STUDENT BORROWER
PROTECTION CENTER

WITHHOLDING DREAMS

Why Washington Must Tie COVID Relief for Colleges to Relief for Students Burdened by Institutional Debt

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Table of Contents

Introduction 1

What Are Institutional Debts and How Do They Affect Borrowers? 3

The Problem of Institutional Debt is Pervasive 5

How Current COVID-19 Economic Relief Has Targeted Borrowers, Students, and Colleges but Left Institutional Debts Unaddressed 9

Future COVID-19 Economic Relief Targeting Borrowers, Students, and Colleges Must Address Institutional Debt 12

Conclusion 16

Introduction[1]

Borrowers faced a complicated, unfair, and often predatory system well before the pandemic—a system that is driven by more than federal student loans. It is also driven by billions of dollars in shadow student debt that goes largely unnoticed and unregulated.

In 2021, student loan borrowers and institutions of higher education are facing three intertwined crises: COVID-19, the economic fallout from the pandemic, and a student debt crisis that preceded both. The federal government has attempted to address these crises in a few ways, including freezing interest and loan payments on most federal loans[2] and providing emergency aid to students and schools.[3] Current measures have, if we are lucky, stopped the freefall within higher education and offered support for some—but not all—Americans with student debt. But borrowers faced a complicated, unfair, and often predatory system well before the pandemic—a system that is driven by more than federal student loans. It is also driven by billions of dollars in shadow student debt that goes largely unnoticed and unregulated. We need solutions that are as creative and multifaceted as the problems they seek to solve. In this paper, we propose solutions to address one of these unnoticed forms of debt: institutional debts.

Millions of Americans owe what are called institutional debts. These are debts students or former students owe directly to schools that arise because of unpaid tuition or other financial obligations to finance higher education.[4]

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[1] This paper was co-authored by the SBPC's staff and SBPC Student Loan Justice Fellow Mark Huelsman. Previously, Mark served as the Associate Director of Policy & Research at Demos, where he led the organization's policy work on college affordability, student debt, and racial equity in higher education.

[2] *Coronavirus and Forbearance Info for Students, Borrowers, and Parents*, Fed. Student Aid, https://studentaid.gov/announcements-events/coronavirus. Many, but not all, student loans have been frozen. Tariq Habash, *The CARES Act Leave Behind Millions of Student Loans Borrowers*, Student Borrower Prot. Ctr. (Mar. 27, 2020), https://protectborrowers.org/the-cares-act-leaves-behind-millions-of-student-loan-borrowers/.

[3] *CARES Act: Higher Education Emergency Relief Fund*, U.S. Dep't of Educ., https://www2.ed.gov/about/offices/list/ope/caresact.html [hereinafter "*CARES Act*, U.S. Dep't of Educ."]; *CRRSAA: Higher Education Emergency Relief Fund (HEERF II)*, U.S. Dep't of Educ., https://www2.ed.gov/about/offices/list/ope/crrsaa.html.

[4] An institutional debt is, of course, in contrast to traditional student loans in which students typically owe money to the federal government or a bank. Perkins loans are a type of student loan owed to the school, but Perkins loans are distinct from the problem of institutional debts. 20 U.S.C. § 1087aa.

For too long, institutional debts have flown under the radar of the broader conversation around the student debt crisis. These debts have been largely ignored by the federal government as balances have ballooned above $15 billion.[5] This indifference has extended into a pandemic in which nearly everyone agrees students and borrowers need relief. As this shadow debt receives little attention, it threatens borrowers' credit, drives delinquencies, and puts borrowers at the mercy of schools and collection agencies.[6] As we discuss below, it also stops students' educational ambition in their tracks. Schools often withhold the transcripts of their students who owe institutional debts—preventing them from graduating, transferring, or even getting jobs that they are qualified for.

With the federal government having provided over $20 billion directly to institutions to deal with the crisis, and with Congress and the Biden administration contemplating additional relief for schools, we must ensure that these student borrowers are no longer in the shadows.

