

POLICY ESSAY

THE COLLEGE TRANSPARENCY ACT: STRENGTHENING TRANSPARENCY, EQUITY, AND STUDENT SUCCESS IN AMERICAN HIGHER EDUCATION

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I.	INTRODUCTION	2
II.	HOW THE CURRENT SYSTEM WORKS (INEFFECTIVELY)	3
	A. <i>Background</i>	3
	B. <i>We Are Making Progress</i>	7
III.	THE PROBLEM: THE STUDENT UNIT RECORD BAN HURTS PEOPLE, COLLEGES, THE FEDERAL GOVERNMENT, AND THE AMERICAN ECONOMY	9
	A. <i>The Student Unit Record Ban Leaves College Applicants in the Dark</i>	9
	B. <i>The Student Unit Record Ban Imposes a Burden on Colleges and Universities</i>	10
	C. <i>The Student Unit Record Ban Reduces the Federal Government’s Ability to Develop Evidence-Based Policies</i>	11
	D. <i>The Student Unit Record Ban Weakens the American Workforce and Economy</i>	11
	E. <i>The Student Unit Record Ban Exacerbates the Student Debt Crisis</i>	15
IV.	THE SOLUTION: THE COLLEGE TRANSPARENCY ACT	16
	A. <i>The College Transparency Act Provisions</i>	16
	B. <i>Public Interest in Greater College Transparency and Institutional Value</i>	19
	C. <i>Support from Experts and Advocates</i>	21
V.	CONCLUSION	22

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“Myths are born in a land deprived of transparency.”

Shahenshah Hafeez Khan

ABSTRACT

In the 21st century, Americans have access to copious amounts of data, informing both minor and major purchases, such as where to eat dinner or where to buy a house. Yet, because of an existing misguided law banning the federal government from collecting and reporting data on student outcomes, working families and prospective students are left in the dark when it comes to what higher educational programs and which institutions best fit their needs and career aspirations. This lack of data and subsequent fundamental lack of transparency in American higher education has catastrophic economic and societal consequences that are playing out in plain sight. It hinders educational equity for racial and cultural minorities, women, and veterans. It fuels the growing “skills gap” by slowing the development of a talent pipeline that matches graduates with in-demand jobs. It impedes student success, contributing to the burgeoning \$1.6 trillion national student loan debt, low six-year graduation rates at both private and public institutions, and Americans’ increasing disillusionment with the higher education system writ large. In sum, it prevents prospective students from identifying which programs offer value in the form of a quality education at an affordable price. This Essay advocates for an urgently needed solution to this problem—the bipartisan and bicameral College Transparency Act—legislation which overturns the federal student unit record ban and implements a privacy-protected system to collect and report data on student outcomes.

I. INTRODUCTION

The vast majority (eighty-five percent) of college freshmen in 2015 rated “to get a better job” as “very important” in their decision to go to college.¹ However, the data to help students discern which programs and institutions will best help them achieve their career goals are severely lacking. This data scarcity exists neither because American federal agencies and institutions of higher education are incapable of collecting and reporting it, nor because public interest in accessing it is minimal. As we will illustrate in this Essay, substantial evidence points to the contrary.

Simply put, it is illegal under current law for the federal government to “authorize the development, implementation, or maintenance of a federal database of personally identifiable information,” including a student unit record system.² In other words, it is illegal for the federal government to establish a system that collects and disaggregates student-level data, such as how students are likely to fare academically and economically (jobs, salaries, loan-repayment rates) based on a specific program at a specific college or

¹ KEVIN EAGAN ET AL., THE AMERICAN FRESHMAN: NATIONAL NORMS FALL 2015, COOP. INST. RES. PROGRAM 1, 17 (2016), <https://www.heri.ucla.edu/monographs/TheAmerican-Freshman2015.pdf> [<https://perma.cc/5JDH-6MRM>].

² Higher Education Opportunity Act, Pub. L. No. 110-315, 122 Stat. 3078, 3110 (2008) (codified in scattered sections of 20 U.S.C.).

university. This provision was included in the 2008 reauthorization of the Higher Education Act of 1965,³ otherwise known as the Higher Education Opportunity Act, the most recent congressional rewrite of the expansive law governing the entire American higher education system. The justification for attaching this paragraph to the bill, known as the “student unit record ban” which passed with bipartisan support, was simple: “such a system would risk the security of the information as well as violate students’ privacy.”⁴ In this Essay, we agree that protecting student privacy is of profound importance. However, we can and must establish a comprehensive student unit record system that will both prepare students for successful career paths and keep their personal information safe.

The next Section of this Essay outlines the current fragmented system used by the federal government to analyze student outcome data and highlights areas where we have improved college transparency in the last decade. This Section aims to illustrate the gaps in our current system that lead to inequities in higher education and impose burdens on American colleges and universities. The third Section of this Essay explores the negative societal and economic impacts of the “student unit record ban” and outlines the constituencies which would benefit if it were repealed. The fourth Section of this Essay offers a comprehensive solution to the problems outlined in Section three: The College Transparency Act. This legislation repeals the student unit record ban and implements a privacy-protected system to report student-outcome data. In addition to explaining the specific provisions of this bipartisan legislation, this Section reveals the bill’s overwhelming support from education experts and advocates. The Essay concludes with a call to action for Congress to vote and pass the College Transparency Act swiftly and comprehensively.

II. HOW THE CURRENT SYSTEM WORKS (INEFFECTIVELY)

A. *Background*

So, how do our current post-secondary data systems work now, practically speaking? In short, they are incomplete, duplicative, inefficient, and burdensome. For the most part, institutions of higher education report aggregate data on metrics including average costs to attend an institution and graduation rates. The National Center for Education Statistics (NCES)⁵ collects aggregate education data in the U.S. but with significant gaps that compromise the applicability of such data. For example, the graduation-rate

³ *Id.*

⁴ Emily Wilkins, *Student-Data Ban Faces Test: A Law Meant to Protect Privacy Makes It Tougher to Assess Colleges and Their Performance*, CQ MAG. (Dec. 5, 2015), <https://foxh.house.gov/news/documentsingle.aspx?DocumentID=398984> [<https://perma.cc/8SVY-EVTZ>].

⁵ See NAT’L CTR. EDUC. STAT., <https://nces.ed.gov/about/> [<https://perma.cc/ECC3-9S76>].

metric only counts undergraduate students entering school for the first time in the Fall and those attending school full time.⁶ This outdated methodology does not match the reality in which we live, where more students are pursuing post-secondary degrees part-time and transferring between institutions.⁷ Further, it fails to report the outcomes of special populations, such as student veterans as outlined in Section III.A of this Essay.⁸ In light of this data gap and subsequent lack of information reported regarding the academic success of part-time students, it should come as no surprise that only one-quarter of exclusively part-time students graduate college, whereas eighty percent of exclusively full-time students attain a degree within eight years of enrolling.⁹

It is important to note that while the student unit record ban prevents the federal government from operating a student-level database with documented student outcomes for families to review, the federal government already has significant data on student outcomes across federal agencies. Further, there are multiple entities within the Department of Education that have postsecondary data, as well as outside actors in the private sector that supplement these systems.

