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HOW STATES USE OCCUPATIONAL LICENSING TO PUNISH STUDENT LOAN DEFAULTS

C. Jarrett Dieterle, Shoshana Weissmann
and Garrett Watson

INTRODUCTION

In recent years, college graduates have found themselves increasingly saddled with student loan debt. Even worse, many of these graduates fall behind on that debt—sometimes through no fault of their own. Prolonged illness, divorce, job loss or other unexpected life events can all cause those living from paycheck-to-paycheck to temporarily default on their loan obligations.

While defaulting on a student loan can bring a whole host of unpleasant ramifications—from wage garnishments to liens—it can also become a direct threat to a person’s livelihood. Presently, 18 states have laws on the books that allow them to strip occupational licenses from individuals who have defaulted on student loans. Certain states enforce these laws more vigorously than others but the laws put borrowers in a lose-lose situation, as they take away a person’s primary means of income and thus their ability to repay outstanding debt.

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It is difficult to measure the extent to which states are using these laws against borrowers but the evidence that is available suggests it is a widespread practice. Despite some claims to the contrary, revoking or suspending professional licenses on account of defaulting on a student loan is a self-defeating policy that leaves borrowers worse off than before. Moreover, these laws can actually work to thwart more traditional debt collection tools, including wage garnishments.

By using occupational licenses in the service of debt collection, lawmakers make licensure an even more harmful labor market constraint. At the same time, it also distracts from more nuanced and narrowly targeted solutions for addressing the recent rise in student loan debt. Ultimately, lawmakers need to require licensing boards to become more transparent about the extent to which they are using these license revocation laws. There also needs to be a concerted effort to repeal and remove these laws in states where they exist.

THE PROBLEM OF STUDENT LOAN DEBT

In recent years, student loan debt in America has ballooned. Estimates peg the total outstanding student loan debt load at \$1.4 trillion, a jump of over \$800 billion in the last decade.¹ The average student loan amount owed by each American sits at just over \$34,000, which is itself an increase of over 50% in the past ten years.² And according to an analysis by

1. Jessica Dickler, “Student loan balances jump nearly 150 percent in a decade,” *CNBC*, Aug. 29, 2017. <https://www.cnbc.com/2017/08/29/student-loan-balances-jump-nearly-150-percent-in-a-decade.html>.

2. *Ibid.*

Pew Research, nearly one out of every four people under the age of 30 has outstanding student loan debt.³

While keeping up on student loan payments can be stressful on its own, many states around the country appear determined to make life even more difficult for borrowers. As highlighted in a recent *New York Times* report, 18 states currently have laws on the books that allow them to strip professional licenses from individuals who default on their student loans.⁴ In these states, if residents fall behind, occupational licensing boards can revoke or suspend their professional licenses.

Occupational licensure acts as a government permission slip, allowing individuals to work in certain professions. Many industries explicitly require such a license in order to work in certain fields. Common examples include nursing, cosmetology and plumbing. However, licensing requirements often do little to protect the health and safety of consumers and instead mostly operate to keep newcomers out of certain professions.⁵

While occupational licensing itself can be problematic, laws that allow states to strip licenses away from those who default on student loans compounds the problem by preventing people from being able to work in their chosen profession even after they have initially obtained a license. And, it should go without saying (but apparently does not) that it is harder to catch up on loan payments after losing one's primary source of income. Further, using this method of debt collection can also work at cross-purposes with more traditional debt collection tools and can ultimately trap borrowers in a downward cycle of debt.

This is no small problem. Recent data suggests that 4.6 million Americans are in default on student loan payments, which comprises about 22% of those with outstanding student loans. What's more, the problem is only getting worse: the number of people behind on student loans has increased by 17% in just the past four years.⁶ While the full number of people whose licenses have been suspended due to falling behind on student loan payments is impossible to determine,

there is reason to believe it could be upwards of ten thousand or more.⁷

The Rise of Student Loans in the United States

While the concept of student loans in America dates back to the 1800s, the federal government began its involvement in the 1950s and 60s. In 1965, The Higher Education Act was signed into law by President Lyndon B. Johnson, establishing the Federal Family Education Loan Program (FFEL).⁸ FFEL loans created government subsidized and guaranteed loans that were issued by third-party entities such as banks and other private lenders. The program was largely administered by a network of state guaranty agencies that were empowered to pursue those who defaulted on their student loans.⁹

According to the *New York Times*, these state agencies began stepping up their collection efforts in the 1980s¹⁰ and in 1990, the Department of Education issued a handbook recommending that states “[d]eny professional licenses to defaulters until they take steps to repayment.”¹¹ Over twenty states followed this advice and passed laws that allowed state licensing boards to revoke professional licenses from delinquent borrowers.¹² Although a few states have recently repealed their versions of these laws, most still remain.

This mechanism of debt collection specifically applies to FFEL loans, which existed prior to 2010 and are administered by state guaranty agencies. Starting in 2010, the federal government took over the student loan market and now acts as the direct lender, rather than relying on third-party lenders. Nevertheless, thousands are affected and the problem remains significant since FFEL loans still comprise 30% percent of student loan borrowing.¹³

Under these state laws, license holders in fields as distinct as nursing, teaching, law, barbering and cosmetology can face license revocation or suspension. But gauging how many license holders have been affected—or how many could potentially be impacted—is difficult given the paucity of

3. Anthony Cilluffo, “5 facts about student loans,” Pew Research, Aug. 24, 2017. <http://www.pewresearch.org/fact-tank/2017/08/24/5-facts-about-student-loans>.

4. Jessica Silver-Greenberg et al., “When Unpaid Student Loan Bills Mean You Can No Longer Work,” *New York Times*, Nov. 18, 2017. <https://www.nytimes.com/2017/11/18/business/student-loans-licenses.html>.

5. *Occupational Licensing: A Framework for Policymakers*, Department of the Treasury, the Council of Economic Advisers, and the Department of Labor, July 2015, pp. 58-61. https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf

6. Josh Mitchell, “Nearly 5 Million Americans in Default on Student Loans,” *The Wall Street Journal*, Dec. 13, 2017. <https://www.wsj.com/articles/nearly-5-million-americans-in-default-on-student-loans-1513192375>.

