

REPORT

I. Tuition and Debt

The average yearly tuition at a private law school in 2012 was \$40,634, and for residents at a public law school, \$23,214.¹ Combined with living expenses, which often exceed \$20,000 a year, books and other fees, the typical private law school student will pay in excess of \$65,000 per year to get a legal education, and a typical public law school student will pay about \$50,000 per year.² As a point of comparison, the median household income in the United States in 2012 was \$51,371.³ That means that in any given year the median American household could put its entire income toward funding law school and still not be able to cover a private law school education.

To make matters worse, tuition continues to increase at levels far outpacing inflation. Indeed, private law schools have increased tuition by a factor of four in real (inflation-adjusted) terms between 1971 and 2011.⁴ Public law schools similarly have increased tuition for residents by nearly a factor of four in only the last two decades.⁵ Those increases are stunning, indicating that law schools have little restraint when it comes to the cost of legal education.

To be sure, the so-called “sticker price” for law school often is not the amount that students actually pay after the application of scholarships and other tuition discounts. As a result, perhaps a more accurate measure of the cost of law school is the average debt load of recent graduates. Here too, however, the picture is grim. According to ABA statistics, the average 2012 graduate of a public law school borrowed \$84,600, and the average 2012 graduate of a private law school borrowed \$122,158.⁶ Significantly, those figures do not include interest that may accrue before graduation, undergraduate debt, and debt from loans to study for the bar exam.⁷ After tallying up all of these other costs, it is not uncommon for law school graduates to carry a debt burden of between \$150,000 and \$200,000, and many carry much more.⁸

¹ Am. Bar Ass’n, Law School Tuition, 1985-2012, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/ls_tuition.authcheckdam.pdf (last visited Nov. 29, 2013).

² For information on the total cost of attendance at various law schools, see the 2014 *ABA LSAC Official Guide to ABA-Approved Law Schools* (2013), available on the LSAC website at https://officialguide.lsac.org/release/OfficialGuide_Default.aspx.

³ AMANDA NOSS, U.S. CENSUS BUREAU, HOUSEHOLD INCOME: 2012, at 3 (2013).

⁴ Paul Campos, *The Crisis of the American Law School*, 46 U. MICH. J.L. REFORM 177, 178 (2012).

⁵ *Id.*

⁶ Am. Bar Ass’n, Average Amount Borrowed, 2001-2012, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/avg_amnt_brwd.authcheckdam.pdf (last visited Nov. 29, 2013).

⁷ ILL. STATE BAR ASS’N, FINAL REPORT, FINDINGS & RECOMMENDATIONS ON THE IMPACT OF LAW SCHOOL DEBT ON THE DELIVERY OF LEGAL SERVICES [hereinafter ISBA DEBT REPORT]

The weight of this debt on young lawyers attempting to begin their careers and on the legal profession as a whole is crushing. First, the high cost of a legal education creates additional barriers to entry for Blacks and Hispanics, who generally receive less support from their families to attend law school.⁹ The rapid rise in law school tuition is therefore one of the factors holding the legal profession back from embodying the full spectrum of diverse backgrounds in America.

Additionally, the burden of law school debt can distort the employment choices of young attorneys. Small firms, particularly those in rural areas, face greater difficulty hiring and retaining competent attorneys. Fewer lawyers are able to sustain a career working in low-paying public interest jobs. Lawyers burdened by debt face greater pressures and temptations to violate ethics rules, and often have less time available for pro bono work. The overall result is that the quality of legal services that the legal profession provides, particularly to low and middle-income Americans, suffers.¹⁰

II. The Problem

There are a variety of explanations for the persistent ability of law schools to raise tuition at rates far exceeding inflation for the past several decades. Declining support for public schools from state legislatures, the rise of practice-oriented legal education, declining faculty-student ratios, and significant increases in faculty compensation to compete with private sector opportunities are all no doubt part of the explanation. Nonetheless, there is little doubt that an overriding factor is the nearly unfettered access that law schools enjoy to federal funds. So long as the federal government provides a blank check, law schools can raise their tuition with near impunity, confident that their students will be able to pay the price by taking out more federal loans.¹¹

As a recent report by the Illinois State Bar Association explains:

The market pressure on law schools to keep tuition affordable is significantly blunted . . . by the generous lending policies of the federal government. To date, the federal government has allowed nearly any student enrolled in a recognized educational program to borrow amounts limited only by the cost of attendance. To remain eligible to enroll students receiving federal student loans, moreover, an institution need meet few requirements other than remaining accredited by a recognized accrediting agency. As a result, the federal government will fully fund the

13 (2013), available at <http://www.isba.org/sites/default/files/committees/Law%20School%20Debt%20Report%20-%203-8-13.pdf>.

