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## PAYING FOR LAW SCHOOL: LAW STUDENT LOAN INDEBTEDNESS AND CAREER CHOICES

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*Student loan debt has reached crisis levels, topping \$1.64 trillion dollars this year and surpassing credit card debt to become the second largest source of debt held by Americans. When discussing student loan debt, it is easy to fixate on the aggregate impact of the burdens this debt places on taxpayers, the economy, and borrowers alike, such as the depressive effects that student loan debt has on marriage, homeownership, and entrepreneurship. Yet, a discussion of which graduates are saddled with the largest student loans and how their debt obligations impacts their career choices is often absent from conversations about student debt and has been understudied to date. This Article contributes to the discourse about student loan debt and its potentially negative externalities by investigating responses from an original survey administered at four law schools, revealing novel findings about law students' expected debt loads, career choices, and intentions to participate in the Public Service Loan Forgiveness program.*

*In Part II of this Article, the student loan crisis is more closely examined with particular emphasis on its salience for law school graduates. In addition, the first part of this Article provides credible descriptive evidence that rates and amounts of borrowing to attend law school impact law students differentially on the basis of their endowed characteristics, such as race and parental education. Next, Part III explores the Public Service Loan Forgiveness program, describing the program's creation and implementation, in addition to evaluating its efficacy and the direct and indirect costs of its administration. Part IV discusses two pervasive issues within*

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*the legal academy with significant social implications—the access-to-justice gap and the public-interest drift—against the backdrop of the student loan crisis and the possible answers that the Public Service Loan Forgiveness program could provide in addressing these issues. Part V describes the data collected from the original survey, the methods used to analyze these data, and reports and discusses the results. The findings reported in Part V offer insight into how a law student’s endowed and acquired traits influence their career intentions and provide evidence of the causal relationship between loan debt and career choice and intentions to enroll in the Public Service Loan Forgiveness program. Finally, this Article concludes by suggesting that the Public Service Loan Forgiveness program presents the best available option to address problems stemming from the access-to-justice gap and the public-interest drift, while also offsetting the negative effects of structural stratification in legal education.*

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## I. INTRODUCTION

Student loan debt has reached crisis levels. The current outstanding student loan debt is roughly \$1.64 trillion dollars and continues to grow every year.<sup>1</sup> As of 2019, student loan debt is the second largest source of debt for US citizens; student loan debt surpassed credit card debt and is topped only by home mortgage debt.<sup>2</sup> While only 5% of that debt is owed by law students and law school graduates, law school loan debt exceeds \$7 billion.<sup>3</sup> This should not be surprising to anyone—especially current law students or recent law school graduates. Legal education is a costly proposition for most law students, an estimated 83% of whom have incurred or will incur debt to attend law school.<sup>4</sup> The average cost of tuition and fees at private law schools was \$49,095 and \$40,725 at public law schools, for out-of-state students, in the 2018–2019 academic year, to say nothing of living expenses and other costs that students encounter.<sup>5</sup> As a result, many

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1. See, e.g., Chris Arnold, *Student Loans a Lot Like the Mortgage Debacle, Watchdog Says*, NPR (Dec. 9, 2019), <https://www.npr.org/2019/12/09/785527874/student-loans-a-lot-like-the-subprime-mortgage-debacle-watchdog-says> [<https://perma.cc/D9QQ-5TG5>]; Anya Kamenetz, *Democratic Presidential Contenders Propose Free College and Student Loan Forgiveness*, NPR (June 27, 2019, 10:41 AM), <https://www.npr.org/2019/06/27/736342686/democratic-presidential-contenders-propose-free-college-and-student-loan-forgive> [<https://perma.cc/LX5L-HFKD>].

2. See, e.g., Zack Friedman, *Are Student Loans the Next Mortgage Crisis?*, FORBES (Dec. 11, 2019, 8:30 AM), <https://www.forbes.com/sites/zackfriedman/2019/12/11/are-student-loans-the-next-mortgage-crisis/#2ddd5a333f86> [<https://perma.cc/Y6UM-FTS2>]; Zack Friedman, *Student Loan Debt Statistics in 2019: A \$1.5 Trillion Crisis*, FORBES (Feb. 25, 2019, 8:32 AM), <https://www.forbes.com/sites/zackfriedman/2019/02/25/student-loan-debt-statistics-2019/#14507d9f133f> [<https://perma.cc/W8NM-CQRM>].

3. For perspective, \$7 billion is roughly 10% of the United States Department of Education's entire 2019 discretionary budget. See *Department of Education Fiscal Year 2020, Congressional Action*, U.S. DEP'T OF EDUC. (Feb. 10, 2019), <https://www2.ed.gov/about/overview/budget/budget20/20action.pdf> [<https://perma.cc/F3DF-3WPH>]; *What Trump Proposed Cutting in His 2019 Budget*, WASH. POST (Feb. 16, 2018), <https://www.washingtonpost.com/graphics/2018/politics/trump-budget-2019/> [<https://perma.cc/DL6Y-PPRF>] (noting that the entire budget for the Department of Education is \$63.2 billion).

4. Aaron N. Taylor, *The Marginalization of Black Aspiring Lawyers*, 13 FIU L. REV. 489, 506 (2019) (citing LSSSE data); see, e.g., LAW SCH. SURV. OF STUDENT ENGAGEMENT, HOW A DECADE OF DEBT CHANGED THE LAW STUDENT EXPERIENCE: 2015 ANNUAL SURVEY RESULTS 10 (2016), <https://lssse.indiana.edu/wp-content/uploads/2016/01/LSSSE-Annual-Report-2015-Update-FINAL-revised-web.pdf> [<https://perma.cc/ZCX9-9ZYY>].

5. See, e.g., Ilana Kowarski, *See the Price, Payoff of Law School Before Enrolling*, U.S. NEWS & WORLD REP. (Mar. 18, 2020, 8:00 AM), <https://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/law-school-cost-starting-salary> [<https://perma.cc/5YL3-WAYC>]. The total cost of attendance may be nearly double the cost of tuition and fees, exceeding \$100,000 at elite private law schools like the University of Chicago and Columbia University. See, e.g., *Cost of Attendance*, UNIV. OF CHI. L. SCH. (2020), <https://www.law.uchicago.edu/financialaid/budget> [<https://perma.cc/58QT-T6YF>]; *Costs and Budgeting*, COLUM. L. SCH., <https://www.law.columbia.edu/about/offices-and-departments/office-financial-aid/costs-and-billing/costs-and-budgeting> [<https://perma.cc/EPD3-LJWW>]. One hidden cost to attending law school is the price of purchasing casebooks, which can carry price tags between \$200 and \$300 per class, costing students an additional \$4,000 or more over the course of their three years in law school. See, e.g., Ben Trachtenberg, *Choosing a Criminal Procedure Casebook: On Lesser Evils and Free Books*, 60 ST. LOUIS UNIV. L.J. 543 (2016); Kyle McEntee, *Law Books for the Price of Printing?*, ABOVE THE L. (June 30, 2016, 3:08 PM), <https://abovethelaw.com/2016/06/law-books-for-the-price-of-printing/?rf=1> [<https://perma.cc/6MHF-VNFL>]. It should be noted, however, that a rise in tuition discounting practices by law schools has led to a significant percentage of law students not paying full sticker-price tuition rates. For example, during the 2018–2019 academic year, only one quarter of JD-enrolled students paid full-price tuition. See *Net Tuition*, LAW SCH. TRANSPARENCY DATA DASHBOARD: L. SCH. COSTS,

law school graduates carry significant student loan debt. In fact, the average amount borrowed by law school graduates who took out loans to attend law school totaled \$115,481 in 2018,<sup>6</sup> which does not include existing debt from previous student loans these borrowers secured to attend their baccalaureate institutions.

When discussing student loan debt, it is easy to fixate on the aggregate impact of the burdens this debt places on taxpayers, the economy, and borrowers alike, such as the depressive effects that student loan debt has on marriage, homeownership, and entrepreneurship.<sup>7</sup> Yet, a discussion of *which* graduates are saddled with the largest student loans and how their debt obligations impact their career choices is often absent from conversations about student debt and has been understudied to date. In fact, while a handful of studies have investigated the relationship between a law student's debt obligations and the career path the student ultimately chooses, none have examined this issue outside of the walls of one law school or another.<sup>8</sup> This Article contributes to the discourse about student loan debt and its potentially negative externalities by investigating responses from an original survey administered at four law schools, revealing critical findings about law students' expected debt loads, career choices, and intentions to participate in the Public Service Loan Forgiveness program.

In Part II of this Article, the student loan crisis is more closely examined with particular emphasis on its salience for law school graduates. In addition, the second Part of this Article provides credible descriptive evidence that rates and amounts of borrowing to attend law school impact law students differentially on the basis of their endowed characteristics, such as race and parental education. Next, Part III explores the Public Service Loan Forgiveness program, describing the program's creation and implementation, in addition to evaluating its efficacy

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<https://data.lawschooltransparency.com/costs/net-tuition/> (last visited Nov. 16, 2020) [<https://perma.cc/4ZP4-ZXP8>].

6. *Debt*, LAW SCH. TRANSPARENCY DATA DASHBOARD: L. SCH. COSTS, <https://data.lawschooltransparency.com/costs/debt/> (last visited Nov. 16, 2020) [<https://perma.cc/RQM4-XS2D>].

7. See, e.g., Clifford Robb & Samantha L. Schreiber, *Married with Children? The Role of Student Debt*, SSRN (Oct. 4, 2019), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3458547&dgcid=ejournal\\_html\\_email\\_social:sciences:education:ejournal\\_abstractlink](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3458547&dgcid=ejournal_html_email_social:sciences:education:ejournal_abstractlink) [<https://perma.cc/7Y5B-652X>] (noting that, for four-year college graduates, a \$1,000 increase in cumulative undergraduate student loan balance was associated with a 1.3% decreased likelihood of marriage in the first four years after college); Alvaro Mezza, Daniel Ringo & Kamila Sommer, *Can Student Loan Debt Explain Low Homeownership Rates for Young Adults?*, FED. RSRV. BD., 5 (2019), <https://www.federalreserve.gov/publications/files/consumer-community-context-201901.pdf> [<https://perma.cc/2QH7-2WPS>] (discussing how student loan debt loads decrease homeownership rates); Vadim Revzin & Sergei Revzin, *Student Debt is Stopping U.S. Millennials from Becoming Entrepreneurs*, HARV. BUS. REV. (Apr. 26, 2019), <https://hbr.org/2019/04/student-debt-is-stopping-u-s-millennials-from-becoming-entrepreneurs> [<https://perma.cc/KE39-W8LL>] (examining how student loan debt impacts rates of student loan borrowers from starting their own businesses).

8. See, e.g., Steven A. Boutcher, Anna Raup-Kounovsky & Carroll Seron, *Financing Legal Education Through Student Loans: Results from a Quasi-Experiment in Tuition Remission*, 67 J. LEGAL EDUC. 755, 757 (2018) (presenting an analysis of students at the University of California Irvine School of Law and the impact of the school's tuition remission program on student debt); John Bliss, *From Idealists to Hired Guns? An Empirical Analysis of Public Interest Drift in Law School*, 51 U.C. DAVIS L. REV. 1973, 1989 (2018) (analyzing data from a longitudinal study of students at an unnamed top-tier law school to determine, in part, what effect debt has on career choice).

and the direct and indirect costs of its administration. Part IV discusses two pervasive issues within the legal academy with significant social implications—the access-to-justice gap and the public-interest drift—against the backdrop of the student loan crisis and the possible answers that the Public Service Loan Forgiveness program could provide in addressing these issues. Part V describes the data collected from the original survey, the methods used to analyze these data, and reports and discusses the results. The findings reported in Part V offer insight into how a law student’s endowed and acquired traits influence their career intentions and provide evidence of the causal relationship between loan debt and career choice and intentions to enroll in the Public Service Loan Forgiveness program. Finally, this Article concludes by suggesting that the Public Service Loan Forgiveness program presents the best available option to address problems stemming from the access-to-justice gap and the public-interest drift, while also offsetting the negative effects of structural stratification in legal education.

## II. THE STUDENT LOAN CRISIS

### A. *No Debt End in Sight*

The staggering numbers of outstanding debt alone paint a troublesome picture of the student loan market, for which there are no easily implemented solutions nor a clear end in sight.<sup>9</sup> In fact, because the costs of postsecondary education continue to escalate, the amount that students must borrow to pay for baccalaureate and postbaccalaureate credentials will also increase.<sup>10</sup> In terms of all student loans, nearly 60% of the baccalaureate Class of 2016 borrowed student loans to attend their postsecondary institution, with two-thirds of those loans being Federal Direct Loans.<sup>11</sup> Among law school graduates, the proportion of students who took out loans to pay for law school is even greater. Nearly two-thirds of recent law graduates paid to attend law school with student loans, leaving them \$145,550 total student loan debt, on average—a figure which combines

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9. Daniel M. Johnson, *What Will It Take to Solve the Student Loan Crisis?*, HARV. BUS. REV. (Sept. 23, 2019), <https://hbr.org/2019/09/what-will-it-take-to-solve-the-student-loan-crisis> [https://perma.cc/QLK8-XERY].

10. ZACHARY BLEEMER, META BROWN, DONGHOON LEE, KATHERINE STRAIR & WILBERT VAN DER KLAUW, FED. RESRV. BANK N.Y., STAFF REP. NO. 820, ECHOES OF RISING TUITION IN STUDENTS’ BORROWING, EDUCATIONAL ATTAINMENT, AND HOMEOWNERSHIP IN POST-RECESSION AMERICA 1 (2017), [https://www.newyorkfed.org/medialibrary/media/research/staff\\_reports/sr820.pdf](https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr820.pdf) [https://perma.cc/JSS2-HB33].

11. Matthew P. Diehr, *The Looming Threat Posed to Student Loan Lenders and Servicers by State-Level Actors in an Era of Federal Regulatory Remission*, 65 FED. LAW. 43, 43–44 (2018). The average graduate owed \$37,172 in student loans, which is 70% greater than the average member of the Class of 2006. *Id.* at 45. Troublingly, 1 million borrowers will default on their payments each year, on average. Annie Nova, *More Than 1 Million People Default on Their Student Loans Each Year*, CNBC (Aug. 13, 2018), <https://www.cnbc.com/2018/08/13/twenty-two-percent-of-student-loan-borrowers-fall-into-default.html> [https://perma.cc/7WHQ-A6X8]. As of August 2018, 11 million of the roughly 44.2 million borrowers are in a state of default or delinquency. Diehr, *supra* at 45.

their existing student loan debt from their baccalaureate studies and their law studies.<sup>12</sup>

Thus, the problem of student loan indebtedness is much worse for those who choose to attend graduate professional schools, such as medical school and law school.<sup>13</sup> For baccalaureate degree holders in particular, increasing loan indebtedness is further compounded by wage stagnation.<sup>14</sup> Graduate degree programs not only impose significant costs on students, but their cost continues to rise yearly to untenable rates.<sup>15</sup> In the twenty-year period between 2000 and 2019, the costs of legal education have more than doubled, and in some instances, tripled or nearly quadrupled.<sup>16</sup> For example, in 2000, the average nominal tuition cost, or “sticker price,” to attend an ABA-approved public law school was \$7,790 for residents and \$15,683 for non-residents, while the average tuition cost of a private law school was \$21,790.<sup>17</sup> In 2019, the sticker price of ABA-approved public law school was \$28,186 for residents and \$41,628 for non-residents, while the average tuition cost of a private law school was \$49,312.<sup>18</sup> Accordingly, the amount of money each law student must borrow must also rise to meet the increased price of tuition. Studies of debt-to-earnings ratios indicate that the issue

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12. Ryan Lane, *Average Student Loan Debt for Law School Graduates*, NERDWALLET (July 24, 2019), <https://www.nerdwallet.com/blog/loans/student-loans/average-student-loan-debt-law-school-graduates/> [https://perma.cc/2B5H-F7RZ]. At current interest rates, and under a ten-year payment plan, a law student with \$145,550 in student loans would pay \$198,700 over the course of ten years, with average monthly payments of \$1,656, to fully satisfy their student loan debt obligation. *Id.*; see also Paul Caron, *Average Student Loan Debt For Law School Graduates: \$145,500*, TAXPROF BLOG (July 12, 2019), [https://taxprof.typepad.com/taxprof\\_blog/2019/07/average-student-loan-debt-for-law-school-graduates-145500.html](https://taxprof.typepad.com/taxprof_blog/2019/07/average-student-loan-debt-for-law-school-graduates-145500.html) [https://perma.cc/3HBV-P95K]. Additionally, these figures fail to include other necessary expenses and possible debts that law students already carry, such as credit card debt. In 2008, 92% of graduate students who used a credit card had an average debt balance of \$8,612. Justin R. La Mort, *Generation Debt and the American Dream: The Need for Student Loan Reform*, HARV. L. & POL'Y REV. (2010), <https://harvardlpr.com/online-articles/generation-debt-and-the-american-dream-the-need-for-student-loan-reform/> [https://perma.cc/U885-KVQJ]. With modern inflation rates applied, even if the amount of credit card debt did not change at all, the amount of credit card debt would be more than \$12,000. See *id.*

13. La Mort, *supra* note 12.

14. See, e.g., Annie Lowery, *The College Wealth Premium Has Collapsed*, ATL. (Jan. 8, 2020), <https://www.theatlantic.com/ideas/archive/2020/01/college-wealth-premium-collapsed/604579/> [https://perma.cc/7XL4-63S4].

15. *Id.*

16. *Tuition*, LAW SCH. TRANSPARENCY DATA DASHBOARD: L. SCH. COSTS, <https://data.lawschooltransparency.com/costs/tuition/> (last visited Nov. 16, 2020) [https://perma.cc/D9MR-A3DM]. In fact, the rapid increase in cost of attendance may be tied not only to simultaneous increases in the cost of higher education generally but also declining law school enrollment. See Boutcher et al., *supra* note 8, at 756.

