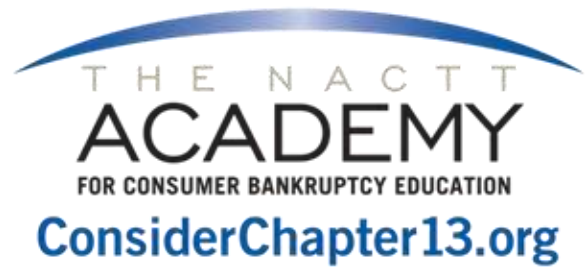


**NACTT 57th Annual
Seminar
San Francisco, CA
Educational Materials**



Friday, July 8 11:50 – 12:50

Student Loans: Where is Litigation Headed and What is Happening in the Department of Education?

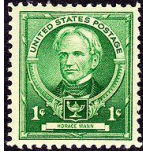
Moderator: Faye D. English, Chapter 13 Standing Trustee for the Southern District of Ohio (Columbus)

Tara Twomey, Executive Director, National Consumer Bankruptcy Rights Center (San Jose, CA)

MATERIALS INDEX

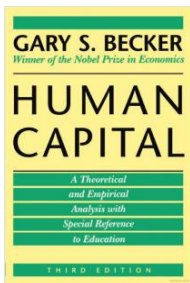
1. **Speaking Outline**
2. **PDF of PowerPoint**
3. **Speaker Biographies**

**"Education then, beyond all other devices of human origin, is the great equalizer of the conditions of men, the balance-wheel of the social machinery."
Horace Mann, 1848**



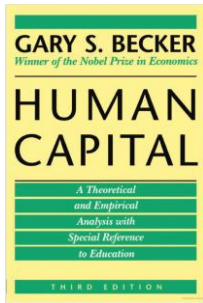
7

8



Human capital investment, that is investment in education and training, "respond rationally to costs and benefits."

9



“Workers would have to decide whether the later higher earnings compensated for the lower initial earnings. They presumably would decide by comparing the present value...”

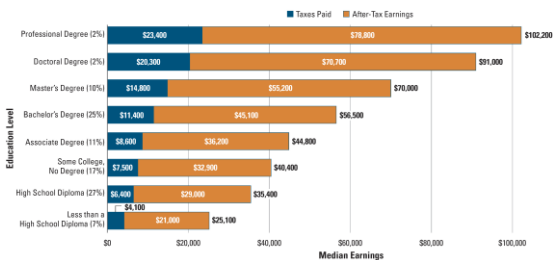
10

$$C_0 = X_0 - Y_0, \quad C_1 = X_1 - Y_1 + rC_0$$

$$C_j = X_j - Y_j + r \sum_{k=0}^{j-1} C_k, \quad 0 \leq j \leq m - 1.$$

11

Median Earnings and Tax Payments of Full-Time Year-Round Workers Ages 25 and Older, by Education Level, 2011



Source: Sandy Baum, Jennifer Ma, Kathleen Payes, Education Pays 2013, <https://www.collegeboard.org/sites/default/files/education-pays-2013-full-report.pdf>