⁸ *Id.*

⁹ *Id.*

¹⁰ For an in-depth look at the impact of law school debt on the careers of young lawyers and on the quality of legal services that the profession provides to the public, see ISBA DEBT REPORT, *supra* note 7.

¹¹ For a detailed explanation of this phenomenon, see Michael Simkovic, *Risk-Based Student Loans*, 70 WASH. & LEE L. REV. 527 (2013), and BRIAN Z. TAMANAHA, FAILING LAW SCHOOLS 126-34, 177-81 (2012).

education of any person who gets into law school, independent of the employment outcomes that the law school's graduates achieve and of their ability to repay the taxpayers' money.¹²

As a result, law schools face little financial pressure to rein in the cost of tuition or to ensure that their students graduate with manageable debt loads.

III. The Solution

To combat this problem the federal government should impose reasonable outcome-based requirements on schools to maintain eligibility to enroll students receiving federal funding. There are a variety of ways that rules could be structured to ensure that schools are graduating students who can meet minimum employment and debt-repayment outcomes. Fortunately, however, the federal government need not reinvent the wheel in this area. The Department of Education has recently released "Gainful Employment" regulations for for-profit schools that provide a template for potential rules for law schools.¹³

Under the newly proposed rules,¹⁴ for-profit schools must meet specified metrics measuring the default rates, debt-to-earnings ratio, and loan repayment rates of students enrolled in their programs. For example, one metric looks at the total amount of all outstanding principal owed by all of a school's borrowers in a particular year. If the total amount of the principal is lower at the end of an award year for that group of borrowers than it was at the beginning of the award year, a school passes the metric. Otherwise, it fails, and a school with a loan balance that fails to decrease for three straight years loses its eligibility for federal funds. Another potential metric could require that a certain percentage of borrowers from a school avoid default on their loans within three years of entering repayment. Yet another could require that the average debt payments of a school's graduates not exceed a certain percentage of discretionary earnings.¹⁵

¹² ISBA DEBT REPORT, *supra* note 7, at 39-40 (footnotes omitted). Note that the federal lending programs allow law students to borrow under the federal graduate PLUS program, which allows students to borrow an unlimited amount up to "the student's estimated cost of attendance, minus . . . other financial aid." 20 U.S.C. § 1078-2(b).

¹³ See Paul Fain, *Further on Gainful Employment*, INSIDE HIGHER ED, Nov. 12, 2013, available at <http://www.insidehighered.com/news/2013/11/12/feds-release-tighter-proposed-language-gainful-employment-rules>. The Department of Education originally proposed a version of the Gainful Employment regulations in 2011. See Jean Braucher, *Mortgaging Human Capital: Federally Funded Subprime Higher Education*, 69 WASH. & LEE L. REV. 439, 465-72 (2012) (describing the regulations). Subsequently, the District Court for the District of Columbia vacated the rules on the ground that the Department had not adequately articulated the rationale behind them and that they were therefore arbitrary and capricious. See *Ass'n of Private Colls. & Univs. v. Duncan*, 870 F. Supp. 2d 133, 154 (D.D.C. 2012). The court's opinion affirmed the statutory power of the Department to issue such regulations, however, leading to the Department's recent attempt to re-promulgate them. *Id.* at 149.

¹⁴ The full text of the proposed rules is available at <http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/draft-regs-session2-11813.pdf> (last visited Nov. 29, 2013).

¹⁵ For a description of the rules, see BEN MILLER, NEW AM. FOUND., *NEW GAINFUL EMPLOYMENT LANGUAGE IS OUT AND IT'S TOUGHER THAN BEFORE* (2013), available at <http://www.edcentral.org/ed-may-have-just-released-the-strongest-gainful-employment-proposal-yet/>.

