Lessons from Down Under: A Comparative Look at Income-Driven Repayment and Higher Education Tuition Policy in the United States and Australia

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"[T]he largest moral hazard [of income-driven repayment] is likely to be an excess of spending on education, either because students simply buy too much or schools accelerate their tuition increases. If the increased costs simply lead to more forgiveness, then students may become indifferent to costs, which could in turn erase any market check on prices. This is a real concern. . . . Left unchecked, such behavior would undermine the goals of the program and could ultimately bankrupt it."¹

I. INTRODUCTION

On August 24, 2022, President Joe Biden announced a three-part plan for federal student loan forgiveness.² While the flashiest part of his announcement promised student debt cancellation of up to $20,000 for eligible borrowers, President Biden also proposed a significant alteration to the Department of Education’s income-driven repayment program.³ Income-driven repayment plans,

³ See The Biden-Harris Administration’s Student Debt Relief Plan Explained, supra note 2 (detailing proposed changes to income-driven repayment plans). In a June 2023 decision, the Supreme Court struck down Biden’s student loan forgiveness plan, ruling that the Biden Administration did not have the authority under the Higher Education Relief Opportunities For Students Act (HEROES) to cancel $43 billion of student loan debt. See generally Biden v. Nebraska, 143 S. Ct. 2355 (2023) (holding Biden Administration’s student loan forgiveness program unauthorized under HEROES Act). The decision did not affect the income-driven repayment portion of the plan, which the Department of Education expects to fully implement by July 2024. See SAVE Repayment Plan Offers Lower Monthly Loan Payments, U.S. DEP’T OF EDUC., https://studentaid.gov/announcements-events/save-plan [https://perma.cc/JNC5-PYB8] (outlining Saving on a Valuable Education (SAVE) Repayment Plan details and implementation timeline).
which Congress first piloted in 1993, cap borrowers’ monthly student loan payments at a percentage of their discretionary income. ⁴ Previously, eligible borrowers could enroll in any of four plans—Income-Based Repayment (IBR), Pay As You Earn (PAYE), Revised Pay As You Earn (REPAYE), or Income-Contingent Repayment (ICR)—as an alternative to traditional loan repayment options, which can become extremely burdensome, particularly for lower earners. ⁵ Under the new Saving on a Valuable Education (SAVE) Plan, the Biden Administration attempts to make income-driven repayment more universal and advantageous to borrowers by: (1) cutting the amount that borrowers under these plans pay each month from 10% to 5% of discretionary income; (2) raising the amount of income not subject to income-driven repayment from 150% to 225% of the federal poverty level; (3) forgiving unpaid loan balances starting at ten years of payments instead of twenty years; and (4) eliminating the accrual of monthly interest. ⁶

These proposals sound like a remarkable improvement to the United States’ student loan system, and in many ways they are—the new SAVE Plan offers significant financial relief following the global pandemic and makes income-driven repayment a better financial option than conventional repayment for millions of borrowers. ⁷ Nevertheless, many economists argue these changes will

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⁵ See Income-Driven Repayment Plans, supra note 4 (identifying four income-driven repayment plan options); Hunt, supra note 4, at 1315-17 (noting income-driven repayment programs’ intent to reduce burden on borrowers). Under a Standard Repayment Plan, payments are a fixed amount, which ensures borrowers pay off their loans within ten years. See Choose the Federal Student Loan Repayment Plan That’s Best for You., U.S. DEP’T OF EDUC., https://studentaid.gov/manage-loans/repayment/plans [https://perma.cc/6Z6C-LWJC] (describing borrower’s monthly payment and time frame under Standard Repayment Plan).

⁶ See The Biden-Harris Administration’s Student Debt Relief Plan Explained, supra note 2 (stating Biden Administration’s proposed changes to income-driven repayment plans); SAVE Repayment Plan Offers Lower Monthly Loan Payments, supra note 3 (titling new income-driven repayment plan); Kristin Blagg, Changes to Income-Driven Repayment Plans Would Reduce Payment Amounts and Extend Payment Timelines, URB. INST. (Sept. 1, 2022), https://www.urban.org/urban-wire/changes-income-driven-repayment-plans-would-reduce-payment-amounts-and-extend-payment (last visited Dec. 19, 2023) (opining plan will reduce amount borrowers pay back, increase loan forgiveness, and lengthen repayment period).

cause colleges and universities to increase the cost of tuition. These scholars reason that if borrowers are only responsible for ten to twenty years of payments equal to 5% of their discretionary income, after which the Department of Education will forgive all their unpaid debt, students will no longer have the motivation to take on smaller debts. As a result, colleges lose a major incentive to keep tuition prices in check and have every reason to rapidly increase costs. Economists have expressed concern about the possibility of unchecked tuition costs since the government first introduced income-driven repayment plans, and the Biden Administration’s proposed changes to the program make such consequences less avoidable.

Fortunately, the United States has a case study on income-driven repayment: Australia has used income-driven repayment as its predominant student loan model since 1989, when it introduced the Higher Education Contribution Scheme (HECS). In 2003, the broader Higher Education Loan Program (HELP) absorbed HECS. Together, the HECS-HELP system ensures the affordability of Australian undergraduate universities through an income-driven undergraduate loan borrowers with a starting salary below approximately $60,700 will not need to pay the full amount of their loans in net present value. See Blagg, supra note 6 (modeling effects of Biden’s proposal on borrowers).

8. See Jim Tankersley, Biden’s Big Dreams Meet the Limits of ‘Imperfect’ Tools, N.Y. TIMES (Aug. 27, 2022), https://www.nytimes.com/2022/08/27/us/politics/biden-student-loans.html [https://perma.cc/UC25-VX-Q3] (warning reductions to loan payments through income-driven repayment could fuel faster tuition increases); Bruenig, supra note 7 (predicting new plan could radically alter college prices); Ali & Barnes, supra note 7 (noting critics of plan say it could incentivize universities to raise tuition); Brooks, supra note 1, at 283 (suggesting income-driven repayment removes market checks on tuition prices).

9. See Brooks, supra note 1, at 283-84 (suggesting tuition cost indifference results from greater loan forgiveness); Bruenig, supra note 7 (observing incentives for borrowers to over-borrow and colleges to raise tuition). For a student planning to enroll in SAVE after graduation, 5% of her discretionary income remains a fixed cost regardless of whether she takes out $15,000 or $50,000 in student loans. See Bruenig, supra note 7 (noting discretionary income’s impact on loan indifference). Though the number of years she will pay this cost will vary from ten to twenty years depending on her loan burden, in practice, borrowers tend to discount long-term costs in favor of immediate financial relief. See id. (explaining price insensitivity). After factoring in the lack of interest accrual under SAVE, the result is magnified price insensitivity to student debt. See id. (discussing SAVE’s impact on student debt incentives).

10. See Brooks, supra note 1, at 283-84 (explaining removal of tuition market checks resulting from student price indifference).

11. See id. (warning old income-driven repayment system could raise tuition prices); Bruenig, supra note 7 (cautioning heightened risk of college tuition increases accelerated by Biden-Harris plan). Many of these concerns stem from the Bennett Hypothesis, a theory touted by former Secretary of Education William Bennett, that hypothesizes generous financial aid enables colleges to raise tuition. See infra notes 67-69 and accompanying text (discussing William Bennett and Bennett Hypothesis).


