

Lifting the Burden:

Law Student Debt as a Barrier to Public Service

The Final Report Of The ABA Commission On Loan Repayment And Forgiveness

ABA COMMISSION ON LOAN REPAYMENT AND FORGIVENESS



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AMERICAN BAR ASSOCIATION

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We are pleased to present **Lifting the Burden: Law Student Debt as a Barrier to Public Service**. This Report concludes the work of the ABA Commission on Loan Repayment and Forgiveness, a special two-year project created in 2001 by the ABA Board of Governors at the request of then-ABA President Robert E. Hirshon.

Many of today's law graduates are finishing law school owing in excess of \$80,000 in law school loans. Graduates who aspire to pursue public service jobs encounter unique challenges as they attempt to meet their monthly educational loan obligations while earning traditionally lower salaries. Many find that they cannot make ends meet on a public service salary and are forced to forego the opportunity to serve their communities using their legal skills. Others who do accept public service legal jobs find they must leave after two to three years of service to accept higher-paying employment.

Lifting the Burden: Law Student Debt as a Barrier to Public Service provides an analysis of this problem, discusses the implications to the profession and society, summarizes strategies that have been developed to help address the problem and highlights some success stories using these methods. The Report includes the Commission's conclusions about the problem and presents the Commission's detailed recommendations, which represent a comprehensive package designed to provide relief for and incentives to lawyers who want to serve their communities through public service careers.

We express our sincere appreciation to the Commission Members, Liaisons and staff counsel Dina Merrell, all of whose dedicated work finds comprehensive expression in **Lifting the Burden: Law Student Debt as a Barrier to Public Service**. Their knowledge and collegial efforts lent perception and stimulating energy to our activities. We owe additional thanks to Stephen Brown, Kelly Carmody, Professor Michael Olivas and Dean Kinvin Wroth. Although not official members of the Commission structure, these advisors contributed invaluable assistance and expertise.

Finally, we must acknowledge the key role of Robert E. Hirshon, ABA Immediate Past President. Bob's longstanding commitment to access to justice issues and his deep concern about this serious problem facing the legal profession today resulted in the Commission's creation. We salute his leadership and vision. And for all of our colleagues in this endeavor, we urge readers of this Report to continue the important work of nurturing public service careers in the law.

Curtis M. Caton
Co-Chair

Judge Frank M. Coffin
Co-Chair

THE PROBLEM: EDUCATIONAL DEBT BARS NEW LAWYERS FROM PUBLIC SERVICE CAREERS

Many law school graduates face a disheartening dilemma. Despite their deep commitment to ensure access to justice for all citizens, many law students find that the rising cost of a legal education forces them to forego any form of public service. They must borrow increasingly higher amounts. Most graduates of law school today have a cumulative debt from undergraduate and law school that exceeds \$80,000. Assuming a standard ten-year repayment schedule, this means payments of more than \$1,000 per month.

Most graduates interested in pursuing public service careers with government or legal services organizations can expect to make a median entry-level public interest salary of \$36,000 (for 2002 graduates) and do not have the resources both to repay educational loans and support basic living expenses. A recent study found that law school debt prevented 66% of student respondents from considering a public interest or government job. This difficult economic environment for new law graduates in turn limits the potential amount of legal services available to our citizens. The legal profession cannot honor its commitment to the principle of access to justice if significant numbers of law graduates are precluded from pursuing or remaining in public service jobs.

THE ABA'S RESPONSE

In 2001, recognizing the significant impact of this problem upon the legal profession and society, then-American Bar Association President Robert E. Hirshon made the issue a priority of his presidential term. At his request, the ABA Board of Governors created the Commission on Loan Repayment and Forgiveness ("Commission") for a two-year term. ABA leadership charged the Commission with (1) examining the law student debt burden issue and its impact on law graduates' ability to serve their communities by accepting and remaining in public service legal employment and (2) making recommendations to the American Bar Association and the legal profession about strategies to address this problem.

During the past two years, the Commission has studied this problem and received testimony from law students, graduates, public service employers, academics, law deans and others with an interest in the debt burden issue. Recognizing the need for multi-faceted solutions, the Commission developed three work groups - Federal, Law School and State - to identify some approaches that would alleviate the problem. As part of its work, the Commission also developed several resources to provide ongoing assistance to the many stakeholders in this issue.

SOLUTIONS THAT WORK: LOAN REPAYMENT ASSISTANCE PROGRAMS

State governments, law schools and other entities have developed a number of solutions for relieving the debt burden of some law graduates, including loan repayment assistance programs, public service post-graduate fellowships and public service scholarships. A loan repayment assistance program ("LRAP") is a key tool, which provides financial aid to law school graduates, typically those working in the public interest or government sector. In most cases, this aid is given to graduates in the form of a new and forgivable loan to help them repay their annual educational debt. Upon completion of the required service obligation, the LRAP administrator forgives or cancels the new loan to program participants. Most LRAPs contain limits on the amount of income a recipient can earn while participating in such a program. There are various types of LRAPs, administered by law schools, state bar foundations and federal and state governments, providing debt relief to a limited number of law graduates. However, the number and scope of existing LRAPs are limited.