With the federal government having provided over $20 billion directly to institutions[7] to deal with the crisis, and with Congress and the Biden administration contemplating additional relief for schools, we must ensure that these student borrowers are no longer in the shadows. We need to ensure that students' institutional debts are prioritized in the same way we prioritize the institutions to which they owe these often-ignored debts. Especially at a time when students are facing unimaginable financial precarity, we must take care of borrowers drowning in all forms of debt, including those debts they take on directly from colleges.

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[5] Julia Karon, James Dean Ward, Katherine Bond Hill & Martin Kurzweil, Ithaka S+R, Solving Stranded Credits (Oct. 5, 2020), https://sr.ithaka.org/wp-content/uploads/2020/10/SR-Report-Solving-Stranded-Credits-100520.pdf [hereinafter "Solving Stranded Credits"].

[6] Shadow Student Debt, Student Borrower Prot. Ctr. (July 2020), https://protectborrowers.org/wp-content/uploads/2020/12/Shadow-Student-Debt.pdf.

[7] While the CARES Act provided nearly $13 billion, and the Coronavirus Response and Relief Supplemental Appropriations Act allocated an additional $21 billion, to institutions through the Higher Education Emergency Relief Fund, approximately $6.25 billion of CARES Act funding was allocated for purposes other than emergency grants to students, and schools are required to use the same amount for emergency grants under CRRSAA as they did under CARES. *See* 80 Fed. Reg. 36494 (June 17, 2020).

What Are Institutional Debts and How Do They Affect Borrowers?

Institutional debts can be caused by any financial obligation a student owes to the school, from library fines to parking tickets to tuition. In our conversations with legal practitioners and school financial aid officers, tuition is likely the most common source of an institutional debt. But these debts do not merely arise because of students who expected to pay their bills out of pocket and then are not able to come up with the money. As this section explains, the tuition debts also arise because of the misalignment of two sets of rules for tuition payments that are owed when a student withdraws from classes early—the rules from the U.S. Department of Education and rules from the colleges. This misalignment traps students who thought their tuition was covered by loans that they could pay back over years. Instead, students are left with institutional debts that they owe almost immediately.

Often, when a student withdraws from school, she immediately owes tuition money that she thought she could repay over a long time as part of a student loan. That is an institutional debt.

Let's consider what this misalignment looks like. Our example student, Maria, has expected to take out federal loans to cover her final semester at the local community college where she was getting her associate degree. But on the first day of class, her car breaks down, and she must pick up overtime shifts to cover the repair, making attending class impossible.[8] She withdraws from classes, hoping to re-enroll next semester. When she withdraws, the school has to return 100 percent of the Title IV student loan funds to the federal government, through a policy known as Return to Title IV.[9] But the school also has a policy that students owe 30 percent of tuition if they withdraw on the first day or afterwards. The student loans no longer cover this tuition obligation.

[8] Forty percent of Americans would not be able to immediately pay an unexpected $400 expense. Bd. of the Govs. of the Fed. Rsrv. Sys., Report on the Economic Well-Being of U.S. Households in 2018 (May 2019), https://www.federalreserve.gov/publications/2019-economic-well-being-of-us-households-in-2018-dealing-with-unexpected-expenses.htm.

[9] 34 C.F.R. § 668.22. When students withdraw, schools must apply a formula to determine the amount of aid that must be returned to Title IV, generally proportional to the amount of the class the student completed. Once 60 percent of a term has passed, the school does not have to return funds. In this instance, withdrawing before attending one class would require the school to pay back 100 percent refund.

In the end, Maria has withdrawn from school and she ends up immediately owing tuition money that she thought she could repay over a long time as part of a student loan. That is an institutional debt.