7. Silver-Greenberg, et al. <https://www.nytimes.com/2017/11/18/business/student-loans-licenses.html>.

8. Jeff Gittlen, “A Look Into the History of Student Loans,” Lendedu.com, Aug. 15, 2016. <https://lendedu.com/blog/history-of-student-loans>.

9. Silver-Greenberg et al. <https://www.nytimes.com/2017/11/18/business/student-loans-licenses.html>.

10. Ibid.

11. “Reducing Student Loan Defaults: A Plan for Action,” U.S. Dept. of Education, 1990, p. 63. <https://files.eric.ed.gov/fulltext/ED323879.pdf>.

12. “State Laws and Statutes That Suspend Professional Licenses and Certificates,” National Consumer Law Center, 2014. <http://www.jw.org/wp-content/uploads/2015/02/State-Laws-and-Statutes-That-Suspend-Professional-Licenses-and-Certificates.pdf>.

13. Federal Student Aid, “Federal Student Loan Portfolio,” U.S. Dept of Education, 2018. <https://studentaid.ed.gov/sa/about/data-center/student/portfolio>.

empirical data available across states and licensing regimes. In fact, state licensing boards are often notoriously opaque entities that disclose little information about license renewals or revocations.

The Scope of the Problem

Despite the lack of empirical data, there is enough information available to suggest that the scope of the problem is significant:

Public records requests by *The New York Times* identified at least 8,700 cases in which licenses were taken away or put at risk of suspension in recent years, although that tally almost certainly understates the true number.¹⁴

State-specific data also sheds light on the scale of the issue. In particular, Tennessee appears to be one of the most active states utilizing the power.¹⁵ Starting in 2009 and upon the direction of the state comptroller's office, Tennessee's state guaranty agency began alerting state licensing boards about delinquent borrowers.¹⁶ Prior to 2009, Tennessee had only used more traditional debt collection tools, such as wage garnishments.¹⁷

By 2011, local media were already reporting instances of nurses in Tennessee having their licenses stripped.¹⁸ In 2015, Tennessee's guaranty agency estimated that since 2009, some 4,200 Tennesseans have had their licenses revoked for falling behind on loans.¹⁹

Texas is another prominent example. As a recent article about license revocation for student loan default in the *Texas Tribune* notes:

There is no comprehensive source of data on how frequently this happens in Texas. Records from multiple organizations and agencies suggest more than 4,215 people in the state – including security guards, cosmetologists and pharmacists – were at risk of losing

their license because of student loan default in 2017.²⁰

Further, a public information request by the paper uncovered over 500 nurses in Texas that had lost their licenses since 2010 as a result of student loan defaults.²¹ Notably, the *American Journal of Medical Quality* projects a growing nursing shortage in the coming years,²² which makes suspending licenses for nurses and other medical professionals especially unwise. In addition to nurses, since 2013, nearly 250 Texas teachers have had license renewals rejected due to falling behind student loans.²³

While Tennessee and Texas illustrate the potential depth of the issue, anecdotal evidence from other states shows how widespread these laws are across the country. A 2016 annual report from Louisiana's State Board of Nursing disclosed that 87 nurses in the state had been stripped of their licenses for falling behind on student loans.²⁴ In 2015, Washington State's Department of Licensing reported that it had suspended 110 licenses for student loan defaults.²⁵ A *New York Times* public record request found another 300 nurses that had been affected by these laws in Kentucky.²⁶

Here, it is worth noting that occupational and professional licenses are not the only type of licenses that states have the power to revoke. Iowa and South Dakota, for example, have revoked driver's licenses from those behind on student loans. In 2012, Iowa suspended over 900 driver's licenses due to student loan default.²⁷ South Dakota took licenses from 1,000 residents for student loan debt, and barred another 1,500 from obtaining state hunting, fishing and camping licenses.²⁸

14. Silver-Greenberg et al. <https://www.nytimes.com/2017/11/18/business/student-loans-licenses.html>.

15. Emily Bregel, "Loan defaults sting Tennessee nurses," *Times Free Press*, Jan. 18, 2011. <http://www.timesfreepress.com/news/news/story/2011/jan/18/loan-defaults-sting-nurses/39644>.

16. Ibid.

17. Ibid.

18. Ibid.

19. Kate Belz, "Licenses suspended for hundreds of Tennessee health care professionals," *Times Free Press*, Aug. 4, 2015. <http://www.timesfreepress.com/news/local/story/2015/aug/04/failed-pay-your-student-loan-if-youre-profess/318051>.

20. Shannon Najmabadi, "In Texas, falling behind on your student loan payments can cost you your license to work," *The Texas Tribune*, March 20, 2018. https://www.texastribune.org/2018/03/20/texas-defaulting-student-loans-can-lo/?utm_campaign=trib-social&utm_medium=social&utm_source=twitter&utm_content=1905166288.

21. Ibid.

22. Stephen P. Juraschek et al., "United States Registered Nurse Workforce Report Card and Shortage Forecast," *American Journal of Medical Quality* 27:2 (2012), pp. 241-49. <http://journals.sagepub.com/doi/10.1177/1062860611416634>.

23. Ibid.

24. "2016 Annual Report," Louisiana State Board of Nursing, 2017, p. 25. <https://www.lsb.state.la.us/Portals/1/Documents/AnnualReport/AnnualReport2016.pdf>.

25. Certificate of Enrollment, Third Substitute House Bill 1169, 65th Legislature, 2018 Regular Session, p. 3. <http://lawfilesexternal.wa.gov/biennium/2017-18/Pdf/Bills/House%20Passed%20Legislature/1169-S3.PL.pdf>.

