Conference on Consumer Finance Law 2021 Frederick Fisher Memorial Program: Developing Changes in Forgiveness of Student Loan Debt

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Panelists:
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Katherine Welbeck, Civil Rights Counsel, Student Borrower Protection Center
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I. Introduction: Moderator John Chiles

John: Welcome, everyone to the Fred Fisher Memorial Program. I'm John Chiles. I'm the Chairman of the Governing Committee of the Conference on Consumer Finance Law. I want to thank the Consumer Financial Services Committee for co-sponsoring this program with the Conference on Consumer Finance Law, which we call the CCFL.

First, I want to tell you a little bit about the CCFL. This is a nonprofit organization founded in 1926 by members of the legal profession and financial services industry to offer educational services, publications, and research relating to consumer financial services law.

We do several things at the CCFL. One is the sponsor of the Fred Fisher Memorial Program. This is a debate among industry representatives, consumer advocates, and government officials, no government officials today, on a topical issue affecting consumer finance.

The program is a little different from the average CLE program. We're not going to use PowerPoints, we're not going to drill down on technical issues of law. It's a discussion of policy, and we try when we plan the program to anticipate what's going to be an important issue, and since you have to plan quite a time in advance, it's hit and miss. This time, I think we did it. We anticipated that student loan forgiveness was going to be an important issue. It was important during the presidential campaign, and in fact, it's heating up and it's getting consideration. We'll talk about that in a minute.

Another thing that CCFL does, we sponsor conferences, CLE conferences. One in Chicago in the spring and in Fort Worth in the fall. Those are two-day conferences, full CLE, and in recent years, we have invited all in-house counsel to attend for free. Those are well attended. We think those are great programs.

This year during the COVID restrictions, we've had to go to webinar, just as ABA has. We've had two six hours, full CLE webinars. One short webinar, we intend to have two or three over the course of the summer, one-hour webinars. In the fall, we're going to present a mortgage law symposium featuring articles and presentations of those articles by some of the top mortgage lawyers in the country.

The framework for that we set in February when we presented this. This is our *Consumer Finance Law Quarterly Report*. This was a debt collection seminar with 17 articles by some of the top practitioners in the country. We're very proud of it, and if anyone would like to see a copy who doesn't have access to a copy, send me an email or send one to the CCFL and we'll send you a complimentary copy of this debt collection symposium in our *Consumer Law Quarterly*.

The publication of the *Consumer Law Quarterly* is one of the most important features of the CCFL. We have—as the name suggests, we have four a year. We have articles by practitioners. These are not esoteric nitpicking articles. These are written by practitioners, involving issues that they know are important. If you practice in the area, I suggest to you that you ought to be subscribing to this.

The membership and subscription is available on the CCFL website. That's my infomercial for the CCFL.

[Background of Fred Fisher program omitted for brevity. For a historical overview, see 73 Cons. L Q.R. 205 (2019)]

Thank you for attending. I'm going to introduce the panelists. . . . We have Persis Yu. Persis is a staff attorney at the National Consumer Law Center, and the director of the NCLC Student Loan Borrower Assistance Project. She is a contributing author to the NCLC's Student Loan Law and Fair Reporting. I'm going to hold this thing up. This is the publication that Persis is one of the editors on. Can you see? Is it legible?

Kelly: Hey, John. Move it.

John: Anyway, if you've never used the NCLC series of—I don't know what we call these handbooks. They're almost too thick and weighty to be a handbook but maybe a deskbook.

Persis: Called a treatise.

John: Treatise. These are excellent resources, I've used them all the time I practice consumer finance law. I don't always agree with them but the research is impeccable and the breadth of them is really to be recommended.

Then I'm going to introduce next Kat Welbeck. Kat is the civil rights counsel with the Student Borrower Protection Center, a non-profit organization that works to protect student loan borrowers through advocacy, policymaking, and litigation strategy. Her work primarily focuses on examining the student debt crisis through a lens of racial equity and economic justice.

Prior to joining her current employer, she worked in the CFPB's Office of Public Engagement and Community Liaison. She's a graduate of Penn Law School and Princeton undergraduate. She's been very helpful to me in putting this panel together. Also, she was helpful to us in publishing, in the *Consumer Law Quarterly* in the most—not the most recent edition but the one before that, an article entitled *Race: Examining Legal Remedies for Disparate Student Debt Outcomes*.

This article is reprinted and is included in the materials for this program. Scott Buchanan is the Executive Director of the Student Loan Servicing Alliance, a trade association that represents student loan servicers and their servicing partners for both federal and private student loans.

He's worked for nearly 20 years on student loans, 529 savings plans, tax and contact center issues. Scott is extremely knowledgeable in this field, and he's also been very helpful to me in putting together the program.

Finally, Kelly Lipinski is our colleague. I'm sure everybody in the CFSC recognizes and knows Kelly. She's a member of the McGlinchey Stafford Firm in Cleveland. She's also a member of the Governing Committee of the CCFL. She advises clients on regulatory compliance matters involving the consumer financial industry. She has a great breadth of experience.

One of her areas that she represents clients in is servicing of student loans. I think primarily, maybe exclusively, in the private loan area which is one of the two facets of student loans.

Now, let me try to set the stage just a little bit, and I want everybody to keep in mind that this is not my field so everything I know about this I got from these four panelists or from the popular press or one of the articles that was presented to me by my panelists.

I think we all know that the student debt load in this country has become an intractable problem and it needs to be fixed. Conceived in its initial enabling statutes, the provision of federally supported student loans was intended to provide a mechanism for young students to improve their lot in life by attaining higher education. Currently, college graduates earn 80% more than non-graduates.

That gap is sure to grow as the American economy becomes more high-tech, but in its current operation for many students, student loans have become an impossible burden which worsens their prospects and they often owe more after many years of attempting to amortize their debts than they initially borrowed.

For federal loans, the federal government has what I regard as superpower or collection powers. They can do a non-judicial garnishment. They can attach federal payments through an offset of things like tax refunds, earned tax credits. Finally, to compound the problem, there are serious restrictions on the ability of borrowers to eliminate the debt through bankruptcy. We'll talk about these things in a moment.

These are problems and the problems had been exacerbated by the increase in the cost of tuition, tuition goes up, up up. I paid for three kids to go to college recently and I can tell you it's a real shock what's going on with student tuition. That, of course, exacerbates the problem with the student debt. In fact, it makes student debt more attractive and necessary for students who, in the past, would have relied on family wealth to put them through school. Those students are increasingly relying on student loans.

Here are some of the numbers. Size of debt is—Outstanding student loan debt in this country is approximately $1.7 trillion owed by 45 million borrowers. It's the second-largest tranche of debt, second only to mortgage debt. Since 1983, the cost of college education has risen by more than 700%. I think that's what the sources tell me. . . . Somebody can take issue with that number. One of my panelists, I hope you will if I'm wrong.

In the past 10 years, student loan debt has increased by more than 99%. The student loan debt is primarily owed to the federal government. The federal debt amounts to 95% of all student debt. That's why any discussion of federal loan forgiveness is germane to almost all but just a small sliver of student lenders.

