Volume 125 | Issue 2 Article 9

January 2023

Shifting the Scope Towards Students: An Analysis of Tax Code Treatment of the Higher Education Loan Interest Deduction

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SHIFTING THE SCOPE TOWARD STUDENTS: AN ANALYSIS OF TAX CODE TREATMENT OF THE HIGHER EDUCATION LOAN INTEREST DEDUCTION

ABSTRACT

In a nation where education is held in the highest regard but given the lowest priority, the United States continues to enlarge a gaping hole in the education system: student loan debt, a crisis sweeping across the nation and affecting nearly every individual in the United States. Higher education costs have sky-rocketed, and the expanding administrations and complex projects do not provide assurance that this will change any time soon.

Congress has placed tax incentives in the Internal Revenue Code ("the Code") to encourage the pursuit of higher education while providing a benefit for doing so. Specifically, § 221 of the Code allows individual taxpayers to deduct interest paid on their student loans, during the taxable year, from their taxable income. However, the value of § 221 wavers when evaluated for its utility, based on efficiency, equity, and simplicity to individual taxpayers. Further, the breadth of the student loan debt crisis has muted the effects § 221 may have provided. This Note will evaluate the § 221 deduction framework and discuss two potential solutions to address the § 221 deduction regarding the student loan debt crisis.

I. INTRODUCTION

"If we want to invest in the prosperity of our nation, we must invest in the education of our children so that their talents may be fully employed."[1] Education is an opportunity to learn, to grow, and to gather experiences to engage with the world. Education provides stability, financial security, and confidence.[2] Further, education provides economic growth, a safer world, and contribution to society.[3] When acknowledging the benefits of education to individuals as well as society, the federal government recognizes the value education adds to the nation and provides it with a reason to encourage and promote engagement and participation with education. Education makes the nation successful and promotes individuals to reach their fullest potential.

The federal government may promote and encourage education through advocacy and publicity, but a common route the federal government has used to encourage behavior is through legislation. Legislation encourages pursuing education by providing a benefit to an individual pursuing education, such as through financial incentives. While some financial incentives are perceived as a "government handout," other financial incentives are disguised through legislation to be more marketable in the political realm.[4] One example of this disguised incentive is the higher education loan interest deduction under § 221 of the Internal Revenue Code of 1986 as amended from time to time ("the Code").[5] The higher education loan interest deduction allows taxpayers to reduce their taxes owed to the federal government, equivalent to the amount of interest they paid on their loans in the taxable year.[6]

Sometimes avoiding the perception of politics in drafting financial incentives through legislation may result in ineffective legislation. Specifically in the Code, statutory provisions lacking efficiency, equity, and simplicity are

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1 Public Papers of the Presidents of the United States: William J. Clinton, 2000–2001, LIBQUOTES, https://libquotes.com/bill-clinton/quote/lbr9p7a (last visited Oct. 4, 2022).

2 *Top 10 Reasons Why Education Is Important*, UNIV. OF THE PEOPLE: THE EDUC. REVOLUTION, https://www.uopeople.edu/blog/10-reasons-why-is-education-important/ (last visited Oct. 4, 2022).

3 *Id.*

4 Camilla Watson, *Reforming the Tax Incentives for Higher Education*, 36 VA. TAX REV. 83, 90–92 (2017).

5 *See* I.R.C. § 221.

6 I.R.C. § 221(a).

ineffective provisions. Further, when a specific provision is ineffective, changes over time may exacerbate its ineffectiveness. For example, the student loan debt crisis has significantly changed the way that people arrange their finances to pursue or not pursue higher education. It is widely accepted that education benefits those who engage with and participate in it, but the financial expense of education affects many individuals' decisions to pursue higher education. With the rising cost of education, how will the nation prosper and individuals reach their full potential when people are economically deterred from participating in an activity that the federal government explicitly encourages societal participation?

This Note will argue why congressional incentives for higher education through the higher education loan interest deduction are currently failing and should be amended to better address the student loan debt crisis. Part II will provide background regarding the benefits of higher education and how the government incentivizes higher education through the Code. Part III will provide background regarding the tax structure, particularly regarding above-the-line deductions, and the higher education loan interest deduction under § 221 of the Code. Part IV will lay out why § 221 of the Code is not effective based on a framework analyzing efficiency, equity, and simplicity. Part V will discuss the need for a change in the scope of § 221 regarding the student loan debt crisis. Finally, Part VI will explore and discuss solutions that provide a better approach for § 221 to promote higher education while also addressing the effects of the student loan debt crisis.

II. INCENTIVIZING HIGHER EDUCATION

Higher education has great societal benefits. Some of these benefits include making connections and increased job opportunities for those who pursue higher education. Society benefits from individuals pursuing higher education through lower unemployment and increases in competitive job markets. The federal government has spent time and resources to prioritize the promotion of higher education. The following subsections demonstrate the individual and societal benefits from pursuing higher education and how and why the government incentivizes the pursuit of higher education.

A. Individual and Society

Students who pursue a college education receive several benefits from their academic experiences. Students have the opportunity to make valuable connections, exercise their minds, increase job opportunities, and become well-rounded individuals, among other benefits.[7] Generally, the median earnings for

7 *Importance of College Education: Why It Is Important to Go to College*, COLLEGESTATS.ORG, https://collegestats.org/articles/why-go-to-college/ (last visited Oct. 4, 2022).

people who earn a bachelor's degree or higher earn approximately $30,000–$60,000 more than a person who earns a high school diploma.[8] Similarly, the unemployment rate for people with a bachelor's degree or higher is 1.1–2.2%, whereas the unemployment rate for people who only complete a high school diploma or less than a high school diploma is 3.7–5.4%.[9] "Higher education is considered both a public and a private good, and its benefits flow to both the individual and the community."[10] Because of the substantial benefits individuals and society derive from pursuing higher education, the government deems higher education worthy of incentivizing.

B. How the Government Incentivizes

Congress may place specific provisions in the Code to promote certain behaviors that it deems socially beneficial.[11] "Tax incentives—also called 'tax benefits'—are reductions in tax that the government makes in order to encourage

See Five Reasons Why Having a Bachelor's Degree Boosts Your Career, AM. ASS'N FOR RESPIRATORY CARE, https://www.aarc.org/careers/career-advice/professional-development/five-reasons-bachelors-boosts-career/ (last visited Oct. 4, 2022) (emphasizing additional knowledge, enhanced communication skills, problem-solving skills, career opportunities, and confidence and recognition as benefits from having a bachelor's degree); *How Does a College Degree Improve Graduates' Employment and Earnings Potential?*, ASS'N OF PUB. & LAND-GRANT UNIVS. https://www.aplu.org/projects-and-initiatives/college-costs-tuition-and-financial-aid/publicuvalues/employment-earnings.html#:~:text=On%20an%20annual%20basis%2C%20bachelor%E2%80%99s%20degree%20holders%20earn,and%20those%20with%20less%20education%20continues%20to%20widen. (last visited Oct. 4, 2022) ("The evidence that a college degree significantly improves one's employment prospects and earnings potential is overwhelming. Bachelor's degree holders are half as likely to be unemployed as their peers who only have a high school degree and they make $1 million in additional earnings on average over their lifetime . . . . On an annual basis, bachelor's degree holders earn about $32,000 more than those whose highest degree is a high school diploma."); Jaison R. Abel & Richard Deitz, *Do the Benefits of College Still Outweigh the Costs?*, 20 FED. RSRV. BANK OF N.Y.: CURRENT ISSUES IN ECON. & FIN. (2014), https://www.newyorkfed.org/medialibrary/media/research/current_issues/ci20-3.pdf; *The Rising Cost of Not Going to College*, PEW RSCH. CTR. (Feb. 11, 2014), https://www.pewresearch.org/social-trends/2014/02/11/the-rising-cost-of-not-going-to-college/ (displaying the disparity among millennials ages 25–32 by education level in terms of annual earnings, unemployment rate, and share living in poverty).

8 Tim Stobierski, *Average Salary by Education Level: The Value of a College Degree*, NE. UNIV. BACHELOR'S DEGREE COMPLETION (June 2, 2020), https://www.northeastern.edu/bachelors-completion/news/average-salary-by-education-level/; *see Learn More, Earn More: Education Leads to Higher Wages, Lower Unemployment*, U.S. BUREAU OF LAB. STAT.: CAREER OUTLOOK (May 2020), https://www.bls.gov/careeroutlook/2020/data-on-display/education-pays.htm.

9 Stobierski, *supra* note 8; *see Learn More Earn More*, *supra* note 8.

10 Victoria J. Haneman, *A Timely Proposal to Eliminate the Student Loan Interest Deduction*, 14 NEV. L. J. 156, 168 (2013).

11 Stuart Lazar, *Schooling Congress: The Current Landscape of the Tax Treatment of Higher Education Expenses and a Framework for Reform*, 2010 MICH. ST. L. REV. 1047, 1110 (2010).

spending on certain items or activities. Tax incentives are often cited as a great way to encourage economic development."[12] When Congress provides benefits to certain expenses in the Code, it expresses to taxpayers that they will receive a benefit if they spend money in those enumerated ways. For example, the government provides billions of dollars in subsidies to homeowners through mortgage interest or real estate tax deductions, whereas the subsidies for renters are significantly lower.[13] Home ownership directly correlates with "greater educational attainment, likelihood of being married, better family outcomes, higher salaries, greater wealth, and increased ownership of assets."[14] When home ownership creates positive outcomes, such as educational attainment and higher salaries, "it is clear why the federal government provides these incentives through tax expenditures to create more homeowners."[15] When massive subsidies are available to taxpayers, they are likely to affect consumer behavior and economic markets, such as the housing market.[16]

Because people receive many benefits from higher education opportunities, the government encourages the pursuit of higher education.[17] To encourage the pursuit of higher education, "the government provides information regarding graduation rates, the 'college experience'" and other areas that are appealing to the public interest.[18] One of the most prominent ways the government contributes to promoting the value of higher education is through financial assistance for higher education.[19] The government and other non-profit

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12 *Understanding Incentives in Economics: 5 Common Types of Economic Incentives*, MASTERCLASS (Aug. 26, 2021), https://www.masterclass.com/articles/understanding-incentives-in-economics#what-is-the-difference-between-extrinsic-vs-intrinsic-incentives.

13 Adam Carasso, C. Eugene Steuerle, & Elizabeth Bell, *Making Tax Incentives for Homeownership More Equitable and Efficient*, THE URB. INST. 1 (2005), https://www.urban.org/sites/default/files/publication/51846/411180-Making-Tax-Incentives-for-Homeownership-More-Equitable-and-Efficient.PDF; *see* I.R.C. §§ 163(h), 164.

14 Richard Q. Lewis III, *Are Tax Expenditures Reaching Their Goals? A View From the Fiscal Cliff*, 87 FLA. BAR J. 28, 29 (2013).