13. See Higher Education Support Act 2003 (Cth) ch 4 pt 4-1 div 134-1 (Austl.) (enacting HECS-HELP assistance program); see also infra notes 95-96 and accompanying text (discussing HECS reform into HECS-HELP).
repayment model while directly legislating the maximum tuition cost for each course of study.\textsuperscript{14} The Australian government is the primary funding source and regulator of Australia’s higher education system.\textsuperscript{15} If a university wants to receive government funding, it must comply with HELP provider requirements and cap its “student contribution” to the maximum legislated amount.\textsuperscript{16}

This Note compares the United States’ income-driven repayment model under President Biden’s reforms to Australia’s HECS-HELP system, analyzing how the United States can learn from Australia’s successful income-driven repayment model and direct legislation of tuition costs.\textsuperscript{17} Section II.A discusses the evolution of student loan law in the United States, detailing how income-driven repayment currently works.\textsuperscript{18} Sections II.B and II.C analyze the relationship between student loan policy and rising tuition costs in the United States.\textsuperscript{19} Section II.D details Australia’s income-driven repayment system and how university funding requirements allow the Australian government to regulate tuition costs.\textsuperscript{20} Having compared the two systems, Section III.A.1 explains why income-driven repayment is a student loan model worth the investment.\textsuperscript{21} In contrast, Section III.A.2 evaluates the arguments against income-driven repayment, with a focus on the plausible consequence of rising tuition costs.\textsuperscript{22} Section III.B proposes a solution to the tuition problem: adapting Australia’s model of university funding requirements to the United States higher education system to incentivize regulated tuition costs.\textsuperscript{23} Finally, this Note concludes that despite the difficulties in applying


\textsuperscript{17} See infra Part II (comparing income-driven repayment in United States and Australia); infra Part III (suggesting modified application of Australian system in United States).

\textsuperscript{18} See infra Section II.A (detailing history of United States student loan law).

\textsuperscript{19} See infra Sections II.B and II.C (examining student loan policy in relation to rising tuition).

\textsuperscript{20} See infra Section II.D (explaining Australian government’s income-driven repayment and university tuition funding systems).

\textsuperscript{21} See infra Section III.A.1 (arguing for adoption of predominant income-driven repayment system).

\textsuperscript{22} See infra Section III.A.2 (addressing arguments against expanding income-driven repayment programs).

\textsuperscript{23} See infra Section III.B (proposing adoption of Australian university funding program to United States system).
the Australian model in the United States, such a solution is both urgently needed and worth the costs.\textsuperscript{24}

II. HISTORY

A. History of Student Loan Legislation in the United States

1. The Federalization of Student Loans

The United States federal government’s involvement in the student loan industry traces back to 1958, when Congress passed the National Defense Education Act (NDEA).\textsuperscript{25} The NDEA authorized colleges and universities to make loans to students with financial needs and guaranteed their repayment.\textsuperscript{26} In the shadow of the Cold War and with national defense concerns, Congress aimed to ensure the education of the country’s most talented students, regardless of their capacity to pay for that education upfront.\textsuperscript{27} Since 1958, the United States government has borne the risk of student loans—to expand access to higher education and produce highly-trained, work-ready citizens—while each new policy aims to address and resolve the budgetary issues of that risk.\textsuperscript{28}

\begin{footnotesize}
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\item See infra Part IV (advocating for solving problems presented by income-driven repayment through university funding).
\item See National Defense Education Act of 1958, Pub. L. No. 85-864, § 101, 72 Stat. 1580, 1581-82 (assuring no student denied higher education because of financial need); Cox & Engel, supra note 25, at 362 (noting creation of precursor to Perkins Loan program under NDEA). The NDEA was an early version of the Perkins Loan program, which ended in 2018 and has since been replaced with modern federal loan schemes. See Cox & Engel, supra note 25, at 362-63 (detailing history of federal student loans from Perkins to present).

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2. **Income-Driven Repayment Policy in the United States**

The history of income-driven repayment in the United States has consisted of an incremental progression toward better terms for borrowers.\(^{29}\) Congress piloted income-driven repayment in 1993 when it passed the Student Loan Reform Act (SLRA) through the Omnibus Budget Reconciliation Act of 1993.\(^{30}\) The SLRA granted the Secretary of Education the authority to create an affordable option for student borrowers whose postgraduate earnings fell short of expected returns on higher education.\(^{31}\) The Department of Education used this authority to create the ICR program, which remains in effect today.\(^{32}\) The original ICR plan allowed borrowers to pay fixed monthly payments equal to 20% of their discretionary income exceeding 100% of the federal poverty level and have their debts forgiven after twenty-five years.\(^{33}\) Notably, the ICR plan linked payments to the borrower's loan balance, discouraging excessive borrowing by allowing individuals with low balances to pay less than the 20% per month formula.\(^{34}\)

The ICR plan was the only income-driven repayment program available to borrowers until 2009, when Congress enacted the IBR plan.\(^{35}\) In response to concerns of increasing student debt burdens and the need for a more affordable option, the IBR plan raised the discretionary income exemption to 150% of the federal poverty level and lowered monthly payments to 15% of that income.\(^{36}\)

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31. See id. (granting power to create income contingent repayment plan to Secretary of Education); SANDY BAUM & JASON DELISLE, URB. INST., INCOME-DRIVEN REPAYMENT OF STUDENT LOANS: LOGIC, HISTORY, AND THE NEED FOR REFORM 6 (2022), https://www.urban.org/sites/default/files/2022-04/Income-Driven%20Repayment%20of%20Student%20Loans.pdf [https://perma.cc/NKW6-DDXT] (discussing Congress's grant to create income-driven repayment).

32. See BAUM & DELISLE, supra note 31, at 6 (explaining Department of Education's creation of ICR); Income-Driven Repayment Plans, supra note 4 (listing ICR one of four programs currently offered).

33. See BAUM & DELISLE, supra note 31, at 7 (describing original ICR program). Today's ICR plan is very similar to its original structure and is the only plan available to all eligible borrowers regardless of loan type. See Income-Driven Repayment Plans, supra note 4 (detailing ICR program features).

34. See BAUM & DELISLE, supra note 31, at 7 (outlining ICR payment formula). The Department of Education has modified this formula by adjusting borrowers' payments to their income and a twelve-year repayment schedule. See William D. Ford Federal Direct Loan Program, 60 Fed. Reg. 48848, 48848 (Sept. 20, 1995) (to be codified at 34 C.F.R. pt. 685) (proposing twelve-year amortization formula); Income-Driven Repayment Plans, supra note 4 (noting twelve-year schedule option).


The IBR plan, however, failed to address the excessive borrowing issue, which was arguably a bigger issue under IBR than ICR due to its more generous terms and growing awareness of the benefits of income-driven repayment plans.37

The Obama Administration made several key reforms to the income-driven repayment system that expanded its reach and attractiveness.38 First, the Health Care and Education Reconciliation Act of 2010 (HCERA) amended the IBR plan by reducing payments from 15% to 10% of discretionary income and decreasing forgiveness time from twenty-five to twenty years.39 Due to congressional restrictions, this reform applied only to students who borrowed their loans after July 2014.40 In 2011 and 2015, the Obama Administration took administrative action to create the PAYE and REPAYE plans, respectively.41 These plans extended the terms of the amended IBR program to all past borrowers.42 Additionally, REPAYE made income-driven repayment available to all borrowers by removing the requirement to show “partial financial hardship.”43 Each of these four income-driven repayment plans—ICR, IBR, PAYE, and REPAYE—aim to make student loan payments affordable regardless of a borrower’s income.44 Before SAVE, all four of these plans were available for borrowers to choose from.45

37. See BAUM & DELISLE, supra note 31, at 7-8 (discussing IBR history and terms); id. at 8 (arguing linking payments to borrowers’ debt balances more relevant under IBR than ICR).


40. See id. (providing amended IBR terms only to new borrowers after July 1, 2014).


42. See BAUM & DELISLE, supra note 31, at 9 (noting purpose of PAYE and REPAYE); Brooks, supra note 1, at 252 (explaining PAYE and REPAYE applied new IBR terms to all loans).