During the presidential campaign and afterwards, President Biden has been urged to make blanket forgiveness of tranches of student debt. He's indicated an inclination to seek forgiveness of up to $10,000 per borrower, but progressives have urged a more aggressive program of debt forgiveness, up to $50,000 per person.

This is not just idle, urging on Twitter, hearings are underway. Last week, Senator Warren conducted a hearing of a subcommittee of the Senate Banking Committee in which this was presented front and center. I'm sure we're going to hear more about it. Initially, President Biden indicated his belief that he did not possess authority to forgive, as an executive matter on an executive order without a congressional enactment, more than $10,000.

In fact, he expressed some skepticism that he could do that, but in recent days, he's requested the Secretary of Education to study the issue of what authority he had under existing legislation to forgive up to $50,000 in debt. What seemed to be off the table may not be after all.

A debt forgiveness of $10,000 per person would eliminate the entire debt for two-thirds of the borrowers. A debt forgiveness of $50,000 per person would eliminate the debt of 93% of the borrowers. There are a lot of people out there that like this idea, a lot of people who are recent graduates, and in fact, student debt is something that is carried by people for decades after their college experience.

There are a lot of older people too who think this is a good idea. What I'd like to do is I'd like to ask the panelists to address the issue, and this is what we at trial call the ultimate issue. I will tell you that according to rule 704, the Federal Rules of Evidence, an opinion on an ultimate issue is not objectionable on that ground. We can do this.

Here's the question, and I'd like to pose this initially to Persis, and then to Kat, and then to Scott, and then to Kelly. I'd like for each of them to take 10 minutes. Before I do this, I want to say something to the audience. We always say during this program that the audience is the fifth panelist in this. We expect and we want questions from the audience, questions and comments.

In a live presentation, we usually have people lined up out at the microphone in the aisles. We have excellent exchanges with the audience, sometimes we have people who are really active in the area. Executives at the CFPB come to the mic if comments are made about the CFPB; we have aggressive questions, and how that works in a virtual setting I don't know, but I'm going to field questions if they come in on the Q&A function.

As long as they're short, and germane, and not rude, I'll try to get those questions to the panelists as we proceed. I urge you to send me questions, identify yourself by name, and I will identify the questioner. Give us at least 50 minutes from this point for the four panelists to make their opening statement before you start peppering us with questions.

Again, I reserve the right to not ask the question because we've got some things that I think are important to cover before we get to that point. Here's the question. Should the Biden administration grant a blanket student debt forgiveness? If so, why? If not, why not? Secondly, if the debt forgiveness is granted, should the amount of forgiveness be $10,000, or $50,000, and what's the reason for your answer?

That ought to give you plenty to work on for 10 minutes. Persis, if you would kick us off, and, panelists, make sure you unmute yourself before you start. Persis.

Persis: All right. Thank you, John. Hello, everyone. Thank you so much for having me here today. As John said, my name is Persis Yu, and I'm the Director of the National Consumer Law Center Student Loan Borrower Assistance Project.

You understand our perspective a little bit more, our project works on behalf of low-income student loan borrowers, in addition to some of the broader policy work that we're known for. We do work directly with low-income student loan borrowers in the Boston area and support a network of legal services and private attorneys who represent student loan borrowers across the country.

Through the work that I've done directly with clients and supporting advocates with clients, I've seen firsthand the devastating effects that the student loan system has caused. John mentioned the superpower collection powers. I've had clients lose their housing because of a garnishment. I've had clients tell me that they can't afford to buy diapers because of the collections that they're experiencing.

I hear from older borrowers across the country all the time, that tell me that they don't know how they're going to retire with their existing crushing student loan debt. I'd like to start with a statement of values, the very basic premise. That is that people should not lose their housing because they tried to get an education. People should not have to jeopardize their family's financial security because they tried to get an education, and people should not be prevented from retiring, starting a family, starting a business because they tried to get an education.

Student loans were created, as John mentioned, to be a tool of access to an education, which was supposed to promote social and economic mobility. Where we are is that, for too many, our system has failed to deliver on that promise. I'm glad that John mentioned the numbers, but I'm going to mention them again because I think that they're really stark and important to recognize.

We have 45 million student loan borrowers collectively owing $1.7 trillion of student loan debt. Pre pandemic, a quarter of those borrowers were behind or in default on those loans. That only gives you, I think, a glimmer of the struggle that student loan borrowers experience because what it doesn't capture is the folks who were making payments, but at great expense. It doesn't capture the folks who were not saving for retirement at all. It doesn't capture the folks who were not investing in homes or their financial futures.

I'm going to pre-empt Kat a little bit, but I'm sure she's going to go into much greater detail, predictively the financial toll of student loan debt hits low-income individuals, women, and people of color the hardest. Folks from these communities have to take on more debt and they have a harder time paying it off. Looking at race, in particular, we know that there's the racial wealth gap and because of the racial wealth gap, people have to take on more debt to go to school, but then student loan debt is also exacerbating the racial wealth gap. We are reducing the available assets that communities of color have.

The student loan system was a crisis even before we were in the current pandemic crisis, and I think it's incumbent upon us to acknowledge that for millions of borrowers, their education failed them and their degree if they were able to achieve one at all, did not pay off. For millions of borrowers, the payment system has failed them where bureaucratic and abusive systems have systematically denied borrows access to the programs that they're entitled to under law.

For millions of borrowers, society has failed them. We have failed to provide equitable opportunities that allow students and graduates to fully realize the benefits of their education. Now we come to the moment that we're in now and ultimately the question that John posed to me, we know the impact of the pandemic is hitting hardest the folks who are hit hardest also by the student loan system.

We have a temporary reprieve with the payment suspension, which is scheduled to expire on September 30th of this year. We cannot allow the system to turn back on as it was before. We must allow borrowers to recover along with the economy, and I believe that we need widespread debt cancellation to begin, just to begin to solve the student loan crisis.

There is widespread agreement that there are millions of student loan borrowers in debt that should just not exist. The question is, how do we get the relief to the people who need it? I expect that some will say that we need to target this relief, and my first contention is that is actually an impossible job to do.

It is impossible to discern who is deserving of relief and who is not. Do we do it by income and if so, how do you discern the folks who have low incomes but high wealth, or the people who have high income but zero wealth? Then tying that in with race, we know, again, that students of color have to take on more debt. How do we ensure that we get the relief to those folks?

We know that even if you're looking—again, coming back to the question of wealth, if you're looking at even Black borrowers with high incomes, they still have significantly less wealth than their white peers. The other thing about targeting, and I know that John wants to talk more about this later on, is that we've tried it. We actually have many targeted forgiveness programs in our federal student loan system and they don't work.

I think the prime example is Public Service Loan Forgiveness, which has a 98% failure rate. We have Income-Driven Repayment, which in six years of theoretical cancellation has only produced cancellation for 32 borrowers. We have a disability discharge program, which is supposed to relieve borrowers who have disabilities that prevent them from working of their student loan obligation.