According to the American Bar Association, average in-state tuition for public law schools rose from \$2,006 in 1985 to \$23,879 in 2013, an increase of over 1000% over twenty-nine years (an average annual growth rate of about 9.3%). Private law school tuition and fees rose from \$7,526 to \$41,985, an increase of over 450% (6.35% per year). Over the 1999–2013 period, these annual growth rates were 8.62% and 5.18%, respectively.

John R. Brooks, *Curing the Cost Disease: Legal Education, Legal Services, And the Role of Income-Contingent Loans*, 68 J. LEGAL EDUC. 521, 524–25 (2019). But see Bernard A. Burk, Jerome M. Organ & Emma B. Rasiel, *Competitive Coping Strategies in the American Legal Academy: An Empirical Study*, 19 NEV. L.J. 583, 639 tbl.A.1.6 (2018) (suggesting that net tuition at law schools may have actually declined at most law schools between 2012–2015).

17. *Tuition*, *supra* note 16.

18. *Id.*

of student debt is pervasive across graduates from many law schools,<sup>19</sup> but what these distressing figures fail to show is *which* students must borrow more than others to pay for their graduate professional credentialing.

### B. *A Demography of Student Loan Debt*

One would assume that there would be a strong and negative correlation between household income and the amount of student loans required to finance a postsecondary education degree; that is, as household income increases, the amount of student loans borrowed should decrease. Recent studies, however, have shown that members of the middle class actually take out more loans than both higher-income and lower-income families, particularly to pay for a baccalaureate degree.<sup>20</sup> This descriptive fact seems fairly obvious, given that higher-income families typically do not need to take out loans—or may require much smaller loan amounts—while the lowest-income families tend to accrue relatively small amounts of loan debt in the context of paying for college, given the infrastructure of institutional need-based aid.<sup>21</sup> Additionally, many of these same studies suggest that students who come from the lowest income bracket and students whose parents had low levels of educational attainment are less likely to

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19. See, e.g., Karen Sloan, *Which California Law School Provides the Best Debt-to-Earnings Ratio for Grads? Find Out Here*, LAW.COM (Dec. 4, 2019, 1:19 PM), <https://www.law.com/therecorder/2019/12/04/which-ca-law-school-provides-the-best-debt-to-earnings-ratio-for-grads-find-out-here/> [https://perma.cc/8ZYK-4PZH]; Karen Sloan, *Which Law School in NY Provides the Best Debt-to-Earnings Ratio for Grads? Take a Look*, LAW.COM (Dec. 4, 2019, 2:53 PM), <https://www.law.com/2019/12/04/which-law-school-in-ny-provides-the-best-debt-to-earnings-ratio-for-grads-take-a-look/> [https://perma.cc/NJR3-ZB6L]; Karen Sloan, *Here's a Look at the Debt-to-Earnings Ratios for Grads from Top Law Schools*, LAW.COM (Dec. 3, 2019, 2:14 PM), <https://www.law.com/2019/12/03/heres-a-look-at-debt-to-earnings-ratios-for-grads-from-top-law-schools/> [https://perma.cc/MMR4-RCST]; Wesley Whistle, *Is Your Law School Worth It?*, FORBES (Nov. 21, 2019, 4:36 PM), <https://www.forbes.com/sites/wesleywhistle/2019/11/21/is-your-law-school-worth-it/#30f6c6bf38c7> [https://perma.cc/23SS-Z2CH]; Derek Muller, *Which Law Schools Have the Best and Worst Ratios Among Recent Graduates?*, EXCESS OF DEMOCRACY (Nov. 21, 2019), <https://excessofdemocracy.com/blog/2019/11/which-law-schools-have-the-best-and-worst-debt-to-income-ratios-among-recent-graduates> [https://perma.cc/CX6Y-A9A3].

20. See, e.g., Jason N. Houle, *Disparities in Debt: Parents' Socioeconomic Resources and Young Adult Student Loan Debt*, 87 SOCIO. EDUC. 53, 55 (2013) (“Children from middle-income families make too much money to qualify for student aid packages, but they do not have the financial means to cover the costs of college.”); Dirk Witteveen & Paul Attewell, *Social Dimensions of Student Debt: A Data Mining Analysis*, 49 J. STUDENT FIN. AID 1, 16 (2019); see also Hillary Hoffower, *6 Findings that Show the Dire State of America's Middle Class*, BUS. INSIDER (May 23, 2019, 1:40 PM), <https://www.businessinsider.com/america-shrinking-middle-class-debt-homeownership-retirement-savings-2019-5> [https://perma.cc/8MWP-56PU] (noting that “nearly half” of middle-class students have student loans, compared to 39% of affluent students).

21. See Houle, *supra* note 20, at 55–62; see also Sandy Baum & Martha Johnson, *Student Debt: Who Borrows Most? What Lies Ahead?*, URBAN INST. 13–14 (Apr. 2015) (discussing the fact that student borrowers from the highest family income bracket only account for 14% of students who have borrowed more than \$50,000, and, alternatively, that student borrowers from the lowest family income bracket only account for 15% of students who have borrowed more than \$50,000); Witteveen & Attewell, *supra* note 20, at 16–17 (noting that students from wealthier families tend to borrow less than lower- and middle- class students and that when “one controls for cost of institution it is clear that lower income students are most burdened by debt”). Additionally, scholars have noted that the drop-out rate is higher for students from the lowest-income families. See, e.g., Houle, *supra* note 20, at 60; Michal Grinstein-Weiss, Dana C. Perantie, Samuel H. Taylor, Shenyang Guo & Ramesh Raghavan., *Racial Disparities in Education Debt Burden Among Low-and Moderate-Income Households*, 65 CHILD. & YOUTH SERV. REV. 166, 167 (2016).

pursue graduate or professional degrees.<sup>22</sup> Those who do pursue professional degrees account for a significant proportion of the student loan debt, since they must take out loans of a greater amount to pay for each year of additional schooling.<sup>23</sup>

But family income and parental education are not the only factors related to student loan indebtedness. While myriad factors have been identified as contributing to student loan indebtedness,<sup>24</sup> several studies have demonstrated that race is closely linked to student loan indebtedness.<sup>25</sup> On average, while around 59.9% of white students end up taking out student loans, 86.8% of African American students need to do the same.<sup>26</sup> Although the figures may fluctuate annually,

22. See Houle, *supra* note 20, at 54–56; Eric F. Dubow, Paul Boxer, & L. Rowell Huesmann, *Long-Term Effects of Parent's Education on Children's Educational and Occupational Success: Mediation by Family Interactions, Child Aggression, and Teenage Aspirations*, 55 MERRILL-PALMER Q. 224, 237.

23. See SANDY BAUM & PATRICIA STEELE, GRADUATE AND PROFESSIONAL SCHOOL DEBT: HOW MUCH STUDENTS BORROW, RESEARCH PAPER NO. 18-02, ACCESSLEX INST. 4 (noting that, although they only represent 17% of student loan borrowers, graduate and professional students account for 38% of all student loan debt).

24. Age is one such factor. With annual increases to tuition rates every year and the fact that the average borrower tends to pay down some amount of their loans annually, the youngest student loan borrowers tend to owe more than borrowers that are further removed from their postsecondary and graduate studies. See Valerie Fontenot, *Disparities in Student Loans, How Did We Get Here, and What Can We Do?*, A.B.A. (July 16, 2019), <https://www.americanbar.org/groups/litigation/committees/diversity-inclusion/articles/2019/summer2019-disparities-in-student-loans/> [<https://perma.cc/D6UE-XEDP>]. Another factor is gender.

[W]omen who graduated in the 2007–2008 school year have only paid off an average of 33 percent of their student debt, while men have paid off an average of 44 percent of their debt during the same time frame.

This is an 11 percent disparity among genders who were all employed full time. The numbers are even more extreme when considering the rate of debt repayment for black and Hispanic women.

*Id.* (citing KEVIN MILLER, AM. ASS'N OF UNIV. WOMEN, DEEPER IN DEBT: WOMEN AND STUDENT LOANS 27–28 (2017), <https://files.eric.ed.gov/fulltext/ED580345.pdf> [<https://perma.cc/Z9E3-NXPP>]).

25. See, e.g., Grinstein-Weiss et al., *supra* note 21, at 166; Houle, *supra* note 20, at 57, 60; see also ROBERT HILTONSMITH, SMALL LOANS, BIG RISKS: MAJOR CONSEQUENCES FOR STUDENT DEBTORS, DEMOS (2017), <https://www.demos.org/sites/default/files/publications/Small%20Loans%20Big%20Risk%20.pdf> [<https://perma.cc/8HUL-CXDQ>] (“Borrowers of color face greater difficulty repaying their loans.”). It should be noted that racial and ethnic groups outside of whites and African-Americans are either statistically underrepresented or not the topic many studies in this area, including the studies mentioned in this Article. See Jason N. Houle & Fenaba R. Addo, *Racial Disparities in Student Debt and the Reproduction of the Fragile Black Middle Class*, 5 SOCIO. RACE & ETHNICITY 562, 562 (2019) (focusing on how student loan debt affects black youth); Janice McCabe & Brandon A. Jackson, *Pathways to Financing College: Race and Class in Student's Narratives of Paying for School*, 3 SOC. CURRENTS 367, 367 (2016) (focusing primarily on differences between white and African-American students). But see DEMOS, LATINOS, STUDENT DEBT, AND FINANCIAL SECURITY 1 (2016), <https://www.demos.org/sites/default/files/publications/Latinos%20Student%20Debt%20and%20Financial%20Security.pdf> [<https://perma.cc/HJA7-BCAH>] (focusing on the impact of student loans on Latinos).

26. Rebecca Safier, *Study: Student Loans Weigh the Heaviest on Black and Hispanic Students*, STUDENT LOAN HERO (Sept. 17, 2018), <https://studentloanhero.com/featured/study-student-loans-weigh-heaviest-black-hispanic/> [<https://perma.cc/KHX6-Z6UR>] (citing 2018 data from the National Center for Education Statistics); see also Grinstein-Weiss et al., *supra* note 21, at 166 (“Black students progress through college and exit with significantly more debt than do peers from other racial or ethnic groups, a finding that holds across institutions, degree type, and area of study.”). Also, on average, recent African American college graduates owe \$7,400 more than recent white graduates. See Dana Goldstein, *The Morehouse Gift, in Context: An Average Black Graduate Has \$7,400 More in Debt than White Peers*, N.Y. TIMES (May 21, 2019), <https://www.nytimes.com/2019/05/20/us/student-debt-america.html> [<https://perma.cc/J938-CYA7>]; Judith Scott-Clayton & Jing Li, *Black-White Disparity in Student Loan Debt More than Triples after Graduation*, BROOKINGS (Oct. 20, 2016), <https://www.brookings.edu/research/black-white-disparity-in-student-loan-debt-more-than-triples-after-graduation/> [<https://perma.cc/Y37L-5BD6>]; Grinstein-Weiss et al., *supra* note 21, at 171. Finally, and relatedly, it will also take African American borrowers longer to pay off their student loans than their white borrowers. Jillian Berman, *12*

African American and Hispanic students tend to incur drastically more debt than both their white counterparts and all other racial and ethnic groups.<sup>27</sup> And perhaps because student loan debt rates are higher for college graduates of color than their white peers, underrepresented racial minority students tend to pursue graduate degrees at a much lower rate than do white students, indicating that the intersectionality of race and debt may impact an individual's decision whether to acquire a graduate education.<sup>28</sup>

The 2018 Law School Survey of Student Engagement (“LSSSE”) offers important insight about the demography of student loan debt for law students. The results of the LSSSE survey reveal that students from the lowest socioeconomic backgrounds, as proxied by parental education, expect the greatest debt loads upon graduating from law school.<sup>29</sup> In fact, among law students expecting to owe between \$180,000 and \$200,000, 40% of these students have parents whose highest level of educational attainment was less than a baccalaureate degree.<sup>30</sup> And this proportion increases—albeit slightly—among students who expect to owe more than \$200,000.<sup>31</sup> Thus, unsurprisingly, students from the lowest socioeconomic backgrounds borrow the most to finance their legal education and are on the hook for the largest debt sums as a result.<sup>32</sup>

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*Years After Starting College, White Men Have Paid Off 44% of Their Student Loans, While Black Women Owe 13% More*, MARKET WATCH (Aug. 11, 2019, 5:34 PM), <https://www.marketwatch.com/story/12-years-after-starting-college-white-men-have-paid-off-44-of-their-student-loans-and-black-women-owe-13-more-2019-06-06> [<https://perma.cc/YH4R-YSKR>].

27. See, e.g., Richard Pallardy, *Racial Disparities in Student Loan Debt*, SAVING FOR COLLEGE.COM (Aug. 27, 2019), <https://www.savingforcollege.com/article/racial-disparities-in-student-loan-debt> [<https://perma.cc/XRW3-JWLM>]; see also Scott-Clayton & Li, *supra* note 26, at 1–3; Safier, *supra* note 26; Houle, *supra* note 20, at 60; Grinstein-Weiss et al., *supra* note 21, at 166, 170.

28. In 2018, underrepresented racial minority students made up roughly 24% of all graduate students. HIRANAO OKAHANA & ENYU ZHOU, COUNCIL OF GRADUATE SCHS., GRADUATE ENROLLMENT AND DEGREES: 2008 TO 2018, 4, 13 (2019), [https://cgsnet.org/ckfinder/userfiles/files/CGS\\_GED18\\_Report\\_web.pdf](https://cgsnet.org/ckfinder/userfiles/files/CGS_GED18_Report_web.pdf) [<https://perma.cc/J97J-B9ZT>].

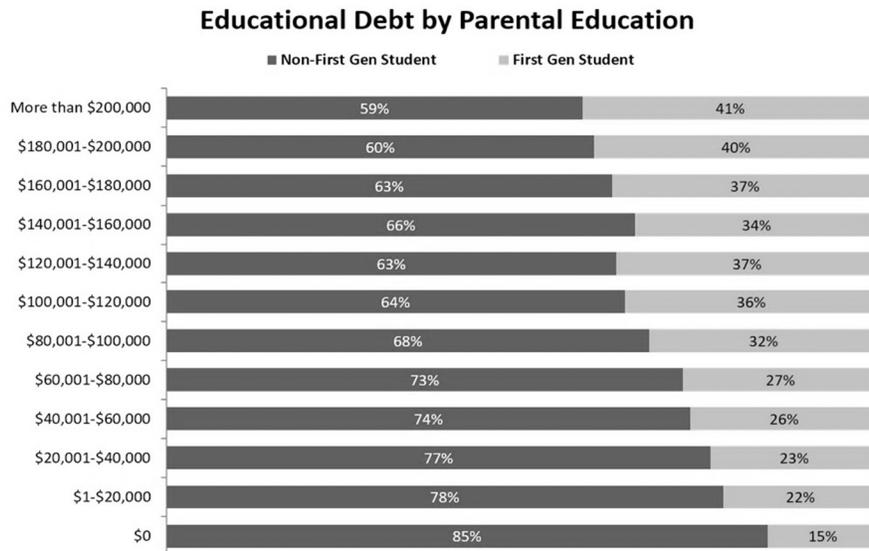
29. The data source from these figures and the information presented in this section is the 2018 Law School Survey of Student Engagement (LSSSE). While these figures can be replicated on LSSSE's interactive website, using its Public Reporting Tool, these figures were created for guest blog post I wrote for the LSSSE blog. See *LSSSE Public Reporting Tool*, LAW SCH. SURV. STUDENT ENGAGEMENT, <http://lsse.indiana.edu/advanis/> (last visited Nov. 16, 2020) [<https://perma.cc/Y5V2-3P4Y>]. LSSSE uses the term “First Gen,” short for first-generation student, to refer to students who reported that neither of their parents or guardians holds a bachelor's degree. Christopher J. Ryan, Jr., *Paying for Law School and the Public Service Loan Forgiveness Program*, LSSSEBLOG (June 14, 2019), <http://lsse.indiana.edu/blog/guest-post-paying-for-law-school-and-the-public-service-loan-forgiveness-program/> [<https://perma.cc/57WQ-N4EW>]. While levels of parental education are not necessarily interchangeable with levels of parental income, parental education is a common proxy for socioeconomic status, because the two are highly correlated. See, e.g., Michael R. Pergamit, Lynn Huang & Julie Lane, *The Relationship of Parents' Education (SES) to Adult Outcomes*, U.S. DEP'T HEALTH & HUMAN SERVS. (Aug. 1, 2001), <https://aspe.hhs.gov/report/long-term-impact-adolescent-risky-behaviors-and-family-environment/4-relationship-parents-education-ses-adult-outcomes> [<https://perma.cc/WG2G-5G4F>].