15 *Id.*

16 Carasso, Steuerle & Bell, *supra* note 13.

17 *See* Milton Friedman, *The Role of Government in Education*, EDCHOICE, https://www.edchoice.org/who-we-are/our-legacy/articles/the-role-of-government-in-education/ (last visited Oct. 4, 2022) ("Education is today largely paid for and almost entirely administered by governmental bodies or non-profit institutions . . . . The role assigned to government in any particular field depends, of course, on the principles accepted for the organization of society in general.").

18 Brandon Swenson, *How Does Government Policy Influence Higher Education?*, UNIV. OF ARK. GRANTHAM (Jan. 8, 2020), https://www.uagrantham.edu/blog/how-does-government-policy-influence-higher-education/.

19 *Id.* (briefly explaining the multiple avenues for financial assistance from the federal government, such as Pell Grants, Free Application for Federal Student Aid, other federal student loans, and military benefits).

and private organizations offer financial assistance through federal student aid programs, state student aid, collegiate and university institutional financial assistance, merit-based or financial need-based grants or scholarships, education benefits for veteran and military service members, savings plans, and student loans.[20] Additionally, the legislature created laws within the Code that can provide financial relief to students and their families who are paying for higher education.[21]

Providing higher education has been a priority for the federal government for over half a century.[22] Higher education is a pillar of an egalitarian society, and the public supports federal assistance.[23] "Education is necessary to remain globally and domestically competitive, and tax incentives help encourage both education and global and domestic competition."[24] The Code adopted education tax incentives to respond to the barrier of ever-increasing college costs and to encourage a college education as a good investment that produces positive effects.[25] Creating tax incentives for education promotes voluntary compliance by fostering taxpayer views of the tax system to prioritize and emphasize indirect benefits, such as a strong economy, stronger democracy, lower rate of crime, and better health.[26] Congress desired to extend access to higher education through these tax provisions and to provide everyone the opportunity to attend college even if they do not have the financial means to do so.[27] The primary justification

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20 *See College and Higher Education*, USA.GOV, https://www.usa.gov/higher-education (last visited Oct. 4, 2022); *Types of Financial Aid*, FED. STUDENT AID: U.S. DEP'T OF EDUC., https://studentaid.gov/understand-aid/types (last visited Oct. 4, 2022); *State Contacts*, U.S. DEP'T OF EDUC., https://www2.ed.gov/about/contacts/state/index.html (last visited Oct. 4, 2022); *VA Education and Training Benefits*, U.S. DEP'T OF VETERANS AFFS., https://www.va.gov/education/ (last visited Oct. 4, 2022); *Financial Aid for Students*, USA.GOV, https://www.usa.gov/financial-aid#item-206091 (last visited Oct. 4, 2022).

21 *See* I.R.C. §§ 25A, 117, 221.

22 Haneman, *supra* note 10, at 158; *see* Sima J. Gandhi, *Understanding Students from a Behavioral Economics Perspective: How Accelerating Student Loan Subsidies Generates More Bang for the Buck*, 17 KAN. J. L. & PUB. POL'Y 130, 130 (2008) ("Federal funding for higher education has played a substantial role in providing students with access to higher education from the 1944 direct subsidies of the GI Bill, to the 1965 subsidized student loans of the Higher Education Act (HEA), to the more recent tax credits and deductions of the 2001 tax bill. In 2002, federal financial aid for higher education totaled a staggering $105.1 billion, or 5.8% of the federal budget.").

23 Haneman, *supra* note 10, at 158–59.

24 Sean M. Stegmaier, *Tax Incentives for Higher Education in the Internal Revenue Code: Education Tax Expenditure Reform and the Inclusion of Refundable Tax Credits*, 37 SW. U. L. REV. 135, 138 (2008).

25 Deborah H. Schenk & Andrew L. Grossman, *The Failure of Tax Incentives for Education*, 61 TAX L. REV. 295, 296 (2008).

26 Watson, *supra* note 4, 90–92.

27 Schenk & Grossman, *supra* note 25, at 297–306; *see* Caroline Hoxby, *Tax Incentives for Higher Education*, 12 TAX POL'Y & ECON. 49 (1998).

for government subsidies for higher education is decreasing higher education costs in hopes of increasing investment in education to more optimal levels.[28]

There are some disadvantages to incentivizing higher education through tax code provisions. First, tax incentives "reflect Americans' values" about education, similar to marriage, divorce, children, work retirement, etc., but they are still not direct assistance funds.[29] While the indirect forms of assistance are more politically appealing, direct funds may be a more practical use of resources to encourage certain behaviors, such as education.[30] Second, "[w]hen the federal government administ[ers] education policy through the Code, it not only makes the Code more complicated and increases compliance costs for taxpayers, but it also increases the likelihood that the intended beneficiary will not receive the intended benefit."[31] Nevertheless, Congress may use certain aspects of the Code to provide opportunities for the broadest audience of people, such as through above-the-line deductions.

However, there are some advantages to promoting behavior through the Code. First, it is more politically appealing and expedient to provide indirect funds through the Code than through direct funds through the budget.[32] Some evidence suggests Congress adopted tax subsidies not because they believed they would really work, but because they were politically attractive.[33] While this approach has its advantages, "[i]t is concerning, however, if congressional attachment to a [tax incentive] is fueled [less] by its objective result and more by the normative message communicated."[34] Second, funds allocated indirectly—an adjustment to gross income rather than income itself—through the Code do not carry the same stigma of a "government handout" in contrast to direct funds.[35]

Because all taxpayers have access to above-the-line deductions, Congress uses the Code to provide benefits to taxpayers through above-the-line deductions, and these benefits are likely to affect consumer behavior. Above-the-line deductions are some of the most expensive provisions in the Code.[36] Tax expenditures are "revenue losses attributable to provisions of the Federal tax laws

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28 Schenk & Grossman, *supra* note 25, at 297.

29 Watson, *supra* note 4, at 92–93.

30 Schenk & Grossman, *supra* note 25, at 307; *see generally Why Scholarships Matter: Helping Communities and Families*, SCHOLARSHIP AM., https://blog.scholarshipamerica.org/why-scholarships-matter (last visited Oct. 4, 2022).

31 Watson, *supra* note 4, at 92–93.

32 *Id.* 90–92.

33 Schenk & Grossman, *supra* note 25, at 307 ("[P]ublic perceptions of a tax provision have an unquantifiable but tacit impact."). Haneman, *supra* note 10, at 159.

34 Haneman, *supra* note 10, at 160.

35 Watson, *supra* note 4, at 90–92.

36 Eric Reed, *What Are Above the Line Deductions?*, THE ST.: PERS. FIN., https://www.thestreet.com/personal-finance/above-the-line-deductions-14904050 (last visited Oct. 4, 2022).

which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral of liability."[37] The government is tasked with raising revenue, which it can accomplish through "increasing tax rates, reducing tax breaks, expanding the tax base, improving enforcement, and levying new taxes."[38] When determining what behavior is worth intervening to encourage through tax code provisions, policymakers "should consider the justification for government intervention" and "justify[ing] the use of [the Code] as the best procedural tack to facilitate the intervention."[39] To fully understand the way the Code provides financial relief to those paying for higher education, one must understand the nature of tax structure and tax policy, specifically regarding above-the-line deductions.

III. UNDERSTANDING ABOVE-THE-LINE DEDUCTIONS AND § 221

Understanding a taxpayer's final tax liability requires an understanding of the various components of taxation, including income and deductions. The Code imposes taxes on individuals' incomes at various rates based on their amount of taxable income.[40] The following subsections briefly discuss a key element of the overall tax structure, above-the-line deductions, and specifically analyze the higher education loan deduction under § 221 of the Code.

A. Tax Structure—Above-the-Line Deductions

The Code defines taxable income as "gross income minus the deductions allowed by [this Code] (other than the standard deduction)."[41] Gross income is "all income from whatever source derived . . . ."[42] Tax liability often derives from determining whether some accumulation of wealth should be included as taxable income. The Code uses a broad definition of income to raise revenue by increasing income-producing sources while continuing to propose smaller

[37] 2 U.S.C.A. § 622 (West 2022); *see* Eric J. Toder, *Tax Expenditures and Tax Reform: Issues and Analysis*, THE URB. INST. 2 (Nov. 2005), https://www.jstor.org/stable/pdf/41954937.pdf.

[38] *Some Background*, URBAN BROOKINGS TAX POL'Y CTR (May 2020), https://www.taxpolicycenter.org/briefing-book/what-options-would-increase-federal-revenues.

[39] Haneman, *supra* note 10, at 168; *see generally* Nat'l Fed. of Indep. Bus. v. Sebelius, 567 U.S. 519 (2012) (holding that the individual mandate to purchase health insurance under the Affordable Care Act was an appropriate exercise of Congress's taxing powers).

[40] *See* I.R.C. § 1(c). For other taxpayer statuses affecting taxation rates, *see also* I.R.C. § 1(a); I.R.C. § 1(b).

[41] I.R.C. § 63(a).

[42] I.R.C. § 61(a).

taxation rates.[43] However, there are ways to adjust taxable income, such as through deductions, income produced from capital assets, and credits.[44]

Gross income can be adjusted based on various permitted deductions.[45] When calculating the adjusted gross income, permitted deductions are subtracted from gross income.[46] The deductions, permitted under § 62 of the Code, are used to calculate adjusted gross income or often referred to as above-the-line deductions. Below-the-line deductions and the standard deduction differ from above-the-line deductions because these deductions contribute to calculating the taxable income after the adjusted gross income has already been calculated with the above-the-line deductions.[47] Taxpayers may elect to itemize their deductions under § 67(b) of the Code or they may elect to take the standard deduction under § 63(c) of the Code, an amount taken as a deduction that is the same from taxpayer to taxpayer.[48]

Generally, above-the-line deductions are more advantageous to taxpayers because taxpayers claim the above-the-line deductions first from their annual gross income, and the deductions benefit everyone who files regardless of the option a taxpayer chooses for their below-the-line deduction.[49] When taxpayers take their below-the-line deductions, they must elect to take a standard deduction or itemize their deductions. These deductions are allowable items that may be subtracted from a taxpayer's adjusted gross income, and taxpayers may choose to take specific deductions if they spend enough money on certain types

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43 *How Could We Improve the Federal Tax System?: What is a Broad-Based Income Tax?*, TAX POL'Y CTR: URB. INST. & BROOKINGS INST. (May 2020), https://www.taxpolicycenter.org/briefing-book/what-broad-based-income-tax.

44 *See* I.R.C. §§ 1(h), 21–54AA, 62, 63, 67(b), 1201–1298.

45 *See* I.R.C. §§ 62, 161–224.

46 I.R.C. § 63(a). Permitted deductions that are subtracted from gross income include trade or business deductions; certain trade and business deductions of employees; losses from sales or exchange of property; deductions attributable to rents and royalties; certain deductions of life tenants and income beneficiaries of property; pension, profit-sharing, and annuity plans of self-employed individuals; retirement savings; penalties forfeited because of premature withdrawal of funds from time savings accounts for deposits; reforestation expenses; certain required repayments of supplemental unemployment compensation benefits; jury duty pay remitted to employer; moving expenses; Archer MSAs; interest on education loans; health savings accounts; costs involving discrimination suits, etc.; and attorneys' fees relating to awards to whistleblowers. I.R.C. § 62(a).