In that system, we have 400,000 borrowers who have been identified and known to qualify who have not yet received that relief and probably hundreds of thousands more who we have not yet identified. Targeted relief, frankly, has failed to deliver the relief to those who need it most.

The last question that was asked is how much? What's the right number? Canceling $10,000 in debt would leave 16 million borrowers completely debt-free and eliminate a significant number of the loans of folks in default. Absolutely, it does it a good amount of good for some folks, but what nuance we're missing in that again, is the racial analysis. Is that we know that women and people of color have to take on more debt in order to go to school.

$10,000 of debt cancellation doesn't get the relief to all the folks who need it. Canceling $50,000 in student loan debt would provide significantly more and economists have suggested that in order to start addressing the racial wealth gap, we need at least $50,000 of cancellation and in fact, actually, that number is a little outdated and probably should be higher. With $50,000 of student loan debt cancellation, approximately 93% of Black borrower households in the bottom income quintile would be alleviated of all of their student loan debt.

Just to come back around, I want to emphasize that the student loan system has failed to serve the student loan borrowers that need it. We are in a moment where big changes are desperately needed and we have an opportunity to make those changes. My position is I think the most effective way to begin to solve the student loan crisis is through widespread debt cancellation. I look forward to our further conversation and thank you so much, John.

John: All right. Kat.

Kat: Hi, everyone. I just want to start by thanking John. Thank you so much for your kind introduction up top, and then just also really thank the ABA Business Law Section for the opportunity to be on today's panel. I'm really excited, as you can see by my title, I'm really excited to talk about this issue and, like you said, increasingly timely topic, and so good morning to everyone.

As John said earlier, I'm Kat Welbeck, I'm deputy director of advocacy and civil rights counsel at the Student Borrower Protection Center. Then just to, again, repeat what John said earlier, a little background on our organization. We're a nonprofit that is solely focused on alleviating the burden of student debt for student loan borrowers all across this country. Again, very excited to talk about this issue today.

Just to briefly walk through what I'm going to talk about in my 10 minutes and to answer John's question, I guess just right up top, I support administrative action to cancel $50,000 of student debt. What I want to do is start a little bit high level with some of the ways that student debt inhibits economic growth. Talk a little bit about how cancellation will help advance equity goals and then just also briefly talk about some of the other actions that the Biden Administration should take to complement debt cancellation.

I know that is a lot, so if I don't get to it, I'm sure there'll be time to discuss a bit later. I just also want to add it is so hard to follow someone as awesome as Persis, but I'm just so glad that she really did such an awesome job of laying a lot of the groundwork and overview of where we are with the student debt crisis and also a lot of the policy shortcomings that we have to address in terms of—A lot of the policy shortcomings you have to address with regards to student debt.

Again, I really appreciated Persis's framing and also talking about where we are in the pandemic because I think just first that debt cancellation, we can't take it away from the moment that we're in right now and it really is a means to provide a much-needed stimulus to help all federal student loan borrowers during the pandemic, but also to advance racial equity goals.

I think we've really seen the pandemic lay bare how much economic strain that millions of Americans are facing right now, like Persis is talking about, struggling to make ends meet, and then we just have to think about there are so many people struggling during this economic crisis before so many have even recovered from the great recession. Student debt really threatens to exacerbate the ongoing economic fallout from the pandemic when many families are still trying to recover from a struggle from the past decade.

Increasingly research has shown that we see the borrowers are not getting the relief as intended under the Federal Student Loan Programs and that what's even more discouraging is that student debt fuels economic, gender, and racial inequality and it really inhibits asset accumulation and accelerates wealth gaps. What we're seeing is that this debt is really a lot, like Persis outlined earlier, it's really hindering borrower's ability to save for retirement, to buy homes, to start businesses, and even to start families, and that affects all of us in all of our local communities. This is something that we should all care about.

We know we've been told that education is a tool for social mobility, but I think as we've seen time and time again that student debt is really hampering economic opportunity for millions of borrowers and, like I said earlier, that should be something that's concerning to all of us.

When Congress created so many programs for relief, they intended for millions of borrowers to receive some form of debt cancellation. This is not necessarily a new idea, we're just talking about it in a new form, but as you've heard today and we'll talk about it a little bit later, we see that system's not working. Like Persis said, when 98% of borrowers who are in PSLF are being denied, that's not working.

We know that Congress promised relief for borrowers defrauded by predatory schools and we're still struggling seeing borrowers get relief there. They guaranteed that if borrowers were making payments on income plans for decades, they would get relief, we're seeing that's not happening. We've been told again, that borrowers who have committed their careers to public service, committed to serving their local communities would get that relief after 10 years of public service. Again, we're not seeing that happen.

We've also seen that there are programs created for student loan borrowers so they wouldn't have to fear forces that are completely out of their control. If they have unexpected school closure or if they have a permanent and total disability that they would get discharged, and we still see that borrowers not having access getting this type of relief.

When our current system hasn't lived up to that promise, providing some level of base cancellation just helps control for a fundamentally broken system. We're saying, we're not doing what we're supposed to do, and let's try to fix this. That's on one level.

I think we're seeing these problems across the board with existing relief programs, but there's also a larger conversation about how this debt is indicative of larger systemic failures, and I just really love that Persis kind of let into some of this and I want to talk about it a little more and I think in this country, I think we're rightfully having conversations about advancing racial equity and how we haven't fully lived up to our nation's promises of equal opportunity for everyone and how that's contributed to our persistent racial wealth gap. I think that drives so many of the disparate loan outcomes that we see for Black and Latino student borrowers.

If we're going to talk about how do we create a more equitable, a more just economy, we can't overlook the long-lasting effects of redlining, labor market and credit discrimination, and how our student debt crisis is a direct reflection of that and continues to perpetuate systemic barriers of racial discrimination. I think it's important to talk about that because it's also deeply interwoven.

I like to start with the racial wealth gap because I think it helps to show how this divide can become really intergenerational. If we have Black and Latino borrowers starting off with less household wealth— We know that white families have almost 10 times the household wealth of Black and Latino families. If we know that those, then we're going to see that because Black and Latino students have less household, they're going to take on more loans to go on to school. With Black borrowers, it's almost 90%. With Latino borrowers, it's about 72% in comparison, about 66% for white students.

What we see is that if the students are more likely to take on debt, they're going to leave school with more debt and that cuts into wealth creation over their lifetimes. Again, that cuts into being able to save, being able to purchase a home, being able to, again, save for retirement, and so when their children attend college, that cycle then repeats and so what does this mean and what does it actually look like?

We see even in terms of repayment and how long it even takes borrowers to repay their loans, if you look at 20 years after starting college, the median Black borrower still owes 95% of his or her original balance in comparison to the median white borrower who's paid down almost 95% of their original balance. It's again, similarly for Latino students, we see after the beginning of college, the median Latino borrower owes about 83% of his or her initial balance after 12 years in comparison to the median white borrower who's paid down almost half.