Institutional debts have additional consequences that make them unique among shadow student debts. As we discuss more in the next section, most schools will withhold a student's official transcript until an institutional debt is repaid.[10] Without a transcript, students like Maria are not able to transfer to a new school to try to finish that last semester. Even if her finances settle down in time for the next semester, she likely will not be allowed to re-enroll in the same school until she pays off the debt. She has just joined the millions of Americans with so-called "stranded credits."[11]

This mismatch in the tuition dollars that the federal government expects to be returned (100 percent) and the tuition dollars the school expects to be paid (30 percent) is not a hypothetical policy. Many schools have such rules in place that create a gap between the money the school pays back to the government and the amount of tuition the student owes the school.[12]

And, in the end, this is just one of the avenues—but one of the underappreciated avenues—in which institutional debts arise. It is also an avenue that has likely been exacerbated by the financial instability caused by COVID-19, which may have forced students all over the country to unexpectedly withdraw from classes. Still, institutional debts can also arise because of any other financial obligations to the school. These policies not only load students up with debt they cannot hope to repay over short time frames, hanging over them for years, but they prevent students from re-enrolling in college, saddling them with debt without a way to repay it.

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[10] *See infra* text accompanying notes 19-20

[11] Solving Stranded Credits, *supra* note 5.

[12] This practice is consistent across two-year, four-year, and for-profit schools. *See, e.g.*, Cuyahoga Community College, *Withdraws and Refunds* https://www.tri-c.edu/paying-for-college/withdraw-refund.html?_ga=2.180918695.1077532301.1610467900-661410048.1610137790 (last accessed Jan. 22, 2021) (Full refunds are only issued if the student withdraws before the first day of class, after that, the student owes between 15 percent and 100 percent of the tuition); Front Range Community College, *Refunds*, https://www.frontrange.edu/paying-for-college/refunds (last accessed Jan. 22, 2021) (Full refunds are issued if you withdraw in the first 15 percent of the school year, but no refunds are issued after that. In other words, if a student withdraws 50 percent of the way through the year, the school has to pay back to the government 50 percent of the Title IV funds, but the school will expect the student to then cover the full tuition amount); Arizona State University, Refund Policy, https://students.asu.edu/tuition-refund-policy (last accessed Jan. 22, 2021) (Unless a student withdraws during the first two weeks of the course, they owe 100 percent of the tuition); Bryant & Stratton College, *Tuition and Fees*, https://catalog.bryantstratton.edu/content.php?catoid=3&navoid=78 (last accessed Jan. 22, 2021) (Unless a student withdraws prior to the second week of class, they cannot get a full refund).

The Problem of Institutional Debt is Pervasive

The problem of institutional debts is widespread across all sectors of higher education. Recent reporting indicates that there may be as many as $15 billion in unpaid balances to colleges and universities, affecting millions of American students.[13]

School-based numbers are hard to come by, but there are some glimpses into the data. For-profit schools carry millions in accounts receivable on their books, which they have to report in SEC filings (or when they file for bankruptcy).[14] Career Education Corporation (CEC), which ran a number of for-profit campuses, had more than $450 million in institutional debts before a settlement with 49 attorneys general wiped the slate clean.[15] Within the year, CEC re-branded as Perdoceo Education Corporation and recently reported more than $7 million in new deferred tuition debts and $36 million in other student receivables.[16]

The problem of institutional debts is widespread across all sectors of higher education. Recent reporting indicates that there may be as many as $15 billion in unpaid balances to colleges and universities, affecting millions of American students.

Institutional debts are also common within the public and non-profit sectors as well. For instance, New York's SUNY system carries more

[13] Solving Stranded Credits, *supra* note 5. The Ithaka report attempts to estimate the exact number of students with institutional debt by using the number of students with stranded credits as a proxy. Based on available data, they estimate that around 6.6 million Americans have stranded credits.

[14] Rebecca Maurer, *Accounts Receivable & Withheld Transcripts: The Quiet Higher Ed Crisis That States Could Be Tackling*, Student Borrower Prot. Ctr (Mar. 29, 2019), https://protectborrowers.org/accounts-receivable-withheld-transcripts-the-quiet-higher-ed-crisis-that-states-could-be-tackling/ (noting, for example, $600 million in accounts receivable owed to ITT Tech at the time of its bankruptcy).

[15] Press Release, Off. of Penn. Att'y Gen. Josh Shapiro, Attorney General Shapiro Announces For-Profit College Company Will Provide $493 Million in Debt Relief for Over 179,000 Students Nationwide (Jan. 3, 2019), https://www.attorneygeneral.gov/taking-action/press-releases/attorney-general-shapiro-announces-for-profit-college-company-will-provide-493-million-in-debt-relief-for-over-179000-students-nationwide/.