47 *See* I.R.C. § 63(c) (under the Tax Cuts and Jobs Act of 2017, the standard deduction is $12,000 for individual filers and $24,000 for joint filers); *see also* § 67(b) (listing a negative definition for below-the-line deductions).

48 *See* I.R.C. §§ 63(c), 67(b).

49 *Above-the-Line Deduction*, BANKRATE, https://www.bankrate.com/glossary/a/above-the-line-deduction/#:~:text=An%20above%2Dthe%2Dline%20deduction%20is%20a%20deduction%20the%20IRS,amount%20of%20taxes%20you%20owe (last visited Nov. 2, 2022).

of expenses to exceed the standard deduction.[50] In 2019, approximately 87.65% of taxpayers took the standard deduction.[51] To the extent a taxpayer's certain below-the-line expenses do not exceed the standard deduction, the taxpayer would not receive those deductions, which differs from the above-the-line deductions that are calculated into the adjusted gross income before any other taxes or deductions are applied.[52] "Above-the-line deductions can be more valuable than below-the-line deductions because they can help you qualify for other deductions or increase their value."[53] Therein, "not all deductions are created equal."[54]

Above-the-line deductions often pertain to business and other income-producing activities, which differ from below-the-line deductions or the standard deduction that accounts for more personal expenses that are not related to business or income-producing activities.[55] However, there are a select few personal deductions that are calculated into the adjusted gross income under § 62 of the Code, such as the higher education loan interest deduction.[56]

B. Higher Education Incentive—§ 221

One of the higher education incentives in the Code is the higher education loan interest deduction.[57] The higher education loan interest deduction is an above-the-line deduction that Congress enacted under § 221 of the Code to ease financial burdens and assist low- and middle-income families with paying for higher education.[58] Section 221 of the Code intended to "serve both as an incentive provision to encourage and support advanced education and also a hardship provision to assist with the burden of debt after graduation[,]" and to make education more affordable for those who do attend by subsidizing the

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50 *Id.*; I.R.C. § 63(b) ("In the case of an individual who does not elect to itemize his deductions for the taxable year, for purposes of this subtitle, the term "taxable income" means adjusted gross income, minus the standard deduction.").

51 *Statistics of Income: Individual Income Tax Returns Complete Report*, I.R.S. Pub. 1304, at 6 (Rev. 12-2021) (2021), https://www.irs.gov/pub/irs-pdf/p1304.pdf. The percentage of taxpayers taking the standard deduction was calculated by dividing the Total Standard Deduction Returns value in Column AE, Row 122, by the All Returns value in Column AE, Row 8, in Table A: Selected Income and Tax Items for Selected Years.

52 *Above-the-Line Deduction*, *supra* note 49.

53 Janet Berry-Johnson & Korrena Bailie, *What Are Above the Line Deductions?*, FORBES ADVISOR (Dec. 20, 2021, 8:06 AM), https://www.forbes.com/advisor/taxes/above-the-line-deductions/.

54 *Id.*

55 SAMUEL A. DONALDSON & DONALD B. TOBIN, FEDERAL INCOME TAX: A CONTEMPORARY APPROACH 29 (West Acad., 3d ed. 2018); *see* I.R.C. § 62(a)(1)–(4).

56 DONALDSON & TOBIN, *supra* note 55, at 29; *see* I.R.C. §§ 62(a)(15), (17), (19).

57 *See* I.R.C. § 221.

58 I.R.C. § 62(a)(17); H.R. Rep. No. 105-148, at 316 (1997); S. Rep. No. 105-33, at 20 (1997).

cost.[59] Section 221 of the Code allows a deduction for the amount of interest a taxpayer pays on their student loan interest in a taxable year.[60]

This deduction is not unlimited. It has a maximum amount of $2,500 for the taxable year.[61] Additionally, a phaseout process that reduces the deduction as taxpayers receive higher amounts in taxable income, as determined by their modified adjusted gross incomes, further limits the deduction.[62] On top of that, the § 221 deduction is not allowed to individuals who are dependents to another taxpayer in a taxable year.[63] While the actual student, who is a dependent, may not claim the deduction in a taxable year, the taxpayer who claims the student as the dependent may deduct the student loan interest on their taxes to the extent that the taxpayer pays the dependent's student loan interest.[64]

There are many ways that policymakers can promote certain behaviors through the Code.[65] The benefits that higher education provides have continued to promulgate legislation that encourages and incentivizes the pursuit of higher

59 Haneman, *supra* note 10, at 173; Schenk & Grossman, *supra* note 25, at 308.

60 I.R.C. § 221(a). This deduction applies to qualified education loans which means

> any indebtedness incurred by the taxpayer solely to pay qualified higher education expenses—which are incurred on behalf of the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer as of the time the indebtedness was incurred, which are paid or incurred within a reasonable period of time before or after the indebtedness is incurred, and which are attributable to education furnished during a period during which the recipient was an eligible student.

I.R.C. § 221(d)(1).

61 I.R.C. § 221(b)(1). When § 221 was codified, its original maximum deduction listed a table where taxpayers in 1998 shall not exceed $1,000 of the § 221 deduction, taxpayers in 1999 shall not exceed $1,500 of the § 221 deduction, taxpayers in 2000 shall not exceed $2,000 of the § 221 deduction, and taxpayers in 2001 and thereafter shall not exceed $2,500 of the § 221 deduction. Taxpayer Relief Act of 1997, Pub. L. 105-34, 111 Stat. 788 (1997) (codified at I.R.C. § 221).

62 I.R.C. § 221(b)(2); *see* I.R.C. § 221(f) (accounting for inflation adjustment into the amount used when reducing the deduction for higher taxable incomes). "The term 'modified adjusted gross income' means adjusted gross income determined without regard to [§ 221] and §§ 85(c), 911, 931, and 933, and after application of §§ 86, 135, 137, 219, and 469." I.R.C. § 221(b)(2)(C).

63 I.R.C. § 221(c).

64 Zack Sigel, *Who Can I Claim as a Dependent and Why Would I Want To?*, POLICYGENIUS (Dec. 27, 2021), https://www.policygenius.com/taxes/who-can-i-claim-as-a-dependent-and-why-would-i-want-to/#:~:text=Claiming%20a%20dependent%20on%20your%20tax%20return%20can,allowances.%20Personal%20allowances%20include%20deductions%2C%20exemptions%2C%20and%20credits*; see* Ginita Wall, *Tax Benefits for Having Dependents*, TURBOTAX BLOG (Nov. 5, 2021), https://blog.turbotax.intuit.com/tax-deductions-and-credits-2/family/tax-benefits-for-having-dependents-12835/.

65 *See Understanding Incentives in Economics*, *supra* note 12; Carasso, *supra* note 13; Lewis III, *supra* note 14, at 29.

education.[66] While above-the-line deductions are expensive, they are available to all taxpayers who participate in the enumerated activities, including deducting interest payments on higher education loans.[67] Considering the nature of above-the-line deductions and incentivizing education, it is critical to analyze provisions in the Code to ensure they are effective, and in order to determine this, it is important to analyze and evaluate its efficiency, equity, and simplicity.

IV. EVALUATING THE HIGHER EDUCATION LOAN INTEREST DEDUCTION

Congress should be able to objectively justify provisions it creates to provide benefits in the Code. While there are a multitude of factors to consider when analyzing and evaluating the justification of tax expenditures, the three primary factors used to evaluate all tax incentives are efficiency, equity, and simplicity.[68] "Tax efficiency involves making investing choices that reduce one's tax bill."[69] Tax efficiency can be analyzed through an analysis of various aspects of a provision, such as tax expenditure and revenue loss compared to the benefit conferred to taxpayers in order to make informed investing choices, ability to meet legislative purpose, and through actual benefit. "Equity means fairness in distribution of the burdens of government expenditures or of economic stabilization."[70] Equity may be based on fairness horizontally and vertically. Some of the perspectives to view fairness in these frameworks are through utilitarianism, where actions and decisions promote "the greatest good for the greatest number,"[71] and John Rawls's alternative to utilitarianism, which prioritizes "the greatest benefit to the least advantaged members of society."[72] Simplicity addresses the ease in understanding and applying provisions within the Code. Most of the Code is not simple and tends to be difficult for taxpayers

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66 *See* Haneman, *supra* note 10, at 158–59; Stegmaier, *supra* note 24, at 138; Schenk, *supra* note 25, at 296.

67 *See* Reed, *supra* note 36; *Above-the-Line Deductions*, *supra* note 49.

68 *See* Watson, *supra* note 4; Kerry A. Ryan, *Access Assured: Restoring Progressivity in the Tax and Spending Programs for Higher Education*, 38 SETON HALL L. REV. 1, 30 (2008).

69 Paul Tracy, *Tax Efficiency*, INVESTINGANSWERS (Sept. 29, 2020), https://investinganswers.com/dictionary/t/tax-efficiency.

70 WILLIAM D. ANDREWS & PETER J. WIEDENBECK, BASIC FEDERAL INCOME TAXATION 9 (Wolters Kluwer, 6th ed. 2009) (emphasis omitted).

71 JAMES SVARA, THE ETHICS PRIMER FOR PUBLIC ADMINISTRATORS IN GOVERNMENT AND NONPROFIT ORGANIZATIONS, 73 (Chloe Falivene et al. eds., 2d ed. 2015).

72 John Rawls, *Justice as Fairness: Political Not Metaphysical*, 14 PHIL. & PUB. AFFS. 223, 227 (1985), https://www.jstor.org/stable/2265349.

to understand and apply.[73] The following subsections address the efficiency of § 221 through various perspectives, an evaluation of the equity of § 221, and an analysis of the simplicity of § 221.

A. *Efficiency Evaluation of § 221*

There are a multitude of ways to evaluate efficiency. The following subsections focus on three bases for understanding the efficiency of § 221. The first subsection will focus on analyzing efficiency based on the amount of tax expenditure by the federal government to provide the § 221 deduction, the amount of potential revenue loss when the federal government provides the § 221 deduction, and the average amount of the § 221 deduction that taxpayers take in comparison to the prescribed maximum under the statute. The second subsection will focus on analyzing efficiency based on the achievement of the two purposes that Congress laid out for § 221: increasing educational opportunity and easing financial burdens.[74] The third subsection will analyze the actual benefit conferred to taxpayers through § 221.

