *See supra* text accompanying notes 123-25. The Act also requires the Department of Education to issue an annual list of the ten most and least expensive colleges, as well as to provide a college cost calculator to help students figure net costs. Higher Education Opportunity Act of 2008, Pub. L. No. 110-315 §132(h), 122 Stat. 3101.
- 189 *See supra* text accompanying notes 58, 125, 144.
- 190 *See* Philip Oreopoulos & Ryan Dunn, *Information and College Access: Evidence From a Randomized Field Experiment* (Nat'l Bureau of Econ. Res., Working Paper No. 18551, 2012), <http://www.nber.org/papers/w18551>.
- 191 *Id.* at 17.
- 192 *See* Eric P. Bettinger, Bridget Terry Long, Philip Oreopoulos & Lisa Sanbonmatsu, *The Role of Application Assistance and Information in College Decisions: Results from the H&R Block FAFSA Experiment*, 127 Q.J. ECON. 1205, 1209 (2012).
- 193 *See* U.S. DEPT. OF EDUC., FEDERAL STUDENT AID, FREE APPLICATION FOR STUDENT AID FORM (2018-2019), <https://fafsa.ed.gov/fotw1819/pdf/PdfFafsa18-19.pdf>.
- 194 *See* Bettinger et al., *supra* note 192, at 1210 (citing study estimating that approximately 850,000 individuals (over 10% of all college students) eligible for Pell Grants failed to complete financial aid forms in 2000).
- 195 *Id.* This study found that individuals who received assistance were not only more likely to apply for financial aid but also were more likely to attend college. This experiment increased the college enrollment rate for high school graduates by eight percentage points. The rate increased by sixteen percentage points for adults out of high school with no prior college experience. *Id.* at 1207-08.
- 196 *Id.* at 1207. This study was an experiment conducted with H&R Block.
- 197 *Id.* at 1226-27.
- 198 This program was enacted in 1965 under the Social Security Amendments Act, Pub. L. No. 89-97, 79 Stat. 286 (1965), to provide dependents' benefits to full-time students up to age 22, in recognition of the fact that full-time students often are dependent on their parents for support beyond age 18. *Id.* § 306 (codified at 42 U.S.C. § 402 (2012)). By the end of 1965, more than 205,000 students had received these benefits. *See* Larry DeWitt, *Research Note #11: The History of Social Security “Student” Benefits*, U.S. SOCIAL SECURITY ADMIN. (2001), <https://www.ssa.gov/history/studentbenefit.html> [<https://perma.cc/2GS3-RJQE>]. This was over 7% of the recent high school graduates who enrolled in college that fall. *See* NCES DIGEST 2015, *supra* note 29, at 450 tbl.302.10.
- 199 *See* Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, 95 Stat. 483. The repeal of this benefit was estimated to save the Social Security program \$10.6 billion over the first five years. *See* Larry DeWitt, *supra* note 198. In 1977, its peak year, almost 900,000 students were receiving the benefit. *Id.* This was over 28% of recent high school graduates enrolling in college that year. *See* NCES DIGEST 2015, *supra* note 29, at 450 tbl.302.10.

One of the reasons that Reagan was successful in repealing this benefit was that it had been touted as a student benefit, rather than a child dependent benefit. Since there were other expensive federal programs for funding higher education, there was inadequate support for this one. *See* Larry DeWitt, *supra* note 198, at 3. But there had been other problems as well that caused this benefit to lose support. *See id.* at 5-7. One such problem was that it was included in the EFC for determining other federal education benefits. *Id.* at 7. Thus, it reduced eligibility for those benefits.

200 *See* Bettinger et al., *supra* note 192, at 1209.

201 *Id.*

202 *See* Tina Griego, *America May Never Have a Draft Again. But We're Still Punishing Low-Income Men for Not Registering*, WASH. POST (Oct. 16, 2014), <https://www.washingtonpost.com/news/storyline/wp/2014/10/16/america-may-never-have-a-draft-again-but-were-still-punishing-low-income-men-for-not-registering> [<https://perma.cc/456H-ZFQV>]. According to this article, “Forty states, the District of Columbia and four U.S. territories now tie issuance or renewal of driver's licenses to Selective Service registration.” *Id.*

203 However, a bill to require women to register with the Selective Service System has been introduced. *See* H.R. 1509, 114th Cong. (2015) (referred to House Subcomm. on Military Personnel); *see also* Jennifer Steinhauer, *Senate Votes to Require Women to Register for the Draft*, N.Y. TIMES (June 14, 2016), <https://www.nytimes.com/2016/06/15/us/politics/congress-women-military-draft.html> [<https://perma.cc/JL6J-G9KA>] (noting that although bill passed the Senate, it was later restructured to remove the language requiring women to register with the Selective Service).

204 *See* Griego, *supra* note 202.

205 *Id.* Richard Nixon ended conscription in order to halt anti-war protests. He was also persuaded that conscription was not necessary for adequate military strength. *See* Andrew Glass, *U.S. Military Draft Ends, Jan. 27, 1973*, POLITICO (Jan. 27, 2012, 12:58 PM), <https://www.politico.com/story/2012/01/us-military-draft-ends-jan-27-1973-072085> [<https://perma.cc/LL6E-CHCU>].

206 According to Tina Griego, 89% of 19-year-olds registered in 2013. *See* Griego, *supra* note 202.

207 *Id.* Supporters argue that in the case of a national emergency or a declared war, the Selective Service System is needed, but this does not explain why registration should be tied to issuance or renewal of a driver's license. *Id.* According to Griego, the Selective Service System estimates that “tens of thousands” face sanctions, and that in California, men who failed to register lost more than \$99 million in state and federal benefits between 2007 and 2014. *Id.* In Pennsylvania, New Jersey, and Massachusetts, nonregistrants lost \$35 million in benefits between 2011 and 2014. *Id.*

208 Rep. Charles Rangel (D-NY), who believes strongly that two years of either military service or community service should be a duty of all citizens and residents, including women, between the ages of 18 and 25, has stated “[h]aving people penalized for not registering is a fraud.” *Id.*

209 *Id.*

210 *Id.*

211 This was a concern of the now defunct Advisory Committee on Student Financial Assistance. *See* ADVISORY COMM. ON STUDENT FIN. ASSISTANCE, DO NO HARM: UNDERMINING ACCESS WILL NOT IMPROVE COLLEGE COMPLETION, A REPORT TO CONGRESS AND THE SECRETARY OF EDUCATION 27 (2013); *see also* ACFSA, *supra* note 146 and accompanying text.