When you think about what does that mean over those student loan borrowers' lifetimes in being able to create wealth to be able to try to combat this larger racial wealth gap? How do we talk about addressing the systemic disparities? When we think about that borrowers are spending that much time in repayment and still not paying down their loans, and so really thinking about cancellation, and I was writing this down because when Persis said it, I was like, "This is it." Education is supposed to be a tool of access and that is not living up to that, and so how can we use debt cancellation as a means to create access?

Quickly back to the cancellation as I know my time is nearing, but I think that cancellation is just one part of a larger solution to address maybe the issues that we're seeing in the student debt crisis and I think cancellation—and we're using numbers, $50,000, is just a first step and it's a necessary and critical step to advance equity and to restore justice.

I think we have to ensure that, for the first time, that these safety valves that were created by Congress and established by law serve their intended function and provide relief to borrowers, and then also address many of the policy failures that we've made and that have created a racial wealth gap that have contributed to these systemic disparities. This is really our chance to right some of those wrongs.

I think it's critical that the solution is twofold, so I think there's cancellation as one part, and I'm sure with time throughout the rest of the program, talking about how do we fix many of these other policy failures so that it's cancellation and how do we create a program that is sustainable and so we don't put ourselves back into the same place, but thank you for the time.

John: I was telling Scott to unmute himself, make sure you unmute yourself, but I was muted. Anyway, Scott, if you would.

Scott: Yes, now thanks. Again, like the other panelists, thanks for holding this conversation. Certainly, this is a big topic right now and I know that it takes us into a lot of other things that we want to be looking at. I guess I'm here, I work for the credit association, which represents student loan services. We're the ones who deal with every single student loan borrower, whether they're being successful or are struggling or whatever that situation is for them.

I think we get sort of a breadth of view about the totality of the program that I think is probably helpful for this conversation. I want to say, first of all, from a servicer perspective, we haven't taken a position on loan forgiveness, whether it's a good thing, a bad thing, or what the amount should be, so I'm really going to speak from—I've been working in this space for 20 years and I think I have some good sense of what the arguments for and the arguments against are.

I guess I'm tasked with thinking a little bit about what are some of the other positions out here and concerns that loan forgiveness raises, but before I get to that, I think like what we've heard so far, we really need to step back and say, what problem are we trying to solve? I think it is correct, I agree with my other panelists, I think about what the problems are in the sense that we have outcomes of the system that are not desirable in some respects.

First of all, I think many borrowers and most borrowers who take advantage of the federal student loan program graduate, they get jobs and the whole system works. There are some who it does not work for, and so we have to figure out what are we trying to do to fix their problems? I do think just off the bat, I think in looking at solving solutions, we all can't throw our hands up and say, "Well, we can't figure out who's really got the problems." I disagree with Persis on that, fundamentally, which is that is our job if we're policymakers using scarce resources, using taxpayer dollars is to figure out who is struggling and help that person rather than providing massive federal subsidies to people who don't need it.

I think that's just being a steward of a good government. I think we do have to do that hard work, but I think we need to look at, number one, what is the driving force here of what we're facing today and those who are struggling and we have to talk about college cost issues. College cost has increased by more than 400% over the last 10 to 12 years, that's at a rate that's faster than healthcare costs have increased to give it some context.

If you spend all your time looking at the back end and not looking at the front end, I'm stealing this from somebody's tweet and I apologize to whoever that was that I'm stealing it from, but the discussion of loan forgiveness is a little bit about like going into your bathroom and finding that the pipe is broken and instead of turning off the water, we grab a mop and keep mopping.

Well, the water keeps coming, and I think that's the challenge we've got to really think about is if you look at loan forgiveness, number one, if you do that tomorrow, what about the millions of students that graduate the next day with student loans? What do we do about them? I think that raises equity questions and the government ought to think about equity questions. It's the one entity that ought to be considering making sure that it's treating people appropriately, targeting relief, but also making sure that we're not treating people fundamentally differently who have the same basic need or in the same basic distress.

Picking winners and losers is hardly a good idea for government policy unless you pick the winners and losers who are based upon a disciplined rubric of who needs help and who needs support. I think there's also a real question about are we providing subsidy to those who don't need it? I hinted at this before, but if you're looking at large scale loan forgiveness without any parameters around it, lots of people are going to get a huge benefit who are not struggling with paying back their loans. You might say, "Well, great, we're always going to give a little bit extra to people who maybe don't need it," but there is an opportunity cost for every dollar that is spent by the federal government. If we're going to spend $400 billion on loan forgiveness and that's on the low-end if you do the smaller amounts, that's enough to double the Pell Grant for the next decade.

Now, and I argue that if you look at that if you doubled the Pell Grant, you would be providing people, number one, access on the front end.

You would reduce their need to borrow, so they wouldn't have loans that you might have to consider forgiving in the future and that may be a more equitable choice about what to do with your scarce resources. Obviously, this is all up to Congress to decide what's the right way to think about that, but I think we do have to think that there is an opportunity cost for this.

If you're thinking about the federal programs that we spend money on, it seems hardly sometimes appropriate to think about that's the right way to spend it. I think we also have to really consider very strongly what does this signal to borrowers and students in the future as well. Are we teaching people or guiding them here that you shouldn't worry about your loan choices because we'll clean it up on the back end. I worry very strongly about, what does it do to colleges and universities in terms of their pricing?

If basically, students don't have to ever pay back what they borrowed, colleges will be unfettered in their desire to raise prices because there's going to be no real cost to anybody but the taxpayer. Keep in mind, a lot of the taxpayers are not the people who have gotten the benefit of a college degree. I think there's some significant concerns about this.

I think certainly the higher the amount in some ways, you'll get more people totally forgiven their loans, but you're also then going to get into a situation where you're providing loan forgiveness to doctors, lawyers, professionals, people who've gone to graduate school and have relatively high earning jobs. That's a real question of is that where we should put taxpayer dollars? Stepping back from that momentarily, I think we really need to look at, again, and agree on the problems.

There's no doubt that if you look at what the system is that we have today, it was designed to create access. This is to take people who were historically denied from accessing our higher education system and providing them access. It's probably not surprising at a policy level that the majority of borrowing is done by minority populations who have been denied access or do not have wealth coming into this. Those of course are the whole point of the federal program is to provide access to those.

Outcomes of disparity on the backend don't necessarily tell us that the program isn't doing exactly what it's supposed to be doing. In fact, it probably is. Now, there's a question of, is this the right way to do it? I think is the federal student loan program, which we've become highly reliant upon?

The federal government has dramatically expanded its lending as opposed to other programs like Pell Grants, encouraging institutional aid states, investing in reducing or controlling costs, those sorts of investments.

From a policy level, Congress has really relied upon the federal student loan program to drive access. I think it's a legitimate conversation to say, "Wait a minute, is that the right balanced approach we want to take?" We want to have a loan program that lets people stretch into the next institution to get into the school that's slightly more expensive than the one that they're able to get in by themselves, those sorts of things, but are we too reliant on the program today?