1. Efficiency by the Numbers

Each provision in the Code has government expenditures to support its function and enforcement.[75] Across time, the federal government increased expenditures to provide a deduction for paying interest on higher education loans. The graph below shows how tax expenditures for the higher education loan interest deduction has changed over time.[76] In its early years, the federal government "spent" approximately $100 million to provide a deduction to

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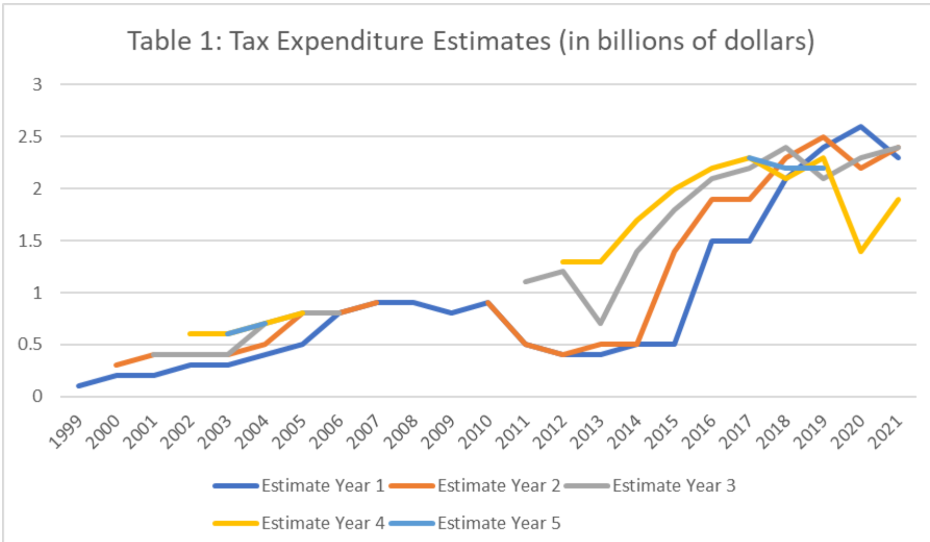
73 Jeremias Ramos, *Why Is Our Tax Code So Complicated?*, THE DAILY CPA: AN ONLINE PUBL'N FOR SMALL BUS. AND ACCT. NEWS (June 2, 2020), https://thedailycpa.com/why-is-our-tax-code-so-complicated/.

74 H.R. Rep. No. 105-148, at 316 (1997); S. Rep. No. 105-33, at 20 (1997).

75 Exclusion of employer contributions for medical insurance premiums and medical care, exclusion of net imputed rental income, capital gains (except agriculture, timber, iron ore, and coal), and defined contribution employer plans are the largest estimated tax expenditures for the 2022–2031 fiscal years. *See Tax Expenditures FY2022*, U.S. DEP'T OF THE TREASURY: OFF. OF TAX ANALYSIS (June 3, 2021), https://home.treasury.gov/system/files/131/Tax-Expenditures-FY2022.pdf.

76 Tax Expenditure Estimates, *infra* Table 1. This table is a representation of tax expenditure estimates based on budget function from the Joint Committee on Taxation. *See* JOINT COMM. ON TAX'N, JCX-23-20, ESTIMATES OF FEDERAL TAX EXPENDITURES FOR FISCAL YEARS 2020–2024 24–36 (2020) (Table 1.–Tax Expenditure Estimate by Budget Function, Fiscal Years 2020–2024). Each set of data came from a one- to five-year report listing the estimated expenditure for the current and upcoming fiscal years. Rather than attempting to combine the data and misrepresent the trends across § 221's existence, Table 1 shows each year's data estimate through "Estimate Years" to show the trends.

taxpayers paying off interest on their education loans.[77] The government expenditure to provide the higher education loan interest deduction increased to $900 million per year until 2011, when the expenditures then decreased to about half this amount.[78] Following this decreasing pattern, the federal government increased spending to maintain this deduction for taxpayers to continue receiving assistance when paying back higher education loans through 2021, where the government spent approximately $1.9–2.4 billion.[79]



The federal government expenditure on the higher education loan interest deduction has significantly increased since its passage in 1997.[80] Yet, the amount of money the federal government spent to execute this deduction is slim in comparison to other expenditures.[81] However, the amount in revenue loss and the amount taxpayers deduct individually is not proportionate to the large amounts the federal government spends to provide this above-the-line deduction. In 2003, taxpayers claimed over $4.4 billion in above-the-line deductions for

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77 *Id.*

78 *Id.*

79 *Id.*

80 JOINT COMM. ON TAX'N, *supra* note 76. *See* Table 1.

81 The federal government estimates tax expenditures just over $3 trillion on the exclusion of employer contributions for medical insurance premiums and medical care, over $1.67 trillion on the exclusion of net imputed rental income, over $1.36 trillion in capital gains (except agriculture, timber, iron ore, and coal), and over $1.35 trillion in defined contribution employer plans. *Tax Expenditures—Frequently Asked Questions Regarding Tax Expenditures*, U.S. DEP'T OF THE TREASURY: OFF. OF TAX ANALYSIS (June 3, 2021), https://home.treasury.gov/system/files/131/Tax-Expenditures-FY2022.pdf.

their payment of interest on their higher education loans.[82] This means, that in 2003, the federal government gave up $4.4 billion in potential revenue to provide this benefit. This amount has increased throughout the subsequent years to the $14.14 billion reported amount in above-the-line deductions for interest repayment of interest on higher education loans in 2019.[83] In 2019, the federal government forewent $14.14 billion in potential revenue to provide the § 221 deduction.

Table 2: Line Item Estimates[84]

Year	Number of Returns for Line 33	Amount for Line 33	Average Amount Deducted
2003	6,953,370	4,409,816,000	634.2
2004	7,527,249	4,398,816,000	584.37
2005	8,072,896	5,052,720,000	625.89
2006	8,540,900	6,156,865,000	720.87
2007	6,207,594	7,463,755,000	1,202.36
2008	9,135,508	7,730,515,000	846.21
2009	9,718,995	8,339,817,000	858.09
2010	10,119,216	9,093,467,000	898.63
2011	10,051,849	9,673,065,000	962.32
2012	10,764,802	10,693,660,000	993.39
2013	11,460,120	11,617,865,000	1,013.76
2014	12,083,228	12,812,975,000	1,060.39
2015	12,371,155	13,438,377,000	1,086.27
2016	12,396,180	13,446,150,000	1,084.70
2017	11,779,245	12,865,034,000	1,092.18
2018	12,425,040	13,434,708,000	1,087.26
2019	12,719,148	14,144,721,000	1,112.08

82 *Statistics of Income, 2003: Individual Income Tax Returns Estimated Data Line Counts,* I.R.S. Pub. 4801 (Rev. 1-2006) (2006), https://www.irs.gov/pub/irs-soi/03linecnt.pdf; *see Statistics of Income*, *2019: Individual Income Tax Returns Line Item Estimates*, I.R.S. Pub. 4801 (Rev. 23-2021) (2021), https://www.irs.gov/pub/irs-pdf/p4801.pdf [hereinafter *I.R.S. Publication 4801*]; *see also infra* Table 3.

83 *I.R.S. Publication 4801*, *supra* note 82; *see also infra* Table 2.

84 *I.R.S. Publication 4801*, *supra* note 82. Table 2 is a representation of the total line estimates for the higher education loan interest deduction, the total line estimates of the amount deducted in the taxable year for the higher education loan interest deduction, and the calculated average amount deducted per individual return that took the higher education loan interest deduction. It is significant to note that the maximums for the § 221 deduction changed from $1,000 to $2,500.

Additionally, the average amounts taken as a § 221 deduction continued to remain significantly lower than the maximum amount permitted under § 221.[85] Where federal government tax expenditures for the higher education loan interest deduction have approached $2 billion and the total amount of potential revenue loss has surpassed $14 billion, the average taxpayer should be able to, at the very least, deduct closer to the maximum $2,500.[86] Accordingly, "an expenditure over $300 million is problematic if it does not accomplish its intended goals."[87] It is unjustifiable to put forth such high amounts of expenditure, which far surpasses $300 million, and potential revenue loss for such minimal amounts of benefit.[88]

2. Efficiency by Purpose

At its birth, the intention of the higher education loan interest deduction was to increase and support higher education opportunities, as well as ease financial burdens on student loan borrowers and their families.[89] Section 221 aims to encourage and support advanced education.[90] Therein, whether the § 221 provision meets this goal is determined by the effect it has on consumer behavior. If consumers who otherwise would not invest in education chose to do so once the § 221 deduction was factored into the price and the consumption of education is increased, then the higher education loan interest deduction incentive is considered efficient.[91] However, the likelihood that this deduction efficiently accomplishes this task is significantly low. "Objective analysis suggests that § 221 is a paradigm of inefficiency that is unlikely to increase access to education or markedly assist with debt service after graduation . . . ."[92] There is a great

85 *See* Table 3. It is significant to note that the maximums for the § 221 deduction changed from $1,000 to $2,500 between 1998 and 2001. *See* Pub. L. 105-34, 111 Stat 788 (1997).

86 *See* I.R.C. § 221(b).

87 Haneman, *supra* note 10, at 173 ("The estimated tax expenditure attributable to § 221 was $400 million both in 2012 and 2013. These numbers do not compare in size to some of the largest tax expenditures, including $131.7 billion on employer-provided health insurance and $69.7 billion on the mortgage interest deduction. Nevertheless, an expenditure of more than $300 million per year is problematic if it does not accomplish intended goals.").

88 *See* H.R. REP. NO. 105-148, at 316 (1997); S. REP. NO. 105-33, at 20 (1997); Table 2; *see also* Haneman, *supra* note 10, at 173.

89 H.R. REP. NO. 105-148, at 316 (1997) ("To assist low- and middle-income families and students, the Committee believes that taxpayers should be allowed to claim a credit . . . for certain tuition and related expenses."); S. REP. NO. 105-33, at 20 (1997) ("The Committee is aware that many students incur considerable debt in the course of obtaining undergraduate and graduate education. The Committee believes that permitting a deduction for interest on student loans will help ease the financial burden that such obligations represent.").

90 S. REP. NO. 105-33, at 20 (1997).

91 Schenk, *supra* note 25, at 308.

92 Haneman, *supra* note 10, 157.

benefit to investment in education, but "market inefficiencies result in under investment," and "the dedicated effort by Congress to revive the deduction offers a troubling illustration of the way in which public perception may adversely affect the tax legislative process."[93] When § 221 does not affect consumer behavior to increase higher education opportunities, it does not function as an incentive to guide social behavior at all.

Additionally, § 221 is meant to ease financial burden.[94] However, the financial burden for higher education has only increased since the establishment of this deduction.[95] There are higher student loan debts and higher unemployment rates.[96] College costs outpace inflation, and "[t]he expense of education continues to sky rocket as the government substitutes one failed ideology (the American dream of home ownership) for a new ideology (every child deserves a college education)."[97] When § 221 does not truly ease the financial burden of higher education, it does not incentivize higher education from a financial standpoint. While the purposes of § 221 are noble, failing to achieve these purposes suggests that the provision is inefficient.

