

Credentialism at Work

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Credentialism is the combination of two related phenomena. First, it is the stacking and use of credentials for their signaling power rather than for the skills and knowledge they convey. Second, credentialism is the ever-growing accumulation of credentials with diminishing levels of return from each subsequent credential. In recent decades, credentialism has become the dominant conduit to increasingly scarce quality jobs in the United States. This has resulted in a credentials arms race between workers, promulgated both by job training policy and firm practices. Credentialism bestows financial rewards on credential providers, especially the nondegree credential providers that both U.S. political parties now tout as providing an alternative pathway to higher education. But credentialism burdens individual workers, perpetuates racial inequities and class antagonism, and demobilizes workers by prioritizing individualist credential stacking over collective organizing. This Article lays out the impact of credentialism and outlines possible responses.

Credentialism thrives because of its entrenchment in the meritocracy narrative. This narrative preaches that if workers expend money and time on credentials, they will be rewarded through greater career security, pay, and ultimately, social mobility. For many workers, however, the narrative is largely a myth perpetuated by laws that encourage a private market for job training and absolve the state and employers of responsibility. That private market flourishes with over a million unique credentials for purchase; these are mostly short-term nondegree credentials with minimal quality oversight. Workers are left to navigate this daunting market alone, with people of color and immigrants especially lacking good guidance and protections against predation.

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Central to the responses to credentialism is a partial reallocation of responsibility for quality job training from workers to employers and the state. In particular, applying disparate impact theory would hold employers more responsible for their choices in perpetuating credentialism. Likewise, demanding worker-centered accountability metrics for public funding for job training and establishing tripartite boards that define credential requirements would hold the state more responsible for guiding workers to quality careers with minimal training debt. This push to re-center workers in job training should be viewed as part of a larger project to boost worker bargaining power.

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INTRODUCTION

Recent scholarship, cultural debates, and U.S. Supreme Court decisions have focused the nation’s attention on access to scarce credentials issued by rarified universities.¹ But the majority of people in the United States are not aiming for an elite university degree, or any university degree; fewer than half of U.S. adults have a college degree.² Students and workers, often deterred by traditional student debt, are instead amassing a vast range of unstandardized and unregulated nondegree credentials to advance their perceived job prospects; well over half a million nondegree credentials are currently available.³ This is the context for credentialism. Credentialism is, first, the stacking and use of credentials for their signaling power rather than for the skills and knowledge they convey. Second, credentialism is the steady accumulation of credentials that offer diminishing levels of return from each subsequent credential.

Credentialism both enhances and is enhanced by the ubiquitous meritocracy narrative, with the accumulation of credentials seen as the manifestation of American virtues of entrepreneurship, self-betterment, individualism, freedom of contract, and competition.⁴ According to the meritocracy narrative, accumulating

1. See, e.g., *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 230 (2023) (holding that Harvard College and the University of North Carolina’s consideration of race in admissions violated the Equal Protection Clause of the U.S. Constitution); Aatish Bhatia, et al., *Study of Elite College Admissions Data Suggests Being Very Rich Is Its Own Qualification*, N.Y. TIMES (July 24, 2023), <https://www.nytimes.com/interactive/2023/07/24/upshot/ivy-league-elite-college-admissions.html>; Louise Seamster, Blake Emerson, Marshall Steinbaum, Ryann Liebenthal, Jonathan D. Glater, Persis Yu & Luke Herrine, *Seven Reactions to Biden v. Nebraska*, L. & POL. ECON. PROJECT (July 10, 2023), <https://lpeproject.org/blog/seven-reactions-to-biden-v-nebraska/> [<https://perma.cc/Z6A6-D3JK>] (Luke Herrine writing that, even if the U.S. Supreme Court had not struck down President Biden’s student debt forgiveness plan in *Biden v. Nebraska*, 600 U.S. 477 (2023), “liberal arts education would continue to become a luxury reserved for elites”). See generally LANI GUINIER, THE TYRANNY OF THE MERITOCRACY: DEMOCRATIZING HIGHER EDUCATION IN AMERICA (2015); MICHAEL J. SANDEL, THE TYRANNY OF MERIT: WHAT’S BECOME OF THE COMMON GOOD? (2020); DANIEL MARKOVITS, THE MERITOCRACY TRAP: HOW AMERICA’S FOUNDATIONAL MYTH FEEDS INEQUALITY, DISMANTLES THE MIDDLE CLASS, AND DEVOURS THE ELITE (2019); STEPHEN J. MCNAMEE, THE MERITOCRACY MYTH: WHO GETS AHEAD AND WHY (Alyssa Palazzo & Samantha Delwarte eds., 5th ed. 2024); ADRIAN WOOLDRIDGE, THE ARISTOCRACY OF TALENT (2021).

2. See Tyler Talbott, *The Percentage of Americans with College Degrees in 2024*, COLL. TRANSITIONS (Aug. 14, 2024), <https://www.collegetransitions.com/blog/percentage-of-americans-with-college-degrees> [<https://perma.cc/SFU2-32AN>] (noting that only 44.4% of U.S. adults aged 25 or older have any sort of college degree).

3. See CREDENTIAL ENGINE, COUNTING U.S. POSTSECONDARY AND SECONDARY CREDENTIALS 11 (2022), https://credentialengine.org/wp-content/uploads/2023/01/Final-CountingCredentials_2022.pdf [<https://perma.cc/U2QL-VH4C>] (identifying 656,505 unique credentials from nonacademic providers, as compared to 350,412 from postsecondary educational institutions).

4. See Rachel Petroziello, *The Author’s Corner with William Novak*, CURRENT (Mar. 23, 2022), <https://currentpub.com/2022/03/23/the-authors-corner-with-william-novak/> [<https://perma.cc/HDX9-WK7Z>] (interviewing William Novak, who characterized the United States as having an “American exceptionalist

credentials will be rewarded through career security and abundant pay, no matter where one started. Credentialism encourages workers to become entrepreneurial risk-takers and positions workers in a zero-sum tournament against fellow workers.

Federal job training policy has come to embrace credentialism and the meritocracy narrative, shifting in the 1970s and 80s from prioritizing direct creation of jobs to private training for private employment.⁵ This policy change, coinciding with market liberalization and reduction of government regulation on a large scale,⁶ transferred responsibility for training for quality jobs from the state, employers, and unions onto individual workers. This transfer also coincided with a move from an “old psychological contract” with long-term employment and mutual employer–employee loyalty to a “new psychological contract” where lifetime employment in the formal labor market is no longer the norm.⁷ Brilliantly, the policymakers orchestrating the transfer utilized the meritocracy narrative to convince workers that taking on the costs and risks of credentials and skills development was for the worker’s own benefit.⁸ In support of this project, the policymakers coined a “skills gap” story—a derivative of the meritocracy narrative—that faults workers for lacking the technical and nontechnical skills needed to fill millions of job openings.⁹ In other words, the meritocracy narrative coaches workers to blame themselves, rather than the state or power asymmetries between firms and workers, for failing to realize a quality career and social mobility.¹⁰

This Article enters an ongoing conversation about merit and ways of measuring it. It takes a step further by focusing on how meritocracy through credentialism manifests for the majority of people in the United States—composed of those who never attain a four-year degree, let alone a degree from one of the handful of elite universities receiving the bulk of scholarly attention.¹¹ The U.S. market for credentials, especially nondegree credentials, has grown rapidly over

narrative” and being a land of “individual rights, self-reliance, voluntarism, entrepreneurship, anti-statism, private property, liberty of contract, and free markets”).

5. See GORDON LAFER, *THE JOB TRAINING CHARADE* 2, 8 (2002); STEVEN ATTEWELL, *PEOPLE MUST LIVE BY WORK: DIRECT JOB CREATION IN AMERICA, FROM FDR TO REAGAN* 262–63 (2018); Hiba Hafiz, *The Law of Geographic Labor Market Inequality*, 172 U. PA. L. REV. 1183, 1233–35 (2024).

6. See David Singh Grewal & Jedediah Purdy, *Introduction: Law and Neoliberalism*, 77 L. & CONTEMP. PROBS. 1, 1, 5–6, 19 (2014).

7. See Katherine V.W. Stone, *The New Psychological Contract: Implications of the Changing Workplace for Labor and Employment Law*, 48 UCLA L. REV. 519, 524, 539, 570 (2001).

8. See LAFER, *supra* note 5, at 2, 22.

9. See *id.* at 22.

10. Cf. JENNIFER L. HOCHSCHILD, *FACING UP TO THE AMERICAN DREAM: RACE, CLASS, AND THE SOUL OF THE NATION* 30 (1995) (describing the American Dream, a narrative related to the meritocracy narrative, and writing that “if success implies virtue, failure implies sin”).

11. See sources cited *supra* note 1. See also Katherine Schaeffer, *10 Facts About Today’s College Graduates*, PEW RSCH. CTR. (Apr. 12, 2022), <https://www.pewresearch.org/short-reads/2022/04/12/10-facts-about-todays-college-graduates/> [https://perma.cc/Z78C-NDX6] (finding that as of 2021, only 37.9% of adults aged 25 or older held a bachelor’s degree). Only 2%–5% of U.S. undergraduates attend elite universities. See Jonathan Wai & Matthew C. Makel, *Why Graduates of Elite Universities Dominate the Time 100 – and What It Means for the Rest of Us*, STUDY INT’L (Nov. 3, 2020), <https://www.studyinternational.com/news/why-graduates-of-elite-universities-dominate-the-time-100-and-what->

the past several years: a 57% increase in the number of available credentials in just the three years spanning the peak of the COVID-19 pandemic has resulted in over a million unique offerings.¹² Credentials, of course, include two- and four-year degrees. But the bulk—over 650,000—now comes from nonacademic providers.¹³ These nonacademic credentials include online course completion certificates with titles like “Learning Personal Branding” and customizable “digital badges” that employers can issue, track, and share on the blockchain.¹⁴ And both major political parties now highlight nondegree credentials as viable pathways to the middle class that offer an alternative to higher education.¹⁵

To date, little attention has been paid to how this growth in credentials affects workers and what should be done about its effects on workers, employers, and labor markets. The Article builds on credentialist theory to expose credentialism’s shortcomings and the government and employers’ past and continued roles in producing it, as well as the narrative overlays that perpetuate it. The Article develops a way forward by proposing new uses of existing employment protections and greater state and firm responsibility. It also expands our thinking about what is possible when job training evolves from firm-centric to worker-centric.

Navigating the U.S. credentials marketplace has proved treacherous for workers and students because not all credentials are valued equally or worth their investments of time and money. And some credentials are simply bogus. Workers are commonly flummoxed by the abundance of credentials and,

it-means-for-the-rest-of-us/ [https://perma.cc/6C5S-ZJUE]. Moreover, fewer than 1% of U.S. undergraduates attend one of the nation’s top twelve universities. See RAJ CHETTY ET AL., OPPORTUNITY INSIGHTS, DIVERSIFYING SOCIETY’S LEADERS? THE DETERMINANTS AND CONSEQUENCES OF ADMISSION TO HIGHLY SELECTIVE COLLEGES 1 (2023), https://opportunityinsights.org/wp-content/uploads/2023/07/CollegeAdmissions_Nontech.pdf [https://perma.cc/W8ZJ-GHFH]. See generally Jonathan D. Glater, *To the Rich Go the Spoils: Merit, Money, and Access to Higher Education*, 43 J. COLL. & U.L. 195 (2018) (explaining that historically excluded groups like Black and Latine students have lower rates of college matriculation due, in part, to greater debt burdens).

12. See CREDENTIAL ENGINE, *supra* note 3, at 11, 13 (showing that the number of unique secondary, postsecondary, and nonacademic credentials increased from around 700,000 to almost 1.1 million in just a three-year period from 2019 to 2022).

13. *Id.* at 11.

14. See *Learning Personal Branding*, LINKEDIN: LEARNING (Feb. 3, 2021), <https://www.linkedin.com/learning/learning-personal-branding-2018> [https://perma.cc/7LR5-4N8R] (describing a 47-minute long online video available after paying \$33.74 per month); *Create, Share & Manage Digital Badges In Minutes*, CREDSURE, <https://credsure.io/solutions/digital-badges/> [https://perma.cc/XJV2-A3XP] (last visited May 9, 2025) (offering employers customizable “digital badging” on “[b]lockchain” to “record [employee] achievements”). See Shane J. Ralston, *Higher Education’s Microcredentialing Craze: A Postdigital-Deweyan Critique*, 3 POSTDIGITAL SCI. & EDUC. 83, 83 (2021) (noting that online certificate programs have increased in popularity).

15. See Carolyn Jones, *High Schools Moved on from College for All. Will Trump Come Through for Job Training?*, CALMATTERS (Dec. 3, 2024), <https://calmatters.org/education/k-12-education/2024/12/career-pathways-2/> [https://perma.cc/PJ3P-EG46] (highlighting the importance of career and technical education to the Republican Party platform in 2024 and in Project 2025, the conservative policy plan authored by the Heritage Foundation); Kara Arundel, et al., *Where the 2024 Presidential Candidates Stand on K-12 Issues*, K-12 DIVE (Sept. 11, 2024), <https://www.k12dive.com/news/where-2024-presidential-candidates-stand-k-12-issues/726633/> [https://perma.cc/E35G-TPET] (noting that both candidates in the 2024 presidential election touted the virtues of vocational training as viable alternatives to higher education).

lacking trustworthy guides, face the risk of selecting the wrong credentials that fail to provide the skills required of a job or are useless as signaling devices to employers. For many workers and trainees, this endeavor ultimately yields few results in the forms of enhanced compensation or career ascension but can create tremendous debt.

Proof of the disconnect between credential stacking and useful skills attainment can be found in the fact that credential requirements in many industries fluctuate according to labor market conditions and not the skills needed for the job. That is, credential requirements for the same job increase during times of high unemployment and low labor demand and decrease when unemployment is low and labor demand is high.¹⁶ The same is true in markets with higher labor concentration; employers in those markets typically demand greater credentials.¹⁷

Unions used to guide workers in training and credential attainment for quality careers and often ran their own training centers and hiring halls.¹⁸ But outside of a federal government program called Registered Apprenticeship that offers earn-and-learn apprenticeships at union wages,¹⁹ the weakening of the labor movement over the decades has all but eliminated this guide service.²⁰ Not coincidentally, the

16. See Alicia Sasser Modestino et al., *Upskilling: Do Employers Demand Greater Skill When Workers Are Plentiful?* 1 (2014) (unpublished manuscript) (on file with Harvard University and the Federal Reserve Bank of Boston), https://scholar.harvard.edu/files/shoag/files/modestino_shoag_and_ballance_012114.pdf [<https://perma.cc/QA8Z-8NW6>] (“[E]mployers opportunistically raise education and experience requirements, within occupations, in response to increases in the supply of relevant job seekers.”); Stephanie Bornstein, *Confronting the Racial Pay Gap*, 75 VAND. L. REV. 1401, 1458 (2022).

17. See JULIE MARGETTA MORGAN & MARSHALL STEINBAUM, ROOSEVELT INST., *THE STUDENT DEBT CRISIS, LABOR MARKET CREDENTIALIZATION, AND RACIAL INEQUALITY: HOW THE CURRENT STUDENT DEBT DEBATE GETS THE ECONOMICS WRONG* 6 (2018), <https://rooseveltinstitute.org/wp-content/uploads/2020/07/RI-Student-Debt-Crisis-Labor-Market-Credentialization-201810.pdf> [<https://perma.cc/8E8L-E4CK>]; Brad Hershbein & Claudia Macaluso, *Labor Market Concentration and the Demand for Skills* 1–3 (July 30, 2018) (unpublished manuscript) (on file with IZA Institute of Labor Economics) (finding evidence of “higher demand for skills[] in concentrated labor markets”).

18. See Jonathan F. Harris, *Unconscionability in Contracting for Worker Training*, 72 ALA. L. REV. 723, 779, 781 (2021) [hereinafter Harris, *Unconscionability*] (explaining how unions offered workers essential benefits and job training); Dorothy Sue Cobble, *Organizing the Postindustrial Work Force: Lessons from the History of Waitress Unionism*, 44 INDUS. & LAB. RELS. REV. 419, 420–23 (1991) (describing “occupational unionism,” in which the waitresses’ unions of the 1940s and 1950s set industry standards and managed waitress training programs and hiring halls).

19. See *About Us*, OFF. OF APPRENTICESHIP, U.S. DEP’T OF LAB., <https://www.apprenticeship.gov/about-us/our-history> [<https://perma.cc/ZV7V-5GLS>] (last visited May 9, 2025); *Apprenticeship & Training*, N. AM.’S BLDG. TRADES UNIONS, https://nabtu.org/workforce_dev/apprenticeship-training/ [<https://perma.cc/8J7J-CU8B>] (last visited Jan. 24, 2025).

20. See Jonathan F. Harris, *The Militant Labor Roots of This “Striketober,”* L.A. DAILY J. (Oct. 9, 2023) [hereinafter Harris, *The Militant Labor Roots*], <https://dailyjournal.com/articles/375169> [<https://perma.cc/W2J7-Q25B>] (explaining that union density is lower than at any point in the last seventy years, with only about 10% of workers represented by a union); *Union Membership Rate 10.5 Percent in 2018, Down from 20.1 Percent in 1983*, U.S. BUREAU OF LAB. STAT.: THE ECON. DAILY (Jan. 25, 2019), <https://www.bls.gov/opub/ted/2019/union-membership-rate-10-point-5-percent-in-2018-down-from-20-point-1-percent-in-1983.htm> [<https://perma.cc/CE4X-TA9C>] (highlighting that as of 2019, union membership rate is down 20.1% since 1983); Jaclyn Diaz & Andrew Wallender, *Employers and Unions Talk Retraining, Just Not in Contracts*, BLOOMBERG L. (Apr. 18, 2019, 6:03 AM), <https://news.bloomberglaw.com/daily-labor-report/employers-and-unions-talk-retraining-just-not-in-contracts> (showing that, in 2019, only 3% of union contracts contained workforce retraining provisions).

meritocracy narrative has played a role in the dissolution of union power by diverting workers' attention away from collectively organizing unions to improve their economic lot and toward individual credential stacking.²¹ In this way, credentialism is a worker demobilization project that harms workers collectively and contributes to economic inequality.

Lacking a counternarrative from a strong union movement, the meritocracy narrative obfuscates the ways that the state and firms have shifted training costs and risks onto workers. Indeed, most workers will not enjoy significant upward social mobility no matter their individual grit, determination, and credential accumulation.²² Nevertheless, the meritocracy narrative broadcasts anecdotes of credentialism's success, particularly among people of color and immigrants.²³

In truth, credentialism shows that the meritocracy narrative of social mobility through individual hard work is more like a myth.²⁴ This is especially true for people of color, who, as a whole, take on more debt than white people for similar credentials, yet face worse outcomes.²⁵ Moreover, even when people of color stack more credentials than their white counterparts, the façade of meritocracy often disappears when confronted with structural discrimination in hiring. For instance, research projects that white male job applicants without high school degrees do just as well as Black male applicants with some amount of college or an associate's degree.²⁶ Credentialism is also a product of the federal government's shift of focus away from the structural roots of racialized unemployment and underemployment that highlighted much of the 1960s.²⁷

Paradoxically, credentialism frequently lets down employers. Employers use credentials as a quick and seemingly low-risk proxy for productive employees, believing that they can count on credential providers to equate greater credentials

21. See LAFER, *supra* note 5, at 17.

22. See Mark R. Rank & Lawrence M. Eppard, Opinion, *The 'American Dream' of Upward Mobility Is Broken. Look at the Numbers*, GUARDIAN (Mar. 13, 2021, 6:17 AM), <https://www.theguardian.com/commentisfree/2021/mar/13/american-dream-broken-upward-mobility-us> [<https://perma.cc/4UMF-6T58>] (explaining that only 8% of U.S. children from the bottom 20% of the income distribution climb to the top 20% as adults).

23. See, e.g., #IamAvant, AVANT HEALTHCARE PROS., <https://avanthealthcare.com/nursing-jobs-usa/i-am-avant.shtml> [<https://perma.cc/L3BL-Q49X>] (last visited May 9, 2025) (listing on a website of a foreign nurse recruiter and credential provider testimonials of immigrant nurses who claim that the recruiter allowed them to achieve their dreams of success in the United States).

24. Cf. Martha Albertson Fineman, *Reasoning from the Body: Universal Vulnerability and Social Justice*, in A JURISPRUDENCE OF THE BODY 17, 33 (Chris Dietz et al. eds., 2020) (arguing that demarcating legal subjects using "a fixation on autonomy, rationality, and liberty," rather than "inevitable social dependency," is disingenuous); Rank & Eppard, *supra* note 22.

25. See MORGAN & STEINBAUM, *supra* note 17, at 31.

26. See, e.g., RORY O'SULLIVAN ET AL., YOUNG INVINCIBLES, CLOSING THE RACE GAP: ALLEVIATING YOUNG AFRICAN AMERICAN UNEMPLOYMENT THROUGH EDUCATION 5 (2014), https://d3n8a8pro7vhmx.cloudfront.net/yicare/pages/141/attachments/original/1403804069/Closing_the_Race_Gap_Ntnl_6.25.14.pdf [<https://perma.cc/588P-G4HH>].

27. See LIVIA LAM, CTR. FOR AM. PROGRESS, A DESIGN FOR WORKFORCE EQUITY: WORKPLACE REDESIGN FOR QUALITY TRAINING AND EMPLOYMENT: A FRAMING PAPER 4–5, 9–11 (2019), https://cdn.americanprogress.org/content/uploads/2019/10/15124435/Workforce-Equity_RPT.pdf [<https://perma.cc/PH2A-XPXW>].

with greater in-demand skills training. Employers, however, are often disappointed when increased credentials do not result in better job performance than on-the-job experience with few or no credentials.²⁸ Additionally, employers frequently complain that even their more credentialed workers lack the “soft skills”—critical thinking, oral communication, adaptability, and complex problem solving—that they most desire in an employee.²⁹

Also like workers, employers become lost in the maze of credentials, commonly demanding inflated credentials for unclear reasons and suffering productivity loss as a result.³⁰ Yet credential providers, especially nondegree providers, continue pumping the market with more and more costly credentials without evidence that such credentials map onto the skills actually needed for the job. Those providers, whom both individual workers and employers trust as intermediaries to deliver in-demand skills, stand to gain some of credentialism’s most lucrative rewards. Venture capital has banked on this, funding some of the largest for-profit nondegree credential providers and expecting healthy returns.³¹

This Article offers several responses to credentialism and the meritocracy narrative that feeds it, primarily by shifting more responsibility from workers to employers and the state. First, legal protections already exist to guard against credentialism’s discriminatory effects on workers of color and immigrants, namely disparate impact theory. Given that many of those workers especially burdened by credentialism are people of color and immigrants, disparate impact theory can go a long way in reining in employers’ overburdensome credential requirements and holding employers more responsible for their choices when fashioning job descriptions. That is, employers must show job-relatedness and a business necessity for requiring a credential for a job when that credential reduces the number of successful candidates of a particular race, color, national origin, religion, sex, or sexual orientation. This was precisely the theory in the successful challenge to the standardized testing and high school degree requirements that had a racially disparate outcome in the case establishing disparate impact theory, *Griggs v.*

28. See JOSEPH B. FULLER & MANJARI RAMAN, HARV. BUS. SCH., DISMISSED BY DEGREES: HOW DEGREE INFLATION IS UNDERMINING U.S. COMPETITIVENESS AND HURTING AMERICA’S MIDDLE CLASS 2–3, 26 (2017), <https://www.hbs.edu/managing-the-future-of-work/Documents/dismitted-by-degrees.pdf> [<https://perma.cc/HXG6-MTBP>].