43. See BAUM & DELISLE, supra note 31, at 9 (discussing removal of “partial financial hardship” showing).

44. See Cox & Engel, supra note 25, at 365-66 (describing purpose of income-driven repayment plans).

45. See Income-Driven Repayment Plans, supra note 4 (providing details of all four available income-driven repayment options).
3. Biden’s Reforms to Income-Driven Repayment

As part of his three-part plan for student debt relief, President Biden proposed creating a new income-driven repayment plan. On August 22, 2023, President Biden named the plan SAVE and announced that borrowers could begin enrolling in the plan before student loan payments resumed in the fall of 2023. SAVE will raise the discretionary income threshold to 225% of the federal poverty level. Borrowers’ monthly payments will be limited to 5% of that discretionary income, reduced from 10% under the current most affordable plan. Additionally, for borrowers with loan balances under $12,000, the new plan promises to forgive remaining balances a substantial ten years earlier than previous plans. Unlike any previous income-driven repayment option, the Biden Administration’s plan will cover borrowers’ unpaid monthly interest to ensure that loan balances never exceed their original amount, even for borrowers whose monthly payments are zero.

Rather than adding an income-driven repayment option to the current plans as done in the past, the SAVE Plan will replace the REPAYE plan. REPAYE’s availability to all borrowers, regardless of financial hardship, combined with

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46. See The Biden-Harris Administration’s Student Debt Relief Plan Explained, supra note 2 and accompanying text (introducing Biden Administration’s three-part student debt relief plan).
48. See SAVE Repayment Plan Offers Lower Monthly Loan Payments, supra note 3 (detailing changes to income-driven repayment under SAVE plan). To put this number in perspective, 225% of the federal poverty level is about the annual equivalent of a $15 minimum wage. See The Biden-Harris Administration’s Student Debt Relief Plan Explained, supra note 2 (equating new discretionary income standard to minimum wage). Any income above that would be considered discretionary income. See id. (raising income amount considered non-discretionary). Borrowers with incomes below $30,577 and families of four making under $62,437 would pay nothing. See Improving Income-Driven Repayment for the William D. Ford Federal Direct Loan Program, 88 Fed. Reg. 1894, 1917 (proposed Jan. 11, 2023) (to be codified at 34 C.F.R. pt. 685) (calculating income thresholds under Biden’s version of income-driven repayment).
49. See SAVE Repayment Plan Offers Lower Monthly Loan Payments, supra note 3 (noting 5% of discretionary income down from 10% under most recent plan).
50. See id. (promising loan forgiveness after ten years of payments); The Biden-Harris Administration’s Student Debt Relief Plan Explained, supra note 2 (noting loan forgiveness time decreased from twenty to ten years). Forgiveness will not only impact borrowers with balances of $12,000 or lower: For each additional $1,000 borrowed, the plan adds one year of payments before granting forgiveness, capping at twenty years. See FACT SHEET: SAVE Plan, supra note 47 (breaking down loan forgiveness timeline).
51. See SAVE Repayment Plan Offers Lower Monthly Loan Payments, supra note 3 (eliminating growing balances due to unpaid monthly interest). Previously, one flaw of income-driven repayment was ballooning balances when monthly payments were too low to cover accruing interest. See BAUM & DELISLE, supra note 31, at 14 (outlining issue of interest accrual).
52. See SAVE Repayment Plan Offers Lower Monthly Loan Payments, supra note 3 (replacing REPAYE with SAVE Plan); Improving Income-Driven Repayment for the William D. Ford Federal Direct Loan Program, 88 Fed. Reg. at 1894 (detailing major provisions of proposed regulation).
SAVE’s generous terms, implies that nearly all borrowers would benefit by choosing SAVE.53  Experts estimate that SAVE’s lower monthly payments, elimination of interest, and earlier debt forgiveness will considerably reduce the amount of money borrowers will need to pay back.54

B. The Interaction Between Student Loans and Increasing Tuition

1. Economic Concerns with President Biden’s Income-Driven Repayment Plan

The Department of Education reported that 8.28 million borrowers enrolled in income-driven repayment plans in quarter two of 2023—just under one-third of total student loan borrowers.55 Under President Biden’s SAVE Plan, income-driven repayment ought to be a significantly better option than both preceding plans and the Standard Repayment Plan.56 While student loan borrowers and their advocates praise the progression towards better terms, economists caution policymakers.57 They fear that reducing loan payments through income-driven repayment creates an opportunity for colleges and universities to increase tuition at faster rates.58

As noted above, SAVE protects students who enroll in income-driven repayment from having to repay their loans in full should their income fall on the lower end of the scale.59 With expectations of low loan payments and balance

53. See SAVE Repayment Plan Offers Lower Monthly Loan Payments, supra note 3 (highlighting terms of SAVE Plan); Blagg, supra note 6 (calling Biden’s plan best choice for nearly all borrowers); Ali & Barnes, supra note 7 (predicting Biden’s plan to provide relief for millions of borrowers).


55. See Federal Student Loan Portfolio, U.S. DEP’T OF EDUC., https://studentaid.gov/data-center/student/portfolio [https://perma.cc/5FU-U-PBI2] (listing number of loan recipients enrolled in ICR, IBR, PAYE, and REPAYE plans). Including Standard and Graduate plans, the total number of borrowers enrolled in repayment for the same quarter was 25.37 million. See id. (listing number of recipients enrolled in each repayment plan).

56. See Bruenig, supra note 7 (suggesting income-driven repayment to become “better deal” than standard repayment).

57. See Tankersley, supra note 8 (warning of potential negative results from reducing loan payments through income-driven repayment); Bruenig, supra note 7 (suggesting Biden’s plan could cause radical alterations to tuition prices); Ali & Barnes, supra note 7 (explaining critiques of Biden’s plan). Even the Department of Education recognized this cost-shifting result as one of the most serious concerns with the income-driven repayment proposal. See Improving Income-Driven Repayment for the William D. Ford Federal Direct Loan Program, 88 Fed. Reg. 1894, 1916 (proposed Jan. 11, 2023) (to be codified at 34 C.F.R. pt. 685) (raising concern of colleges shifting costs to students).

58. See supra note 57 (discussing critiques of better income-driven repayment terms).

59. See Improving Income-Driven Repayment for the William D. Ford Federal Direct Loan Program, 88 Fed. Reg. at 1894 (establishing lower income-based repayment amounts over life of loan); Ali & Barnes, supra note 7 (noting White House guaranteed no borrower earning under 225% of poverty level to make payments).
forgiveness after ten years, borrowers could become indifferent towards taking out large loans.\textsuperscript{60} When students lack such price sensitivity, colleges lose a major incentive for keeping tuition prices reasonable.\textsuperscript{61} The most practical colleges will likely raise tuition with the assurance that their financially needy students will not bear the consequences.\textsuperscript{62} Unfortunately, many scholars suspect colleges will go even further, manipulating the new system by encouraging students to take on more loans and profiting from the government’s assumption of risk.\textsuperscript{63}

2. Historic Relationship Between Tuition Increases and Student Loan Policy

The fear of increasing tuition in response to student loan legislation is not new; rather, experts claim that today’s $1.6 trillion student debt crisis is the result of a slow progression of policy decisions that have motivated colleges to increase costs.\textsuperscript{64} Over the past thirty years, college tuition has risen by 80% at private, nonprofit four-year institutions and 125% at public, four-year institutions, even after adjusting for inflation.\textsuperscript{65} In the same period, the total dollar amount of federal student loans has increased by 264%.\textsuperscript{66}

Economists have warned policymakers of this problem since 1987, when former Secretary of Education William J. Bennett theorized that increasing student

\textsuperscript{60} See Brooks, supra note 1, at 283 (explaining income-driven repayment leads to cost indifference); Bruenig, supra note 7 (warning of overborrowing).

\textsuperscript{61} See Brooks, supra note 1, at 283-84 (suggesting generous income-driven repayment terms remove market checks on tuition prices).