3. Efficiency by Actual Benefit

When analyzing the actual benefit of the higher education interest deduction, it is imperative to consider the ways it affects taxpayers. "[A]n interest deduction does not directly influence higher education enrollment unless student determines (prior to enrollment) that he is unable to afford loan payments in the

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93 Schenk, *supra* note 25, at 332; *see Carryover (Tax) Law and Legal Definition*, U.S. LEGAL, https://definitions.uslegal.com/c/carryover-tax/ (last visited Oct. 4, 2022) ("Carryover (Tax) is a process by which the deduction or credits of one taxable year that cannot be used to reduce tax liability in that year are applied against tax liability in subsequent years (carryforward) or previous years (carryback).").

94 H.R. REP. NO. 105-148, at 316 (1997).

95 *See infra* Table 3; G.19 STATISTICAL RELEASE: CONSUMER CREDIT, U.S. FED. RESERVE (Oct. 2022), https://www.federalreserve.gov/releases/g19/current/g19.pdf.

96 Haneman, *supra* note 10, at 165; *see infra* Table 3; *Consumer Credit Outstanding Data Release*, U.S. FED. RESERVE, https://www.federalreserve.gov/releases/g19/current/default.htm (last visited Oct. 4, 2022) (showing that student loan debt has surpassed $1.7 trillion); *see also U.S. Unemployment Rate 1991–2022*, MACROTRENDS, https://www.macrotrends.net/countries/USA/united-states/unemployment-rate#:~:text=U.S.%20Unemployment%20Rate%20-%20Historical%20Data%20%20,%20%20-0.51%25%20%2026%20more%20rows%20 (last visited Oct. 4, 2022) (The U.S. unemployment rate for 2020 was 8.05%, which is a 4.38% increase from 2019.).

97 Schenk, *supra* note 25, at 296–97; Haneman, *supra* note 10, at 164; *see* Roger Roots, *The Student Loan Debt Crisis: A Lesson in Unintended Consequences*, 29 SW. U. L. REV. 501, 504 (2000) (proposing that "[the government student loan] program has interfered with the educational marketplace by unnecessarily causing tuitions to increase."); *see also* Carasso, *supra* note 13 (focusing on several reforms that would help deliver more equitable and efficient home ownership subsidies).

absence of deduction, and, conversely, that he is able to afford the loan payments with the deduction."[98] A taxpayer who has a 0% income taxation rate receives no benefit from the deduction and no carryover because there is not enough income to surpass the threshold necessary to receive the higher education interest deduction.[99] In 2019, approximately 21.33% of taxpayers filed their returns and received a zero percent income taxation rate.[100] For taxpayers with a 10% income taxation rate, they may receive a tiny benefit, but if the taxpayer can make payments even without the deduction, then there is no benefit.[101] In 2019, approximately 16.02% of taxpayers filed their returns and received a 10% income taxation rate.[102] Similarly, if the taxpayer could not make payments even with the deduction, then there is no benefit.[103] Taxpayers who had a 12% income taxation rate also received a benefit that is too small to be significant.[104] In 2019, approximately 33.78% of taxpayers filed their returns and received a 12% income taxation rate.[105] The bottom three tax brackets in 2019 comprised 71.13% of total taxpayers, and yet, the benefits of the § 221 deduction were nonexistent or so insignificant that it is highly improbable to increase pursuit of higher education.[106] Most taxpayers cannot or are "[not] willing to borrow large amounts [of money] even with the deduction," making the decision to invest in

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[98] Haneman, *supra* note 10, at 174.

[99] Schenk, *supra* note 25, at 332; *see* U.S. LEGAL, *supra* note 93.

[100] *See Statistics of Income, 2019: Individual Income Tax Returns Complete Report*, I.R.S. Pub. 1304, at 267–69 (Rev. 12-2021) (2021), https://www.irs.gov/statistics/soi-tax-stats-individual-statistical-tables-by-tax-rate-and-income-percentile (Table 3.4 All Returns: Tax Classified by Both the Marginal Rate and Each Rate at Which Tax Was Computed, by Filing Status, Tax Year 2019 (Filing Year 2020)) (Calculated derived percentage from the 0 Percent Tax Rate Number of Returns value in Column B, Row 11 divided by the Number of Returns for All Tax Rates in Column B, Row 10) [hereinafter *Publication 1304*].

[101] Schenk, *supra* note 25, at 333; *see* Jeff Rose, *The New 2019 Federal Income Tax Brackets and Rates*, FORBES (Dec. 5, 2018), https://www.forbes.com/sites/jrose/2018/12/05/tax-brackets-and-rates-2019/?sh=761a53123ec5 (The 10% taxation rate in 2019 was imposed on single taxpayers who received $0 to $9,700 in taxable income.).

[102] *See Publication 1304*, *supra* note 100 (Table 3.4 All Returns: Tax Classified by Both the Marginal Rate and Each Rate at Which Tax Was Computed, by Filing Status, Tax Year 2019 (Filing Year 2020)) (Calculated derived percentage from the 10 Percent Tax Rate Number of Returns value in Column B, Row 13 divided by the Number of Returns for All Tax Rates in Column B, Row 10).

[103] Schenk, *supra* note 25, at 333.

[104] *Id.* at 334; *see* Rose, *supra* note 101 (The 12% taxation rate was imposed on single taxpayers who received $9,701 to $39,475 in taxable income.).

[105] *See Publication 1304*, *supra* note 100, at 267 (Table 3.4 All Returns: Tax Classified by Both the Marginal Rate and Each Rate at Which Tax Was Computed, by Filing Status, Tax Year 2019 (Filing Year 2020)) (Calculated derived percentage from the 12 Percent Tax Rate value in Column B, Row 15 divided by the Number of Returns for All Tax Rates in Column B, Row 10).

[106] *See id.*

a college education, rather than some other investment, uninfluenced by the higher education interest deduction.[107]

Conversely, taxpayers with 22% and 24% income taxation rates in 2019 receive a larger benefit from the higher education loan interest deduction, but the benefit received is not high enough to modify behavior to enroll or not in higher education.[108] The benefit is too small to affect behavior because there is an increase in income and "amounts borrowed are larger."[109] If a taxpayer could not afford to borrow the amount of tuition, then the deduction would not change their ability to borrow the amount of tuition either.[110] Further, in 2019, approximately 24.84% of taxpayers filed their returns and received a 22% or 24% taxation rate.[111] To the extent that these populations of taxpayers receive the "greatest" benefit of the § 221 deduction, they make up less than a quarter of the population of taxpayers, and the greatest populations of taxpayers, who should be one of the primary targets of the § 221 deduction, receive the least significant portion of the benefit. "The least benefit is conferred to those taxpayers with the greatest need."[112] The remaining taxpayers comprise of 2.25% of the 2019 taxpayer population, and their incomes are too high to take the higher education interest deduction.[113] If the higher education loan interest deduction were successful, it would increase the debt burden of graduating students because students will borrow more since the after-tax borrowed cost has declined.[114] Nevertheless, if the § 221 deduction were successful, enrollment as a response to this benefit

107 Schenk, *supra* note 25, at 334.

108 The 22% taxation rate was imposed on single taxpayers who received $39,476 to $84,200 in taxable income. The 24% taxation rate was imposed on single taxpayers who received $84,201 to $160,725 in taxable income. *Id.* at 335; *see* Rose, *supra* note 101.

109 Schenk, *supra* note 25, at 335.

110 *Id.*

111 In 2019, there were approximately 18.91% of taxpayers who filed their returns and received the 22% income taxation rate, and there were approximately 5.93% of taxpayers who filed their returns and received the 24% income taxation rate. *See Publication 1304*, *supra* note 100 (Table 3.4 All Returns: Tax Classified by Both the Marginal Rate and Each Rate at Which Tax Was Computed, by Filing Status, Tax Year 2019 (Filing Year 2020)).

112 Haneman, *supra* note 10, at 173.

113 The 32% taxation rate was imposed on single taxpayers who received $160,726 to $204,100 in taxable income. The 35% taxation rate was imposed on single taxpayers who received $204,101 to $510,300 in taxable income, and the 37% taxation rate was imposed on single taxpayers who received $510,301 or more. Schenk, *supra* note 25, at 335; *see* Rose, *supra* note 101; *see also* I.R.C. § 221(b)(2) ("The amount which would [but for this paragraph] be allowable as a deduction under this section shall be reduced [but not below zero] by the amount determined under subparagraph (B). The amount determined under this subparagraph is the amount which bears the same ratio to the amount which would be so taken into account as the excess of the taxpayer's modified adjusted gross income for such taxable year, over $50,000 [$100,000 in the case of a joint return], bears to $15,000 [$30,000 in the case of a joint return.]").

114 Schenk, *supra* note 25, at 335.

would also increase, but enrollment statistics support the assertion that education incentives have not affected college access.[115]

Results show there are great benefits of pursuing higher education.[116] Further, it is common practice to provide tax benefits to help ease financial burden and encourage people to pursue higher education.[117] However, the government expenditure and the amount of potential revenue loss through the § 221 deduction suggests that this tax benefit is not very efficient. The § 221 failure to increase educational opportunities and ease financial burdens suggest it is not very efficient to accomplish its purpose. Finally, the § 221 deduction's failure to provide an actual benefit by targeting low- and even middle-income taxpayers and providing a significant enough benefit to affect taxpayer behavior suggests that, not only is the § 221 deduction inefficient, but it is also ineffective. Therein, it is difficult to justify § 221 of the Code on the basis of efficiency.

B. Equitable Analysis of § 221

Equity is a core policy to ensure "fairness in distribution of the burdens of government expenditures or of economic stabilization."[118] There are two kinds of equity: horizontal equity and vertical equity. Horizontal equity imposes "similar burdens on people in like circumstances."[119] Vertical equity creates "an appropriate differential in burdens for people in unlike circumstances."[120] The following subsections evaluate § 221 based on horizontal and vertical equity.

1. Horizontal Equity

"Horizontal equity is an economic theory that states that individuals with similar income and assets should pay the same amount in taxes. Horizontal equity should apply to individuals considered equal regardless of the tax system in place."[121] Likewise, taxpayers with similar amounts of student loan debt should be in a similar position to receive a tax subsidy based on student loans.

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115 *Id.* at 360; *see* Michael T. Nietzel, *Latest Numbers Show Largest College Enrollment Decline in a Decade*, FORBES (June 10, 2021, 1:10 AM), https://www.forbes.com/sites/michaeltnietzel/2021/06/10/updated-numbers-show-largest-college-enrollment-decline-in-a-decade/?sh=757260b51a70.

116 *See supra* Part II; *see also* Watson, *supra* note 4, at 90–92.

117 H.R. REP. NO. 105-148, at 316 (1997); S. REP. NO. 105-33, at 20 (1997); *see Tax Benefits for Education*, I.R.S. Pub. 970 (2022), https://www.irs.gov/pub/irs-pdf/p970.pdf [hereinafter *Publication 970*].