30. Ryan, *supra* note 29.

31. *Id.*

32. *Id.*

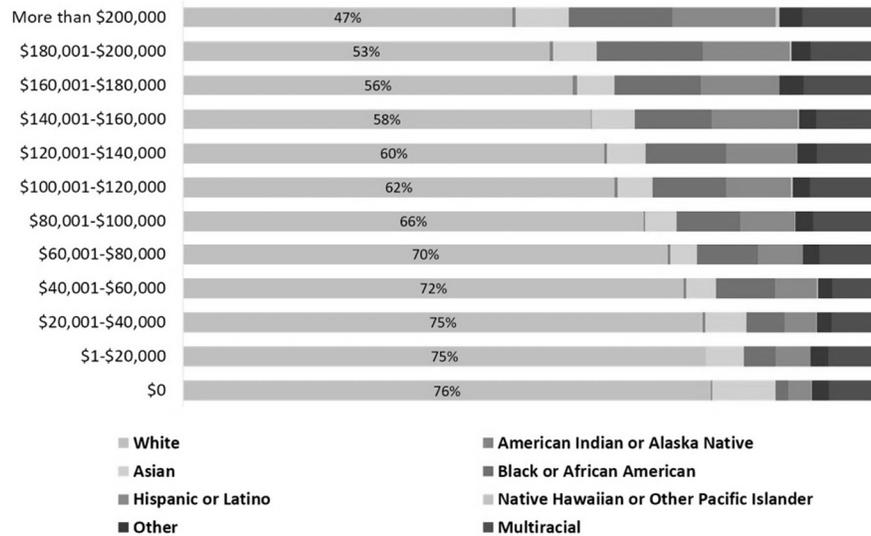
FIGURE 1



Furthermore, students from underrepresented racial minority groups in law schools account for the largest expected law school debt loads.<sup>33</sup> A disproportionate amount of underrepresented racial minority students expect to hold more than \$100,000 in student loan debt upon graduating from law school.<sup>34</sup> And of the students surveyed by LSSSE who expected to owe more than \$200,000 in law school loans following their graduation, 53% identified with a racial group other than white.<sup>35</sup> Thus, the disparate impact of the highest law school loans is greatest among underrepresented racial minorities.<sup>36</sup>

33. *Id.*34. *Id.*35. *Id.*36. *Id.*

FIGURE 2  
Educational Debt by Race/Ethnicity



That law students from underrepresented racial minority backgrounds expect to hold the greatest debt from attending law school is concerning enough. But this fact, taken together with the reality that underrepresented racial minority students are unlikely to make significant progress paying down their loans after graduation and are substantially more likely to default on their loans than their white peers, is all the more worrying.<sup>37</sup> Fortunately, income-based repayment options for student loans make paying back significant debt loads for law school graduates more manageable.<sup>38</sup> One repayment option, the Public Service Loan Forgiveness (“PSLF”) program, even forgives borrowers a portion of their student loan debt.<sup>39</sup> But, the future of the PSLF program remains uncertain, as the Department of Education, as well as President Trump, have announced plans to

37. While default rates and rates of paying down loans among law graduates are unavailable, many believe that they mirror the rates of student loan default and repayment more generally. *See, e.g.*, Jonnelle Marte, *Black Student Loan Borrowers Are Defaulting at Nearly Twice the Rate of Whites: NY Fed*, REUTERS (Nov. 13, 2019, 10:30 AM), <https://www.reuters.com/article/us-usa-fed-debt-race/black-student-loan-borrowers-are-defaulting-at-nearly-twice-the-rate-of-whites-ny-fed-idUSKBN1XN25M> [<https://perma.cc/YB84-LY2F>] (reporting a 17.7% default rate among borrowers from majority-black neighborhoods versus a 9% default rate among borrowers from majority-white neighborhoods); Ben Miller, *New Federal Data Show a Student Loan Crisis for African American Borrowers*, CTR. FOR AM. PROGRESS (Oct. 16, 2017, 9:00 AM), <https://www.americanprogress.org/issues/education-postsecondary/news/2017/10/16/440711/new-federal-data-show-student-loan-crisis-african-american-borrowers/> [<https://perma.cc/PC37-Z75Z>] (discussing that, on average, white students had paid down their loans, twelve years after graduation, while African American and Latino students had not, and that default rates among baccalaureate degree holders were highest for African Americans (23%) and Latinos (14%), as compared with whites (9%)); Scott-Clayton & Li, *supra* note 26, at 3 (noting a 7.6% default rate for African Americans versus a 2.4% default rate for white graduates within four years of graduation).

38. Ryan, *supra* note 29.

39. *Id.*

eliminate the PSLF program.<sup>40</sup> With the future of this program in question, debt relief may be effectively foreclosed to a number of law school graduates, especially those pursuing careers in the public sector.<sup>41</sup>

### III. THE PUBLIC SERVICE LOAN FORGIVENESS PROGRAM

#### A. *An Overview of the PSLF Program*

The Public Service Loan Forgiveness program is a loan forgiveness program that allows individuals engaged in public service careers to have their remaining student loan balance forgiven after paying into the program for ten years of full-time employment with a government organization, or a qualifying public-service or tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code.<sup>42</sup> The program was designed to incentivize students to pursue careers in public service—such as teaching, or working for a governmental agency or as a public interest attorney—given that these careers often offer substantially less compensation than careers in the private sector.<sup>43</sup> The rationale behind the PSLF program is that student debt is difficult to pay off, no matter what field one enters, but because public service work pays significantly less than private sector work, borrowers in public service professions need additional repayment assistance, including loan forgiveness.<sup>44</sup> Graduates from specialized professional training programs, like physicians and lawyers, typically encounter even greater student debt than those with only a baccalaureate degree, making loan repayment even more difficult when these graduates work in public interest careers.<sup>45</sup> Thus, the

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40. Zack Friedman, *Trump Proposes to End Student Loan Forgiveness Program*, FORBES (Mar. 12, 2019, 8:32 AM), <https://www.forbes.com/sites/zackfriedman/2019/03/12/trump-proposes-to-end-student-loan-forgiveness-program/> [<https://perma.cc/795Y-WRKR>].

41. *Id.*; Ryan, *supra* note 29.

42. *Public Service Loan Forgiveness (PSLF)*, FED. STUDENT AID, <https://studentaid.gov/manage-loans/forgiveness-cancellation/public-service> (last visited Nov. 16, 2020) [<https://perma.cc/KCE5-LUB8>]. Borrowers can have their student loan debt forgiven after 120 qualifying monthly payments, resulting in often substantial debt forgiveness. *Id.*

43. *See, e.g.,* Anna Helhoski, *Public Service Loan Forgiveness: What It Is, How It Works*, NERDWALLET (Aug. 19, 2020), <https://www.nerdwallet.com/article/loans/student-loans/public-service-loan-forgiveness/> [<https://perma.cc/H2FJ-CCN9>].

44. For a complete discussion of the congressional rationale behind the creation of the PSLF program, see generally John P. Hunt, *Tempering Bankruptcy Nondischargeability to Promote the Purposes of Student Loans*, 72 SMU L. REV. 725 (2019); Philip G. Schrag, *Federal Student Loan Repayment Assistance for Public Interest Lawyers and Other Employees of Governments and Nonprofit Organizations*, 36 HOFSTRA L. REV. 27 (2007).

45. *See, e.g.,* Allana Akhtar & Hillary Hoffower, *How Grad Schools Became the Hidden Culprit Behind America's Student-Debt Crisis*, BUS. INSIDER (Aug. 22, 2019, 7:43 AM), <https://www.businessinsider.com/graduate-student-loan-debt-nationwide-crisis-2019-8> [<https://perma.cc/8M26-4JWP>] (noting that as much as half of all student loan debt is from graduate school loans); Victoria J. Haneman, *Intergenerational Equity, Student-Loan Debt, and Taxing Rich Dead People*, 39 VA. TAX REV. 197 (2019) (discussing difficulties borrowers encounter in repaying student loans); Schrag, *supra* note 44 (explaining why the PSLF program was created—notably recognizing the program's benefits for public interest attorneys); PATRICIA STEELE & CHAD ANDERSON, ACCESSLEX INST., LOAN COUNSELING FOR GRADUATE AND PROFESSIONAL STUDENTS (2016) (arguing that graduate and professional students need greater access to financial literacy education, given that they incur debt at higher rates and in higher amounts than other student loan borrowers).

PSLF program can be seen as offsetting lower pay in careers that serve a critical public need by incentivizing skilled graduates to take those jobs.

Created by Congress, the PSLF program operates under the auspices of the U.S. Department of Education, which has the authority to review applications and make determinations regarding eligibility of program participants and their employment with qualifying organizations.<sup>46</sup> A borrower can qualify for the PSLF program by satisfying all of the following conditions:<sup>47</sup> (1) working full-time (at least thirty hours per week) for a government agency or for certain types of nonprofit organizations;<sup>48</sup> (2) holding Federal Direct Loans—subsidized, unsubsidized, or PLUS loans (or consolidate other federal student loans);<sup>49</sup> (3) repaying those loans on an income-driven repayment plan;<sup>50</sup> and ultimately,

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46. College Cost Reduction and Access Act, Pub. L. No. 110-84, §401, 121 Stat. 784, 800–01 (2007); *see also* 20 U.S.C. § 1087e(m)(1) (giving the Secretary of the U.S. Department of Education the authority to “cancel the balance of interest and principal due . . . on any eligible Federal Direct Loan not in default for a borrower” who is a qualifying applicant for loan forgiveness under the PSLF program).

47. *See* Higher Education Opportunity Act, Pub. L. No. 110-315, § 451, 122 Stat. 3078, 3261–62 (2008). In particular, this Act contains the following provisions:

(B) . . . The term ‘public service job’ means . . . a full-time job in emergency management, government (excluding time served as a member of Congress), military service, public safety, law enforcement, public health (including nurses, nurse practitioners, nurses in a clinical setting, and full-time professionals engaged in health care practitioner occupations and health care support occupations, as such terms are defined by the Bureau of Labor Statistics), public education, social work in a public child or family service agency, public interest law services (including prosecution or public defense or legal advocacy on behalf of low-income communities at a nonprofit organization), early childhood education (including licensed or regulated childcare, Head Start, and State funded prekindergarten), public service for individuals with disabilities, public service for the elderly, public library sciences, school-based library sciences and other school-based services, or at an organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code; or (ii) teaching as a full-time faculty member at a Tribal College or University as defined in section 316(b) and other faculty teaching in high- needs subject areas or areas of shortage (including nurse faculty, foreign language faculty, and part-time faculty at community colleges), as determined by the Secretary.

*Id.* The following do *not* apply: (1) labor unions, (2) partisan political organizations, (3) for-profit organizations (this includes for-profit government contractors), and (4) not-for-profit organizations that are not tax-exempt under Section 501(c)(3) of the Internal Revenue Code and that do not provide a qualifying public service as their primary function. *See Public Service Loan Forgiveness (PSLF)*, *supra* note 42.

48. *Public Service Loan Forgiveness FAQ*, FED. STUDENT AID, <https://studentaid.gov/manage-loans/forgiveness-cancellation/public-service/questions> (last visited Nov. 16, 2020) [<https://perma.cc/7K6R-MLSG>] (“The specific job that you perform doesn’t matter, as long as you’re employed by a qualifying employer.”). Importantly, the borrower also has to certify qualifying employment on an annual basis. In 2012, the Department of Education introduced the Employer Certification Form (“ECF”), largely in response to the ambiguity surrounding which organizations were qualifying employment organizations for purposes of the PSLF program. The Department of Education has considerable discretion in making PSLF-related decisions and determinations, including which employment organizations make borrowers eligible for participation in the program, which have led to a number of lawsuits and are discussed later in this Article. All borrowers who seek to apply for PSLF eligibility must submit an ECF at least once but are encouraged to do so each year to be sure that their employer still qualifies as a “Public Service Job.” *See Public Service Loan Forgiveness Data*, FED. STUDENT AID, <https://studentaid.gov/data-center/student/loan-forgiveness/pslf-data> (last visited Nov. 16, 2020) [<https://perma.cc/76ZA-N86U>].

49. *See* Miranda Marquit, *Public Service Loan Forgiveness: Do You Qualify and Is It Right for You?*, STUDENT LOAN HERO (Jun. 17, 2019), <https://studentloanhero.com/featured/public-service-loan-forgiveness-do-you-qualify/> [<https://perma.cc/53SH-X62U>].

50. All income-based payment plans qualify for PSLF, namely: Pay as You Earn (“PAYE”), Income-Based Repayment (“IBR”), and Income-Contingent Repayment (“ICR”). *See id.*

(4) making 120 total qualifying payments.<sup>51</sup> Once a borrower qualifies for eligibility to pay into the program by satisfying the first three program requirements, the borrower's loan is transferred from the Department of Education to the agency's loan servicing contractor, FedLoan, which oversees the loans for PSLF program participants and handles all approved loan cancellations.<sup>52</sup> After a borrower has made 120 qualifying payments, which need not be consecutive, the borrower may submit an application to the Department of Education to have the remaining balance of the borrower's Federal Direct Loans (or consolidated loans) forgiven.<sup>53</sup> Nevertheless, while the PSLF program may seem fairly straightforward, its implementation has been anything but.<sup>54</sup> In fact, the PSLF program is something of a political football, having been passed between three presidential administrations and multiple Congresses.<sup>55</sup>

### B. *A Chronology of the PSLF Program and Its Implementation*

The PSLF Program traces its origins to the 110th Congress, which drafted the College Cost Reduction and Access Act, signed into law in 2007 by President Bush.<sup>56</sup> The College Cost Reduction and Access Act was a far-reaching act that provided new and innovative ways to help students pay for post-secondary education—including the creation of the PSLF program—and modified or increased funding for student loans and pre-existing programs to make post-secondary education more affordable, in addition to making investments in Historically Black Colleges and Universities and other Minority-Serving Institutions.<sup>57</sup> Just one year later, in 2008, the Higher Education Act of 1965 was reauthorized with the passage of the Higher Education Opportunity Act, also signed into law by President Bush.<sup>58</sup> The Higher Education Opportunity Act functioned similarly to the College Cost Reduction and Access Act but notably modified several of the programs newly created by the College Cost Reduction and Access Act, including adding or subtracting funding provisions.<sup>59</sup> With regard to the PSLF program,

51. *Public Service Loan Forgiveness (PSLF)*, *supra* note 42.

52. See Helhoski, *supra* note 43. FedLoan is the d/b/a name for the Pennsylvania Higher Education Assistance Agency. *About FedLoan Servicing*, FEDLOAN SERVICING, <https://myfedloan.org/general/about/who-we-are> (last visited Nov. 16, 2020) [<https://perma.cc/86KC-VNLU>]. Currently, FedLoan services about one-third of all Federal Direct Loans. See *Who's My Student Loan Servicer?*, FED. STUDENT AID, <https://studentaid.gov/manage-loans/repayment/servicers> (last visited Nov. 16, 2020) [<https://perma.cc/8HX4-YNF2>].

53. *Public Service Loan Forgiveness (PSLF)*, *supra* note 42. Interest and taxes accrued will also be forgiven for unsubsidized loans. See *id.*

54. Farran Powell, *The Fate of Public Service Loan Forgiveness*, U.S. NEWS & WORLD REP. (Oct. 3, 2017, 9:30 AM), <https://www.usnews.com/education/best-colleges/paying-for-college/articles/2017-10-03/the-fate-of-public-service-loan-forgiveness> [<https://perma.cc/L8U8-JH4K>] (noting policy analysts say the program may still be around for older borrowers but unlikely for new).

55. Robert Farrington, *The Guide to Temporary Expanded Public Service Loan Forgiveness*, COLL. INV. (Feb. 11, 2020), <https://thecollegeinvestor.com/24410/temporary-expanded-public-service-loan-forgiveness/> [<https://perma.cc/PZ45-ANNR>].

56. See College Cost Reduction and Access Act of 2007, Pub. L. No. 110–84, § 401, 121 Stat. 784, 800–01 (2007) (codified as amended at 20 U.S.C. § 1087e (setting forth the requirements for the PSLF program)).

57. See generally *id.*

58. See Higher Education Opportunity Act, Pub. L. No. 110–315, § 451, 122 Stat. 3078, 3261–62 (2008).

59. See generally *id.*

however, the most significant impact of the Higher Education Opportunity Act was its widening of the definition of a “Public Service Job,” to include professions that were not originally considered as qualifying public service occupations under the College Cost Reduction and Access Act.<sup>60</sup>

While the Bush and Obama presidencies were responsible for the creation and early roll-out of the PSLF program, neither administration had to directly deal with its actual implementation, given that the first wave of program participants were not eligible for loan forgiveness under the program until late 2017—ten years after the program’s creation—under the Trump administration.<sup>61</sup> In fact, with implementation of loan forgiveness nearing, plans for the reduction of the PSLF program began with President Obama’s proposal to cap loan forgiveness at \$57,500 for new borrowers and have continued under the Trump administration, which—in coordination with the House of Representatives in 2016—called for the elimination of the PSLF program for new borrowers.<sup>62</sup> Principally, these measures were proposed because funding for the program appeared, prospectively, to be insufficient.<sup>63</sup>

Thus, in 2018, Congress passed the Consolidated Appropriations Act in response to the Department of Education’s request for the temporary expansion of the PSLF program, providing the Department of Education with an additional \$700 million from Congress to spend over two years on administering the program.<sup>64</sup> But even with this funding measure, the PSLF program has found itself in the political crosshairs. As of March 2019, the Trump administration proposed to amend the Higher Education Act of 1965 yet again by eliminating the PSLF program altogether, amidst the most recent onslaught of budget cuts.<sup>65</sup> And this

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60. *Id.* at 3261–63 (including librarians, public services for the elderly, public interest law services, and others).

61. See Powell, *supra* note 54 (noting that the earliest an eligible borrower could reach forgiveness was Fall of 2017).

62. See H.R. REP. NO. 114-47, at 115 (2015) (discussing the House’s proposal to eliminate the PSLF program for new borrowers); Josh Mitchell, *2015 Budget: White House Proposes Broader Debt Forgiveness for Students*, WALL ST. J.: WASH. WIRE (Mar. 4, 2014, 12:29 PM), <https://blogs.wsj.com/washwire/2014/03/04/2015-budget-white-house-proposes-broader-debt-forgiveness-for-students/> [<https://perma.cc/T3WA-NN5T>] (noting President Obama’s proposed cap on the PSLF program).

63. Annie Nova, *Student Loan Forgiveness Gets One-Shot, \$350M Boost*, CNBC (Mar. 26, 2018, 2:02 PM), <https://www.cnbc.com/2018/03/26/student-loan-forgiveness-gets-one-shot-350m-boost.html> [<https://perma.cc/AF3U-7W7V>].

64. Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, § 315, 132 Stat. 348, 752–53 (2018). It also allowed public servants who had been enrolled in a wrong repayment plan—which would render them unable to qualify for loan forgiveness under the PSLF—to have another chance to successfully apply for PSLF, even if they had already submitted an application for loan forgiveness that had been denied. See FED. STUDENT AID: TEMPORARY EXPANDED PUBL. SERV. LOAN FORGIVENESS, <https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/public-service/temporary-expanded-public-service-loan-forgiveness> (last visited Nov. 16, 2020) [<https://perma.cc/P8KK-4FP4>]; Sarah Kessler, *Temporary Expanded Public Service Loan Forgiveness: Everything You Need to Know*, STUDENT DEBT RELIEF (Aug. 17, 2018), <https://www.studentdebtrelief.us/student-loan-forgiveness/programs/temporary-expanded-public-service-loan-forgiveness/> [<https://perma.cc/3PZK-LT2H>]; Aimee Picchi, *Student Loan Relief for Public Servants: 38,460 Applied, Only 262 Accepted*, CBS NEWS (Apr. 4, 2019, 5:00 AM), <https://www.cbsnews.com/news/student-loan-relief-for-public-servants-many-apply-few-are-accepted/> [<https://perma.cc/U2Y5-E865>].