212 U.S. DEPT OF EDUC., COMMUNITY COLLEGE FACTS AT A GLANCE (2015), <https://www2.ed.gov/about/offices/list/ovae/pi/cclo/ccfacts.html> [<https://perma.cc/UZ33-WLFQ>]. There are also 415 private community colleges in the United States. *Id.*

213 *Community College FAQs*, TCHR'S C., COLUM. U., COMMUNITY C. RES. CTR., <https://ccrc.tc.columbia.edu/Community-College-FAQs.html> [<https://perma.cc/WG5P-ZPTH>]. This information is from fall 2015. Out of all the students who completed a four-year degree in the academic year 2015-2016, 49% had enrolled in a two-year college at some point during the previous 10 years. *Id.*

- 214 See AM. ASSOC. OF COMMUNITY COLLEGES, 2016 FACT SHEET (2016) [hereinafter AACC FACT SHEET], [https://www.napicaacc.com/docs/AACC\\_Fact\\_Sheet\\_2016.pdf](https://www.napicaacc.com/docs/AACC_Fact_Sheet_2016.pdf). The majority of community college students are from low-income backgrounds, 60% work over 20 hours per week, and 29% are parents. Mary Deweese, *Failed: The Myths and Realities of Community Colleges, and How to Fulfill the American Dream*, 23 GEO. J. ON POVERTY L. & POL'Y 293, 299 (2016).
- 215 See AACC FACT SHEET, *supra* note 214.
- 216 Certificates are job-specific and normally can be earned in a year or less. They are more narrowly focused than associate degrees and require some prior training. Associate degrees, on the other hand, normally require two years of study. Usually the credits earned for the associate degree (but not the certificate) will transfer toward a bachelor's degree. Studies have shown that those with associate degrees earn, on average, around \$10,000 more per year than those with just a high school diploma. Press Release, U.S. Dep't of Educ., Strengthening Partnerships Between Businesses and Community Colleges to Grow the Middle Class (Feb. 5, 2016), <https://www.ed.gov/news/press-releases/strengthening-partnerships-between-businesses-and-community-colleges-to-grow-middle-class> [<https://perma.cc/USR9-9ADW>]. According to Mary Deweese, “A student who attends a community college and graduates with an associate degree has almost a 20% return on his or her investment, the highest of any postsecondary degree.” See Deweese, *supra* note 214, at 296.
- 217 See NCES DIGEST 2015, *supra* note 29, at 698, tbl.330.10.
- 218 See *id.*; see also COLL. BD., TRENDS IN HIGHER EDUCATION: AVERAGE PUBLISHED UNDERGRADUATE CHARGES BY SECTOR, 2017-18 (2018), <https://trends.collegeboard.org/college-pricing/figures-tables/average-published-undergraduate-charges-sector-2017-18> [<https://perma.cc/2UYT-CC9W>]. It also has been noted that because many for-profits offer the majority of their courses on-line, when one considers average tuition, fees, and room and board at community colleges, it brings the total cost to approximately 70% of for-profit tuition and fees. *Id.*
- 219 However, some students have complained that community colleges should offer more evening and weekend classes. See Deweese, *supra* note 214, at 308.
- 220 The Obama Administration proposed a tax credit for employers who partner with community colleges to design educational programs to train students for job-based opportunities. See Press Release, U.S. Dep't of Educ., Strengthening Partnerships between Businesses and Community Colleges to Grow the Middle Class (Feb. 5, 2016), <https://www.ed.gov/news/press-releases/strengthening-partnerships-between-business-and-community-colleges-grow-middle-class> [<https://perma.cc/CL5H-6K2J>]. However, the proposal was rejected by the Republican-controlled Congress. See Eliana Osborn, *Will Tax Credits For Hiring Community College Graduates Survive the 2017 Budget Rejection?*, GOODCALL (Mar. 4, 2016), <https://www.goodcall.com/news/will-tax-credits-for-hiring-community-college-graduates-survive-the-2-17-budget-rejection-04970> [<https://perma.cc/8UKA-3Q86>]. It is unlikely that the Trump Administration and the new Republican-controlled Congress will enact this proposal.
- 221 See Paul Fain, *Open Access and Inequity*, INSIDE HIGHER ED (June 17, 2014), <https://insidehighered.com/news/2014/06/17/new-book-says-community-colleges-should-tighten-their-admissions-policies> [<https://perma.cc/3HHX-276E>] (discussing a book by two community college teachers who argue that open access is a “cruel hoax” on those who are not qualified).
- 222 See Deweese, *supra* note 214, at 300-01.
- 223 *Id.* at 301.
- 224 Approximately 14% of transfer students lose over 90% of their credits and without the credit loss attributable to remedial courses, the rate of those in community colleges who obtain bachelor's degrees would rise from 45% to 54%. See *id.* at 300.
- 225 In the fall of 2012, approximately 29% of first-time, full-time undergraduates who began pursuit of certificate or associate degrees in two-year colleges had completed their programs at the end of three years. See U.S. DEP'T. OF EDUC., NAT'L CTR. FOR EDUC. STATISTICS, THE CONDITION OF EDUCATION: UNDERGRADUATE RETENTION AND GRADUATION RATES (2017), [https://nces.ed.gov/programs/coe/indicator\\_ctr.asp](https://nces.ed.gov/programs/coe/indicator_ctr.asp) [<https://perma.cc/J8B5-QB4P>]. This was broken down to 22% of those at public two-year colleges, 56% at private, non-profit

two-year colleges, and 60% at private, for-profit two-year institutions. *Id.* Of those who started in remedial courses, fewer than 10% graduate within three years and barely a third complete a bachelor's degree within six years. *See* Deweese, *supra* note 214, at 301.

226 Deweese, *supra* note 214, at 311 (citing National Study of Community College Remedial Education).

227 *Id.* at 311-12.