For example, the Office of Federal Student Aid (FSA) houses the National Student Loan Data System (NSLDS), which contains transactional data on all federal Title IV student loan programs including borrowers' original principal balance, current repayment and loan status, and borrowers' outstanding principal and interest.¹⁰ The purpose of NSLDS is for borrowers and their loan servicers to have up-to-date information to effectively monitor and manage their loans.¹¹ NSLDS keeps information until fifteen years after student aid recipients have paid off their accounts. This information is used by colleges and state agencies to report aggregate federal loan data depicting the proportion of students who borrow, the amount they borrow on average, and any additional borrowing patterns.¹² NSLDS collects information on a plethora of indicators and tracks specific accountability metrics such as the percentage of students who default on their loans within three years of enter-

⁶ Jennifer Engle, *Answering the Call: Institutions and States Lead the Way Toward Better Measures of Postsecondary Performance*, BILL & MELINDA GATES FOUND. 1, 15 (2016), <http://postsecondary.gatesfoundation.org/wp-content/uploads/2016/02/AnsweringtheCall.pdf> [<https://perma.cc/UK74-W6ZG>].

⁷ Marcella Bombardieri, *Hidden in Plain Sight: Understanding Part-Time College Students in America*, CTR. FOR AM. PROGRESS, (Sept. 6, 2017, 4:00 AM), <https://www.americanprogress.org/issues/education-postsecondary/reports/2017/09/06/438341/hidden-plain-sight/> [<https://perma.cc/J9U4-MTZ9>].

⁸ Tanya Ang, *On the 75th Anniversary of the GI Bill, Military-Connected Students Need the College Transparency Act*, POSTSECDATA: DATA AT WORK (June 22, 2019), <http://www.ihep.org/postsecdata/data-at-work/75th-anniversary-gi-bill-military-connected-students-need-college> [<https://perma.cc/S36F-NMS3>].

⁹ Bombardieri, *supra* note 7.

¹⁰ Ben Miller, *Building a Student-Level Data System*, CTR. FOR AM. PROGRESS (May 23, 2016, 9:03 AM), <https://www.americanprogress.org/issues/education-postsecondary/news/2016/05/23/137881/building-a-student-level-data-system/> [<https://perma.cc/L9PV-HU5B>].

¹¹ *Id.*

¹² *Id.*

ing repayment.¹³ These indicators are used for operational purposes by FSA to strengthen the integrity of student financial aid programs but are generally not used to inform families about which programs offer value to students.¹⁴

The private sector is also involved in the current data collecting regime. In order for NSLDS to notify the Department of Education about the enrollment status of students receiving financial aid, which is required by law, institutions of higher education must provide NSLDS with sufficient information to meet this standard. As a result, many colleges rely on the National Student Clearinghouse (NSC), which is a private third-party database that prepares enrollment reports which colleges then send to NSLDS.¹⁵ NSC was founded in 1993 and in many ways attempts to fill the void created by the student unit record ban.¹⁶ NSC was originally called the National Student Loan Clearinghouse and primarily served to confirm that student loan borrowers were enrolled and therefore exempt from paying back their student loans.¹⁷ However, as noted in a recent publication by Susan M. Dynarski, Steven W. Hemelt, and Joshua Hyman, there have historically been several gaps in data collected by NSC.¹⁸ The Clearinghouse has primarily tracked enrollment but not credits or specific majors because enrollment is the metric that determines a student's ability to defer loan payments. In fact, NSC did not start using Classification of Instructional Program (CIP) codes¹⁹ to better match student outcome data to specific programs and majors until 2012.²⁰ In sum, NSC provides a rich abundance of data to institutions of higher education, policymakers (especially local officials through state-specific contracts), and researchers that help them understand postsecondary attendance, persistence, and attainment. However, like the other data collection systems outlined in this Section, NSC insufficiently offers prospective students and families a complete and comprehensive understanding with regards to which programs and institutions are best positioned to receive their investment. Importantly, NSC data are not published for individual institutions or programs in a way that students and families could access the data to inform their decision making, which serves as a poignant example of robust student-level data collection that already exists but in a fragmented process.

FSA, through NSLDS and other data systems, is not the only office in the Department of Education responsible for postsecondary data collection.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Susan M. Dynarski, Steven W. Hemelt & Joshua Hyman, *The Missing Manual: Using National Student Outcomes Clearinghouse Data to Track Postsecondary Outcomes*, 37 *EDUC. EVALUATION & POLY ANALYSIS* 53S, 54S (2015), <https://journals.sagepub.com/doi/pdf/10.3102/0162373715576078> [<https://perma.cc/BJ9L-PGP8>].

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

Another important data system is the Integrated Post-Secondary Education Data System (IPEDS), which is administered by NCES. As a condition of participating in federal student aid programs, colleges are required to report institutional data (not student-level) to IPEDS, barring a few program-level indicators such as the number of graduates and certain pricing data.²¹ The data reported by colleges cover several topics, including background on the institution (location, programs offered), pricing information (average tuition, total amount of financial aid received), certain student outcome data (graduation rates, retention rates, number and type of degrees/certificates awarded by program), enrollment information, and information regarding the financial health and status of an institution (revenues, expenses, endowment assets, other financial information pertaining to faculty and staff).²² It is important to restate that this information is all given at the aggregate institutional level. For example, IPEDS data help inform our collective understanding of the average cost that any student would expect to pay at one institution compared to another and the discrepancy between the average graduation rate of one college compared to another. As previously noted, this information is extremely important, but much of it is useless to graduating high school students trying to understand whether they are likely to succeed at a specific program or major at a specific institution. This system also does not effectively track student outcome data with regards to workforce-specific indicators, such as employment metrics and post-college earnings. Finally, many of these IPEDS metrics are not disaggregated by key student characteristics, such as race/ethnicity, gender, income status, or veteran status because reporting more disaggregated metrics requires a greater level of effort by institutions reporting the data.

While outside the scope of this Essay, it is necessary to note that states have attempted to build their own longitudinal data systems for elementary and secondary education. In fact, every state has a longitudinal data system that measures individual outcomes in the K-12 education system, and a select number of states measure student postsecondary outcomes through in-state public postsecondary education and measure students' workforce outcomes after leaving school.²³ Unfortunately, even for the few states that use postsecondary or workforce data, it is clear that multivariate state-level systems are unable to efficiently measure student success for individuals enrolled in out-of-state colleges or employed in other states after college.²⁴ As a result, there is a clear need for the federal government to take on the responsibility of compiling information on postsecondary student success into college and into the workforce.

²¹ Miller, *supra* note 10.

²² *Id.*

²³ Dynarski et al., *supra* note 16.

²⁴ *Id.*

As noted extensively in this Section, there are many systems which federal and state officials, as well as private third-party entities and researchers, use and will continue to use to analyze student success into and through college. However, no single method is either comprehensive or complete, leaving gaps in data that weaken our ability to ensure students pursue career pathways that match their ambitions and skill sets.

