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ENDING DISPOSSESSION THROUGH STUDENT LOAN COLLECTION: Policies & Polling

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August 2020

INTRODUCTION

The student loan debt crisis is leading to tremendous dispossession of wealth and income from borrowers—and disproportionately from Black and Latinx borrowers, as well as women borrowers of all races, with Black and Latinx women faring the worst. Aggressive student loan collection practices, which may even involve arrest or threat of arrest, are both an economic crisis and a civil rights concern. Even in the midst of the pandemic, borrowers are having wages garnished and their tax returns seized to pay for student loan debt. Congress must immediately act to prohibit this dispossession and to preserve economic stability—one urgently-needed step toward addressing a debt crisis that, ultimately, demands broad systemic reform.

New polling from Data for Progress and The Justice Collaborative Institute shows popular support for such relief:

- 55% of likely voters, including 52% of Republicans, support making it illegal to seize people's property, such as cars and homes, to force the repayment of student loans;
- 53% of likely voters, including nearly half (49%) of Republicans, support making it illegal to withhold tax refunds and other government payments owed to people in order to force the repayment of student loans;
- Half of all likely voters, including 48% of Republicans, support banning garnishing wages—that is, the government taking money directly from people's paychecks—to force the repayment of student loans.

BACKGROUND: STUDENT LOANS ARE AN ECONOMIC AND CIVIL RIGHTS CRISIS

Outstanding student loan debt in the United States has reached crisis proportions, with 44 million Americans owing $1.6 trillion in student loans. Every year more than a million of these borrowers default on approximately $20 billion worth of federal student loans. More borrowers—10%—are in default on their student loans than on auto loans (8.5%), even though auto loans are in default after 30 days of non-payment and student loans are not considered to be in default until 270-360 days of non-payment. In fact, the New York Federal Reserve estimates that the number of delinquent student loans is actually closer to 20%.

Student loan payments occupy increasingly greater portions of graduates' incomes. Of borrowers who filed for bankruptcy in 2005, only 5.4% had student loans that totaled over 50% of their income; by 2014, the rate of borrowers whose student loan burden exceeded 50% of their income had tripled to 16%. These increasing debt burdens are tied to the astronomical increases in college tuition itself; if the cost of cars had increased as much as the cost of a college education, the average new car today would cost over $80,000 instead of just over $30,000.

As Professor Abbye Atkinson and others have pointed out, "women and African Americans (both separately and at their intersections), are carrying the brunt of this burden."[1] Women owe two-thirds of total outstanding student loans, and are more likely to default on these loans than men. Black and Latinx borrowers are also more likely than white borrowers to default on their student loans. Thirty-four percent of women in repayment indicated that they are "unable to meet essential expenses," and 57% of Black women said that they cannot meet their essential expenses. According to Department of Education data, 12 years after entering college, the median white borrower had paid only 35% of their original loan balance. But the situation for Black borrowers is much worse: over the same 12-year period, the median Black student loan borrower owed 113% more than their original loan balance.

As Atkinson points out, the problem of this unequal student debt burden is exacerbated by structural inequality that depresses both the income and wealth of Black and Latinx people, as well as that of white women.[2] White households with college graduates are more than *three times* as wealthy as Black households with the same degree obtainment. In fact, the average Black household with a college-educated head-of-household has less wealth than the average white household whose head-of-household did not graduate from high school. In contrast to white borrowers, Black borrowers with a college degree are just as likely to file for bankruptcy as Black borrowers without a college degree.

NO RELIEF FROM STUDENT LOAN DEBT & DISPOSSESSION

Student loan debt is particularly insidious because, unlike other types of debt, it is very difficult to discharge student loan debt in bankruptcy. Credit cards, medical bills, and even taxes[3] can be discharged in bankruptcy, but student loans are only dischargeable if the debtor can show that the loans pose an "undue hardship" to the debtor.[4] Many courts have interpreted this requirement in a draconian way that is arguably inconsistent with the plain meaning of "undue hardship," for example by requiring debtors to show a "certainty of hopelessness."