29. See ASHLEY P. FINLEY, AM. ASS’N COLLS. & UNIVS., THE CAREER-READY GRADUATE: WHAT EMPLOYERS SAY ABOUT THE DIFFERENCE COLLEGE MAKES 22–23 (2023), <https://dgm81phhvh63.cloudfront.net/content/user-photos/Research/PDFs/AACU-2023-Employer-Report.pdf> [<https://perma.cc/P5RJ-ZJLM>]; Jathan Janove, *Leaders and Employees Need Soft Skills Now More than Ever*, SOC’Y FOR HUM. RES. MGMT. (May 11, 2020), <https://www.shrm.org/topics-tools/news/humanity-hr-compliance/leaders-employees-need-soft-skills-now-ever>.

30. See FULLER & RAMAN, *supra* note 28, at 2 (explaining how credentialism diminishes productivity, as employers dedicate more resources to hiring and retaining highly credentialed but transitory employees rather than on-the-job training for the actual skills needed).

31. See NADINE DIAZ-INFANTE ET AL., MCKINSEY & CO., DEMAND FOR ONLINE EDUCATION IS GROWING. ARE PROVIDERS READY? 2 (2022), <https://www.mckinsey.com/industries/education/our-insights/demand-for-online-education-is-growing-are-providers-ready> [<https://perma.cc/KU8V-T3QZ>] (noting that venture capital funding for online nondegree credential providers, what they call “[E]d[T]ech,” jumped from \$1 billion to \$8 billion from 2017 to 2021).

*Duke Power Co.*³² Especially when an employer periodically adds or removes a required or preferred credential based solely on the relative slackness of the labor market at any given time, or demands a credential of applicants that it does not demand of incumbent employees, the credential may not be a business necessity or sufficiently job-related and the hiring could be challenged under a disparate impact theory.³³

Additionally, workers could challenge bogus credentials using consumer law protections against unfair and deceptive acts and practices (UDAPs).³⁴ For instance, when a credential provider promises returns from a credential using fraudulent or misleading data, it could be susceptible to such claims.³⁵ In fact, the Federal Trade Commission has for almost a century used its UDAP authority to rein in unscrupulous correspondence schools and job placement agencies.³⁶

Disparate impact theory, however, does not go far enough because it does not remediate situations in which employers require or prefer unnecessary credentials but no disparate impact on a protected category results. Likewise, UDAP-based consumer law claims are generally only useful against bogus credential providers. In other words, these approaches do not address underlying concerns of credential proliferation nor do they do enough to rebalance job training responsibilities from workers to firms and the government. For this, policy change is needed.

This Article proposes two shifts that re-center workers and require firms and the state to share responsibility with workers for training for quality careers. First, federal, state, and local governments should confront credentialism with more robust accountability metrics for public funding for nondegree credentials, especially as the federal government pumps approximately \$11.5 billion annually into the job training marketplace.³⁷ Examples of this abound, especially in developed economies overseas.³⁸ Second, governments should create tripartite sector-based

32. 401 U.S. 424, 425–26, 436 (1971) (holding that employment tests and a credential requirement that had a racially disparate impact violated Title VII of the Civil Rights Act of 1964).

33. See Bornstein, *supra* note 16, at 1457–58; Creola Johnson, *Credentialism and the Proliferation of Fake Degrees: The Employer Pretends to Need a Degree; the Employee Pretends to Have One*, 23 HOFSTRA LAB. & EMP. L.J. 269, 276 (2006).

34. See Jonathan F. Harris, *Consumer Law as Work Law*, 112 CALIF. L. REV. 1, 28–30 (2024) [hereinafter Harris, *Consumer Law as Work Law*].

35. See *id.* at 29–30, 30 n.187.

36. Jonathan F. Harris, *History Absolves the FTC: A Defense of the Rule on Non-Competes and Functional Non-Competes*, HARV. L. REV. BLOG (Jan. 5, 2025), [hereinafter Harris, *History Absolves the FTC*], <https://harvardlawreview.org/blog/2025/01/history-absolves-the-ftc-a-defense-of-the-rule-on-non-competes-and-functional-non-competes> [https://perma.cc/7DA2-VXBE].

37. See U.S. DEP'T OF LAB., FY 2024 DEPARTMENT OF LABOR BUDGET IN BRIEF 1 (2023), <https://www.dol.gov/sites/dolgov/files/general/budget/2024/FY2024BIB.pdf> [https://perma.cc/E7DU-CCCC] (listing an \$11.5 billion 2024 budget request for the U.S. Department of Labor's Employment and Training Administration).

38. See, e.g., France: *Employers Obligation to Provide Skill Development Plans or Training*, EUROFOUND (May 8, 2015), <https://www.eurofound.europa.eu/observatories/emcc/erm/legislation/france-employers-obligation-to-provide-skill-development-plans-or-training> [https://perma.cc/9J56-YBT6].

credential boards in the vein of ascendant wage boards³⁹ to set credential requirements for specific job titles. Those boards would be comprised of representatives from unions and workers' organizations, employers, and regional governments. A model already exists in the immigration context: the United States sets maximum credential requirements for over 900 occupations and employers seeking to sponsor a foreign worker for permanent residency.⁴⁰ These prospective employers must show that they cannot find a U.S. worker with the enumerated credentials for that job.⁴¹

Ultimately, workers must build back their bargaining power vis-à-vis employers.⁴² This is true both with job training and industrial relations generally. Remediating the bargaining power asymmetries between firms and workers requires reining in credentialism and its meritocracy narrative, and replacing them with greater firm and state responsibility for workers' unencumbered access to quality careers and social mobility. Undoing credentialism—and questioning its underlying meritocracy narrative that prioritizes individualist credential stacking over collective organizing—is one step in such a power-shifting project.

This Article proceeds as follows. Part I traces credentialism's conceptual origins, describes credentialism's modern manifestations, and details how the government and firms have deployed the meritocracy narrative to promote a credentialist job training policy. Part II illustrates the many ways that credentialism harms workers, especially people of color and immigrants, and also lets down many employers. Part III proposes both litigation and policy responses to credentialism, including using disparate impact theory against employers requiring unnecessary credentials, instituting robust accountability metrics for public funding for job training, and creating tripartite credential boards.

I. CREDENTIALISM AT WORK

The meritocracy narrative's manifestation through credentialism is a curious story. The narrative requires constant attainment of credentials just to keep up. Those who obtain credentials are not guaranteed a secure and sustainable career. But those who fail to purchase the right credentials are almost guaranteed to lose out, with many facing careers of precarity. To explain credentialism, this Part builds on the work of economic and political theorists and synthesizes how job

39. See Kate Andrias, *An American Approach to Social Democracy: The Forgotten Promise of the Fair Labor Standards Act*, 128 YALE L.J. 616, 625 (2019). But see César F. Rosado Marzán, *Can Wage Boards Work in America?*, L. & POL. ECON. PROJECT (Apr. 3, 2023), <https://lpeproject.org/blog/wage-boards-labor-america/> [<https://perma.cc/ETD2-6KFE>] (expressing skepticism over the viability of tripartism in the United States).

40. See *The O*NET-SOC Taxonomy*, O*NET RESOURCE CTR., U.S. DEP'T OF LAB., <https://www.onetcenter.org/taxonomy.html> [<https://perma.cc/7P8B-72PW>] (last visited May 9, 2025).

41. See, e.g., *O*NET: Its Role in the EB-3 Visa Process*, EB3.WORK, <https://eb3.work/glossary/onet-its-role-in-the-eb-3-visa-process> [<https://perma.cc/EC6J-ZEYJ>] (last visited May 9, 2025); *H-1B Program*, U.S. DEP'T OF LAB., <https://www.dol.gov/agencies/whd/immigration/h1b> [<https://perma.cc/P985-WUYR>] (last visited May 9, 2025).

42. See Harris, *Consumer Law as Work Law*, *supra* note 34, at 54.

training policy firmly embraces the meritocracy narrative through credentialism. Such a meritocracy-based policy keeps workers on a perpetual treadmill of credential stacking while prioritizing the interests of firms over workers.

A. CREDENTIALISM'S MERITOCRACY ORIGINS

Mid-century British sociologist Michael Dunlop Young coined the term “meritocracy,” which he meant as a “spoof.”⁴³ Young described a fictional and distressing world in which the elite was defined not by ancestry but by talent.⁴⁴ Young’s parable was meant to highlight the dangers of a society in which educational credentials were most determinative of social status.⁴⁵ Lani Guinier confirmed that “Young’s nightmarish meritocracy” has indeed manifested in today’s “testocracy” for admission to elite U.S. higher education institutions.⁴⁶ Guinier’s assessment is accurate for bachelor’s degree providers, and a quick glance at numerous recent *New York Times* headlines shows how hotly debated the value of a four-year degree has become.⁴⁷ Indeed, economists have expressed skepticism over the value of a postsecondary degree when considering the financial burden of student debt.⁴⁸

Yet a similar though much less publicized debate is occurring regarding nondegree credentials—the bulk of credentials—where the wage and wealth premiums are significantly more dubious than those from a four-year degree.⁴⁹ Nondegree credentials are ignored perhaps due to the nation’s fetish with elite university education.⁵⁰ This has allowed the market for such credentials to flourish without external standardization, quality controls, or proof of labor market returns.

43. See Lani Guinier, *The Tyranny of Meritocracy: In Their Admissions Criteria, Colleges Are Further Comforting the Comfortable*, CHRON. HIGHER EDUC. (Jan. 5, 2015) (citing MICHAEL DUNLOP YOUNG, *THE RISE OF THE MERITOCRACY, 1870–2033* (1958)), <https://www.chronicle.com/article/the-tyranny-of-meritocracy>.

44. *See id.*

45. *See id.*

46. *Id.*

47. *See, e.g.*, Paul Tough, *Americans Are Losing Faith in the Value of College. Whose Fault Is That?*, N.Y. TIMES: MAG. (Sept. 5, 2023), <https://www.nytimes.com/2023/09/05/magazine/college-worth-price.html>; Ben Wildavsky, *Let’s Stop Pretending College Degrees Don’t Matter*, N.Y. TIMES (Aug. 21, 2023), <https://www.nytimes.com/2023/08/21/opinion/skills-based-hiring-college-degree-job-market-wage-premium.html>; Christopher Zara, *You Learn the Value of a College Degree When You Live Without One*, N.Y. TIMES (Apr. 26, 2023), <https://www.nytimes.com/2023/04/26/opinion/value-college-degree-higher-education.html>; The Editorial Board, *See Workers as Workers, Not as a College Credential*, N.Y. TIMES (Jan. 28, 2023), <https://www.nytimes.com/2023/01/28/opinion/jobs-college-degree-requirement.html>; Peter Coy, *College Degrees Are Overrated*, N.Y. TIMES (Oct. 18, 2021), <https://www.nytimes.com/2021/10/18/opinion/college-degrees-employers.html>.

48. *See, e.g.*, MORGAN & STEINBAUM, *supra* note 17, at 4.

49. *See, e.g.*, Rachel Fishman, *Short-Term Pell Already Exists*, NEW AM. (Apr. 15, 2024), <https://www.newamerica.org/education-policy/edcentral/short-term-pell-already-exists> (recounting the low or negative returns of nondegree credentials as compared to college degrees); Andrew Hanson, *Examining the Value of Nondegree Credentials*, STRADA EDUC. FOUND. (July 28, 2021), <https://www.strada.org/reports/examining-the-value-of-nondegree-credentials> [<https://perma.cc/U2DC-MACX>].

50. *See supra*, note 11 and accompanying text.

Tying Young's and Guinier's descriptions of meritocracy and testocracy to present job training policy, the meritocracy narrative preaches to workers and students that they should purchase and stack credentials not only to maximize their chances at social mobility but also as a virtue in itself.⁵¹ According to the narrative, workers cannot trust the state, nor should they trust the state, to provide pathways to worthwhile careers; if they do, they are insufficiently entrepreneurial and even lazy. Thus, U.S. job training policy, as detailed below in Section I.C, is characterized more by the absence of policy and guidance than by their presence. In other words, a Wild West landscape of nondegree credentialism has blossomed in the absence of state intervention.

Missing from the meritocracy narrative, however, is an inquiry into whether such credentials provide useful training for a good job or merely serve as signaling devices for risk-averse and impatient employers.⁵² Indeed, the opportunity for training is itself an indicator of a good job.⁵³

The debate over the purpose of job training has taken place most energetically between human capital theorists and credentialist theorists.⁵⁴ Chicago School economist Gary Becker is seen as the forefather of human capital theory, under which increased education is the answer to greater demand for skilled labor in the face of technological change.⁵⁵ That is, education pays off because of the skills it imparts. The applicability of human capital theory has been challenged by the likes of Thomas Piketty, who asserts that inherited wealth and other forms of "nonhuman" capital account for a much greater share of inequality than income from labor.⁵⁶ Others like Daniel Markovits disagree, arguing that labor wealth has become the predominant form of wealth accumulation, fueled by the extraordinary salaries earned by workers with the most elite credentials.⁵⁷

Regardless of the prominence of human capital in national and global marketplaces, human capital theory is closely aligned with the meritocracy narrative

51. There certainly is virtue in, for example, a four-year liberal arts education, aside from its ability to produce successful workers. Cuts to traditional liberal arts curricula in favor of more profitable STEM programs have been highlighted as problematic. *See, e.g.,* Leif Weatherby, *What Just Happened at West Virginia University Should Worry All of Us*, N.Y. TIMES (Aug. 20, 2023), <https://www.nytimes.com/2023/08/20/opinion/west-virginia-university-cuts.html>. Without conceding the virtue of education as a necessary foundation for a civically engaged society, this Article argues that, even if one were concerned only with financial and career-oriented payoffs, many nondegree credentials fail workers.

52. *See* Brandon Busteed, *We Don't Value Education. We Value The Credential.*, FORBES (Oct. 17, 2020, 6:57 AM), <https://www.forbes.com/sites/brandonbusteed/2020/10/17/we-dont-value-education-we-value-the-credential>.

53. *See* NICHOLA LOWE, PUTTING SKILL TO WORK: HOW TO CREATE GOOD JOBS IN UNCERTAIN TIMES 8 (2021) (asserting that "skill development is *constitutive* of a quality job" and is just as important as "high wages, comprehensive benefits, workplace autonomy, and job satisfaction").

54. *See* David Walters, *The Relationship Between Postsecondary Education and Skill: Comparing Credentialism with Human Capital Theory*, 34 CANADIAN J. HIGHER EDUC. 97, 99–102 (2004).

55. *See generally* GARY S. BECKER, HUMAN CAPITAL: A THEORETICAL AND EMPIRICAL ANALYSIS WITH SPECIAL REFERENCE TO EDUCATION (3d ed. 1994).

56. *See* THOMAS PIKETTY, CAPITAL IN THE TWENTY-FIRST CENTURY 22, 29 (Arthur Goldhammer trans., 2014).

57. *See* MARKOVITS, *supra* note 1, at 5, 15–16.

and, in fact, relies on a society structured on meritocracy.⁵⁸ Human capital theory is also aligned with skill-biased technological change (SBTC) theory, whose proponents argue that rising wage inequality is due to more complex technology, which in turn requires more education for skills.⁵⁹ Thus, those with highly technical skills receive the bulk of the jobs involving technology and their enhanced wages, while those without the skills are left behind. Notably, some of SBTC theory's original proponents have since recanted their belief in the theory.⁶⁰ Nevertheless, SBTC theory—like the meritocracy narrative—remains influential.⁶¹

On the other side of the debate, Randall Collins first proposed credentialist theory as an alternative to human capital theory.⁶² Under credentialist theory, instead of education and training serving as a conveyor of skills in response to technological change, they merely provide formal credentials that allow workers to progress in their careers.⁶³ Put another way, credentials are signaling devices for employers seeking a quick and low-risk proxy for productive employees.⁶⁴ The piece of paper is what matters. As an example, a study of Canadian postsecondary graduates found that, while some respondents subjectively felt that their degrees—the pieces of paper—matched well with their jobs, a large number of respondents believed that they were in jobs unrelated to their training.⁶⁵ The study found that credentials were not well matched to the skills needed for the jobs, lending support to Collins's credentialist theory.⁶⁶

Conceptually, credentialism provides workers and students access to better jobs and allows those already in desirable professions to restrict admission to

58. See Hyemin Cho Kim, *Human Capital Theory and the Role of Education*, HYEMINCHOKIM (Apr. 13, 2015), <https://hyeminchokim.wordpress.com/2015/04/13/human-capital-theory-and-the-role-of-education> [<https://perma.cc/BSK9-AWXX>].

59. See David Card & John E. DiNardo, *Skill-Biased Technological Change and Rising Wage Inequality: Some Problems and Puzzles*, 20 J. LAB. ECON. 733, 734–35 (2002) (articulating how SBTC theory is not helpful by itself to understand wage shifts in the late 1970s to 1990s).

60. See Lawrence Mishel et al., *Don't Blame the Robots: Assessing the Job Polarization Explanation of Growing Wage Inequality*, 4 (Nov. 19, 2013) (unpublished manuscript) (on file with Economic Policy Institute), <https://files.epi.org/2013/technology-inequality-dont-blame-the-robots.pdf> [<https://perma.cc/XYR3-Y7FF>] (explaining that economists like David Autor, who originally pitched the SBTC theory, now acknowledge that the theory failed to explain wage trends).

61. See *id.*

62. See RANDALL COLLINS, *THE CREDENTIAL SOCIETY: AN HISTORICAL SOCIOLOGY OF EDUCATION AND STRATIFICATION* 125 (Howard S. Becker & Mitchell Deneier eds., Colum. Univ. Press 2019) (1979) (asserting that “[t]he rise of a competitive system for producing an abstract cultural currency in the form of educational credentials has been the major new force shaping stratification in twentieth-century America”). More recent scholarship has reaffirmed credentialist theory, with Tressie McMillan Cottom's book *Lower Ed* highlighting how credentialism's “education gospel” has fueled the rise of predatory for-profit colleges. TRESSIE McMILLAN COTTOM, *LOWER ED: THE TROUBLING RISE OF FOR-PROFIT COLLEGES IN THE NEW ECONOMY* 1, 33 (2017) (writing that credentialism “says that something about the unequal distribution of jobs and access to those jobs generates demand for degrees or credentials”).

63. See Walters, *supra* note 54, at 102–03.

64. See COLLINS, *supra* note 62, at 183, 262–64.

65. See Walters, *supra* note 54, at 116.

66. See *id.*

maintain their superordinate status.⁶⁷ In practice, however, it leads to credential inflation that devalues education and lessens the returns from postsecondary education and training.⁶⁸ For example, manufacturing was once seen as a path to the middle class for those without a college education; now, however, specialized job requirements have led to 40% of U.S. manufacturing workers having a four-year degree but manufacturing jobs no longer guarantee middle-class status.⁶⁹ Likewise, the proportion of registered nurses with bachelor's degrees has expanded from fewer than half in 1990 to almost three-quarters in 2021,⁷⁰ despite lagging pay for nurses with the highest credentials and doubt as to the credentials' enhancement of patient outcomes.⁷¹ Indeed, much of credentialism can be seen through the lens of the nursing profession, which makes it a useful through line for examples in this Article.

Credentialism is situated within the decline of mutual commitment to lifetime employment with a single firm and internal career ladders, at least in formal labor markets. Perhaps by the late 1970s when he conceived of credentialist theory, Collins was witnessing this decline in real time.⁷² The older paradigm, which Katherine Stone has called the "old psychological contract," has been largely replaced by a "new psychological contract" that no longer values loyalty and has led to more movement between employers and hence, greater worker precarity.⁷³ According to Stone, the new psychological contract also includes employer commitments of on-the-job training for transferable skills—what she calls "employability security" rather than "employment security."⁷⁴ If this were truly the case, it would appear to be a fairer tradeoff, as more transient workers could greatly benefit from transferable skills. But the commitment has not manifested: employers typically provide little "employability security" through on-the-job training for transferable skills.⁷⁵ This Article argues that credential stacking is an essential component of the new psychological contract, yet as with other aspects of the

67. See *id.* at 103.

68. See *id.* at 104 (citing D.W. LIVINGSTONE, *THE EDUCATION-JOBS GAP: UNDEREMPLOYMENT OR ECONOMIC DEMOCRACY* (1998); Herbert L. Smith, *Overeducation and Underemployment: An Agnostic Review*, 59 SOCIO. EDUC. 85, 85–99 (1986)).

69. See Austen Hufford, *American Factories Demand White-Collar Education for Blue-Collar Work*, WALL ST. J. (Dec. 9, 2019, 10:59 AM), <https://www.wsj.com/articles/american-factories-demand-white-collar-education-for-blue-collar-work-11575907185>.

70. See Preston Cooper, *How Unnecessary College Degree Requirements Hurt the Working Class*, FOUND. RSCH. ON EQUAL OPPORTUNITY (June 13, 2023), <https://freopp.org/how-unnecessary-college-degree-requirements-hurt-the-working-class-e1812b42a2f> [<https://perma.cc/9BP5-DL4C>].

71. See VICKY LOVELL, INST. WOMEN'S POL'Y RSCH., *SOLVING THE NURSING SHORTAGE THROUGH HIGHER WAGES* 12 (2006) (explaining that nursing has a relatively compressed wage scale, regardless of the nurse's degree); Cooper, *supra* note 70 (writing that even though increases in registered nurses' salaries have kept up with the increased educational requirements, the degree itself does not necessarily lead to improved patient outcomes).

72. See *supra* note 62 and accompanying text.

73. See Stone, *supra* note 7, at 570–72.

74. See Katherine V.W. Stone, *Knowledge at Work: Disputes over the Ownership of Human Capital in the Changing Workplace*, 34 CONN. L. REV. 721, 729–31, 754 (2002).

75. See Harris, *Unconscionability*, *supra* note 18, at 734.

modern workplace, it tends to disfavor workers. This conceptual history of credentialism provides the context for credentialism's modern manifestations, which are discussed next.

B. CREDENTIALISM TODAY

Today, credentialism is most at work in the market for nondegree credentials, which vastly outnumber degree credentials. Of the approximately 1.1 million existing credentials, over 650,000 are issued by nonacademic providers, whereas only around 350,000 are issued by postsecondary educational institutions.⁷⁶ Though nondegree credentials are almost impossible to categorize, those who have made the attempt denote the following categories: industry-recognized certifications like project management certificates issued by trade groups, "microcredentials" and "badges" such as IT trainings issued by "massive open online course" (MOOC) providers, occupational licenses like real estate agent licenses, and apprenticeships frequently offered in collaboration with community colleges and unions.⁷⁷

Not all nondegree credentials are low-value. For example, occupational licenses allow workers to practice a trade and can protect the public, while restricting access to keep salaries high.⁷⁸ And Registered Apprenticeships regulated by the U.S. Department of Labor offer earn-and-learn experience with union wages and transferable credentials.⁷⁹ But even some licenses are shams, such as the food handler license required by four of the largest states as a result of lobbying from the National Restaurant Association.⁸⁰ The trade group bought the market-dominant ServSafe food handler training program and then lobbied states to require a food handler license for all servers and cooks.⁸¹ It charges workers \$15 for the training and uses the revenues to fund efforts to oppose statutory minimum wage hikes that would benefit those very workers.⁸²

The variable and overlapping types of nondegree credentials, as well as the wide breadth of options within each, confuse workers and trainees, regulators, and employers.⁸³ For instance, many states do not have criteria or a system in

76. CREDENTIAL ENGINE, *supra* note 3, at 11.

77. See *Credentials of Value*, NAT'L CONF. STATE LEGISLATURES (Feb. 23, 2023), <https://www.ncsl.org/education/credentials-of-value>; *Partner Finder*, OFF. OF APPRENTICESHIP, U.S. DEP'T OF LAB., <https://www.apprenticeship.gov/partner-finder> [<https://perma.cc/8UYA-VTH2>] (last visited May 9, 2025).