118 ANDREWS, *supra* note 70, at 9.

119 *Id.*

120 *Id.*

121 Julia Kagan, *Horizontal Equity*, INVESTOPEDIA (Aug. 25, 2020), https://www.investopedia.com/terms/h/horizontalequity.asp#:~:text=Horizontal%20equity%20is

An example of disproportionate treatment among the benefits' intended recipients is the exclusion of graduate and professional students from receiving the § 221 deduction.[122] The problem for graduate and professional students is their likelihood of accepting higher paying jobs.[123] The phase-out in § 221 reduces the value of the deduction to zero when there is excess of a taxpayer's modified adjusted gross income for a taxable year over $50,000 ($100,000 for joint returns), bears to $15,000 ($30,000 for joint returns).[124] Although graduate and professional students are more likely to have higher paying jobs to pay off their student loan debt, they are also the people who typically have the highest level of student loans.[125] With higher levels of debt come longer timelines to pay higher education debt off. The average student debt for a borrower with a master's degree is $58,300, and the average student loan debt for a borrower obtaining a doctoral degree is almost double that amount at approximately $101,200–175,600.[126] For graduate and professional students, the timeline to repay their higher education debt averages anywhere from 10 to over 45 years.[127]

However, due to the nature of high-paying professions for some graduate and professional students in contrast to others, students with similar loan balances are treated dissimilarly if one happens to accept a higher paying job.[128] A liberal arts professor with the same level of education as an engineering professor may have the same amount of debt, but to the extent that an engineering professor obtains a higher-paying position, the treatment between the two professionals under § 221 would differ because of the limitations on the amount of the benefit and the phase-out limitation for high-income taxpayers.[129] The §

%20a%20principle%20of%20income%20tax,have%20the%20same%20annual%20income%20as%20somebody%20else.

122 Haneman, *supra* note 10, at 170.

123 *Id.*

124 I.R.C. § 221(b)(2)(B).

125 STAFF OF J. COMM. ON TAX'N, 105TH CONG., ANALYSIS OF PROPOSED TAX AND SAVINGS INCENTIVES FOR HIGHER EDUCATION 42 (Apr. 18, 1997), https://www.jct.gov/publications/1997/jcs-9-97/ (access pdf); *see* Melanie Hanson*, Student Loan Debt Statistics*, EDUC. DATA INITIATIVE (Mar. 1, 2022) https://educationdata.org/student-loan-debt-statistics.

126 Hanson, *supra* note 125. The data provided takes into account public institutions, whereas the debt for a Master's at a private, for-profit institution averages at $96,700 and $243,300 for professional degree holders. *Id.*

127 *Id.*

128 Haneman, *supra* note 10, at 170. An English Professor in the United States, on average, makes $58,472 per year, whereas an Engineering Professor in the United States, on average, makes $86,754. *English Professor Salary*, ZIPRECRUITER, https://www.ziprecruiter.com/Salaries/English-Professor-Salary (last visited Oct. 4, 2022); *Engineering Professor Salary*, ZIPRECRUITER, https://www.ziprecruiter.com/Salaries/Engineering-Professor-Salary (last visited Oct. 4, 2022).

129 *See* I.R.C. § 221(b)(1)–(b)(2).

221 deduction functions based on a taxpayer's income rather than a taxpayer's amount of higher education debt, which creates the uneven distribution of benefit among taxpayers with the same amount of higher education debt.

2. Vertical Equity

Not only does § 221 treat taxpayers with the same amount of debt differently, it also does not appropriately distribute tax burdens "among people with different abilities to pay."[130] "A component of fairness in taxation is vertical equity, a concept which requires that tax burdens be distributed among people with different abilities to pay."[131] To the extent that there is a "disproportionate benefit of tax expenditure to individuals with higher income reduces the progressivity of the tax system, which is often viewed as a reduction in equity."[132]

One of the ways to analyze the vertical equity of § 221 is through the utilitarian perspective advocating for the greatest good to the greatest amount of people.[133] However, as previously demonstrated, § 221 does not benefit the greatest amount of people because 71.13% of taxpayers sitting in the bottom three tax brackets in 2019 did not confer a benefit greater than the 24.84% of taxpayers in the 22% and 24% tax brackets in 2019.[134] Considering § 221's failure to meet a utilitarian perspective, it may be advantageous to consider meeting a Rawlsian perspective of fairness through conferring the greatest benefit to the least advantaged.[135] However, the § 221 deduction does not fit this framework for fairness either because the least advantaged taxpayers are the taxpayers in the lowest tax brackets, and they do not receive a benefit as great as those taxpayers in a better position, as previously mentioned.[136] Regardless of the emphasis as to where the greatest benefit should be allocated in fairness, § 221 does not meet the utilitarian nor Rawls's alternative to utilitarianism frameworks to determine fairness and equity.

The distribution of benefit can be equitable when it treats taxpayers among differing tax brackets the same and when it treats taxpayers in similar financial circumstances similarly.[137] However, the § 221 deduction does not offer

130 Lazar*,* *supra* note 11, at 1111.

131 *Id.*

132 *Id.*

133 SVARA, *supra* note 71, at 73.

134 *See supra* Part IV.A; *see also Publication 1304*, *supra* note 100 (Table 3.4 All Returns: Tax Classified by Both the Marginal Rate and Each Rate at Which Tax Was Computed, by Filing Status, Tax Year 2019 (Filing Year 2020)).

135 Rawls*,* *supra* note 72, at 227.

136 *See supra* Part IV.A. *See Publication 1304*, *supra* note 100 (Table 3.4 All Returns: Tax Classified by Both the Marginal Rate and Each Rate at Which Tax Was Computed, by Filing Status, Tax Year 2019 (Filing Year 2020)).

137 ANDREWS, *supra* note 70, at 9.

adequate benefits distributed among taxpayers in differing tax brackets fairly, and it fails to place people with similar higher education loan debt in a similar position based on their income, the same basis on which, it cannot be considered collateral for taking out a higher education loan in the first place.[138] "A failure to equalize this opportunity perpetuates income inequality."[139] Therein, it is difficult to justify § 221 of the Code based on equity.

C. *Simplicity, or Lack Thereof, of § 221*

Some of the value in the Code provisions derives from their ability to be administered with ease and for taxpayers to apply these provisions with little difficulty. The simpler the Code provisions, the better. However, the higher education interest deduction requires a lot of records and a lot of forms, and even when a taxpayer takes the time to keep those records and fill out those forms, the amount limitation and the phase-out limitation may apply because the taxpayer reached a certain threshold of repayment or income received in a taxable year.[140] Studies show that many people are unaware of the higher education interest deduction, and taxpayers' behavior would not change to enroll in higher education or not to enroll in higher education because taxpayers would not even know the deduction exists.[141] Education tax incentives have experienced "the greatest increase in federal funding since the GI Bill[, b]ut no one can explain what these provisions are, how these provisions work, or how they interact" with other provisions or the taxpayers they affect.[142] "It is difficult to understand why Congress would choose to make provisions aimed largely at unsophisticated taxpayers so complex."[143]

Further, there is a level of uncertainty that greets these provisions because of the nature of the guarantee, or lack thereof, of repayment. The private market does not generally lend against future earnings because future income has

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138 Schenk, *supra* note 25, at 330 ("The basic human capital model assumes that students can borrow at the market rate. Because they are unable to collateralize a loan with the future increase in human capital [higher wages], the default risk on an education loan is higher than on a collateralized loan and therefore the interest must be higher.").

139 *Id.* at 297.

140 *See* I.R.C. §§ 221(a), 221(b)(2).

141 Schenk, *supra* note 25, at 355; *see The National Postsecondary Student Aid Study (NPSAS)*, NAT'L CTR. FOR EDUC. STATS., https://nces.ed.gov/surveys/npsas (last visited Oct. 4, 2022).

142 Watson, *supra* note 4, at 88 (quoting Michael J. Graetz, *VAT As the Key to Real Tax Reform*, *in* THE VAT READER: WHAT A FEDERAL CONSUMPTION TAX WOULD MEAN FOR AMERICA 112, 119 (Tax Analysts, 2011)); *see Education Tax Incentives and Tax Reform: Hearing Before the S. Comm. on Finance*, 112th Cong. 5 (2012) (statement of Sen. Orrin Hatch), http://www.finance.senate.gov/imo/media/doc/82271.pdf (quoting Graetz and remarking, "I think there is a lot of agreement that the education tax incentives are very complex and, at minimum, should be consolidated and reformed.").

143 Schenk, *supra* note 25, at 355.

not yet arisen from such individuals to pay for these loans.[144] Because of the uncertainty and lack of guarantee of repayment, the interest rates of higher education loans rise to compensate for potential loss in profit, which continues to perpetuate the higher tuition costs and higher borrowing for people pursuing higher education and defeats the purposes of § 221, to increase access to educational opportunities and ease financial burdens of higher education debt on taxpayers and their families.[145] The uncertainty of higher education loan repayment driving up higher education loan interest affects the function and limitations of § 221, and the taxpayer awareness of § 221 benefits are low due to the lack of simplicity when applying this provision. Therein, it is difficult to justify § 221 of the Code on the basis of simplicity.

Based on the evaluation framework provided, § 221 is an ineffective provision of the Code. First, it is inefficient based on high expenditure and high revenue loss, failure to achieve intended goals, and shortcomings in providing an actual benefit. Second, § 221 is not equitable based on its inability to acknowledge taxpayers based on student loan debt and based on taxpayer rates to similarly situate them. Finally, § 221 lacks simplicity in taxpayer understanding and application. It is impossible for Congress to have known that this provision would be so ineffective, but since § 221's passage in 1997, the scope of the problem has expanded, and the need for an effective tax provision is dire.

V. CHANGE IN SCOPE—THE STUDENT LOAN DEBT CRISIS

As previously discussed, it is difficult to hold the Congress of 1997 accountable for the problems that have arisen in the subsequent 25 years. However, there must be a shift in scope and gravity of the problem that § 221 is meant to address.

Even though the government provides multiple avenues to encourage higher education enrollment, higher education enrollment has dropped.[146] Overall, college enrollment decreased by 600,000 students, representing a 3.5% decline from the previous year.[147] This decline is the largest college enrollment

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144 Haneman, *supra* note 10, at 159 ("Although data supports the idea that education results in higher financial returns, educational expenses arise before the individual has earned the higher income necessary to pay for them, and the private market will generally not lend against future earnings.").

145 Schenk, *supra* note 25, at 330 ("The basic human capital model assumes that students can borrow at the market rate. Because they are unable to collateralize a loan with the future increase in human capital [higher wages], the default risk on an education loan is higher than on a collateralized loan and therefore the interest must be higher."); *id.* at 335; *see* H.R. REP. NO. 105-148, at 316 (1997); S. REP. NO. 105-33, at 20 (1997).

146 *See* Nietzel, *supra* note 115.