\textsuperscript{62} See Bruenig, supra note 7 (arguing incentive for colleges to raise prices without consequence to students); Brooks, supra note 1, at 283 (noting students will not bear much risk of higher payments).

\textsuperscript{63} See Tankersley, supra note 8 (cautioning colleges could easily “game” new structure); Brooks, supra note 1 at 283-84 (comparing criticism of for-profit schools to more traditional universities); Bruenig, supra note 7 (describing incentive for colleges to keep raising prices); Ali & Barnes, supra note 7 (considering critique of incentivized tuition raises).


\textsuperscript{65} See JENNIFER MA & MATEA PENDER, COLL. BD., TRENDS IN COLLEGE PRICING & STUDENT AID 2022 3 (2022), https://research.collegeboard.org/media/pdf/trends-in-college-pricing-student-aid-2022.pdf [https://perma.cc/K652-GG6J] (reporting average tuition and fees between 1992-93 and 2022-23). In 1992-93, the average tuition at private four-year institutions was $21,860; in 2022-23, that average increased to $39,400. See id. (listing average tuition and fees). Since 1980, the total cost of college tuition at four-year institutions has nearly tripled. See FACT SHEET: Student Loan Relief, supra note 64 (stating tuition increases since 1980). More recently, from 2010 to 2020, average tuition and fees rose 10% at public, nonprofit colleges and nearly 20% at private institutions. See Tankersley, supra note 8 (noting rising tuition between 2010 and 2020).

\textsuperscript{66} See Ma & Pender, supra note 65, at 31 (reporting percentage change in total federal loans over past thirty years). More than 180 colleges charged over $50,000 for the 2022-2023 school year, with the ten most expensive colleges charging an average of $65,000. See Cole Claybourn, 10 Most, Least Expensive Private Colleges, U.S. NEWS & WORLD REP. (Sept. 12, 2022), https://www.usnews.com/education/best-colleges/the-short-list-college/articles/10-most-least-expensive-private-colleges (last visited Feb. 22, 2023), (summarizing tuition data from 2022-2023 annual survey).
loan funding is one factor behind rising tuition. Bennett claimed that recent federal aid policies empowered colleges “blithely to raise their tuitions, confident that Federal loan subsidies would help cushion the increase.” Researchers have set out to test the Bennett Hypothesis since its inception. While studies have produced varying results due to the many factors affecting tuition, most scholars agree there is a strong correlation between federal financial aid and escalating tuition costs. President Biden commented that government subsidies have likely impacted rising tuition, and that the Bennett Hypothesis is a “conundrum.” Even if there is no direct causation between tuition increases and student loan policy, President Biden’s plan for loan relief fails to address the genuine problem of rapidly escalating tuition costs.

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68. See Bennett, supra note 67 (suggesting financial aid causes colleges to raise tuition).


71. See Kix, supra note 69 (discussing Biden’s comments on Bennett Hypothesis). President Biden, Vice President at the time, commented on a 2012 study that tested the Bennett Hypothesis on for-profit institutions and found that those receiving federal student aid set tuition about 78% higher than those that did not receive aid. See id. (addressing Biden’s comments on Cellini and Goldin study); Cellini & Goldin, supra note 70, at 26 (finding significantly higher tuition at for-profit schools receiving aid). The theory is easiest to test on for-profit institutions because these schools can choose whether to receive federal aid or not. See Kix, supra note 69 (explaining benefits of for-profit sector studies).

72. See Tankersley, supra note 8 (explaining shortcomings of new income-driven repayment plan). Columbia economist R. Glenn Hubbard commented that “fixing with subsidies” does not solve the problem, alleging that because the new plan does nothing to change the structure of education, it will ultimately result in raising tuition prices. See id. (quoting Hubbard’s statement on Biden’s plan).
C. Historic Policies Aimed at Preventing Rising Tuition

Policymakers have made modest attempts to curb rising tuition. Most of these efforts have focused on for-profit colleges, which have historically been responsible for a large portion of loan defaults due to their high tuition rates and suboptimal career outcomes. Congress responded to the G.I. Bill and concerns about tuition by designing the college accreditation system as a quality assurance test for institutions receiving federal aid. More recently, in 2008, Congress took steps to increase transparency and accountability around colleges raising tuition by requiring the Department of Education to list the top 5% most expensive colleges and the 5% of colleges with the largest tuition increases over the last three academic years. In 2011, the Department of Education introduced a three-part test to determine whether colleges prepare students for “gainful employment” based on the percentage of graduates from that college who can repay their loans. Colleges that did not meet any of the three factors would lose federal funding. Although federal courts struck down parts of this plan as arbitrary, the general requirement for colleges to prepare students for gainful employment remains in place.


74. See Ariel Gelrud Shiro & Richard V. Reeves, The For-Profit College System is Broken and the Biden Administration Needs to Fix It, BROOKINGS INST. (Jan. 12, 2021), https://www.brookings.edu/blog/how-we-rise/2021/01/12/the-for-profit-college-system-is-broken-and-the-biden-administration-needs-to-fix-it/ [https://perma.cc/ND54-D5MJ] (reviewing history of manipulative behavior at for-profit colleges). While for-profit colleges enroll only about 10% of students in the United States, their graduates account for around 50% of all student loan defaults. See id. at 40 (discussing high default rates at for-profit institutions).


77. See Joseph E. Stiglitz, Student Debt and the Crushing of the American Dream, N.Y. TIMES (May 12, 2013), https://archive.nytimes.com/opinionator.blogs.nytimes.com/2013/05/12/student-debt-and-the-crushing-of-the-american-dream/ [https://perma.cc/3PHY-4GG6] (identifying three-part test for federal aid eligibility under regulation). The plan, based on language in the Higher Education Act, requires colleges to “prepare students for gainful employment” to be eligible for federal funding. See Higher Education Act of 1965, tit. IV, sec. 461, § 103(b), 79 Stat. 1219, 1251 (requiring gainful employment outcome); Watson, supra note 76, at 931 (reviewing inspiration for gainful employment regulation). The original test required colleges to meet one of three requirements or else lose federal funding: (1) 35% of graduates in loan repayment; (2) average graduate’s estimated annual loan payments less than 12% of their income; or (3) average graduate’s estimated annual loan payments less than 30% of their discretionary income. See Stiglitz, supra (listing requirements for federal student aid under original test).

78. See Stiglitz, supra note 77 (noting colleges would lose federal funding if gainful employment test not met).
employment remains. The Department of Education has shut down several for-profit colleges and discharged their students’ loans due to predatory actions that do not meet the gainful employment standard.

Larger attempts to lower tuition have been unsuccessful. During his 2012 presidential re-election campaign, President Barack Obama proposed a plan to tie colleges’ federal grant money to how low they kept tuition. Congressional Republicans objected to the plan based on taxpayer costs. Both President Obama and President Biden have proposed partnering with states to federally fund free community college, but neither has succeeded in their endeavors.

Several states have attempted to regulate tuition costs by imposing tuition freezes and caps on public universities. These policies have been mostly short-term solutions, however, and universities often respond by decreasing their financial aid payments.

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82. See Nakamura & de Vise, supra note 81 (detailing President Obama’s plan).

83. See id. (noting congressional barrier to implementing Obama’s plan). White House officials responded to these objections, arguing that such a plan would not cost additional taxpayer dollars because of the interest on student financial aid payments. See id. (accounting White House’s response to congressional concerns).

84. See Watson, supra note 76, at 933 (discussing Obama proposal for free community college); Tankersley, supra note 8 (noting Biden’s proposal to federally fund community college). Even more modest plans for federally funded community college, like the America’s College Promise Act (ACPA), have failed due to partisan concerns over taxpayer costs. See America’s College Promise Act of 2021, S. 1396, 117th Cong. (2021) (proposing free tuition and fees for low-income students); Startz, supra note 81 (discussing ACPA and noting imperfections).