[16] Perdoceo Education Corporation, Form 10-K, Securities Exchange Commission, (Dec. 31, 2019), https://www.sec.gov/ix?doc=/Archives/edgar/data/1046568/000156459020005289/prdo-10k_20191231.htm.

than $225 million on the books with more than 40,000 open accounts.[17] Columbus State Community College in Ohio has over 21,000 accounts and nearly $52 million in accounts receivable on their books.[18]

Absent state regulation, transcript withholding is a near-universal practice within higher education, and it creates an immediate link between institutional debts and workforce development. The transcript is a student's ticket to re-enroll, transfer schools, or prove to their employer that they have their degree or credential.

This debt is holding people back and likely exacerbates inequalities in the same ways as other unpayable debts—including federal student loans. Debts can be reported to credit bureaus and collections agencies, dinging borrowers' credit and hounding them for years.[19] And it goes without saying that many of these borrowers with institutional debts may also owe federal or private student loans and that the inability to come up with the money for an institutional debt means that they are more likely to struggle to repay other debts as well.

There are also immediate workforce development barriers caused by these institutional debts. The National Association of College and University Business Officers (NACUBO) surveyed 410 schools in 2016 and found that 98 percent of them withheld transcripts because of past-due financial accounts.[20] Beginning in 2019, California passed a law banning transcript withholding, and narrower laws in Washington and Louisiana followed.[21] But absent state regulation, transcript withholding is a near-universal practice within higher education, and it creates an immediate link between institutional debts and workforce development challenges.

[17] Numbers on file with the authors based on public records requests.

[18] Policy Matters Ohio, Collecting Against the Future (Feb. 2020), https://www.policymattersohio.org/files/news/collectagainstfuture.pdf.

[19] *See, e.g.*, Jillian Berman, The Obscure Debt Holding Back Thousands of Students, Marketwatch (Apr. 1, 2019), https://www.marketwatch.com/story/the-obscure-debt-holding-back-thousands-of-students-2019-03-29 (discussing debts going into collections); Univ. of Va., Credit and Collection Procedures, https://fro.vpfinance.virginia.edu/system/files/Credit-Collection_Procs.pdf (discussing the school policy of sending information to credit bureaus and collections agencies)

[20] Solving Stranded Credits, *supra* note 5 (citing Nat'l Assoc. of Coll. and Univ. Business Officers, 2016 Student Financial Services Policies and Procedures Report (Apr. 2, 2017), https://www.nacubo.org/Publications/Online-Research-Products/2017/2016-Student-Financial-Services-Policies-and-Procedures-Report).

[21] Cal. Assemb. B. 1313 (2019), Wash. H.B. 2513 (2020), Louisiana H.B. 676 (2020); *For-Profit School Accountability*, Student Borrower Prot. Ctr., https://protectborrowers.org/fps-accountability/#transcript.

The transcript is a student's ticket to re-enroll, transfer schools, or prove to their employer that they have their degree or credential.

Moreover, COVID-19 has further exacerbated a problem that was already bad to begin with. Nearly two million Americans reported that amidst the COVID pandemic, they will take classes from a different institution than the one they had planned to attend this fall[22], raising the question: how many more students are limited in transferring because of a withheld transcript? And tightening family budgets mean it will be harder and harder for students to get out of institutional debts to have their transcript released.

Schools argue that withholding transcripts to collect on institutional debt is necessary. However, there is little evidence that it is an effective practice.

In the state of Ohio alone, the Attorney General has over 400,000 open collection accounts tied to the state's public institutions, totaling almost $725 million. [23] In recent years, the Ohio Attorney General has collected on average $50 million per year, totaling about 7 cents on the dollar and representing barely a fraction of 1 percent of the schools' budgets.[24] In other words, the harsh practice of withholding transcripts results in fairly meager revenue for schools. It is not worth it to put students and borrowers in untenable positions in the first place; it is even less justifiable when schools are recouping very little money.