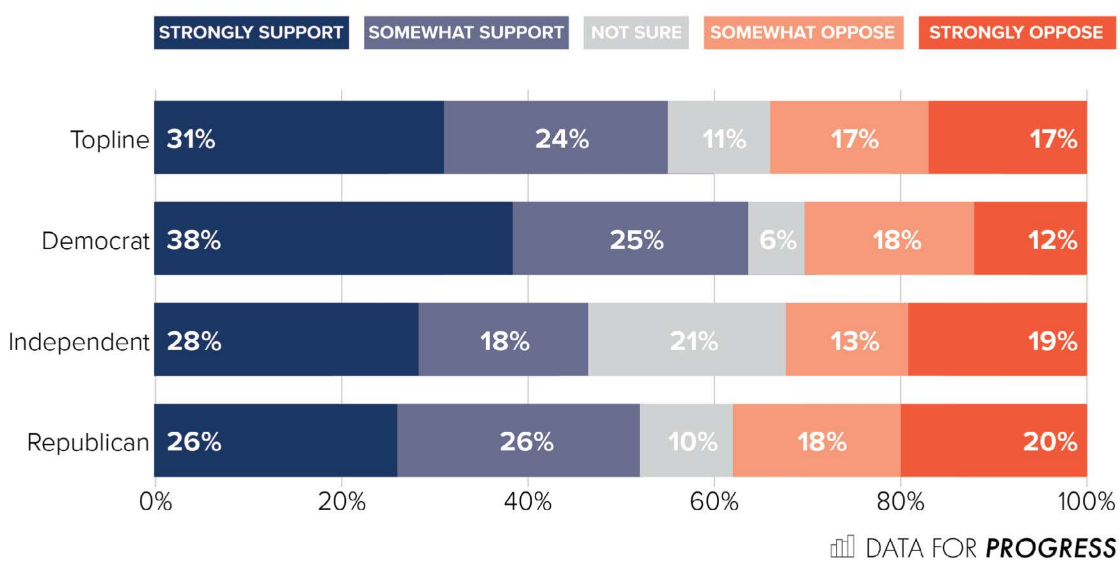
Other measures designed to provide debtors relief from student loan burdens have been ineffective. Income-driven repayment plans are notoriously difficult to enroll in, and can also result in borrowers being in repayment for the rest of their lives. These plans are also less available to Black and Latinx borrowers than to white borrowers.

Black and Latinx borrowers are also more likely to be targeted for aggressive collection practices, and less likely to be given repayment accommodation options. According to the National Consumer Law Center, loan servicers more frequently sue borrowers who live in communities with a high proportion of residents of color. Worse, over sixty percent of these lawsuits result in default judgments against the borrower. Default judgments can occur because individuals did not receive the notice to appear, were confused by the notice, were unable to leave work or find childcare, or suffered from medical impairments making it impossible to attend.

Once a default judgment is issued, borrowers face dispossession of income and wealth—and even incarceration. In Texas, a disabled woman who earned only disability income was arrested for failure to appear in a case involving a loan for truck driving school. The original balance of the loan was only $1500, but it had ballooned to $13,000 over the years with interest and late fees.

Individuals may miss court dates, resulting in default judgment, because they were not served, were confused by the notice, were unable to leave work, unable to find childcare, or were unable to attend for medical reasons. Once a default judgment is issued, individuals may be summoned to appear in court to discuss payment or to fill out paperwork giving information about their financial assets. Individuals unable to attend the initial court hearing are unlikely to be able to appear to respond to the summons; many may not receive the paperwork or may not know how to fill it out. Nevertheless, debtors who do not comply may be arrested in 44 states. Every year tens of thousands of arrest warrants are issued that stem from a failure to pay a private debt, and millions of people are threatened with arrest.

Would you support or oppose a policy that makes it illegal to seize people's property, such as cars and homes to force the repayment of student loans?