147 *Id.*

decline since 2011.[148] One of the most prominent contributing factors to decreased higher education enrollment is the affordability of college tuition.[149] Some of the most prominent reasons tuition costs continue to rise are increasing higher education administration, overbuilding campus amenities, continual dependence on high-wage labor, and the simple access and availability of student loans.[150] Higher education costs are nine times higher than in the 1970s, and its costs raise three times as fast as inflation.[151] "Cost is a huge factor that matters to many students who want to pursue higher education. And given the increase in demand . . . the cost of tuition and fees keep increasing at breakneck speed."[152]

In response to rising higher education costs, people continued to rely on financial assistance to afford pursuing post-secondary education. The most common avenue of financial assistance is through student loan borrowing, which

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148 Community colleges experienced a 9.5% decrease resulting in 427,000 fewer students enrolled. Public four-year universities experienced a 0.6% decrease in enrollment. Private, nonprofit institutions experienced a 0.8% decline, and private, for-profit schools experienced a 1.5% enrollment decline. *Id.*

149 *See* Nestor Gilbert, *19 Higher Education Trends for 2022/2023: Latest Forecasts to Watch Out For*, FINANCESONLINE: REVIEWS FOR BUS., https://financesonline.com/trends-in-higher-education/ (last visited Oct. 4, 2022).

150 Preston Cooper, *A New Study Investigates Why College Tuition Is So Expensive*, FORBES (Aug. 31, 2020, 2:30 AM) https://www.forbes.com/sites/prestoncooper2/2020/08/31/a-new-study-investigates-why-college-tuition-is-so-expensive/?sh=4c6b95717a05; *see* Erik Gross, *Tackling Administrative Bloat: Reflecting on the Launch of HowCollegesSpendMoney.com*, AM. COUNCIL OF TRS. & ALUMNI (Feb. 6, 2019), https://www.goacta.org/2019/02/tackling-administrative-bloat-reflecting-on-the-launch-of-howcollegesspendmoney-com/; Cara Newlon, *The College Amenities Arms Race*, FORBES (Jul. 31, 2014 12:49 PM), https://www.forbes.com/sites/caranewlon/2014/07/31/the-college-amenities-arms-race/?sh=63ac10834883; Cardiff Garcia & Danielle Kurtzleben, *The Baumol Effect and Rising Health Care and Education Costs*, NPR (Oct. 4, 2019 5:12 AM), https://www.npr.org/2019/10/04/767095401/the-baumol-effect-and-rising-health-care-and-education-costs; Jenna A. Robinson, *The Bennett Hypothesis Turns 30*, THE JAMES G. MARTIN CTR. FOR ACAD. RENEWAL (Dec. 26, 2017), https://www.jamesgmartin.center/2017/12/the-bennett-hypothesis-turns-30/; *see also* William J. Bennett, *Our Greedy Colleges*, NY TIMES (Feb. 18, 1987), https://www.nytimes.com/1987/02/18/opinion/our-greedy-colleges.html.

151 Haneman, *supra* note 10, at 157; Amy J. Oliver, *Improving the Tax Code to Provide Meaningful and Effective Tax Incentives for Higher Education*, 12 U. FLA. J. L. & PUB. POL'Y 91, 93 (2000).

152 Gilbert, *supra* note 149; *see Average Undergraduate Tuition, Fees, Room, and Board Rates Charged for Full-Time Students in Degree-Granting Postsecondary Institutions, by Level and Control of Institution: Selected Years, 1963-64 through 2019-20*, NAT'L CTR. FOR EDUC. STATS., (Jan. 2021), https://nces.ed.gov/programs/digest/d20/tables/dt20_330.10.asp (Table showing the average cost of tuition, fees, room, and board, in total and individually, in current dollars and controlling for inflation since 1963–64); *Fast Facts: Tuition Costs of Colleges and Universities*, NAT'L CTR. FOR EDUC. STATS, https://nces.ed.gov/fastfacts/display.asp?id=76 (last visited Oct. 4, 2022) (Table showing the average total tuition, fees, room and board rates charged for full-time undergraduate students in degree-granting institutions, by level and control of institution in current dollars and controlling for inflation since 1985–86).

increases the amount of student loan debt. Student loan debt has become a problem for almost everyone in the nation.[153] About 12.9%, or 1/8, of people in the United States carry student loan debt.[154] Generally, a student loan borrower leaves school with approximately $30,000 in debt.[155] Student loan debt continues to be a financial burden upon people, and the table shows the number of student loan borrowers, the amount of student loan debt, and the annual rate of increase of student loan debt since 2008.

Table 3: Consumer Credit Outstanding U.S. Federal Reserve[156]			
Student Loans			
Year	Number of Borrowers	Amount of Debt	Annual rate (in billions of dollars)
2008	30,000,000	730,700,000,000	100.9
2009	32,000,000	831,600,000,000	123
2010	34,000,000	843,900,000,000	117.1
2011	37,000,000	961,000,000,000	93.6
2012	38,000,000	1,054,600,000,000	91
2013	40,000,000	1,145,600,000,000	90.2
2014	41,000,000	1,235,800,000,000	84.4
2015	42,000,000	1,320,200,000,000	85.1
2016	42,000,000	1,405,300,000,000	83.6
2017	43,000,000	1,488,900,000,000	81.6
2018	43,000,000	1,566,900,000,000	75.9

[153] *The Far-Reaching Impact of the Student Debt Crisis*, SCHOLARSHIP AM. BLOG, (Sept. 2022), https://scholarshipamerica.org/blog/the-far-reaching-impact-of-the-student-debt-crisis/#:~:text=As%20of%202005%2C%20their%20average%20debt%20level%20was,nation.%20Student%20Debt%20Hits%20Middle%20Class%20Students%20Hard.

[154] Anna Helhoski, *How Many Americans Have Student Loan Debt?*, NERDWALLET (May 20, 2021), https://www.nerdwallet.com/article/loans/student-loans/how-many-americans-have-student-loan-debt.

[155] *Id.* ("In general, women borrow more for college compared with men, and Black students borrow more compared with all other races and ethnicities. Student debt is most common in the 25-to-34 age group, but the greatest amount of debt is owed by those 35 to 49—more than $600 billion in undergraduate, graduate and parent loans, as well as payments stretched out by forbearance or income-driven repayment plans."); Haneman, *supra* note 10, at 168–69 ("Cost has always been a barrier to access for students from diverse socioeconomic backgrounds who wish to pursue an education. Although data supports the idea that education results in higher financial returns, educational expenses arise before the individual has earned the higher income necessary to pay for them, and the private market will generally not lend against future earnings.").

[156] G.19 STAT. RELEASE: CONSUMER CREDIT, *supra* note 95; Melanie Hanson, *Student Loan Debt Statistics*, EDUC. DATA INITIATIVE (Oct. 26, 2022), https://educationdata.org/student-loan-debt-statistics (referencing Student Loan Debt Growth Relative to Student Borrowers Chart).

2019	43,000,000	1,637,900,000,000	56.2
2020	43,000,000	1,693,900,000,000	39.6
2021	43,000,000	1,733,400,000,000	

Since 2008, the number of student loan borrowers increased by over 40%.[157] Across the same amount of time, the amount of student loan debt increased by almost one trillion dollars, resulting in a total of approximately $1.7 trillion in student loan debt.[158] Certain demographics of student loan borrowers are more affected by student loan debt than others.[159] Women hold about two-thirds of the student loan debt in the United States, and they are experiencing higher unemployment rates than men.[160] Additionally, some minority student populations are more likely to graduate with higher levels of debt than white students.[161] However, the broader effects of student loan debt may have a greater economic impact than just upon individual borrowers. For example, a study by the National Association of Realtors shows that student loan debt delays homeownership by approximately seven years.[162] Another student loan debt effect is its deterrence from other forms of credit or debt for student loan borrowers, such as credit cards or car loans, which "mean[s] less interest and fee revenue for lenders and banks."[163] These broader economic effects will directly affect businesses and slow economic growth.

Not only does student loan debt impact the broader economic world, but it is a significant burden to the individual borrowers as well. The average student loan debt balance is $40,904.[164] "The average student borrower takes 20 years to pay off their student loan debt[,]" even though the ideal timeline to pay off

157 *See* Table 3.

158 *Id.*

159 *See* Rebecca Lake, *Student Loan Debt Crisis Breakdown*, THE BALANCE (Aug. 24, 2021), https://www.thebalance.com/student-loan-debt-crisis-breakdown-4171739.

160 *Deeper in Debt: Women & Student Loans*, AM. ASS'N OF UNIV. OF WOMEN, https://www.aauw.org/resources/research/deeper-in-debt/ (last visited Oct. 4, 2022) ("[W]omen filed nearly 59% of unemployment claims, despite being only half of the labor force.").

161 Lake*, supra* note 159; Judith Scott-Clayton & Jing Li, *Black-White Disparity in Student Loan Debt More Than Triples After Graduation*, THE BROOKINGS INST. (Oct. 20, 2016), https://www.brookings.edu/research/black-white-disparity-in-student-loan-debt-more-than-triples-after-graduation/.

162 Lake*, supra* note 159; *see Student Loan Debt and Housing Report 2017: When Debt Holds You Back*, NAT'L ASS'N OF REALTORS RSCH. DEP'T & AM. STUDENT ASSISTANCE, https://www.nar.realtor/sites/default/files/documents/2017-student-loan-debt-and-housing-09-26-2017.pdf (last visited Sept. 24, 2022).

163 Lake*, supra* note 159.

164 Hanson, *supra* note 125. This amount includes private loans, whereas the average federal student loan debt balance is $37,113, and the average public university student borrows $30,030 to obtain a bachelor's degree. *Id.*

student loans is ten years.[165] Student loan debt can be quite burdensome considering the median wage for workers is $54,132 per year, and individuals also have to pay for cost of living and other expenses.[166]

Student loan debt affects almost everyone in the United States.[167] However, the solution to student loan debt cannot be avoiding higher education because college degrees are imperative to remaining competitive in the current job market.[168] Instead, Congress may be able to look to its higher education loan interest deduction in the Code to refocus and reshape the effectiveness of this provision to help address the problem of student loan debt.

VI. PROPOSED SOLUTIONS

When attempting to reconcile the failures of the Code with a new scope of the issue, the federal government should consider some solutions. When approaching goals for education, the federal government should focus on expanding educational opportunities and easing financial burdens for people to pursue higher education effectively and in a meaningful way.[169] Approaching goals for education effectively should prioritize the need for appropriate distribution of benefit across the different tax brackets as well as situating those with similar student loan debt amounts in similar financial positions from a tax perspective.[170] With these goals in mind, the focus should shift to reforming education tax incentives in the Code to benefit students who are otherwise unlikely to attend higher education institutions.[171] The method for government intervention should not be tax expenditure.[172] Rather than emphasizing the allocation of tax expenditures to assist taxpayers in financing their post-secondary education, the legislature "should instead focus these expenditures

165 Melanie Hanson, *Average Time to Repay Student Loans*, EDUC. DATA INITIATIVE (Dec. 16, 2021), https://educationdata.org/average-time-to-repay-student-loans.

166 Alison Doyle, *Average Salary Information for U.S. Workers*, THE BALANCE CAREERS (Sept. 19, 2022), https://www.thebalancecareers.com/average-salary-information-for-us-workers-2060808.