B. We Are Making Progress

Since the student unit record ban was first implemented in 2008, there is heightened awareness from education experts regarding the flaws of the current system, as well as increasing pressure from education advocates to reform the system and strengthen college transparency. While the fundamental argument in this Essay is to establish a federal student-level data network, it is important to recognize that we have made positive reforms in the last decade to improve college transparency in the absence of complete data. For example, in 2015, the Obama administration re-launched the College Scorecard, a positive step towards data transparency that allows families and prospective students to compare aggregate metrics across institutions.²⁵ Encompassing more than 1,700 indicators across 7,000 colleges, the College Scorecard has served as the most comprehensive tool to publicly share student outcome data, including metrics such as student loan repayment rates and the average earnings of students who receive financial aid.²⁶ The Scorecard has user-friendly search options to allow individuals to compare side-by-side information between institutions. However, the Scorecard is forced to omit students who do not receive Title IV financial aid from the earnings metric and is limited to the insufficient graduation rate data available in IPEDS.²⁷

This year, while many speculated that the Trump administration would abolish the Scorecard, the Department of Education actually expanded the tool to include data on the average level of debt students take on to study a particular subject at a particular school.²⁸ In addition to disaggregating data on student loan debt by program of study, the amended Scorecard also adds recently available information about non-first-time and non-full-time stu-

²⁵ Andrew Kreighbaum, *Return of the College Scorecard*, INSIDE HIGHER ED (Sept. 29, 2017), <https://www.insidehighered.com/news/2017/09/29/education-dept-updates-higher-ed-consumer-tool-adds-new-comparison-feature> [https://perma.cc/QS9R-868V].

²⁶ Miller, *supra* note 10.

²⁷ See U.S. DEPT. OF EDUC., *Data Documentation for College Scorecard* (2019), <https://collegescorecard.ed.gov/assets/FullDataDocumentation.pdf> [https://perma.cc/6XEN-YPV6].

²⁸ Jillian Berman, *Finally, Students Can Comparison Shop the Cost of Their College Majors*, MARKETWATCH (May 28, 2019, 5:12 AM), <https://www.marketwatch.com/story/finally-students-can-comparison-shop-the-cost-of-their-college-majors-2019-05-27> [https://perma.cc/DHP4-8S8L].

dents and the percentage of students who transferred or were still enrolled in school.²⁹

Building on a program established by the previous presidential administration (of the opposite political party), these investments signify the strong bipartisan interest in strengthening college transparency. However, there are still significant shortcomings with the College Scorecard that cannot be overcome without the repeal of the student unit record ban. First and foremost, the Scorecard only counts and analyzes earnings and completion data for students who receive Title IV financial aid, which equals approximately seventy percent of all college students.³⁰ In other words, our best tool to publish student workforce outcome data does not include information on thirty percent of college students. This gap is bad for both students and institutions, as it leads to the possibility of grossly underrepresenting the return on investment that a given institution offers its students. Another issue for the Scorecard is accuracy; according to analysis conducted following the Obama administration's revised Scorecard in 2015, reports showed that the Department of Education's figures for the graduation rates of Pell Grant recipients were off by an average of ten percentage points, with some figures off by up to fifty-nine percentage points.³¹ Further, some leading higher education experts believe the Scorecard should add completion data for part-time and transfer students that are disaggregated by race to better highlight inequities in the higher education system, and most agree that there needs to be more program-level data showing how students will fare based on their specific programs of study.³² The next Section outlines the harms of the student unit record ban in greater detail, as well as the various benefits to students, workers, educators, and the overall economy that are pending with its full repeal.

²⁹ LaMont Jones, *Some Say College Scorecard Changes Are Good, But More Needed*, DIVERSE: ISSUES IN HIGHER EDUC. (May 22, 2019), <https://diverseeducation.com/article/146204/> [https://perma.cc/8EJH-PHW9].

³⁰ COUNCIL OF ECON. ADVISORS, EXEC. OFFICE OF THE PRESIDENT, USING FEDERAL DATA TO MEASURE AND IMPROVE THE PERFORMANCE OF U.S. INSTITUTIONS OF HIGHER EDUCATION 25 (2017), <https://collegescorecard.ed.gov/assets/UsingFederalDataToMeasureAndImprovePerformance.pdf> [https://perma.cc/GS7N-S74F]. It is also worth noting that only sixty-two percent of students at public two-year higher education institutions (community colleges) receive federal aid. *See id.* Moreover, in California in 2016–17, more than seventy-five percent of students in the state community college system did not receive federal financial aid. *See Reauthorizing the Higher Education Act: Accountability and Risk to Taxpayers: Hearing Before the S. Comm. on Health, Educ., Labor, & Pensions*, 115th Cong. 12 (2018) (statement of Mamie Voight, Vice President of Policy Research, Institute for Higher Education Policy).

³¹ Sarah Butrymowicz, *There's Finally Federal Data on Low-Income College Graduation Rates—But It's Wrong*, HECHINGER REPORT (Oct. 9, 2015), <https://hechingerreport.org/theres-finally-federal-data-on-low-income-college-graduation-rates-but-its-wrong/> [https://perma.cc/2XUE-BUKF].

³² Kreighbaum, *supra* note 25.

III. THE PROBLEM: THE STUDENT UNIT RECORD BAN HURTS PEOPLE, COLLEGES, THE FEDERAL GOVERNMENT, AND THE AMERICAN ECONOMY

A. *The Student Unit Record Ban Leaves College Applicants in the Dark*

There are numerous economic and societal benefits to implementing a student-level data network which are unrealized due to the existing student unit record ban. For students and families, the unit record ban hinders access to powerful new sources of data that could help individuals generate personalized information—including earnings outcomes, loan repayment rates, graduation rates, and the likelihood to pursue further education at the master’s or doctorate level—which could be compared and contrasted between programs and institutions.³³ In addition to preventing full transparency for prospective students, this ban allows gaps in data to exist, making it impossible for individuals (especially students from backgrounds that have traditionally had more difficulty in navigating the college process)³⁴ and institutions to identify inequities in our current education system. By disaggregating data by important factors like age, gender, socioeconomic status, race/ethnicity, and veterans status, a student-level data network would allow students from all backgrounds to make informed choices about which programs and institutions meet their unique needs and aspirations.³⁵ For example, according to Tanya Ang, Vice President of Veterans Education Success, “[c]urrently, the Department of Education has no veteran specific outcome data to help military-connected students make an informed choice about where to use their benefits,” and “the student outcome data that are currently reported have well recognized flaws.”³⁶ Importantly, as the next Section of this Essay outlines in greater detail, the current graduation metric used by the NCES counts only students who are enrolled in school for the first time and who attend as full-time students, which “leaves out student veterans who may have started their postsecondary education before enlisting, who earned college credits while in the military, or who may attend school part-time.”³⁷ Simply put, repealing the unit record ban is necessary to strengthen the accuracy of data that is collected and reviewed, as well as to ensure the federal higher education system is fair and equitable to the millions of students who depend on it.

³³ Miller, *supra* note 10.

³⁴ Sarah Henry, *Why Students Deserve the College Transparency Act*, YOUNG INVINCIBLES (Apr. 29, 2019), <https://younginvincibles.org/students-deserve-cta/> [<https://perma.cc/4WUB-TN9D>].

³⁵ *Id.*

³⁶ Ang, *supra* note 8.