26. Silver-Greenberg et al. <https://www.nytimes.com/2017/11/18/business/student-loans-licenses.html>.

27. David M. Gettings et al., "Many States Can Revoke Professional and Other Licenses as Means of Collecting Unpaid Student Loans," Troutman-Sanders, March 26, 2018. <https://www.consumerfinancialserviceslawmonitor.com/2018/03/many-states-can-revoke-professional-and-other-licenses-as-means-of-collecting-unpaid-student-loans>.

28. Silver-Greenberg et al. <https://www.nytimes.com/2017/11/18/business/student-loans-licenses.html>.

Likewise, it is not just student loan delinquency that states can punish with license revocation. Maryland strips occupational licenses for falling behind on taxes²⁹ and 43 states bar people from renewing driver's licenses if they have accrued unpaid court fees.³⁰ Such practices pose many of the same problems as suspending a professional license.

As these specific examples suggest, some states are more aggressive than others in enforcing these types of laws. While 18 states have laws on the books that allow them to suspend or revoke occupational licenses as punishment for student loan defaults, officials in several of these states have asserted that the laws remain dormant and largely unenforced.³¹ Other states, like Georgia, appear to enforce them only sporadically and infrequently,³² while states like Tennessee and Texas clearly put them to significant use.

Unfortunately, determining just how prevalent the issue is in the 18 states in which these laws exist is impossible since many state licensing boards do not disclose how many, if any, professional licenses they have suspended, revoked or declined to renew on account of student loan defaults. It is not even clear whether many states and licensing boards are collecting this information at all.

RESULTANT ISSUES

Creating A Catch-22

The purported rationale for these laws is to force people who are behind on student loan payments to catch up. The approach is severely misguided, however, and can work against its own stated goal. Furthermore, there are already numerous readily-available debt collection tools for pursuing delinquent borrowers that are more narrowly tailored.

At its most basic level, the ability to repay a loan requires an individual to have the requisite income and cash flow to be able to make timely payments. Removing one's ability to work in the field he or she knows best will most likely reduce that individual's income and force them to pursue less reli-

able and remunerative sources of income. Stripping delinquent borrowers of their professional license essentially tells them: we want you to do better at repaying your loans, so we are going to deny you the ability to earn the money needed to do so.

While there are important government interests in encouraging on-time loan repayment, policymakers who support these laws would do well to consider their on-the-ground impact. Far from only punishing deadbeat delinquents, these laws can ensnare well-meaning people who hit a financial rough patch through no fault of their own. For example, the *New York Times* profiled Shannon Otto, a nurse from Tennessee who started suffering epileptic seizures and was forced to take a break from her job as a nurse. When she fell behind on her student loans as a result of not working, her nursing license was suspended. Later, when she attempted to return to work after getting her seizures under control, she was unable to do so.³³

Tethering two unrelated policy issues—student loans and occupational licensing—together in this way can lead to harm. So, while student loan debt has rightly become a growing concern for policymakers given the fact that an increasing number of Americans find themselves saddled with it, creative and *effective* solutions are needed to address the problem.

Credential Creep

Another recent phenomenon that has compounded the negative effects of these license revocation laws is the rise of “credential creep.” An increasing amount of legislation requires more educational training and degrees in order to qualify for certain occupations. To be sure, ensuring that licensed practitioners in certain fields are appropriately trained is an understandable goal but oftentimes the educational training required has little connection to the work in question—or is far more burdensome than is necessary.

For example, in 2015, Tennessee passed a law that requires all barbers in the state to have at least a high school education as a prerequisite to obtain a barber license, despite the fact that high school curriculums do not teach anything about cutting hair.³⁴ Similarly, the District of Columbia is in the process of implementing new daycare regulations that would

29. Anastasia Boden, “States are using absurd licensing requirements to license people right out of work - it has to stop,” Foxnews.com, Jan. 29, 2018. <http://www.foxnews.com/opinion/2018/01/29/states-are-using-absurd-licensing-requirements-to-license-people-right-out-work-it-has-to-stop.html>.

30. Mario Salas and Angela Ciolfi, “Driven By Dollars: A State-By-State Analysis of Driver's License Suspension Laws for Failure to Pay Court Debt.” Legal Aid Justice Center, Fall 2017, p. 2. <https://www.justice4all.org/wp-content/uploads/2017/09/Driven-by-Dollars.pdf>.

31. According to the New York Times, officials in Hawaii, Massachusetts, Alaska and Iowa have stated that their versions of these laws are not being used. See Silver-Greenberg et al. <https://www.nytimes.com/2017/11/18/business/student-loans-licenses.html>.

32. Nicole Carr and Terah Boyd, “Bill to relax sanctions on student loan defaults pending in Ga. House,” *The Atlanta-Journal Constitution*, Feb. 27, 2018. <https://www.myajc.com/news/state--regional-govt--politics/bill-relax-sanctions-student-loan-defaults-pending-house/VjJSrO9dQFTurNoAk5WY3N>.

33. Silver-Greenberg et al. <https://www.nytimes.com/2017/11/18/business/student-loans-licenses.html>.

34. Eric Boehm, “Tennessee's Haircut Cops Bust Barbers Who Lack High School Diplomas,” *Reason*, Jan. 19, 2018. <http://reason.com/archives/2018/01/19/barber-cops-bust-high-school-dropouts>.

require all licensed daycare workers in the city to possess a college degree.³⁵

The D.C. requirement at least mandates degrees focused on early childhood education, but the requirement nevertheless exceeds what is necessary to be a properly trained childcare worker. After all, most babysitters and childcare workers around the country lack college degrees—as do many parents—and the ultimate effect of such a requirement will be to block those of lower means from entering the field.³⁶ D.C. also has the highest cost of childcare in the country.³⁷ Forcing current and aspiring workers to acquire an unnecessary degree will only worsen that problem.³⁸

A recent analysis by Preston Cooper of the American Enterprise Institute looked at educational licensing requirements across industries and found that in some states as many as 30-40 different licensed occupations have some form of educational requirement.³⁹ In many cases the educational training only spanned a few weeks, but in a significant number of occupations the educational requirements extended well over a year.⁴⁰ The study concluded:

Longer education requirements are particularly burdensome because they carry multiple costs: aspiring workers must not only find a way to finance their education, but may also forego the opportunity to earn income while they are in school. Taking on student debt becomes necessary for many license-seekers.⁴¹

As states require more education as a prerequisite to licensure, they are simultaneously incentivizing more would-be license applicants to accrue additional student loan debt to finance that education. To then turn around and use defaults on that same debt as an excuse to strip someone of their

professional license creates a Sword of Damocles⁴² over the heads of license holders. With one hand, the government encourages more student debt and with the other, it uses that debt as a weapon to punish debtors.