78. See NAT'L CONF. STATE LEGISLATURES, *supra* note 77.

79. See N. AM.'S BLDG. TRADES UNIONS, *supra* note 19.

80. See David A. Farenthold & Talmon Joseph Smith, *How Restaurant Workers Help Pay for Lobbying to Keep Their Wages Low*, N.Y. TIMES (June 20, 2023), <https://www.nytimes.com/2023/01/17/us/politics/restaurant-workers-wages-lobbying.html> (listing Texas, California, Illinois, and Florida).

81. See *id.*

82. See *id.*

83. See EXCELINED & BURNING GLASS TECHS., CREDENTIALS MATTER: REPORT 1: A NATIONAL LANDSCAPE OF HIGH SCHOOL STUDENT CREDENTIAL ATTAINMENT COMPARED TO WORKFORCE DEMAND 27 (2019), <https://www.excelined.org/wp-content/uploads/2019/05/ExcelinEdBurningGlassTechnologies.CredentialsMatterNationalLandscapeofHighSchoolCredentialAttainmentComparedtoWorkforceDemand.May2019.pdf> [<https://perma.cc/3YZW-MTZV>]; Kathryn Palmer, *Assessing Quality of Microcredentials Is Difficult*, INSIDE HIGHER ED (Feb. 6, 2024), <https://www.insidehighered.com/news/tech-innovation/>

place to verify the “industry-recognized” status of a credential.⁸⁴ This means that governmental bodies cannot accurately recommend beneficial nondegree credentials to workers. Moreover, some large firms exert control over credentialization by offering their own branded nondegree credentials. For example, Google offers certificate programs via MOOC provider Coursera; the training is in the Google ecosystem.⁸⁵ Google claims that these programs are treated as the equivalent of college degrees within the company.⁸⁶ Whether these certificates hold the same sway at other companies is unclear, especially because many advantageous, or even required, nondegree credentials are not listed in job descriptions.⁸⁷ This makes such credentials more like Gary Becker’s “firm-specific” training, as opposed to “general” training that can be useful for employment with any employer.⁸⁸

The opacity of requirements mixed with the lack of standardization and regulation leaves workers—and employers to a lesser extent—entirely reliant on nondegree credential providers’ claims. As an example, a health care worker could easily be confused by the subtle differences between “certificates” and “licenses,” even though some unlicensed positions pay roughly 75% as much as those that require licenses.⁸⁹ To this end, California law defines a “certified nurse assistant” (CNA) as “any person who . . . performs basic patient care services directed at the safety, comfort, personal hygiene, and protection of patients, and is certified as having completed the requirements of this article.”⁹⁰ It then clarifies that “[t]hese services shall not include any services which may only be performed by a licensed person.”⁹¹

Candidates for California CNA positions are led to believe that the certificate is a license that is required to practice and are surprised to learn that many health care employers do not require nurse assistants to be certified because the job is an unlicensed one.⁹² Nonetheless, training providers and their feeders take advantage

teaching-learning/2024/02/06/assessing-quality-microcredentials-difficult [https://perma.cc/E768-ATAW].

84. See EXCEL/NED & BURNING GLASS TECHNOLOGIES, *supra* note 83, at 27.

85. See Mariela J. Rivas et al., *Do MOOCs Make You More Marketable? An Experimental Analysis of the Value of MOOCs Relative to Traditional Credentials and Experience*, AERA OPEN, Oct.–Dec. 2020 at 1, 2.

86. See *id.*

87. See EXCEL/NED & BURNING GLASS TECHS., *supra* note 83, at 28.

88. See BECKER, *supra* note 55, at 33, 35, 40 (explaining that firm-specific training “has no effect on the productivity of trainees that would be useful in other firms”).

89. See *Credentials*, U.S. BUREAU OF LAB. STAT.: OCCUPATIONAL REQUIREMENTS SURV., <https://www.bls.gov/ors/factsheet/credentials.htm> [https://perma.cc/9LAP-BF72] (last visited May 9, 2025); *Household Data Annual Averages 55. Median Weekly Earnings of Full-time Wage and Salary Workers by Certification and Licensing Status and Occupation, 2024 Annual Averages*, U.S. BUREAU OF LAB. STAT.: CURRENT POPULATION SURV. (Jan. 29, 2025), <https://www.bls.gov/cps/cpsaat55.htm> [https://perma.cc/UY7M-M5PE].

90. Cal. Health & Safety Code § 1337(d)(3) (2009).

91. *Id.*

92. Cf. u/lawblogz, *Question About Working as a CNA in California, Do You Have to Be Licensed?*, REDDIT: R/NURSING (Oct. 3, 2013, 1:20 AM), https://www.reddit.com/r/nursing/comments/1nmxm3/question_about_working_as_a_cna_in_california_do [https://perma.cc/LE9V-TCT3].

of this confusion by convincing prospective applicants that a CNA certificate is, instead, a license necessary for the job.⁹³ Meanwhile, CNA programs in California cost over \$2,000—a hefty sum for a relatively low-paying job.⁹⁴ CNAs in California earn \$20 per hour on average, while the state minimum wage is only slightly less at \$16.50 per hour.⁹⁵ In comparison, the next step on a career trajectory—and the first step where a license is truly required—is a “licensed vocational nurse” (LVN), paying substantially more at almost \$36 per hour.⁹⁶ Yet only 3% of CNAs ever advance to become LVNs or registered nurses (RNs), dispelling the myth that this is a common career path.⁹⁷

Despite rampant confusion among both workers and employers, job training policy has steered workers and employers into the morass that is the nondegree credential marketplace, as described next.

C. JOB TRAINING BUY-IN

Job training policy both emanates from the meritocracy narrative and reinforces it. While employers, unions, and the state once absorbed many of the costs of credentials and skills development, those costs have largely shifted onto workers.⁹⁸ Likewise, firms have offloaded onto workers much of the risks of employees taking their skills to competitors by, first, requiring workers to arrive with training rather than obtaining it on the job and, second, enforcing restrictive covenants against workers who attempt to take their skills elsewhere.⁹⁹ But policymakers have used the meritocracy narrative to convince workers that taking on the costs and risks of credential attainment is for the worker’s own benefit. Additionally, according to the meritocracy narrative, workers who do not achieve social mobility have only themselves to blame because they amassed an insufficient number

93. See Amanda Jordan, *California CNA License: Step-by-Step Certification Guide for 2025*, CERTIFIED NURSING ASSISTANT LICENSE (Mar. 12, 2025) <https://www.cnalicense.org/by-state/california> [<https://perma.cc/2RP4-RAEW>] (explaining steps required to obtain a certificate by a CNA marketing website calling the certificate a “CNA License”).

94. See, e.g., *Certified Nurse Assistant (CNA)*, ALLEGIANCE CAREER INST., <https://allegiancecareer-institute.com/course-schedule> [<https://perma.cc/EU6T-XKTY>] (last visited May 9, 2025) (listing total fees for a CNA program as \$2,298 for in-person students).

95. See *CNA Salary in California*, ZIPRECRUITER, <https://www.ziprecruiter.com/Salaries/CNA-Salary-in-California> (last visited May 9, 2025) (listing average California CNA wage at \$20 per hour); *Minimum Wage*, STATE OF CAL.: DEP’T OF INDUS. RELS., https://www.dir.ca.gov/dlse/minimum_wage.htm [<https://perma.cc/D3RR-XJXE>] (last visited May 9, 2025) (noting California minimum wage of \$16.50 per hour effective January 1, 2025).

96. See *Online License Verification*, STATE OF CAL.: BD. OF VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS, https://www.bvnpt.ca.gov/consumers/license_verification.shtml [<https://perma.cc/J4WN-BU4T>] (last visited May 9, 2025); *Licensed Vocational Nurse Salary in California*, INDEED, <https://www.indeed.com/career/licensed-vocational-nurse/salaries/CA> (last visited May 9, 2025) (listing average California LVN salary at \$35.84 per hour).

97. See Fishman, *supra* note 49. LVNs are more commonly known outside of California as licensed practical nurses (LPNs). See *Comparing the LVN and LPN Roles*, U. OF SOUTHERN CAL.: LEONARD DAVIS SCH. OF GERONTOLOGY, <https://gero.usc.edu/students/current-students/careers-in-aging/comparing-the-lvn-and-lpn-roles> [<https://perma.cc/JY3N-KGE2>] (last visited May 9, 2025).

98. See Harris, *Unconscionability* *supra* note 18, at 725.

99. See *id.* at 724–25; Harris, *Consumer Law as Work Law*, *supra* note 34, at 3–6, 11–12.

of credentials or the wrong credentials.¹⁰⁰ And on an economy-wide level, the meritocracy narrative blames workers collectively for a “skills gap” between inadequately skilled workers and the millions of unfilled quality jobs that businesses are purportedly creating.¹⁰¹

Workers were not always expected to solely bear the costs and risks of job training. New Deal labor policy was based on returning workers to the labor force after the Great Depression, with a focus on full employment through direct public job creation.¹⁰² At its peak in the 1930s, the federal government directly employed millions of previously unemployed workers to labor on public works projects.¹⁰³ With that employment came robust state-sponsored skills training for workers, even if the government jobs themselves were generally not as lucrative as those in the private sector and the government’s commitment to being a long-term employer was uncertain.¹⁰⁴

Later, employer-sponsored on-the-job training became the norm in the formal economy.¹⁰⁵ In the postwar era, labor unions provided their members a significant amount of training along with a hiring hall system that allowed both workers and employers to avoid the costs and risks of training and hiring.¹⁰⁶ Likewise, in the 1960s, the federal government expanded its role in job creation and robust training to combat racial disparities, highlighting the need to address Black unemployment as a root cause of that decade’s racial uprisings.¹⁰⁷

100. See HOCHSCHILD, *supra* note 10, at 30.

101. See, e.g., *Time to Align: America’s Skills Gap and How to Overcome It*, BUS. ROUNDTABLE, <https://www.businessroundtable.org/time-to-align-americas-skills-gap-and-how-to-overcome-it> [https://perma.cc/9MV7-P52S] (last visited May 9, 2025); Stephanie Ferguson Melhorn & Makinizi Hoover, *Understanding America’s Labor Shortage: The Most Impacted Industries*, U.S. CHAMBER COM. (Mar. 21, 2025), <https://www.uschamber.com/workforce/understanding-americas-labor-shortage-the-most-impacted-industries> [https://perma.cc/CR45-K957] (reporting that U.S. businesses create hundreds of thousands of jobs per month, many of which go unfilled); see also LOWE, *supra* note 53, at 27 (writing that, according to this “skills mismatch” theory, “[lower wage workers’] lack of in-demand skills—but little else—explains why they are trapped at the bottom of the earnings scale”).

102. See Hafiz, *supra* note 5, at 1228.

103. See *id.* at 1229.

104. Many New Deal policies were still tailored to not threaten business, as one of their top aims was getting the economy back on track. This meant supporting a thriving private sector; governments were cautious to not have their employment capacity compete against that of the private sector. Similarly, AmeriCorps is designed to pay very little so that private employment options remain better. See Henry H. Perritt Jr., *Job Training Mythologies: Stitching Up Labor Markets*, 98 NEB. L. REV. 795, 805 (2020); E-mail from Ezra Rosser, Professor of L., Am. Univ. Wash. Coll. of L., to author (Feb. 17, 2024) (on file with author).

105. See LOWE, *supra* note 53, at 30 (“Up until [around 1980], most American-based firms extended on-the-job training to workers at all occupational levels, with robust internal practices and structures in place to protect and reward workers for this skill-enhanced learning.”).

106. See Harris, *Unconscionability*, *supra* note 18, at 781 (explaining how unions offered workers essential benefits and job training); Cobble, *supra* note 18, at 420–24 (discussing waitresses’ union training programs and hiring halls).

107. See NAT’L ADVISORY COMM’N ON CIV. DISORDERS, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 2, 5–6, 11 (1968) (reporting findings from a commission established by President Lyndon B. Johnson, known as the Kerner Commission); Jill Lepore, *The History of the “Riot” Report*, NEW YORKER (June 15, 2020), <https://www.newyorker.com/magazine/2020/06/22/the-history-of-the-riot-report>.

Starting in the 1970s and accelerating in the 1980s and 90s, however, federal workforce development policy shifted from job creation to issuing block grants for private job training and from union neutrality to union antagonism.¹⁰⁸ Along with this shift came a rush of concern over a “skills gap,” with multiple presidential administrations pointing to newspaper want ads as proof of “the millions of Americans who need additional training to be able to fill them.”¹⁰⁹

Notably, Democratic administrations have defied their New Deal roots by supporting the policy shift from job creation to job training, employing the meritocracy narrative to mandate self-betterment and personal responsibility through entrepreneurial work. In fact, President Clinton’s 1996 “welfare reform” bill that shrank entitlements and mandated “welfare-to-work” programs had the meritocratic name “Personal Responsibility and Work Opportunity Reconciliation Act.”¹¹⁰ Moreover, the Clinton jobs program focused on creating “Empowerment Zone[s]” and “Enterprise Communities” in neighborhoods of color that emphasized individualist small business startups over direct support for the unemployed, again calling up the entrepreneurial spirit of meritocracy.¹¹¹

In these ways, job training policy under both Republican and Democratic administrations has focused on technocratic solutions to a “mismatch” between underskilled, underemployed workers and the abundant quality job openings requiring skilled labor.¹¹² That solution is credentialism.

According to one political theorist, however, between 1984 and 1996, the number of decently paying U.S. jobs satisfied only between a quarter and one-twentieth of the need among workers.¹¹³ If anything, then, there is a different type of mismatch that no amount of training can solve: employer expectations of committed workers and the low wages that they are willing to pay.¹¹⁴ Yet, the “skills gap” storyline has persisted and even expanded in the intervening years in both

108. See LAFER, *supra* note 5, at 2, 8–9; ATTEWELL, *supra* note 5, at 261–63; Hafiz, *supra* note 5, at 1225–26, 1233–34.

109. LAFER, *supra* note 5, at 22 (quoting *Hearing on the Labor Secretary Nomination Before the S. Comm. on Health, Educ., Lab., & Pensions*, 107th Cong. (2001) (statement of Elaine Chao, U.S. Sec’y of Lab. Designate)).

110. See Hafiz, *supra* note 5, at 1235–36.

111. See *id.* at 1236–37; see also Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399, 402, 428–29 (2001); Audrey G. McFarlane, *Race, Space, and Place: The Geography of Economic Development*, 36 SAN DIEGO L. REV. 295, 296–97, 313–14 (1999); Wilton Hyman, *Empowerment Zones, Enterprise Communities, Black Business, and Unemployment*, 53 WASH. U. J. URB. & CONTEMP. L. 143, 144, 156–59 (1998).

112. LAFER, *supra* note 5, at 2; see also LOWE, *supra* note 53, at 27.

113. See LAFER, *supra* note 5, at 23.

114. See SARAH A. DONOVAN ET AL., CONG. RSCH. SERV., RL47059, *SKILLS GAPS: A REVIEW OF UNDERLYING CONCEPTS AND EVIDENCE* 6, 28 (2022) (writing that many argue that the lack of job uptake is the product of “wage levels and working conditions being offered or workers’ lack of access to affordable childcare or eldercare as opposed to being indicators that adequately skilled workers are unavailable”); Richard Rothstein & Lawrence Mishel, *Unemployment, Schools, Wages, and the Mythical Skills Gap*, ECON. POL’Y INST. (Apr. 2, 2014, 1:21 PM), <https://www.epi.org/blog/unemployment-schools-wages-mythical-skills> [<https://perma.cc/PRK2-2EAE>]; Angela Hanks, *The Skills Gap Myth Does Not Explain What’s Happening to Work*, FORBES (June 29, 2018, 1:59 PM),

human resources and education policy circles.¹¹⁵ Management consulting firms like McKinsey have particularly touted the need for workers to “reskill.”¹¹⁶

The current federal workforce development law, the Workforce Innovation and Opportunity Act of 2014 (WIOA),¹¹⁷ is an Obama-era statute in line with the skills gap narrative that largely reinforces prior moves away from job creation and toward block grants to states and local quasi-governmental agencies for distribution to job training providers.¹¹⁸ These quasi-governmental agencies, called workforce development boards, are employer-dominated—they are legally required to have at least 51% representation by private sector employers—in contrast to prior local bodies that had greater representation among unions and community groups.¹¹⁹ The statutorily mandated majority representation of employers demonstrates how job training policy caters to the interests of firms over those of workers and their communities.

Today, over three-quarters of the U.S. Department of Labor’s (DOL) budget is dedicated to its Employment and Training Administration, with over \$4 billion earmarked solely for implementation of WIOA and the National Apprenticeship Act (NAA),¹²⁰ the two largest job training laws.¹²¹ WIOA largely continues in the vein of earlier workforce development laws, despite their demonstrated lack of success. For example, a 2017 study of WIOA’s predecessor, the Workforce Investment Act of 1998 (WIA),¹²² revealed that “participants receiving the full set of [job training] services . . . increased the likelihood of program completion and educational credential attainment but also suggested the intervention yielded minimal, or no, gains in earnings.”¹²³ This shows how credential attainment does

<https://www.forbes.com/sites/angelahanks/2018/06/26/the-skills-gap-myth-does-not-explain-whats-happening-to-work> [<https://perma.cc/EB2A-FMZ8>]; LOWE, *supra* note 53, at 5.

115. See, e.g., GROVER J. WHITEHURST, *HARD THINKING ON SOFT SKILLS*, BROOKINGS INST. (2016), <https://www.brookings.edu/wp-content/uploads/2016/07/Download-the-paper2.pdf> [<https://perma.cc/QW2V-8QU3>] (describing emphasis on soft skills training in PK-12 education); *The Skills Mismatch*, NAT’L SKILLS COAL., <https://nationalskillscoalition.org/skills-mismatch> [<https://perma.cc/L8K2-MASS>] (last visited May 9, 2025) (detailing “[s]kills [m]ismatch[es]” by state); Eric Krell, *The Global Talent Mismatch*, SOC’Y HUM. RES. MGMT. (June 1, 2011), <https://www.shrm.org/topics-tools/news/hr-magazine/global-talent-mismatch> (“[T]he talent crisis will affect every region of the world in the coming years.”).

116. See FABIAN BILLING ET AL., MCKINSEY & CO., *BUILDING WORKFORCE SKILLS AT SCALE TO THRIVE DURING—AND AFTER—THE COVID-19 CRISIS* (2021), <https://www.mckinsey.com/capabilities/people-and-organizational-performance/our-insights/building-workforce-skills-at-scale-to-thrive-during-and-after-the-covid-19-crisis> [<https://perma.cc/VBQ6-RJ3W>].

117. Workforce Innovation and Opportunity Act, 29 U.S.C. §§ 3101–3361.

118. See Hafiz, *supra* note 5, at 1237.

119. See *id.*; LAFER, *supra* note 5, at 8–9; LAM, *supra* note 27, at 16, 27.

120. National Apprenticeship Act, 29 U.S.C. § 50.

121. U.S. DEP’T OF LAB., *supra* note 37, at 1 (noting a \$15.1 billion DOL budget request, with \$11.5 billion for the Employment and Training Administration); U.S. DEP’T OF LAB., *FY 2024 CONGRESSIONAL BUDGET JUSTIFICATION, EMPLOYMENT AND TRAINING ADMINISTRATION: TRAINING AND EMPLOYMENT SERVICES 1* (2023), <https://www.dol.gov/sites/dolgov/files/general/budget/2024/CBJ-2024-V1-03.pdf> [<https://perma.cc/6966-NTDM>] (allocating \$4.42 billion to WIOA and NAA expenses).

122. Workforce Investment Act, 29 U.S.C. §§ 2811–2945 (repealed 2014).

123. Jonathan F. Harris & Livia Lam, *Is There a Right to Job Quality? Reenvisioning Workforce Development*, 11 CALIF. L. REV. ONLINE 339, 344 (2020) (citing KENNETH FORTSON ET AL.,

not always lead to concrete gains for workers and raises the question of whether credential attainment should even be a virtue in itself.

Likewise, WIOA fails to require training for enough in-demand and quality careers, instead funding training providers that frequently offer redundant and dated training for yesterday's jobs.¹²⁴ Far fewer than half of WIOA Eligible Training Provider (ETP) programs train for jobs listed in the Federal Reserve's list of the "top 100 Opportunity Occupations," despite those occupations not necessitating a bachelor's degree.¹²⁵ In addition, "WIOA ETP programs prepare participants for jobs that pay below the [U.S.] median income and also below median income for individuals without college degrees."¹²⁶ Over 40% of WIOA participants earn less than \$25,000 per year, with women and people of color disproportionately enrolled in WIOA training programs for the lowest-paid jobs.¹²⁷ Thus, WIOA programs may be perpetuating occupational segregation for women and people of color.¹²⁸ Nevertheless, WIOA offers workers no legal mechanism to grieve the quality of services, as the law explicitly denies individual workers a private right of action against workforce development boards or training providers.¹²⁹

WIOA also mimics older job retraining laws that have likewise proved ineffective in raising trainees' job quality prospects. One of those was the Trade Act of 1974, which established Trade Adjustment Assistance (TAA) for workers displaced by foreign trade.¹³⁰ TAA provided qualifying workers up to 130 weeks of full-time or part-time training with a small amount of cash assistance, employment and case management services like career counseling and skills assessments, and other benefits.¹³¹ TAA is largely viewed as a failure, with strict

MATHEMATICA POL'Y RSCH., PROVIDING PUBLIC WORKFORCE SERVICES TO JOB SEEKERS: 30-MONTH IMPACT FINDINGS ON THE WIA ADULT AND DISLOCATED WORKER PROGRAMS 137 (2017)); *see also* Fishman, *supra* note 49 (citing same Mathematica Policy Research report, and noting that thirty months after completing a WIA-sponsored training, workers' earnings had not improved).

124. *See* Harris & Lam, *supra* note 123, at 340, 343–45.

125. *See* David Deming et al., *Navigating Public Job Training*, HARV. PROJECT ON WORKFORCE (Mar. 8, 2023), https://889099f7-c025-4d8a-9e78-9d2a22e8040f.usrfiles.com/ugd/889099_06ca8851a90f43c98534daeffdb80479.pdf [<https://perma.cc/H6N3-C9WU>].

126. *Id.*

127. *Id.*

128. Other research elaborates on the gendered impact of credentialism. For example, one South Korean study found that women value credentials higher but have lower participation in the labor market. *See* Sung won Kim et al., *Why Do Women Value Credentials? Perceptions of Gender Inequality and Credentialism in South Korea*, INT'L J. EDUC. DEV., Mar. 2020, at 1.

129. *See* 29 U.S.C. § 3254(12) ("Nothing in this subchapter shall be construed to provide an individual with an entitlement to a service under this subchapter."); *Coastal Counties Workforce, Inc. v. LePage*, 284 F. Supp. 3d 32, 47 (D. Me. 2018) (acknowledging that individual workers are "statutorily barred from suing" under WIOA).

130. 19 U.S.C. § 2101; 19 U.S.C. §§ 2271–2331; Stephen Kim Park, *Bridging the Global Governance Gap: Reforming the Law of Trade Adjustment*, 43 GEO. J. INT'L L. 797, 807 (2012).