65. Friedman, *supra* note 40 (“The proposal would impact borrowers who borrow a new student loan starting July 1, 2020, excluding borrowers who are completing their current course study.”); see also *Proposals*

proposal is just one of the many plans to eliminate the PSLF program going forward, in light of the significant costs associated with administering the program, making the program and the student loan crisis a touchpoint in the 2020 Democratic Party presidential debates.<sup>66</sup> Congress has also made changes to its Fiscal Year 2020 budget to eliminate the PSLF program and adopt a further modified income-driven repayment plan, the Revised Pay as You Earn program, that creates a system to forgive all student debts remaining after as few as 180 months of qualifying payments.<sup>67</sup>

While the proposed budget carries an estimated savings of \$1.459 billion by 2020 and \$53 billion by 2029 after the elimination of PSLF program,<sup>68</sup> forgiving all debts after at most thirty years of Income-Based Repayment could be conceivably much more costly for taxpayers, creating many negative externalities.<sup>69</sup> For example, scholars have noted that students rely on programs like the PSLF program to fund their educations, and the repeal of these programs would leave many borrowers unable either to repay their loans or pursue postsecondary

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to Reform the Higher Education Act, WHITE HOUSE (Mar. 18, 2019), <https://www.whitehouse.gov/wp-content/uploads/2019/03/HEA-Principles.pdf> [<https://perma.cc/HJ9H-EGSV>]; Gregory Crespi, *The Public Service Loan Forgiveness Program: The Need for Better Employment Eligibility Regulations*, 66 BUFF. L. REV. 819, 832 (2018).

66. Although the topic of student loan debt forgiveness started out as a peripheral issue in the 2016 presidential race, with Senator Bernie Sanders being one of the few candidates to discuss the matter in a serious way, it has become one of the foremost hot-button issues of the 2020 election. See, e.g., Kamenetz, *supra* note 1; Carmin Chappell, *Here's How the Democratic Presidential Candidates Plan to Address the Student Debt Crisis*, CNBC (July 30, 2019, 4:36 PM), <https://www.cnbc.com/2019/07/30/democratic-presidential-candidates-plans-for-addressing-student-debt.html> [<https://perma.cc/EZR6-QYG2>]. Thus far, Sanders has proposed not only to eliminate tuition at public colleges, but also to cancel all outstanding student loan debt with under the College for All Act of 2019. Kamenetz, *supra* note 1. Curiously, or perhaps intentionally, the Sanders' sponsored College for All Act does not mention the PSLF program, nor does it discuss a budget for his new programs. College for All Act of 2019, H.R. 3472, 116th Cong. § 402 (2019). Senator Elizabeth Warren and former Vice President Joe Biden have also proposed various plans to solve the student loan crisis and make college more affordable for all. See Kamenetz, *supra* note 1. Thus, commentators have called the 2020 Democratic field "an 'arms race' for 'who can be the most ambitious and expansive when it comes to tackling the cost of higher education.'" *Id.* Each candidate plans on funding their proposed loan debt cancellation with new taxes: Senator Warren would tax the wealthy, while Senator Sanders plans on taxing Wall Street. *Id.* The candidates' plans seem keenly responsive to overwhelming public support of student loan repayment reform. See also Sarah Sattlemayer & Rich Williams, *Americans Support Federal Action to Make Student Loan Repayment Easier*, PEW CHARITABLE TRUSTS (Oct. 4, 2019), <https://www.pewtrusts.org/en/research-and-analysis/articles/2019/10/14/americans-support-federal-action-to-make-student-loan-repayment-easier> [<https://perma.cc/24CJ-FLBS>].

67. OFF. OF MGMT. & BUDGET, EFFICIENT, EFFECTIVE, ACCOUNTABLE: AN AMERICAN BUDGET (2019). "The single IDR plan would cap a borrower's monthly payment at 12.5 percent of discretionary income. For undergraduate borrowers, any balance remaining after 15 years of repayment would be forgiven. For borrowers with any graduate debt, any balance remaining after 30 years of repayment would be forgiven." *Id.* at 41. Again, the proposal would impact borrowers who borrow a new student loan starting July 1, 2020, excluding borrowers who are completing their current course study. See Friedman, *supra* note 40.

68. See OFF. OF MGMT. & BUDGET, *supra* note 67, at 119 (explaining the potential savings gained by eliminating the PSLF program).

69. Without the program, students are faced with higher monthly payments and thus encounter significant difficulty in paying for things like rent and utilities. Moreover, when students struggle with debt, without any relief, they cannot fully participate the economy. See generally Thomas M. Susman, *With Your Help the ABA Is Working to Save Public Service Loan Forgiveness*, 25 PASS IT ON: NEWSL. GOV'T & PUB. SECTOR LAW. DIV. 4, 4 (2016); Ryan Liebenthal, *Unforgivable*, 43 MOTHER JONES 5, 16–25 (Oct. 2018).

education, especially graduate education, at all.<sup>70</sup> Furthermore, canceling the PSLF program could result in law-trained graduates being suddenly unwilling to take public sector jobs due to their newfound inability to pay back their loans without the help of the PSLF program.<sup>71</sup>

### C. *Is the PSLF Program Working?*

The first wave of borrowers became eligible for loan forgiveness under the PSLF program in the last two years, which has fueled discussions about the efficacy of the PSLF program centering on whether the program is correctly incentivizing borrowers to pursue careers in the public interest, whether these borrowers are having their loans forgiven as promised, and if so, whether there are sufficient financial resources available to fund the program.<sup>72</sup> With respect to the first question—whether the PSLF program is attracting individuals to pursue public service jobs—figures from March 2019 are telling: many borrowers in public service careers are seeking to capitalize on the promise of loan forgiveness offered by the PSLF program.<sup>73</sup> Of the 3,213,089 Employment Certification Forms submitted to the Department of Education, 2,181,000—about two-thirds—have been approved.<sup>74</sup> Assuming that each Employment Certification Form is submitted by a borrower seeking to enroll in PSLF, the number of applicants would make the PSLF program the second most popular student loan forgiveness program, second only to the Revised Pay As You Earn plan.<sup>75</sup> And this number is expected to grow at a fairly steady rate, along with an estimated 200,000 additional borrowers applying for loan forgiveness under the PSLF program per year, after 2018.<sup>76</sup> In fact, the Consumer Financial Protection Bureau projects that up to 25% of all jobs in the United States could qualify for PSLF,

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70. Gregory Crespi, *Could the Benefits of the Public Service Loan Forgiveness Program be Retroactively Curtailed?*, 51 CONN. L. REV. 625, 630 (2019) (“If [the repeal of PSLF] occurs it will be very disappointing if not financially devastating to the hundreds of thousands to perhaps millions of persons who will not yet have qualified for debt forgiveness by completing 10 years of public service, but who have relied on the availability of eventual debt forgiveness in making their borrowing and subsequent employment decisions.”). Although other income-based repayment plans would remain in current budget proposals, Crespi is critical of the final amount forgiven being treated as taxable income, mainly because borrowers will still often end up with a six-figure bill after their loan is “forgiven.” *Id.* at 670. The budget proposal is silent as to whether the new loan forgiveness program would also treat the final amount forgiven as taxable income. *See id.*

71. Jack Karp, *Are Law Schools Helping Students Who Want to Help Others?*, LAW360 (Mar. 31, 2019, 8:02 PM), <https://www.law360.com/articles/1143092> [<https://perma.cc/G6ZN-95DJ>].

72. *Id.*; Andrew Keshner, *Education Department Explains Why Only 1% of People Who Applied for Public-Loan Forgiveness Were Accepted*, MARKET WATCH (Sept. 22, 2019, 9:47 AM), <https://www.marketwatch.com/story/education-dept-admits-much-criticized-loan-forgiveness-program-has-obstacles-for-borrowers-2019-09-20> [<https://perma.cc/2VGK-AZFB>].

73. U.S. DEP’T OF EDUC.: FED. STUDENT AID, *Public Service Loan Forgiveness (PSLF) Program Data*, <https://studentaid.gov/sites/default/files/pslf-march-2019.xls> (last visited Nov. 16, 2020) [<https://perma.cc/JN8P-5SSE>].

74. *Id.*

75. If all 3,213,089 Employment Certification Forms were approved, the PSLF program would be the most popular loan repayment program based on number of those enrolled. *Id.*; Gregory Crespi, *The Obama Administration’s New “REPAYE” Plan for Student Loan Borrowers: Not Much Help for Law Graduates*, 35 QUINNIPIAC L. REV. 323, 332–33 (2017).

76. Crespi, *supra* note 70, at 637–38, 652.

meaning that many more borrowers who have not yet applied for eligibility could conceivably do so, conditional on maintaining qualifying employment and paying into the program.<sup>77</sup>

But, with respect to the second question—whether PSLF participants can expect their debts to be forgiven—recent information about the odds of benefitting from loan forgiveness under the PSLF program paint a very bleak picture. As of March 2019, only 864 of the 86,006 applications for loan forgiveness had been approved: a 1% approval rate.<sup>78</sup> Troublingly, the approval rate has remained static since mid-2018.<sup>79</sup> This low rate of approval for loan forgiveness applicants highlights the fact that the promise of loan forgiveness is still unattainable for many borrowers, which has led many borrowers who have paid into PSLF-eligible repayment plans to file suit against the loan servicers with which the Department of Education contracts.<sup>80</sup> Many reasons have been proffered for the extremely low approval rate, including missing information in the application,

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77. See CFPB *Spotlights Borrower Complaints About Student Loan Servicers Mishandling Public Service Loan Forgiveness Program*, CONSUMER FIN. PROT. BUREAU (June 22, 2018), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-spotlights-borrower-complaints-about-student-loan-servicers-mishandling-public-service-loan-forgiveness-program/> [<https://perma.cc/5MFK-3BHZ>].

78. U.S. DEP'T EDUC., *supra* note 73. Seventy-eight percent of applications are rejected for either missing information (25%) or failure to make 120 qualified payments (53%). *Id.* An additional 16% are rejected due to having loans that do not qualify for forgiveness. *Id.* The remaining 4% of rejections occur due to clerical errors regarding employer eligibility and full-time employment calculations. *Id.*

79. See generally Annie Nova, *Here Are the Facts About Public Service Loan Forgiveness*, CNBC (Dec. 21, 2018, 12:03 PM), <https://www.cnbc.com/2018/12/21/1-percent-of-people-were-approved-for-public-service-loan-forgiveness.html> [<https://perma.cc/SC2H-XC3C>]; Cory Turner, *Why Public Service Loan Forgiveness Is So Unforgiving*, NPR (Oct. 17, 2018, 9:27 AM), <https://www.npr.org/2018/10/17/653853227/the-student-loan-whistleblower> [<https://perma.cc/4X79-9U9R>]; Allie Conti, *You're Probably Not Getting That Loan Forgiveness You're Counting On*, VICE (Sept. 21, 2018, 3:10 PM), [https://www.vice.com/en\\_us/article/kz5zew/youre-probably-not-getting-that-loan-forgiveness-youre-counting-on](https://www.vice.com/en_us/article/kz5zew/youre-probably-not-getting-that-loan-forgiveness-youre-counting-on) [<https://perma.cc/KTY9-NX3V>]. *But see*, Travis Hornsby, *Why the PSLF Success Rate Will Hit Over 50% by 2024*, STUDENT LOAN PLANNER (Sept. 20, 2019), <https://www.studentloanplanner.com/pslf-snowball-effect/> [<https://perma.cc/L33B-SL2L>] (using now-outdated data but arguing that the 1% approval rate is simply a growing pain of the program's implementation).

80. Most of the lawsuits related to PSLF are due to loan servicers giving borrowers the wrong type of loans or not properly disclosing what type of loans were being administered. See *Daniel v. Navient Sols., LLC*, 328 F. Supp. 3d, 1319, 1321–22 (M.D. Fla. 2018) (“Plaintiffs allege that they relied on incorrect information and recommendations given to them by Defendant regarding their eligibility for student loan forgiveness under the PSLF, resulting in their mistaken belief that they were eligible for the PSLF program.”); see also *Lawson-Ross v. Great Lakes Higher Educ. Corp.*, No. 1:17-CV-253-MW/GRJ, 2018 U.S. Dist. LEXIS 199048, at \*2–3 (N.D. Fla. 2018) (alleging that loan servicer did not inform them that only Direct Loans are eligible for PSLF, resulting in Plaintiff taking out only private loans but relying on PSLF to pay them off). The most high-profile case regarding the implementation of PSLF program to date has resulted from litigation between the American Bar Association and the Department of Education over the issue of the agency's determinations of qualifying employment via Employment Certification Forms. See *ABA v. U.S. Dep't of Educ.*, 370 F. Supp. 3d 1 (D.D.C. 2019). Specifically, the American Bar Association alleged that the Department of Education abused its discretion and arbitrarily subjected Employment Certification Forms to a “primary purpose test” to determine whether a borrower's employment was eligible for PSLF. *Id.* The federal district court ruled against the Department of Education, stating that they had no authority to change their standards without informing every borrower who relied on the agency to provide them with accurate information regarding the eligibility of their Employment Certification Forms. *Id.* But, a notable decision from US Bankruptcy Court in the Southern District of New York at the time of the writing of this Article has allowed a law school graduate to erase \$220,000 of student loan debt through the bankruptcy process, which could allow borrowers another avenue to loan forgiveness. See *In re Rosenberg*, 610 B.R. 454, 454–55 (Bankr. S.D.N.Y. 2020) (applying the *Brunner* test, the Court discharged the debt due to undue hardship).

which accounts for 25% of all rejections.<sup>81</sup> Yet, even with a 1% approval rate, the Department of Education still paid out \$30.6 million to forgive the remaining loan balance for the 864 borrowers whom the agency deemed eligible for loan forgiveness.<sup>82</sup> Assuming the average loan forgiveness amount of \$35,416.67 for all 86,006 applicants for loan forgiveness, the total discharge amount that the Department of Education would have to pay would exceed \$3.04 billion.<sup>83</sup> This descriptive fact illustrates the costs of administering the PSLF program and casts doubt on whether and how financial resources will be marshaled to continue to fund the PSLF program.

#### D. *The Cost of the PSLF Program*

Regardless of the many benefits and successes of the PSLF program, its critics argue that it is not an economically feasible or sustainable solution to the problem of student loan debt.<sup>84</sup> Simply put, at current rates of borrowing and program participants, the government cannot afford PSLF.<sup>85</sup> Given the 2,181,000 PSLF program participants with approved Employment Certification Forms, if every present participant were to be approved for loan forgiveness immediately, the Department of Education would have an outstanding discharge balance of \$97.9 billion.<sup>86</sup> For perspective, this theoretical outstanding discharge

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81. U.S. DEP'T OF EDUC., *supra* note 73.

82. Hypothetically, at this rate, if the Department of Education approved all of the applications for loan forgiveness that were dismissed for missing information, the total payout would be astronomical. Based on PSLF program data, 25% of the 85,000 rejected applications is 21,250. The average balance discharged per borrower is approximately \$59,000, which, multiplied by 21,250, brings the total payout to roughly \$1.25 billion, symptomatic of the extremely high costs of administering the program. *Id.*

83. The average balance discharged for borrowers with an approved PSLF application was \$59,244. Assuming this average amount for all 76,000 applicants would result in an amount of \$4.5 billion. *Id.*

84. *See, e.g.*, Wesley Whistle, *The Problem with Public Service Loan Forgiveness? It's Mostly Working*, FORBES (Dec. 6, 2019, 2:22 PM), <https://www.forbes.com/sites/wesleywhistle/2019/12/06/the-problem-with-public-service-loan-forgiveness-its-mostly-working/#3ecfe9bc216c> [<https://perma.cc/9TLH-K4EU>] (summarizing the need for reform, in light of the program's high costs and the coming wave of borrowers eligible for forgiveness under the program's guidelines); Robert Farrington, *The Moral Hazard of Student Loan Forgiveness*, FORBES (June 25, 2019, 7:37 AM), <https://www.forbes.com/sites/robertfarrington/2019/06/25/the-moral-hazard-of-student-loan-forgiveness/#5691b2b9364c> [<https://perma.cc/E4QJ-PAZ7>] (discussing the fact that the funding of the PSLF program is lacking and citing other critics of the program who contend that taxpayers are on the hook for individual borrowing decisions, in which borrowers lack "skin in the game," and the fact that blanket forgiveness does not address rising costs in higher education); Andrew Kriegbaum, *Barriers to Loan Forgiveness*, INSIDE HIGHER ED (Sept. 27, 2018), <https://www.insidehighered.com/news/2018/09/27/unsettled-debate-over-impact-public-service-loan-forgiveness> [<https://perma.cc/BXW9-GZFQ>] (reporting a conversation with Jason Delisle, a resident fellow at the American Enterprise Institute, who noted that the "Congressional Budget Office has estimated that PSLF could cost as much as \$2 billion annually . . . [T]hose future costs could force lawmakers to re-examine who is benefitting from the program."); Jason Delisle, *The Spiraling Costs of a Student Loan Relief Program*, POLITICO (July 21, 2017, 5:33 AM), <https://www.politico.com/agenda/story/2017/07/21/public-service-loan-forgiveness-cost-double-000478> [<https://perma.cc/N8WX-MG5R>] (discussing the same concerns).

85. Based on data released by the Department of Education regarding current PSLF program statistics, the total loan forgiveness payout would far exceed any realistic budget that would ever be given to the Department of Education. *See* U.S. DEP'T OF EDUC., *supra* note 73.

86. *Id.* This, of course, is a hypothetical exercise, because the number of PSLF program participants represents all members over a span of ten years. But even assuming current rates of debt hold constant, the outstanding discharge balance would still be roughly \$10 billion per year for the next decade.

balance is \$27 billion more than the Department of Education's estimated spending for 2019 (\$70 billion) and \$38 billion more than the approved budget for the Department of Education in 2019 (\$59.9 billion).<sup>87</sup> Even though law graduates represent a small fraction of this overall sum, the outstanding discharge balance to forgive law graduates' debts under the program would be significant.