I think that's a real question that we need to talk about, and I'm sure we'll talk about the other things about some of these other programs that exist. It's a little concerning to me when we talk about, for example, we talk about an income-driven repayment plans that—on those right now, like 32 borrowers have gotten loan forgiveness. I'm surprised it's 32 because the programs were not designed to begin providing any benefits for several years from now.

Now there's a convoluted way that borrowers who were an income-contingent repayments and keep in mind in 1997, there was only 56,000.

It wasn't 2 million, but 56,000 people, if they hopscotched around and prognosticated that Congress in the future would provide an additional loan forgiveness program that they might be eligible. I think we use these statistics sometimes to validate the arguments, but I'm not sure that they validate the same argument.

I do think it's right to think about though with existing loan forgiveness programs today that they are not designed. Congress intentionally designed them to not provide a lot of people forgiveness, that wasn't an accident. In fact, I was around when those programs were being developed and they were retweaked in a lot of the requirements. For example, in public service loan forgiveness were added in during the discussion of development because it lowered the score, that CBO score the program is.

Congress knew full well what they were doing, which was they've created a lot of barriers to get those forgiveness programs. I think we ought to talk about, why are those barriers there, and if we're going to spend and we're willing to spend taxpayer money, we should make those programs more effective and make sure that they are more open to people who actually need them. This didn't happen by accident and it's certainly not something that's a result that has come about to surprise us. This was the structure of the program and design.

Let me finish up, I guess, for this section and say, I think there's a good discussion about whether loan forgiveness is the right solution. I think in isolation, it doesn't solve the real problem and that's what the conversation ought to be because, in world of policy, we have to make tough decisions and fix hard problems, not go big with solutions that don't solve the long-term trajectory of where we're going.

John Chiles: That's great, Scott. Thank you. Kelly.

Kelly: Thank you, John. Thank you to my other panelists. I appreciate you having me on this panel. As John mentioned, my background in the space and the place that I advise clients on is really in the private education loan space. The companies that I work with, lenders, servicers certainly do it differently than the federal government.

What I perhaps can bring to this conversation is familiarity, awareness, and understanding, but certainly, a perspective of maybe what can be done to improve or to learn from on the private side that may influence some of the solutions that we try to build on the federal side. I am a regulatory and compliance lawyer. When I am presented with a challenge or presented with a problem, I really focus on the root cause analysis, and that guides how I think about this issue.

I appreciate and I agree with the concerns that Kat and Persis have identified. Yes, the burden of student loan is crushing. Yes, it is having a very disproportionate effect on minorities, low-income citizens and that is a problem, and it needs to be addressed and hopefully, a solution we can craft towards resolving that. My concern is that the idea of blanket forgiveness is not the appropriate solution. It feels good and it's certainly if I'm the one who has federal debt, I will appreciate that. Who will not love to have their debt forgiven?

It feels good, but I am very concerned that it is not an effective or the best solution that is out there. A couple of things, as I mentioned, root cause. I think as Scott said, this solution or this idea affects and helps borrowers that are in repayments. It does nothing for the students that are currently in a four-year program right now, or in grad school right now who are going to have the crushing impact of student loan debt at the end of this academic year.

If we're going to start this now, I fear that it is going to perpetuate, and every year, we're going to have to effectively wipe out debt. I do not view that to be a long-term or practical solution to this issue. Second, I believe that forgiveness of debt without any type of merit-based analysis is just fundamentally inequitable. I'm not trying to be a hardliner on this point, but if people have the ability to repay—I'll appreciate Persis point, how do we establish that ability to repay? We'll talk about that in a second, but if people can pay—

Man, the federal government made a bet on that borrower without any real underwriting, they made a bet on that student to say, "Hey, we want you to go to college." If that student is successful, has a degree, has income coming in, and can repay their debts, I believe we should hold them to that.

For people who cannot, who are under that crushing burden of debt, let's talk about providing them some merit-based relief, some relief that is either based on their income, based on their wealth.

We can play around with how we go about determining that, but I really do not think it is appropriate or the right solution to allow someone who has a fantastic income coming in, can pay their bills, is in a 2% income family to basically say, "You can walk away from your debt." That just feels inequitable and it's also, certainly from an economic policy perspective, I don't believe it's the right approach.

We have all talked about some of the original policy ideas around why the federal loan program was created. We've talked a little bit about—I think about is there's two concepts here. One, we want to create a very well-built workforce in our country. Our country has a need and an interest in making sure that our population is educated, that we provide an economic and some of the highly skilled workforce concepts. That's certainly one policy of why we need to continue with a Higher Education Act and Federal Loan Programs.

Second, or the policy reasons that we've already addressed, which is that we need to ensure that low-income and middle-income, and minority borrowers have access to higher education. I'm not suggesting that we repeal the Federal Loan Program. It is an extremely important program and part of our country with a lot of various important benefits that it's providing. If I'm coming to this conversation and I'm saying, "I don't think a blanket forgiveness is the solution." I think that word is important, blanket.

I believe forgiveness is an important element of the solution, but I don't believe blanket forgiveness is the solution. If I don't think that that's the solution, I think it's incumbent on me to try to come up with some alternatives, what could be a solution? As I'm thinking about what options are on the table, I think maybe three different options. One is the homeostasis, what we're doing right now.

With federal loans, it's an extremely lax and low underwriting, if any, on the front end. Almost anyone can get a loan, and then now we're contemplating this idea that almost anyone could have the loan forgiven, so loose on the front end, loose on the backend. We're effectively saying free college education.

Second, would be applying some type of underwriting framework for students. Instead of basically saying, certify that you're going to attend this college, certify that this is the cost of your education, a very need-based determination, which is the current model shifting a little bit and incorporating some type of creditworthiness. I acknowledge and I respect that the characteristics of borrowers are often that they don't have a credit history or that they have a thin credit file.

There may be an opportunity to partner with a private space, partner with private lenders, and evaluate some of the tools and the metrics that some of the private education loan companies are adopting to make smart choices on borrowers that are attending college. If we put people more in option two, which is, "Hey, let's try to apply some better underwriting or even any type of underwriting on the front end to ensure that people actually should be incurring $100,000 of student loan debt," is that really something that is a smart choice?

We understand they're going to be settled, and they have really minimal ability to repay. I don't think that is the right solution at the end of the day because I think it is inconsistent with the policy goals of the Higher Education Act. I think it's inconsistent with what we are trying to accomplish with a student loaning, Federal Student Loan Program. We want to facilitate access to college to allow our citizens, our fellow

Americans to progress and get a degree. I think that's an option, but it is not one that I would advocate for.

I think the third option would be continue with the underwriting process that we have right now but adopt more stringent and consumer-friendly solutions on the backend. If people cannot pay their loans, let's try to help them out and find some meaningful and working solutions. For example, I think we've talked about this, and perhaps the things I'm going to introduce, certainly are not novel.