Constitutional Concerns

Not only are there deep-seated policy concerns about laws that tie student loans and professional licenses together in this way, the laws themselves may not even be constitutional. Traditionally, it has been recognized that occupational licensing burdens must have at least some rational connection to an individual's capacity to practice in that particular industry. Caleb Trotter, an attorney for the Pacific Legal Foundation (PLF), has summarized the prevailing legal standard as follows:

In the 1957 Supreme Court case *Schware v. Board of Bar Examiners of the State of New Mexico*,⁴³ the court held that under the 14th Amendment's due process clause, state licensing requirements "must have a rational connection with the [professional's] fitness or capacity" to work in their chosen profession.⁴⁴

In that case, Rudolph Schware had applied for a law license but was denied when authorities accused him of lacking a "good moral character" due to his pro-communist activism some 15-plus years earlier.

The Supreme Court reviewed the evidence and held that Schware's past political activism and resulting arrests were insufficient to call his character into doubt and thus had no bearing on his ability to practice law. Accordingly, the court ordered the state to allow him to sit for the bar exam.⁴⁵

Trotter argues that similarly, "the ability to afford personal loan payments" does not necessarily "have much connection to one's ability to do his or her job."⁴⁶ After all, a brilliant brain surgeon may not be brilliant at personal finance and even if he were, he might have gone through a health scare or other unexpected life event that temporarily caused him to fall behind on his payments.

35. Jarrett Dieterle and Shoshana Weissmann, "Comment Regarding the Office of the State Superintendent of Education's Notice of Proposed Rulemaking amended 5-A DCMR Chapter 1," Dec. 13, 2017. <https://www.rstreet.org/wp-content/uploads/2018/04/R-Street-Institute-Comment-on-DC-Daycare-College-Requirement-2-1.pdf>. Private industry groups have also been raising educational requirements for practitioners, as evidenced within the occupational therapy field. See, e.g., Garrett Watson and Shoshana Weissmann, "Occupational therapy: You shouldn't need a degree for that," *Washington Examiner*, Jan. 31, 2018. <https://www.washingtonexaminer.com/occupational-therapy-you-shouldnt-need-a-degree-for-that>.

36. *Ibid.*, pp. 1-3.

37. "The Cost of Child Care in Washington, DC," Economic Policy Institute, April 2016. <http://www.epi.org/child-care-costs-in-the-united-states/#/DC>.

38. C. Jarrett Dieterle and Shoshana Weissmann, "R Street Institute comment on DC daycare college requirement," R Street Institute, Dec. 13, 2017. <https://www.rstreet.org/2017/12/13/r-street-institute-comment-on-dc-daycare-college-requirement>.

39. Preston Cooper, "Want government permission to work? Get ready to go back to school," American Enterprise Institute, April 18, 2018. <https://www.aei.org/publication/want-government-permission-to-work-get-ready-to-go-back-to-school>.

40. *Ibid.*

41. *Ibid.*

42. "Sword of Damocles," Cambridge Dictionary. <https://dictionary.cambridge.org/us/dictionary/english/sword-of-damocles>. ("If you have a sword of Damocles hanging over you/your head, something bad seems very likely to happen to you.")

43. *Schware v. Board of Bar Examiners*, 353 U.S. 232 (1957).

44. Caleb Trotter, "Don't Punish People With Delinquent Student Loans by Revoking Their Work Licenses," *The Daily Signal*, Feb. 23, 2018. <https://www.dailysignal.com/2018/02/23/dont-punish-delinquent-student-loans-revoking-licenses>.

45. *Ibid.*

46. *Ibid.*

There have been examples of state litigation challenging these types of license revocation laws.⁴⁷ In 2005, a Maryland man challenged a state law that stripped his professional dentistry license due to unpaid taxes, arguing that this imposed a burden unrelated to his qualifications to practice competently as a dentist.

While the state court ultimately disagreed and held that paying taxes was related to one's qualifications as a dentist, the court's logic is hard to parse.⁴⁸ As PLF attorney Anastasia Boden points out, failure to pay taxes could conceivably be relevant in professions like finance or accounting but a dentist who is behind on taxes can still be quite "capable of filling cavities."⁴⁹ It is plausible that a similar case could arise in the student loan context and that a future court in another state could take a different view of the matter than the court in Maryland did.

In any event, using occupational licenses as a debt collection tool creates serious policy and legal concerns. Perhaps worse, it is also uncertain whether the laws are even necessary in the first place.

A Solution in Search of a Problem

As American law has evolved over time, numerous debt collection tools and enforcement mechanisms followed suit. Among other things, delinquent borrowers can have wages garnished, tax returns or social security payments seized, or liens assessed against their property. These long-recognized options form a core toolkit that has served creditors and governments successfully throughout much of history. As such, governments should be reluctant merely to pile on additional enforcement mechanisms for debt collection.

Some defenders of licensing revocation laws have argued that they are particularly effective tools for ensuring loan repayment. For instance, Louisiana's nursing board has reported that of the 87 nurses whose licenses they did not renew for student loan default, 84 of those repaid their debts and had their licenses restored.⁵⁰ Data from other states has showed similar numbers when it comes to loan repayments.⁵¹

47. See, e.g., Boden. <http://www.foxnews.com/opinion/2018/01/29/states-are-using-absurd-licensing-requirements-to-license-people-right-out-work-it-has-to-stop.html>.