167 SCHOLARSHIP AM., *supra* note 153.

168 *Why Should I Earn a College Degree?*, FREMONT UNIV., https://fremont.edu/why-should-i-earn-a-college-degree-infographic/ (last visited Oct. 4, 2022).

169 Watson, *supra* note 4, at 115. The federal government, when redirecting its focus, should also prioritize expanding educational opportunities for the economically disadvantaged, minorities, and first generational students to attend college and those who would not have enrolled in college and encouraging retention of these individuals to increase the likelihood of degree completion.

170 *See supra* Part IV.B.

171 Stegmaier, *supra* note 24, at 139.

172 Haneman, *supra* note 10, at 169.

towards ensuring that needy students enter the institutions in the first place by targeting the financial subsidy to them."[173]

There are multiple avenues to pursue these goals regarding education benefits in the Code and, more specifically, to solve the issues with the higher education interest deduction. The first solution analyzes and evaluates the current proposed legislation to amend § 221 by repealing the maximum amount of the higher education interest deduction and the carryover to subsequent taxable years. The second solution discussed is repealing the provision altogether and providing an opportunity to refocus the provision regarding the student loan debt crisis.

A. *Proposed Legislation*

Under § 221, the higher education loan interest deduction limits the amount of that deduction to $2,500.[174] However, Senator Rand Paul introduced Senate Bill 3081 in October 2021 to strike the $2,500 maximum and the inflation adjustments and replace the limitation with a carryover of excess interest.[175] To the extent a taxpayer pays interest on their higher education loan that exceeds their income for a taxable year, then the excess amount paid in the taxable year "shall be treated as interest paid by the taxpayer in the succeeding taxable year" on the higher education loan.[176]

For example, a taxpayer who pays $3,000 of interest on their higher education loans in a taxable year would be able to deduct the entirety of the $3,000. However, if $1,000 of that deduction exceeds the taxable income, the taxpayer would lose the benefit of paying that interest on their higher education loan. With the carryover of excess interest, the $1,000 of interest paid will remain paid interest and will be deducted from the taxpayer's taxable income in the succeeding taxable year. Striking the amount limitation on § 221 encourages taxpayers to pay off their higher education loan debt without limitation. With the $2,500 limitation, taxpayers would only be incentivized to pay off $2,500 of interest each taxable year. Not only does striking the limitation encourage higher amounts of repayment, but it also provides the reward for higher amounts of repayment in the form of a carryover.

However, eliminating the cap on a deduction and implementing a carryforward may not be the most advantageous solution either. The first reason this may not provide an adequate solution is that eliminating or even raising the cap of a deduction increases economic deficit.[177] When a cap on a deduction is

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173 Stegmaier, *supra* note 24, at 160.

174 I.R.C. § 221(b)(1).

175 S. 3081, 117th Cong. § 6 (2021); *see* U.S. LEGAL, *supra* note 93.

176 S. 3081, 117th Cong. § 6 (2021).

177 *See* Lewis III, *supra* note 14; Martin Feldstein, *Raising Revenue by Limiting Tax Expenditures*, 29 TAX POL'Y & ECON. 1 (2015),

eliminated, it opens the door for government spending to increase rather than limiting tax expenditure to reduce government spending.[178] Often times, a cap on a deduction or exclusion "is based on the value of the tax expenditures, . . . not on the total amount deducted or excluded."[179] However, eliminating the cap would remove the appropriate proportion of tax expenditure to deduction limitation and further the disparaging effects of rising revenue loss.[180] The second reason this may not provide an adequate solution is the potential to encourage students to take out unlimited amounts of loans. Students may limit their student loan uptake with the higher education loan interest deduction amount limitation in place, but without this limitation, students might not understand the inherent lack of benefit from taking out large amounts of student loans and, particularly, amounts they cannot pay back.[181]

Finally, eliminating the § 221 cap does not make a commitment to efficiency, equity, or simplicity of the higher education loan interest deduction. People who are planning to pursue higher education are not changing their decisions based on the higher education interest deduction.[182] Low-income taxpayers, who are already not meeting the § 221 deduction limitation, will not be any more likely to pay excess interest amounts on their higher education loans simply because a limitation is eliminated. Additionally, eliminating the § 221 deduction limitation, a relatively simple portion of § 221, and replacing it with the carryforward provision arguably makes § 221 more complex than it previously was. While the gesture of removing the § 221 deduction limitation is noble in appearance, it does not materially affect the poor function and effect of § 221 to increase access to education and decrease the financial burden on families paying for higher education.[183]

https://www.journals.uchicago.edu/doi/epdf/10.1086/683363; Martin Feldstein, Daniel Feenberg, & Maya MacGuineas, *Capping Individual Tax Expenditure Benefits* (Nat'l Bureau of Econ. Rsch., Working Paper No. 16921, 2011), https://www.nber.org/system/files/working_papers/w16921/w16921.pdf; David Schizer, *Limiting Tax Expenditures*, 68 TAX L. REV. 275 (2014).

178 Feldstein, *supra* note 177 ("In terms of real economic impact, limiting tax expenditures should be viewed as a reduction in government spending.").

179 Feldstein, Feenberg & MacGuineas, *supra* note 177; *see* 2 U.S.C.A. § 622 (West); Toder, *supra* note 37 (Tax expenditures are "revenue losses attributable to provisions of the Federal tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral of liability.").

180 *See* Feldstein, *supra* note 177; Feldstein, Feenberg & MacGuineas, *supra* note 177; Schizer, *supra* note 177. *See also* JOINT COMM. ON TAX'N, *supra* note 76; *supra* Table 2.

181 *See* Robert Mendenhall, *Addressing the Student Debt Crisis: We Can Do More to Encourage Responsible Borrowing*, HUFFPOST (Oct. 23, 2014, 6:08 PM), https://www.huffpost.com/entry/encourage-responsible-borrowing_b_6017804.

182 *See supra* Part IV.A.

183 *See* H.R. REP. NO. 105-148, at 316 (1997); S. REP. NO. 105-33, at 20 (1997).

B. Repeal and Refocus

A second proposed solution to solve the failures of § 221 is to repeal the provision altogether. One advantage to this solution is the decrease in tax expenditure and the increase in revenue. The aforementioned government expenditure on § 221 in 2021 was $1.9–2.4 billion.[184] The amount from this tax expenditure could be allocated elsewhere that may be more functional and effective than § 221, such as direct assistance with financing higher education.[185] Otherwise, the amount from this tax expenditure could remain with the federal government in order to reduce government spending as a form of raising revenue.[186]

Further, the advantage of this solution is to refocus § 221 to effectively address the student loan debt crisis. Repealing the provision would give legislators an opportunity to take a step back and analyze how this provision and its framework could be efficient, equitable, and simple. As previously mentioned, the high expenditure and high revenue loss could be reallocated to provide direct assistance to students.[187] Congress could revise the statute to focus on providing a larger amount of benefit that is more reflective of the effects of the student loan debt crisis, and that is fair to students based on their amount of debt rather than based, solely, on income.

However, the detrimental effects of repealing a Code provision lie with the taxpayers more so than the federal government. Immediate repeal is unfair to those who consistently repay their loan interest and claim the § 221 deduction because of the unexpected increase in payment based on the lack of benefit received.[188] Additionally, eliminating § 221 decreases financial assistance to students, particularly middle-income taxpayers, with educational expenses who may not be able to get direct assistance, whereas their low-income taxpayer colleagues may be able to obtain direct assistance through federal grants and other opportunities.[189] Although § 221 lacks efficiency, equity, and simplicity, it

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184 JOINT COMM. ON TAX'N, *supra* note 76.

185 *See Types of Financial Aid: Loans, Grants, and Work-Study Programs*, FED. STUDENT AID: U.S. DEP'T OF EDUC., https://studentaid.gov/understand-aid/types (last visited Oct. 4, 2022). A grant is a form of financial aid that does not have to be repaid, and a variety of federal grants are available, such as Pell Grants, Federal Supplemental Educational Opportunity Grants, Teacher Education Assistance for College and Higher Education Grants, and Iraq and Afghanistan Service Grants. *Id.* Scholarships are free money, sometimes based on academic merit, talent, or particular area of study, that many nonprofit and private organizations offer to help students manage education expenses. *Id.*

186 *See* Feldstein, *supra* note 177; Feldstein, Feenberg & MacGuineas, *supra* note 177; Schizer, *supra* note 177.

187 *See* FED. STUDENT AID, *supra* note 185.

188 Watson, *supra* note 4, at 136.

189 Haneman, *supra* note 10, at 169.

is crucial to weigh whether the potential of having some benefit, no matter how insignificant, is better than having no benefit at all.

One partial alternative to complete repeal is repealing the provision or phasing out § 221 over a period of years for undergraduates while amending § 221 to remain for graduate and professional students, who typically have higher student loan debt and receive lower benefits from § 221 in its current form.[190] A partial repeal still provides Congress the opportunity to refocus its efforts on incentivizing education while addressing the student loan debt crisis and keeping a steady stream of benefit for those who have higher amounts of debt that need financial assistance. The best form of this solution would be applying it to graduate and professional students without a phase-out based on income. This would address some of the horizontal equity issues that stem from higher education students with varying degrees of income and yet, having the same amount of higher education debt, and it may simplify the application of the § 221 deduction.

The proposed legislation regarding § 221 and repealing § 221 both provide solutions that address some concerns with § 221's current status, but they ultimately leave room for other issues to arise. However, repealing § 221 gives a greater hope that § 221 can be revised and refocused to be effective and provide a significant benefit to taxpayers regarding the detrimental effects of the student loan debt crisis. The nature of higher education costs, student loan debt, and § 221 suggest that maybe the focus of the § 221 deduction, and perhaps higher education loan repayment as a whole, should be on the amount of debt of the borrower rather than the amount of income received in the taxable year. Nevertheless, addressing the lack of efficiency, equity, and simplicity of § 221 will be imperative for a higher education loan interest deduction to be truly effective in increasing access to education and easing the financial burdens of student loan borrowers.[191]

VII. CONCLUSION

Higher education is beneficial for individuals and society, and the federal government recognizes this through incentivizing behavior to pursue higher education. In 1997, Congress passed § 221 of the Code, giving a deduction to taxpayers on the amounts of student loan interest they pay each taxable year. Yet, § 221 is inefficient based on high expenditure, high revenue loss, and minimal benefit. Section 221 is inequitable because of the lack of fairness among taxpayers with similar amounts of student loan debt and the lack of fairness among taxpayers in different tax brackets. Finally, § 221 lacks simplicity for taxpayer comprehension and application. To exacerbate § 221's ineffectiveness, the expanding problem of student loan debt has caused a need to reevaluate the

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190 Watson, *supra* note 4, at 136.

191 *See* H.R. REP. NO. 105-148, at 316 (1997); S. REP. NO. 105-33, at 20 (1997).

focus of § 221. While no single Code provision will solve the student loan debt crisis, proposing legislation or repealing § 221 may begin to address the issue while still incentivizing the behavior that Congress intended to promote.

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