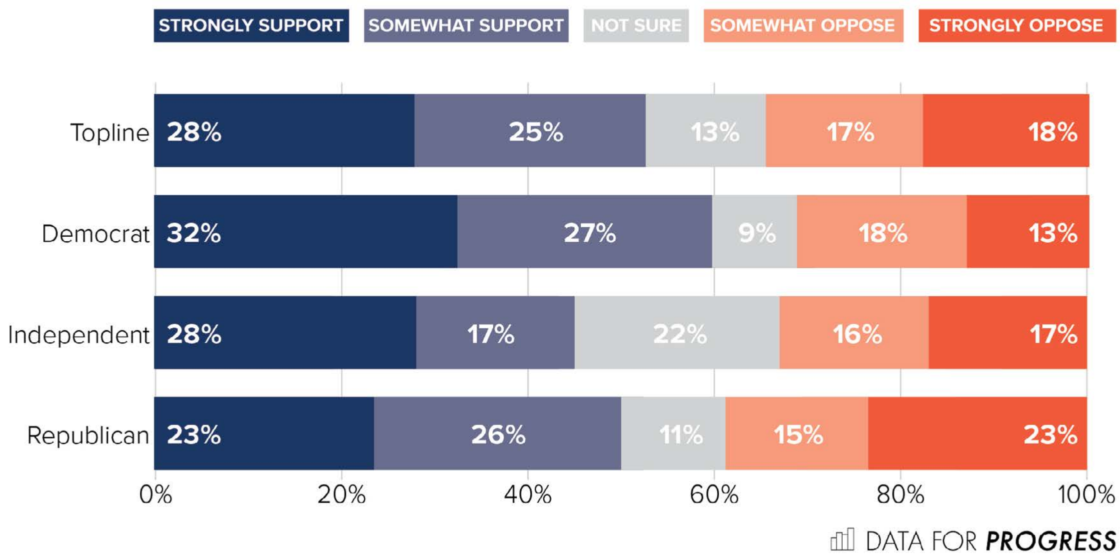
BANNING DISPOSSESSION: A START TOWARD REFORM

The problem of skyrocketing student loans is a tremendous one, and ultimately Congress must pass broad student loan relief measures in order for this generation of graduates to have a chance at being successful members of our economy. Without such relief, graduates will not be able to participate in the consumer economy—will not, that is, be able to buy homes or other goods and services crucial to the functioning of our economic system. What is worse, the harsh collection practices and methods of dispossession mean that, at present, many borrowers are not able to meet their basic needs. Borrowers report going without food, medical essentials, and experiencing utilities shut-offs due to over-indebtedness.

The COVID-19 crisis has sharply exacerbated the risks for borrowers. While federal collection is suspended until September, private student loan collection has not been suspended. And temporarily suspended collection does not mean that the debt is waived, so borrowers will ultimately have to repay regardless. Democrats have called for student loan payments to be suspended until September of 2021, but even this solution would not address private loan collection. Scholars such as Pamela Foohey, Dalie Jimenez, and Chris Odinet have called for Congress to immediately halt all debt collection activity for the duration of the COVID crisis. Even after the economy begins to recover, however, many borrowers will not have income sufficient to both pay their student loans and meet their basic needs. No one should have to choose between food and medical care, and no one should be threatened with arrest because they cannot afford to repay a debt. Under no circumstance should the government garnish wages or seize assets in situations in which the borrower cannot both make the student loan payments and meet their basic needs.

There are a variety of options for ameliorating this crisis. Senator Bernie Sanders has proposed wholesale student debt cancelation, and Senator Elizabeth Warren has proposed income-based debt cancelation. Another option is to amend the Bankruptcy Code to allow for relief of student loans; the Bankruptcy system makes relief accessible for every other type of debt, and there is no reason that student loan debt should be given special treatment. But until a long-term debt relief or debt cancellation program is in place, the federal government must act to prevent dispossession and incarceration as a result of student loan debt. **Under no circumstance should wages be garnished or assets seized unless and until there is a long-term policy in place to address the student loan crisis.**

Would you support or oppose a policy that would make it illegal to withhold tax refunds and other government payments owed to people in order to repay student loans”?



POLLING METHODOLOGY

From 7/24/2020 to 7/25/2020 Data for Progress conducted a survey of 1,318 likely voters nationally using web panel respondents. The sample was weighted to be representative of likely voters by age, gender, education, race, and voting history. The survey was conducted in English. The margin of error is +/- 2.7 percent.

1. Abbye Atkinson, *Borrowing Equality*, forthcoming Columbia Law Review (on file with author) citing American Association of University Women, *Deeper in Debt: Women and Student Loans* (2019), at 1-2.
2. *Id.* at 37.
3. Taxes more than three years old are dischargeable, see 11 U.S.C. 523 (a)(1); 11 U.S.C. 507(a)(8).
4. 11 U.S.C. 523(a)(8).

COVER PHOTO
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