85. See GILLEN, supra note 70, at 8 (discussing public university tuition caps); Lois Miller & Minseon Park, Making College Affordable? The Impacts of Tuition Freezes and Caps, ECON. EDUC. REV., Aug. 2022, at 1, 3 (analyzing state-imposed public university tuition caps and freezes). Between 2008 and 2019, twenty-two states experimented with tuition caps and freezes. See Miller & Park, supra, at 26 (listing states with tuition caps and freezes from 2008 through 2019); e.g., FLA. STAT. ANN. § 1009.24 (LexisNexis 2023); Mich. COMP. LAWS SERV. § 388.1865 (LexisNexis 2023); MD. CODE ANN., EDUC. § 14-410 (LexisNexis 2023). Most of these tuition regulations have only applied to in-state undergraduate tuition. See Miller & Park, supra, at 3 (discussing scope of tuition regulations).
institutional financial aid. Critics argue that capping or foregoing tuition prices could degrade the quality of education, which likely prevents long-term solutions.

D. Australia’s Higher Education System

1. Success of the Australian System

While the United States government’s role in funding higher education is certainly not trivial, Australia’s structure is more robust: The Australian government is the primary funder and regulator of Australia’s higher education system. In fact, Australia claims to run one of the most generous student loan programs in the world, largely because of its income-contingent loan scheme. Unlike students in countries like the United States who rely on tuition assistance through a variety of sources such as means testing, private loans, and limited state and federal government loans, Australian students pay back their higher education loans exclusively through income-contingent repayment organized by the government. The uniformity of income-contingent repayment and its protection of low-income students results in a highly effective structure. Many American scholars have pointed to Australia’s income-contingent repayment and

86. See Miller & Park, supra note 85, at 14 (concluding institutional financial aid decreases in response to tuition freezes and caps).

87. See Michael Simkovic, Risk-Based Student Loans, 70 WASH. & LEE L. REV. 527, 632-34 (2013) (arguing tuition caps could impact quality, availability, and value of education). One study found a 3.3% decrease in per-student instructional expenditures during short-term state caps and freezes. See Miller & Park, supra note 85, at 12 (presenting effects of tuition caps and freezes on university expenditures).


91. See Creagh, supra note 89 (explaining successful implementation of income-contingent programs); see also JANE LOMAX-SMITH ET AL., HIGHER EDUCATION BASE FUNDING REVIEW: FINAL REPORT 111 (2011) (concluding Australian loan scheme functions well and should remain in place); AUSTL. GOV’T DEP’T OF EDUC. & TRAINING, HIGHER EDUCATION IN AUSTRALIA: A REVIEW OF REVIEWS FROM DAWKINS TO TODAY 22 (2015) (summarizing recent reviews of Australian higher education system).
higher education tuition programs as examples for American policymakers to follow.92

2. Income-Driven Repayment in Australia

Australia implemented its first income-contingent repayment loan program, HECS, in 1989.93 Following a policy proposal for the unification and growth of the national higher education system, legislators based HECS on the innovative idea of repaying loans in relation to taxable income.94 In response to funding pressures, the government restructured the HECS program through the Higher Education Support Act (HESA) in 2003, increasing the maximum amount students can contribute to tuition, and codifying many features to make the program sustainable.95 The government renamed HECS to HECS-HELP, and the program remains largely successful to date.96

Under HECS-HELP, borrowers pay 1% to 10% of their income towards loan repayment on a sliding scale based on their earnings.97 Borrowers pay until their entire balance is gone and are not granted loan forgiveness after a certain number

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92. See Stiglitz, supra note 77 (suggesting United States look to Australian system for long-term solution to student loans); Bruenig, supra note 7 (noting Australia’s success with directly legislated tuition caps and suggesting similar reforms in United States); Brooks, supra note 1, at 277 (pointing to success of Australian HELP program in comparison to American PAYE program); Ritika Kapadia, Note, A Solution to the Student Loan Crisis: Human Capital Contracts, 9 BROOK. J. CORP. FIN. & COM. L. 591, 604-05 (2015) (using Australia to exemplify successful income-contingent financing scheme).


94. See AUSL. GOV’T DEP’T OF EDUC. & TRAINING, supra note 91, at 31 (recording 1988 policy proposal and 1989 implementation of HECS); Higher Education Funding Act 1988 (Cth) ch 4 pt 4.4 div 1 (Austl.) (detailing calculation of debt based on taxable income); Delisle & Usher, supra note 12 (describing innovative nature of HECS).

95. See AUSL. GOV’T DEP’T OF EDUC. & TRAINING, supra note 91, at 32 (noting higher education funding review identified funding pressures and recommended reform); Higher Education Support Act 2003, (Cth) ch 4 pt 4-1 div 134-1 (Austl.) (increasing maximum student contributions and codifying HECS-HELP program objectives).

96. See AUSL. GOV’T DEP’T OF EDUC. & TRAINING, supra note 91, at 32 (indicating program name change in 2007). The 2003 HESA reform has been the largest reform to the program since its inception in 1989. See id., at 18 (explaining HESA basis for Australia’s current higher education financing system). Since 2003, Australia has made several financial sustainability reforms to the program, like adjusting student contribution brackets and increasing the threshold for repayments to begin. See Delisle & Usher, supra note 12 (discussing recent reforms to sustain HECS-HELP program).

of years.\textsuperscript{98} Student loan defaults, however, are quite rare in Australia.\textsuperscript{99} Default rates are low because borrowers who make less than $48,361 in Australian dollars per year, which equals about $32,500 in U.S. dollars, pay nothing.\textsuperscript{100} This repayment threshold also ensures that graduates do not need to make loan payments until they are reaping the benefits of their degree.\textsuperscript{101} Since income-contingent repayment is the only option for loan repayment, repayment rates are adjusted automatically, and debts are collected directly from borrowers’ paychecks, similarly to taxes.\textsuperscript{102} Automatic collection makes the system seamless and less frustrating to navigate, a major criticism of the United States loan system.\textsuperscript{103}

3. The Commonwealth Grant Scheme and Student Contributions

Perhaps the most important factor in maintaining the viability of Australia’s income-contingent repayment program is its Commonwealth Grant Scheme (CGS).\textsuperscript{104} Through CGS, the Australian government gives grant funding to higher education providers to subsidize student tuition.\textsuperscript{105} Each higher education provider that receives CGS funding must first enter into a funding contract with the Australian government agreeing to honor directly legislated tuition prices.\textsuperscript{106} The program’s scope is large—as of 2022, 147 higher education institutions participate and receive CGS funding, including public, private, vocational, and even one online-only university.\textsuperscript{107} Each year, the annual federal budget determines