48. Knoche v. Maryland, The Court of Special Appeals of Maryland, No. 574 (Oct. 11, 2006). <https://www.courts.state.md.us/data/opinions/cosa/2006/574s05.pdf>.

49. Boden. <http://www.foxnews.com/opinion/2018/01/29/states-are-using-absurd-licensing-requirements-to-license-people-right-out-work-it-has-to-stop.html>.

50. "2016 Annual Report," p. 25. <https://www.lsbns.state.la.us/Portals/1/Documents/AnnualReport/AnnualReport2016.pdf>.

51. See, e.g., Najmabadi. https://www.texastribune.org/2018/03/20/texas-defaulting-student-loans-can-lo/?utm_campaign=trib-social&utm_medium=social&utm_source=twitter&utm_content=1905166288; and Silver-Greenberg et al. <https://www.nytimes.com/2017/11/18/business/student-loans-licenses.html>.

What these topline numbers miss, however, is *how* those who have lost their occupational licenses are catching up on their payments. Oftentimes, borrowers who face the loss of a professional license—and thus their only means of income—will go to extreme lengths, including taking out *more* debt, to make the necessary repayments. In other situations, they might forgo necessities—such as food or shelter—in an effort to keep their license. An article in the *Texas Tribune* offers the case of Texas teacher Roderick Scott as an example:

[Facing the loss of his license, Scott] immediately paid the loan collector — borrowing money to do so — and entered into a repayment plan that let him keep his license. But during the time it took him to sort out the paperwork, his students were moved to a different teacher and he lost a department-chair position that came with an added stipend — making it even harder to make the loan payments, he said.

Scott then made a string of financial sacrifices to afford the more than \$300-a-month payment his loan collector asked for. He put the loan payment before rent and other bills. He was evicted, stayed with his brother and considered setting up a GoFundMe page to help ends meet.⁵²

Scott's situation shows how punishing student loan default this way can trigger a downward debt spiral even for well-meaning borrowers. It also shows how these laws have the greatest impact on those living at the margins. Of the 87 nurses whose license renewal was upheld because of student loan defaults, nearly 50% of them had previously defaulted on a loan, which further underscores this reality.⁵³ While middle- and upper-class households may have the cash flow available to quickly catch up on loan repayments without taking on more ancillary debt, most low-income households do not. The result is a regressive policy that disproportionately hurts the most vulnerable Americans.

A final consideration is that stripping occupational licenses from student loan defaults can actually work at cross-purposes with other debt collection techniques. For example, it is difficult to garnish wages from a delinquent borrower if the borrower does not have any wages—as is the case when they lose their professional license and are unable to work. A similar issue could crop up with seizing tax returns and liens. The less resources a borrower has on account of lacking a means of income, the less efficacy these traditional tools will have.

52. Ibid.

53. "2016 Annual Report," p. 25. <https://www.lsbns.state.la.us/Portals/1/Documents/AnnualReport/AnnualReport2016.pdf>.

POLICY RECOMMENDATIONS

Target laws for repeal

Recent exposure of these license revocation laws has led to some initial, modest successes in reforming them. A bipartisan mix of policy wonks and advocacy groups has spoken out against punishing student loan defaults by stripping occupational licenses. On the left, teachers' unions like the American Federation of Teachers, have voiced criticism of the laws, with AFT president Randi Weingarten going so far as to analogize them to a "modern-day debtors' prison."⁵⁴ Consumer rights groups such as the National Consumer Law Center have also been involved in the issue.⁵⁵

At the same time, efforts to reform excessive occupational licensing have spread across the intellectual right and libertarian-oriented groups have also offered critiques. Organizations such as the Pacific Legal Foundation⁵⁶ and the R Street Institute⁵⁷ have specifically spoken out against laws that connect student loans and licensing on both constitutional and policy grounds.

Likewise, state lawmakers on both sides of the aisle have introduced legislation to repeal these types of laws. In the last several years, four different states—Montana⁵⁸, New Jersey,⁵⁹ North Dakota⁶⁰ and Washington⁶¹—have successfully eliminated their versions. In Oklahoma, the legislature was unable to enact a full-scale repeal, but it did reduce the law's effect by reforming the reporting requirements for

notifying licensing boards of a student loan default.⁶²

In particular, the experience in Montana provides a roadmap for repeal. In 2015, libertarian-leaning Republican Rep. Daniel Zolnikov and his Democratic colleague Rep. Moffie Funk co-sponsored a simple bill that repealed Montana's version of the law.⁶³ The bill passed with overwhelming majorities in a Republican-leaning legislature and was signed by the state's Democratic governor.⁶⁴ While each state's political system is different, Montana shows that reform is well within reach and can be bipartisan in nature.

There is hope for more action in the near future, as well. Following the *Texas Tribune* investigation of the issue, a bipartisan array of Texas lawmakers expressed a desire to repeal the Texas version of the law⁶⁵ and more policymakers in states across the country are increasingly highlighting the issue.

To the extent that states also have laws allowing them to strip driver's licenses on account of unpaid student loans, these laws should also be overturned. Losing a driver's license can be as bad or worse than losing a professional license for many Americans. Particularly in rural communities that lack other forms of public transportation, revoking a driver's license can mean taking away a person's only means of getting to their job and earning income. Further, in many states, driving on a suspended or revoked driver's license is a criminal offense, which only worsens the plight of people with problems paying back their student loan debt.⁶⁶

In addition to pursuing repeal in the 18 states, the federal government's role should also be addressed. As previously mentioned, the Department of Education originally endorsed these types of laws and encouraged states to adopt them. Although this informal guidance is from a 1990 handbook—and thus may no longer even be the official position of the department—Department of Education officials should explicitly rescind this position and clarify that there are better and more appropriate ways for states to pursue delinquent borrowers. Given that states often look to the federal government as a policy leader, this small step could prompt more states to reform these laws.

54. Silver-Greenberg et al. <https://www.nytimes.com/2017/11/18/business/student-loans-licenses.html>. See also, American Federation of Teachers, "Fighting back from default," *AFT On Campus* (Fall 2015). <https://www.aft.org/periodical/aft-campus/fall-2015/fighting-back-default>.