Pilot projects to encourage forgiveness and re-enrollment instead have shown to be better for students and for schools' bottom lines. The Warrior Way Back program at Wayne State University forgave student debts if the student re-enrolled. A pilot program netted $200,000 in tuition revenue for the school, even taking into account forgiven balances.[25] Program officers estimated that if the program was expanded, it could net more than $2

[22] Census Bureau, Week 21 Household Pulse Survey: December 9 – December 21, Education Table 6. Impact of Coronavirus Pandemic on Post-Secondary Educational Plans, https://www.census.gov/data/tables/2020/demo/hhp/hhp21.html.

[23] Policy Matters Ohio, Collecting Against the Future: Student Debt Practices Undermine Ohio's Higher Education Goals (Feb. 2020), https://www.policymattersohio.org/files/news/collectagainstfuture.pdf.

[24] Rebecca Maurer, *Withholding Transcripts: Policy, Possibilities, and Legal Recourse* (Dec. 14, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3288837.

[25] Inst. for Higher Educ. Policy, Innovative Strategies to Close Postsecondary Attainment Gaps (May 2019), https://files.eric.ed.gov/fulltext/ED595135.pdf.

million.[26] Other pilot projects have been similarly promising.[27] The Institute for Higher Education Policy even created a "reengagement calculator" to help schools consider the financial benefits of forgiving institutional debts and re-enrolling students.[28] Of course, students should not see their hard-earned academic work held hostage even if they choose not to re-enroll in the same school. But there are often financial and other advantages to institutions for stopping these uniquely harsh practices.

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[26] *Id.*

[27] Policy Matters Ohio, Collecting Against the Future, *supra* note 23.

[28] Inst. for Higher Educ. Policy, *Reengagement Investment Calculator*, https://reengagementcalculator.ihep.org (last accessed Jan. 28, 2021).

How Current COVID-19 Economic Relief Has Targeted Borrowers, Students, and Colleges but Left Institutional Debts Unaddressed

It is clear that Congress and the incoming Biden administration need to be ambitious and creative in addressing the fallout from COVID-19 and the economic crisis on students, borrowers, and institutions. To this point, existing relief enacted and proposed by the Trump and Biden administrations has focused on providing money to institutions, either to cover costs associated with COVID-19 or passed through to students expressly for the purpose of emergency aid. Institutions have received around $35 billion in relief.[29]

Congress and the incoming Biden administration need to be ambitious and creative in addressing the fallout from COVID-19 and the economic crisis on students, borrowers, and institutions.

The first large-scale effort to address the crisis, the Coronavirus Aid, Relief, and Economic Security (CARES) Act, signed into law in March 2020, provided a number of avenues for relief, including:

- Suspending the repayment of most federal student loans and waiving interest, as well as suspending the involuntary collections of defaulted student loans, wage and social security garnishment, and tax refund offsets. This suspension was extended twice by President Trump via executive order, in August and December 2020[30], and further extended by President Biden through September 2021.[31]

[29] *CARES Act*, U.S. Dep't of Educ., *supra* note 3.

[30] Michael Stratford, Trump Extends Student Loan Relief Through Year's End, Politico (Aug. 8, 2020), https://www.politico.com/news/2020/08/08/trump-extends-student-loan-relief-through-years-end-392724; Press Release, U.S. Dep't of Educ., Secretary DeVos Extends Student Loan Forbearance Period Through January 31, 2021, in Response to COVID-19 National Emergency (Dec. 4, 2020), https://www.ed.gov/news/press-releases/secretary-devos-extends-student-loan-forbearance-period-through-january-31-2021-response-covid-19-national-emergency.

[31] Press Release, Student Borrower Prot. Ctr., Statement on President Biden's Executive Action to Extend the Payment Pause for Millions of Federal Student Loan Borrowers (Jan. 21, 2021), https://protectborrowers.org/pp_extension_stmnt/.