\begin{itemize}
\item \textsuperscript{98} See Barr et al., \textit{The US College Loans System: Lessons from Australia and England}, 71 \textit{ECON. EDUC. REV.} 32, 37 (2019) (discussing lack of maximum repayment period in Australia).
\item \textsuperscript{100} See Burke, supra note 97 (describing minimum income threshold for repayments). Income-contingent repayment plans are generally effective at decreasing default rates because they eliminate repayment burdens for low earners. See Barr et al., supra note 98, at 36 (touting lower default rates benefit of income-contingent loan plans).
\item \textsuperscript{101} See \textit{How Universities Are Funded}, supra note 15 (illustrating HELP program improvements to higher education access). Although Australia does not have a discretionary income threshold for payments like the United States’ version of income-drive repayment, its minimum income threshold to begin repayments is lower than the United States’ model, even under President Biden’s plan. See supra note 48 and accompanying text (illustrating discretionary income threshold under Biden’s plan).
\item \textsuperscript{102} See Barr et al., supra note 98, at 34 (describing systems under which repayments adjust automatically).
\item \textsuperscript{103} See id. at 36 (arguing United States loan system difficult to navigate and administratively burdensome compared to Australian system).
\item \textsuperscript{104} See Commonwealth Grant Scheme (CGS), supra note 16 (defining CGS and its benefits).
\item \textsuperscript{105} See id. (describing CGS program). CGS is the largest funding program for Australian higher education, providing $7.5 billion in support for higher education in 2020-2021. See Ferguson, supra note 88 (illustrating scope of CGS program).
\item \textsuperscript{106} See Commonwealth Grant Scheme (CGS), supra note 16 (noting requirement for funding agreements); \textit{Higher Education Providers’ 2021-2023 Funding Agreements}, AUSTL. GOV’T DEP’T OF EDUC., https://www.dese.gov.au/collections/higher-education-providers-2021-2023-funding-agreements (last visited Jan. 5, 2022) (providing most recent funding agreements between Australian government and universities).
\item \textsuperscript{107} See Providers that Offer Commonwealth Assistance, STUDY ASSIST, https://www.studyassist.gov.au/-you-study/providers-offer-commonwealth-assistance (last visited Jan. 5, 2022) (listing approved providers
\end{itemize}
CGS funding for universities, dividing tuition into two parts: Commonwealth contribution—the government-subsidized grant portion—and student contribution—the maximum cost for which students are responsible.108

Students who attend university through a Commonwealth Supported Place (CSP), a program based on citizenship, residency, enrollment, and acceptance at an approved institution, are eligible for the HECS-HELP and CGS programs.109 CSP students will never pay more than the student contribution for their field of study.110 The Australian Parliament breaks student contributions for different fields of study into funding clusters based on: the costs of teaching and scholarship, expected employment prospects within that field, and, most recently, areas of national priority.111 For example, the most expensive student contribution cluster includes fields like law, business management, and social sciences, and the lowest student contributions include fields like teacher education, nursing, and agriculture.112 The maximum student contribution amounts are remarkably low compared to what American students pay, ranging from $4,124 to $15,142 Australian dollars, or about $2,700 to $10,200 U.S. dollars per year of study.113

CGS ensures that no higher education provider receiving government funding can increase tuition past the maximum legislated amount without permission from the government.114 Unlike in the United States, where colleges can prey on generous government loan programs by raising tuition, Australia’s system ensures that its income-contingent repayment program remains affordable for the government by dictating what its universities can and cannot charge students.115

108. See Ferguson, supra note 88 (illustrating how Australian government breaks down tuition into Commonwealth and student contributions); Student Contribution Amounts, supra note 16 (defining student contribution amounts).


110. See id. at 5 (discussing governmentally subsidized student contribution under CSP).


112. See 2023 Allocation of Units of Study to Funding Clusters, supra note 14 (listing 2023 funding clusters). In 2023, law students were responsible for a maximum student contribution of $15,142 Australian dollars, while nursing students contributed a maximum of $4,124 Australian dollars. See id. (noting student contributions for law and nursing programs).

113. See id. (listing maximum student contribution amounts per funding cluster and area of study).

114. See Ferguson, supra note 88 (noting HESA funding only available to approved providers); Commonwealth Grant Scheme (CGS), supra note 16 (specifying level of funding limited to determined contributions under CGS).

115. See Brooks, supra note 1, at 283-84 (arguing generous loan programs give colleges opportunity to raise tuition); Student Contribution Amounts, supra note 16 (detailing maximum student contribution amounts).
While Australia’s approach to higher education funding is more progressive than the United States, it is still far less progressive than countries such as Germany, Finland, and Sweden, that charge students only nominal tuition or no fees at all for higher education.116

III. ANALYSIS

A. The United States Should Continue Towards a Predominantly Income-Driven System for Student Loan Repayment

1. Benefits of Income-Driven Repayment

As the Department of Education begins to implement President Biden’s income-driven repayment plan, it is likely that most student loan borrowers will switch accordingly.117 Thus, the United States is quickly heading towards a student loan repayment system that is dominated by an income-driven repayment model.118 The benefits of income-driven repayment make clear that the United States should feel confident transitioning to President Biden’s SAVE Plan as the standard.119

The SAVE model significantly improves borrowers’ ability to repay their student loans and avoid the consequences of default.120 For borrowers struggling to make monthly payments on a standardized plan, enrolling in an income-driven repayment plan reduces monthly payments and allows them to redirect that

116. See Cherastidtham, supra note 89 (comparing Australia’s CGS to countries offering free higher education or nominal tuition). On the most progressive side of the spectrum, countries like Sweden and Finland never introduce fees, operating under the notion they deter democratic access to education. See id. (discussing lack of higher education fees in several countries); ALEX USHER & ROBERT BURROUGHS, HIGHER EDUC. STRATEGY ASSOC., TARGETED FREE TUITION: A GLOBAL ANALYSIS 1 (2018) (introducing higher education cost-sharing debate). On the other end of the spectrum, many argue that charging tuition leads to more resources and quality education and that a better solution is providing aid to students who cannot afford fees. See USHER & BURROUGHS, supra (establishing argument for “fees plus aid” camp). Universal income-contingent loans have presented a middle ground to these viewpoints but are largely overshadowed by student debt debates. See id. (discussing change in debate from cost-sharing to debt crises).

117. See SAVE Repayment Plan Offers Lower Monthly Loan Payments, supra note 3 (announcing implementation of SAVE Plan for summer 2023 through July 2024). Predictions suggest that most borrowers would benefit by switch to President Biden’s version of income-driven repayment to take advantage of its lower monthly payments, interest-free, and debt-forgiveness features. See id. (highlighting SAVE Plan’s generous terms); Bruenig, supra note 7 (suggesting income-driven repayment to become “better deal” than standard repayment); Blagg, supra note 6 (calling Biden’s plan good choice for nearly all borrowers); Improving Income-Driven Repayment for the William D. Ford Federal Direct Loan Program, 88 Fed. Reg. 1894, 1915 (proposed Jan. 11, 2023) (to be codified at 34 C.F.R. pt. 685) (projecting reductions in total payments for all borrowers).

118. See Improving Income-Driven Repayment for the William D. Ford Federal Direct Loan Program, 88 Fed. Reg. at 1895 (noting goal of streamlining and standardizing of Direct Loan Program). In fact, the Department of Education hopes to phase out all existing income-driven repayment models because this new plan will be the best choice for almost all borrowers. See id. (proposing phasing out of existing income-driven repayment plans).

119. See id. at 1916-17 (discussing impacts on borrowers’ repayments and chances of default).

120. See id. (noting impact on borrowers from regulatory changes).
money towards living costs.\textsuperscript{121} Additionally, the SAVE Plan’s elimination of interest ensures that loan balances never accumulate over their original value, solving a significant concern for borrowers considering switching to income-driven repayment.\textsuperscript{122} By providing the lowest-income borrowers with a $0 interest-free monthly payment, income-driven repayment effectively eliminates the possibility of delinquency and default, resulting in life-changing financial outcomes for borrowers.\textsuperscript{123} Moreover, income-driven repayment allows borrowers to keep their progress toward loan forgiveness, which typically pauses when a borrower cannot make payments, even through difficult times.\textsuperscript{124} One of the most significant benefits of SAVE is its simplicity: Payments calculate automatically, and the plan automatically enrolls delinquent borrowers after seventy-five days.\textsuperscript{125} Because the SAVE Plan benefits almost all borrowers, the Department of Education plans to phase out existing income-driven repayment plans, streamlining a complicated and frustrating system.\textsuperscript{126}