SUMMARY OF LIFTING THE BURDEN: LAW STUDENT DEBT AS A BARRIER TO PUBLIC SERVICE

This Report provides an analysis of the educational debt problem, discusses the impact of the problem on the legal profession and society, summarizes strategies that have been developed to help address the problem and highlights some success stories using these methods. The Report includes ten conclusions about the debt burden issue and its impact on the profession and presents 19 detailed recommendations which, taken together, constitute a comprehensive package designed to provide relief for and incentives to lawyers who want to serve their communities through public service careers.

CONCLUSIONS: THE IMPACT OF THE LAW STUDENT DEBT BURDEN ON THE LEGAL PROFESSION AND SOCIETY AND STRATEGIES TO ADDRESS THE PROBLEM

- **Law school tuitions have skyrocketed.** Since the early 1970's, there has been a steep and persistent rise in the costs of legal education and in the tuitions law schools charge students. During the period 1992-2002, the cost of living in the U.S. has risen 28%, while the cost of tuition for public law schools has risen 134% (for residents) and 100% (for non-residents) and private law school tuition has increased 76%. In 2002, the median law school tuitions were: \$24,920 (private law school), \$18,131 (non-resident public law school) and \$9,252 (resident public law school).
- **The vast majority of law students borrow to finance their legal education.** In 2002, almost 87% of law students borrowed to finance their legal education.
- **Law students are borrowing increasingly larger sums to finance their legal education.** As tuitions and other expenses of attending law school rose, more and more students found they needed to borrow to pay for law school. During the 1990's, the average amounts students borrowed more than doubled. In the year 2002, the amount borrowed by many law students exceeded \$80,000.
- **Public service salaries have not kept pace with rising law school debt burdens or private sector salaries.** Entry-level salaries for government and other public service positions have always been significantly lower than those in private practice. Over the years since the mid-1970's, the median starting salaries in private practice have risen at a much faster pace than entry-level public service salaries. In 2002, the median starting salary for private practice was \$90,000, while the median starting salary for public interest legal work was \$36,000.
- **High student debt bars many law graduates from pursuing public service careers.** As law school tuitions and student debt have sharply escalated, fewer and fewer law school graduates can afford to take the comparatively low-paying public service positions that are available in government agencies or with prosecutor, public defender or legal services offices. A national study recently found that law student debt prevented 66% of law student respondents from considering a public service career.
- **Many law graduates who take public service legal jobs must leave after they gain two to three years of experience.** Despite their high debt burden, some law graduates initially accept public service jobs. Some who begin careers in public service, and who would like to remain, leave after a few years when they find their debts are too severely constraining on their hopes for making ends meet, much less raising children or saving for retirement. These lawyers leave just at the point when they have gained enough experience to provide valuable services to their employers and clients.
- **Public service employers report serious difficulty recruiting and retaining lawyers.** Public service employers, such as prosecutor or legal services offices, have vacancies they cannot fill because new law graduates cannot afford to work for

them. Many public service employers report having a difficult time attracting the best qualified law graduates. Alternatively, those who do hire law graduates find that, because of educational debt payments, those whom they do hire leave just at the point when they provide the most valuable services.

- **The legal profession and society pay a severe price when law graduates are shut out from pursuing public service legal careers due to high educational debt burdens.** Lawyers with dreams of serving their communities as prosecutors, public defenders or civil legal aid lawyers are unable to use their skills to do so. The profession is thus unable to promote and provide meaningful access to legal representation for all. When governments cannot hire new lawyers and/or keep experienced ones, governments' ability to protect the public safety is challenged. The inability of poor and moderate-income persons to obtain legal assistance can result in dire consequences to the individuals and the communities in which they live.
- **Loan repayment assistance programs help law graduates take and remain in public service legal jobs.** Loan repayment assistance programs help alleviate this problem by providing additional, focused financial aid to those who are committed to working in public service positions. In most cases, this aid is given in the form of a new forgivable loan to help them repay their annual educational debt. Law schools, states and public service employers that have created these programs report that they have had a positive impact on new law graduates' ability to take and remain in public service jobs.
- **The number of LRAPs is limited.** Existing LRAPs help a small percentage of law graduates enter and remain in public service legal careers. However, the number of these programs is inadequate. Many of the existing programs have very limited resources and are able to provide assistance to only a small number of public service lawyers. Therefore, federal, state and local governments, law schools, public service employers, bar foundations and other entities must create more programs or expand existing programs to support more public service lawyers.