- Creating the Governor's Emergency Education Relief Fund (GEERF), which initially provided states with nearly $3 billion to help K-12 schools and those higher education institutions "most significantly impacted by coronavirus and/or essential for carrying out emergency educational services."[32]

- As a part of a new Education Stabilization Fund, the allocation of over $14 billion for higher education in order to address the unanticipated costs, lost revenue, distance learning requirements, and student services resulting from the COVID-19 pandemic, and provide emergency grants to students to help pay for the costs of attendance amid a disrupted academic calendar and economic crisis.[33]

The nearly $14 billion was by far the largest pot of money made available to institutions and students. In addition to setting aside around $1 billion in funds exclusively for Historically Black Colleges & Universities and other Minority-Serving Institutions, Congress created a new fund and formula, known as the Higher Education Emergency Relief Fund (HEERF)[34], which allocated 75 percent of the remaining $13 billion dollars based on each institution's national share of full-time equivalent (FTE) students receiving Pell Grants, with the other 25 percent allocated based upon the total share of non-Pell grant recipients attending the school.

The broad objectives of HEERF were twofold: ensure that institutions serving high numbers of low-income students received a higher proportion of aid, and help students meet basic (and often unexpected) needs, or other costs that could prevent them from staying in school, returning to school, or receiving their credential. To that end, at least half of HEERF funds were required to be allocated for emergency grants to students, and the remaining funds could be used by institutions in ways to help address unexpected costs and effects of COVID-19. Crucially, funds could *not* be used for things such as marketing or recruitment activities, endowments, athletic facilities, administrator or executive salaries, bonuses or benefits, or other expenditures such as stock buybacks, shareholder dividends, capital distributions, and stock options.

In December 2020, Congress passed the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA), through which the Department of Education allocated an additional $21.2 billion to institutions through HEERF, with two broad differences from CARES: funding for for-profit institutions is required to be entirely spent on emergency grant aid for students, and funding for public and non-profit institutions is based on a formula that incorporates both the total headcount of students as well as FTE enrollment, a move that provides

[32] Governor's Emergency Education Relief Fund, U.S. Dep't of Educ., https://oese.ed.gov/offices/education-stabilization-fund/governors-emergency-education-relief-fund/.

[33] *CARES Act*, U.S. Dep't of Educ., *supra* note 3.

[34] *Id.*

better consideration for institutions that enroll more part-time students. And while the CARES Act required 50 percent to be spent on emergency grants for students, CRRSAA simply requires that institutions receiving funds spend the same dollar amount on emergency aid as they did under CARES, which, given the larger pot of money, provides greater potential funding for institutions to spend on other areas associated with COVID-19, distance learning, and student services.

Given the scale of the problem of institutional debt and its clear ripple effects into workforce development, there should be a way to address the fact that students and borrowers face institutional costs that stand in the way of them transferring or graduating. If schools need relief, surely students and borrowers do too.

The Department has explicitly prevented institutions from using emergency aid dollars to satisfy students' outstanding account balances.[35] Of course, this makes sense; emergency aid should be provided to students to tackle basic and urgent needs, not settle outstanding fees and other costs that students have already incurred and thus pad institutional coffers. And given that the amount of CARES and CRRSAA funding is still insufficient[36] to address the budgetary crisis facing many public institutions, and also not enough to help all students stave off housing insecurity, hunger, and childcare crises, it makes sense to circumscribe the aid in ways that are most immediately going to benefit students and their families.

Yet given the scale of the problem of institutional debt and its clear ripple effects into workforce development, there should be a way to address the fact that students and borrowers face institutional costs that stand in the way of them transferring or graduating. If schools need relief, surely students and borrowers do too.

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[35] *HEERF Student FAQs*, U.S. Dep't of Educ., https://www2.ed.gov/about/offices/list/ope/heerfstudentfaqs.pdf.

[36] Letter from The Inst. for Higher Educ. Success to Speaker of the House Nancy Pelosi, et al. (Apr. 27, 2020), https://ticas.org/wp-content/uploads/2020/04/State-Higher-Education-Support-Hill-Letter.pdf.