In preparation for this meeting, and I was looking at my notes from prior presentations, going back almost a decade, there are certain common themes that we've seen over and over again, bankruptcy relief. Bankruptcy for student loans, let's take out that exclusion or let's at least perhaps adjust it in such a way that it allows an appropriate period of time, 5, 10 years, allow a consumer, a borrower to actually discharge their debts. That would address the need-based concept if there are concerns with how the student loan product is actually formed.

One of the concerns that I appreciate is that when people are in a forbearance or a deferral, interest is capitalized. Well, let's prohibit capitalization of interest. Let's allow interest to be waived. If it's this idea that you can never get out of debt, that the debt continues to accrue even when we are in little touch payments, that kind of thing, let's address it on that front or let's prohibit garnishment of wages.

Again, I support the idea and the need to make some type of improvements. I support the need that what is currently in existence is hurting citizens, but I believe that we have some better tools. They're going to provide a more holistic and longer-term approach and resolution to some of these problems by backend relief that is targeted. To press this point about it's going to be, I think **[unintelligible 01:00:52]** said it was impossible to target relief.

I respectfully disagree with that interpretation. We do it for housing relief in this country, food stamps, healthcare. It may not always be perfect, and I know that there will be different tests, we want to look at income, do we want to look at wealth? I think we can do it. I do believe that individuals that can repay their debt should repay their debt.

I've talked a little bit about the potential changes. I think of how to get there. We talked a little bit about capitalized interest. Let's try to introduce some solutions there to waive it, either in prohibiting on the front end or the backend. Some of the solutions about relief, the points are very well-taken that it's hard. The eligibility rules are sometimes difficult. Not sometimes, they're most oftentimes difficult. You have to continue making payments for 10 years straight. You can't miss a payment or else you lose that relief.

It is not always intuitive for a consumer, so let's perhaps adopt some type of graduated relief. Graduated, not in the sense of graduating with a four-year degree, but graduated or laddered relief, that instead of 10 years out, we'll offer you a percentage-based relief at two years, four years, six years, eight years, et cetera. Provide some relief to consumers that is more practical and more reflective of the current workforce where people do not necessarily stay in the job for 10 years before moving on to the next career.

That, at a high level, John, at the end of the day, I think you can sort of see where I am landing on this one. While I do think forgiveness is appropriate in context and in appropriate circumstances, I do not believe that a blanket forgiveness is the appropriate solution. To the second question is, "What is the right number?" It's certainly based on the premise that my position is not going to be the successful one or the persuasive one, the secondary issue is then, what's the appropriate number? Perhaps we were looking at different data about what the relief would provide.

I think some of the data that I saw from Senator Warren's most recent hearing, the Department of Education furnished information to her and she released, I think last week or the week prior, and $10,000 was the threshold that would provide relief or eliminate the debt for 15 million Americans. If we jumped that up to $50,000 of relief, that would effectively discharge or forgive all of the student debt for 36 million Americans, which according to the math that I saw is around 84% of the borrowers. I think maybe some had it at 90% value. 84% versus 96% those are both significant numbers.

I have not done the analysis on the fiscal impact on what this would mean to our country, the opportunity cost that Scott had. If you're asking me $10,000 or $50,000, perhaps it's counterintuitive to what we're talking about, but then I would say, "Let's just shoot for the fences and do $50,000 and wipe it off and move forward with providing relief even though I think that it needs to be still a merit-based approach."

John Chiles: Thank you, everybody. Let me get back to some things that came up during this conversation. The things that everybody seems to agree on. Whether or not there is a debt forgiveness now, we're going to start the same cycle again with future students. The other thing I think we all agree on is that there are fail-safes safety net mechanisms built into the current complex of laws that are designed to keep people from being trapped in the cycle of debt, but they're not working particularly well.

We all talked about the income-driven repayment plan. I'm not sure the audience really understands the ins and outs of that because we really haven't explored that. Persis, do it quickly, but can you tell the audience what the income-driven repayment plan does, how it works, and further, why it's not being effective? What's the problem here? I'm going to come to Scott to follow up on that and I'm going to ask, what do we need to do with that? Do we need to tinker with it? Do we need to change the servicing pattern? Is it something that can be done through policy dictated by the Department of Education or would it require legislation?

Then, I also want to talk further about the public service repayment plan, which I think we all know that hasn't worked as it was intended to work unless Scott correct that Congress intended it for it to be hard to do. I think that there's reason to think that it hasn't been implemented well. Anyway, let's talk about, forgiveness or not? We still got the same system, and the system's not working particularly well for a number of the borrowers. Persis, talk just a minute about the income-driven repayment.

Persis: Sure. Income-driven repayment is a blanket term for a number of different repayment options, but they all work in roughly a similar way where a borrower is paying an amount based upon a percentage of their discretionary income. The discretionary is we protect a certain amount of income and then take a percentage of the rest of it. There are a number of different income-driven repayment plans.

The first was income-contingent, which was passed in 1993, and then the first borrowers were able to access in 1995. The more popular, the plans were started in 2007 with income-based repayment, that's the more modern version of what most folks are in at one point and then the Obama administration expanded it regulatorily. That's the nutshell version.

What happens then after a certain amount of years of payment is that cancellation then occurs after 20 or 25 years of repayment based upon our circumstances or the various different repayment plans. In that time, borrowers need to recertify their income every single year to maintain their eligibility. There's a lot of barriers that folks have run into in this program.

Income-driven repayments throughout the history has been greatly underutilized. I think to Scott's point earlier, is there 57,000 or 2 million borrowers, I think this depends on well, what universe of folks or do you count, but there's an underutilization effect. That's number one barrier is that folks don't know about it and have not historically enrolled.

Certainly, now there's greater awareness, but I think there's still an under-enrollment issue according to the GAO. There's an under-enrollment and then there's the annual recertification process, which has stumped a lot of borrowers. I think that the number is that approximately a third of borrowers fail to recertify timely each year.

John: Is that **[unintelligible 01:08:27]** income information for more recent income information, **[unintelligible 01:08:34]** verification?

Persis: It's the purpose of it, where it is to recalculate their payments every single year. Borrowers need to recertify to both provide whatever documentation of their income and provide documentation, which is usually just a certification of their family size. That's a process that they must engage in every single year and that's a process where a lot of borrowers have fallen through the cracks.

John: Question?

Persis: Yes.

John: Given the fact that the internal revenue service has well, at least reasonably current data on the income of each of these individuals and it's a co-equal agency within the government, why would we have such or continue to perpetuate that recertification requirement when the income information is there and accessible to the Department of Education? Is it just to maintain a hurdle that they can bend the herd?

Persis: I'm sure that Scott can probably share war stories about the history of sharing information between the IRS and the Department of Education. It's certainly a thing that during the repay NegReg, I think there was broad consensus amongst everyone at the table, whether it was servicers or advocates or student advocates that there needed to be a process for the IRS to share that information. There was at the end of the Obama administration an MOU between Treasury and the Department of Education to do that sharing. It has yet to come to fruition.