Income-driven repayment under President Biden’s plan does not advantage borrowers exclusively; taxpayers and the federal government will also see positive impacts.\textsuperscript{127} Basing monthly payments on income ensures that the Department of Education targets assistance to the borrowers who are most likely to struggle with repayment, which will minimize the program’s cost for
taxpayers.\textsuperscript{128} Reductions in delinquency and default rates will help the Department of Education reduce costs and administrative challenges that impact taxpayers.\textsuperscript{129} The Department of Education also estimates that eliminating interest will encourage repayment.\textsuperscript{130} Finally, the program will benefit taxpayers by increasing consumer spending and stimulating the national economy.\textsuperscript{131}

2. Potential Costs of Expanding Income-Driven Repayment

While income-driven repayment is a remarkable model for reducing the burden of student debt, the United States must not ignore the potential consequences of transitioning to this system.\textsuperscript{132} One potential concern is the program’s cost to taxpayers; like all federal assistance programs, the SAVE Plan will require an upfront cost as borrowers pay less on their loans.\textsuperscript{133} Nevertheless, the program’s results—lower delinquency and default rates, simplified administration, and increased consumer spending—could likely make up for its upfront costs.\textsuperscript{134} Moreover, by eliminating interest, SAVE will directly benefit the one-in-five American taxpaying adults with outstanding student debt.\textsuperscript{135}

One of the greatest concerns with income-driven repayment is the incentive for colleges to raise tuition, shifting the cost to students to take out more loans.\textsuperscript{136} Economists have warned of this result for decades, but the concern becomes increasingly grave as the Department of Education transitions United States student loan policy to a primarily income-driven repayment system.\textsuperscript{137} Colleges with predatory student loan tendencies could also become more difficult to

\textsuperscript{128} See id. (discussing taxpayer benefits of income-driven repayment despite cost of program).


\textsuperscript{130} See supra note 51 and accompanying text (discussing problem of ballooning balances); see also Baum & Delisle, supra note 51, at 14 (stating flaws of income-driven repayment). The Department of Education uncovered through research and borrower complaints that interest accumulation may discourage repayment. See Improving Income-Driven Repayment for the William D. Ford Federal Direct Loan Program, 88 Fed. Reg. at 1918 (anticipating interest rates to encourage repayment).

\textsuperscript{131} See id. at 1895 (discussing costs of income-driven repayment).

\textsuperscript{132} See id. at 1917 (discussing delayed benefits of program to taxpayers).

\textsuperscript{133} See Melanie Hanson, Student Loan Debt Statistics, EDUC. DATA INITIATIVE (Feb. 10, 2023), https://educationdata.org/student-loan-debt-statistics [https://perma.cc/XY9Y-RN2N] (reporting 20% of American adults holding outstanding undergraduate student debt). Even borrowers who do not struggle to make monthly payments will benefit from the elimination of interest under President Biden’s plan. See supra note 51 and accompanying text (reviewing issue of interest accrual).

\textsuperscript{134} See supra notes 61-63 and accompanying text (detailing problems of lack of student price consciousness and resulting tuition increases).

\textsuperscript{135} See Bennett, supra note 67 (suggesting financial aid causes colleges to raise tuition); supra note 57 and accompanying text (reviewing economists’ concerns with income-driven repayment and particularly Biden’s plan).
identify, making punitive action against these colleges less attainable.138 A re-
view of economists’ predictions of the likely effects of income-driven repayment
and the ineffectiveness of past policies aimed at abating higher education costs
evinces that the United States federal government urgently needs to design a bet-
ter solution to combat rising college tuition.139

B. Australia’s Higher Education Funding System as a Model for the United
States

Australia was the first country to pilot income-driven repayment, and its suc-
cess should serve as a model to the United States.140 Confining its implementa-
tion of Australia’s system to income-driven repayment plans is not enough; ra-
ther, the United States should follow Australia’s success with capping tuition
costs as a prerequisite for colleges to receive government funding.141

1. Reform Federal Higher Education Funding Requirements to Mitigate Rising

college tuition.

138. See Improving Income-Driven Repayment for the William D. Ford Federal Direct Loan Program, 88
institutions losing access to federal student aid); Stiglitz, supra note 77 (discussing introduction of gainful em-
ployment test); Gainful Employment, supra note 79 (stating current gainful employment standards). For example,
one method of evaluating colleges for predatory action is the Annual Earnings Rate test, which calculates the
annual loan payment amount of a college’s graduates and divides it by the graduates’ mean or median earnings.
See Gainful Employment, supra note 79 (detailing tests used to determine gainful employment). Annual Earning
Rates that fall above 8% may lose federal funding. See id. (noting gainful employment requirement for funding
under Higher Education Act); Education Department Approves $5.8 Billion Group Discharge to Cancel All Re-
maining Loans for 560,000 Borrowers Who Attended Corinthian, supra note 80 (discussing past Department of
Education shutdown of a predatory colleges). Under an income-driven repayment system, a graduate’s annual
loan payment depends on their income, rendering this test futile. See Gainful Employment, supra note 79 (pre-
senting Annual Earnings Rate test to measure institution success); Income-Driven Repayment Plans, supra note
4 (noting income-driven repayment plan matches borrowers’ payment to their income).

139. See Tankersley, supra note 8 (discussing economists’ concerns with Biden’s plan). Despite the many
benefits of income-driven repayment systems, supporters and critics of President Biden’s program agree that its
failure to address rising tuition is a defect to its success. See id. (noting failure to address tuition shortcoming of
Biden’s plan). Past attempts at curbing rising tuition in the United States have been largely unsuccessful. See
supra note 84 and accompanying text (discussing failed attempts at federally-funded community college); Miller
& Park, supra note 85, at 14 (concluding short-term, state-specific tuition freezes and caps unsuccessful due to
correlation with decreased financial aid); Nakamura & de Vise, supra note 81 (providing example of congres-
sional blocks to higher education tuition policy). The federal government should implement a new tuition policy
quickly and effectively, as implementation of the SAVE model began in August 2023 and will take effect by July
2024. See SAVE Repayment Plan Offers Lower Monthly Loan Payments, supra note 3 (announcing SAVE im-
plementation timeline).

140. See Delisle & Usher, supra note 12 (noting United States’ creation of income-driven repayment plans
based on Australian model). Not only was Australia the first country to experiment with income-driven repay-
ment, but its program is one of the most successful student loan schemes in the world. See supra notes 89-91
and accompanying text (discussing success of Australian loan scheme).

141. See Commonwealth Grant Scheme (CGS), supra note 16 (defining CGS and discussing benefits); Fer-
guson, supra note 88 (measuring impact of CGS tuition program). Australia’s response to rising tuition under
its first iteration of income-driven repayment was implementing direct legislation of tuition prices, which has
proven key to the program’s longevity and affordability. See supra note 114 and accompanying text (noting how
CSG maintains affordability of income-driven repayment); supra notes 95-96 and accompanying text (discussing
Australia’s adjustments to program to maintain sustainability).
Tuition

Australia has maintained one of the world’s most well-run income-driven repayment models by implementing CGS, its higher education funding scheme. Under CGS, the Australian government has ensured that its income-driven repayment program remains affordable and that tuition costs do not skyrocket by directly legislating maximum student tuition contributions. If the United States were to adopt a similar model to CGS and cap maximum tuition costs for students, it would solve for both the affordability of income-driven repayment and the ongoing problem of rapidly escalating tuition prices at United States colleges.

The United States has struggled for decades to keep college tuition prices from rapidly escalating, but past solutions like state tuition freezes and attempts to fund community college completely have been ineffective. Instead of reinventing the wheel, the Department of Education should adopt a program like CGS in which colleges must cap tuition at a reasonable price in exchange for access to federal student loan funding.

2. Difficulties of Implementing Australian Model

Fortunately, some American economists and policy experts are already pointing towards the adoption of Australian higher education tuition models as a solution. Access to federal student loan funding is already contingent on a program’s success compared to its graduates’ loans, so the idea of enacting requirements for funding is not novel. Nevertheless, one concern with a

142. See Commonwealth Grant Scheme (CGS), supra note 16 (defining CGS); Ferguson, supra note 88 (detailing CGS program and its success).