Significantly, as currently written, the Gainful Employment rules also include protection for current students and graduates of schools that are at risk of falling short of the metrics and of losing their eligibility for federal funds. These protections include a requirement that schools in danger of failing pay their graduates to bring down their average debt to a level where the school can meet the requirements of the regulations.¹⁶

A Gainful Employment rule applicable to law schools could adopt any or all of these features, with the requirements set at appropriate levels for law schools. Moreover, appropriate adjustments to the rules could account for the unique circumstances of law schools. For example, the metrics could be lowered for schools with a certain percentage of graduates employed in legal aid or government jobs, which traditionally do not pay as well as the private sector. Similarly, the metrics could be lowered for schools enrolling a certain percentage of minority students, thus protecting schools with a historical mission of providing access to the legal profession to disadvantaged students. In that way, the regulations would not jeopardize the advances in diversity that the legal profession has made.¹⁷

The purpose of this resolution is not to work out all of the details of a reasonable, effective, and just set of Gainful Employment regulations applicable to law schools. Instead, this resolution aims to endorse the general principle that law schools should not be allowed to increase their tuition indiscriminately on the backs of taxpayers without facing some accountability for their use of funds.

If such regulations were adopted, law schools would be forced to lower their tuition and the debt burdens of their graduates, or else face declining enrollment and likely closure. With their debt burden lightened, graduates would then be freer to accept jobs in government or with legal aid agencies, who would then have an easier time retaining talented lawyers. As a result, the quality and quantity of legal services that the profession provides to the public would increase.¹⁸

IV. Conclusion

The YLD has traditionally worked diligently to improve the plight of young lawyers facing unmanageable debt loads and a difficult employment market. For all of its efforts to help current young lawyers, solving this problem in the long term requires addressing the root of the problem: the rapid and incessant increase in law school tuition. This resolution aims to arrest that

¹⁶ *Id.*

¹⁷ Implementing this proposal would likely require congressional action. Current law allows the Department of Education to implement the Gainful Employment regulations only with respect to “program[s] of training to prepare students for gainful employment in a recognized occupation,” a category that does not include all graduate programs. *Compare* 20 U.S.C. § 1001(a), *with* 20 U.S.C. § 1002(b)(1)(A)(i), *and* 20 U.S.C. § 1002(c)(1)(A). Accordingly, the ABA’s efforts to impose accountability on law schools in this area require lobbying Congress to grant the Department of Education authority to develop Gainful Employment regulations for law schools receiving federal funding.

¹⁸ For a detailed explanation of the effect of law school debt on the quality and quantity of legal services that the profession provides to the public, see ISBA DEBT REPORT, *supra* note 7.

increase by imposing reasonable requirements on law schools that are eligible to enroll students receiving federal funds.

**ABA/YLD RECOMMENDATION
GENERAL INFORMATION FORM**

Submitting Entity: ABA/YLD Truth in Law School Education Task Force

Submitted By: Daniel Thies, ABA/YLD Liaison to the Section of Legal Education and Admissions to the Bar

1. Summary of Recommendations:

The ABA should lobby Congress and the Department of Education to develop reasonable benchmarks for successful debt repayment by a law school's graduates that the law school must meet to maintain eligibility to enroll students receiving federal student loans.

2. Date of Approval by Submitting Entity:

Approved December 11, 2013 by the ABA/YLD Truth in Law School Education Task Force

3. Has this or a similar recommendation been submitted to the Assembly or ABA previously?

None of which I am aware.

4. Are there any Division or ABA policies that are relevant to this recommendation and, if so, would they be affected by its adoption?

None of which I am aware.

5. Does this recommendation require immediate action at the next Assembly? If so, why?

Yes. The ABA House of Delegates will likely consider a proposal in February to create a Task Force to consider issues surrounding the financing of legal education. These recommendations may influence the work of that Task Force, and will most effectively do so if they are passed in February.

6. Status of Legislation (if applicable):

N/A

7. Cost to the Association:

None.

8. Disclosure of Conflict of Interest (if applicable):

None.

9. Referrals:

None

10. Contact Person (Prior to the meeting):

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11. Contact Person (Who will present the report to the Executive Council and/or Assembly)

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