131. *See* Park, *supra* note 130, at 815–16.

eligibility requirements allowing for only around 7,000 participants in 2023; the program was terminated in 2022 for new applicants.¹³²

The biggest fault of TAA was the ineffectiveness of classroom-based retraining for credential attainment, as opposed to on-the-job training.¹³³ In fact, one study showed that, notwithstanding personal differences, there was no statistically significant difference between the wages of displaced workers who had completed training under TAA and those who had not.¹³⁴

Out of all of the surviving job training laws, the National Apprenticeship Act (NAA) is probably the most deeply rooted and worker-centered. Enacted in 1937 as a key pillar of the New Deal, the NAA established what is today known as Registered Apprenticeship Programs (RAPs).¹³⁵ RAPs are earn-and-learn and tuition-free job training; a labor union is commonly involved to ensure decent pay, safety, and high standards.¹³⁶ RAPs have been primarily implemented in the unionized construction sector, with current starting wages of \$60,000 per year and a \$300,000 lifetime-earnings premium over RAP non-participants.¹³⁷ Despite the program's success, Republicans have recently taken aim at RAPs' collaborations with unions as part of their broader anti-union campaigns, with the first Trump Administration issuing a 2017 executive order to establish union-free Industry-Recognized Apprenticeship Programs (IRAPs).¹³⁸ The justification for removing union partnerships was to give

132. See U.S. DEP'T OF LAB., TAA TERMINATION IMPACTS: BY THE NUMBERS 1 (2024), https://www.dol.gov/sites/dolgov/files/ETA/tradeact/pdfs/TAA_Termination_Fact_Sheet.pdf [<https://perma.cc/Y24A-2DU9>]; see also Jessica Schauer, *Federal Trade Adjustment Assistance for Workers: Broken Equipment*, 26 B.C. THIRD WORLD L.J. 397, 405–07 (2006) (stressing that, to be effective, the scope of TAA must be expanded from the initial Trade Act of 1974, which limited TAA eligibility only to workers who had produced an “article” and whose jobs had been sent to countries that were part of free trade agreements with the United States).

133. See LORI G. KLETZER, IMPORTS, EXPORTS, AND JOBS: WHAT DOES TRADE MEAN FOR EMPLOYMENT AND JOB LOSS? 148 (2002) (“Because workers typically enter training before getting a new job, there is a weak link between training and the skill needs of potential employers.”).

134. See Schauer, *supra* note 132, at 410–11 (citing Paul T. Decker & Walter Corson, *International Trade and Worker Displacement: Evaluation of the Trade Adjustment Assistance Program*, 48 INDUS. & LAB. RELS. REV. 758, 773 (1995)).

135. See OFF. OF APPRENTICESHIP, U.S. DEP'T OF LAB., *supra* note 19.

136. See N. AM.'S BLDG. TRADES UNIONS, *supra* note 19.

137. See *Credentialing Basics - Apprenticeship*, U.S. DEP'T OF DEF.: CIVILIAN CREDENTIALING OPPORTUNITIES ON-LINE, https://www.cool.osd.mil/dciv/credential_basics/index.html?apprenticeship [<https://perma.cc/9TYJ-YZ36>] (last visited May 9, 2025); *Apprenticeship and Training*, N. AM.'S BLDG. TRADES UNIONS, <https://nabtu.org/apprenticeship-and-training> [<https://perma.cc/LZ66-UBN8>] (last visited May 9, 2025). See generally GRACE PALLADINO, *SKILLED HANDS, STRONG SPIRITS: A CENTURY OF BUILDING TRADES HISTORY* 142–56 (2005).

138. See *Expanding Apprenticeships in America*, Exec. Order No. 13801, 82 Fed. Reg. 28229 (June 15, 2017); OFF. OF APPRENTICESHIP, U.S. DEP'T OF LAB., *INDUSTRY-RECOGNIZED APPRENTICESHIP PROGRAM FREQUENTLY ASKED QUESTIONS*, https://www.apprenticeship.gov/sites/default/files/IRAP_FAQ.pdf [<https://perma.cc/VP3K-8BTW>] (last visited May 9, 2025).

“employees and job creators . . . flexibility to innovate” without onerous red tape, echoing the meritocracy narrative’s entrepreneurial spirit.¹³⁹

President Biden ended IRAPs in his first month in office.¹⁴⁰ According to Biden, IRAPs “fail to require the wage progression that reflects increasing apprentice skills and they lack the standardized training rigor that ensures employers know they are hiring a worker with high-quality training.”¹⁴¹ Biden’s decision to drop IRAPs, however, was an outlier in the long-term trajectory of job training policy and likely occurred only because of the Building Trades Unions’ powerful lobby as compared to the rest of the labor movement.¹⁴² Indeed, reestablishing IRAPs is likely on the agenda of the second Trump Administration.¹⁴³

Aside from the NAA and its RAPs, much of the remainder of the nation’s job training policy prioritizes credential attainment in largely unregulated training and education markets. Despite the demonstrated failings of WIOA and other training programs, workforce development providers continue lobbying for ever-increasing funding under the same models. Democratic lawmakers have been happy to appease; in 2022 alone, the Biden Administration dedicated “over \$21 billion in education and training through the public workforce system, Pell Grants, and other programs.”¹⁴⁴ To this end, workforce development lobbies are pushing to make very short-term nondegree credentials eligible for Pell Grants—the foundation of higher education public grantmaking for working-class students.¹⁴⁵ The Bipartisan

139. See *Democrats’ Bill Closes Potential Pathways to Work*, U.S. HOUSE REPRESENTATIVES: COMM. ON EDUC. & THE WORKFORCE (Feb. 5, 2021), <https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=407168> [<https://perma.cc/3PZH-C6J8>].

140. See *Fact Sheet: Biden Administration to Take Steps to Bolster Registered Apprenticeships*, WHITE HOUSE (Feb. 17, 2021), <https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2021/02/17/fact-sheet-biden-administration-to-take-steps-to-bolster-registered-apprenticeships> [<https://perma.cc/L6LT-Y23E>]; *NABTU Commends Executive Actions to Rescind IRAPs and Reinstates the Advisory Committee on Apprenticeship*, N. AM.’S BLDG. TRADES UNIONS (Feb. 18, 2021), https://nabtu.org/press_releases/nabtu-statement-commending-biden-irap-executive-actions [<https://perma.cc/7HPN-9NHT>].

141. WHITE HOUSE, *supra* note 140.

142. See Ian Kullgren, *Construction Workers Prepare to Battle Former Ally Trump*, POLITICO (Aug. 16, 2019, 5:03 AM), <https://www.politico.com/story/2019/08/16/trump-jobs-construction-workers-1653450> [<https://perma.cc/66YR-W5ED>].

143. See Veronica Goodman, *Project 2025 Would Undermine Registered Apprenticeship System and Put Corporations over Workers*, CTR. FOR AM. PROGRESS (Sept. 16, 2024), <https://www.americanprogress.org/article/project-2025-would-undermine-registered-apprenticeship-system-and-put-corporations-over-workers> [<https://perma.cc/N74B-TSUP>] (“The IRAP model sought to eliminate and weaken quality standards and worker protections for apprenticeship programs, including by assigning oversight authority to third-party industry groups. The end result would have been a system that prioritized corporate interests over workers.”).

144. WHITE HOUSE, *ADVANCING EQUITABLE WORKFORCE DEVELOPMENT FOR INFRASTRUCTURE JOBS: A GUIDE TO SELECTED FEDERAL RESOURCES* 4 (2022), https://bidenwhitehouse.archives.gov/wp-content/uploads/2022/11/Advancing-Equitable-Workforce-Development-for-Infrastructure-Jobs_110122.pdf [<https://perma.cc/F6JW-2J42>].

145. See LINDSEY REICHLIN CRUSE ET AL., NAT’L SKILLS COAL., *THE NON-DEGREE CREDENTIAL QUALITY IMPERATIVE* 19 (2023), https://nationalskillscoalition.org/wp-content/uploads/2023/07/The-NDCQ-Imperative-report_fn12-1.pdf [<https://perma.cc/BPH8-3QUC>]; SANDY BAUM ET AL., URB. INST.,

Workforce Pell Act,¹⁴⁶ supported by Trump's Secretary of Education Linda McMahon,¹⁴⁷ would open the floodgates by pumping over \$27 billion annually in possible Pell Grant funding into the market for very short-term nondegree credentials; that is, credentials lasting as little as eight weeks.¹⁴⁸ Few have questioned the effectiveness of such additional funding in this age of credentialism, other than filling the coffers of nondegree credential providers.¹⁴⁹

In sum, credentialism's treadmill effect for workers, in which workers stack credentials just to keep up but never get ahead, is not a defect of the meritocracy narrative but a feature of it. And despite credentialism's downsides for stakeholders as described in the next Part, job training policy buys into the meritocracy narrative to perpetuate credentialism.

II. THE PROBLEMS WITH CREDENTIALISM

Aspiring workers need training when entering the workforce. But the endless amounts and types of credentials for sale leave both workers and employers perplexed and oftentimes worse off. Individually, workers expend valuable time and money on credential pursuits, often amassing exorbitant debt. Collectively, workers' movements suffer as credentialism demobilizes them and exacerbates bargaining power disparities with employers. Meanwhile, credential providers are treated as omniscient intermediaries between workers and employers but often fail to facilitate valuable skills attainment or match workers with quality jobs.

A. HOW CREDENTIALISM HARMS WORKERS

Aside from encouraging credentialism in lieu of valuable skills learning for quality careers, the meritocracy narrative and job training policy converge to allow firms to offload the costs and risks of training and employee turnover onto

SHOULD THE FEDERAL GOVERNMENT FUND SHORT-TERM POSTSECONDARY CERTIFICATE PROGRAMS? vi (2021), https://www.urban.org/sites/default/files/publication/103370/should-the-federal-government-fund-short-term-postsecondary-certificate-programs_0_0.pdf [<https://perma.cc/N743-K5K3>].

146. Bipartisan Workforce Pell Act, H.R. 6585, 118th Cong. (2023) (shortening job training program eligibility for Pell Grant funding from 15 weeks to 8 weeks).

147. See Linda McMahon, *Workforce Pell Grants Will Create High-Paying Jobs for More Americans*, THE HILL (Sept. 11, 2024, 1:30 PM), <https://thehill.com/opinion/congress-blog/4871602-skilled-workforce-investment> [<https://perma.cc/592F-39YU>].

148. See Veera Korhonen, *Total Expenditure on Federal Pell Grant Awards in the United States from 1981/82 to 2022/23*, STATISTA (July 5, 2024), <https://www.statista.com/statistics/235374/expenditure-on-federal-pell-grants-in-the-us> [<https://perma.cc/TG6Y-NQRJ>] (noting that, in 2022 dollars, the U.S. government spent \$27.2 billion on Pell Grants in the 2022/23 academic year, down from a peak of \$47.88 billion in the 2010/11 academic year). See generally Fishman, *supra* note 49 (warning that very short-term credentials frequently lead to poverty jobs and distract students from obtaining credentials with better returns).

149. But see Fishman, *supra* note 49 (opposing opening Pell Grant eligibility for short-term nondegree credentials lasting less than 8 weeks); cf. MORGAN & STEINBAUM, *supra* note 17, at 29 ("This is a variant on the Bennett Hypothesis, except that instead of a given program's tuition increasing in response to federal loan availability, tuition is increasing by raising the number of programs eligible for such funding.").

workers.¹⁵⁰ Though it hurts all workers, credentialism is particularly harmful to people of color and immigrants, who are frequent targets of predatory practices and disproportionately burdened by credential-driven debt.¹⁵¹ Credentialism produces an overabundance of credentials for purchase, feeding off of workers' precarity and confusion and employers' desires for quick, definitive, and low-risk signaling devices when hiring. Credentialism harms workers in at least five ways: by (1) valuing signaling over skills, (2) failing the most disadvantaged workers, (3) perpetuating the sales of bogus credentials, (4) allowing for the fluctuation of required credentials based on labor-market demand rather than the skills needed, and (5) demobilizing workers by directing their attention toward individualist credential stacking rather than collective organizing. Paradoxically, credentialism also often fails to benefit individual employers, even if it benefits them as a class by shifting workplace bargaining power further in the hands of firms.

1. Credentialism Values Signaling over Skills

Other than apprenticeships, the majority of credentials do not include the experiential training most useful to workers and employers. Indeed, social science research reveals that learning-by-doing implicit skills development and informal mentoring are at least as important as knowledge obtained through outside credential attainment.¹⁵² Nevertheless, because credentials serve largely as signaling devices for hiring entities, skills training falls by the wayside.¹⁵³ This is not to say that credentials have minimal value for workers or employers; more often than not, a credential can help a worker get a job and provides employers a quick and safe proxy for one's ability to do at least some parts of the job. The question, though, is whether credentials truly provide the skills that they purport to offer and that are needed by both workers and employers. Frequently, the answer is "no."

Indeed, examining wages and unemployment rates by education level reveals how credentials are more valuable as signals than as skills or education conveyors, as shown through the bachelor's degree wage premium. In 2019, high school diploma holders earned on average \$37,024 annually and experienced 4.6% unemployment, while a worker who completed some college but did not obtain a degree earned only \$3,224 more—\$40,248—and faced only a slightly better

150. Cf. LOWE, *supra* note 53, at 1 ("America has a skill problem. But not because of inadequate educational systems or an unprepared generation of younger-aged workers, as some try to claim. The problem is the widespread failure of American businesses to share responsibility for skill development—that is to say, the unwillingness or inability of many employers to invest sufficient resources, time, and energy into work-based learning and the creation of skill-rewarding career pathways that extend economic opportunity to workers on the lowest rungs of the labor market.").

151. See MORGAN & STEINBAUM, *supra* note 17, at 4.

152. See MICHAEL ERAUT & WENDY HIRSH, ESRC CTR. ON SKILLS, KNOWLEDGE & ORG. PERFORMANCE, *THE SIGNIFICANCE OF WORKPLACE LEARNING FOR INDIVIDUALS, GROUPS AND ORGANISATIONS* 5 (2010); DAVID A. KOLB, *EXPERIENTIAL LEARNING: EXPERIENCE AS THE SOURCE OF LEARNING AND DEVELOPMENT* 49 (2d ed. 2015) (explaining that "[l]earning is the process whereby knowledge is created through the transformation of experience" (emphasis omitted)).

153. See Busteed, *supra* note 52.

unemployment rate of 4%.¹⁵⁴ Even those who obtained an associate's degree, the type of credential that is more vocational and skills-oriented than a bachelor's degree, earned only \$43,472.¹⁵⁵ The real benefit came only once a worker finally obtained a bachelor's degree, bringing their salary to \$60,996, with an unemployment rate of only 2.5%.¹⁵⁶

Reviewing these figures, one can see the economic value of the degree but not the education that went into it; even two years of college is only marginally more valuable to a worker than a high school diploma.¹⁵⁷ Moreover, the kind of degree that brings true economic value must be a bachelor's degree, which is more affiliated with classroom-based learning than the more experiential two-year associate's degree commonly issued by community colleges.

The bachelor's degree's signaling effect also helps explain the relatively low value of nondegree credentials, which employers frequently ignore. To this end, research shows that stackable nonbachelor's degree credentials are not strongly connected to wage gains when compared with degrees.¹⁵⁸ For example, technology employers are known to pass over candidates with short-term, nondegree computer coding "bootcamp" certifications, preferring instead those with bachelor's degrees.¹⁵⁹ This is the case despite the fact that both types of credentials are largely classroom-based and nonexperiential.

Additionally, workers must often stack credentials simply to maintain the status quo but not to advance along a career path in a meaningful way. Commonly, incumbent workers seek credentials when the labor market becomes slack because employers become more demanding with their credential requirements.¹⁶⁰ Those workers, then, must obtain the credential simply to keep their existing jobs, even if the jobs themselves have not changed in any meaningful way.

For example, many hospitals now require incumbent nurses to obtain a bachelor of science in nursing degree (BSN) to keep their job, even if the content of the job has not changed.¹⁶¹ This is partly due to the American Nurses Credentialing

154. See *The Average Salary by Education Level 2019–2020*, SMART SCHOOLS. (Oct. 27, 2019), <https://smartschoolsusa.org/blog/the-average-salary-by-education-level-2019-2020> [<https://perma.cc/7TFU-BP7P>].

155. See *id.*

156. See *id.*

157. See Busteed, *supra* note 52.

158. See Thomas Bailey & Clive R. Belfield, *Stackable Credentials: Do They Have Market Value?* 8, 21 (Cmty. Coll. Rsch. Ctr., Working Paper No. 97, 2017), <https://files.eric.ed.gov/fulltext/ED579160.pdf> [<https://perma.cc/J239-CA57>] (finding that not many students continue beyond the first step in the sequential stack of credentials).

159. See Brandon Parise, *The Death of Coding Bootcamps?*, DEV CMY. (May 14, 2019), <https://dev.to/bparise/the-death-of-coding-bootcamps-p6i> [<https://perma.cc/MB9L-RC6K>].

160. See *infra* Section II.A.4.

161. See, e.g., STATE OF CAL.: BD. OF REGISTERED NURSING, BRN BOARD MEETING: REPORT OF THE EDUCATION/LICENSING COMMITTEE 52 (2024) https://www.m.ca.gov/pdfs/meetings/brd/brd_aug24_item8.pdf [<https://perma.cc/TPE4-669K>] (noting that, in Orange County, California, most major hospitals require that incumbent RNs hold a BSN or enroll in a BSN program within six months).

Center's (ANCC) Magnet Recognition Program, a highly sought hospital accreditation that requires 80% of the hospital's nurses to hold a BSN.¹⁶²

With such high demand and a limited number of BSN programs in states like California, private for-profit universities are able to charge, on average, \$130,000 in tuition while dramatically expanding enrollment with little government oversight.¹⁶³ Though Magnet accreditation seems to be most beneficial to these for-profit colleges and the ANCC, it was ostensibly created to better conditions for nurses and patients.¹⁶⁴ According to nurse Tinny Abogado, however, "[y]ou don't really accumulate knowledge until the day you start working as a bedside nurse. You can put a Ph.D. nurse and an experienced [two-year associate's degree] nurse in that room, and if I'm the patient, I want the [associate's degree] nurse."¹⁶⁵ Coincidentally, the ANCC had plans to sell nurses "a new credential designed to evaluate and enhance well-being among nursing and health care teams," and hosted a competition with a raffle prize for the nurses who submitted names for the proposed credential.¹⁶⁶

2. Nondegree Credentials Fail the Most Disadvantaged Workers

Short-term nondegree credentials are not a bypass of the higher education system; instead they reflect similar problems as in higher education, only worse. A 2021 study focused exclusively on people with both a nondegree credential obtainable in less than fifteen weeks and an education level above high school but below an associate's degree.¹⁶⁷ The findings were dismal; 41% remained unemployed (45% for Black people), half of those who were employed earned \$30,000 or less with the plurality (18%) earning \$10,000 or less, and 39% of the employed believed their current job was not related to their credential.¹⁶⁸ Meanwhile, these

162. See ANCC Magnet Recognition Program, NURSING WORLD: AM. NURSES CREDENTIALING CTR., <https://www.nursingworld.org/organizational-programs/magnet> [<https://perma.cc/847U-X3LT>] (last visited May 9, 2025); Blake Pinto, *How the Magnet Recognition Program Is Affecting Registered Nurses*, THE CHIC. SCH.: INSIGHT MAG. (Dec. 9, 2024), <https://thechicagoschool.edu/insight/health-care/how-is-magnet-program-affecting-registered-nurses> [<https://perma.cc/SJ24-AKAA>].

163. See Christopher Buchanan & Jacqueline Munis, *Tired of the Waiting Lists for California's Public Universities, Nursing Students Increasingly Turn to Expensive Private Programs*, CALMATTERS (Dec. 18, 2023), <https://calmatters.org/education/higher-education/college-beat/2023/12/nursing-students> [<https://perma.cc/B8FH-8UZM>]; Denise Dador, *West Coast University's Growing Enrollment Under Fire as California Braces for Nursing Shortage*, ABC7 NEWS (Nov. 11, 2023), <https://abc7.com/west-coast-university-nurse-enrollment-california-nursing-programs/14041957> [<https://perma.cc/57Z9-QRGH>].

164. Lucy Diavolo, *Keeping Up Appearances*, NAT'L NURSE, Apr., May, June 2023, at 14, 15.

165. *Id.* at 19.

166. See E-mail from Christine Pabico, Dir., Pathway to Excellence, Am. Nurses Credentialing Ctr. (May 17, 2024, 3:52 PM EDT) (on file with author).

167. MONIQUE O. OSITELU, NEW AM., FIVE THINGS POLICYMAKERS SHOULD KNOW ABOUT SHORT-TERM CREDENTIALS 6–7 (2021), https://d1y8sb8igg2f8e.cloudfront.net/documents/Five_Things_Policymakers_Should_Know_About_Short-Term_Credentials.pdf [<https://perma.cc/7U8E-A6B5>].

168. See *id.* at 10, 13–15 (noting that most people still believed that their credentials were helpful for getting a job, but that participants were evenly split about whether the credentials increased wages).

trainees frequently spend time and take on debt to finance the credentials, making them worse off than had they not obtained the credentials.¹⁶⁹

“Massive open online courses” (MOOCs), the most easily accessible nondegree credentials, are emblematic of the problems with nondegree credentials. There are over 12,000 MOOCs available online, with offerings from both universities and firms all over the world.¹⁷⁰ MOOCs act as a marketing tool for increasing enrollment in traditional higher education and can be quite profitable for all credential providers.¹⁷¹ Postsecondary education providers also partner with firms to offer online programs and are sometimes accused of becoming “diploma mills.”¹⁷² For example, students sued the University of Southern California for allegedly outsourcing a university-branded online master’s in social work program to a for-profit education company, 2U, and deceiving students by claiming it was the same academic program as the on-campus program.¹⁷³ Even more troubles arose when 2U later declared bankruptcy, as it was one of the nation’s largest online education companies, also known as “online program managers.”¹⁷⁴

Other credential providers partner exclusively with employers to design MOOCs around that employer’s proprietary software, another example of Gary Becker’s “firm-specific” training.¹⁷⁵ For example, virtually every certificate offered by the nation’s largest MOOC provider, Coursera,¹⁷⁶ is tied either to a university or a private company such as Google, Meta, or Amazon.¹⁷⁷ Historically, Microsoft and Cisco were two of the earliest firms to offer branded professional certifications, with Google implementing its first IT certificate in 2018 through Coursera.¹⁷⁸ Professional certifications offered by Coursera take around three to six months to

169. See, Fishman, *supra* note 49.

170. See Irena Galikyan et al., *MOOC Discussion Forums: The Interplay of the Cognitive and the Social*, COMPUTS. & EDUC., May 2021, at 1, 1.

171. See Jonatan Castaño-Muñoz & Margarida Rodrigues, *Open to MOOCs? Evidence of Their Impact on Labour Market Outcomes*, COMPUTS. & EDUC., Nov. 2021, at 1, 2.

172. See *USC Ends Partnership with 2U After Graduate Social Work Students Sue over Online MSW “Diploma Mill,”* PROJECT ON PREDATORY STUDENT LENDING (Nov. 10, 2023), <https://www.ppsl.org/news/statement-usc-ends-partnership-with-2u-after-graduate-social-work-students-sue-over-online-msw-diploma-mill> [https://perma.cc/XFU5-3JCY]; STUDENT BORROWER PROT. CTR., *SELLING OUT STUDENTS: A CASE STUDY IN BRAND-NAME SCHOOLS PARTNERING WITH FOR-PROFIT SCAMMERS TO MAKE A BUCK 3–4* (2023), <https://protectborrowers.org/wp-content/uploads/2023/03/Selling-Out-Students.pdf> [https://perma.cc/A9FH-CRXB] (describing how Dominican University partnered with Make School, Inc. to allow the for-profit firm to use the university’s name to receive federal student loan proceeds for subpar education).

173. See PROJECT ON PREDATORY STUDENT LENDING, *supra* note 172.

174. See Danielle Douglas-Gabriel, *Maryland-Based Online Education Giant Files Bankruptcy*, WASH. POST (July 25, 2024, 6:21 PM), <https://www.washingtonpost.com/education/2024/07/25/2u-online-education/>; Tariq Habash, *The Potential Fallout of 2U’s Bankruptcy: A Harsh Reality for Students*, STUDENT BORROWER PROT. CTR. (Aug. 7, 2024), <https://protectborrowers.org/the-potential-fallout-of-2us-bankruptcy-a-harsh-reality-for-students> [https://perma.cc/HBE8-2VAH].