Roughly 5,000 law school graduates nationwide from the Class of 2018 entered careers in government or public interest law.<sup>88</sup> Consider the possibility that 80%—or 4,000—of these graduates borrowed loans to attend law school and remained employed in a PSLF-eligible career for the next ten years.<sup>89</sup> With an estimated \$115,000 in debt from law school loans for these students, and limited ability to pay off their loans as their loan interest capitalizes, we could assume that the average forgivable loan balance could still be as high as \$100,000 in 2028.<sup>90</sup> This would result in a \$400 million outstanding discharge balance that the Department of Education would be on the hook to pay for one year's worth of loan forgiveness for qualifying law school graduates discharged from their debt obligation. This discharge balance is more than half of the \$700 million Congress approved in the Temporary Expansion of Public Service Loan Forgiveness in 2018.<sup>91</sup> If 4,000 borrowers represent over half of the funds specifically allocated for loan discharge under the PSLF in 2018, then what will become

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87. Kimberly Amadeo, *FY 2019 Federal Budget: Trump's Budget Request*, BALANCE (May 21, 2019), <https://www.thebalance.com/fy-2019-federal-budget-summary-of-revenue-and-spending-4589082> [https://perma.cc/G8HG-3M5X].

88. *Employment Outcomes as of April 2019 (Class of 2018 Graduates)*, AM. BAR ASS'N (May 6, 2019), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/2018-law-graduate-employment-data.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2018-law-graduate-employment-data.pdf) [https://perma.cc/8ZGL-MB9F].

89. *See id.*; *Findings from the NALP/PSJD 2018 Public Service Attorney Salary Survey*, NALP (June 2018), <https://www.nalp.org/0618research> [https://perma.cc/6HRY-WT4H]. While the ABA does not define its classification of "public interest" careers in its employment data reports, elsewhere, the ABA defines public interest positions to include:

[L]egal services positions that are funded by the Legal Services Corporation or a similar funding entity; positions with other organizations that provide indigent or reduced-fee legal services, such as prisoners' legal services and campus legal services; and positions with public interest and non-profit employers, including private non-profit advocacy, religious, social service, fund-raising, community resource, or cause-oriented organizations. Public interest employers also include labor unions, non-profit policy analysis and research organizations, and public and appellate defender positions not funded by the government.

*2017 Employment Questionnaire (For 2016 Graduates) Definitions and Instructions*, AM. BAR ASS'N (2017), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/Questionnaires/2017\\_eq\\_definitions\\_and\\_instructions.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/Questionnaires/2017_eq_definitions_and_instructions.authcheckdam.pdf) [https://perma.cc/GM92-YTSS]. The ABA defines a governmental position as including "federal, state and local governments. Government positions include positions in governmental agencies, military positions, and prosecution positions. Government positions also include governmental public defender and appellate defender positions." *Id.*

90. Bob Lotich, *Average Law School Debt*, BALANCE (Mar. 8, 2019), <https://www.thebalance.com/average-law-school-debt-4588830> [https://perma.cc/3XGL-CMRJ]. One could just as easily assume negative amortization, which is a reality for many borrowers, especially underrepresented racial minorities. *See Miller, supra* note 37. Given that negative amortization would probably not be the case for all borrowers, however, for purposes of this hypothetical calculation, I have assumed that the average borrower has paid down some of their outstanding loan debt over a projected fiscal decade. *See id.*

91. Cory Turner, *Congress Promised Student Borrowers A Break. Education Dept. Rejected 99% Of Them*, NPR (Sept. 5, 2019, 5:00 AM), <https://www.npr.org/2019/09/05/754656294/congress-promised-student-borrowers-a-break-then-ed-dept-rejected-99-of-them> [https://perma.cc/MCM3-Z47Q].

of the applications for loan forgiveness from the other 2.1 million potential applicants?<sup>92</sup>

As a corollary to criticism that there may be insufficient funding to support the PSLF program, critics have noted that this problem may be exacerbated and indeed caused by overborrowing, or—put another way—attending an institution that is unaffordable for the average American.<sup>93</sup> Before fully addressing this negative externality of the program, it is important to note what specific feature sets the PSLF program apart from all other income-driven repayment plans, such as Income-Contingent Repayment, Income-Based Repayment, Pay as You Earn, and Revised Pay as You Earn plans, and makes it the most attractive option for all who qualify for it. Specifically, unlike traditional income-driven repayment plans, the final loan amount that the government forgives under the PSLF program is not treated as taxable income.<sup>94</sup> Thus, although the nontaxability of loan forgiveness makes the PSLF program an attractive option for certain borrowers, it also removes any incentive that these borrowers have to regulate the amount that they borrow when they know that their loan will eventually be forgiven.<sup>95</sup>

Theoretically, if a borrower must internalize a cost associated with the borrower's loan forgiveness in the form of income tax, it is likely that the borrower would be conscientious about the amount of their loan—taking out only what is essential to fund their education—and even make all efforts to pay down their loan during the course of their repayment plan.<sup>96</sup> If students behave in an economically rational manner, then they would only take out student loans for as much money as necessary to fund their education or as much as they will one

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92. Part of the program's affordability problem is the fact that the very bill that created PSLF program is silent on its funding. Section 455 of the College Cost Reduction and Access Act of 2007, which established PSLF, does not explicitly mention or even suggest how the program is to be funded. *See* College Cost Reduction and Access Act, Pub. L. No. 110-84, §401, 121 Stat. 784, 800-01 (2007). The same goes for the Fiscal Year 2020 Budget Proposal, which, as mentioned earlier, instead suggests the elimination of PSLF altogether. OFF. OF MGMT. & BUDGET, *supra* note 67, at 41.

93. NAT'L ASS'N STUDENT FIN. AID ADM'RS, NASFFA TASK FORCE REPORT: PUBLIC SERVICE LOAN FORGIVENESS (2014).

94. *See, e.g.*, Robert Farrington, *The Student Loan Forgiveness Tax Bomb*, FORBES (Jan. 6, 2020, 8:20 AM), <https://www.forbes.com/sites/robertfarrington/2020/01/06/the-student-loan-forgiveness-tax-bomb/#450cf5353271> [<https://perma.cc/JK3L-LB49>]. "The main problem with income-driven repayment plans is the potential for severe tax consequences down the road." *Id.* The biggest drawback to even the most generous income-driven repayment programs is that the amount ultimately forgiven by these programs is treated as taxable income. "[I]n effect, the government cancels 100 percent of the debt, but then will turn around and collect 10–40 percent of it anyway." John R. Brooks, *The Case for More Debt: Expanding College Affordability by Expanding Income-Driven Repayment*, 2018 UTAH L. REV. 847, 850 (2018); *see also*, Gregory Crespi, *Will the Income-Based Repayment Program Enable Law Schools To Continue To Provide "Harvard-Style" Legal Education?*, 67 SMU L. REV. 54, 129 (2014).

95. *See* Jason Delisle, *The Coming Public Service Loan Forgiveness Bonanza*, 2 EVIDENCE SPEAKS REPS. 2, 5 (2016). "Thanks to PSLF, a student like the hypothetical one above who is faced with the choice of borrowing \$10,000 to live frugally while enrolled in graduate school or \$20,000 to support a more comfortable lifestyle is probably more inclined to choose the latter." *Id.*; *see also* Crespi, *supra* note 94, at 79–83. That said, borrowing, of course, is capped at the student's cost of attendance, setting an upper boundary to a student's potential for overborrowing.

96. Delisle, *supra* note 95 at 5.

day be able to repay.<sup>97</sup> But, if the borrower's entire loan is forgiven after ten years of payments—regardless of the loan amount or the repayment that the borrower made—there is little incentive for the borrower to exercise such restraint or reduce their total debt obligation.<sup>98</sup> Moreover, expecting that their debt obligation will be fully forgiven *a priori*, prospective law students may choose to attend more expensive law schools, which could draw students away from attending less expensive law schools, including those in rural settings, further reducing the likelihood that these law students would practice in locations like rural areas that desperately need attorneys.<sup>99</sup> In spite of the borrowing decisions made by some individuals who participate in the PSLF program, however, it is clear that the PSLF program is successful at attracting students to careers in public service and thus requires full federal financial backing to fulfill its promise of loan forgiveness for qualifying public servants.

#### IV. THE “GAP” AND THE “DRIFT”

##### A. *The Access-to-Justice Gap and Its Causes*

The access-to-justice “gap” is defined as the difference between the civil legal needs of low-income Americans and the resources available to meet those needs.<sup>100</sup> And the sheer numbers of people who need civil legal resources are significant. The most common groups of people who meet the definition of low-income individuals requiring legal assistance include: individuals with disabilities (11.1 million); rural residents (10 million); seniors over the age of sixty-five

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97. ANGELA BOATMAN, BRENT EVANS, & ADELA SOLIZ, LUMINA FOUND., *APPLYING THE LESSONS OF BEHAVIORAL ECONOMICS TO IMPROVE THE FEDERAL STUDENT LOAN PROGRAMS: SIX POLICY RECOMMENDATIONS* 1, 2 (2014), [https://www.luminafoundation.org/files/publications/ideas\\_summit/Applying\\_the\\_Lessons\\_of\\_Behavioral\\_Economics\\_to\\_improve\\_the\\_Federal\\_Policy\\_Loan\\_Programs.pdf](https://www.luminafoundation.org/files/publications/ideas_summit/Applying_the_Lessons_of_Behavioral_Economics_to_improve_the_Federal_Policy_Loan_Programs.pdf) [https://perma.cc/PBL4-A7KB].

98. See Farrington, *supra* note 84 (classifying this problem as moral hazard).

99. Hannah Haksgaard, *Rural Practice as Public Interest Work*, 71 ME. L. REV. 210, 222 (2019). While serving residents of rural areas was not an explicit goal of the PSLF, its creators envisioned that the PSLF program and the other facets of the College Cost Reduction and Access Act would be an investment in “the young people that will take their talents and provide the next generation of . . . economic activity here at home. . . [T]hat’s the investment we . . . make in this generation of young people for the future of this country.” 153 CONG. REC. H7540 (daily ed. July 11, 2007) (statement of Rep. Miller). Moreover, the central purpose of the PSLF program and income-driven repayment plans was to encourage students to pursue careers with lower salaries, including those in public service and in rural areas where pay is lower than national averages. See, e.g., *id.* at H7554 (statement of Rep. Miller).

100. LEGAL SERVS. CORP., *THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS* 9 (2017). The Legal Services Corporation is a quasi-government entity created in 1974 to help lower-income Americans gain access to high quality legal aid. For a brief history of the origin and development of LSC, see Richard A. Cullison, *Eliminating the Justice Gap*, 72 BENCH & BAR 13, 13–14 (2008). For clarity and consistency, this Article will operationalize a definition of “low-income” that is consistent with the definition used by the Legal Services Corporation: a low-income household is one in which the combined income is below 125% of the Federal poverty rate. LEGAL SERVS. CORP., *supra*, at 11.

(6.4 million); and veterans (1.7 million).<sup>101</sup> Addressing the gap requires recognition of the inability of lower-income Americans to obtain legal services when they are needed and that the legal profession make reasonable efforts meet that need. Even with pro bono service requirements and countless no- or low-cost legal services providers, this is easier said than done.<sup>102</sup>

The Legal Services Corporation estimates that 71% of low-income households have experienced at least one severe civil legal problem in the past year, yet only 20% of these individuals will seek help for their legal problems.<sup>103</sup> As a corollary, the LSC estimates that low-income Americans will receive either inadequate or no professional legal help for 86% of their civil legal problems in a given year.<sup>104</sup> In reality, the business model of obtaining legal services remains cost prohibitive to many.<sup>105</sup> The primary reasons why low-income households do not seek legal help is the cost—or expectations of the cost—of such legal assistance.<sup>106</sup> And although organizations like the Legal Services Corporation

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101. LEGAL SERVS. CORP., *supra* note 100, at 6. The most common types of legal issues these low-income Americans encounter are issues with: rental housing; children and custody; education; disability; income maintenance; employment; family; health; homeownership; and wills and estates. *Id.* at 22–24. These findings by the LSC are roughly consistent with what other scholars have observed. *See, e.g.*, Rebecca L. Sandefur, *What We Know and Need to Know About the Legal Needs of the Public*, 67 S. CAR. L. REV. 443 (2016); Rebecca L. Sandefur, *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study*, AM. BAR FOUND. (2014), [http://www.americanbarfoundation.org/uploads/cms/documents/sandefur\\_accessing\\_justice\\_in\\_the\\_contemporary\\_usa\\_aug\\_2014.pdf](http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa_aug_2014.pdf) [<https://perma.cc/EGO2-V295>].

102. *A Guide and Explanation to Pro Bono Services*, AM. BAR ASS'N (July 26, 2018), [https://www.americanbar.org/groups/legal\\_education/resources/pro\\_bono/](https://www.americanbar.org/groups/legal_education/resources/pro_bono/) [<https://perma.cc/5B3J-DBMG>] (“Nearly every state has an ethical rule that calls upon lawyers to render pro bono services.”). In fact, Montana and New York have pro bono requirements for admission to the bar of each state. *The Role of Pro Bono Service as a Condition for Receiving a Law License*, AM. B. ASS'N, [https://www.americanbar.org/groups/probono\\_public\\_service/policy/bar\\_pre\\_admission\\_pro\\_bono/](https://www.americanbar.org/groups/probono_public_service/policy/bar_pre_admission_pro_bono/) (last visited Nov. 16, 2020) [<https://perma.cc/ZG4Y-WK9E>]. Because of the tremendous variation that exists on a state-by-state and community-by-community basis in terms of how pro bono services are administered, little is known about the quality of pro bono services or their impact. *See* Scott L. Cummings & Rebecca L. Sandefur, *Beyond the Numbers: What We Know—and Should Know—about American Pro Bono*, 7 HARV. L. & POL'Y REV. 83, 85 (2013); REBECCA L. SANDEFUR & AARON C. SMYTH, AM. BAR FOUND., *ACCESS ACROSS AMERICA: FIRST REPORT OF THE CIVIL JUSTICE INFRASTRUCTURE MAPPING PROJECT* (2011), [http://www.americanbarfoundation.org/uploads/cms/documents/access\\_across\\_america\\_first\\_report\\_of\\_the\\_civil\\_justice\\_infrastructure\\_mapping\\_project.pdf](http://www.americanbarfoundation.org/uploads/cms/documents/access_across_america_first_report_of_the_civil_justice_infrastructure_mapping_project.pdf) [<https://perma.cc/HJM2-823C>]. Some scholars have suggested, however, that pro bono collaborations between law firms and legal services providers create additional negative externalities, raising costs for the provision of legal services. *See generally* Atinuke O. Adediran, *The Relational Costs of Free Legal Services*, 55 HARV. C.R.-C.L. L. REV. 357 (2020).

103. LEGAL SERVS. CORP., *supra* note 100, at 6–7; *see* Vanita Saleema Snow, *The Untold Story of the Justice Gap: Integrating Poverty Law into the Law School Curriculum*, 37 PACE L. REV. 642, 647 (2017) (“[L]iving in poverty leads to legal problems.”); *see also* Rebecca L. Sandefur, *Access to Civil Justice and Race, Class, and Gender Inequality*, 34 ANN. REV. SOC'Y 339, 346 (2008).

104. LEGAL SERVS. CORP., *supra* note 100, at 6; *see also* Andrew M. Perlman, *The Public's Unmet Need for Legal Services and What Law Schools Can Do About It*, 148 DÆDALUS, J. AM. ACAD. ARTS & SCI. 75, 75–76 (2019). *But see* Deborah L. Rhode, *Access to Justice: An Agenda for Legal Education and Research*, 62 J. LEGAL EDUC. 531, 534 (2013) (“Although useful to a point, these studies also have inherent limitations.”).

105. *See* LEGAL SERVS. CORP., *supra* note 100, at 6, 13 (“A full 70% of low-income Americans with civil legal problems reported that at least one of their problems affected them very much or severely.”). For a more in-depth discussion on the cost of legal aid, *see supra* Section III.

106. *Id.* at 13. Additional reasons why low-income households do not seek legal assistance include not knowing where to look for legal assistance and being unsure that the issues they experience are legal in nature. *Id.* Yet, it is a well-known fact that the cost of legal representation can be expensive, even for middle-income families, and this impacts how the public perceives the cost of legal representation. Jason Tashea, *Access-to-*

and the legal aid organizations it funds were approached to assist with 1.7 million civil legal cases in 2017 alone, the agency or its affiliates were only able to assist in 59% of these cases—and fully resolve around just 33% of these cases—illustrating the reality of a substantial access-to-justice gap.<sup>107</sup>

There are many independent factors that have contributed to creating, and to widening, the access-to-justice gap. Two factors that undeniably contribute to the access to justice gap are: (1) the reality that essential legal services offered at no- or low-cost are woefully underfunded, and (2) unlike the criminal legal system, there is no constitutional right to an attorney or legal representation in civil cases.<sup>108</sup> Yet, the gap is principally owing to the complexity of the American

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*Justice Gap? It's the Economy*, AM. BAR ASS'N J. (Dec. 17, 2018, 7:30 AM), [http://www.abajournal.com/laws-cribbler/article/access\\_to\\_justice\\_gap\\_its\\_the\\_economy\\_stupid](http://www.abajournal.com/laws-cribbler/article/access_to_justice_gap_its_the_economy_stupid) [<https://perma.cc/289D-JHR4>]. A general trend shows that some clients turn to consumer loans to cover their exuberant legal fees, which only adds to the problem, as loans quickly become more expensive than the very fees they were taken out to cover. *Id.* “One recent survey found, regardless of economic class and generation, 91 percent of respondents believed that lawyers’ fees were ‘extremely expensive’ and 82 percent wanted alternatives to attorneys when dealing with small legal matters.” *Id.* The hourly rates of an attorney, notwithstanding variables like job type or area of law, can range between \$100 and \$400 an hour (with a maximum in the area of \$1000). *How Much Are Attorney's Fees?*, THERVO, <https://thervo.com/costs/attorney-fees> (last visited Nov. 16, 2020) [<https://perma.cc/DXA8-YTLE>].