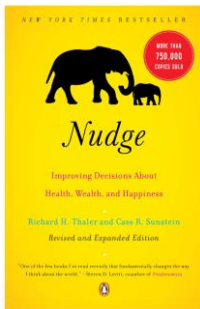
12

Published and Net Prices by Sector, Full-Time Undergraduate Students, 2019-20

	2019-20	10-year change (inflation-adjusted)	20-year change (inflation-adjusted)
Public Two-Year In-District			
Published Tuition and Fees	\$3,730	\$670	22%
Room and Board	\$6,890	\$480	6%
Published Tuition and Fees and Room and Board (TFRB)	\$12,720	\$1,150	10%
Net Tuition and Fees	\$430	\$200	na
Net TFRB	\$8,560	\$680	9%
Total Grant Aid and Tax Benefits	\$4,160	\$470	13%
Public Four-Year In-State			
Published Tuition and Fees	\$10,440	\$2,025	24%
Room and Board	\$11,510	\$1,770	18%
Published TFRB	\$21,950	\$3,790	21%
Net Tuition and Fees	\$3,870	\$1,730	81%
Net TFRB	\$15,380	\$3,500	29%
Total Grant Aid and Tax Benefits	\$6,370	\$290	9%
Private Nonprofit Four-Year			
Published Tuition and Fees	\$36,880	\$6,210	20%
Room and Board	\$12,990	\$1,800	17%
Published TFRB	\$49,870	\$8,000	19%
Net Tuition and Fees	\$14,380	\$400	3%
Net TFRB	\$27,370	\$2,300	9%
Total Grant Aid and Tax Benefits	\$22,500	\$5,790	30%

Source: Beth Allen, A New Approach for Curbing College Tuition Inflation, Manhattan Institute (Aug. 2020), available at https://media4.manhattaninstitute.org/sites/default/files/new-approach-curbing-college-tuition-inflation_8A.pdf

13



Humans are not always rational actors, and in fact, we often come hard-wired with biases that can lead us to make bad decisions, in general, and bad financial decisions.

14

SCHOOL	AVERAGE DEBT (2013 GRADS)	FTLT-JD (2013 GRADS)
Arizona Summit	\$184,825	44%
Thomas Jefferson	\$180,665	29%
New York Law School	\$164,739	45%
American University	\$158,636	38%
California Western	\$157,748	35%
Northwestern	\$155,777	78%
Whittier	\$154,267	27%
University of Chicago	\$153,753	87%
Florida Coastal	\$150,360	31%
St. Thomas (FL)	\$150,166	48%

Steven J. Harper, Bankruptcy and Bad Behavior: The Real Moral Hazard: Law Schools Exploring Market Dysfunction, 23 ABI L. Rev. 347 (2015).

15



16



17

COVID-19 Emergency Relief and Federal Student Aid



18



19

**Biden Administration
Cancelled Student Loan Debt
\$15 billion**

Borrower Defense to Repayment: \$1.5 billion

Total and Permanent Disability: \$7 billion

ITT Tech Students: \$1.3 billion

Public Service Loan Forgiveness: \$5 billion

20

DoE Regulations Requiring Concession of Undue Hardship

“Finally, review is also unwarranted because the U.S. Department of Education, which has issued regulations requiring loan holders to evaluate undue-hardship claims and concede an undue hardship in certain circumstances...is currently considering the appropriate factors to be taken into account in making that determination...”

Brief for the United States in Opposition to a Writ of Certiorari, *McCoy v. U.S.*, No. 20-886 (U.S. May 2021).

21



22

FRESH START Through Bankruptcy Act
S.2598
Introduced 8/4/21
Sens. Durbin & Cornyn

Make Federal Student Loans Eligible for Discharge in a Bankruptcy
 Proceeding ten years after the first loan payment is due.

Increase Institutional Accountability by creating provisions that require certain schools to repay a portion of discharged federal student loans to the taxpayer, in a new cost-sharing structure.

23

Student Loan Relief Act
HR.4797 (7/29/21 Rep. Carter (D-LA))

HIGHER ED Act
HR.6424 (1/19/22 Rep. DeFazio (D-OR))

Income-Driven Student Loan Forgiveness Act
HR.2034 (3/18/21 Rep. Lawson (D-FL))

Affordable Loans for Any Student Act
**HR.7288/S.3953 (3/30/22 Rep. DeLauro (D-CT),
 Sen. Merkley (D. OR))**

24



25

Undue Hardship

Matter of McCoy, 810 Fed. Appx. 315 (5th Cir. June 5, 2020), *cert. denied* June 21, 2021

Rosenberg v. Educ. Credit Mgmt. Corp., 610 B.R. 454 (Bankr. S.D.N.Y. 2020), *aff'd in part, rev'd in part and remanded* (S.D.N.Y. Sept. 29, 2021)

In re Wolfson, 2021 WL 6498863 (Bankr. D. Del. Jan. 14, 2021).