55. "State Laws and Statutes That Suspend Professional Licenses and Certificates." <http://www.iwj.org/wp-content/uploads/2015/02/State-Laws-and-Statutes-That-Suspend-Professional-Licenses-and-Certificates.pdf>.

56. See, e.g., Trotter. <https://www.dailysignal.com/2018/02/23/dont-punish-delinquent-student-loans-revoking-licenses>; and Boden. <http://www.foxnews.com/opinion/2018/01/29/states-are-using-absurd-licensing-requirements-to-license-people-right-out-work-it-has-to-stop.html>.

57. The authors of this paper all work and are affiliated with the R Street Institute and two of the authors have previously written about these laws. See C. Jarrett Dieterle and Shoshana Weissmann, "How can people repay student loan debt if states take away the licenses they need to work?," *USA Today*, June 21, 2018. <https://www.usatoday.com/story/opinion/2018/06/21/student-loan-debt-shouldnt-cost-people-licenses-jobs-column/711573002>; and C. Jarrett Dieterle and Shoshana Weissmann, "Behind on your student loans? Some want the government to keep you from working," *Washington Examiner*, March 6, 2018. <https://www.washingtonexaminer.com/behind-on-your-student-loans-some-want-the-government-to-keep-you-from-working>.

58. House Bill No. 363, Montana Legislature, 2015. <http://leg.mt.gov/bills/2015/bill.html/HB0363.htm>.

59. Bill Texts: NJA2926, 2016-2017, Regular Session, LegiScan. <https://legiscan.com/NJ/drafts/A2926/2016>.

60. Senate Bill No. 2014 (Appropriations Committee), Legislative Assembly of North Dakota, Jan. 3, 2017. <http://www.legis.nd.gov/assembly/65-2017/documents/17-0522-05000.pdf>.

61. House Bill No. 1169, Washington State Legislature, Mar. 22, 2018. <http://apps2.leg.wa.gov/bills/summary?Year=2017&BillNumber=1169&Year=2017&BillNumber=1169>.

62. Bill Text: OK SB357, 2017, Regular Session, Enrolled, LegiScan. <https://legiscan.com/OK/text/SB357/id/1596344>.

63. House Bill No. 363. <http://leg.mt.gov/bills/2015/bill.html/HB0363.htm>.

64. "Behind on your student loans." <https://www.washingtonexaminer.com/behind-on-your-student-loans-some-want-the-government-to-keep-you-from-working>.

65. Shannon Najmabadi, "Lawmakers: Change state law that bars Texans in default on student loans from renewing work licenses," *The Texas Tribune*, April 4, 2018. <https://www.texastribune.org/2018/04/04/default-student-loans-lawmakers-change-Texas-law>.

66. "Driving While Revoked, Suspended, or Otherwise Unlicensed: Penalties by State," National Conference of State Legislatures, Oct. 27, 2016. <http://www.ncsl.org/research/transportation/driving-while-revoked-suspended-or-otherwise-unli.aspx>.

Another option is federal legislation.⁶⁷ The bipartisan Protecting JOBS Act, co-sponsored by Senators Marco Rubio (R-Fla.) and Elizabeth Warren (D-Mass.) was recently introduced in the U.S. Senate.⁶⁸ The bill would condition federal funding that flows to states under the Higher Education Act upon the elimination of any state laws that strip licenses for student loan default. This would include driver's licenses, teacher's licenses and other professional licenses. The law would take effect within two years of enactment and borrowers would also have the right to file for legal relief against state officials if a state violates the terms of the federal law.

While some may question the necessity of federal intervention on this issue, it is important to keep in mind that the FFEL loans at issue here are federally-guaranteed and the Department of Education itself played a key role in urging states to adopt these types of license revocation laws in the first place. Furthermore, there is relevant precedent for Congress using federal funding under the Higher Education Act in a similar way to encourage state colleges to offer in-state tuition to members of the military.⁶⁹

Create more transparency and data

While the ultimate solution for reforming laws that tie student loan defaults and occupational licensing together is to repeal the laws, another helpful step would be to require licensing boards in the states that have these laws to disclose the extent to which they are being used.

Presently, the only evidence thereof comes from occasional voluntary disclosures from the boards themselves or via public records requests from independent media watchdogs.⁷⁰ While investigative journalism such as that conducted by the *New York Times* and *Texas Tribune* on this issue is laudable, it should not be the only mechanism for uncovering the true extent of the problem.

Some licensing boards have voluntarily disclosed their use of these laws, including the Louisiana Nursing Board in its 2016 annual report.⁷¹ Put simply, in states that have these laws on their books, periodic disclosure should be the norm for all

licensing boards. Moreover, data on how many licensees fell behind on student loans and how many lost their licenses as a result would not be difficult to gather. If licensing boards prove reluctant to track and release this information, state legislatures should order them to do so in quarterly or annual reports.

Such a requirement would allow state policymakers in the relevant states to understand both the scope of the problem and the urgency for reform. If the data suggested that these laws were being used aggressively in particular states to pursue student loan defaulters—and thus causing the deleterious side effects discussed above—then lawmakers would understand the need to pursue reform with particular haste. On the flip side, if these laws are on the books but rarely—if ever—used, then lawmakers should consider whether they are really even necessary in the first place.

CONCLUSION

The issue of rising student loan debt should not be ignored. It is understandable that policymakers want to deter delinquency and encourage on-time loan payments. While student loan debt and the associated costs are a growing concern, this is not due to a lack of debt collection tools at the state level. On the contrary, recent changes to loan policies at the federal level,⁷² as well as growing cultural pressures that push Americans toward four-year college degrees are more likely culprits.⁷³

Policymakers on both the right and left have also suggested many potential options for addressing the growing levels of student loan debt. More market-based alternatives, such as income-share agreements, have been suggested, as well as the promotion of vocational and trade education as a less-costly alternative to traditional four-year degrees.⁷⁴

Other possibilities could include making it easier for FFEL borrowers to have access to income-based repayment options. Currently, FFEL loans are eligible for income-driven repayment plans but are required to be consolidated and re-categorized by the Department of Education as a direct

67. Dieterle and Weissmann. <https://www.usatoday.com/story/opinion/2018/06/21/student-loan-debt-shouldnt-cost-people-licenses-jobs-column/711573002>.