107. LEGAL SERVS. CORP., *supra* note 100, at 10–14 (“In 2017, low-income Americans will likely not get their legal needs fully met for between 907,000 and 1.2 million civil legal problems that they bring to LSC-funded legal aid programs, due to limited resources among LSC grantees. This represents the vast majority (85% to 97%) of all of the problems receiving limited or no legal assistance from LSC grantees.”).

108. See, e.g., David Udell & Amy Widman, *Tracking Client Outcomes: A Qualitative Assessment of Civil Legal Aid's Use of Outcomes Data, with Recommendations*, 25 CARDOZO J. EQUAL RTS. & SOC. JUST. 435, 436 (2019) (noting how thinly-funded civil legal aid services have little capacity or infrastructure for tracking outcomes data); Symposium, *What Is Access to Justice? Identifying the Unmet Legal Needs of the Poor*, 24 FORDHAM INT'L L.J. S188 (2000) (acknowledging the underfunding of civil legal service provision programs and the absence of a constitutional right to legal representation in civil cases in the United States). Given the reality of the ballooning national debt, substantially increased funding for the Legal Services Corporation seems unlikely. And even if its budget were doubled overnight, the sudden influx of funding would not necessarily result in a doubling of its caseload. In fact, some have suggested that a greater budget for the agency would only result in greater spending to increase the salaries for public interest attorneys, which—given the dramatic pay differentials between public interest attorneys and the rest of the legal profession—would not be money badly spent if it were meant to incentivize attorneys to pursue careers in public interest law. Cullison, *supra* note 100, at 15. While a constitutional right to representation in civil legal matters has had many champions over the years, few have been as influential as Justice Earl Johnson Jr., a former associate justice on California's Court of Appeal, who became known as “Mr. Access to Justice” in certain circles due to his role in drafting the first two versions of the Legal Services Corporation Act of 1974. Justice Johnson advocated for an expansion of the constitutional right to an attorney to be extended to both civil and criminal legal matters. He went on to identify the right to an attorney and the equal ability of all to seek and obtain justice the “cornerstone of American democracy.” See Earl Johnson, Jr., *Equal Access to Justice: Comparing Access to Justice in the United States and Other Industrial Democracies*, 24 FORDHAM INT'L L.J. S83, S83–110 (2000). As the LSC report notes, although there is no threat of jail time in civil suits, individuals still stand to lose a great deal as a result of their lack of legal representation. For example, of the 71% of low-income households that experienced at least one civil legal problem in 2017, most of the legal problems involved families obtaining access to healthcare, staying in their homes, and securing safe living conditions for their families. A further 27% of legal problems involved the health and custody of children. LEGAL SERVS. CORP., *supra* note 100, at 21–23. Extrapolating from Justice Johnson's argument, it is helpful to compare the civil legal problems mentioned above with some of the low-level crimes that, simply by the nature of the offense, carry a guarantee of legal representation. Depending on the severity of the incident, someone in Massachusetts who is found guilty of Negligent Operation of a Motor Vehicle may only face a \$20.00 fine and a sixty-day license suspension period. See MASS. GEN. LAWS ch. 90, § 24G (2020). Nevertheless, given that Negligent Operation of a Motor Vehicle is a crime, legal counsel will be provided if the individual charged cannot procure legal representation independently. By contrast, a low-income family of four who are facing

justice system, the accompanying high costs of the system, and the comparatively low financial incentives for attorneys to pursue careers in the public interest.<sup>109</sup> The first two of these factors contributing to the access-to-justice gap are hard to pin down and even more difficult to change through any one solution.<sup>110</sup> Nevertheless, both high costs and low financial incentives can be addressed by compensating public interest lawyers with competitive salaries, or alternatively with dramatically reduced student loan obligations, so that they can represent clients for no- or low-cost.<sup>111</sup>

To put matters simply, legal aid services are underfunded, and public interest attorneys are notoriously underpaid. According to the most recent data from the National Association of Law Placement, entry-level civil legal aid attorneys earn, on average, only \$48,000—the lowest of any public service legal position.<sup>112</sup> Perhaps there are not enough public interest attorneys as a result.<sup>113</sup> Due to the substantial cost of attending law school, and the corresponding debt that many graduates carry following graduation from law school, it is understandable that law school graduates would be hesitant to take public interest law jobs that promise notoriously overwhelming workloads at below-average salaries.<sup>114</sup> In fact, results from the first wave of the After the JD Study—a 2004 study of law school graduates of the Class of 2000, when tuition rates and debt loads were comparatively much lower than today—demonstrated that 70% of law school graduates rated paying off student loan debt as a top-four concern when looking for jobs after law school.<sup>115</sup>

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eviction and potentially losing their children due to unsafe living conditions are not constitutionally guaranteed an attorney if they cannot otherwise obtain one—a stark illustration of the argument advanced by Justice Johnson and other advocates of a broader constitutional right to representation. In fact, America differs from the vast majority of European countries by not providing legal aid to the poor. In Europe, a constitutional right to a fair hearing in a civil trial requires that the government provide legal aid to the poor; in America, due process is satisfied in a civil case even though a low-income litigant lacks counsel. *See, e.g.*, Symposium, *supra*, at S191–93; Johnson, *supra*, at S91–92.

109. *See* Cullison, *supra* note 100, at 15; Perlman, *supra* note 104, at 75.

110. *See* Johnson, *supra* note 108, at S97 (acknowledging the complexity of the nation’s court system); Perlman, *supra* note 104, at 79 (commenting on the profound structural problems of the justice system).

111. *See* Cullison, *supra* note 100, at 15 (noting how little public interest lawyers are paid and explaining why doubling the budgets of legal aid programs would first lead to an increase in attorney salaries); Perlman *supra* note 104, at 77 (positing that reducing attorneys’ student loan obligations might improve access to justice).

112. Press Release, NALP, New Public Service Attorney Salary Figures from NALP Show Slow Growth Since 2004, 1, 3 (July 9, 2018), [https://www.nalp.org/uploads/PSASR\\_7-9-18\\_FINAL.pdf](https://www.nalp.org/uploads/PSASR_7-9-18_FINAL.pdf) [<https://perma.cc/FX8U-QLUA>]. It must be noted that the same data shows that the high end of the spectrum for the starting salary of public interest attorneys is only \$58,300 (public defenders).

113. *See* Cullison, *supra* note 100, at 15 (noting that legal aid programs are having difficulty attracting and maintaining staff attorneys because of the low pay and increasing debt obligations of law graduates).

114. *See* Boutcher et al., *supra* note 8; Jesse Rothstein & Cecilia Elena Rouse, *Constrained After College: Student Loans and Early-Career Occupational Choices*, 95 J. PUB. ECON. 149, 150 (2011) (“[D]ebt appears to reduce the probability that students [will] choose low-paid ‘public interest’ jobs.”). Yet, public interest attorneys nonetheless have among the highest levels of job satisfaction in the legal profession, even with comparatively low salaries. *See, e.g.*, Lawrence S. Krieger & Kennon M. Sheldon, *What Makes Lawyers Happy?: A Data-Driven Prescription to Redefine Professional Success*, 83 GEO. WASH. L. REV. 554, 554 (2015).

115. *See* RONIT DINOVITZER, BRYANT G. GARTH, RICHARD SANDER, JOYCE STERLING & GITA Z. WILDER, THE NALP FOUND. & AM. BAR ASS’N, AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS 72 (2004).

While the shortage of attorneys in public interest law careers is clearly a function of inadequate remuneration and high debt loads for law-trained professionals, the spillover effects of this shortage adversely impact the individuals that could be served by public interest attorneys.<sup>116</sup> And this impact is particularly acute for individuals in rural areas, who have even fewer options to engage professional legal services than residents of metropolitan areas.<sup>117</sup> As of 2004, public interest attorneys still only comprise 4% of all practicing attorneys.<sup>118</sup> Of that 4%, nearly 42% of these public interest attorneys operate out of New York, Washington D.C., and Chicago alone.<sup>119</sup> Moreover, a public interest attorney in a rural area will, on average, not only make less than most other attorneys in the country, but will also have a workload so demanding that they are required to be prosecutors in some weeks and defenders others, possibly with 100 miles between the two courthouses.<sup>120</sup>

Thus, the problem of the access-to-justice gap has demand-side and supply-side inputs. And the insufficient supply of attorneys to meet the demand for legal services is surely compounded by the rate at which debt increases among law school graduates. This is the silent wake of the “drift” problem, explored in the section that follows.

### B. *The Reality of the “Public-Interest Drift”*

With many law students choosing to attend law school with intentions to “save the world,” the reality that so few will enter careers in the public interest

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116. See Cullison, *supra* note 100, at 13–15 (discussing the shortage of low-income legal assistance, in part due to low attorney salaries and student loan debt).

117. Haksgaard, *supra* note 99, at 212–15; Grant Gerlock, *Lawyer Shortage in Some Rural Areas Reach Epic Proportions*, NPR (Dec. 26, 2016, 5:00 AM), <https://www.npr.org/2016/12/26/506971630/nebraska-and-other-states-combat-rural-lawyer-shortage> [<https://perma.cc/26AE-HHEZ>]. Several states without a major metropolitan area show up on annual lists for states with the fewest number of attorneys and the biggest access-to-justice gap, including North Dakota, Wyoming, South Dakota, and Vermont. See, e.g., Danielle Braff, *The Best Places to Practice*, 105 AM. BAR ASS’N J. 46, 51 (2019). Yet, attorneys in rural areas are also some of the lowest paid attorneys in the country. Private practice attorneys in South Dakota will make, on average, between \$52,000 and \$58,000. Haksgaard, *supra* note 99, at 218–19. By contrast, the national median salary for private practice attorneys was between \$98,000 and \$155,000, with the majority of the higher-end salaries coming from metropolitan areas. See, e.g., *Findings on First-Year Salaries from the 2019 Associate Survey*, NALP (June 2019), <https://www.nalp.org/0619research> [<https://perma.cc/X9EY-78AC>]. Many states with the highest value of purchasing power, however, are also states with the highest access-to-justice gap, such as Mississippi, Alabama, South Dakota, and Oklahoma. See Braff, *supra*, at 51. A cost-conscious public interest attorney with no debt would likely find a legal career in a less urban area—where purchasing power is greatly increased—appealing. This would also track with a fairly sizeable trend of skilled millennials to relocate to small and mid-sized cities to increase their purchasing power. See, e.g., Jeffrey Brown & Mike Fritz, *Why Millennials Are Moving Away from Large Urban Centers*, PBS NEWS HOUR (Dec. 2, 2019), <https://www.pbs.org/newshour/show/why-millennials-are-moving-away-from-large-urban-centers> [<https://perma.cc/34FW-6V2M>]; Liz Farmer, *Millennials Are Coming to America’s Small Towns*, WALL ST. J. (Oct. 11, 2019, 6:22 PM), <https://www.wsj.com/articles/millennials-are-coming-to-americas-small-towns-11570832560> [<https://perma.cc/9LCB-ZLUJ>].

118. DINOVTZET ET AL., *supra* note 115, at 26.

119. *Id.* This data is mirrored by the ABA’s most recent data on the percentage of each graduating class that enters public interest. As of 2018, only between 3% and 4% of each graduating class enters the public interest field. See AM. BAR ASS’N, *supra* note 88.

120. See, e.g., Gerlock, *supra* note 117 (discussing how attorneys in rural Nebraska have to travel as many as 100 miles to meet with clients that live in towns that used to have lawyers but no longer do).

is perplexing.<sup>121</sup> Despite these intentions and stated preferences for careers in the public sector, most of these students instead decide to pursue careers in the private sector.<sup>122</sup> This puzzling phenomenon, described by many as the “public-interest drift,” has recently drawn academic attention and examination.<sup>123</sup>

Findings from several recent studies suggest that the amount of loan debt that a law graduate incurs to attend law school has a substantial impact on the graduate’s initial job selection.<sup>124</sup> Results from a couple of studies of graduates from prestigious schools make clear the relationship between debt obligations and career choice.<sup>125</sup> Specifically, both of these studies involved the real-world experiment of phasing in a “no-loans policy” to investigate the effect such a policy had on students’ post-graduate career choices.<sup>126</sup> And both studies acknowledge a causal relationship between high amounts of debt and a graduate taking a higher salary position.<sup>127</sup> The rationale is simple: students want to pay off their student loans, especially when they are exorbitantly high, and so they are naturally attracted to high-paying jobs.<sup>128</sup> Even before graduation, law students who took internships or summer jobs in the private sector were statistically more comfortable accruing higher debt than those who chose to work in the public sector.<sup>129</sup> Likewise, because public interest lawyers are the lowest paid lawyers in the country by far,<sup>130</sup> it would stand to reason that jobs in public interest law are less appealing to students with high debt.

But the key finding from these studies is perhaps less intuitive: those who received total debt forgiveness shifted away from higher paying jobs and were more comfortable taking public interest positions.<sup>131</sup> In fact, debt may be the

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121. See, e.g., John Bliss, *Drifting Law Students: Public Interest Caught in the Law Firm Pipeline*, 4 HARV. L. SCH. CTR. ON THE LEGAL PRO. (May/June 2018), <https://thepractice.law.harvard.edu/article/drifting-law-students/> [https://perma.cc/L6PF-6A2V].

122. *Id.*

123. *Id.*

124. See Boutcher et al., *supra* note 8 (examining the no-loan policy at the University of California-Irvine School of Law and its effect on the jobs that graduates took out of law school); Rothstein & Rouse, *supra* note 114. Rothstein and Rouse’s experiment was especially telling of the relationship between student loan debt and the likelihood that students will accept low-paying public interest jobs. The authors were given the unique opportunity to study the post-grad decisions of students who graduated with student loan debt and those who graduated debt-free from the same school, due to a program that replaced the traditional student loan award system with a no-strings-attached grant system. After the program was fully employed, students who took advantage of it graduated debt-free. Thus, the authors were able to “compare the academic outcomes and career choices of otherwise-identical students who graduated from Anon U with very different debt positions.” *Id.* at 151. But see DINOVTZER ET AL., *supra* note 115, at 71 (noting that debt levels among the first wave of After-the-JD respondents were fairly constant across practice settings, revealing “no simple pattern relating job choice to debt.”).

125. See generally Boutcher et al., *supra* note 8; Rothstein & Rouse, *supra* note 114.

126. Boutcher et al., *supra* note 8, at 757; Rothstein & Rouse, *supra* note 114, at 149.

127. Boutcher et al., *supra* note 8, at 776 (“[S]tudents who desire working in the public interest who have high debt will take higher-paying jobs in the private sector to pay down their debt . . . .”); Rothstein & Rouse, *supra* note 114, at 149 (“[D]ebt causes graduates to choose substantially higher-salary jobs and reduces the probability that students choose low-paid ‘public interest’ jobs.”).

128. Boutcher et al., *supra* note 8, at 776; Rothstein & Rouse, *supra* note 114, at 149.

129. Boutcher et al., *supra* note 8, at 762–64.

130. DINOVTZER ET AL., *supra* note 115, at 41, 43.

131. Rothstein & Rouse, *supra* note 114, at 158 (“By contrast, we find negative, statistically significant effects of debt on employment in the low salary occupations. Specifically, in our preferred specifications . . . we

strongest factor that influences career choice and can largely explain the public-interest drift.<sup>132</sup> In general, students who do not have to worry about debt are free to explore broader career paths and more seriously entertain the idea of public interest law.<sup>133</sup>

Thus, it is undeniable that debt, salary, and risk management are the primary factors driving law students' post-graduate career choices.<sup>134</sup> Yet, some scholars have noted that the orientation of the law school curriculum or the private-sector rhetoric pushed by top-tier law schools may play an important part in the public-interest drift.<sup>135</sup> The role that these social factors play in precipitating the phenomenon of public-interest drift should not be discounted, but they are arguably less salient to students across all law schools than debt, which transcends law school typology.

For law students with a desire to help people in their time of need, this intention is demonstrably not enough to lock these students into a public-interest career path that eventually matures into a career in public interest law. In fact, many students who are originally oriented toward a career in the public interest struggle to reconcile their desire to help others and their contradictory desire to earn a high salary.<sup>136</sup> It is attractive to view the law school socialization process as a defining factor that is partly, if not mostly, responsible for the dismally small number of law school graduates who pursue public interest careers;<sup>137</sup> however, even pro-socialization scholarship suggests that debt and salary are the strongest factors in determining a law student's post-graduate career choice and in drawing many law graduates away from public interest law positions.<sup>138</sup> It is important to note that law school graduates' inability to repay their loans does not merely

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estimate that an extra \$10,000 in student debt reduces the likelihood that an individual will take a job in nonprofits, government, or education by about 5 to 6 percentage points.”)

132. See *id.* at 158, 160, 162.

133. *Id.* at 150, 158, 160, 162; see also La Mort, *supra* note 12, at 2; Marco Di Maggio, Ankit Kalda & Vincent Yao, *Second Chance: Life Without Student Debt* 3–5 (Nat'l Bureau Econ. Rsch. Working Paper No. 25810, 2019) (finding that loan discharge resulted in increases to borrowers' geographical mobility, probability of changing jobs, and upward increases in their income).

134. See Howard S. Erlanger & Douglas A. Klegon, *Socialization Effects of Professional School: The Law School Experience and Students' Orientation to Public Interest Concerns*, 13 L. & SOC'Y REV. 11, 32 (1978) (“It is not until students enter the job market that they need to adjust to the realities of legal practice . . . . The predominant concern of all students interviewed, even those with outstanding records, was getting a job.”).

135. See, e.g., Bliss, *supra* note 8, at 1976–77. It is noteworthy, however, that even proponents of the socialization drift theory recognize how debt and salary are salient factors bearing on the career paths of law graduates. *Id.* at 2005 (“A drifting-path 2L explained: ‘I’m not sure I really want to work in a firm but I didn’t want to close any doors, considering the crushing debt.’”). Bliss later offers the testimony of at least two more students who cite concerns about paying off debt as a primary factor that influenced their decision to consider high-paying private sector jobs. *Id.* at 2005–06, 2018–19.