228 *Id.* at 311. These courses would mirror foundational courses but provide extra support, counseling, and tutoring. *Id.*

229 Some community colleges apparently engage in “social promotion” to attract and retain students as a financial maneuver. *See* Jay Mathews, *Data on the Nation's Community Colleges is Not Encouraging*, WASH. POST (Mar. 20, 2016), <https://washingtonpost.com/local/education/data-on-the-nations-community-colleges-is-not-encouraging/2016/03/20/9f012998-ed50-11e5-b0fd-073d5930a7b7>. The problem with this is that four-year institutions will be reluctant to allow those credits to transfer if the standards in these courses are not high enough to enable students to successfully complete their work at four-year institutions. Loss of credits upon transfer to a four-year program is a major factor in low degree attainment rates of transfer students. *See* Deweese, *supra* note 214, at 303.

230 Deweese, *supra* note 214, at 300.

231 *See* Mathews, *supra* note 229.

232 About 80% of community college students expressed a desire to obtain bachelor's degrees but only about 42% of these students actually transferred to four-year colleges. Deweese, *supra* note 214, at 302-03.

233 *Id.* at 303.

234 *Id.* at 308.

235 *Id.* at 305.

236 For instance, the majority of those issued by community colleges in South Carolina are of low value, while those issued in Wisconsin and Wyoming are of much higher value. *See id.*

237 *Id.* The majority of students earning certificates and associate degrees tend to be women who are clustered in lower paying jobs. *Id.*

238 For example, Northern Virginia Community College (NVCC) has established a Pathway to Baccalaureate Program in conjunction with a local school to help underprepared students enroll in NVCC. *Id.* at 314. Once in NVCC, they are assigned retention counselors to provide oversight and academic guidance. If they maintain a 2.5 GPA at NVCC, they are guaranteed admission to George Mason University. *See id.* at 315. As Mary Deweese notes, though, “guaranteed acceptance policies are only possible where the community college itself provides for a high-quality education.” *Id.* at 315.

239 For example, St. Paul College in Minnesota established its Trading Up! Program in conjunction with local contractors and the Department of Employment and Economic Development to provide paid on-the-job and classroom training. *Id.* at 316.

240 *Id.* at 306. For-profit schools educate more minority and low-income students. They also award over 20% of associate's degrees and just under 50% of certificates. *Id.*




241 *See* NCES DIGEST 2015, *supra* note 29, at 460 tbl.303.10; *see also supra* note 131.

242 *See* NCES DIGEST 2015, *supra* note 29, at 460 tbl.303.10.

243 *See* GAO *Finds Fraud, Deception and Questionable Marketing Tactics at For-Profits*, HISPANIC OUTLOOK ON EDUC. MAG. (Apr. 2011), <https://www.hispanicoutlook.com/articles/gao-finds-fraud-deception-and-questionable-marketing-tactics-at-for-profits>. Indeed, prior to becoming President of the United States, Trump himself operated a for-profit school, Trump University, for which he was sued by former students alleging fraud. Trump ultimately

settled for \$25 million without admitting wrongdoing. *See* Steve Eder, *Donald Trump Agrees to Pay \$25 Million in Trump University Settlement*, N.Y. TIMES (Nov. 18, 2016), <https://www.nytimes.com/2016/11/19/us/politics/trump-university.html?r=0>.

- 244 *See, e.g.*, Press Release, U.S. Dep't of Educ., *New Analysis Finds Many For-Profits Skirt Federal Funding Limits* (Dec. 21, 2016), <https://www.ed.gov/news/press-releases/new-analysis-finds-many-profits-skirt-federal-funding-limits> [<https://perma.cc/9U5U-K4RV>]; Alia Wong, *The Downfall of For-Profit Colleges*, ATLANTIC (Feb. 23, 2015), <https://www.theatlantic.com/education/archive/2015/02/the-downfall-of-for-profit-colleges/385810/> [<https://perma.cc/XP9V-SP9B>].
- 245 *See* FOR PROFIT HIGHER EDUCATION: THE FAILURE TO SAFEGUARD THE FEDERAL INVESTMENT AND ENSURE STUDENT SUCCESS, S. REP. NO. 112-37 (2012) [hereinafter HELP REP.].
- 246 This Report found that on average, for-profit institutions charged about three-and-a-half times more than public institutions for the same degree in the same state. *Id.* at 40. For-profits argue that their tuition must be higher than public institutions because they do not receive subsidies from the state governments. *Id.* at 51-52.
- 247 *See id.* at 98-100, 101-17.
- 248 *Id.* at 98-100. For-profit institutions argue that their high drop-out rates are not much higher than those at community colleges. While this is true, community colleges charge much lower tuition.
- 249 The Report found that more than half of registered students at for-profit schools in 2008-2009 dropped out within four months. *Id.* at 84.
- 250 Students who attended for-profit institutions accounted for 47% of all federal student loan defaults, yet only 7.7-8.5% of students attended for-profit institutions during the 2008-2009 period that was the focus of the Report. *Id.* at 132-34. The rationale for this discrepancy may be explained in several ways. First, students who enroll in for-profit institutions tend to be older and independent of their parents. Thus, they borrow more because they are paying the tuition bill themselves. Second, tuition and fees at for-profit schools are much more expensive than at non-profit institutions. Third, unlike nonprofit institutions, for-profits do not offer scholarships to help students defray the costs. *Id.* at 129-30.
- 251 *See id.* at 53-64.
- 252 In many cases, employers do not value degrees from for-profit institutions, making it difficult for graduates to find jobs. *Id.* at 138-40; *see also* Catherine Rampell, *The Investment in For-Profit Colleges Isn't Paying Off*, WASH. POST (Sept. 25, 2014), <https://washingtonpost.com/opinions/catherine-rampell-the-investment-in-for-profit-colleges-isnt-paying-off/2014/09/25/0c4aaf24-44ec-11e4-b7c-f5889e061e5f>.
- 253 *See* HELP Rep., *supra* note 245, at 64-66.
- 254 *Id.* at 66. After graduation, students have been surprised to find that some jobs require additional certification, for which they will have to incur additional cost. *Id.* at 138-40.
- 255 For a list of for-profits sanctioned for these activities, *see* *Colleges Sanctioned by the Government*, C. AFFORDABILITY GUIDE, <https://collegeaffordabilityguide.org/online-colleges-sanctioned-by-government-organizations/>.
- 256 *See* HELP REP., *supra* note 245, at 159-74. One loophole in this rule is that military benefits do not count toward the 90% because they are not "Title IV" benefits. *Id.* at 170-72. The Committee on Health, Education, Labor, and Pensions further found that almost a quarter of the schools they examined encouraged applicants to falsify their FAFSA to qualify for federal financial aid. *See* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-10-948T, FOR PROFIT COLLEGES: UNDERCOVER TESTING FINDS COLLEGES ENCOURAGED FRAUD AND ENGAGED IN DECEPTIVE AND QUESTIONABLE MARKETING PRACTICES (2010), [www.gao.gov/assets/130/125197.pdf](http://www.gao.gov/assets/130/125197.pdf) (testimony before the Senate Committee on Health, Education, Labor and Pensions).