Future COVID-19 Economic Relief Targeting Borrowers, Students, and Colleges Must Address Institutional Debt

President Biden has also announced plans for a third major relief package, in which $35 billion in funding would be provided through HEERF to public colleges as well as private HBCUs and other MSIs.[37] In addition, the Administration proposes another $5 billion through GEERF for early childhood, K-12, and higher education institutions most impacted by the pandemic. This relief comes on the heels of the HEROES Act, passed by the House in May 2020 but not yet passed in the Senate.[38] If the bill had been taken up in the Senate and signed by then-President Trump, it would have provided $27 billion directly to public colleges and universities and $10 billion to schools that have suffered severe financial losses due to COVID.[39] We believe that these proposals and funding ideas could be used, in part, to bring institutional debt out of the shadows and protect current and former students. Congress should consider including legislation, and the Biden administration should consider issuing guidance, that does the following:

The best approach is to require that schools must wipe out institutional debts as a condition of receiving additional relief.

Recommendation #1: Wipe Out Institutional Debts

The best approach is to require that schools must wipe out institutional debts as a condition of receiving additional relief. Currently, Congress and the Biden administration have signaled a willingness to provide additional stimulus funding for public institutions as well as private Minority Serving Institutions.[40] But if the administration is going to focus on giving relief to schools, it needs to put as much energy and creativity into

[37] Press Release, President-Elect Biden Announces American Rescue Plan, https://buildbackbetter.gov/wp-content/uploads/2021/01/COVID_Relief-Package-Fact-Sheet.pdf.

[38] H.R. 6800 (116th): The Heroes Act, GovTrack, https://www.govtrack.us/congress/bills/116/hr6800 (last accessed Jan. 28, 2021).

[39] Fact Sheet, HEROES Act (H.R. 6800), Committee on Educ. and Labor, https://edlabor.house.gov/imo/media/doc/2020-05-12%20Heroes%20Act%20-%20Education%20Fact%20Sheet.pdf.

[40] Kerry Kurakami, Private Colleges Warrios, Inside Higher Ed (Jan. 18, 2021), https://www.insidehighered.com/news/2021/01/18/private-colleges-wonder-if-they-are-biden-relief-plan.

helping students at the same time. Up to this point, Congress has largely split the $35 billion to colleges into two pots: one for students to meet emergency expenses and another for colleges to cope with the economic ramifications of COVID-19. This additional relief to colleges should be predicated on students not only receiving emergency aid but also on schools wiping institutional debts off their books at the same time.

States, too, should consider requiring institutions receiving state financial aid and operating dollars to cancel institutional debts. States should create rules that prevent future students from having these debts hanging over their heads. Wiping institutional debt from school balance sheets serves clear public policy goals and acknowledges the reality that schools are not receiving substantial returns by keeping these debts on the books.

First, colleges that face budget constraints should not be trying to gain or backfill revenue by squeezing current and former students through institutional debts in a pandemic. Instead, we should be encouraging institutions receiving relief aid not to pursue students for unpaid debts that force them to put their educational aspirations on hold. That includes students seeking to reenroll in school, for whom institutional debts should be wiped out while additional emergency grant aid ensures their basic needs are met.

Second, because of the link between institutional debts and transcript withholding, keeping these debts on the books is stopping students from finishing their degrees. At an individual level, this is clearly harmful. Especially as COVID-19 has made students want to re-consider their learning options and transfer schools, they may be prohibited from considering all options because of institutional debts. But also, at a systemic level, it is counterproductive to our goals of workforce development. Especially given the challenges faced by a sputtering economy during the pandemic, the federal government should seize an opportunity to unlock potential and get Americans back in school.

Schools may argue that wiping student debt is unfair, particularly when they are (rightfully) banned from using their relief money to directly pay outstanding or overdue student bills. But there is very little evidence that these debts matter much to institutional bottom lines. In Ohio, where we currently have the most complete data on returns through collections on open university accounts at the attorney general's office, the Ohio Attorney General only receives 7 cents on the dollar each year.[41] Schools receive even less after fees are accounted for. The entire University of California system, which has a total system-wide budget of $39 billion, anticipated that it

[41] *See infra* text accompanying notes 23-24.

would lose only $10-12 million in annual revenue if they could not collect on debts via transcript withholding—less than 0.03 percent of their budget.[42]

Moreover, pilot programs show that debt forgiveness can be a net-positive in terms of long-term revenue. For example, Wayne State University's Warrior Way Back program allowed students who owed less than $1,500 to re-enroll and see their institutional debts cancelled as they persisted through school, netting over $200,000 for the institution in the process.[43]

Recommendation #2: Prohibit Transcript Withholding

Knowledge and skills should not be treated as an asset that can be taken away if students simply cannot come up with money at a given moment. And yet transcript withholding treats it that way. Congress should follow the state of California and permanently ban the use of transcript withholding for students.