136. Bliss, *supra* note 8, at 2002, 2007; see also Robert Granfield, *Legal Education as Corporate Ideology: Student Adjustment to the Law School Experience*, 1 SOCIO. F. 514, 519 (1986) (“It appears that most students enter Ivy with the desire to ‘help’ people while also seeking financial security and professional prestige. Very early in their careers, however, students begin to recognize the number of opportunities for personal success in the private sector and find it convenient to compromise their public service goals.”).

137. Bliss, *supra* note 8, at 1982; Granfield, *supra* note 136, at 517.

138. Recall that the ABA reports that only between 4–5% of law school graduates end up in public service positions. See AM. BAR ASS'N, *supra* note 88; see also Rothstein & Rouse, *supra* note 114, at 149.

affect them but ultimately spills over to those who benefit most from public interest work.<sup>139</sup>

C. *Can the PSLF Program Solve the Problems of Student Debt, the Gap, and the Drift?*

There is no silver bullet to solve the dire problems of the student loan crisis, the access-to-justice gap, and the public-interest drift. Yet, the PSLF is the only such remedy to mitigate the effects of all three concerns.<sup>140</sup> The PSLF program makes it possible for many, including law graduates, in traditionally low-paying careers in the public interest to pay off their seemingly insurmountable debt, even though precise estimates of its efficacy at each law school accredited by the American Bar Association are difficult to come by.<sup>141</sup>

Several scholars have noted that the value proposition of legal education—the amount that law students pay to receive their legal education and the payoff they can expect after graduating from law school—is not what it once was;<sup>142</sup> some have even gone so far as to say that unless a student attends a top-tier law school and is certain to obtain a prestigious job earning a six-figure salary right out of law school, the risk of attending law school is simply too great.<sup>143</sup> While it is an economic imperative for most graduating law students to join the workforce upon graduation, those who graduate with large amounts of student loan debt have more to lose if they fail to find a secure job than those who graduate debt-free or with negligible amounts of debt.<sup>144</sup> Troublingly, some scholars have noted that there are not enough legal job opportunities that will justify the amount of money students will spend on law school, which makes the PSLF program essential to the accessibility of the value proposition of legal education for all graduates.<sup>145</sup>

Forgiving student loan debt for graduates in public service careers may indeed act as a stimulus package of sorts, allowing graduates with significant debt—who have sacrificed in their pursuit of public service careers—to begin basic life-making.<sup>146</sup> Without student debt hanging over their heads, law school

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139. If fewer new attorneys are willing to take public interest jobs due to fears of repaying their student loan debt, those who are less fortunate will suffer most. See Karp, *supra* note 71; Brooks, *supra* note 16, at 536 (“Producing lawyers is also expensive, which in turns exacerbates the cost pressures on legal services, since lawyers may feel the need to recoup the significant private investment . . .”).

140. See Crespi, *supra* note 94, at 82–83; Schrag, *supra* note 44.

141. See Jonathan Wolf, *Why Can't Anyone Give Us a Straight Answer About Average Law School Student Loan Debt?*, ABOVE THE L. (July 31, 2019, 12:48 PM), <https://abovethelaw.com/2019/07/why-cant-anyone-give-us-a-straight-answer-about-average-law-school-student-loan-debt/> [https://perma.cc/CFL6-EZKK]. The ABA stopped publishing data on law student indebtedness after the 2012–2013 academic year, and other sources that estimate indebtedness vary dramatically.

142. See Crespi, *supra* note 94, at 51, 137–38; Jerome M. Organ, *Reflections on the Decreasing Affordability of Legal Education*, 41 WASH. U. J.L. & POL'Y 33 (2013).

143. Crespi, *supra* note 94, at 51; see also BRIAN Z. TAMANAHA, FAILING LAW SCHOOLS 135–44 (2019).

144. See TAMANAHA, *supra* note 143, at 142.

145. Brooks, *supra* note 16, at 521–22.

146. Dina Gerdeman, *Forgiving Student Loan Debt Frees Consumers to Pursue Better Opportunities*, FORBES (May 23, 2019, 9:18 PM), <https://www.forbes.com/sites/hbsworkingknowledge/2019/05/23/forgiving->

graduates are free to redirect the money that would be going towards monthly student loan payments to other areas, such as buying a car, purchasing a home, or paying off other debts, such as credit card debt and mortgage loan obligations.<sup>147</sup> By removing student loan debt from the equation, lawyers who stayed the course in public sector careers will have more disposable income and feel more comfortable with their career choices.<sup>148</sup> But perhaps just as importantly, the prospect of loan forgiveness may indeed be driving some students toward careers in public service, where they are sorely needed.<sup>149</sup>

## V. INVESTIGATING LAW STUDENT LOAN INDEBTEDNESS AND CAREER INTENTIONS

### A. *Data and Methods*

In an effort to conduct research on an area heretofore unexplored across law school typologies, I created a unique survey that queried law student respondents in several areas related to their expected student loan debt and careers. Chief among these areas were: the funding sources the student is using to pay for law school; the amount of debt that the student expected on graduation; the student's career intentions; and the student's intention to participate in the Public Service Loan Forgiveness program. In the fall of 2017, I administered this survey at four law schools: a private elite law school; a public flagship law school; a public regional law school; and a private new law school.<sup>150</sup> The response rate within this sample of law students was quite robust—45%, 34%, 40% and 43%, respectively—and respondents to the survey were representative of their law school's entire population on the basis of race and gender, within 2%, in each category.<sup>151</sup>

While I was allowed to survey students at all four law schools about their expected debt and career intentions, I was only allowed to survey students about their intentions to enroll in the PSLF program at three law schools: the public flagship, the public regional, and the private new law school.<sup>152</sup> Responses from

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student-loan-debt-frees-consumers-to-pursue-better-opportunities/#27850fe66ba2 [https://perma.cc/GL42-X3L8].

147. See Di Maggio et al., *supra* note 133, at 3–4, 10–25; La Mort, *supra* note 12, at 6.

148. Cf. Di Maggio et al., *supra* note 133.

149. See Boutcher et al., *supra* note 8, at 776; cf. Rothstein & Rouse, *supra* note 114, at 158 (“Overall, it appears that . . . debt affects post-graduation employment decisions: students with more debt are less likely to accept jobs in low-paying industries and accept higher-paying jobs more generally.”). *Contra* Bliss, *supra* note 8, at 2025.

150. See Christopher J. Ryan, Jr., *Analyzing Law School Choice*, 2020 U. ILL. L. REV. 583, 583 (2020). As a condition of their participation in the survey, the law schools at which the survey was administered asked to remain anonymous and only be identified by descriptive terms. The administration at the private elite law school would not permit me to ask whether students at the law school were planning to enroll or had already paid into the PSLF program; however, all other survey questions were common between law schools. *Id.* at 589.

151. See *id.* at 590.

152. It bears noting, again, that this survey was conducted in the Fall 2017 semester, before reports of the dismal rate of loan forgiveness application approval were announced. As such, it is possible that these results could be marginally lower if students were surveyed today.

students at all law schools indicated that white students, students whose parents earned more than \$50,000 annually, and students whose parents earned a baccalaureate degree or higher credential were less likely than their peers from underrepresented racial minority groups, whose parents earned less than \$50,000 annually, and whose parent or parents earned less than a baccalaureate degree, to expect loan debts exceeding \$100,000. Moreover, this same pattern holds for a student's intention to pursue a career in public interest law and intention to enroll or to have already paid into the PSLF program.

Looking within the three law schools that allowed me to query their students about their intentions to participate in the PSLF program, responses at the public flagship law school indicated that 16% of white students planned to enroll in or were already enrolled in PSLF, but 20% of the African American students and half of the Hispanic/Latino students planned to enroll in or were already enrolled in PSLF. At the public regional law school, nearly 29% of white students indicated that they planned to enroll in or had already paid into PSLF, but half of the Hispanic/Latino students and 70% of African American students planned to enroll in or had already paid into PSLF. At the private new law school, 33% of African American students and more than 35% of white students surveyed indicated that they plan to avail themselves of PSLF.<sup>153</sup>

TABLE 1: PSLF INTENTIONS BY RACE

	White	African American	Hispanic/Latino
Public Flagship	16.00	20.00	50.00
Public Regional	28.63	70.00	50.00
Private New	35.35	33.33	N/A

Furthermore, nearly 77% of students at the public flagship law school, and more than 55% of students at the public regional and private new law schools, with expected law school loan debt exceeding \$100,000, indicated that they plan to enroll or were enrolled in PSLF. These results demonstrate that a significant proportion of underrepresented racial minority students, as well as their white counterparts, and students with the greatest expected debt loads view the PSLF as their primary recourse for repaying their substantial law school loan debt.

Likewise, 40% of the students whose parents earned a combined income of less than \$50,000 annually plan to enroll or were already enrolled in the PSLF program at the public flagship law school. At the public regional law school, more than 21% of students whose parents earned less than \$50,000—but more than 44% of the students whose parents earned less than \$60,000 annually—are counting on the PSLF program as a means to repay their student loan debt. And more than 58% of the students whose parents earned less than \$50,000 annually

153. Curiously, no Hispanic/Latino students surveyed at the new private law school indicated that PSLF was included in their loan repayment plans but both of the Asian American law students surveyed indicated that they planned to enroll or were enrolled in the PSLF program. It should be noted, however, that the private new law school is not terribly diverse in terms of race.

at the private new law school indicated that they plan to use or are enrolled in the PSLF to repay their student loans.

Additionally, more than 35% of students who planned to enter a career in the public sector indicated that they planned to or had already enrolled in PSLF.<sup>154</sup> More than 54% of students who sought a career in the public sector at the public regional law school indicated that PSLF was a part of their loan repayment plans. And more than 30% of students at the new private law school who plan to enter a career in the public sector reported that they plan to repay using PSLF.

TABLE 2: PSLF INTENTIONS BY DEBT, PARENTAL INCOME, AND CAREER INTENTION

	Expected Debt (>\$100K)	Parental Income (<\$50K)	Career Intention (Public Sector)
Public Flagship	76.67	40.00	35.21
Public Regional	55.55	21.70	54.09
Private New	62.80	58.82	30.36

These descriptive results are useful to confirm that the students who arguably most need access to debt relief programs are the same students who intend to enroll in the PSLF program.<sup>155</sup> But, they fail to causally connect a student's endowed traits with likelihoods of debt, career intention, and potential enrollment in the PSLF program. Thus, I analyzed the data more closely using empirical methods, such as fixed effects and logistic regression analysis, to interrogate the factors that most clearly and causally indicate debt expectations, career intentions, and enrollment in the PSLF program. The results of this analysis are outlined in the section that follows.

### B. Results

In conducting a closer analysis of the survey response results, I first employed an institutional fixed effect to isolate the impact that institutional differences may have on expectations of debt, career intentions, and intentions to participate in the PSLF program. This fixed effect also eliminates the bias caused by comparing law schools that produce many graduates with significant debt or that have a public interest focus, although no law school in my sample overtly does. Second, in employing a logistic regression to determine likelihoods of public service careers and intentions to participate in the PSLF program, I controlled for student debt expectations in thousands of dollars or the percent of law school attendance funded by federal loans, depending on the model specification, given that expectations of debt or the percent of attendance the student was funding through federal loan obligations could play a role in explaining both outcomes.

154. These law career sectors included: children's law/ juvenile justice; civil liberties and civil rights; criminal law; education law; employment/labor law; family law; general legal services; government law; housing law; immigration law; and public interest law.

155. See Table 2.

Additionally, I controlled for the following independent variables that relate to these outcomes of interest in this study: race,<sup>156</sup> sex,<sup>157</sup> age,<sup>158</sup> parental income,<sup>159</sup> law school grade-point average,<sup>160</sup> Law School Admissions Test (“LSAT”) score,<sup>161</sup> annual cost of attendance,<sup>162</sup> and risk tolerance.<sup>163</sup> In this analysis, I used a logistic regression model, as opposed to an Ordinary Least Squares (“OLS”) regression model, to evaluate the dependent variables of a student’s intentions to pursue a public service career and to enroll in the PSLF program. I employed this modeling technique because the likelihood of each dependent variable was bounded by zero and one, yielding a truer indication of the likelihood of the dependent variable outcomes that OLS does not provide.

For the first logistic regression analysis with an institutional fixed effect, I regressed a student’s intention to enter a public service career, which included careers in public law that would qualify for the PSLF program,<sup>164</sup> on the independent variables described above and present in Table 3 below. The results were striking, revealing that students in my analytic sample with higher-earning parents, students with better grades, and students with higher costs of law school attendance were less likely to want to pursue careers in the public sector. And

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156. For purposes of the models that I present, race was constructed as a dichotomous variable, where students who self-identified as belonging to an underrepresented racial minority group in the legal education context—including African American, Hispanic/Latino, Native American, Asian American/Pacific Islander—were collapsed into the indicator category (or one), while white students were coded in the comparison category (or zero).

157. Likewise, sex was presented to students as nonbinary, but in the analytic sample (i.e., those respondents who completed the survey), respondents identified with being either male or female, making the variable a *de facto* binary variable.

158. As with all control variables, age was self-reported and was coded as a continuous integer variable.

159. Parental income was transformed from a continuous variable into a categorical variable by increments of \$50,000, to harmonize the findings reported below with the descriptive statistics reported in the LSSSE data above.

160. In lieu of keeping grade-point averages in their standard form, given that the distance from a 3.00 to a 4.00 is enormous in grade-point average points, this variable was represented in terms of incremental differences of one-tenth of one grade-point average points (e.g., the distance between 3.00 and 3.10) to more meaningfully assess the relationship of law school performance on the dependent variable outcomes.

161. While not entirely continuous, the LSAT score variable represents the student’s self-reported LSAT score, which is scored on a scale between 120 and 180.

162. This carriage, annual cost of attendance, collapses continuous responses in increments of \$10,000, based on the student respondents estimated marginal cost of attendance in the academic year (i.e., the amount that the student will pay with funds from all sources to attend law school that year).

163. Risk tolerance was uniquely constructed binary variable for purposes of this study. Students were asked three questions about their openness to tolerating risk in nonloan scenarios that involve risk of loss. For instance, students were asked to rate on a scale of zero to ten—with zero being not at all comfortable and ten being completely comfortable—how comfortable they would be: investing in the stock market; investing in a start-up business; gambling in a casino game (such as cards or a slot machine); and placing a bet on a sporting event. The students’ responses were averaged first by scenario-type (i.e., investment risk tolerance scenarios and recreational risk tolerance scenarios), and then averaged across these two scenario types. Finally, students with an average risk tolerance index from zero to five were classified as risk averse (or zero), and students with an average risk tolerance index exceeding five out of a possible ten were classified as risk neutral (or one).

164. The types of jobs classified as public sector jobs largely overlapped with the positions described in the ABA employment categories. See *2017 Employment Questionnaire (For 2016 Graduates) Definitions and Instructions*, *supra* note 89. Examples of career choices that were categorized as public service careers include: public interest law attorneys; governmental agency attorneys; non-governmental agency attorneys; and non-profit legal careers.

this may indeed be evidence of the influence of socialization—such as family expectations and opportunity that have been richly identified in the literature on the sociology of education—at work in the career choices of law students.<sup>165</sup> Specifically, the results of this analysis indicate that as a student's combined parental income increased by increments of \$50,000, that student would be 20.33% less likely to intend to pursue a public interest law career. Moreover, as a student's law school GPA increased by one-tenth of a GPA point (i.e., from 3.40 to 3.50), that student would be roughly 11.93% less likely to intend to pursue a public sector career. Both of these findings are statistically significant at conventional levels and were robust to multiple specifications of the model, including step-wise specifications.<sup>166</sup> Last, I found that as a student's cost of attendance increased by \$10,000, that student would be more than 30.66% less likely to want to pursue a public interest career at the highest statistically significant level, evidencing the fact that many students are drawn to the private sector when faced with greater tuition costs.<sup>167</sup>

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165. There is a rich body of literature exploring social reproduction and opportunity provided by endowed and family characteristics and how these constructs play out in individuals' educational outcomes. For a seminal work on the subject, see Pierre Bourdieu, *Cultural Reproduction and Social Reproduction*, in KNOWLEDGE, EDUCATION, AND CULTURAL CHANGE 71–112 (Richard Brown ed., 1973) (describing how educational systems reproduce cultural and social values of students' parents' social class).

166. In fact, the same independent variables held statistical significance ( $p < 0.05$ ) across all model specifications and produced odds ratios that had both the same directionality—positive or negative—as well as relatively similar orders of magnitude across each model specification.

167. The results for this finding were statistically significant at the  $p < 0.01$  level. Together, the results from this model specification instill a certain confidence of reliability, given that the R-squared values are respectable in this kind of research, with all exceeding 0.35. See *infra* Tables 3 and 4.

TABLE 3: PUBLIC SERVICE CAREER INTENTION

Independent Variables	Odds Ratios
Race	1.1543 (0.158)
Sex	1.6339 (0.550)
Age	0.9639 (0.043)
Parents' Income	0.7967** (0.076)
Law School GPA	0.8807** (0.044)
LSAT Score	1.0253 (0.0287)
Pct. of Attendance Cost Paid by Federal Loans	1.0001 (0.000)
Cost of Attendance	0.6934*** (0.088)
Risk Tolerance	0.5079 (0.260)
Constant	5.6602 (24.394)
Psuedo R-squared	0.351

For the second and final logistic regression analysis, which also employed an institutional fixed effect, I regressed a student's intention to participate in the PSLF program on the same set of independent variables used in the previous analysis, except that a student's expected loan debt was substituted for the percent of attendance costs paid for with federal loans. Also, because one law school did not allow me to ask questions about a student's intention to participate in the PSLF program, I use data from only the three law schools that did allow me to ask about a student's intention to enroll in the PSLF program. Thus, Table 4, below, reports the results from the data that I gleaned from three of the four law schools surveyed.