- 257 HELP REP., *supra* note 245, at 1, 30. This is five times more than the for-profit sector collected ten years ago. *Id.* at 30. These institutions collect a higher proportion of their revenues from federal aid than most public and private nonprofit educational institutions. *Id.* at 30-31.
- 258 *Id.* at 3, 19. However, according to the NCES DIGEST, for-profit schools enrolled only 9-10% of total students during that period. See NCES DIGEST 2015, *supra* note 29, at 462 tbl.303.20.
- 259 See Jillian Berman, *ITT is the Second Major For-Profit College to Declare Bankruptcy Since Last Year*, MARKETWATCH (Sept. 18, 2016), <https://www.marketwatch.com/story/itt-is-second-major-for-profit-college-to-declare-bankruptcy-since-last-year-2016-09-16>.
- 260 *See id.*
- 261 See Sarah Jaffe, *The For-Profit College Scam That These Students Are Still Paying For*, MOYERS & COMPANY (Mar. 9, 2016), <https://billmoyers.com/story/the-for-profit-college-scam-that-these-students-are-still-paying-for/> (obstacles include a statute of limitations and expensive, individualized relief instead of global relief). The process also varies by state. See Kat Tretina, *New Federal Rules Help Students Get Forgiveness in Cases of Fraud*, STUDENT LOAN HERO (Nov. 9, 2016), <https://studentloanhero.com/featured/federal-rules-students-get-forgiveness-fraud/>.
- 262 See Jaffe, *supra* note 261.
- 263 See Press Release, U.S. Dep't of Educ., U.S. Department of Education Announces Final Regulations to Protect Students and Taxpayers from Predatory Institutions (Oct. 28, 2016), <https://www.ed.gov/news/press-releases/us-department-education-announces-final-regulations-protect-students-and-taxpayers-predatory-institutions>.
- 264 *Id.*
- 265 See Complaint at 2, California Ass'n of Private Postsecondary Schs v. DeVos, No. 1:17-cv-00999 (D.D.C. May 24, 2017).
- 266 See Stacy Cowley, *18 States Sue Betsy DeVos Over Student Loan Protections*, N.Y. TIMES (July 6, 2017), <https://www.nytimes.com/2017/07/06/business/dealbook/massachusetts-betsy-devos-lawsuit.html>.
- 267 See Susan Shain, *Betsy DeVos Just Got Sued. The Decision Could Affect 68,000 Student Borrowers*, STUDENT LOAN HERO (July 10, 2017), <https://studentloanhero.com/featured/betsy-devos-for-profit-colleges/>.
- 268 See Complaint at 3, Massachusetts et al. v. DeVos, No. 1:17-cv-01331, 2017 WL 2875620 (D.D.C. July 6, 2017).
- 269  11 U.S.C. § 523(a)(8) (2012) (providing an exception to bankruptcy discharge for education loans).
- 270 See Patricia Cohen, *Crackdown on For-Profit Colleges May Free Students and Trap Taxpayers*, N.Y. TIMES (Aug. 28, 2016), <https://nytimes.com/2016/08/29/business/crackdown-on-for-profit-colleges-may-free-students-and-trap-taxpayers.html>.
- 271 As Barmak Nassirian, Director of Federal Relations and Policy Analysis at the American Association of State Colleges and Universities, said of the Department of Education, “There is a built-in conflict of interest when the gatekeeper and the financier are the same entity.” *Id.*
- 272 The authority for this test is Title IV of the HEA, which provides that in order to receive federal funds, career schools (for-profits community colleges and vocational schools) must demonstrate that they prepare students for “gainful employment in a recognized occupation.” See *Ass'n of Private Sector Colls. & Univs. v. Duncan*, 110 F. Supp. 3d 176, 181-82 (D.D.C. 2015) (internal quotation marks omitted) (citing  20 U.S.C. §§ 1002(b)(1)(A)(i),  1002(c)(1)(A) (2012)) (upholding “gainful employment” test).
- 273 See Press Release, U.S. Dep't of Educ., Obama Administration Announces Final Rules to Protect Students from Poor Performing Career College Programs (Oct. 20, 2014), <https://www.ed.gov/news/press-releases/obama-administration-announces-final-rules-protect-students-poor-performing-career-college-programs>.