175. See BECKER, *supra* note 55, at 33, 35, 40.

176. See Rivas et al., *supra* note 85, at 2.

177. See *Meet our Partners*, COURSERA, <https://www.coursera.org/partners> [https://perma.cc/5HVT-677J] (last visited May 9, 2025).

178. See PAUL FAIN, *INSIDE HIGHER ED, ON-RAMPS AND OFF-RAMPS: ALTERNATIVE CREDENTIALS AND EMERGING PATHWAYS BETWEEN EDUCATION AND WORK* 5, 18 (2018).

complete and cost around \$250.¹⁷⁹ Outside of the designated “free course” section, Coursera courses require “free enrollment” before telling the learner the cost of the certificate.¹⁸⁰ The frequently asked questions section of the website, however, notes that there is a subscription fee which will add up to roughly \$300 over the time needed to complete the course.¹⁸¹ This echoes the general lack of transparency with nondegree credentials.

Perhaps most importantly, hiring managers do not value MOOCs anywhere near the level that they value bachelor’s degrees.¹⁸² This preference could stem from beliefs that MOOCs are illegitimate or ineffective, partially due to the lack of the interpersonal aspect of learning that makes up a large portion of true cognition and workplace skills.¹⁸³ Tellingly, one of the only studies finding tangible career benefits from MOOCs was conducted by Coursera stakeholders and was based on learners’ self-reported data.¹⁸⁴ Even in this study, only 3% of workers reported an increase in pay, and 3% reported a promotion resulting from the MOOC.¹⁸⁵

Concerningly, credentialism disproportionately harms people of color. Higher education scholar Julietta Morgan and economist Marshall Steinbaum provide four main reasons for this.¹⁸⁶ First, overall, students of color still lack the access that white students have to better educational institutions; those institutions and the networks that derive from them provide the most direct routes to well-paying jobs.¹⁸⁷ Second, while each subsequent generation in the United States is becoming more educated, credentialism has meant that each level of education is less well-paid.¹⁸⁸ People of color have less intergenerational wealth—both on an individual and a community basis—making the cost of the additional required education and debt incurred to finance such education disproportionately burdensome.¹⁸⁹ Third, people of color experience discrimination in credit offerings,

179. Rivas et al., *supra* note 85, at 2.

180. See Hillary Grigonis, *Coursera pricing: Comparing costs and best courses*, BUS. INSIDER (Jan. 3, 2025, 3:31 PM) <https://www.businessinsider.com/guides/learning/coursera-pricing-and-best-courses>.

181. See *Google Data Analytics Professional Certificate*, COURSERA, <https://www.coursera.org/professional-certificates/google-data-analytics> [<https://perma.cc/SPU3-ZY2A>] (last visited May 9, 2025) (scroll down to “Frequently asked questions”; then choose “How much does this certificate cost?” from the listed options).

182. See Rivas et al., *supra* note 85, at 3.

183. See *id.* at 3; Stephen Billet, *Learning Through Work: Exploring Instances of Relational Interdependencies*, 47 INT’L J. EDUC. RSCH. 232, 233–34 (2008); Karsten Zegwaard, Richard K. Coll & Dave Hodges, *Assessment of Workplace Learning: A Framework*, 4 ASIA-PAC. J. COOP. EDUC. 10, 11–12 (2003).

184. See Chen Zhenghao et al., *Who’s Benefiting from MOOCs, and Why*, HARV. BUS. REV. (Sept. 22, 2015), <https://hbr.org/2015/09/whos-benefiting-from-moocs-and-why> [<https://perma.cc/2GQ9-TK64>] (listing authors of the study including the president and co-founder of Coursera, two in-house data scientists, and two university administrators whose schools offer courses on Coursera).

185. See *id.*

186. See MORGAN & STEINBAUM, *supra* note 17, at 4, 31.

187. See *id.* at 32.

188. See *id.* at 4.

189. See *id.* at 4, 6, 30–32.

especially in private education loans that are often used to finance credentials.¹⁹⁰ Fourth, job applicants of color must generally hold more and more expensive credentials to overcome continuing racial discrimination in hiring.¹⁹¹ Notably, even credential accumulation may not be enough; researchers have projected that Black male workers with some amount of college fare no better in labor markets than white male workers without a high school diploma.¹⁹²

Nondegree credentials can be especially problematic for people of color. For example, Black and Latine students disproportionately enroll in short-term nondegree credential programs, even though the bachelor's degree remains one of the best tools to reduce the racial wealth gap.¹⁹³ One researcher has described this stratification as “a White flight to the bachelor's degree.”¹⁹⁴ Moreover, even those Black and Latine workers holding short-term nondegree certificates earn \$10,000 to \$20,000 less yearly than their white peers with similar credentials.¹⁹⁵

One may argue that meritocracy is at least a better societal framework than the familial inheritance frameworks that preceded it. And meritocracy through credentialism can help alleviate the problem of nepotism, at least initially.¹⁹⁶ That is, credentialism is seen as a better way to select job candidates than based on one's race, gender, or other protected traits. It is indeed true that credentialism may alleviate some forms of facially racist hiring practices and nepotistic legacies of dynastic inheritance. Nevertheless, credentialism and its meritocracy narrative encourage a new form of nepotism and a social structure that, in many ways, reinforces existing class and racial hierarchies. Given that wealth has itself become a qualification for access to rarefied institutions, meritocratic elites use their great wealth to buy elite credentials for their offspring to maintain the familial dynasty.¹⁹⁷ Those elites are also predominantly white.¹⁹⁸

3. Bogus Credentials Proliferate

Saturating the nondegree credential market are bogus credentials that are deceptively marketed and provide little or no value to workers while frequently burying them in debt. Indeed, debt accumulation together with the opportunity

190. *See id.* at 31.

191. *See id.*

192. *See* O'SULLIVAN ET AL., *supra* note 26, at 5.

193. *See* Fishman, *supra* note 49. The term “Latine (lah-TEE-ney)” is used in this Article because it “is easy for Spanish speakers to use, and it's gender-neutral.” Christina Baker, César Cabezas, & Augusto Lorenzino, *Hispanic, Latino/a, Latinx or Latine? Find Out How to Use the Terms*, TEMPLE NOW (Oct. 8, 2024), <https://news.temple.edu/news/2024-10-08/hispanic-latinoa-latinx-or-latine-find-out-how-use-terms>.

194. *See id.*

195. *See* OSITELU, *supra* note 167, at 11.

196. *See* MARKOVITS, *supra* note 1, at 17.

197. *See id.*; Bhatia et al., *supra* note 1.

198. *See* Eric Levitz, *Harvard's Affirmative Action for Rich Whites Exposes Myth of Meritocracy*, N.Y. MAG.: INTELLIGENCER (Sept. 30, 2019), <https://nymag.com/intelligencer/2019/09/harvard-affirmative-action-white-people-meritocracy.html> (“While 43 percent of white Harvard students were athletes, legacies, or the children of faculty or donors, less than 16 percent of their nonwhite peers fit into one of those favored categories.”).

cost of time and effort expended on credentials are common throughlines in the story of credentialism. Some of the best-known examples of bogus credentials are degrees from private for-profit colleges and institutes that promise career opportunities and class mobility while indebting students and all the while, profiting from federal student aid funding.¹⁹⁹ For four decades, cosmetology and beauty schools have been accused of predatory practices while benefiting from generous government subsidies.²⁰⁰ This has been especially true for those schools that partner exclusively with a single employer as the only workplace where a student can fulfill licensure experiential requirements while receiving no compensation and paying tuition for the so-called opportunity.²⁰¹

Since at least the 1930s, job training providers have sold bogus credentials to workers with false promises of job placements.²⁰² Two of the more recent types of bogus credentials are training repayment agreement provisions (TRAPs) and income share agreements (ISAs).²⁰³ TRAPs require an employee or trainee “to pay the employer a fixed or pro rata sum if the employee received on-the-job training and quits work or is fired within a set period of time.”²⁰⁴ ISAs lend “a certain amount of training on the condition that trainees repay . . . [a] percentage of their future income,” rather than a fixed sum up front.²⁰⁵

Many TRAPs involve training that is of little value to the employee, yet include high repayment amounts wholly unrelated to the value of the training. For instance, a TRAP required of entry-level financial advisor trainees had a \$75,000 repayment amount if the worker quit or was fired within three years.²⁰⁶ The training was comprised of preparation classes for two standardized tests

199. See, e.g., Ayelet Sheffey, *5 of the Biggest For-Profit Colleges That Were Accused of Defrauding Their Students*, BUS. INSIDER (Mar. 23, 2021, 1:46 PM), <https://www.businessinsider.com/for-profit-colleges-alleged-fraud-student-loans-debt-cancellation-education-2021-3>; see also “Unconscionable” Debt-for-Training Scheme Funnels Low-Wage Tech Workers to Fortune 500 Companies; Groundbreaking Class-Action Lawsuit Seeks to Void Predatory Training Repayment Agreement Provisions, STUDENT BORROWER PROT. CTR. (Apr. 14, 2023), <https://protectborrowers.org/unconscionable-debt-for-training-scheme-funnels-low-wage-tech-workers-to-fortune-500-companies-groundbreaking-class-action-lawsuit-seeks-to-void-predatory-training-repayment-agreement-provisions> [https://perma.cc/A29H-YQVY]; MCMILLAN COTTOM, *supra* note 62, at 32.

200. See, e.g., Walter Pincus, *Want to Study Cosmetology? ‘Government Grants Available,’* WASH. POST May 6, 1978, at A6.

201. See *Benjamin v. B & H Educ., Inc.*, 877 F.3d 1139, 1147–48 (9th Cir. 2017) (ruling that cosmetology students fulfilling experiential hours requirement without pay were not employees under Fair Labor Standards Act and therefore ineligible for pay); Meredith Kolodner & Sarah Butrymowicz, *A \$21,000 Cosmetology School Debt, and a \$9-an-Hour Job*, N.Y. TIMES (Dec. 26, 2018), <https://www.nytimes.com/2018/12/26/business/cosmetology-school-debt-iowa.html>; MCMILLAN COTTOM, *supra* note 62, at 47–50.

202. See Harris, *History Absolves the FTC*, *supra* note 36; see also Harris, *Consumer Law as Work Law*, *supra* note 34, at 30 n.187 (collecting cases of Federal Trade Commission actions against correspondence schools that deceptively promised quality training and job placements).

203. See Harris, *Consumer Law as Work Law*, *supra* note 34, at 5; see also Harris, *Unconscionability*, *supra* note 18, at 724–25 (noting that employers are increasingly requiring “conditional training contracts” for job training).

204. Harris, *Unconscionability*, *supra* note 18, at 725–26.

205. *Id.* at 726.

206. See *id.* at 743.

required of all financial advisors, but a trainee or employee could have purchased such test preparation on their own for less than \$1,000.²⁰⁷ Indeed, employers have revealed that the main purpose of their TRAPs is not to recover costs for valuable skills training but instead to force workers to stay.²⁰⁸

Likewise, ISAs have been criticized for providing little training of value when compared with the hefty future repayment amounts post-employment, sometimes approaching 17% of a trainee's annual salary.²⁰⁹ ISAs are particularly common among short-term computer coding bootcamps, which again, provide completion certificates but not degrees.²¹⁰ Many bootcamp operators have been accused of providing inferior training, much of which could be obtained for free online.²¹¹ ISA bootcamp trainees are typically promised well-paid job placements and a zero-repayment obligation until they receive a job, but as discussed above, employers usually prefer to hire those with bachelor's degrees.²¹²

Bogus credentials are particularly harmful to people of color and immigrants. As discussed above in Section II.A.2, Black and Latine people are already disproportionately burdened by debt, particularly student debt.²¹³ Close to 19% of all Black families and over 11% of all Latine families have more household debt than assets, compared with over 10% nationally.²¹⁴ Many sectors that rely on TRAPs hire greater numbers of people of color and immigrants than white

207. See *id.* at 762.

208. See, e.g., Mitchell Hoffman & Stephen V. Burks, *Training Contracts, Employee Turnover, and the Returns from Firm-Sponsored General Training* 6–7 (Nat'l Bureau of Econ. Rsch, Working Paper No. 23247, 2017); cf. Philip J. Siegel, *Protect Your Investment*, PRO. ROOFING (Nov. 2019), <https://www.professionalroofing.net/Articles/Protect-your-investment—11-01-2019/4566> [<https://perma.cc/NA32-WGZY>] (recommending TRAPs as workarounds to traditional noncompetes to accomplish the same goal of forced employee retention in a way that will face less scrutiny than a traditional noncompete).

209. See Harris, *Unconscionability*, *supra* note 18, at 767–68.

210. See Emma Rindlisbacher, *The Coding Bootcamp Trap*, MEDIUM: ONEZERO (Jan. 26, 2021), <https://onezero.medium.com/recent-grads-are-being-lured-into-indentured-servitude-by-a-coding-bootcamp-8a3b2b8e87e8>; Harris, *Unconscionability*, *supra* note 18, at 767.

211. See Zoë Schiffer & Megan Farokhmanesh, *The High Cost of a Free Coding Bootcamp*, VERGE (Feb. 11, 2020, 11:15 AM), <https://www.theverge.com/2020/2/11/21131848/lambda-school-coding-bootcamp-isa-tuition-cost-free> [<https://perma.cc/2FYZ-ZJJ7>]; Vincent Woo, *Lambda School's Misleading Promises*, N.Y. MAG.: INTELLIGENCER (Feb. 19, 2020), <https://nymag.com/intelligencer/2020/02/lambda-schools-job-placement-rate-is-lower-than-claimed.html>.

212. See Parise, *supra* note 159; CFPB and 11 States Order Prehired to Provide Students More than \$30 Million in Relief for Illegal Student Lending Practices, CFPB (Nov. 20, 2023, 12:46 PM) <https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-11-states-order-prehired-to-provide-students-more-than-30-million-in-relief-for-illegal-student-lending-practices> [<https://perma.cc/SW5A-ZUQ8>] (announcing CFPB order closing ISA provider for its deceptive promises of a “job guarantee” with “six-figure salaries”).

213. See Aissa Canchola & Seth Frotman, *The Significant Impact of Student Debt on Communities of Color*, CFPB (Sept. 15, 2016), <https://www.consumerfinance.gov/about-us/blog/significant-impact-student-debt-communities-color> [<https://perma.cc/NVF4-36SF>]; see also Ben Miller, *The Continued Student Loan Crisis for Black Borrowers*, CTR. FOR AM. PROGRESS (Dec. 2, 2019), <https://www.americanprogress.org/article/continued-student-loan-crisis-black-borrowers> (observing that, for students who entered college in 2003, half of all Black student loan borrowers defaulted within twelve years).

214. See TASHFIA HASAN ET AL., ASPEN INST. FIN. SEC. PROGRAM, DISPARITIES IN DEBT: WHY DEBT IS A DRIVER IN THE RACIAL WEALTH GAP 2 (2022), https://www.aspeninstitute.org/wp-content/uploads/2022/02/FINAL-ASP-FSW_Disparities-in-Debt_020722-3.pdf [<https://perma.cc/PBD2-SKDC>].

people, such as trucking where almost half of all drivers are Black or Latine.²¹⁵ And many ISA bootcamps explicitly target their financial products to communities of color and low-income communities.²¹⁶ They have also been found to charge varied repayment terms that require higher repayments from those attending Historically Black Colleges and Universities (HBCUs), all other factors being equal.²¹⁷

This has led to accusations of “reverse redlining,” where the harm comes from targeting predatory credit products at communities of color rather than from denials of credit to those communities.²¹⁸ For example, just as lenders have targeted high-cost mortgages at Black and Latine potential homebuyers,²¹⁹ ISAs are often targeted at those communities, under the guise of providing economic mobility to students of color.²²⁰ But if the product is not designed with the student’s interests at heart, it could lead to the indebtedness of the student with little upside.

TRAPs and ISAs often rely on a particular subtheme of the meritocracy narrative: the American Dream story. The American Dream story is explicitly targeted at—and resonant within—immigrant communities.²²¹ This story promises social mobility for immigrants who work hard and sacrifice.²²² For example, Avant, a health care staffing agency that uses TRAPs to recruit workers from overseas, leans heavily on American Dream tropes.²²³ In fact, in its step-by-step overview of the recruitment process, Avant lists as the last step the “American Dream.”²²⁴

Latoya Lewis, a nurse from Jamaica, said that she signed a TRAP to work for Avant because of its promise of the American Dream and her “belief that in America it doesn’t matter who you are or where you come from if you come with

215. Int’l Bhd. of Teamsters, Comment Letter on Employer-Driven Debt Request for Information 4–5 (Sept. 23, 2022), <https://www.regulations.gov/comment/CFPB-2022-0038-0055> [<https://perma.cc/VGE6-C49F>].

216. See Harris, *Unconscionability*, *supra* note 18, at 767 & n.308.

217. See STUDENT BORROWER PROT. CTR., INEQUITABLE STUDENT AID: A CASE STUDY OF DISPARATE LENDING PRACTICES AND EDUCATIONAL REDLINING TACTICS IN THE MARKET FOR INCOME SHARE AGREEMENTS 3–4 (2021), https://protectborrowers.org/wp-content/uploads/2021/03/SBPC_Inequitable-Student-Aid.pdf [<https://perma.cc/BV5U-6ZKA>].

218. See Stephen Hayes & Alexa Milton, Solving Student Debt or Compounding the Crisis? Income Share Agreements and Fair Lending Risks 7–9 (July 2020) (unpublished manuscript) (on file with Student Borrower Protection Center Emerging Risks Series).

219. Gillian B. White, *Why Blacks and Hispanics Have Such Expensive Mortgages*, ATLANTIC (Feb. 25, 2016), <https://www.theatlantic.com/business/archive/2016/02/blacks-hispanics-mortgages/471024> (noting that high-cost home loans are targeted at communities of color and describing particular effects of the subprime loan crisis on the Black and Hispanic populations).

220. See Harris, *Unconscionability*, *supra* note 18, at 767–68 (quoting the advertising of an ISA lender and computer coding trainer that claims to turn “blue-collar worker[s] [in]to software engineer[s]” (alteration in original)).

221. See Rachel F. Moran, *What if Latinos Really Mattered in the Public Policy Debate?*, 85 CALIF. L. REV. 1315, 1323 (1997).

222. See *id.* (describing an “American Dream” narrative for “good immigrant[s]” that resonates in both popular imagery and policy arenas, even if it is inaccurate).

223. See Second Amended Collective Action & Class Action Complaint at 1–2, 4, 22, Byron v. Avant Healthcare Pros., LLC, No. 6:23-cv-01645 (M.D. Fla. Dec. 7, 2023).

224. *Id.* at 4; *Our Recruitment Process*, AVANT HEALTHCARE PROS., <https://avanthealthcare.com/nursing-jobs-usa/the-process.html> [<https://perma.cc/SW3Z-GNRH>] (last visited May 9, 2025).

the intention to work hard and lift up your life.”²²⁵ Instead, she claimed that she found grueling and isolating working conditions with poor pay in the United States.²²⁶ Moreover, the TRAP allegedly required her to pay back tens of thousands of dollars if she failed to work for Avant for a total of over 6,000 hours, and the four- to six-week “training” period in Florida did not count toward the hours.²²⁷ In addition to the TRAP’s threat of financial ruin, Ms. Lewis alleged that Avant threatened her with immigration consequences if she stopped working.²²⁸ In these ways, the TRAP calls up notions of indentured servitude, another historical experience common among both formerly enslaved Black people and immigrants promised the American Dream.²²⁹

Ms. Lewis and other nurses sued Avant, claiming labor trafficking, wage theft, and a RICO conspiracy.²³⁰ In response, Avant called the lawsuit “malicious” and maintained that the company “allowed [plaintiffs] to realize the American Dream.”²³¹ Similarly, some health care recruiting agencies require managers to read scripts to workers considering quitting, emphasizing that they have gifted the worker the American Dream, which is not always easy but is a once-in-a-lifetime opportunity.²³²

4. Required Credentials Fluctuate with Labor Market Demand More than Skill Demands

Employers’ credential requirements are tethered less to the actual skills needed for a job than to the slackness of the labor market at any given time. A monumental 2019 study found that when job seekers are more plentiful “employer requirements rise for both education and experience—even when controlling for time, occupation, and state fixed effects among other covariates.”²³³ In other words, when conditions are relatively bad for workers and unemployment is high, employers demand more credentials for the same job, even if the job itself has not changed. This is known as a “cyclical” change, as opposed to a “structural” change that corresponds

225. See Second Amended Collective Action & Class Action Complaint, *supra* note 223, at 22.

226. See *id.* at 24–25.

227. *Id.* at 2, 6–7.

228. *Id.* at 23, 26, 38–39.

229. See *id.*; Maria L. Ontiveros, “Liquidated Damages” in *Guest Worker Contracts: Involuntary Servitude, Debt Peonage or Valid Contract Clause?*, 19 NEV. L.J. 413, 416, 431 (2018) (explaining the application of the Thirteenth Amendment of the U.S. Constitution to immigrant guest workers’ forced labor); Kathleen Kim, *The Coercion of Trafficked Workers*, 96 IOWA L. REV. 409, 418–20 (2011) (describing the post-Civil War contractual coercion of Black workers and the genesis of legislation and case law prohibiting debt peonage). See generally James Gray Pope, *Contract, Race, and Freedom of Labor in the Constitutional Law of “Involuntary Servitude,”* 119 YALE L.J. 1474 (2010). A future article will examine the question of whether these and other similar restrictive covenants reflect new forms of indentured servitude that could implicate the Thirteenth Amendment and derivative laws like the Trafficking Victims Protection Act, 18 U.S.C. §§ 1589–90, 1595.

230. See Second Amended Collective Action & Class Action Complaint, *supra* note 223, at 1–2, 51.

231. Motion to Dismiss Second Amended Complaint at 25, *Byron v. Avant Healthcare Pros., LLC*, No. 6:23-cv-01645 (M.D. Fla. Dec. 20, 2023).

232. Telephone Interview with David Seligman, Executive Dir., Towards Justice (Jan. 4, 2024) (on file with author).

233. See Modestino et al., *supra* note 16, at 26.

with the actual skills required in a job.²³⁴ For example, during the years 2007 to 2012, which coincided with the Great Recession, credential requirements increased dramatically.²³⁵

One may reasonably argue that employers should have a right to be pickier when labor is more abundant. Moreover, just because credentials serve as noisy proxies for productive workers does not mean that they convey no information. For example, researchers have discussed the signaling benefits of completing credential programs for formerly incarcerated individuals reentering the labor force.²³⁶ Specifically, they argue that credential completion can signal the soft skills that predict one's ability to comply with the institutional requirements of a workplace over time.²³⁷ And as discussed above in Part I, employers purport to prioritize such "soft skills": commitment to a job, time management, reliability, and the like.

Furthermore, it is possible that improving the quality of the signal from credentials is more expensive than the cost of the information's imperfections. And because one's ability to perform a job is not a binary yes or no, but instead often a matter of degree, variation in employer reliance on credentials does not imply their complete irrelevance.

All of this is true, of course. These arguments, however, assume that (1) employers are rational actors and (2) employers invest substantial thought and resources into their hiring and retention processes. As for the first assumption, many employers are unable to articulate the reason for raising credential requirements, other than because credential providers and the meritocracy narrative declare that stacked credentials are good and safe proxies for productive workers. They, like workers, rely on credential providers to be scrupulous and discriminating in the credentials they sell. This is simply not the case when, as articulated above in Part I, those providers offer over a million unique credentials and continuously invent new ones to enhance revenues.²³⁸

As for the second assumption, employers routinely complain that they lack the time and resources to invest in hiring and retention, and use credentials to narrow large pools of applicants.²³⁹ Most employers, relying on credential providers, are probably not considering which credentials are the most likely to offer some

234. See JOSEPH B. FULLER ET AL., THE EMERGING DEGREE RESET, BURNING GLASS INST. 3–4, 6, 9–10 (2022) <https://static1.squarespace.com/static/6197797102be715f55c0e0a1/t/6202bda7f1ceee7b0e9b7e2f/1644346798760/The+Emerging+Degree+Reset+%2822.02%29Final.pdf> [<https://perma.cc/6YNU-LRPC>] ("Employers who had not asked for a four-year college degree historically started adding college degrees as minimum education requirements even for jobs that had not materially changed.")