Even if the federal government will not wipe the slate clean, it should look at work already being done on the state level and permanently prohibit transcript withholding for students with institutional debt.[44] Transcript withholding is an unusual method of debt collection. It makes an education a secured transaction—something that can be foreclosed on like a house. But education is not a physical object that can be locked away. Knowledge and skills should not be treated as an asset that can be taken away if students simply cannot come up with money at a given moment. And yet transcript withholding treats it that way.

Students have good reasons for withdrawing or needing to transfer to a different institution while they have an outstanding obligation to another school, especially during the current economic crisis, when many are caring for family or are physically in a different location than they might otherwise have been.

[42] *Budget for Current Operations 2020-2021,* Univ. of Cal., 6, https://www.ucop.edu/operating-budget/_files/rbudget/2020-21-budget-summary.pdf; Solving Stranded Credits, *supra* note 5 at 19.

[43] *See infra* text accompanying notes 25-28.

[44] Some will argue that because in the rare instances transcript withholding has been regulated, it has been regulated on the state level, federal intervention is inappropriate. This is wrong. Transcript withholding could very reasonably be addressed through the Department of Education's program participation agreement, alongside many other school policies. But there is also a hook for federal legislation as part of the interstate commerce clause. Transcripts are a needed ticket to transfer schools, including transferring schools across state lines.

Withholding transcripts in order to collect on institutional debts adds insult to injury for students who both owe debt and cannot hope to increase their earning power by finishing school elsewhere.

Given that millions of students' education plans have been upended in the past year, Congress should follow the state of California and permanently ban the use of transcript withholding for students with institutional debt as a condition of receiving relief aid. Going forward, this should also be a condition of participating in Title IV student aid programs, allowing students to resume their educational aspirations at a time and place that is convenient for them.

Recommendation #3: Halt Collections of Institutional Debt During the COVID-19 Crisis.

If a permanent ban on transcript withholding is not available, the federal government should still insist on a temporary halt on all collections of institutional debt for the duration of the pandemic. Most federal student loan payments were suspended based on the assumption that borrowers should not have to pay debts in order to simply stay afloat in the current economy. By the same token, collecting on accounts receivable debt, withholding transcripts, or otherwise harassing current and former students for these debts during COVID-19 is particularly inhumane and counterproductive. Future rounds of relief for colleges and universities should be conditioned upon them suspending collections on tuition and other debts for as long as the moratorium on federal student loans are in place. Afterwards, Congress should consider long-term remedies including cancelling institutional debt or creating incentives and funds for colleges to wipe out institutional debt.

Collecting on accounts receivable debt, withholding transcripts, or otherwise harassing current and former students for these debts during COVID-19 is particularly inhumane and counterproductive.

Conclusion

The student debt problem did not happen overnight, nor is it a product only of the economic crisis spurred by COVID-19. For years, borrowers have been waiting on the federal government, states, and institutions to do everything in their power to help them enroll and stay in school and to ensure they are not burdened by small or large debts that hold them back when they leave or graduate. Institutional debts are a significant and underappreciated piece of the student debt crisis—one that Congress should consider addressing throughout the current economic crisis and beyond.

It is vital that we get relief into borrowers' and families' hands and ensure that no debts are holding them back and that they come out of this crisis stronger than they entered it. Efforts to backstop colleges—especially those in the public sector that are staring down brutal cuts that could increase costs for students down the line—should be applauded. At the same time, as Congress considers further relief this year, it should ensure schools are not holding small but significant debts over the heads of students and families, harassing students via collection agencies during a pandemic, or acting in a way that would prevent students from getting back on their feet.

Solving the problem of institutional debts is the right thing to do for schools, it is the right thing to do for the economy, and, most importantly, it is the right thing to do for millions of Americans.

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