- 274 Press Release, U.S. Dep't of Educ., Obama Administration Takes Action to Protect Americans from Predatory, Poor Performing Career Colleges (Mar. 14, 2014), <https://www.ed.gov/news/press-releases/obama-administration-takes-action-protect-americans-predatory-poor-performing-career-colleges>.
- 275 David Halperin, *98 Percent of College Programs that Flunked Performance Test Are For-Profit*, HUFFINGTON POST (Jan. 9, 2017), [https://www.huffingtonpost.com/davidhalperin/90-percent-of-college-p\\_b\\_14064182.html](https://www.huffingtonpost.com/davidhalperin/90-percent-of-college-p_b_14064182.html). Some for-profits are reinventing themselves as nonprofits to avoid both the regulations and fines for misconduct. See Michelle Chen, *Trump's Administration is Making It Easier for For-Profit Colleges to Screw Over More Students*, NATION (Mar. 31, 2017), <https://www.thenation.com/article/trumps-administration-is-making-it-easier-for-for-profit-colleges-to-screw-over-more-students/>.
- 276 See Andrew Kreighbaum, *Reset of Rules Aimed at For-Profits Begins*, INSIDE HIGHER ED (June 15, 2017), <https://www.insidehighered.com/news/2017/06/15/education-department-hit-pause-two-primary-obama-regulations-aimed-profits> (noting speculation is that the new rules will not be effective until 2019, at the earliest). The suspension of these rules is not a surprise because both Trump and Secretary of Education Betsy DeVos have invested in for-profit education. See also Ben Miller & Laura Jimenez, *Inside the Financial Holdings of Billionaire Betsy DeVos*, CTR. FOR AM. PROGRESS (Jan 27, 2017), <https://www.americanprogress.org/issues/education/news/2017/01/27/297572/inside-the-financial-holdings-of-billionaire-betsy-devos/>; Bruce Watson, *Lawsuit Against 'Trump University' Puts For-Profit Schools in the Crosshairs Again*, AOL.COM (Aug. 27, 2013), <https://www.aol.com/article/2013/08/27/trump-university-lawsuit-for-profit-schools/20704015/>.
- 277 See David Halperin, *DeVos Declines to Support For-Profit Accountability Rules*, HUFFINGTON POST (Jan. 19, 2017), [https://huffingtonpost.com/davidhalperin/devos-declines-to-support\\_b\\_14235348.html](https://huffingtonpost.com/davidhalperin/devos-declines-to-support_b_14235348.html); see also Danielle Douglas-Gabriel, *Elizabeth Warren Questions the Hiring of For-Profit College Officials at the Education Department*, WASH. POST (Mar. 20, 2017), [https://www.washingtonpost.com/news/grade-point/wp/2017/03/20/elizabeth-warren-questions-the-hiring-of-for-profit-college-officials-at-the-education-department/?utm\\_term=.ef27d0e89ada](https://www.washingtonpost.com/news/grade-point/wp/2017/03/20/elizabeth-warren-questions-the-hiring-of-for-profit-college-officials-at-the-education-department/?utm_term=.ef27d0e89ada) (reporting that Warren accused DeVos of violating conflict of interest rules, as well as a Trump executive order requiring political appointees to abstain from involvement in matters relating to their former employer or clients for two years). The Trump Administration has sided with proprietary institutions in suspending the gainful employment and borrower-defense provisions. See Kreighbaum, *supra* note 276.
- 278 See Patricia Cohen, *For-Profit Schools, An Obama Target, See New Day Under Trump*, N.Y. TIMES (Feb. 20, 2017), <https://www.nytimes.com/2017/02/20/business/for-profit-education-trump-devos.html>.
- 279 See DISCUSSION DRAFT, *supra* note 175.
- 280 See Caroline Hoxby, *The Economics of Online Postsecondary Education: MOOCS, Nonselective Education, and Highly Selective Education* 11-12 (Nat'l Bureau of Econ. Res., Working Paper No. 19816, 2014), <https://www.nber.org/papers/w19816.pdf>.
- 281 *Id.* at 7.
- 282 See, e.g., Joshua Goodman, Julia Melkers & Amanda Pallais, *Can Online Delivery Increase Access to Education?* 1-2 (Nat'l Bureau of Econ. Res., Working Paper No. 22754, 2016), <http://www.nber.org/papers/w22754> (extolling the virtues of a successful MS online program established by Georgia Tech University).
- 283 See Hoxby, *supra* note 80, at 12.
- 284 See, e.g., Paul Fain, *Gates Foundation Solicits Remedial MOOCS*, INSIDE HIGHER ED (Sept. 14, 2012), <https://www.insidehighered.com/news/2012/09/14/gates-foundation-solicits-remedial-moocs>; Moon-Heum Cho & Michele L. Heron, *Self-Regulated Learning: The Role of Motivation, Emotion, and Use of Learning Strategies in Students' Learning Experiences in a Self-Paced Online Mathematics Course*, 36 DISTANCE ED. 80 (2015), [www.tandfonline.com/doi/pdf/10.1080/01587919.2015.1019963](http://www.tandfonline.com/doi/pdf/10.1080/01587919.2015.1019963).
- 285 *Id.*
- 286 See Geoffrey A. Fowler, *An Early Report Card on Massive Online Open Courses*, WALL ST. J. (Oct. 8, 2013), <https://www.wsj.com/articles/SB10001424052702303759604579093400834738>.