68. S. 3065, 115th Congress (2017-18), introduced June 14, 2018.

69. Rubio-Warren, "Protecting JOBS Act," Bill Summary. <https://www.warren.senate.gov/download/rubio-warren-protecting-jobs-act-one-pager>.

70. See, e.g., Silver-Greenberg et al. <https://www.nytimes.com/2017/11/18/business/student-loans-licenses.html>; Najmabadi. https://www.texastribune.org/2018/03/20/texas-defaulting-student-loans-can-lo/?utm_campaign=trib-social&utm_medium=social&utm_source=twitter&utm_content=1905166288; and Natalie Kitroeff, "These States Will Take Your License for Not Paying Student Loans," Bloomberg, March 25, 2015. <https://www.bloomberg.com/news/articles/2015-03-25/these-states-will-take-your-license-for-not-paying-student-loans>.

71. "2016 Annual Report," p. 25. <https://www.lsbn.state.la.us/Portals/1/Documents/AnnualReport/AnnualReport2016.pdf>.

72. According to a report by the Department of Education, rising student loan costs are largely attributable to changes in policy at the federal level, including the rising number of borrowers enrolled in loan forgiveness and income-based repayment plans. See, e.g., Adam Harris, "Federal Student-Loan Program Is Rapidly Losing Money, and Income-Based Repayment Is to Blame, Report Says," *The Chronicle of Higher Education*, Feb. 2, 2018. <https://www.chronicle.com/article/Federal-Student-Loans-Program/242426>.

73. See, e.g., Ibid; and Hayley Glatter, "College Is Still the Promised Land for High-School Students," *The Atlantic*, Sept. 13, 2016. <https://www.theatlantic.com/education/archive/2016/09/college-is-still-the-promised-land-for-high-school-students/499865>.

74. Oren Cass, "Not Everyone Should Go to College," *The Wall Street Journal*, May 17, 2018. <https://www.wsj.com/articles/not-everyone-should-go-to-college-1526598817>.

loan.⁷⁵ This process is not particularly difficult for borrowers but it may act as deterrent to some borrowers that use income-driven repayment options.

Furthermore, students who default tend to owe incredibly large amounts of debt, particularly for graduate degrees. Federal direct loans for these degrees are capped at \$138,500 but they do not require a co-signer and often are well above the annual compensation students receive when they graduate.⁷⁶ Students cannot obtain loans at that amount without a co-signer in the private sector. This suggests that federal student loans are taking undue risks with taxpayer support by extending loans that are frequently beyond the capacity of students to pay. This could be resolved by reducing the caps on Federal direct loans or implementing additional safeguards, such as requiring a co-signer after a certain loan limit is reached.

While policymakers from across the political spectrum may ultimately disagree on the best way to tackle the student debt load, it is clear that there are better policy responses available than to strip borrowers of their licenses. Weaponizing occupational licensing to punish student loan defaults distracts from the underlying issues behind the ballooning student debt load and exacerbates the problem of occupational licensing's harmful effects. Occupational licensure is usually justified as necessary to protect the health and safety of consumers (a rationale that oftentimes fails to hold up under scrutiny). But even the practice's more vociferous defenders would be hard-pressed to deny that stripping licenses as an enforcement tool for loan delinquency is far afield from licensure's intended policy purpose.

In view of this, state lawmakers should require licensing boards to be more transparent about how often they employ license revocation powers and policymakers at all levels of government should engage in efforts to repeal these laws.

ABOUT THE AUTHORS

C. Jarrett Dieterle is the director of commercial freedom policy and a senior fellow for the R Street Institute. His research and writing focus on regulatory affairs, alcohol policy, occupational licensing and other commercial freedom issues. He has testified in front of Congress and submitted numerous regulatory comments about excessive occupational licensing requirements.

Shoshana Weissmann is a policy analyst and digital media specialist with the R Street Institute, where she manages the institute's social media and email marketing, in addition to contributing graphics and video skills.

Garrett Watson is a policy analyst and senior program manager with the R Street Institute, responsible for managing grants and proposals and measuring R Street's policy impact. He also writes on income mobility and economic opportunity.

75. Federal Student Aid, "Income Driven Repayment Plans," U.S. Dept. of Education, 2018. <https://studentaid.ed.gov/sa/repay-loans/understand/plans/income-driven>.

76. Federal Student Aid, "Subsidized and Unsubsidized Student Loans," U.S. Department of Education, 2018. <https://studentaid.ed.gov/sa/types/loans/subsidized-unsubsidized>.