³⁷ *Id.*

B. The Student Unit Record Ban Imposes a Burden on Colleges and Universities

For example, a student-level data system could help institutions of higher education more easily fulfill existing federal reporting requirements, which are duplicative.³⁸ According to the Association of Public and Land-grant Universities (APLU) President Peter McPherson, repealing the ban and implementing a student-level network (mandated by provisions in the College Transparency Act)³⁹ “would provide schools with the information they need to better assess their programs and take steps to further improve the success of their students.”⁴⁰ This sentiment is shared by a plethora of national education experts, including Association of Community College Trustees President and CEO Noah Brown, who said, “[T]he measures around student success are antiquated and do not reflect the actual enrollment behavior of current college students” and that “establishing a student unit record will reduce the burden of data collection for institutions and facilitate an accurate picture of student outcomes for all community college students.”⁴¹ And while community college advocates believe lifting the ban is a win for both educators and students, it is important to note that this perspective is also shared by many leaders who represent private, nonprofit and even for-profit institutions. In fact, a recent letter authored by Christopher Eisgruber, the President of Princeton University, encourages Congress to adopt a national student-level data system to “improve accountability for the large investment made by the federal government in higher education.”⁴² In this letter, he astutely notes that “more complete data would provide a better picture of student outcomes, which in turn would allow a more accurate assessment of the return-on-investment for federal student aid used at different—and different types—of universities.”⁴³

³⁸ U.S. NAT'L CTR. FOR EDUC. STAT. ET AL., OMB No. 1850-0582 v.18, INTEGRATED POSTSECONDARY EDUCATION DATA SYSTEM (IPEDS) 2016-2019: SUPPORTING STATEMENT PART A – OMB PAPERWORK REDUCTION ACT SUBMISSION (2016) (on file with Harvard Journal on Legislation).

³⁹ College Transparency Act, H.R. 1766, 116th Cong. § 2 (2019), <https://www.congress.gov/bill/116th-congress/house-bill/1766> [<https://perma.cc/L46B-MS4J>].

⁴⁰ APLU *Statement on Reintroduction of the College Transparency Act*, ASS'N OF PUBLIC & LAND GRANT U. (Mar. 14, 2019), <https://www.aplu.org/news-and-media/News/aplu-statement-on-reintroduction-of-the-college-transparency-act> [<https://perma.cc/XT8A-TSS6>].

⁴¹ Press Release, Senators Orrin Hatch, Elizabeth Warren, Sheldon Whitehouse, & Bill Cassidy, Whitehouse Introduce Bipartisan College Transparency Act to Improve Reporting of Student Outcomes (May 15, 2017), <https://www.warren.senate.gov/newsroom/press-releases/hatch-warren-cassidy-whitehouse-introduce-bipartisan-college-transparency-act-to-improve-reporting-of-student-outcomes> [<https://perma.cc/NGT9-KV63>].

⁴² Letter from Christopher L. Eisgruber, President, Princeton University, to Senator Lamar Alexander, Chairman Senate Comm. on Health, Educ., Labor, & Pensions (Apr. 25, 2019) (on file with author).

⁴³ *Id.*

C. The Student Unit Record Ban Reduces the Federal Government's Ability to Develop Evidence-Based Policies

In addition to supporting educational institutions, students, and working families by strengthening transparency, repealing the unit record ban would help the federal government by providing information to promote evidence-based policymaking. According to the U.S. Department of the Treasury's Bureau of the Fiscal Service, in Fiscal Year 2018 alone the federal government invested \$145 billion in higher education, including \$98 billion in federal student aid.⁴⁴ This funding was distributed to more than 6,000 schools nationwide and approximately 13 million students.⁴⁵ Ending the unit record ban would let all actors involved in this system, and primarily federal government officials, finally understand their return on investment.⁴⁶ This would promote stronger fiscal stewardship of American taxpayer dollars and result in more thorough evidence to ensure institutions provide sufficient value to students. In this vein, greater college transparency would create public pressure that encourages institutions to work to lower costs and improve student outcomes where possible.

D. The Student Unit Record Ban Weakens the American Workforce and Economy

To effectively illustrate the need for stronger college transparency, one must not analyze only the current gaps in student outcome data and the public interest in obtaining this data but one must also examine societal economic and labor trends that make this data more valuable. In this Essay, we argue that the current "skills gap," where employers are unable to hire qualified employees for in-demand jobs, and the exploding national student debt are two factors that make college transparency more important now than ever.

While the American economy has experienced consistent growth over the last century, with a positive GDP growth rate each year since 2010,⁴⁷ American businesses are facing an unprecedented challenge: the labor force does not have enough qualified workers to fill millions of in-demand jobs. In fact, this "skills gap" resulted in 7.2 million job openings in June 2019 ac-

⁴⁴ *Fiscal Service Launches Analysis of Federal Investment in Higher Education*, U.S. DEPT OF TREASURY, BUREAU OF THE FIN. SERV. (July 17, 2019), <https://fiscal.treasury.gov/news/fiscal-service-launches-analysis-of-federal-investment-in-higher-education.html> [<https://perma.cc/5VNQ-8WAZ>].

⁴⁵ UNITED STATES DEPARTMENT OF EDUCATION, FEDERAL STUDENT AID OFFICE, FISCAL YEAR 2018 ANNUAL REPORT iii (2018), <https://www2.ed.gov/about/reports/annual/2018report/fsa-report.pdf> [<https://perma.cc/WY43-85DY>].

⁴⁶ Miller, *supra* note 10.

⁴⁷ Kimberly Amadeo, *U.S. GDP by Year Compared to Recessions and Events*, BALANCE (Aug. 1, 2019), <https://www.thebalance.com/us-gdp-by-year-3305543> [<https://perma.cc/8PE7-TL2M>].

ording to the Bureau of Labor Statistics.⁴⁸ The number of job openings remains consistent through differing geographic regions (1.2 million in the Northeast, 2.7 million in the South, 1.7 million in the Midwest, and 1.8 million in the West) as well as industries.⁴⁹ This problem is further evidenced by the difficulty employers (both large and small) say they are having in finding qualified workers. For example, according to a report from the National Federation of Independent Business (NFIB), approximately eighty-nine percent of small businesses that were hiring said they had few or no qualified applicants for their open positions.⁵⁰ The Business Roundtable, an advocacy organization that represents the CEOs of America's Fortune 200 companies, reported similar data; according to a 2016 survey, ninety-five percent of Business Roundtable member executives (the CEOs of the most profitable companies in the world) said that skills shortages were at least "somewhat problematic" to finding talent for their companies, and over fifty percent said it was "problematic" or "very problematic."⁵¹ Lastly, according to recent research published by Wiley Education Services and Future Workplace, forty-four percent of employers believed it was more difficult to fill open positions in 2019 compared to 2018, and sixty-four percent of companies believe there is currently a skills gap in their organization.⁵² In summation, despite recent economic growth, the "skills gap" is widening and American business owners are emphatically affirming that it is difficult to find workers with the right skills for in-demand jobs in the current labor market.

There are numerous factors contributing to the skills gap, and employers' subsequent difficulty in recruiting, training, and retaining talent. This Essay does not purport to diagnose all the contributing reasons to this persistent gap.⁵³ However, one thing we know is that in recent decades businesses have been investing less in their workers, not more. From 1996 to 2008, the percentage of workers receiving employer-sponsored training fell forty-two

⁴⁸ *Job Openings and Labor Turnover – July 2019*, U.S. DEP'T OF LABOR, BUREAU OF LABOR STAT. (Sept. 10, 2019), <https://www.bls.gov/news.release/jolts.nr0.htm> [https://perma.cc/G89A-GZAY].

⁴⁹ *Table 7. Job Openings Levels and Rates by Industry and Region, Not Seasonally Adjusted*, U.S. DEP'T OF LABOR, BUREAU OF LABOR STAT. (Sept. 10, 2019), <https://www.bls.gov/news.release/jolts.t07.htm> [https://perma.cc/T9D8-Q9DS].