- 287 See Jordan Friedman, *How Employers View Online, For-Profit Bachelor's Degrees*, U.S. NEWS & WORLD REP. (Aug. 15, 2016), <https://www.usnews.com/education/online-education/articles/2016-08-15/how-employers-view-online-for-profit-bachelors-degrees>.
- 288 See Sophie Quinton, *Will a For-Profit Degree Help You Get a Job?*, ATLANTIC (Mar. 25, 2014), <https://www.theatlantic.com/education/archive/2014/03/will-a-for-profit-degree-help-you-get-a-job/359527/>.
- 289 See Michael Wartell, *A New Paradigm for Remediation: MOOCs in Secondary Schools*, EDUCAUSE REV. (Nov. 1, 2012), <https://er.educause.edu/articles/2012/11/a-new-paradigm-for-remediation-moocs-in-secondary-schools>.
- 290 See *supra* text accompanying notes 156-57.
- 291 See *supra* text accompanying note 157.
- 292 See COLL. BD., TRENDS IN HIGHER EDUCATION: MAXIMUM AND AVERAGE PELL GRANTS OVER TIME (2018), <https://trends.collegeboard.org/student-aid/figures-tables/maximum-pell-grant-and-published-prices-four-year-institutions-over-time> (“[In the past 10 years], published tuition and fees increased by 3.2% per year at public, four-year institutions and by 2.4% per year at private nonprofit institutions, while the maximum Pell Grant increased by 1.6% per year, after adjusting for inflation.”).
- 293 See Press Release, U.S. Dep't of Educ., Fact Sheet: Helping More Americans Complete College: New Proposals for Success (Jan. 19, 2016), <https://www.ed.gov/news/press-releases/fact-sheet-helping-more-americans-complete-college-new-proposals-success> (discussing President Obama's request for Congress to strengthen the Pell program); The Inst. for Coll. Access & Success, *Pell Grants Help Keep College Affordable for Millions of Americans* (June 30, 2017), [https://www.ticas.org/sites/default/files/pub\\_files/overall\\_pell\\_one\\_pager.pdf](https://www.ticas.org/sites/default/files/pub_files/overall_pell_one_pager.pdf).
- 294 It is estimated that if the grants are not indexed for inflation, assuming a 3% rise in tuition per year, by 2026 the grant will cover only 21% of the cost of tuition at public, instate, four-year institutions. Donald E. Heller, *The Key to Affordable College Education Already Exists*, BUS. INSIDER (Aug. 1, 2016), [www.businessinsider.com/pell-grants-are-the-key-to-affordable-college-2016-8](http://www.businessinsider.com/pell-grants-are-the-key-to-affordable-college-2016-8).
- 295 See Andrew Kreighbaum, *Protecting Pell? Critics Say Budget Wouldn't*, INSIDE HIGHER ED (Mar. 17, 2017), <https://insidehighered.com/news/2017/03/17/proposed-us-budget-would-imperil-pell-and-low-income-students-critics-say> (noting that the Trump budget proposes to shift \$3.9 billion from Pell surplus to defense spending); Melissa Korn, *Pell Grant Program Projected to See \$7.8 Billion Surplus Next Year; Expecting Fight for the Funds, Two Democrats Push to Keep the Money for Students*, WALL ST. J. (June 2, 2016), [www.wsj.com/articles/pell-grant-program-projected-to-see-7-8-billion-surplus-next-year-1464908583](http://www.wsj.com/articles/pell-grant-program-projected-to-see-7-8-billion-surplus-next-year-1464908583).
- 296 See Kreighbaum, *supra* note 295. Regardless of whether this proposal is approved, it indicates that education is not among the priorities of the Trump Administration.
- 297 Stephen Burd, *Changing the Incentives for Colleges to Enroll and Graduate Low-Income Students*, HECHINGER REP. (June 3, 2015), <https://hechingerreport.org/changing-the-incentives-for-colleges-to-enroll-and-graduate-low-income-students/>.
- 298 See David Deming & Susan Dynarski, *Into College, Out of Poverty? Policies to Increase the Postsecondary Attainment of the Poor*, 7 (Nat'l Bureau of Econ. Res., Working Paper No. 1538, 2009), <https://users.nber.org/~dynarski/w15387.pdf> (citing two studies that show that the Pell program has had no effect on college enrollment rate, although another study showed that there has been a 4% increase in enrollment by nontraditional students once they become eligible for the Pell Grant).
- 299 See DAVID J. DEMING & CHRISTOPHER R. WALTERS, THE IMPACT OF PRICE CAPS AND SPENDING CUTS ON U.S. POSTSECONDARY ATTAINMENT, 4 (Aug. 2017), [https://scholar.harvard.edu/files/ddeming/files/DW\\_Aug2017.pdf](https://scholar.harvard.edu/files/ddeming/files/DW_Aug2017.pdf) (citing several studies).
- 300 *Id.* at 2. Although state appropriations per student fell by 28% between 2000 and 2014, at public institutions pressure from various sources has kept tuition from rising proportionately. Thus, the effect on students has been a per-student spending decline of 16%. *Id.*



- 301 *Id.* at 4.
- 302 *See id.* at 2-3. Schools obtain funding from several sources: state and local appropriations, student tuition and fees, and federal grants, such as the Pell Grant. More selective institutions also obtain a portion of their funding from alumni donations, and for some schools, other funding sources include ticket sales from athletic events, bookstore proceeds, and hospital or veterinary facilities. However, at community colleges, tuition is much lower and these schools do not benefit from alumni donations and athletic events. Thus, they are highly dependent on state and federal funding. *Id.*
- 303 In some years, there has been no increase; in other years there has been a decrease in the amount of the grant; and in others (such as the 2016-2017 academic year) the increase has not been sufficient to keep up with the consumer price index, much less the rising costs of higher education. *See* COLL. BD., *supra* note 292.
- 304 *See, e.g.*, Joshua Wyner, *Should Community Colleges Be Tuition-Free?*, WALL ST. J. (Sept. 15, 2015), <https://www.wsj.com/articles/should-community-colleges-be-tuition-free-1442368892> (argument of Monica Herk, Vice-president for Education Research at the Committee for Economic Development).
- 305 *See* Preston Cooper, *Let Them Eat Free Community College*, FORBES (Feb. 7, 2017, 7:15 AM), <https://www.forbes.com/sites/prestoncooper2/2017/02/07/let-them-eat-free-communitycollege/#6d127fc625ce>. Cooper argues that under the Oregon Promise Program, over 60% of the benefits have flowed to upper-middle and high-income families. *Id.*
- 306 *See id.*; *see also* Room For Debate: *Should College Be Free?*, N.Y. TIMES: OPINION PAGES (Jan. 20, 2016), <http://www.nytimes.com/roomfordebate/2016/01/20/should-college-be-free>.
- 307 *See* Andrew P. Kelly, *Tuition Is Not the Main Obstacle to Student Success*, EDUC. NEXT (Winter 2016), [educationnext.org/tuition-is-not-the-main-obstacle-to-student-success-forum-community-college/](http://educationnext.org/tuition-is-not-the-main-obstacle-to-student-success-forum-community-college/).
- 308 *See id.*
- 309 *See* Kirk Carapezza, *National Survey Shows High Rates of Hungry and Homeless Community College Students*, NPR (Mar. 15, 2017), <http://www.npr.org/sections/ed/2017/03/15/520192774/national-survey-shows-high-rates-of-hungry-and-homeless-community-college-students>.
- 310 *See* Ryan Lane, *Avoid These Student Loan Challenges for Community College Students*, U.S. NEWS & WORLD REP. (June 25, 2014, 10:00 AM), <https://www.usnews.com/education/blogs/student-loan-ranger/2014/06/25/avoid-these-student-loan-challenges-for-community-college-students>.
- 311 In America's College Promise, President Obama had proposed an upper income limitation of \$200,000. This would have included some taxpayers in the middle- and upper-middle-income ranges. In the case of such a limitation, preference should be given to those in the lower income ranges. *See supra* text accompany notes 154-55. Note, however, that the successful Tennessee Promise program is open to everyone, regardless of socioeconomic level. *See* ABOUT TENNESSEE PROMISE, <http://tennesseepromise.gov/about.shtml>.
- 312 *See* Paul Fain, *Small Loans, Big Problem*, INSIDE HIGHER ED (Sept. 28, 2015), <https://www.insidehighered.com/news/2015/09/28/four-surprising-findings-debt-and-default-among-community-college-students>.
- 313 *See id.*
- 314 This is the projection of the Tennessee Promise Program. *See* TENNESSEE PROMISE, FREQUENTLY ASKED QUESTIONS, <https://taaup.org/NEWS%20ARTICLES/TN%20Promise%20FAQ.pdf>.
- 315 *See* Adam Tamburin, *Tennessee Promise Boasts 80 Percent Retention Rate*, TENNESSEAN (Apr. 7, 2016), <https://www.tennessean.com/story/news/education/2016/04/07/tennessee-promise-boasts-80-percent-retention-rate/82749838/>.
- 316 *See* Deming & Dynarski, *supra* note 298, at 9-10. Under the Georgia and Arkansas programs, degree completion was increased by about 3-4 percentage points. In the cohort of those who would have enrolled in college regardless, Dynarski