143. See Commonwealth Grant Scheme (CGS), supra note 16 (summarizing CGS’s impact on higher education tuition rates and income-driven repayment program). The United States’ greatest reservation to the expansion of income-driven repayment is its effect on tuition prices for students. See supra note 57 and accompanying text (sampling concerns about tuition rates in response to income-driven repayment). Australia has found a way to solve this problem through CGS. See Ferguson, supra note 88 (detailing CGS solution to rising tuition via maximum student contributions).


145. See supra Section II.B (discussing history of rising tuition in United States leading to debt crisis); supra Section II.C (discussing past attempts to mitigate tuition increases in United States).

146. See supra notes 113-115 (comparing CGS model and its benefits to other higher education funding models).

147. See supra note 92 and accompanying text (sampling American scholars’ arguments for adopting Australian income-contingent financing scheme).

148. See Gainful Employment, supra note 79 (outlining “gainful employment” standard and tests for losing federal funding). While federal courts struck the original “gainful employment” test down as arbitrary, maximum tuition costs would be a clear, easily applicable standard for disqualifying predatory institutions from receiving federal funding. See Ass’n of Private Sector Colls. & Univs. v. Duncan, 681 F.3d 427, 462 (D.C. Cir. 2012) (striking down original gainful employment test under arbitrary and capricious standard); 2023 Allocation of Units of Study to Funding Clusters, supra note 14 (demonstrating simplicity of Australian student contribution caps). Tuition capping would also provide a substitute for the current gainful employment test, which is less
tuition-capping model is that partisan disputes would prevent such a proposal from passing into law. 149 In the past, critics have suggested that capping tuition degrades the quality of education, but maximum tuition requirements do not have to be as low as Australia’s to be effective. 150 Moreover, setting maximum tuition costs serves as a middle ground between the United States’ current “fees plus aid” system and the free higher education systems of more progressive countries like Germany, Finland, and Sweden. 151 The United States’ student debt problem, combined with the push towards an income-driven repayment system—which has support across party lines—suggests that the government must implement a solution to rising tuition immediately. 152 Tuition capping is one of the least intrusive and most effective ways to solve these problems, and Australia’s model provides a testament to its success. 153

149. See Nakamura & de Vise, supra note 82 (providing example of partisan dispute blocking higher education tuition policy). Similarly, partisan concerns have shut down discussions about funding free community college. See supra note 84 and accompanying text (noting failures of community college funding proposals due to partisan concerns). Unlike plans to lower tuition, income-driven repayment policy has had little trouble passing through Congress. See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, ch 1, sec. 4021, § 455(e), 107 Stat. 312, 341 (creating income-driven repayment option); College Cost Reduction and Access Act, Pub. L. No. 110-84, tit. II, sec. 203, § 493C, 121 Stat. 784, 792 (2007) (authorizing IBR plan); Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, tit. II, sec. 2213, § 493C, 124 Stat. 1029, 1081 (amending IBR program); Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, 80 Fed. Reg. 67204, 67204 (Oct. 30, 2015) (to be codified at 34 C.F.R. pts. 668, 682, 685) (finalizing REPAYE program). Congress delegated the authority to create income-driven repayment policies to the Secretary of Education, and the Department of Education has used this authority to make changes to the plans. See BAUM & DELISLE, supra note 31, at 6 (summarizing congressional grant to Secretary of Education and Department of Education’s subsequent creation of ICR).

150. See supra note 87 and accompanying text (discussing critics’ qualms with prospect of tuition caps); 2023 Allocation of Units of Study to Funding Clusters, supra note 14 (listing Australian maximum student contributions for 2023). The most expensive courses of study cost Australian students $15,142 in Australian dollars or the equivalent of $10,200 in U.S. dollars per year. See id. (providing cost breakdown for 2023 funding clusters). Meanwhile, American students paid over $65,000 to attend the five most expensive colleges in the United States in the 2022 to 2023 school year. See Claybourn, supra note 66 (listing most expensive colleges in 2022-2023). The average cost of tuition was $39,700 at private four-year colleges and $10,000 at in-state public colleges. See id. (noting average tuition costs for 2022-2023 school year). Even if the Department of Education were to cap tuition at $65,000 for the 2023 to 2024 school year, this regulation would prevent the ten most expensive colleges from raising tuition by any significant margin. See id. (listing tuition and fees for ten most expensive American colleges).

151. See supra note 116 and accompanying text (discussing “fees plus aid” versus “no fees” camps of higher education funding debate).

152. See Frotman, supra note 64, at 812 (addressing American student debt crisis); Improving Income-Driven Repayment for the William D. Ford Federal Direct Loan Program, 88 Fed. Reg. 1894, 1894 (proposed Jan. 11, 2023) (to be codified at 34 C.F.R. pt. 685) (proposing income-driven repayment reform to address college affordability and debt crisis). Both Democratic and Republican lawmakers have shown support for income-driven repayment and stressed its importance. See Sheffey, supra note 54 (noting bipartisan support for workable income-driven repayment plan).

153. See supra note 116 and accompanying text (discussing levels of government intervention in higher education tuition). Price capping is effective at preventing tuition increases because it ensures that no college receiving federal student aid funding will increase tuition past the maximum mandated price. See supra note 115 and accompanying text (explaining how CGS ensures maximum tuition for higher education institutions receiving government funding). The scope of the CGS program demonstrates that setting tuition requirements in
IV. CONCLUSION

Americans hold over $1.6 trillion in student debt—a number that continues to rise each year—yet holding a college degree is becoming increasingly necessary for Americans to gain employment and earn a living wage. The United States’ student debt crisis results from escalating college tuition costs which cause most Americans to take on burdensome loans simply to afford the price of attendance.

The recent changes to the Department of Education’s income-driven repayment program offer significant financial relief to millions of borrowers and provide a better option than conventional repayment. The SAVE model will significantly improve borrowers’ ability to repay their student loans, avoid default, and achieve life-changing financial outcomes. Nevertheless, the Department of Education must address economists’ concerns regarding the program’s potential to result in unchecked tuition costs before moving forward. Disregarding tuition costs would not only undermine the new income-driven repayment program; but more concerning, it would exacerbate the already crushing national student debt crisis. Thus, while income-driven repayment is an admirable solution, President Biden and the Department of Education must urgently address the source of student debt—the soaring cost of college tuition—before colleges have a chance to respond to the new income-driven repayment plan.

Implementing reasonable tuition caps on United States colleges as a prerequisite for receiving federal funding is a promising solution because it is both simple to implement and proven effective. The most difficult hurdle is passing such a program into law, but the Department of Education can point to Australia’s HECS-HELP and CGS systems as proof that this model is highly successful at suppressing tuition in an income-driven loan repayment system. While colleges may not delight at the possibility of legislated tuition caps, the alternative of allowing many colleges to continue preying on students is far more damaging to borrowers and the nation. The longer the Department of Education waits to implement tuition caps, the more tuition will rise, and the less willing colleges will be to accept realistic price caps. It is time for President Biden and the Department of Education to fix the student debt problem at its source before it becomes an even greater crisis.

exchange for funding causes most universities to accept these requirements. See Providers that Offer Commonwealth Assistance, supra note 107 (listing institutions participating in CGS program, including all forty-one accredited Australian Universities). Australia’s model demonstrates tuition capping is an effective way to keep income-driven repayment affordable. Compare LOMAX-SMITH ET AL., supra note 91, at 17 (noting Australia’s 1.5% of GDP investment in higher education on par with comparable countries), with Brooks, supra note 1, at 283-84 (suggesting failure to address excessive spending on education could bankrupt income-driven repayment programs).