⁵⁰ WILLIAM C. DUNKELBERG & HOLLY WADE, SMALL BUSINESS ECONOMIC TRENDS, NAT'L FED'N OF INDEP. BUS. 1 (2019), <https://www.nfib.com/assets/SBET-August-2019.pdf> [https://perma.cc/4QQ5-KLSW].

⁵¹ *The Skills Gap, Explained*, BUS. ROUNDTABLE (Oct. 2018), <https://www.businessroundtable.org/policy-perspectives/building-americas-tomorrow-ready-workforce/closing-the-skills-gap/the-skills-gap-explained> [https://perma.cc/WW4Q-BJTA].

⁵² WILEY EDUC. SERVS. & FUTURE WORKPLACE, CLOSING THE SKILLS GAP 6 (2019), <https://edservices.wiley.com/wp-content/uploads/2019/08/201908-CSG-Report-WES-FINAL.pdf> [https://perma.cc/FDU2-PE2N].

⁵³ See Paul Krugman, *Jobs and Skills and Zombies*, N.Y. TIMES (Mar. 30, 2014), https://www.nytimes.com/2014/03/31/opinion/krugman-jobs-and-skills-and-zombies.html?_r=1 [https://perma.cc/Q4XT-HK2Z] (noting that the legitimacy of the "skills gap" is challenged by some economists who believe it is a mythical concept constructed by businesses to "make excuses for an economy that punishes workers.").

percent, and the percentage of workers receiving on-the-job training fell thirty-six percent.⁵⁴ As outlined in research conducted by the Aspen Institute Future of Work Initiative, this decline was widespread across industries, demographic groups, and occupations.⁵⁵ Simply put, investing in job training “upskills” American workers, strengthening the overall capacity of the workforce and the strength of both businesses and the economy. However, businesses are not solely to fault for the decline in employer-provided training; this can be partially explained by the changing nature of work, where 21st century employees are significantly more likely to hop from job to job compared to workers from past generations.⁵⁶ As a result, employers fear that significant investments in worker training will help workers take their new skills to other employers.⁵⁷

Another factor contributing to the gap between job training and existing job openings is the pace of change in technology. In fact, thirty-seven percent of business owners surveyed believe that the pace of change in technology is the most difficult barrier to filling open positions.⁵⁸ New technologies frequently require specific new skills that schools do not teach and that become obsolete quickly. As a result, employers have a particularly challenging time finding workers with the relevant skills in fields like information technology and graphic design.⁵⁹

Furthermore, the strength of American higher education institutions and the education system in totality is clearly one of the most significant factors in determining the strength of the American workforce. According to a recent Pew Research Center survey, the majority of Americans believe that two and four-year degrees are “very useful” in opening doors to job opportunities.⁶⁰ Congress, state and local governments, and leaders in both the education and business communities have made monumental changes to education systems in order to prepare students with the skills needed for in-demand jobs. For example, last year Congress passed the bipartisan Strengthening Career and Technical Education (CTE) for the 21st Century Act, which reformed and modernized the federal law governing all federal career and vocational education funding distributed to high schools and

⁵⁴ Alastair Fitzpayne & Ethan Pollack, *Promoting Employer Investments in the Workforce*, ASPEN INST. (2017), <https://www.aspeninstitute.org/publications/worker-training-tax-credit-promoting-greater-employer-investments-in-the-workforce/> [<https://perma.cc/67RZ-2ASE>].

⁵⁵ *Id.*

⁵⁶ See Matissa N. Hollister & Kristin E. Smith, *Unmasking the Conflicting Trends in Job Tenure by Gender in the United States, 1983–2008*, 79 AM. SOC. REV. 159, 159 (2013).

⁵⁷ Fitzpayne & Pollack, *supra* note 54, at 2.

⁵⁸ WILEY EDUC. SERVS. & FUTURE WORKPLACE, *supra* note 52, at 7.

⁵⁹ James Bessen, *Employers Aren't Just Whining – the “Skills Gap” Is Real*, HARV. BUS. REV. (Aug. 25, 2014), <https://hbr.org/2014/08/employers-arent-just-whining-the-skills-gap-is-real> [<https://perma.cc/VC3R-AUUR>].

⁶⁰ Kim Parker, *The Growing Partisan Divide in Views of Higher Education*, PEW RES. CTR. (Aug. 19, 2019), <https://www.pewsocialtrends.org/essay/the-growing-partisan-divide-in-views-of-higher-education> [<https://perma.cc/3LBT-VEUE>].

community colleges.⁶¹ Among several key reforms, this new law increased funding to CTE programs by 10.5% between Fiscal Year 2019 and Fiscal Year 2024, strengthened business involvement in crafting CTE courses to validate the skills being taught, and expanded CTE funding to middle school courses for “career exploration.”⁶² And despite the aforementioned data regarding decreased employer investment in on-the-job training, the U.S. Department of Labor and many state and local labor and workforce agencies are encouraging the development of registered apprenticeship programs.⁶³ In tandem, efforts to make higher education courses more relevant for job-seekers, as well as establishing stronger multi-employer continual education and training options, are important measures to upskill the American workforce. However, we argue that another meaningful solution to addressing the skills gap is addressing the “evidence gap” regarding information on student outcomes. In other words, strengthening access to student outcomes will decrease the discrepancy between the number of open jobs and qualified workers.

First, public data on student outcomes will help benchmark the goals for measuring improvement and progress among grantees and institutions that are spending federal dollars.⁶⁴ Giving institutions better information will help them take action to improve their programs to better match students’ needs. By strengthening mediocre programs and cutting insufficient ones altogether, institutions can use the measures in a federal student data network to ensure their students pursue programs that lead to positive job outcomes, including job attainment, retention, and higher wages. Secondly, students need better college transparency in order to pursue educational pathways that adeptly match their interests and ambitions. While most prospective students and young adults will not choose educational pathways simply based on postsecondary employment outcomes, they could still use this data to understand which programs best match their talents and ambitions, both academically and professionally, and which will set them up for social, academic, and professional success.

According to Cheryl Oldham, Vice President of Education Policy at the U.S. Chamber of Commerce, repealing the ban and implementing a student-level data network (mandated by provisions in the College Transparency Act)⁶⁵ “would help students enter the workforce with the skills that employers need by providing them with earnings and employment information by

⁶¹ Strengthening Career and Technical Education for the 21st Century Act, Pub. L. No. 115-224, 132 Stat. 1563 (2018) (codified in scattered sections of 20 U.S.C.).

⁶² *Id.* § 135(b)(1).

⁶³ Kevin Martin, *Five Reasons Employers Should Invest in Apprenticeships*, I4CP (Mar. 8, 2016), <https://www.i4cp.com/productivity-blog/2016/03/08/five-reasons-employers-should-invest-in-apprenticeships> [<https://perma.cc/5W8Z-RT2B>].

⁶⁴ Clare McCann, *Closing the Evidence Gap*, NEW AM. (May 2, 2019), <https://www.newamerica.org/education-policy/reports/closing-evidence-gap/goals-and-strategies-for-improving-the-programs> [<https://perma.cc/BYY3-QJ6D>].