estimates increased retention of 5-11%. She notes that “the positive effect of lower cost on retention outweighs any negative effect of enrolling marginally weaker students who are less likely to persist.” *Id.* at 9.

317 *See* Deming & Dynarski, *supra* note 298, at 10.

318 The West Virginia Promise, which required students to complete at least 30 credits per year to graduate on time, increased graduation rates by 4 percentage points, and the number of students graduating on time increased by 7 percentage points. *Id.*

319 *See* ABOUT TENNESSEE PROMISE, *supra* note 311.

320 *See* Press Release, U.S. Dep't of Educ., Strengthening Partnerships Between Businesses and Community Colleges to Grow the Middle Class (Feb. 5, 2016), <https://www.ed.gov/news/press-releases/strengthening-partnerships-between-businesses-and-community-colleges-grow-middle-class>; *see also supra* note 220.

321 *Id.*

322 The number of incentives may vary according to the commentator. *E.g.*, Clare McCann, *Tax Benefits for Education*, EDCENTRAL, <http://www.edcentral.org/edcyclopedia/federal-education-tax-benefits/> [<https://perma.cc/X8A5-V9G3/>] (noting that there are twelve such benefits). The seventeen that I identify are: the two tax credits under I.R.C. § 25A (2012)--the AOTC/HOPE credit and the Lifetime Learning Tax Credit; the eleven exclusions from income--I.R.C. § 72(t)(2)(E) (2012) (exclusion from tax and penalty for early distributions from IRA accounts used for education), I.R.C. § 108(f) (2012) (exclusion of certain student loan forgiveness), I.R.C. § 117(a) (2012) (exclusion of qualified scholarships and fellowships), I.R.C. § 117(d) (2012) (exclusion of tuition reduction for employees of educational institutions and their families), I.R.C. § 127 (2012) (exclusion of employer provided education assistance), I.R.C. § 132(a)(3), (j)(8) (2012) (exclusion of certain work-related education expenses paid by an employer), I.R.C. § 134 (2012) (exclusion of veterans education and training benefits), I.R.C. § 135 (2012) (exclusion of interest on education savings bonds), I.R.C. § 529 (2012) (exclusion of tax on contributions and distributions from qualified tuition programs and the five-year averaging for one-time gifts), I.R.C. § 530 (2012) (exclusion of tax on distributions from Coverdell education savings accounts), I.R.C. § 2503 (2012) (exclusion from gift tax of tuition payments made to an educational institution on behalf of a student); the deductions--I.R.C. § 162 (2012) and *Treas. Reg. § 1.162-5(a)*(as amended in 1967) (allowing a deduction of work-related education expenses), and I.R.C. § 221 (2012) (an above-the-line deduction for interest paid on qualified education loans); the miscellaneous provisions--I.R.C. § 32(c)(3) (2012) (increasing the age limit for a qualifying child to age 23 for full-time students for purposes of the earned income tax credit), and I.R.C. § 152(c)(3) (2012) (allowing a parental personal exemption for full-time students under the age of 24).

Note that the AOTC has replaced the HOPE credit as of 2015, and the § 222 deduction for tuition and fees expired at the end of 2017. *See* Consolidation Appropriations Act, 2016, *Pub. L. No. 114-113*, §§ 153, 206, 129 Stat. 3066, 3082.

323 *See, e.g.*, Deborah H. Schenk & Andrew L. Grossman, *The Failure of Tax Incentives for Education*, 61 *TAX L. REV.* 295, 354-56 (2008); Watson, *supra* note 23, at 92-94; OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, ANALYTICAL PERSPECTIVES, BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 2017, at 230 tbl.14-1 (2016) (noting the cost of these incentives is estimated to reach \$37.1 billion in fiscal year 2016).

324 *See* George B. Bulman & Caroline M. Hoxby, *The Returns to the Federal Tax Credits for Higher Education*, 30-31 (Nat'l Bureau of Econ. Res., Working Paper No. 20833, 2015) (concluding that among the inefficiencies of the tax incentives is that incentives benefit those who do not have liquidity constraints); Susan Dynarski, *\$20 Billion In Tax Credits Fails to Increase College Attendance*, *N.Y. TIMES* (Apr. 19, 2016), <https://www.nytimes.com/2016/04/20/upshot/how-to-use-tax-credits-to-increase-college-attendance.html>.