235. See *id.* at 7.

236. See Shawn D. Bushway & Robert Apel, *A Signaling Perspective on Employment-Based Reentry Programming: Training Completion as a Desistance Signal*, 11 CRIMINOLOGY & PUB. POL'Y 21, 23, 34 (2012).

237. See *id.* at 23, 36, 40.

238. See discussion *supra* Section I.B.

239. See Sydney Ember & Ben Casselman, *Wave of Job-Switching Has Employers on a Training Treadmill*, N.Y. TIMES (Jan. 3, 2023), <https://www.nytimes.com/2023/01/03/business/economy/job-turnover-productivity.html>; *Re-Thinking Entry-Level Job Requirements Can Connect Employers with the*

useful information for their specific workplace and may be culling the candidate pool using the wrong credentials. And, as discussed above in Part I, credentialism touts that more is better and leads to credential inflation.²⁴⁰

As proof of such labor market-driven credential inflation, one study found that in 2013—during the Great Recession—only 26% of incumbent credit authorizers, checkers, and clerks held a bachelor's degree, but 66% of new postings for those positions required the degree.²⁴¹ Similarly, only 19% of incumbent executive assistants and secretaries held such degrees, but 65% of new postings required them.²⁴² And while only 25% of incumbent insurance claims and policy processing clerks held a bachelor's degree, 49% of new postings required them.²⁴³ As some business scholars concluded, “[j]obs do not require four-year college degrees. Employers do.”²⁴⁴

The inverse is also true: when demand for labor increases, credential requirements drop. This was the case starting when the economy strengthened around 2017 and accelerated during and immediately after the COVID-19 pandemic.²⁴⁵ During this period, in sectors with particularly acute labor shortages like nursing and teaching, employers reduced credential requirements.²⁴⁶ The effects were positive in some sectors, with more workers entering those in-demand fields.²⁴⁷

Indeed, efforts are underway to make credential requirements responsive to the demands of the job rather than fluctuations in the tightness of the labor market. Some employer groups and business-funded think tanks have launched campaigns to reduce credentialism, nominally in the name of helping job seekers but still appealing to the meritocracy narrative. Opportunity@Work, founded by McKinsey management consulting alums, is a nonprofit with the dual goals of

Right Talent, GENERATION, <https://www.generation.org/news/re-thinking-entry-level-job-requirements-can-connect-employers-with-the-right-talent> [<https://perma.cc/YD8U-CMB9>] (last visited May 9, 2025).

240. See *supra* note 68 and accompanying text.

241. BURNING GLASS TECHS., MOVING THE GOALPOSTS: HOW DEMAND FOR A BACHELOR'S DEGREE IS RESHAPING THE WORKFORCE 5 (2014), https://lerna.courses/wp-content/uploads/Moving_the_Goalposts.pdf [<https://perma.cc/M9AG-6FN8>].

242. *Id.*

243. *Id.*

244. FULLER ET AL., *supra* note 234, at 4.

245. See *id.* at 4, 8 (finding that employers dropped bachelor's degree requirements in many low, middle, and high-skill roles).

246. See, e.g., Maggie Mancini, *To Reduce Hospital Staffing Shortages, Pennsylvania to Allow Out-of-State Nurses to Practice*, PHILLY VOICE (Aug. 23, 2023), <https://www.phillyvoice.com/pennsylvania-nurse-license-shortage-nlc-> [<https://perma.cc/AN3C-LHK4>] (reporting that, to respond to a nursing shortage, Pennsylvania dropped its requirement that nurses be licensed in-state as long as the nurse was licensed in another recognized state); Moriah Balingit, *Wanted: Teachers. No Training Necessary.*, WASH. POST (Sept. 13, 2022, 2:51 PM), <https://www.washingtonpost.com/education/2022/09/13/teacher-requirements-shortage-jobs> (commenting that some schools dropped college degree requirements for teachers in response to shortages).

247. See, e.g., Diana Lambert, *Number of New California Teacher Credentials Declines After Seven Years of Increases*, EDSOURCE (June 8, 2023), <https://edsources.org/2023/number-of-california-teacher-credentials-down-after-seven-years-of-increases/692024> [<https://perma.cc/SY8K-QVRA>] (remarking that waiving some credential requirements could have explained the growing number of California teacher applications through the COVID-19 pandemic).

developing “tech-enabled solutions to solve the opportunity gap” and “rally[ing] public, private, and nonprofit partners to rewire the labor market so that everyone can contribute their skills, talent, and energy in pursuit of a better life.”²⁴⁸

Together with the Ad Council, Opportunity@Work launched a public service advertising campaign entitled “Tear the Paper Ceiling,” meant to highlight the plight of job seekers without four-year degrees, called “STARS” (“Skilled Through Alternative Routes”).²⁴⁹ The campaign claims support from over sixty entities representing some of the largest firms in the country like Walmart and Google, management consultants like McKinsey, fully online universities like Western Governors University (WGU), and for-profit short-term nondegree credential providers like General Assembly.²⁵⁰ Tellingly, not a single STARS “partner” is a union or worker organization.²⁵¹

Some of the entities that could profit the most from the Tear the Paper Ceiling campaign are the short-term nondegree credential providers affiliated with the campaign. One of them, General Assembly, is an online computer coding bootcamp with financing mechanisms that student borrower advocates have called usurious.²⁵² Another, Guild, is a short-term credential provider that partners with employers to offer online training to their employees, with the “tuition” costs shared between the employer and employee and no “up-front” employee payment.²⁵³ Guild, however, has been accused of providing subpar training while evading the U.S. Department of Education’s oversight of third-party loan servicers.²⁵⁴

248. *About Opportunity@Work*, OPPORTUNITY@WORK, <https://www.opportunityatwork.org/about-us> [https://perma.cc/X2XD-AEDE] (last visited May 9, 2025).

249. *See Coalition of Nearly 50 Organizations Launches ‘Tear the Paper Ceiling’ Campaign to Raise Awareness Around the 70+ Million Workers in the U.S. Skilled Through Alternative Routes (STARS)*, AD COUNCIL (Oct. 3, 2022), <https://www.adcouncil.org/press-releases/coalition-of-nearly-50-organizations-launches-tear-the-paper-ceiling-campaign-to-raise-awareness-around-the-70-million-workers-in-the-u-s-skilled-through-alternative-routes-stars> [https://perma.cc/QF7Q-B6QK]; *see also* Scott Gullick & Brian Matthew Rhodes, *Tearing the Paper Ceiling: Identifying the Legal Levers to Rewire the Labor Market*, AM. BAR ASS’N HUM. RTS. MAG. (Oct. 31, 2023), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/labor-and-employment-rights/tearing-the-paper-ceiling-identifying-the-legal-levers-to-rewire-the-labor-market (stating in an article penned by Opportunity@Work leaders that the group’s CEO Byron Auguste believes “[i]f a company doesn’t have a STARS talent strategy, then it only has half a talent strategy”).

250. *United in Tearing the Paper Ceiling*, STARS, <https://www.teartheperceiling.org/meet-our-partners> [https://perma.cc/K2K5-ZTLN] (last visited May 9, 2025); *see also 5 Things We’ve Learned as an Online University*, W. GOVERNORS UNIV. (May 13, 2020), <https://www.wgu.edu/blog/5-things-learned-online-university2005.html> [https://perma.cc/32WR-9QJT].

251. *See* STARS, *supra* note 250.

252. *See What is an Income Share Agreement? (ISA)*, GEN. ASSEMBLY (Oct. 14, 2020), <https://generalassemb.ly/blog/what-is-an-income-share-agreement> [https://perma.cc/3EVP-T44V]; BEN ROESCH & BEN KAUFMAN, STUDENT BORROWER PROT. CTR., MEMORANDUM RE: UNFAIR, DECEPTIVE, AND ABUSIVE ACTS AND PRACTICES IN THE SERVICING OF VOID AND UNENFORCEABLE ISAs 6–7 (2021), https://protectborrowers.org/wp-content/uploads/2021/06/SBPC_ISA-Servicing-Memo.pdf [https://perma.cc/M25F-GXYC] (accusing General Assembly’s ISA of charging usurious interest rates).

253. *FAQs*, GUILD, <https://www.guild.com/faq> [https://perma.cc/LS6M-NEAC] (last visited May 9, 2025).

254. *See* Student Borrower Prot. Ctr., Comment Letter on Requirements and Responsibilities for Third-Party Servicers and Institutions 3–4 (Mar. 30, 2022), https://protectborrowers.org/wp-content/uploads/2023/03/SBPC_Final_ED-DCL-March-2023.pdf [https://perma.cc/8DXS-YB32].

As for the incentive for some of the nation's largest employers' involvement in the Tear the Paper Ceiling campaign, one educator surmised the following:

The pitch here is also for “skills-based hiring,” which is the employment side of competency[-]based education and its cousin, “ledger”-style cradle-to-career pipeline stuff, where you collect a bunch of “I can do X” badges from wherever you will, and employers can sift through the meat widget database of blockchain-stored digital identities to order up whatever configuration of meat widget skill sets they desire. That seems like the better explanation for why Walmart is in on this. . . . [F]or corporate leaders looking for cheaper and easier ways to fill jobs . . . this could be great.²⁵⁵

Obviously, such a result would be bad for workers, especially the STARs that the campaign purports to champion. It could be terrific, however, for the EdTech online credential providers and their venture capital financiers.²⁵⁶

Regardless, the Tear the Paper Ceiling campaign does not seem to be catching on in the private sector.²⁵⁷ While large firms purport to be dropping degree requirements for jobs, a recent study found that they are still overwhelmingly hiring degreed candidates for those jobs.²⁵⁸ This shows both the continued influence of credentialism and the inertia of employers in preferring degreed candidates. Such inertia is particularly difficult to overcome, as one employer renouncing credentialism—in word and in action—may force that employer to lose out, at least in the short term. In other words, a collective action problem exists.

255. Peter Greene, *Should We Tear the Paper Ceiling?*, CURMUDGUCATION BLOG (Jan. 19, 2023), <https://curmudgucation.blogspot.com/2023/01/should-we-tear-paper-ceiling.html> [https://perma.cc/23WJ-U29E]. For a discussion of “skills-biased technological change” (SBTC) theory, see *supra* note 59 and accompanying text.

256. See DIAZ-INFANTE ET AL., *supra* note 31, at 2.

257. It may, however, be catching on in the public sector. The Tear the Paper Ceiling campaign has claimed victories in convincing states to drop degree requirements for state government jobs, as well as in raising public awareness of STARs. See Justin Heck, Blair Corcoran de Castillo, Peter Q. Blair & Papia Debroy, *Tearing the Paper Ceiling: The Impact of State Commitments to Remove Degree Requirements on Public Awareness and Job Opportunities for STARs* 34–36 (Nat'l Bureau of Econ. Rsch., Working Paper No. 33220, 2024), <https://www.nber.org/papers/w33220> [https://perma.cc/3F77-BSJJ]. Relatedly, the Trump II Federal Trade Commission is aiming to reduce occupational licensing requirements for employment. See Memorandum from FTC Chairman Andrew N. Ferguson on Directive Regarding Labor Markets Task Force to Dirs. of Bureau of Competition and Bureau of Consumer Prot., and Acting Dirs. of Bureau of Econs. and Off. of Pol'y Planning 2 (Feb. 26, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/memorandum-chairman-ferguson-re-labor-task-force-2025-02-26.pdf [https://perma.cc/Y7WQ-M2HY].

258. MATT SIGELMAN ET AL., HARV. BUS. SCH. & BURNING GLASS INST., *SKILLS-BASED HIRING: THE LONG ROAD FROM PRONOUNCEMENTS TO PRACTICE* 4, 17 (2024), <https://static1.squarespace.com/static/6197797102be715f55c0e0a1/t/65cc355c4935cb001349a4cd/1707881822922/Skills-Based+Hiring+02122024+vF.pdf> [https://perma.cc/9XJM-8DGT] (finding that, despite an almost fourfold increase in the annual number of jobs where employers removed degree requirements from 2014 to 2023, employers increased their hiring of applicants without a bachelor's degree by only around 3.5%).

5. Credentialism as a Worker Demobilization Project

Credentialism is one of the contributors to the demobilization of U.S. workers over the past half century and, in turn, the disempowerment of unions.²⁵⁹ While other contributors exist, such as corporate globalization, labor market shifts from manufacturing to service work, and firm outsourcing and subcontracting, credentialism is unique in that it convinces workers themselves to act toward their collective disempowerment. Workers are told, via the meritocracy narrative, that individualist and competitive credential stacking is for their own well-being.

Before the rise of credentialism, workers frequently found that the best way to improve their economic conditions was through union organizing. This changed with credentialism during a time when other policies were enacted to discourage union growth.²⁶⁰ Distracting workers from unionizing has also been convenient for politicians on both sides of the political divide, many of whom feel little or no obligation to consider union demands due to unions' diminished political power. One political theorist even argues that individualist and competition-oriented job training policies have helped convince workers that engaging in broader activism outside of the workplace would be against their self-interest.²⁶¹ This, perhaps, can partially explain why both Republican and Democratic policymakers have perpetuated credentialist-driven policies despite the policies' failings for workers.²⁶²

Credentialism became official state policy around the time that the Reagan Administration conveyed that it was willing to break unions through summary dismissal and permanent replacement of over 11,000 striking air traffic controllers.²⁶³ It is no coincidence that the resulting zero-sum credentials arms race has occurred at a time when union density has steadily declined to its lowest level in seven decades.²⁶⁴

Unions used to play important roles in both training workers and placing them in careers through what Dorothy Sue Cobble called "occupational unionism."²⁶⁵ She provided the example of the waitresses' unions of the 1950s, which ran their

259. See LAFER, *supra* note 5, at 17 (arguing that the narrative thread "proceeds through an analysis in which job training [policy] starts out looking like a policy issue and ends up looking like a political strategy").

260. See *supra* Section I.C.

261. See LAFER, *supra* note 5, at 9, 17 ("On a deeper level, the assumptions underlying training policy have encouraged a popular view of the economy in which the political mobilization of workers is irrelevant at best and self-destructive at worst.").

262. See *id.* at 5, 11.

263. See Hafiz, *supra* note 5, at 1226; Michael H. LeRoy & John H. Johnson IV, *Death by Lethal Injunction: National Emergency Strikes Under the Taft-Hartley Act and the Moribund Right to Strike*, 43 ARIZ. L. REV. 63, 66 & n.13, 68 (2001) ("Labor analysts regard Reagan's tough stand against PATCO, the union involved in this strike, as a catalyst for 'American management's increasingly aggressive tactics against unions.'" (quoting Bob Baker, *Ex-Air Traffic Controllers Recall Strike with Regret*, L.A. TIMES, July 27, 1991, at A1)).

264. See Harris, *The Militant Labor Roots*, *supra* note 20 ("U.S. union membership is at its lowest point since the 1950s. Right now, only about 10% of U.S. workers have a union, and only 6% of private sector workers have one.").

265. See Cobble, *supra* note 18, at 420–21.

own training programs and set industry standards.²⁶⁶ Restaurants would rely on the union to provide fully trained waitresses (they were all women) through a hiring hall at union salaries based on the level of the waitress's training.²⁶⁷ In addition, unions backed a federal full employment fiscal policy that focused on direct job creation and they had the power to pressure the state to create those jobs.²⁶⁸

Today, in contrast, unions have lost not only occupational unionism and direct job creation, but also training opportunities in their collective bargaining agreements.²⁶⁹ This marked change has left a void that credentialism and its proponents have filled, all supported by the meritocracy narrative.

B. CREDENTIALISM IS NOT INVARIABLY HELPFUL TO INDIVIDUAL EMPLOYERS

Credentialism has not aided individual employers to the extent many would think, even if it has generally benefitted firms in their bargaining power vis-à-vis workers. Though workers lose out more individually and collectively, individual employers do not unquestionably benefit from credentialism in either hiring or retention. At least in part, this is due to many workers' and firms' trust in credential providers as intermediaries that purport to know best the training needed for jobs, and the number and types of credentials required for a job. The result for many employers has been decreased productivity by still having to offer on-the-job training while experiencing higher turnover, poaching by competitors, and attrition.²⁷⁰

For example, Rahkeem Morris originally started a consulting firm to help employers with hiring.²⁷¹ But as employee turnover skyrocketed for his clients, he switched his firm's focus to assisting with retention.²⁷² He compared the experience of hiring to filling a bucket with a leak—the problem could be solved only by fixing the leak through increased employee retention.²⁷³ Of course, one could argue that some of the best ways to retain those workers would be improving wages and working conditions.

Individual employers struggle to identify the best types and quantities of credentials required for particular jobs. Given that employers are not always rational actors, they might be unknowingly acting against their economic interests by relying exclusively on credential providers to dictate needed credentials for a job, rather than doing their own self-study. Ideally, employers would prefer credentials tailored to each job, but have been frustrated with the market's offerings.²⁷⁴

266. *See id.*

267. *See id.* at 423–24.

268. *See* ATTEWELL, *supra* note 5, at 41, 47–48, 73.

269. *See* Diaz & Wallender, *supra* note 20 (showing that, in 2019, only 3% of union contracts contained workforce retraining provisions). As noted above in Section I.A, training opportunities are a fundamental factor in job quality. *See* LOWE, *supra* note 53, at 8.

270. *See* Ember & Casselman, *supra* note 239.

271. *See id.*

272. *See id.*

273. *See id.*

274. *See* Frederick Hess, *What Are Microcredentials and Why Should You Care?*, FORBES (July 11, 2023, 6:00 AM), <https://www.forbes.com/sites/frederickhess/2023/07/11/what-are-microcredentials-and-why-should-you-care>.

But even microcredentials, marketed as some of the most useful credentials due to their customizable nature, fail individual employers and may lead to reduced long-term productivity.²⁷⁵ Employers end up having to provide on-the-job training anyway, which, it turns out, is the best type of training for both workers and employers.²⁷⁶

In this sense, because employers almost universally must provide on-the-job training no matter how credentialed their workforce is, they might be better off investing more in such on-the-job training that is actually useful to the employer's productivity. Likewise, workers report that on-the-job training is a major perk of a job and would thus likely stay longer at an employer that invests in such training.²⁷⁷ This approach, in turn, could decrease the training treadmill that employers frequently complain of.²⁷⁸

In conclusion, credentialism harms workers and is not always helpful to individual employers for their workforce needs, as both constituencies are left alone to navigate the daunting worlds of credential attainment and evaluation. Reinserting the state, employers, and unions into job training can both alleviate the burdens on workers and assist employers in raising productivity by freeing up resources used for hiring and retention, and rededicating those resources to on-the-job training. This next Part offers a roadmap for doing so.

III. UNDOING CREDENTIALISM

Both litigation and policy responses are necessary to begin to undo credentialism's harms to workers and labor markets. Disparate impact theory is an existing tool that can be used to immediately offset credentialism's effects on the most disproportionately harmed workers: people of color and immigrants. Consumer law protections against unfair and deceptive acts and practices (UDAPs) can be deployed against bogus credential purveyors. Additionally, policy evolutions requiring greater accountability for public funding for job training and establishing quasi-governmental boards that define credential requirements are accessible, are proven, and can be long-lasting. Over time, these approaches can help to rebalance bargaining power disparities between firms and workers. This Part highlights these approaches and addresses their respective challenges.

A. DISPARATE IMPACT THEORY

An antidiscrimination approach to job training in the form of disparate impact theory would help people of color and immigrants, who, as discussed above in Section II.A.3, disproportionately experience some of the most acute effects of credentialism. Disparate impact theory originated in employment discrimination

275. See Thomas Gauthier, *The Value of Microcredentials: The Employer's Perspective*, J. COMPETENCY-BASED EDUC., 2020, at 1, 2 (discussing data revealing that microcredentials yield productivity during the employee's first two years only).

276. See FULLER & RAMAN, *supra* note 28, at 2–3.

277. See LOWE, *supra* note 53, at 8.

278. See Ember & Casselman, *supra* note 239.

law under Title VII of the Civil Rights Act of 1964.²⁷⁹ Under Title VII, an employee must first show that an employment practice has a disparate impact on employees or applicants on the basis of race, color, religion, sex, or national origin.²⁸⁰ This means that the practice disproportionately harms applicants from a particular race, color, religion, sex, or national origin. Statistical evidence is used to show the disparity.

If the employee succeeds, the burden then shifts to the employer to prove that the facially neutral job requirement that disproportionately affects applicants from one or more of the above protected categories is both “job related for the position in question and consistent with business necessity.”²⁸¹ This two-step defense requires that an employer first show that the practice “is job related by demonstrating the validity of the selection device for the job.”²⁸² Such validity, at least for standardized examinations, is determined by the exam’s relation to the content, construct, and criterion of the job.²⁸³ Construct validity—most applicable here—looks to whether the examination tests for the skills needed for the job.²⁸⁴

The second step of the analysis, “business necessity,” though somewhat vague, “permits employers to create a disparate impact when avoiding that impact would seriously undermine otherwise legitimate business goals.”²⁸⁵ But anything less than seriously undermining legitimate business goals would not meet the business necessity defense.²⁸⁶ Thus, a “more is better” approach where more credentials would marginally benefit the business, but not substantially benefit it, would likely fail to meet the business necessity prong of the defense.²⁸⁷

279. See Tristin K. Green, *The Juxtaposition Turn: Watson v. Fort Worth Bank & Trust*, 50 SETON HALL L. REV. 1445, 1449 (2020) (“[S]ystemic disparate impact theory . . . makes it an unlawful employment practice for an employer to use a practice that has an impact on a protected group and is not justified as job related and consistent with business necessity . . .” (citing 42 U.S.C. § 2000e-2(k))).

280. 42 U.S.C. § 2000e-2(k).

281. 42 U.S.C. § 2000e-2(k)(1)(A)(i).

282. Michael T. Kirkpatrick, *Employment Testing: Trends and Tactics*, 10 EMP. RTS. & EMP. POL’Y J. 623, 631 (2006).

283. *Id.* at 631–32 (explaining that content validity addresses the relationship between the content of the examination and that of the job, and “[c]riterion-related validity is an inference about the job-relatedness of a test shown empirically by a correlation coefficient between test scores and job performance scores” (emphasis omitted)).

284. *Id.* at 632.

285. Noah D. Zatz, *Managing the Macaw: Third-Party Harassers, Accommodation, and the Disaggregation of Discriminatory Intent*, 109 COLUM. L. REV. 1357, 1404 (2009).

286. *See id.*

287. *See id.* at 1404 & n.194 (collecting cases); *see also* Charles A. Sullivan, *Disparate Impact: Looking Past the Desert Palace Mirage*, 47 WM. & MARY L. REV. 911, 958 (2005) (“[T]he notion that better education might conduce to more efficiency in an increasingly complex world is scarcely counterintuitive in a society that tends to believe more is better when it comes to education. Nevertheless, *Griggs* demanded that, where the requisite disparate impact exists, some proof must also exist that the employer was not merely reasonable but also right in its policies.”); Dallan F. Flake, *When Any Sentence Is a Life Sentence: Employment Discrimination Against Ex-Offenders*, 93 WASH. U. L. REV. 45, 77 (2015) (“The court likewise interpreted Supreme Court precedent as rejecting ‘more is better-style reasoning,’ whereby an employer may try to justify its exclusionary policy based on ‘some abstract notion that more of a given quality is better.’” (citing *El v. Se. Pa. Transp. Auth.*, 479 F.3d 232, 240 (3d Cir. 2007))).