⁶⁵ College Transparency Act, H.R. 1766, 116th Cong. (2019).

college graduates by major and program.”⁶⁶ This would also “help address the skills gap, as it will allow students to find programs that not only suit their interests, but also meet employer needs and lead to success in the workforce post-graduation.”⁶⁷ In other words, students who pursue educational pathways that match their interests and ambitions are more likely to find postsecondary workforce opportunities that align with their talents and skills, growing the American talent pipeline, workforce preparedness, and ultimately the ability for American companies to compete internationally. In conclusion, the ability for small and medium sized businesses to obtain, train, and retain qualified and adequately skilled workers for in-demand jobs is one of the gravest economic challenges of the 21st century,⁶⁸ and implementing a student-level data network is one monumental step in alleviating this obstacle.

E. The Student Unit Record Ban Exacerbates the Student Debt Crisis

Another important issue to consider in the context of college transparency is the fact that Americans are more burdened by student debt than ever before. Over 45 million Americans owe approximately \$1.6 trillion in student loan debt, which equals eight percent of our national income.⁶⁹ This is \$521 billion more than the total U.S. credit card debt.⁷⁰ Unfortunately, expanding student debt is leading to adverse consequences for American families, small businesses, and the economy. Rising student loan debt has proven to hamper small business formation and growth by decreasing the average entrepreneur’s access to capital,⁷¹ contributing to a drop in home ownership by approximately twenty-five percent for young families between

⁶⁶ Cheryl Oldham, *Bipartisan Coalition Reintroduces College Transparency Act in House and Senate*, U.S. CHAMBER OF COM. (May 14, 2019, 1:00 PM), <https://www.uschamber.com/article/bipartisan-coalition-reintroduces-college-transparency-act-house-and-senate> [https://perma.cc/CYN3-9BC9].

⁶⁷ *Id.*

⁶⁸ Edwin Koc, *Is There Really a Skills Gap?*, NAT’L ASS’N OF COLLEGES & EMPLOYERS (Feb. 1, 2018), <https://www.naceweb.org/talent-acquisition/trends-and-predictions/is-there-really-a-skills-gap/> [https://perma.cc/S2NR-BHZ3].

⁶⁹ Christopher Ingraham, *7 Ways \$1.6 Trillion in Student Loan Debt Affects the U.S. Economy*, WASH. POST (June 25, 2019), <https://www.washingtonpost.com/business/2019/06/25/here-what-trillion-student-loan-debt-is-doing-us-economy/> [https://perma.cc/2FY9-LGJC].

⁷⁰ *A Look at the Shocking Student Loan Debt Statistics for 2019*, STUDENT LOAN HERO (Feb. 4, 2019), <https://studentloanhero.com/student-loan-debt-statistics/> [https://perma.cc/F6S8-GJEH].

⁷¹ Brent W. Ambrose, Larry Cordell & Shuwei Ma, *The Impact of Student Loan Debt on Small Business Formation*, FED. RES. BANK OF PHILA. (2015), <https://www.philadelphiafed.org/-/media/research-and-data/publications/working-papers/2015/wp15-26.pdf> [https://perma.cc/6EJK-GLUE].

2005 to 2014,⁷² and preventing young Americans from saving for retirement.⁷³

Naturally, with the increasing cost of college tuition and the growing number of students relying on loans to get a degree, confidence in the higher education system is eroding. While Americans, particularly young Americans, still see college as necessary to get a good job, the vast majority does not believe the system is helping students succeed.⁷⁴ In fact, just thirteen percent of millennials believe the system is operating fine, and sixty-four percent believe that college leaders put the interests of their schools above the interests of their students.⁷⁵ It is unsurprising that faith in higher education is decreasing in tandem with the growth of national student debt.

There are complex reasons for both of these occurrences that are unrelated to college transparency, but one thing is self-evident: offering prospective students and their families greater access to student outcomes data would help restore Americans' faith in higher education while playing a role in tempering student loan debt enlargement. This is because students and families will be able to see how much people are earning on average and how much student debt they have, and will have the ability to compare programs across institutions.

IV. THE SOLUTION: THE COLLEGE TRANSPARENCY ACT

A. *The College Transparency Act Provisions*

The majority of this Essay illustrates challenges faced by students, educators, and businesses in building an educational system that is equitable and transparent and that strengthens the American workforce and overall economy. We believe the College Transparency Act is a gravely needed legislative solution to address (and in some instances solve) the aforementioned challenges, and we advocate in strong support of its provisions.

In the current congressional session, the bipartisan and bicameral College Transparency Act⁷⁶ was introduced by Representatives Paul Mitchell (R-MI), Raja Krishnamoorthi (D-IL), Elise Stefanik (R-NY), and Josh Harder (D-CA), as well as Senators Bill Cassidy (R-LA), Elizabeth Warren (D-MA), Tim Scott (R-SC), and Sheldon Whitehouse (D-RI). The legislation

⁷² Christopher Ingraham, *Student Debt Has Kept Home Ownership Out of Reach for 400,000 Young Families, Fed Reports*, WASH. POST (Jan. 18, 2019), <https://www.washingtonpost.com/business/2019/01/18/student-debt-has-kept-home-ownership-out-reach-young-families-fed-reports/> [https://perma.cc/9AFA-EGVV].

⁷³ *Id.*

⁷⁴ Benjamin Wermund, *Losing Faith in Higher Education*, POLITICO (May 11, 2015), <https://www.politico.com/tipsheets/morning-education/2017/05/losing-faith-in-higher-education-220254> [https://perma.cc/M2WN-R5SJ].

⁷⁵ *Id.*

⁷⁶ College Transparency Act, H.R. 1766, 116th Cong. (2019), <https://www.congress.gov/bill/116th-congress/house-bill/1766> [https://perma.cc/L46B-MS4J].

was referred to the House Committee on Education and Labor and the Senate Committee on Health, Education, Labor, and Pensions (HELP Committee) and is cosponsored by more than a quarter of both the U.S. House and Senate.⁷⁷ Nonetheless, the legislation has not yet received a vote in either legislative chamber.⁷⁸ This legislation includes numerous reforms to promote greater transparency in student outcomes, while simultaneously establishing strong security standards and data governance protocols that protect student privacy.

The simplest and most integral provision in this legislation is one sentence long. Section 3 of the bill repeals Section 134 of the Higher Education Act of 1965, effectively repealing the student unit record ban.⁷⁹

Next, the legislation directs the Commissioner for Education Statistics to “develop and maintain a secure, privacy-protected postsecondary student-level data system” intended to provide customizable information about institutions and programs to American families.⁸⁰ To determine the specific data elements to be included in the system and to reduce any duplicative reporting, the Commissioner for Education Statistics will work with the newly created Postsecondary Student Data System Advisory Committee.⁸¹ This diverse group of experts will consist of agency privacy and security officials, representatives of state higher education bodies and institutions of higher education, student representatives, representatives from relevant federal agencies, and postsecondary researchers.⁸² At a minimum, the system must include data elements currently reported in student-related surveys in the Integrated Postsecondary Education Data System.⁸³ It must also include the following data: student enrollment, persistence, retention, transfer, and completion measures, as well as post-college earnings and employment information for all credential levels and across institutions and programs.⁸⁴ This data must be disaggregated by student characteristics such as enrollment status as a first-time student or transfer student, attendance intensity, credential-seeking status, race or ethnicity, age intervals, gender, program of study if applicable, veterans status, status as a full or part-time distance education student, and federal loan recipient status.⁸⁵ Importantly, the legislation prohibits the collection of sensitive data that could threaten student health or safety, including but not limited to: citizenship and immigration status, health information, grades, entrance exam results, political affiliation, personally

⁷⁷ See *id.* This description reflects the support for the College Transparency Act at the time of this Essay’s publication. However, the number of bipartisan cosponsors in both the House and the Senate continues to grow.