TABLE 4: PSLF PROGRAM PARTICIPATION INTENTION

Independent Variables	Odds Ratios
Race	1.9835* (1.002)
Sex	3.0450** (0.1675)
Age	1.0263 (0.0540)
Parents' Income	1.0164 (0.158)
Law School GPA	0.8147*** (0.062)
LSAT	1.0393 (0.0583)
Expected Law School Loan Debt (\$10K)	1.2222*** (0.006)
Cost of Attendance (\$10K)	0.6845* (0.156)
Risk Tolerance	0.5449 (0.349)
Constant	0.4637 (0.384)
Psuedo R-squared	0.383

The results from this analysis are more troubling than the first analysis and thus receive greater discussion. On average, looking within law school, underrepresented racial minority students were almost twice as likely to intend to participate in the PSLF program compared to their white peers, but this particular result falls just outside of normal statistical significance levels. Additionally, women were almost three times more likely to intend to participate in the PSLF program than their male peers at conventional levels of statistical significance. Also, as a student's law school grade-point average increased by one-tenth of a GPA point, that student would be 18.53% less likely to intend to participate in the PSLF program at the highest statistically significant level. Last, as a student's expected loan indebtedness increased by \$10,000, that student would be 22.22%

more likely to intend to participate in PSLF, at the highest level of statistical significance.

These results offer evidence that borrowing and repaying loans to attend law school is highly stratified on endowed factors, like race and gender, as well as acquired factors, such as educational performance. In some ways, this is not terribly surprising, given the overwhelming evidence of structural stratification that occurs within legal education. Studies have indicated that, before they even enter law school, women and underrepresented minorities tend to perform worse on the LSAT than their white male peers, meaning that they undermatch—or attend lower-ranked law schools—and are less likely to be eligible for merit-based scholarships, many of which are based on LSAT performance.<sup>168</sup> Thus, it is understandable that these students would have the highest student loan debt, because many of these students are borrowing loans to pay for their law school attendance at or near the sticker price.<sup>169</sup> This significantly burdens women and underrepresented racial minority law graduates, relative to their male and white peers, precisely as they enter the legal profession and begin debt repayment.<sup>170</sup>

This stratification is perpetuated in terms of the career choices available to women and underrepresented racial minority law graduates, which impact these law graduates well after they leave the halls of law school. Although the legal profession has diversified somewhat in recent years, more than 90% of law firm

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168. In fact, while women perform, on average, better than men in their undergraduate coursework and the same as men in law school, they tend to perform worse than men on standardized testing, like the LSAT, which is often weighted more heavily by admissions committees. See Timothy T. Clydesdale, *A Forked River Runs through Law School: Toward Understanding Race, Gender, Age, and Related Gaps in Law School Performance and Bar Passage*, 29 L. & SOC. INQUIRY 711, 712, 732–33 (2004). The findings of my analysis, with respect to women, also unfortunately comport with recent a recent research paper, noting that when “women are admitted to law school, they attend schools with significantly worse placements rates (and *U.S. News* rank) than men” and that they receive scholarships in fewer numbers and at lower amounts than their male counterparts on average. Deborah Jones Merritt & Kyle McEntee, *The Leaky Pipeline for Women Entering the Legal Profession* (2016), [https://www.lstradio.com/women/documents/MerrittAndMcEnteeResearchSummary\\_Nov-2016.pdf](https://www.lstradio.com/women/documents/MerrittAndMcEnteeResearchSummary_Nov-2016.pdf) [<https://perma.cc/7QWC-8ES6>]; see also Taylor, *supra* note 4, at 496–508 (describing examples of the structural stratification of legal education based on race, including the fact that half or less half of all black and Latino students will receive a scholarship, while two thirds or more of Asian and white students will be offered a scholarship). Law students are also stratified in terms of the law schools they attend.

[Black students] were least likely to attend schools with the most generous scholarship awards, the lowest attrition, and the best bar exam and employment outcomes. Conversely, they were most likely to attend the least favorable schools . . . . On a whole, Black [and Latino] law students are attending law school under the riskiest terms of . . . the four largest racial and ethnic groups . . . .

*Id.* at 501. There are gatekeeping concerns, too, about the stratification occurring as early as a student sitting for an LSAT exam.

Seventy-two percent of Black applicants during the 2016-17 cycle had LSAT scores below 150. This was by far the largest proportion among the four largest racial and ethnic groups . . . and almost three times the proportion of Asian and White applicants. . . . The majority, 55 percent, of Black applicants within this band received no offers of admission, compared to 39 percent of White applicants. . . . These trends contradict the conventional wisdom that Black applicants with lower LSAT scores have advantages over White applicants with similar or even higher scores. The opposite is true.

*Id.* at 496–97.

169. *Law School Costs*, LAW SCH. TRANSPARENCY DATA DASHBOARD, <https://data.lawschooltransparency.com/costs/debt/?scope=schools> [<https://perma.cc/LCP3-V694>]; Erin Thompson, *Law Schools Are Failing Students of Color*, NATION (June 5, 2018), <https://www.thenation.com/article/archive/law-schools-failing-students-color/> [<https://perma.cc/8ZKN-R8XP>].

170. See Fontenot, *supra* note 24.

partners are white, and approximately 80% of partners in law firms are men.<sup>171</sup> While in law school, law students of color secure significantly lower grades than their white peers, impacting their job prospects after graduation.<sup>172</sup> Because law firms often strictly limit candidates for associate attorney positions on the basis of their grades, many law graduates of color are precluded from the most lucrative entry-level legal positions.<sup>173</sup> Additionally, men and women students often leave law school with different credentials. For example, studies indicate that women are more likely than men to find mentors in their clinical work—which is often public interest oriented—as law students.<sup>174</sup> This could explain why women attorneys outnumber men two-to-one in public interest law and why attorneys of color are more common in public interest law than in private practice—trends that have existed for at least two decades.<sup>175</sup> Thus, because of the structural stratification that is taking place before and during law school and by the gate-keeping private sector employers within the legal profession, women

171. See AM. BAR ASS'N, A CURRENT GLANCE AT WOMEN IN THE LAW (2019) [https://www.americanbar.org/content/dam/aba/administrative/women/current\\_glance\\_2019.pdf](https://www.americanbar.org/content/dam/aba/administrative/women/current_glance_2019.pdf) [https://perma.cc/3RRK-A8EH] (citing data from NALP and the National Association of Women Lawyers, noting that women make up just 22.7% of partners and just 19% of equity partners in law firms); Tracy Jan, *The Legal Profession Is Diversifying. But Not at the Top*, WASH. POST (Nov. 27, 2017, 7:08 AM), <https://www.washingtonpost.com/news/work/wp/2017/11/27/the-legal-profession-is-diversifying-but-not-at-the-top> [https://perma.cc/8SSA-PDZX] (reporting that just 9% of law partners were people of color); Bourree Lam, *The Least Diverse Jobs in America*, ATL. (June 29, 2015), <https://www.theatlantic.com/business/archive/2015/06/diversity-jobs-professions-america/396632/> [https://perma.cc/WW6R-M4MV] (relying on 2000 census-level data to report that eight out of every ten lawyers are white).

172. See, e.g., Clydesdale, *supra* note 168, at 726–32 (detailing the remarkable disparity in law school grades between white students and students of color); Alexia Brunet Marks & Scott A. Moss, *What Predicts Law Student Success? A Longitudinal Study Correlating Law Student Applicant Data and Law School Outcomes*, 13 J. EMPIRICAL L. STUD. 205, 243 (2016) (explaining that—even after controlling for LSAT scores, undergraduate GPA, college quality and major, and a host of other factors—students of color receive worse grades than white students).

173. See Clydesdale, *supra* note 168, at 726–32 (noting the disparity in law school grade performance between white students and students of color); Sarah A. Zearfoss, *From Here to Eternity with Your Law School Grades? Not So Much.*, MICH. L.: A2Z BLOG, <https://experience.law.umich.edu/from-here-to-eternity-with-your-law-school-grades-not-so-much/> (last visited Nov. 16, 2020) [https://perma.cc/9LJH-BKJJ] (acknowledging that many law firms have strict GPA cutoffs for evaluating entry-level candidates but arguing that law school grades matter less on the lateral attorney market).

174. See Ruth Anne French-Hodson, *The Continuing Gender Gap in Legal Education*, FED. LAW. 80, 88 (July 2014), [http://www.tsulaw.edu/assets/title\\_IX/TheContinuingGenderGapinLegalEducation.pdf](http://www.tsulaw.edu/assets/title_IX/TheContinuingGenderGapinLegalEducation.pdf) [https://perma.cc/LZ5C-WUVV].

175. INST. FOR INCLUSION IN THE LEGAL PRO., IILP REVIEW 2017: THE STATE OF DIVERSITY AND INCLUSION IN THE LEGAL PROFESSION 16 (2017), [http://www.theiilp.com/resources/Pictures/IILP\\_2016\\_Final\\_LowRes.pdf](http://www.theiilp.com/resources/Pictures/IILP_2016_Final_LowRes.pdf) [https://perma.cc/7BHM-LLTX] (discussing the far greater likelihood of Latinos and Native Americans to begin their legal careers in public interest law, relative to other racial groups); Katie Dilks, *Why Is Nobody Talking about Gender Diversity in Public Interest Law?*, NALP BULL. (June 2010), [https://www.nalp.org/uploads/0610\\_Gender\\_Diversity\\_in\\_Public\\_Interest\\_Law.pdf](https://www.nalp.org/uploads/0610_Gender_Diversity_in_Public_Interest_Law.pdf) [https://perma.cc/YB3D-HDJK] (“[W]omen outnumber men at least two to one in [public interest law positions]—which are some of the lowest-earning fields in the legal profession”); *Employment Patterns—1982-2004*, NALP BULL. (June 2006), <https://www.nalp.org/2006junemploymentpatterns> [https://perma.cc/K2B6-KGYZ] (“[M]inorities are less likely to take jobs in law firms and more likely to take jobs with public sector employers”); *Minorities at Private and Public Sector Employers*, NALP BULL. (Apr. 2003), <https://www.nalp.org/2003aprminorities> [https://perma.cc/DP79-ACQH] (“Minorities accounted for 3.71% of the more than 49,000 partners collectively reported by law firms. Among a far smaller number of public service employers, minorities accounted for 12% of the more than 7,000 supervising attorneys reported.”).

and underrepresented racial minorities may indeed be tracked to public sector careers while holding the greatest debt loads from attending law school. This reality demands further consideration, as well as action, and speaks to the necessity of the PSLF program to mitigate the impact of this structural stratification.

## VI. CONCLUSION

Amidst mounting student loan debt for the vast majority of law students, an ever-increasing access-to-justice gap, and the specter of the public-interest drift, the findings presented in this Article raise as many concerns about the present and future stratification of the legal academic environment and the legal profession as they do answers about the demography of law student indebtedness and its causal relationship with the career intentions of law students. Principally, the results from the analyses presented above evince that a student's career intentions may have already drifted away from a career in the service of the public if the student's parents are high wage earners, the student is successful in law school, and the student's cost of attendance is high. These findings seem to support the notion that high-performing law students and students at more selective—and therefore more expensive—law schools, are drawn to careers in legal careers in the private sector. It may be the case that these students seek careers in private practice precisely because they feel that they can repay their student loans more quickly in a private sector career path. But it could also be the case that the law school experience of these students has socialized them to value careers in private legal practice over the opportunity to make a career serving the public in a legal capacity. Regardless of the individual inputs to the career choice calculus, the reality that the legal profession may become further stratified on the basis of endowed socioeconomic status and law school performance is alarming.

Just as concerning is the finding that a student's intention to participate in the PSLF program greatly increase if the student is a woman or underrepresented racial minority, expects greater debt loads, and performs worse in law school. Because participation in the PSLF program is conditional on public service employment, a student's intention to participate in the PSLF program can be read not only as the student's desire to have the student's considerable student loan debt forgiven but also as a proxy for the student's intentions to pursue a career in public service for a decade or more. When interpreted in that light, this result reveals the ugly truth that the legal profession is further stratifying on the basis of race and gender.<sup>176</sup>

This troubling finding begs two questions. Why is it that women and underrepresented racial minorities are tracking at much higher rates than their counterparts into public service careers? And why should only clients in the private sector be served by attorneys at the top of their law school class? The pattern of women and underrepresented racial minorities tracking into public sector careers

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176. Taylor, *supra* note 4, at 499–500 (discussing the stratification of legal education based on race); Jo Dixon & Carroll Seron, *Stratification in the Legal Profession: Sex, Sector, and Salary*, 29 L. & SOC'Y REV. 381, 381 (1995) (noting the stratification of the legal profession on the basis of sex and organizational segmentation).

has been fairly constant over time and long-predates the creation of the PSLF program.<sup>177</sup> Clearly, much more needs to be done from within the legal academy and the legal profession to ensure socioeconomic, gender, and racial diversity in the legal profession across sectors, so that students from traditionally underrepresented backgrounds are not tracked to a career path because of their endowed traits.<sup>178</sup>

In the near term, however, no existing program offers a more viable path to ensuring socioeconomic, racial, and gender diversity in the legal profession, in addition to addressing the problems of the access-to-justice gap and the public-interest drift, than the PSLF program.<sup>179</sup> And while the PSLF program and its future remain the subject of political controversy, debt relief for student loan borrowers has overwhelming public support.<sup>180</sup> Additionally, the incentive of loan forgiveness to offset lower pay in a career that serves a crucial public need is alluring to many borrowers; the promise of student loan debt forgiveness has already led thousands law school graduates to pursue public service careers.<sup>181</sup> Because women and underrepresented racial minorities also incur the greatest

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177. See INST. FOR INCLUSION IN THE LEGAL PRO., *supra* note 175, at 16; Dilks, *supra* note 175, at 1; *Employment Patterns—1982-2004*, *supra* note 175, at 2.

178. For example, legal scholars have suggested that the law school curriculum could be restructured so that all students, regardless of the practice sectors they enter upon graduation, learn how to better serve lower-income members of the community and how to most efficiently provide legal services at the lowest possible cost to clients. See, e.g., Perlman, *supra* note 104, at 75; Mark Edwin Burge, *Access to Law or Access to Lawyers? Masters Programs in the Public Educational Mission of Law Schools*, 74 U. MIAMI L. REV. 143, 143 (2019). Law schools can do more for lower-income Americans than require each student to complete fifty pro bono hours. Some legal academics have notably challenged law schools to tackle the realities of poverty law and expose students to it in a more meaningful and systematic way in order to catalyze in law students a calling to the area of public interest law. Snow, *supra* note 103, at 665. “By embedding poverty law issues into core curriculum courses, professors can begin to heighten students’ cognitive skills, sensitize students to the disparities in the judicial system, and reinforce the responsibility and societal privilege associated with a law degree.” *Id.* at 684; see also, Rhode, *supra* note 104, at 535–36 (advocating for specialized courses that focus on the justice gap and inadequate access to legal aid, although she too finds merit in a general increased focus on justice gap rhetoric in law school.); Lois Johnson & Louise G. Trubek, *Developing a Poverty Law Course: A Case Study*, 42 WASH. U. J. URB. & CONTEMP. L. 185, 206 (1992) (“There is a great need in the arena of legal education for a course which focuses critically on poverty.”). Furthermore, this vision of a restructured law school curriculum would not be limited to doctrinal learning. Although some have argued that experiential learning might more effectively prepare law students for the practice of law than doctrinal learning, experiential legal education does not teach law students how to practice law efficiently. “[M]ost law schools and most clinical programs continue to teach a predominantly bespoke model of representation, in which each client receives highly tailored and time-consuming assistance that is necessarily expensive.” Perlman, *supra* note 104, at 76. Instead, law schools should be teaching students and new attorneys how to best utilize and work with new technologies that can cut down time and expenses for lower-income families. This paradigm shift in the legal education curriculum could break down the tracking barriers that the legal education may be reinforcing and address the access-to-justice gap simultaneously.

179. Isaac Bowers, EQUAL JUST. WORKS, *How Public Service Loan Forgiveness Helps Close the Justice Gap*, HUFFINGTON POST (Oct. 4, 2015, 4:15 PM), [https://www.huffpost.com/entry/how-public-service-loan-f\\_b\\_6123302](https://www.huffpost.com/entry/how-public-service-loan-f_b_6123302) [https://perma.cc/H2GB-AZ4E] (“In fact, [PSLF is] so vital that many organizations that represent poor people are proactively educating incoming attorneys about their debt relief options.”).

180. A recent survey found that the majority of the public (83%) believes that the government should be doing more to help students repay their student loans. For more statistics on the matter, see Sattlemayer & Williams, *supra* note 66.

181. Di Maggio et al., *supra* note 133, at 3–5.

debt to attend law school and are more likely than their male and white counterparts to enter a legal career in the public sector, the PSLF program has profound implications for alleviating the tremendous debt loads they incur to pursue these careers.

Taken together with the public discourse surrounding the student loan crisis and the access-to-justice gap, the results proffered in this Article suggest that that the students who most need relief for their substantial law school loans—students from lower socioeconomic backgrounds, students from diverse racial backgrounds, students considering careers in public law, and students carrying the highest debt loads, most of whom are the same students across these four categories—are the students most likely to enroll in the PSLF program. Thus, the PSLF program is the best available option to ensure diversity in the legal profession, in terms of socioeconomic status, gender, and race. But the PSLF program also has substantial implications for ensuring access to justice. The PSLF program provides an important pathway for lawyers willing to serve in public service roles—often at dramatically lower salaries than their peers who pursue careers in the private sector, to repay their loans—while helping to address the unmet demand for legal services for those with the greatest need in our society.<sup>182</sup> To eliminate the PSLF program, and forsake the important goals that it accomplishes, would be a mistake.

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182. For example, it is estimated that legal aid lawyers “are estimated to provide just 1 percent of the total legal needs in the United States each year . . .” *3 Ways to Meet the “Staggering” Amount of Unmet Legal Needs*, AM. BAR ASS’N J. (July 2018), <https://www.americanbar.org/news/abanews/publications/youraba/2018/july-2018/3-ways-to-meet-the-staggering-amount-of-unmet-legal-needs/> [<https://perma.cc/C87V-5FNR>].