There's also a law that was passed last year, which is in the process of being implemented that should facilitate that process. Again, we have yet to actually see it in place. It's been a big question of like, "Why are we doing this? Why are we sticking these hurdles up for borrowers?" I think it is an important solution that will certainly solve the problem for a lot of folks.

I do think it's also worth noting though that—Scott, you may have better data on this, so I'll let you to respond. Roughly half of borrowers do also use alternative documentation in order to document their income. The IRS sharing, I think will get us much closer to our goal than where we are now, but I don't think it completely eliminates the problems.

John: Scott, what's your take on why this has not been more effective? While you're doing that because this is a short program, tell us what you think would be a solution that would make that particular program effective and keep people from getting trapped, and that continues to negatively advertise and grow?

Scott: Well, I think they're a couple of things. I think Persis makes really good points about the barriers we have here. Number one, taking the second part first, which is this idea of structural barriers. I think the recertification process is very cumbersome. It is no doubt. It is something that is difficult for borrowers to do.

It involves filling out a lot of forms, going to a separate website, then you enter in information to US department, the department then sends it to the servicer. It's an administrative mess and it's the kind of thing that only government could come up with as the process for doing this. I think it's right.

The alternate documentation is something that a lot of borrowers use and rightfully so. I think, hopefully, one of the frustrations with the pandemic is the department and treasury has shelved the implementation of the future act because they're working on other things.

We need to walk and chew gum at the same time I argue, but that would help a lot. If we could have automatic information provided from the Internal Revenue Service to the department so we could know what people's income are. We're going to have a lot of people above and beyond that. Look at the pandemic right now. I'm pretty sure that a lot of people who were impacted if you pulled their tax return from the previous year which is what we're doing, that's not going to indicate what their current situation is.

We need to have that base level of getting good information from the IRS so we don't have to ask people for it, but then also simplify and expedite the process for doing certification using alternative documentation. I think that's something we got to spend a lot of time thinking about because that's going to be something that really is going to make it a heck of a lot easier.

I think we've also got to think about turning to the other thing about underutilization. You got half the portfolio in terms of dollars, not all borrowers. It's about a little over a third of borrowers now who are in an income-driven repayment plan of some kind. I think we're doing better today, but we also have to be thoughtful about the consequences of that.

It's interesting we talk about, "Oh my God, people's balances are ballooning and people owe 90% of what they owed when they started." That's IDR, that's how it works. We have to think about that a lot of times the things that we offer is policy solutions create the secondary problem that we identified then later as a problem. This was a knowable outcome. IDR is a reverse amortizing solution.

Now if you stay in it for long enough and you stay low income for long enough which hopefully, actually, we don't want—The goal of this whole program if lots of people are getting loan forgiveness and income-driven repayment, we got a bigger problem than income-driven repayment. We've got people graduating and not making enough income to justify what they spent on college.

John: Let me ask the question that came up during the hearing the other day. I'm sorry, I'm interrupting you but I'm really intrigued by this. The Navient president had some suggestions about how to repair IDR. One of them was to go to a forgive-as-you-go program, which would prevent the negative amortization. If you're in an IDR program, essentially you're paying reduced amounts that ordinarily wouldn't amortize the loan, but just by **[unintelligible 01:15:04]**, I guess and by the structure of the program, you would go ahead and reduce the balances. Is that a feasible program?

Scott: I think so. Kelly talked a little bit about that sort of thing. I think that's what she was getting at in terms of thinking about how to do **[unintelligible 01:15:20]** forgiveness over time. I think there are two things we ought to look at here. Again, I'm not sure that either is necessarily the panacea that's going to solve the problem. Number one, the reverse amortization. Right now, for the first few years, if you're an income-driven repayment, the government is going to pay the debt of what interest that is accruing that you're not paying on.

Well, if we've got borrowers who are in income-driven repayment for more than a few years, that borrower is probably on a trajectory that's going to necessitate some forgiveness at the end of this. Why are we piling on? If the government's going to forgive it anyway and the balance is growing and that borrower is on a trajectory, I think we ought to look at interest accrual. The government only bites it right now for the first couple of years, but the government's going to bite it in the end. I think for borrowers, that's a very distressing thing.

Listen, if you've been an income-driven repayment for five or six years, you log into your account, and all of a sudden, you owe 20,000 more than you did at the start of this program, you talk about crushing feelings, that would be a crushing feeling. That's what we do to borrowers, and then we say, "Okay, but don't worry, it'll be forgiven in the future."

Well, I'm looking at today, and today, I feel like I'm making no progress on paying down my loans. I think number one, we got to look at, if we're going to spend a lot of money, why not spend money on stopping interest accrual, that's funny money anyway if a borrower is going to be in distress for a long period of time.

Number two, I think forgiveness, as we go, is something we ought to look at because that would also help borrowers feel more successful that this program is working for them. When they can every year look and see, "Yes, I'm not making the income level I hope to, but I am making progress in paying down this loan. When I stroke a check, whatever that amount is based upon my income, it's a check that is helping me move towards getting out of the loan that I owe."

I think those are two things we really ought to look at. Those are things that would work over the long term. Those are solutions that for today's borrowers, tomorrow's borrowers would be things that would really structurally, I think help improve the program. Those are two things I would look at.

John: What about the people who have been disadvantaged in the past by the way that the IDR has operated? Did you have a reach back or is the loan forgiveness essentially a reach back? I just realized we got about four or five hours of things to talk about in only about 10 minutes left.

Persis: John, I'm going to jump in with one comment about IVR, IDR, or whatever really we're going to refer to it. I don't know why I always call it IVR. Another issue that bothers me about it in its current design, and I understand why, but it's this massive extension of the repayment term. We shift from a 10-year loan to effectively a 20 to 25-year loan.

Again, I understand the why? We're taking a 10%, 15% of income, we have to stretch it out. Overnight, it effectively feels like a mortgage, you can never shake the step. I would hope that one of the ideas that could be on the table for discussion would be something that is relief that offers different repayment terms that allow borrowers to get to that finish line a little bit sooner.

If we look at, again, some of the data from Senator Warren during her hearing, it's those borrowers that are 10 years, 15 years out that are the bulk of the delinquent accounts. It's not the people who are recently graduated or a couple of years out, it seems like it's disproportionately in that tranche of 10 to 12 to 15 year out borrowers. I suspect, those are the borrowers that really feel like they cannot get this lasso from around their shoulders.

Scott: Again, now, this is the problem of what Congress is doing here. Again, that 20 and 25-year repayment option was not an accident. This was designed to make the revenues for the government higher on these loans to offset some of the cost here. I think that's where policymakers, we got to stop hiding. I think we could all agree, I hope that you know that we've got to stop hiding these barriers and inserting things that are obvious speed bumps for people with success, just because we're not willing to spend the money to actually do what we say we're trying to do. I think that's the frustration that a lot of us feel.