If the employer meets its burden on this two-step defense, the plaintiffs can still prevail by pointing to an alternative employment practice—here, an alternative or lesser credential requirement—that serves the same legitimate purpose without producing the discriminatory effect and indicating that the employer has unreasonably refused to adopt this less harmful alternative.²⁸⁸

Advocates have used disparate impact theory to challenge credential requirements and employment tests with a disparate impact on protected categories; the challenge requires an employer to validate “each test with a disparate impact . . . for the specific job, employer, and population for which it is used.”²⁸⁹ The first case to articulate disparate impact theory, *Griggs v. Duke Power Co.*, held that a high school degree requirement and two standardized tests as part of a job application disproportionately screened out Black applicants, and yet was not a business necessity or sufficiently job related.²⁹⁰ In *Griggs*, the U.S. Supreme Court held that such exams, while neutral on their face, can be unlawful if they operate to perpetuate historical discrimination by maintaining the status quo.²⁹¹ The Court further clarified that an employer’s lack of discriminatory intent does not shield it from liability under disparate impact theory.²⁹²

Employing disparate impact theory, a job applicant could assert that a credential requirement has a disparate impact on applicants by protected category and is neither sufficiently related to the actual job or a business necessity.²⁹³ Stephanie Bornstein has proposed using disparate impact theory to challenge unnecessary educational degrees that contribute to racial pay gaps.²⁹⁴ Bornstein highlighted how, in late 2020, in response to new attention on the racial wealth gap, corporations launched initiatives committing to review educational requirements and hire more Black candidates without bachelor’s degrees.²⁹⁵ The admission that some jobs with postings requiring four-year college degrees may not truly require the degrees and a willingness to change job requirements, Bornstein argued, opens the door to disparate impact arguments.²⁹⁶ “If education requirements are not truly necessary,” she explained, “antidiscrimination law can and should play a larger role in redressing the issue.”²⁹⁷

288. See Tristin K. Green, “*It’s Not You, It’s Me*”: Assessing an Emerging Relationship Between Law and Social Science, 46 CONN. L. REV. 287, 296 (2013).

289. *Id.* at 294 (citing Robin Stryker et al., *Employment Discrimination Law and Industrial Psychology: Social Science as Social Authority and the Co-Production of Law and Science*, 37 L. & SOC. INQUIRY 777, 791–92 (2012)).

290. See *Griggs v. Duke Power Co.*, 401 U.S. 424, 425–26, 436 (1971) (holding that employment tests had racially disparate impacts in violation of Title VII of the Civil Rights Act of 1964).

291. See *id.* at 429–30.

292. See *id.* at 432 (ruling that courts are mandated to assess the consequences of employment practices rather than merely the motivations behind them).

293. See Johnson, *supra* note 33, at 312–32.

294. See Bornstein, *supra* note 16, at 1457–59 (proposing, in response to credential inflation, a Title VII disparate impact approach to college degree requirements).

295. See *id.* at 1456.

296. See *id.* at 1457.

297. *Id.*

A similar argument can be applied to unnecessary nondegree credentials. An employer would first have to prove that the credential is related to the worker's ability to do the job and the skills needed for that job—this is construct and content validity.²⁹⁸ As discussed above, some credentials may make it easier for a worker to obtain a job through their signaling effect, but do not provide additional skills or training needed for that job.²⁹⁹ Second, the employer would have to show a business necessity for the credentials it requires or prefers. This would have to be a credential that would add substantially to the business's productivity, not simply one that could benefit the business in a more minor way.³⁰⁰ As described above in Section II.A, many employers would be hard-pressed to show this, especially firms that periodically add or remove credential requirements based on the labor market's relative slackness rather than changes in the job itself.³⁰¹ For example, a hospital requiring all new nurses to obtain a bachelor of science in nursing degree (BSN) in order to obtain the American Nurses Credentialing Center's (ANCC) Magnet accreditation that is unable to show a causally related market share gain may not satisfy the business necessity test.³⁰²

If it fails the job-relatedness and business necessity defense, the employer could be enjoined from using that credential in its hiring and retention practices and the harmed workers could recover make-whole remedies. Credential providers would not come to the rescue; the employer would bear sole responsibility for the credential's disproportionate burden on people of color or immigrant applicants.

Initiatives like the STARS program, described above, could assist with a disparate impact approach to credentialism. For example, in determining a credential's job-relatedness and business necessity, evidence could be considered of an employer requiring the credential of job applicants that it does not require of incumbent employees in the same job title.³⁰³

Paradoxically, employers that require or prefer unnecessary credentials as a risk-aversion mechanism could be raising their risk of disparate impact legal claims. Hiring and training are both time-consuming and costly.³⁰⁴ As discussed in Section II.B, employers seize on credentials as a quick and definite proxy for

298. See Kirkpatrick, *supra* note 282, at 631–32.

299. See *supra* note 64 and accompanying text.

300. Cf. Zatz, *supra* note 285, at 1404.

301. See *supra* Section II.A.4; Bornstein, *supra* note 16, at 1458 (discussing the same issue regarding college degree requirements).

302. Courts, however, have been quite deferential to employers when justifying the business necessity of a challenged practice. See Bornstein, *supra* note 16, at 1436.

303. See BURNING GLASS TECHS., *supra* note 241, at 5 (describing various job titles that required bachelor's degrees of applicants but not of incumbent employees).

304. See Ember & Casselman, *supra* note 239. This is why employers frequently outsource part or all of the task to algorithms. See Ifeoma Ajunwa, *The Paradox of Automation as Anti-Bias Intervention*, 41 CARDOZO L. REV. 1671, 1673–74 (2020) (describing biases in hiring through algorithms); Stephanie Bornstein, *Antidiscriminatory Algorithms*, 70 ALA. L. REV. 519, 532–33 (2018) (commenting that algorithmic hiring could support workplace equality better than customary hiring systems, depending on the algorithm).

productive workers, even if credentialism ultimately reduces firm productivity when compared with simply offering robust on-the-job training. Additionally, many firms worry about accusations of unlawful discrimination in hiring and credentialism offers a facially nondiscriminatory reason. For example, an employer can more easily justify hiring a white non-Latine candidate with eight credentials over a Latine candidate with seven credentials, all else being equal. Nevertheless, if the credential requirement or preference has a disparate impact on a protected category of applicants and is not both job related and a business necessity, an employer could be susceptible to a disparate impact lawsuit.³⁰⁵

It is true that courts have recently disfavored disparate impact theory, and some scholars have written about the theory's failure to address the structural discrimination it was intended to remediate.³⁰⁶ But this concern is not limited to credentialism, and in any case, the U.S. Supreme Court has not yet adopted the view, espoused by Justice Scalia, that the theory can be used only to assist in uncovering intentional—as opposed to structural—discrimination.³⁰⁷

Such concerns about disparate impact theory, and the effectiveness of judicial challenges to firm practices generally, reveal how disparate impact litigation would be complemented by the policy responses to credentialism described next.³⁰⁸

B. JOB TRAINING REFORM

Tackling credentialism requires answering a fundamental question: is the problem with credentialism simply the offloading of training costs and risks onto workers, or does the belief in credential attainment as a virtue raise its own independent concerns? If the former, credentialism can be targeted at the supply point, with government actors and workers pursuing litigation against unscrupulous training providers for selling bogus credentials. I have previously advocated for using a hybrid of consumer law and employment law to combat bogus credentials and their deceptive marketing.³⁰⁹ Essentially, if the bogus credential is primarily for the benefit of the employer, employment law “anti-kickback” provisions would prohibit employers from requiring workers to pay for the credential.³¹⁰ If, on

305. See *Griggs v. Duke Power Co.*, 401 U.S. 424, 431, 436 (1971).

306. See Bornstein, *supra* note 16, at 1437 & n.201 (citing Michael Selmi, *Was the Disparate Impact Theory a Mistake?*, 53 UCLA L. REV. 701 (2006)); Lawrence Rosenthal, *Saving Disparate Impact*, 34 CARDOZO L. REV. 2157 (2013); Noah D. Zatz, *Disparate Impact and the Unity of Equality Law*, 97 B.U. L. REV. 1357 (2017)).

307. See Bornstein, *supra* note 16, at 1437.

308. See Joseph Fishkin, *The Anti-Bottleneck Principle in Employment Discrimination Law*, 91 WASH. U. L. REV. 1429, 1434 (2014) (describing state legislative bans on credit checks for employment, and stating that “[t]he race-based disparate impact analysis and the non-race-based arguments prominent in state legislative deliberations are complementary. These modes of analysis helpfully foreground different aspects of what is really the same problem”).

309. See Harris, *Consumer Law as Work Law*, *supra* note 34, at 28–41 (arguing for the pursuit of consumer law claims against firms for unscrupulous practices that harm “worker-consumers,” especially when those worker-consumers are not covered by traditional employment laws).

310. See *id.* at 8–9.

the other hand, the bogus credential is primarily for the worker's personal use, consumer UDAP laws would step in to keep the worker from having to pay for it.³¹¹ Either way, the burden would not fall on the worker for such a deceptive credential.

All of credentialism's problems, however, cannot be solved by merely reallocating onto the state and employers some of the costs and risks of credential attainment. As long as the financial systems remain in place that allow for immense profits in credential sales regardless of their quality, which emanates from the meritocracy narrative, no amount of cost or risk reallocation will suffice. Moreover, the problem of economic waste through workers' expenditure of time in unnecessary credential stacking and firm productivity declines would persist. And though this Article does not attempt to resolve this dilemma, there does seem to be a flaw in the concept of credentialism and even in the meritocracy narrative that supports it.

For these reasons, a pro-worker shift in bargaining power through organizing is the ultimate prescription, thereby changing unsustainable careers into quality ones. Meanwhile, the following policy changes—enhanced accountability for publicly funded job training and credential boards—can make job training more worker-centered and encourage, or at least not discourage, worker organizing.³¹²

1. Accountability for Publicly Funded Job Training

First, federal job training laws must ensure greater state responsibility for training for quality jobs by including more robust accountability mechanisms. Public funding for job training should be tied to such mechanisms, including tracking metrics like those proposed by the Organisation for Economic Co-operation and Development: “1) [e]arnings quality; 2) labor market security; and 3) quality of the working environment.”³¹³

It has been frustrating to watch the debate over job training policy revolve mostly around funding amounts and not the underlying goals or outcomes of programs. And it has been bewildering to see Republicans take the lead in insisting on greater accountability, especially when many economists agree that existing policy has mostly failed workers.³¹⁴ Livia Lam and I have written about the failings of the Workforce Innovation and Opportunity Act of 2014 (WIOA) largely

311. *See id.*

312. *See About the Good Jobs Collaborative*, NEW AM., <https://www.newamerica.org/education-policy/reports/building-good-jobs-workforce-development/about-the-good-jobs-collaborative> [<https://perma.cc/HW2Y-9A9Y>] (last visited May 9, 2025) (describing a coalition of policy experts and worker organizations advocating for a “worker-centered workforce development system” that “advance[s] workers’ voices, power, organizing, and unionization”).

313. LAM, *supra* note 27, at 23 (citing *Job Quality*, ORG. FOR ECON. COOP. & DEV., <https://www.oecd.org/en/topics/policy-issues/job-quality.html>).

314. *See* Marya Ruth Dunning, *Rep. Foxx Demands Accountability in Workforce Innovation and Opportunity Act*, CAMPUS REFORM (Oct. 2, 2023, 4:02 PM), <https://www.campusreform.org/article/rep-foxx-demands-accountability-workforce-innovation-opportunity-act-/24073> [<https://perma.cc/WQ77-MHX5>] (writing that the Republican Chairperson of the House Committee on Education and the Workforce Virginia Foxx demanded accountability for job training funding nearly ten years after the enactment of the Workforce Innovation and Opportunity Act).

due to the dearth of accountability metrics for job quality.³¹⁵ WIOA is up for reauthorization and the current draft bill would add additional accountability metrics.³¹⁶ Nevertheless, those metrics focus mostly on skills attainment and not enough on the quality of the jobs that trainees obtain.³¹⁷ Thus, even if workers learn skills, they are not able to improve their economic lot. Publicly funded credential providers should be responsible for both. In the meantime, other legislation, like the Bipartisan Workforce Pell Act,³¹⁸ is proceeding that would allow very-short-term nondegree credentials—defined as programs as short as eight weeks—to qualify for Pell Grants.³¹⁹ This would pump billions of dollars more into the job training marketplace. Without robust accountability requirements, this is a step in the wrong direction.

Taking a comparativist and internationalist approach, we can learn from other nations and international labor standards that encourage greater state responsibility for training for quality jobs, by ensuring that public funding is truly assisting workers.³²⁰ Singapore's government, for example, takes a more hands-on approach, implementing initiatives to ensure the market for job training serves workers.³²¹ This is a more state-driven than private market-driven job training system. Singapore's approach is one reason why the nation is ranked highly on the intergenerational income mobility scale.³²² In contrast, under the U.S. model, the state leaves job training largely to the private market, not only condoning

315. See Harris & Lam, *supra* note 123, at 343 (describing the existing WIOA accountability metrics, and noting that “[t]hree of these . . . measures directly connect to labor market outcomes and are collected for each individual worker participant that exits a WIOA training program: 1) whether the participant entered employment; 2) whether the participant retained a job; and 3) the participant's earnings from any job obtained. These performance measures together capture an employment outcome, per se, in terms of training output. The system, however, does not require training programs to account for whether actual job attainment is matched to decent working conditions.”). In contrast to WIOA's vague standards, one organization has attempted to define more precise metrics, asserting that a quality job includes at least three of the following five key elements: a living wage, basic benefits, career-building opportunities, wealth-building opportunities, and a fair and engaging workplace. *Defining and Measuring the Creation of Quality Jobs*, PAC. CMTY. VENTURES (Apr. 14, 2016), <https://www.pacificcommunityventures.org/2016/04/14/defining-and-measuring-the-creation-of-quality-jobs> [<https://perma.cc/GFN7-C2QF>].

316. See AM. COUNCIL ON EDUC., BILL SUMMARY: A STRONGER WORKFORCE FOR AMERICA ACT 1 (2023), <https://www.acenet.edu/Documents/Summary-A-Stronger-Workforce-for-America-Act.pdf> [<https://perma.cc/T9QF-JXVY>].

317. See *id.*

318. Bipartisan Workforce Pell Act, H.R. 6585, 118th Cong. (2023) (shortening job training program eligibility for Pell Grant funding from fifteen weeks to eight weeks).

319. See *House Committee Approves Bills on Short-Term Pell, WIOA Reauthorization*, AM. COUNCIL ON EDUC. (Dec. 18, 2023), <https://www.acenet.edu/News-Room/Pages/Committee-Approves-Short-Term-Pell-WIOA-Reauthorization.aspx> [<https://perma.cc/KE83-ZBY5>]; Fishman, *supra* note 49.

320. See Julia López López, *Inscribing Solidarity in Labor Law: Promise and Limitations, in INSCRIBING SOLIDARITY: DEBATES IN LABOR LAW AND BEYOND* 1, 16 (Julia López López ed., 2022) (describing multiple International Labour Organization conventions that “reinforce the need for public policies through which the state provides the resources needed”).

321. See EDWARD ROBINSON, BANK FOR INT'L SETTLEMENTS, GLOBALISATION IN A SMALL OPEN ECONOMY: THE SINGAPORE EXPERIENCE 325–26, https://www.bis.org/publ/bppdf/bispap100_u.pdf [<https://perma.cc/4XDR-VS6L>].

322. See *id.* at 325.

credentialism but affirmatively propping it up with funding that leaves training providers unaccountable for results.³²³

Singapore is a nation with few natural resources, so it must rely on human labor for its prosperity.³²⁴ This is why Singapore has staked its future on, in part, building the capacities of its working class.³²⁵ Singapore's state-driven program is threefold: (1) an individualized training voucher system allowing workers to access training throughout their lifetimes; (2) industry-specific skills frameworks and occupational standards providing clear career pathways; and (3) a levy on employers to help finance the voucher system, with matching contributions from the state.³²⁶

First, the SkillsFuture Credit provides all Singaporeans with 500 Singapore-dollar vouchers to redeem for job training, with periodic top-ups.³²⁷ The credit, meant to promote worker mobility, represents the antithesis of training repayment agreement provisions (TRAPs), which are imposed primarily to impair worker mobility.³²⁸ Second, Singapore embraces a "lifelong learning entitlement" system through strong governmental infrastructure to create clear career pathways with standardized requirements for skills and credentials in over a dozen industries.³²⁹ This system holds the state responsible for ensuring that credentialism does not burden its population with unneeded credentials and crippling education and training debt. Third, Singapore's Skills Development Levy is a tax on employers of 0.25% of the monthly wages of each employee, regardless of citizenship status, which the Singaporean government matches.³³⁰ The levy funds a grant program

323. South Africa has even more rampant credentialism than the United States, with many postsecondary degree and nondegree credential holders unable to obtain sustainable employment. See Lynsey Chutel, *One Year in the Infuriating and Humiliating Search for a Job in South Africa*, N.Y. TIMES (Nov. 11, 2023), <https://www.nytimes.com/2023/11/11/world/africa/job-search-unemployment-south-africa.html>. This may help explain why South Africa ranks near the bottom of the Global Social Mobility Index. See WORLD ECON. F., THE GLOBAL SOCIAL MOBILITY REPORT 7 (2020), https://www3.weforum.org/docs/Global_Social_Mobility_Report.pdf [<https://perma.cc/YD66-FV6T>] (ranking South Africa number 77 out of 82 nations in social mobility).

324. See ROBINSON, *supra* note 321, at 322–23; see also Michael Fung, *Developing a Robust System for Upskilling and Reskilling the Workforce: Lessons from the SkillsFuture Movement in Singapore*, in ANTICIPATING AND PREPARING FOR EMERGING SKILLS AND JOBS: KEY ISSUES, CONCERNS, AND PROSPECTS 321, 321 (Brajesh Panth & Rupert Maclean eds., 2020).

325. See ROBINSON, *supra* note 321, at 325–327.

326. See MURIEL DUNBAR, INT'L LAB. ORG., A REVIEW OF ENTITLEMENT SYSTEMS FOR LLL 32 (2020), https://www.ilo.org/wcmsp5/groups/public/-ed_emp/-emp_ent/documents/publication/wcms_752215.pdf; Alex Usher, *Skills Accounts: Singapore*, HIGHER EDUC. STRATEGY ASSOCS. (Mar. 14, 2019), <https://higherstrategy.com/skills-accounts-singapore> [<https://perma.cc/H2FU-CWJ5>]; Osman Husain, *The Singapore Skills Development Levy (SDL)—Everything You Need to Know*, SHOPIFY BLOG (Feb. 9, 2021), <https://www.shopify.com.sg/blog/skills-development-levy-singapore>.

327. See DUNBAR, *supra* note 326, at 32; *Frequently Asked Questions on SkillsFuture Credit*, GOV'T OF SING.: MYSKILLSFUTURE, <https://www.myskillsfuture.gov.sg/content/portal/en/header/faqs/skillsfuture-credit.html> [<https://perma.cc/3LXE-AMWL>] (last visited May 9, 2025).

328. See *supra* Section II.A.3.

329. See DUNBAR, *supra* note 326, at 6, 31–33 (commenting that both Singapore and France have mature "lifelong learning entitlement" systems, with France also operating a skills voucher program for individual workers); Usher, *supra* note 326.

330. See Husain, *supra* note 326.

where employers can apply to send their employees for training.³³¹ This addresses the cost and risk-offloading problems inherent in U.S. job training, discussed above in Section II.A, by having the state and employer share the costs of training with workers.³³² And it appears to be working, with close to half of all Singaporeans participating in at least one training program in any given year.³³³

It should be noted that Singapore relies heavily on migrant labor and has been criticized for having a two-tiered and exploitative labor system.³³⁴ Also, it may be easier to implement robust job training accountability measures in such a small population than in the United States. France, however, has also invested quite heavily in job training and requires substantial accountability from both employers and training providers receiving public funds.³³⁵ France offers a statutory right to training and also requires employers to pay into a payroll tax to fund training programs for quality careers.³³⁶ Those programs are monitored for quality and give workers greater options untethered from their employers through “personal training accounts.”³³⁷

In addition, the International Labour Organization (ILO) approved a 2023 recommendation that member states and employers take responsibility for quality apprenticeships.³³⁸ The recommendation encourages member states to adopt a tripartite apprenticeship system involving governments, employers, and worker organizations, with written apprenticeship contracts containing no mobility-restricting provisions like noncompetes and TRAPs, occupation-specific skills and credential standards, and the right to a union and family leave.³³⁹ In addition, it recommends that member states ensure equality, diversity, and social inclusion in apprenticeships without discrimination and promote a culture of lifelong learning.³⁴⁰ Taking a cue from the ILO, the U.S. Department of Labor (DOL) then proposed a rule adopting some parts of the recommendation by strengthening

331. See *Skills Development Levy: How Much Must Employers Pay on Their Staff?*, OSOME (Apr. 29, 2025), <https://osome.com/sg/blog/skills-development-levy-how-much-must-employers-pay> [<https://perma.cc/RUQ8-6JPP>]; *About SDL*, GOBUSINESS SING., <https://www.gobusiness.gov.sg/skills-development-levy-faqs/sdl-about> [<https://perma.cc/4UJY-QHWS>] (last visited May 9, 2025).

332. See LAM, *supra* note 27, at 27.

333. See DUNBAR, *supra* note 326, at 32.

334. See, e.g., Pheng Cheah, *Necessary Strangers: Law's Hospitality in the Age of Transnational Migrancy*, in LAW AND THE STRANGER 21, 37–38 (Austin Sarat et al. eds., 2010).

335. See LAM, *supra* note 27, at 17.

336. See *id.*

337. See EUROFOUND, *supra* note 38.

338. Int'l Lab. Org., 111th ILC Sess., Recommendation No. 208, *Quality Apprenticeships Recommendation*, at ¶ 1 (June 16, 2023), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:4347381 [<https://perma.cc/4PU8-5S5H>] (defining “apprenticeship” as “a form of education and training that is governed by an apprenticeship agreement, that enables an apprentice to acquire the competencies required to work in an occupation through structured and remunerated or otherwise financially compensated training consisting of both on-the-job and off-the-job learning and that leads to a recognized qualification”). An International Labour Organization recommendation is not mandatory like a convention, but still carries persuasive weight with member states.

339. *Id.* at ¶¶ 5–6, 10, 16, 18.

340. *Id.* at ¶¶ 20–26.

earn-and-learn and largely union-affiliated Registered Apprenticeship Programs (RAPs).³⁴¹

Last, the European Union has granted workers a “right to work” and a “right . . . to earn [a] living” in a sincere and worker-centered sense, not in the cynical and laissez-faire senses familiar in the United States.³⁴² Article I of the European Social Charter guarantees a right to work that includes: (1) a mandate that member states accept as a primary responsibility the attainment of full employment, (2) a worker’s ability to earn a living in a freely chosen job, and (3) free employment and training services for all.³⁴³ Notably, the European Union has set a bottom line that “is crossed where a state deliberately abandons ‘the objective of full employment in favour of an economic system providing for a permanent pool of unemployed.’”³⁴⁴ This directly references the conflicting U.S. employment policy, which shifted decades ago from prioritizing full employment to preferring a minimum level of “natural unemployment.”³⁴⁵

Singapore and France’s mature job training programs, the ILO’s quality apprenticeship recommendation, and the EU Social Charter’s right to work are all examples of greater state involvement in job training and accountability mandates for public funding for job training. Some of these initiatives, like the EU Social Charter, are admittedly aspirational in nature,³⁴⁶ but they are consistent

341. National Apprenticeship System Enhancements, 89 Fed. Reg. 3118 (proposed Jan. 17, 2024). See *supra* Section I.B. The DOL subsequently withdrew the proposed rule but signaled that it was still interested in reforming the system after gathering more information from stakeholders. National Apprenticeship System Enhancements; Withdrawal, 89 Fed. Reg. 105504 (Dec. 27, 2024).