Loyle v. U.S., et al., 2022 WL 567724 (Bankr. D. Kan. Feb. 24, 2022)

26

Partial Discharge

Loyle v. U.S., et al., 2022 WL 567724 (Bankr. D. Kan. Feb. 24, 2022)

Mendenhall v. Navient Corporation, et al. 621 B.R. 472 (D. Idaho 2020)

27

Coverage of 523(a)(8)(A)(ii)

“funds received as an education benefit, scholarship, or stipend”

Homaidan v. Sallie Mae, Inc., et al.
3 F.4th 595 (2d Cir. 2021)

McDaniel v. Navient Solutions, LLC,
973 F.3d 1083 (10th Cir. 2020)

Crocker v. Navient Solutions, LLC,
941 F.3d 206 (5th Cir. 2019)

28

Coverage of 523(a)(8)(A)(ii)

“funds received as an education benefit, scholarship, or stipend”

Christoff v. Institute of Imaginal Studies,
527 B.R. 624 (B.A.P 9th Cir. 2015)

29



**A Few Other Items
of Interest...**

30

Navient AG Settlement

Resolves allegations of widespread unfair and deceptive student loan servicing practices with 39 state attorneys general; \$1.85 billion in relief www.navientagsettlement.com (January 13, 2022)

NCSLT Litigation

CFPB v. The National Collegiate Master Student Loan Trust, et al, Docket No. 1:17-cv-01323 (D. Del), filed Sept. 18, 2017

31

School Bankruptcies



32

Speaker Biographies



Faye English was appointed as the Chapter 13 Trustee in Columbus, Ohio in August 2014. Prior to accepting her appointment she concentrated her practice in representing creditors in bankruptcy cases throughout Ohio. Faye represented mortgage lenders, banks, finance companies, and automotive financiers in Chapter 7, 11, and 13 proceedings. She has experience representing debtors in Chapter 7 and Chapter 13 bankruptcy cases, as well as experience in the areas of estate planning and contract law. Faye was licensed in Ohio in 2002, and is admitted to the U.S. District Courts for the Northern and Southern Districts of Ohio and the U.S Court of Appeals for the Sixth Circuit. Faye is a member of the NACTT, serves on the National Data Center Board, is a member of the NACTT's Mortgage Committee (Chair from 7/2018-7/2020), serves on the NACTT's Finance Committee, is a board member for the Frank M. Pees Credit Education Coalition, and is a member of the Ohio State Bar Association. Faye has presented on numerous topics for the NACTT and is a frequent speaker on relevant bankruptcy topics for both national and local organizations.



Tara Twomey is currently Of Counsel to the National Consumer Law Center and the Executive Director for the National Consumer Bankruptcy Rights Center. Ms. Twomey also serves as the Consumer Claims Trustee in the chapter 11 cases of Ditech Holding Corporation and its affiliates. In 2021, she was appointed by Chief Justice Roberts to the Judicial Conference Advisory Committee on Bankruptcy Rules. Ms. Twomey has been a Lecturer in Law at Stanford Law School, Harvard Law School and Boston College Law School. She is a former Clinical Instructor Harvard Law School's Legal Services Center where her practice focused, in part, on sustainable homeownership for low and moderate-income homeowners. This practice area included foreclosure prevention and bankruptcy. She has taught numerous programs in the areas of bankruptcy and consumer credit issues and has testified before Congress on mortgage servicing problems. Ms. Twomey is a conferee of the National Bankruptcy Conference and a fellow of the American College of Bankruptcy. She is also a contributing author to the Collier Bankruptcy Practice Guide and contributing author of several books published by the National Consumer Law Center, including Mortgage Servicing and Loan Modifications. Ms. Twomey earned her J.D. from Boston College Law School, summa cum laude and received her undergraduate degree from the University of California, San Diego. After law school, she served as a law clerk for Chief Justice Herbert P. Wilkins of the Massachusetts Supreme Court. Subsequently, Ms. Twomey received a two-year Skadden Fellowship.