⁷⁸ *Id.*

⁷⁹ College Transparency Act, H.R. 1766, 116th Cong. § 3 (2019).

⁸⁰ *Id.* § 2(2) (inserting 20 U.S.C. § 1015a(l)(1)(A)).

⁸¹ *Id.* § 2(2) (inserting 20 U.S.C. § 1015a(l)(2)(A)).

⁸² *Id.* § 2(2) (inserting 20 U.S.C. § 1015a(l)(2)(B)(i)).

⁸³ *Id.* § 2(2) (inserting 20 U.S.C. § 1015a(l)(2)(C)(i)).

⁸⁴ *Id.* § 2(2) (inserting 20 U.S.C. § 1015a(l)(2)(C)(ii)).

⁸⁵ *Id.*

identifiable earnings information, or religion.⁸⁶ NCES must compile these measures and make them publicly available on a user-friendly website.⁸⁷

In order to use all the tools available through the many existing federal agencies that collect outcomes data, the legislation directs the Commissioner of National Education Statistics to coordinate with the Census Bureau and the Departments of Treasury, Defense, and Veterans Affairs to generate aggregate outcome information.⁸⁸ These periodic data matches will, for the first time ever, enable analysis of student outcomes regarding those receiving veterans' and military education benefits and will allow the compilation of crucial data such as earnings, employment, and further education (degree attainment after an individual receives a postsecondary degree). In addition, and also for the first time ever, this will ensure that all students are counted in the higher education postsecondary data network, including part-time students, transfer students, and students not receiving Title IV federal student aid. It is important to note that this legislation does not create a database of student outcome data at the Department of Education, and that this information is not accessible through a permanent link. Rather, the College Transparency Act specifically requires that any periodic data matching "does not result in the creation of a single standing, linked Federal database at the Department that maintains the information reported across other Federal agencies."⁸⁹ Further, NCES must establish robust protocols to prevent the disclosures of individual data, including data minimization and destruction after a data match.⁹⁰

In other words, if the College Transparency Act were signed into law, college applicants and their families would be able to answer questions such as: How many low-income, adult, transfer, and part-time students earn a degree from an institution? How long does it take veterans to graduate, and what is their average student debt? What is the likelihood that individuals with a specific race, ethnicity, or gender will succeed in the workforce post-graduation with a decent paying job? Further, students will be able to access this information on a user-friendly website and will be able to compare outcomes data between different programs at different institutions. This will help answer questions such as: Does a health sciences degree from my local community college set me up for success compared to another public non-profit, private non-profit, or private for-profit school of interest? This data will not rank schools and programs; in fact, the legislation expressly prohibits NCES from doing so.⁹¹ Rather, it will offer resources to prospective students so they can engage in a cost-benefit analysis and have conversations with their families about where to invest their hard-earned dollars.

⁸⁶ *Id.* § 2(2) (inserting 20 U.S.C. § 1015a(l)(2)(F)).

⁸⁷ *Id.* § 2(2) (inserting 20 U.S.C. § 1015a(l)(4)(A)).

⁸⁸ *Id.* § 2(2) (inserting 20 U.S.C. § 1015a(l)(3)(A)(i)).

⁸⁹ *Id.* § 2(2) (inserting 20 U.S.C. § 1015a(l)(3)(C)(iii)).

⁹⁰ *Id.* § 2(2) (inserting 20 U.S.C. § 1015a(l)(8)(E)).

⁹¹ *Id.* § 2(2) (inserting 20 U.S.C. § 1015a(l)(5)(F)).

In addition to disallowing the collection of sensitive data, prohibiting the publicly available data from including any personally identifiable data, and mandating that NCES use stringent protocols to prevent disclosures of individual data, there are numerous privacy requirements to protect the safety and welfare of all students. For example, this legislation prohibits any sale of student data.⁹² It also prohibits data collected for this system from being shared with any other federal agency for any purposes outside the strict scope of the student-level data system and prohibits any personally identifiable information from being used by law enforcement or any outside entity.⁹³ It is important to note that the Postsecondary Student Data System Advisory Committee, which is responsible for identifying the data elements necessary to create this system, must include Department of Education Chief Privacy Officer and Chief Security Officer, as well as stakeholders with expertise in data privacy and consumer protection.⁹⁴ In total, the legislation includes numerous data security protocols to ensure that efforts to strengthen college transparency do not compromise student health and prosperity.

B. Public Interest in Greater College Transparency and Institutional Value

When analyzing Americans' opinions about the current higher education system, two things are strikingly clear: they want colleges to provide better value, and they want greater transparency, *i.e.*, they want access to data on student outcomes. Both viewpoints are supported by a majority of individuals, regardless of political party affiliation.

Third Way, a nonpartisan public policy think tank with a strong focus on economic and education issues, recently commissioned and reported revelatory polling research that illustrates Americans' widely held belief that higher education institutions can and should do more to provide value to the students they are supposed to serve.⁹⁵ In an online survey of 1,389 likely 2020 voters from April 30 through May 9, 2019, eighty-three percent of Democrats and seventy percent of Republicans shared the belief that higher education institutions have a responsibility to ensure that most students who enroll in college graduate, and approximately ninety percent of all voters believed that institutions can do more to make that happen.⁹⁶ Further, only fifty-eight percent of likely 2020 voters think colleges are doing a "good" or "very good" job at providing students a return on their investment.⁹⁷ Impor-

⁹² *Id.* § 2(2) (inserting 20 U.S.C. § 1015a(l)(5)(C)).

⁹³ *Id.* § 2(2) (inserting 20 U.S.C. § 1015a(l)(5)).

⁹⁴ *Id.* § 2(2) (inserting 20 U.S.C. § 1015a(l)(2)(B)).

⁹⁵ Tamara Hiller & Lanae Erickson, *Beyond Free College and Free Markets: Voters Want Greater Accountability in Higher Ed*, THIRD WAY (June 17, 2019), <https://www.thirdway.org/polling/beyond-free-college-and-free-markets-voters-want-greater-accountability-in-higher-ed> [<https://perma.cc/5KKU-LQXU>].

⁹⁶ *Id.*

⁹⁷ *Id.*

tantly, this belief is not shared only by current and former students but also college administrators responsible for ensuring student success.⁹⁸ Another poll commissioned by Third Way from April 2019 illustrates that seventy-seven percent of college administrators want Congress to focus on “ensuring higher education institutions are held responsible for student outcomes,” and seventy percent believe Congress should be “ensuring higher education institutions are providing a return on investment to students.”⁹⁹

There is also an abundance of research verifying that people want greater access to student outcome data, and that they specifically want to access this data by lifting the student unit record ban and implementing a national student data network. For example, as evidenced in the first Third Way poll, eighty-two percent of Democratic voters support the policy proposal to “increase transparency by lifting [the] federal ban on collecting student data,” with forty-nine percent strongly supporting.¹⁰⁰ Interestingly, this position is held by nearly the same percentage of Republican voters, with seventy-eight percent supporting the statement and forty-four percent strongly supporting it.¹⁰¹ In aggregate, seventy-eight percent of voters (Democrat and Republican) agree that we should lift the federal ban on collecting student data, twelve percent are “not sure,” and just ten percent oppose.¹⁰² Again, the public and the education community agree on this particular issue, as seventy-three percent of college administrators support lifting the federal ban on collecting student-level data to equip students and parents with the information to determine which school provides the best return on their investment before they enroll.¹⁰³ It should not be taken lightly that college administrators, those whose livelihoods revolve around serving both institutions and students, believe publicly disclosing student outcomes data is an effective and worthwhile objective.