- 325 See Watson, *supra* note 23, at 98-102 (discussing problems raised by the complexity of the incentives).
- 326 See Margot L. Crandall-Hollick, *The American Opportunity Tax Credit: Overview, Analysis, and Policy Options*, CONG. RES. SERV. 15-16 (Jan. 19, 2016) (citing reports by the Treasury Inspector General for Tax Administration of intentional and unintentional errors).
- 327 The mismatch occurs because the tuition must be paid before the credit can be used. If tuition is due and paid in the spring or summer before admittance, the tax return cannot be filed before the end of the taxable year. Thus, there is a delay between the payment of the tuition and fees and the receipt of the tax refund attributable to the credit or other benefit. In some cases, the delay may be as long as fifteen months. See Watson, *supra* note 23, at 102.
- 328 *Id.* at 122-35.
- 329 See *id.* at 122-26. Among the other incentives I suggest for repeal are Coverdell education savings plans, I.R.C. § 530 (2012), and the exclusion of early IRA withdrawals for qualified educational purposes, I.R.C. § 72(t) (2012). The deduction for qualified tuition and related expenses, I.R.C. § 222 (2012), expired at the end of 2017, see *supra* note 322, and should not be revived because it was a complicated provision that was underutilized.
- 330 The bonds can be used tax-free only for tuition and fees. This is the most restrictive definition of any of the education savings tax benefits. The problem this raises is that the payment of the tuition and fees may reduce the taxpayer's ability to use another tax incentive that may be more advantageous to that taxpayer, such as the refundable AOTC, which also applies to payment of tuition and fees. Another serious problem with savings bonds currently is that if the bondholder's modified adjusted gross income is above the phase-out amount when the bonds are cashed, they become taxable. Since these bonds are more valuable if purchased earlier, young parents may have no idea what their modified adjusted gross income will be in fifteen to eighteen years. This decision becomes even more speculative when one considers that if her income is less than the modified adjusted gross income limit, her children may qualify for federal assistance and the bonds would not be needed. Thus, in the ten- to fifteen-year period, the young parents' income must fall within a narrow range--it cannot be greater than the adjusted gross income limit but it can't be too far below, either. See Watson, *supra* note 23, at 122-35.
- 331 See *id.*
- 332 Fluctuation in value has been a problem with qualified tuition plans. Since these plans are maintained by the states, investors are at the mercy of the advisors retained by the state. Some of these advisors are better than others. For instance, during the economic crisis of 2008, QTP plans in North Carolina, Maryland, and Virginia lost up to 30% of their value, while in Florida, which had more conservative investment advisors, there was no decline in the value of their QTP assets. See *Saving For College: 529 Plans*, NAT'L CONF. ST. LEGISLATURES (May 22, 2014), <https://www.ncsl.org/research/education/saving-for-college-529-plans.aspx>.
- 333 STAFF OF J. COMM. ON TAXATION, JCX-3-17, ESTIMATES OF FEDERAL TAX EXPENDITURES FOR FISCAL YEARS 2016-2020 36 (Jan. 30, 2017); see also Philip Oliff, Mark Robyn, & Rebecca Theiss, *Federal Support for Higher Education Comes from Spending Programs and the Tax Code*, PEW CHARITABLE TRUSTS (Mar. 7, 2017), <http://www.pewtrusts.org/en/research-and-analysis/analysis/2017/03/07/federal-support-for-higher-education-comes-from-spending-programs-and-the-tax-code>.
- 334 CONG. BUDGET OFFICE, FEDERAL PELL GRANT PROGRAM, DISCRETIONARY PROGRAM COSTS AND CUMULATIVE SURPLUS/SHORTFALL at tbl.1 (2017), <https://www.cbo.gov/sites/default/files/recurringdata/51304-2017-01-pellgrant.pdf>.
- 335 The current estimate of the Joint Committee on Taxation is that by 2020 these credits will cost \$20.1 billion. Over the five-year period from 2016-2020, it is estimated that these credits will cost \$98.2 billion. JCT ESTIMATES OF FEDERAL TAX EXPENDITURES FOR FISCAL YEARS 2016-2020 (2017). However, the previous estimate of the JCT was that from 2015-2019, and these credits would cost \$84 billion over the same five years. STAFF OF J. COMM. ON TAXATION, 114th Cong., JCX-141R-15, ESTIMATES OF FEDERAL TAX FOR FISCAL YEARS 2015-2019, at 36, tbl.1 (Comm. Print 2015), <https://www.jct.gov/publications.html?func=startdown&id=4857>. The recent estimate had to be adjusted upward to account for the rising revenue costs of the credits.

- 336 Two examples are the Tennessee Promise Program and the Georgia HOPE Scholarship Program. The Tennessee Promise Program is based on neither need nor merit, in contrast to the exemplary Georgia HOPE Scholarship Program which is merit-based, although there is a Georgia HOPE Grant Program as well, to encourage technical training. The Georgia Program is not merit based. The problem with merit-based programs is twofold: (1) they do not affect whether a student goes to college but instead they have a greater effect on which college a student attends; and (2) merit-based programs disproportionately benefit upper- and upper-middle income students. According to one commentator, this “[calls] into question the social benefits of state-sponsored merit aid.” Deweese, *supra* note 214, at 321. The Tennessee Promise Program applies to Tennessee’s colleges of applied technology, community colleges or any in-state independent or four-year public universities offering associate degrees. The Georgia HOPE programs are available to students enrolled in public or private colleges or universities, as well as public technical colleges.
- 337 *See supra* text accompanying notes 12-16.
- 338 *See* Danielle Douglas-Gabriel, *Student Loan Defaults Are Rising Faster Than You Think*, WASH. POST (Mar. 14, 2017), [https://www.washingtonpost.com/news/grade-point/wp/2017/03/14/student-loan-defaults-are-rising-faster-than-you-think/?utm\\_term=.0d0ef86328a0](https://www.washingtonpost.com/news/grade-point/wp/2017/03/14/student-loan-defaults-are-rising-faster-than-you-think/?utm_term=.0d0ef86328a0).
- 339 *See supra* text accompanying notes 17-18.
- 340 Since 1985, tuition has risen 222%, after inflation adjustment, but Pell grants have increased only 30%, after inflation adjustment. The inflation adjusted value of the average Pell Grant today is “still below the 1975 level in inflation-adjusted dollars.” Donald Heller, *The Key to Affordable College Education Already Exists*, BUS. INSIDER (Aug. 1, 2016), <http://www.businessinsider.com/pell-grants-are-the-key-to-affordable-college-2016-8>.
- 341 While this Article suggests repealing some of the more popular tax incentives, nevertheless, the remaining incentives plus the reformed educational savings bond exclusion will provide benefits to taxpayers in all income ranges to help defray the costs of higher education.

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