APPENDIX: STATES THAT SUSPEND PROFESSIONAL LICENSES AND CERTIFICATES

CHART I: CURRENT LAWS THAT ALLOW LICENSE SUSPENSION OR DENIAL FOR LOAN DEFAULT

| State | Statute | Professions Impacted |
|------------|---|--|
| Alaska | Alaska Stat. § 14.43.148 (general) | Any job requiring a professional license issued by the state. |
| Arkansas | Ark. Code Ann. § 17-95-409 | Physicians in breach of Rural Medical Practice student loan or scholarship contract. |
| California | Cal. Bus. & Prof. Code § 685 (West) (healthcare practitioners) | Healthcare practitioner or a licensed clinical social worker. |
| Florida | Fla. Stat. § 456.072 , 456.074 (health professions and occupations) | Any job requiring a health profession license issued by the state (defined here). |
| Georgia | Ga. Code Ann. § 7-1-707.1 (check cashers), § 12-6-49.2 (professional forestry), § 20-3-295 (general), § 43-1-29 (general) | Any job requiring a professional license issued by the state. |
| Hawaii | Haw. Rev. Stat. § 436B-19.6 (general), § 436C-2 (general), § 189-2(f) (commercial marine licenses), 302A-807(e) (school personnel), § 321-15 (Department of Health), § 431:9-235 (insurance adjusters and bill reviewers), § 431:9A-112 (insurance producers), § 457-9 (nurses), § 466J-8 (radiologic technology) | Any job requiring a professional license issued by the state or profession listed in the statute. |
| Illinois | 20 Ill. Comp. Stat. § 2105/2105-15 (general); 215 Ill. Comp. Stat. § 5/500-70 (insurance producers); 225 Ill. Comp. Stat. § 30/95 (dietetic and nutrition servicers), § 37/35 (environmental health practitioners), § 55/85 (marriage and family therapists), § 107/80 (professional counselors), § 110/16 (speech language pathology and audiology), § 135/95 (genetic counselors), § 335/9.1 (roofing), § 410/4-7 (barbers, cosmetologists), § 425/9 (debt collectors), § 441/15-10(e) , § 447/40-35 (private detectives, security, locksmiths), § 450/20.01 (certified public accountants), § 458/15-45 (real estate appraiser), § 420 Ill. Comp. Stat. § 44/45 (radon industry) | Any job requiring a professional license issued by the state or profession listed in the statute. |
| Iowa | Iowa Code § 261.121/-/261.127 (general) | Any job requiring a professional license issued by the state. |

| | | |
|---------------|---|---|
| Kentucky | Ky. Rev. Stat. Ann. § 164.772 (West) (general), § 314.091(l)(i) (West) (nurses) | Any job requiring a professional license issued by the state, additional penalties for nurses. |
| Louisiana | La. Rev. Stat. Ann. § 37:2951 (general) | Any job requiring a professional license issued by the state. |
| Massachusetts | Mass. Gen. Laws Ann. chs. 30A § 13 (general), § 112 § 61 (Department of Public Health) | Any job requiring a professional license issued by the state. |
| Minnesota | Minn. Stat. § 147.091(l)(y) (physicians), § 214.105 (health professions) | Health-related professions. |
| Mississippi | Miss. Code Ann. § 37-101-291 , § 37-101-293 (paid educational leave for healthcare professionals), § 37-101-292 (same for civil engineers), § 41-9-37 (same for hospital employees) | Health-related professions; civil engineer at the Mississippi Department of Transportation. |
| New Mexico | N.M. Stat. Ann. § 61-17A-21 (barbers and cosmetologists) | Cosmetology professions; board of barbers and cosmetologists scheduled for delayed repeal in 2020 under § 61-17A-25 . |
| Tennessee | Tenn. Code Ann. § 23-3-111 (authorizing Supreme Court to establish guidelines for attorneys), § 49-5-108 (authorizing State Board of Education to establish guidelines for teachers), § 56-1-312 (general), § 63-1-141 (healing arts professionals) | Any job requiring a professional license issued by the state or profession listed in the statute. |
| Texas | Tex. Educ. Code Ann. § 57.491 (West) (general), Tex. Gov't Code Ann. § 82.022(c) (West) (lawyers), 466.155(a)(3)(B), (C) (West) (state lottery agents), Tex. Occ. Code Ann. § 56.001-/56.006 (West) (general) | Any job requiring a professional license issued by the state or profession listed in the statute. |
| Virginia | Va. Code Ann. § 54.1-2400.5 (health professions) | Health-related professions. |

CHART 2: REFORMS TO LAWS THAT ALLOW LICENSE SUSPENSION OR DENIAL FOR LOAN DEFAULT

| State | Statute | Professions Impacted |
|--------------|--|--|
| Montana | Previously codified as Mont. Code Ann. § 20-26-1115 to § 20-16-1121. House Bill No. 363 repealed this law. Sponsored by Reps. Moffie Funk (D) and Daniel Zolnikov (R). | Any job requiring a professional license; or a driver's license. |
| New Jersey | Previously codified as N.J. Stat. Ann. § 2A:13-12 (attorneys) , 18A:71C-19 (general), § 45:1-21.2 (same) (West); N.J. Ct. R. 1:20-11B (attorneys) Assembly Bill 2926 repealed this bill. Sponsored by Louis D. Greenwald (D). | Any job requiring a professional license. |
| North Dakota | Previously codified as N.D. Cent. Code § 28-25-11 (general--judgment debtors) Senate Bill No. 2014 repealed this law. Introduced by the appropriations committee. | Any job requiring a professional license. |
| Oklahoma | Okla. Stat. tit. 70, § 623.1 (general); Okla. Admin. Code § 595:10-1-80 (commercial drivers) Senate Bill No. 357 reformed this law by changing the reporting requirements for notifying licensing boards of a student loan default. Sponsored by Representative Harold Wright (R) and David Holt (R). | Any job requiring a professional license or commercial driver license. |
| Washington | Wash. Rev. Code § 2.48.165 (lawyers), § 18.04.420 (accountants), § 18.08.470 (architects), § 18.11.270 (auctioneers), § 18.16.230 (cosmetologists, barbers and manicurists), § 18.20.200 (assisted living facilities), § 18.27.360 (contractors), § 18.39.465 (embalmers, funeral directors), § 18.43.160 (engineers and land surveyors), § 18.44.460 (escrow agents), § 18.46.055 (birthing centers), § 18.76.100 (poison center directors or specialists), § 18.85.341 (real estate brokers and salespersons), § 18.96.190 (landscape architects), § 18.104.115 (water well construction), § 18.106.290 (plumbers), § 18.130.125 (health professionals), § 18.140.200 (real estate appraisers), § 18.160.085 (fire system sprinkler contractors), § 18.165.280 (private investigators), § 18.170.163 (security guards), § 18.185.055 (bail bond agents) House Bill 1169 repealed these provisions except for the one pertaining to escrow agents. Sponsored by Rep. Tina Orwell (D), et al. | Any job listed in the statute. |

SOURCE: A version of these charts were originally published by the National Consumer Law Center in 2014. Here, they have been updated, revised and reprinted with permission from NCLC.