One might suggest that, to get an accurate depiction of Americans’ unbiased view of this policy proposal and to depict the full scale of the healthy debate surrounding the issue, polling questions should offer an opposing alternative for respondents to choose instead of simply “oppose.” However, data suggests that even when given the opportunity to choose between repealing the unit record ban or keeping it for data-security reasons, Americans overwhelmingly support lifting the unit record ban and strengthening college transparency. For example, when asked to compare between two

⁹⁸ *Id.*

⁹⁹ Lanae Erickson, *College Administrators Support Greater Accountability in Higher Ed*, THIRD WAY, (Apr. 11, 2019), <https://www.thirdway.org/polling/college-administrators-support-greater-accountability-in-higher-ed> [https://perma.cc/GJ52-TUY9].

¹⁰⁰ See Hiller & Erickson, *supra* note 95.

¹⁰¹ *Id.*

¹⁰² *Third Way Higher Education Survey*, GLOBAL STRATEGY GROUP (May 6, 2019), <http://thirdway.imgix.net/ThirdWay-HigherEducation%20Survey-Topline.pdf> [https://perma.cc/5UKY-BCR7].

¹⁰³ *Admin Online Survey*, GLOBAL STRATEGY GROUP (Mar. 20, 2019), <http://thirdway.imgix.net/ThirdWay-Admin-Survey-Toplines.pdf> [https://perma.cc/9LYS-LPGL].

statements, one which says that “the federal ban on collecting data on how students do after enrolling in college should be lifted” and one which says “if the [ban on collecting student outcomes] is lifted, the personal information of millions of students will be vulnerable to privacy leaks and hacking,” sixty-six percent of individuals side with the former.¹⁰⁴

However, perhaps the most persuasive evidence supporting our thesis is illustrated in a nationally representative survey recently published in September 2019 by New America, a think tank which focuses on promoting evidence-based policymaking in the education space. Through this inquiry, students were asked, “How important is it for colleges and universities to provide publicly-available data on key indicators of quality, such as graduation rates or graduate employment rates?”¹⁰⁵ It is important to note that, in response, ninety-one percent of current college students said this was “important,” and fifty-seven percent said it was “very important.” This response could suggest that data transparency is increasingly important to young Americans compared to their older counterparts. Further, it could be perceived as emblematic of the current culture of the twenty-first century marketplace, where consumers expect data transparency for all purchases and unsurprisingly expect it when they are making one of the most substantial fiscal investments of their lifetime.

C. Support from Experts and Advocates

Section III of this Essay described various constituencies who support repealing the student unit record ban. Similarly, the College Transparency Act enjoys overwhelming support from education experts with disparate perspectives and advocates representing a multitude of industries. In fact, the legislation is endorsed by close to 200 organizations nationwide.¹⁰⁶ Because it will strengthen educational equity and college access, it is endorsed by organizations such as the Institute for Higher Education Policy (IHEP), Center for American Progress, The Institute for College Access and Success (TICAS), the Center for Law and Social Policy (CLASP), Education Trust, Excelencia in Education, the Muslim Student Association-West, and the South Asian Fund for Education, Scholarship and Training.¹⁰⁷ Because it will help higher education institutions better assess their programs and take steps to further improve the success of their students, the legislation is endorsed by education advocacy organizations representing colleges and universities

¹⁰⁴ See *Third Way Higher Education Survey*, *supra* note 102.

¹⁰⁵ *Varying Degrees 2019 Findings*, NEW AM. (Sept. 10, 2019), <https://www.newamerica.org/education-policy/reports/varying-degrees-2019/explore-the-data> [<https://perma.cc/53WP-QKNN>].

¹⁰⁶ See *PostsecData Collaborative and National Skills Coalition Support the Reintroduction of the College Transparency Act*, INST. FOR HIGHER EDUC. POL’Y, (Apr. 1, 2019), <http://www.ihep.org/press/opinions-and-statements/postsecdata-collaborative-and-national-skills-coalition-support> [<https://perma.cc/YZY3-JTRM>].

¹⁰⁷ *Id.*

such as the Association of American Colleges & Universities (AAC&U), American Association of Community Colleges, Association for Career and Technical Education, and the Association of Public and Land-grant Universities.¹⁰⁸ Because it will help decrease the skills gap and bolster the American workforce, it is endorsed by business advocacy organizations such as the U.S. Chamber of Commerce, the Business Roundtable, the National Skills Coalition, and various local and regional Chambers and businesses.¹⁰⁹ Because it particularly helps young Americans make important choices about their future and would likely have a positive impact in tempering increasing tuition costs and the national student debt, it is endorsed by youth civic engagement groups like Young Invincibles and the Association of Big Ten Students.¹¹⁰ Because it implements a federal student data network that would provide a comprehensive look at veteran-specific outcomes, it is endorsed by thirty-seven veterans specific organizations, including but not limited to Veterans Education Success, The American Legion, The Iraq and Afghanistan Veterans of America, and the Student Veterans of America.¹¹¹

This level of support for any legislative initiative is highly unusual. In the current climate, it is difficult to coalesce stakeholders with diametrical prerogatives and political ideologies. The robust support for the College Transparency Act demonstrates the magnitude of its reforms, as well as the sheer number of communities who stand to benefit if its provisions are enacted into law.

V. CONCLUSION

For far too long, deciding where to go to college has been treated like an emotional decision, not as an investment. This is a fundamental and unfortunate reality in current American culture, where countless young Americans must make one of the largest and most significant investments of their lives without information about the return on investment. At a time with national student loan debt surpassing \$1.6 trillion, a skills gap of over 7 million unfilled jobs, and a growing distrust in American educational institutions and the value of a college education, one must ask: can we do better?

The simple answer is yes: we can and must do better for our prospective students and working families and for the tuition-payers, taxpayers, and donors who are making important expensive decisions largely in the dark. We must do better for American veterans by ensuring veteran-specific data is available to help them get back on their feet after returning from abroad. We must do better for underserved students based on ethnicity, race, gender, and socioeconomic status to use data to seek and address inequities in our

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Letter from 37 Veterans Groups Who Support CTA to Sen. Lamar Alexander, Rep. Bobby Scott, Sen. Patty Murray, and Rep. Virginia Foxx (May 2, 2019) (on file with author).

education system. We must do better for American small business owners who are yearning for adequately trained workers for the in-demand jobs of the twenty-first century. And we must do better for administrators and educators by providing the data necessary to allow them to improve educational programs to match students' needs and maximize their career opportunities. To accomplish all of this, we must pass the bipartisan and bicameral College Transparency Act.

At the time of this Essay's publication, there is a debate in Congress to reauthorize the Higher Education Act of 1965 for the first time since 2008. It is imperative that any comprehensive education rewrite includes the College Transparency Act and that elected officials on both sides of the aisle work to pass this monumental legislation in a swift manner.