342. See European Social Charter (Revised) art. I, E.T.S. No. 163 (Oct. 18, 1961, entered into force Feb. 26, 1965, revised May 5, 1996); Michael M. Oswalt, *The Grand Bargain: Revitalizing Labor Through NLRA Reform and Radical Workplace Relations*, 57 DUKE L.J. 691, 700 (2007) (describing U.S. states’ “right-to-work” laws that prohibit unions from collecting union “agency fee[s]” from nonmembers); Cynthia Estlund, *How the Workplace Constitution Ties Liberals and Conservatives in Knots*, 93 TEX. L. REV. 1137, 1137 (2015) (book review) (revealing “the [U.S.] right-to-work movement’s success in building a constitutional case for the ‘right to refrain’ from supporting unions”). In addition, a strand of U.S. libertarianism supports removing training and occupational licensing requirements in the name of the “right to earn a living,” economic liberty, and entrepreneurship. See TIMOTHY SANDEFUR, *THE RIGHT TO EARN A LIVING: ECONOMIC FREEDOM AND THE LAW* 141–59 (2010); cf. Yvette Butler, *Survival Labor*, 112 CALIF. L. REV. 403, 407–09, 427–28, 427 n.159 (2024) (remarking that “people across the political spectrum take issue with occupational licensing laws” and arguing for cooption of those challenges to help, rather than harm, marginalized communities, particularly racial minorities whose labor is criminalized).

343. See European Social Charter, *supra* note 342, art. 1.

344. Nicola Gundt, *The Right to Work, EU Activation Policies and National Unemployment Benefit Schemes*, 5 EUR. LAB. L.J. 349, 352 (2014) (quoting Eur. Comm. of Soc. Rts., *Statement of Interpretation on Article I §1*, EUR. SOC. CHARTER (May 31, 1969)). The European Union does this, in part, by limiting working hours to forty-eight per week, similar to the U.S. Fair Labor Standards Act’s, 29 U.S.C. §§ 201–219, goal of reducing unemployment by spreading out work to more people. See Council Directive 2003 O.J. (L 299) 9, 11; Shirley Lung, *Overwork and Overtime*, 39 IND. L. REV. 51, 57 (2005).

345. See Hafiz, *supra* note 5, at 1224–25.

346. See Gundt, *supra* note 344, at 350–51; see also Jeremias Adams-Prassl, *Article 47 CFR and the Effective Enforcement of EU Labour Law: Teeth for Paper Tigers?*, 11 EUR. LAB. L.J. 391, 392–401 (2020) (articulating both the promise and challenges of enforcing EU workers’ rights, the latter of which include member states’ significant discretion and the difficulty of mandating duties on employers).

with an approach to workforce development that shifts some of the burdens of job training for quality careers from workers to firms and the state itself.

Importantly, some of these programs already exist in the United States and can be replicated and eventually, expanded nationwide.³⁴⁷ For example, Texas, Massachusetts, and New Jersey have employer payroll taxes that fund training opportunities for workers, similar to those in Singapore and France.³⁴⁸ Likewise, California has employers pay an Employment Training Tax (ETT) equal to 0.1% of an employee's wages.³⁴⁹ The ETT funds an Employment Training Panel, a tripartite body with representation from business, unions, and government that "provides funding to employers to assist in upgrading the skills of their workers through training that leads to good-paying, long-term jobs."³⁵⁰ Also like Singapore's SkillsFuture Credit and France's personal training accounts, the Workforce Investment Act, WIOA's predecessor, briefly instituted individual training accounts, though the George W. Bush Administration underfunded the program.³⁵¹

Regardless of the source of job training funding, the entities that ultimately disburse those funds—quasi-governmental workforce development boards (WDBs) in the United States—must have more equal representation among employers, governments, and workers and their unions. As discussed above in Section I.C, current federal law requires that WDBs have at least 51% representation from employers.³⁵² This is unacceptable and reflects the continued dominance of the "skills gap" and "employers as job creators" narratives espoused by the Reagan Administration and subsequent presidencies.³⁵³ If job training should be worker-centric, and I believe it should, WDBs and their later iterations need equal representation among all stakeholders.³⁵⁴ Having more workers, unions, and community groups represented on a WDB would help ensure that their interests are carried out or are at least more properly balanced with those of employers.

2. Credential Boards

Second, sector-specific and tripartite quasi-governmental boards that set credential requirements would reposition the state as the protector of workers and students. Instead of remediating credentialism at the supply point, credential boards would address the demand for credentials, most often coming from

347. See, e.g., LAM, *supra* note 27, at 1–3 (proposing a Workforce Equity Trust Fund that "makes job quality—not upskilling for upskilling's sake—the driving force in anticipating the inevitable future of work").

348. See *id.* at 19.

349. See *Contribution Rates, Withholding Schedules, and Meals and Lodging Values*, CAL. EMP. DEV. DEP'T, https://edd.ca.gov/en/payroll_taxes/rates_and_withholding [<https://perma.cc/UV39-2HLE>] (last visited May 9, 2025).

350. *Welcome*, STATE OF CAL.: EMP. TRAINING PANEL, <https://etp.ca.gov> [<https://perma.cc/2XJA-6MTA>] (last visited May 9, 2025).

351. See STEPHEN A. WANDNER, *SOLVING THE REEMPLOYMENT PUZZLE: FROM RESEARCH TO POLICY* 240 (2010).

352. See LAM, *supra* note 27, at 27.

353. See *supra* Section I.C.

354. See *supra* Section I.C.

employers but also sometimes from state occupational licensing bodies. The tripartite boards would include representatives from workers' organizations, employers, and regional and sectoral governmental agencies. This structure mirrors that of tripartite training partnerships: labor market intermediaries³⁵⁵ that have proved successful in some U.S. sectors and other countries and offer earn-and-learn skills training at union wages.³⁵⁶

The tripartite structure works because incumbent workers know best the skills needed for a job, employers know best their hiring needs, and regional and sectoral governmental and quasi-governmental bodies, including public community colleges,³⁵⁷ know best how to match the skills needed for the jobs with tailored credentials.

Best of all, the U.S. DOL has already done the work, having set maximum credential requirements for over 900 occupations.³⁵⁸ This DOL program, called Occupational Information Network (O*NET), requires employers who seek to sponsor a foreign worker for U.S. permanent residency to demonstrate that the training and education requirements in their job descriptions do not exceed those listed on O*NET.³⁵⁹ The rationale is that employers should prioritize hiring qualified U.S. workers. There is no reason this process cannot be expanded beyond the immigration context because the logic of shared responsibility is the same regardless of the setting. In other words, the employability of U.S. workers should not be the sole responsibility of the employees themselves but should be shared with employers (and the state). Therefore, we must not only scrutinize workers who are "underskilled" but also employers that are overcredentializing jobs. O*NET is a way in which the state ensures that credentialism does not run rampant.

Credential boards would take a similar approach and could follow the model of existing wage boards that set sector-specific minimum wages and other standards. Wage boards have a lengthy history in the United States and have inspired renewed scholarship and policy change.³⁶⁰ Six states and three local governments

355. See David H. Autor, *Introduction*, in *STUDIES OF LABOR MARKET INTERMEDIATION* 1, 1 (David H. Autor ed., 2009) (defining "Labor Market Intermediaries" as "entities or institutions that interpose themselves between workers and firms to facilitate, inform, or regulate how workers are matched to firms, how work is accomplished, and how conflicts are resolved"); Richard Kazis, *What Do Workforce Intermediaries Do?*, in *WORKFORCE INTERMEDIARIES FOR THE TWENTY-FIRST CENTURY* 73, 74–75 (Robert P. Giloth ed., 2004); LOWE, *supra* note 53, at 11–12.

356. See Harris, *Unconscionability*, *supra* note 18, at 778–83.

357. Public community colleges are a necessary pillar of society and a potential class mobility catalyst but are woefully underfunded, especially in comparison with their private for-profit counterparts. See Grace Chen, *While Community Colleges Struggle, More Federal Subsidies Pour into For-Profits*, *CMTY. COLL. REV.* (Jan. 28, 2024), <https://www.communitycollegereview.com/blog/while-community-colleges-struggle-more-federal-subsidies-pour-into-for-profits> [https://perma.cc/R7M3-TLV4].

358. See O*NET RESOURCE CTR., U.S. DEP'T OF LAB. *supra* note 40.

359. See *id.*; EB3.WORK, *supra* note 41; U.S. DEP'T OF LAB., *supra* note 41.

360. See Andrias, *supra* note 39, at 625; Aurelia Glass & David Madland, *Momentum for Worker Standards Boards Continues to Grow*, *CTR. FOR AM. PROGRESS* (Sept. 7, 2023), <https://www.americanprogress.org/article/momentum-for-worker-standards-boards-continues-to-grow> [https://perma.cc/Q9Z7-XQZD] (writing that the boards "bring workers and employers together to recommend standards for sectors of the economy").

have enacted wage boards since 2018; one of the boards also sets training standards.³⁶¹

Key to credential boards, and what would differentiate them from the existing WIOA-funded and employer-dominated WDBs, would be balanced representation by the various stakeholders. Such a rebalancing would enhance the interests of workers vis-à-vis employers and training providers, allowing for a more worker-centric job training system. As discussed above in Section III.B.1, both the Singaporean and French “lifelong learning entitlement” systems—with clear career paths for many sectors—and the ILO quality apprenticeships recommendation—with tripartite bodies assigning clear sector-specific occupational standards—require agreement among all stakeholders before implementing workforce development policies.³⁶²

On the domestic front, the U.S. Department of Education (DOE) issued a “gainful employment” rule during the Biden Administration.³⁶³ The rule uses two metrics to determine whether postsecondary institutions and other credential providers are affordable and offer sufficient value to their students. First, a debt-to-earnings test requires that students dedicate no more than 8% of their income toward repaying their student loans or 20% of their discretionary income.³⁶⁴ Second, the rule requires that at least 50% of graduates earn more than working adults in their state’s workforce who hold only a high school diploma.³⁶⁵ Failing to meet these metrics could result in an institution losing federal funding.³⁶⁶ Because these institutions rely so heavily on such funding, with many for-profit institutions receiving 80 to 90% of their revenue from federal aid,³⁶⁷ those that fail to meet the standards would likely close. The DOE has estimated that 700,000 trainees duped by predatory for-profit training providers would benefit

361. Glass & Madland, *supra* note 360; see also Aurelia Glass & David Madland, *Worker Boards Across the Country Are Empowering Workers and Implementing Workforce Standards Across Industries*, CTR. FOR AM. PROGRESS (Feb. 18, 2022), <https://www.americanprogress.org/article/worker-boards-across-the-country-are-empowering-workers-and-implementing-workforce-standards-across-industries> [https://perma.cc/7AND-9RCK] (listing Seattle’s Domestic Workers Standards Board; Seattle’s Transportation Network Deactivation Appeals Panel; New York’s Farm Laborers Wage Board; Philadelphia’s Domestic Workers Standards and Implementation Task Force; Michigan’s Nursing Home Workforce Stabilization Council; Colorado’s Agricultural Work Advisory Committee; Nevada’s Home Care Employment Standards Board; and Detroit’s Industry Standards Board).

362. See DUNBAR, *supra* note 326, at 1, 31–33; Usher, *supra* note 326; Int’l Lab. Org., *supra* note 338, ¶ 1; LAM, *supra* note 27, at 27.

363. *Biden-Harris Administration Announces Landmark Final Rules to Protect Consumers from Unaffordable Student Debt and Increase Transparency*, U.S. DEP’T OF EDUC. (Oct. 10, 2023), <https://www.ed.gov/news/press-releases/biden-harris-administration-announces-landmark-final-rules-protect-consumers-unaffordable-student-debt-and-increase-transparency> [https://perma.cc/TT3D-89QN].

364. *Id.*

365. *Id.*

366. See Ben Unglesbee, *Gainful Employment Reporting Delayed Amid Political Pressure*, HIGHER ED DIVE (Apr. 1, 2024), <https://www.highereddive.com/news/gainful-employment-reporting-delays-education-department/711914> [https://perma.cc/6T5Q-PGV6].

367. See Robert Kelchen, *How Much Do For-Profit Colleges Rely on Federal Funds?*, BROOKINGS INST. (Jan. 11, 2017), <https://www.brookings.edu/articles/how-much-do-for-profit-colleges-rely-on-federal-funds> [https://perma.cc/6YDN-YJXM].

annually from the rule.³⁶⁸ Nevertheless, cosmetology institutes have sued to block it, knowing that their very existence is on the line.³⁶⁹ Though the Trump II Administration is likely working to rescind the gainful employment rule, the data collected before that point could still be useful, and credential boards could look to the rule as a model to adopt similar rules.³⁷⁰

Other models for credential boards exist in the United States on the state level. For example, California's High Road Training Partnerships (HRTPs) are a demonstration initiative of the California WDB.³⁷¹ HRTPs are tripartite "industry-based, worker-focused training partnerships . . . that build workers' skills . . . for California's high road employers."³⁷² Moreover, "[t]hese [employers] compete based on quality of product and service, achieved through innovation and investment in human capital, and generate family-supporting jobs where workers have agency and voice."³⁷³

In seven different ways, HRTPs put into practice social science research indicating that workers learn best through on-the-job experience.³⁷⁴ First, HRTPs use focus groups of incumbent workers to obtain input on skills needed and solicit otherwise hard-to-obtain information.³⁷⁵ Second, they obtain information on trends within unionized sectors by asking union shop stewards who service multiple workplaces in a sector.³⁷⁶ Third, HRTPs solicit incumbent worker input on the actual skills needed for jobs, emphasizing peer learning to complement the typical "jobs requirements" list provided by human resources.³⁷⁷ Fourth, they require equal representation of labor and management in leadership, similar to the requirements of Singapore, France, and unionized Registered Apprenticeship

368. See U.S. DEP'T OF EDUC., *supra* note 363.

369. See Unglesbee, *supra* note 366.

370. JASON DELISLE & JASON COHN, URB. INST., THE GAINFUL EMPLOYMENT RULE UNDER A SECOND TRUMP ADMINISTRATION: DATA AND ANALYSIS TO INFORM THE ADMINISTRATION'S APPROACH TO A BIDEN-ERA POLICY 1 (2025), https://www.urban.org/sites/default/files/2025-01/The_Gainful_Employment_Rule_under_a_Second_Trump_Administration.pdf [<https://perma.cc/9FFA-BY7F>].

371. See ANA LUZ GONZÁLEZ-VÁSQUEZ ET AL., UCLA LAB. CTR., THE HIGH ROAD TO ECONOMIC PROSPERITY: AN ASSESSMENT OF THE CALIFORNIA WORKFORCE DEVELOPMENT BOARD'S HIGH ROAD TRAINING PARTNERSHIP INITIATIVE 4 (2021), https://www.labor.ucla.edu/wp-content/uploads/2021/05/Eval-Report_The-High-Road_UCLA-Labor-Center_FINAL.pdf [<https://perma.cc/A4DP-4RUF>]; see also Annette Bernhardt, Laura Dresser, & Joel Rogers, *Taking the High Road in Milwaukee: The Wisconsin Regional Training Partnership*, 5 WORKINGUSA 109, 116 (2002) (describing another successful tripartite training partnership).

372. GONZÁLEZ-VÁSQUEZ ET AL., *supra* note 371, at 8.

373. UC BERKELEY LAB. CTR., HRTTP PROMISING PRACTICES: INCORPORATE WORKER WISDOM THROUGHOUT THE PARTNERSHIP 20 (2020), <https://laborcenter.berkeley.edu/wp-content/uploads/2020/08/HRTTP-promising-practices-3-incorporate-worker-wisdom.pdf> [<https://perma.cc/28XG-C7AR>].

374. See ERAUT & HIRSH, *supra* note 152, at 5–6; KOLB, *supra* note 152, at 34.

375. See UC BERKELEY LAB. CTR., *supra* note 373, at 2–3.

376. See *id.* at 3.

377. See *id.* at 4.

Programs.³⁷⁸ Fifth, HRTPs use worker voice in designing training curricula.³⁷⁹ Sixth, they institute peer mentoring programs between senior and junior workers, formalizing the useful informal learning discussed above in Section II.A.1.³⁸⁰ Last, HRTPs explore specific issues for many people of color and immigrants by focusing on “cultural affinity”—the “intangible attributes like empathy skills that make one comfortable and effective with a particular culture.”³⁸¹

As an example of the success of HRTPs, a commercial janitorial company unilaterally initiated new “green” practices by replacing traditional vacuums with energy-efficient backpack “VacPacs” and standard trash bags with thinner ones.³⁸² The HRTP worker focus group, however, revealed that the VacPacs caused injuries and burns, and that workers were double and triple-bagging because the thinner bags constantly ripped.³⁸³ Whereas the workers previously had no idea why they were using the new protocols, the HRTP focus group allowed the workers to understand the environmental purposes behind protocols and to suggest more practical ways of implementing green practices.³⁸⁴

With both of these policy changes—more robust accountability metrics for job training funding and credential boards—the goals would be reinserting the worker as the focus of job training³⁸⁵ and rebalancing responsibility for quality job training between workers, firms, unions, and the state.

CONCLUSION

Credentialism is part of the larger story of ever-increasing bargaining power disparities between firms and workers over the past half-century. Much of this story is related to the contemporaneous weakening of unions and dismantling of government regulation.³⁸⁶ Credentialism was less of a problem when workers had more collective power. Workers and students can see this, which is why many are

378. See *id.* at 6; *The Role of Trade Unions in the US Apprenticeship Arena*, FRANKLIN SKILLS, <https://www.franklinapprenticeships.com/role-trade-unions-us-apprenticeship-arena> [<https://perma.cc/7QH2-NCAZ>] (last visited May 5, 2025).

379. See UC BERKELEY LAB. CTR., *supra* note 373, at 7–8.

380. See *id.* at 9–10.

381. *Id.* at 14.

382. See *id.* at 7–8.

383. See *id.* at 8.

384. See *id.*

385. See Alí R. Bustamante, Mary Alice McCarthy & Maureen Conway, *It’s Time to Put Workers at the Center of Workforce Development Policy*, DC J. (Feb. 14, 2024), <https://dcjournal.com/its-time-to-put-workers-at-the-center-of-workforce-development-policy> [<https://perma.cc/4Y2P-4VNV>].

386. For example, many have blamed a spate of airplane runway close calls and crashes on the lessened ability of the Federal Aviation Administration to patrol the skies. This is due, in part, to chronic staffing shortages after President Reagan broke the air traffic controllers’ union strike in the early 1980s. See Sydney Ember & Emily Steel, *Airline Close Calls Happen Far More Often Than Previously Known*, N.Y. TIMES (Aug. 21, 2023), <https://www.nytimes.com/interactive/2023/08/21/business/airline-safety-close-calls.html> (“Since [the strike], there have been waves of departures as controllers become eligible for retirement. The F. A. A. has struggled to keep pace.”); Mark Rivera & Barb Markoff, *Air Traffic Control Staffing was “Not Normal” before Deadly DC Crash, Highlighting Ongoing Shortages*, ABC 7 CHICAGO (Jan. 30, 2025), <https://abc7chicago.com/post/deadly-dc-plane-crash-highlights-ongoing-air-traffic-control-staffing-shortages-challenges/15849959/>; Hafiz, *supra* note 5, at 1222; LeRoy & Johnson, *supra* note 263, at 134.

beginning to question the value of debt-inducing credentials.³⁸⁷ Shockingly, prominent scholars are questioning altogether the value of job skills when such great power asymmetries persist between firms and workers.³⁸⁸

Such questioning is a bold affront to the meritocracy narrative. Meanwhile, a recent rise in union organizing and worker strikes reflects emboldened workers challenging firm exploitation and demanding greater state responsibility in multiple facets of their lives.³⁸⁹ Even student debtors have organized unions in recent years.³⁹⁰ Perhaps this signals the beginning of a tidal shift away from individualized and atomized credential stacking and toward collective action to improve workers' and students' economic lot.

These questions about the value of credentials deserve meticulous investigation. This Article invites such investigation by presenting an overview of credentialism and its many impacts, especially nondegree credentials that have flooded the private market in the absence of state regulation but that have received only a fraction of the attention garnered by elite university credentials.

Any response to credentialism and the meritocracy narrative should insist that skills learning—and any corresponding credential stacking—coincide with growing both quality jobs and bargaining power for workers collectively. One cannot happen without the other, as shown by the concurrent declines of quality job training and union power. The state should take responsibility for this project, not only to stop the offloading of costs and risks onto workers for job training but also to help workers rebuild collective power in the workplace.³⁹¹ This can be

387. See, e.g., LEILA BENGALI ET AL., FED. RES. BD. OF S.F. ECON. LETTER, FALLING COLLEGE WAGE PREMIUMS BY RACE AND ETHNICITY 1, 3 (2023), <https://www.frbsf.org/wp-content/uploads/sites/4/el2023-22.pdf> [<https://perma.cc/5N7Y-9BC7>] (finding that the college wage premium flattened and then declined significantly since the COVID-19 pandemic, especially for nonwhite people); Tough, *supra* note 47 (describing a reduced “college wealth premium” which considers not only wages but also the debt incurred to obtain credentials).

388. See Suresh Naidu & Aaron Sojourner, *Employer Power and Employee Skills: Understanding Workforce Training Programs in the Context of Labor Market Power*, ROOSEVELT INST. (Dec. 4, 2020), <https://rooseveltinstitute.org/publications/employer-power-employee-skills-workforce-training-programs-labor-market-power> [<https://perma.cc/NFE2-CCYS>] (“[T]raining programs that focus on skills learning without addressing underlying labor market power dynamics between employers and workers can perpetuate existing inequalities.”); SURESH NAIDU & AARON SOJOURNER, ROOSEVELT INST., *EMPLOYER POWER AND EMPLOYEE SKILLS: UNDERSTANDING WORKFORCE TRAINING PROGRAMS IN THE CONTEXT OF LABOR MARKET POWER* 4–6, 9, 33, 35 (2020), https://rooseveltinstitute.org/wp-content/uploads/2020/12/RI_EmployerPowerEmployeeSkills_Report_202012.pdf [<https://perma.cc/Z84Y-887A>].

389. See Harris, *The Militant Labor Roots*, *supra* note 20; Kate Bronfenbrenner, *For Labor Unions, 2023 Was the Year of the Strike—and Big Victories*, WALL ST. J. (Dec. 4, 2023), <https://www.wsj.com/business/unions-workers-2023-strikes-companies-da09de12>.

390. See *Our History and Victories*, DEBT COLLECTIVE, <https://debtcollective.org/about-us/history-and-victories/> [<https://perma.cc/89R8-J7JD>] (last visited May 9, 2025).

391. Indeed, the preamble of the National Labor Relations Act requires state action to enhance worker bargaining power vis-à-vis firms:

The inequality of bargaining power between employees . . . and employers . . . substantially burdens and affects the flow of commerce . . . It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce . . . by protecting the exercise by workers of full freedom of association . . .

29 U.S.C. § 151.

done, in part, by requiring stricter accountability for public funding for job training. Likewise, the state should institute sector-specific tripartite training partnerships that would enhance workers' voices and credential boards that would help ensure that employers are not overcredentializing jobs in a way that harms workers. These responses, at a minimum, would be better than leaving job training to purely market-driven credentialing that steers workers toward debt and dead-end careers. Worsening economic inequality requires nothing less than such a state-supported power-transferring project.