Persis: If I can just jump in on that because I think it's a really important point. Well, I don't disagree at all with Scott with what the policymakers were doing. I agree that PSLF was intentionally set up to cut—I saw it coming. I saw the low numbers coming. I think most of us saw the low numbers coming. I think what is missing here is that there was a difference between how it was designed, and what the folks on the hill knew what was going to happen, and what borrowers were promised. That's where I think there's a huge disconnect here.

Borrowers are promised, if you do public service, you'll have it forgiven if you have a federal loan, and then it's like NPS only if you did these 17 things in exactly the right order. I think income-driven repayment is a similar thing. I think that the PSLF firms really are the canary in the coal mine of income-driven repayment, because income-driven repayment like PSLF is like, "Let's be honest, those borrowers have been counting every single payment, they have records."

Low-income borrowers facing a 20, 25-year repayment plan, they don't have that. They're not counting. It's the distinction between the promise and the policymakers trying to squeeze down their bottom line. I think that's where we have this disconnect, and how do you remedy that? I think this is a question of remedies and accountability for that lie that borrowers were told. Yes, I love that this is recorded, and I'm going to get you all on interest and on capitalization and I'm expanding Pell later. I love those ideas, but I think this is also about remedies and accountability to the borrowers who were lied to for decades.

[crosstalk]

Kelly: One second, John. Isn't a response to that, whether you disagree with it or not, that UDAAP enforcement is exactly what states have been doing in the last couple of years of saying, "Hey, when you're misrepresenting things to borrowers—" I know that there's a great debate about what they can enforce and the scope of it.

I think perhaps the things that you're talking about more on the front end origination side, which may not be viable enforcement for the states, but on the backend, describing what your rights are, what your reliefs are. The counter-argument isn't some of this being addressed through some state robust enforcement actions on this issue, and hopefully, that would—

Persis: Okay, I will let Kat go, she needs to jump in. [chuckles]

Kat: I love this and I was going to say two things. I'm going to circle back to what Persis and Scott were saying, and Kelly responded to you. Just literally piggybacking off what Persis was just saying about this promise that we sold borrowers and I really think that—I think earlier, Scott said, he said, "What are we signaling with debt cancellation?" We're signaling that we promise borrowers one thing, that's not what we lived up to and so when we make a mistake, we're going to fix it, we're going to make borrowers whole. We're going to remedy this wrong that we created.

Then, on the backend, to answer your question, Kelly, I think at the same time, so you say we're going to make you whole by providing this remedy that we said we're going to promise you this relief that we didn't. Then, on the other end, I think that's one thing I'd really love to see the Biden administration do is I would love to see the CFPB take a more hands-on approach to student debt. I think following the Great Recession, we saw that we got all these really robust consumer protection laws, but at the same time, student debt was really growing exponentially.

There's this lag, in terms of protections that we have for student loan borrowers versus what we have for other products. I would love to see the bureau use its UDAAP rulemaking authority to have a student loan servicing rulemaking so we can make sure that our borrowers' payments are being counted, going in on the back end of doing all that. Yes, I'm totally pro on doing that, and having more robust—the bureau taking a more heavier hand in UDAAP enforcement there in trying to create a student loan servicing rulemaking. With that, I'm totally there. I think that's—Sorry, John. [chuckles]

John: Sorry. I was going to jump ahead of you just a little bit. Since we're policymakers here on this panel, separate aside from whether Congress has to make these changes or whether the executive can make the changes, what do we do about the bankruptcy rule, which requires for discharge an undue hardship, which is a really, really tough standard and has been referred to as a—One of the tests is a certainty of hopelessness, which sounds like some—

Kelly: It sounds like a telenovela, doesn't it? The certainty of hopelessness. [laughs]

John: I was thinking it sounded like an existential philosopher's tome, it belongs there side-by-side with Sartre's *Being and Nothingness*. It's a really grim thought, a certainty of hopelessness. What needs to be done with the bankruptcy code? Do we just need to make that readily dischargeable, or to address the problem of potential moral risk with somebody walking out of school and wiping out their debt, and then commencing with their career? Do we need to make a timeframe after which they can take advantage of normal bankruptcy remedies?

Kelly: I'll jump in, in a second, **[unintelligible 01:25:57]** John, we're at 1:17, are we cool to keep this conversation going?

John: Well, I think we're supposed to go four or five minutes past 10:15, so we're getting really close.

Kelly: Okay. I'll be brief and I'll be direct. [crosstalk] I do believe that we need to revise the bankruptcy code. I think that that's been something that not just myself, but many people have been advocating for years. Every presentation that I've ever done where we talk about bankruptcy, I look back at my notes and I have the Durbin Amendment or I can have all of the dead bodies of years past of people trying to propose the solution. Yes, I think an amendment to the bankruptcy code would be fantastic.

The way that it's drafted right now, it actually hinders and it carries the student loan debt for actually both federal loans as well as private loans. This is some type of challenge that affects the entire populace, not just those borrowers that have incurred federal loan debt. The case law in this issue as you've pointed out is extremely challenging for borrowers to overcome. The Brunner test that's been established has been the rule of the land, the law of the land for almost over a decade at this point and many courts have followed it.

There are little exceptions that cause the industry to run amok and get really excited that we're going to create a lesser or an eased standard, but those are exceptions to the rule. Those are not any wholesale relief. The point that you bring up about, John, well, is there some period of time? The Brunner test was created almost for that exact issue.

If I recall correctly, the borrower there has filed for bankruptcy protection after being out of college for only seven months. This standard was created to expressly address that fact pattern and say, "Hey, wait a second, it shouldn't be this easy for everyone who just gets out of college to file bankruptcy and walk away from the debt."

In light of that, I do think the moral hazard kind of thing is legitimate. If that's a concern that would cause Congress to slow-walk this, then let's implement some type of 5 or 10-year approach that you have to wait until you can seek a discharge of that debt using the data that I cited to earlier where most borrowers who are significantly delinquent are in that 10 year out trench, maybe 10 years is a good starting point. [crosstalk]

Persis: I will just say, I think that borrower was mythical.

John: [laughs]

Persis: I'm pretty sure that was a mythical borrower, but I will just say that I think we absolutely need bankruptcy reform, however, we can get it but it needs to be much more available.

John: All right. I'm looking at the time . . . [crosstalk]

Scott: Persis, I'll send you the *New York Times* article from 1979 that lists five of those, actually, so because I have it. I had to go to the Library of Congress and actually go to microfiche because it wasn't digitized, but it exists. Now, listen, I think bankruptcy reform is something we ought to—[crosstalk]

John: We're out of time. I'm sorry.

Persis: You're kicking us out. [laughs]

John: We've run out of time.

Kat: We got to go home, but you got to get out here. Got it.

John: Thank you, everybody. People who had questions, I'm sorry, we didn't get to your questions. We have a lot of material that we haven't talked about yet, we just need more time. Thank you, everybody, for participating. Thank you to the ABA for letting us have this platform to talk about this important issue. With that, I think we're done.

Kelly: Thank you.

Kat: Thank you.

John: Bye.

Scott: Thank you.

Persis: Thank you.

[01:29:35] [END OF PROGRAM]