RECOMMENDATIONS

Responsibility for resolving the debt burden issue lies with the legal profession, federal and state governments, law schools and public service legal employers. Therefore, the Commission developed specific recommendations targeting each of these sectors. Taken together, these recommendations are a comprehensive package designed to provide relief for and incentives to lawyers who want to serve their communities through full-time public service work.

American Bar Association

- As an important component of its commitment to promoting access to justice, the ABA should continue to exert leadership regarding the impact of educational debt on law graduates' ability to enter and remain in public service legal careers. The ABA should build on the national momentum generated in the past two years by keeping this issue as a priority through such specific means as funding an appropriate structure to support ongoing work, seeking appropriate federal loan repayment legislation and convening an annual national LRAP summit or symposium of interested organizations and persons.

Federal Government

- Congress should enact legislation or the Secretary of the U.S. Department of Education should amend existing regulations governing the income-contingent repayment option of the William D. Ford Federal Direct Loan Program by (1) permitting forgiveness sooner than 25 years after a borrower begins repaying loans and (2) eliminating or reducing the marriage penalty.

- Congress and/or the U.S. Department of Education should increase to at least \$30,000 the amount a law student may borrow annually in unsubsidized loans under the Stafford Loan Program. This amount should be reviewed periodically thereafter and, at a minimum, adjusted for inflation and rising higher education costs.
- Congress should create loan repayment/forgiveness programs for lawyers in public service under the Stafford Loan Program.
- Congress should extend loan forgiveness under the Perkins Loan Program to attorneys working in public service, such as public defenders and legal aid attorneys.
- Congress should amend Section 125 of the Internal Revenue Code of 1986 to include an educational loan repayment program as part of a qualified benefit assistance program (cafeteria plan) that can be sponsored by employers and offered to employees.
- Congress should enact legislation to give incentives to public service employers to provide educational loan repayment programs.
- Pursuant to 5 U.S.C. § 5379, Congress authorized federal agencies to set up loan repayment programs to repay federally insured student loans when necessary to recruit or retain highly qualified professional, technical, or administrative personnel. Congress currently authorizes the agencies to pay up to \$6,000 in assistance to an employee in a calendar year, with an aggregate cap of \$40,000. Congress should increase the annual cap to at least \$10,000, increase the aggregate cap, provide for inflation increases to keep pace with tuition increases and provide funding for federal agencies to implement these programs.
- Congress should amend the Internal Revenue Code to allow a full deduction for interest paid on student loans obtained for the purpose of attending an institution of post-secondary education.
- The Legal Services Corporation should make loan repayment assistance and forgiveness a priority, by such means as promoting these programs to its grantees and/or exploring the creation of a loan repayment assistance program for its grantees.

Law Schools

- Law schools should create programs to help reduce student debt burdens and facilitate a student's decision to enter and remain in a public service job. These programs should include financial aid programs, such as loan repayment assistance programs ("LRAPs"), public service scholarships and post-graduate public service fellowships.
 - Law schools should treat as a priority the funding of programs, such as LRAPs, designed to make public service work financially feasible for graduates.
 - Law schools should assure that their LRAPs have a solid funding base to enable them to be effective.
 - Law schools with LRAPs should continually evaluate them to determine whether they are effectively meeting a school's goals.
- Law schools should provide more financial planning and guidance counseling to law students prior to matriculation, while enrolled, and following graduation, to help reduce debt load while attending law school, as well as adopt measures to achieve debt consolidation and reasonable payment scheduling to minimize default. At a minimum, the debt counseling function of a law school should include discussions of such methods of debt reduction as LRAPs, fellowships and other similar programs.

- In addition to creating law school LRAPs, law schools should work with state and local bar associations and foundations, IOLTA programs and other LRAP advocates to support government, statewide and other loan repayment assistance programs for public service lawyers.

States

- As part of their commitment to access to justice, state governments should create and fund more programs, such as LRAPs, designed to enable law graduates to enter into and remain in public service legal careers.
- Taking into account the legal profession's responsibility to ensure access to justice, state, local and territorial bar associations and foundations and IOLTA programs should promote the creation of programs, such as LRAPs, so that law graduates can enter into and remain in public service legal jobs.
- To support their recruiting and retention efforts, public service legal employers should create employer-based programs and support the creation of other LRAPs to allow law graduates to take and remain in public service employment.

LAW STUDENT DEBT AS AN IMPEDIMENT TO PUBLIC SERVICE LEGAL CAREERS

The great majority of American law students pay for their education by taking out loans through federally subsidized and private loan programs. The typical law student today graduates with debts of around \$80,000, which she expects to pay out of later earnings. In general, this system of financing legal education has served well both the students and America's legal system: through it, each year, thousands of students enter the profession bearing, as they should, the substantial majority of the costs of their own education. But one enormous shortcoming of this financing system is becoming more and more acute each year: as law school tuitions and the debts of law students have increased, fewer law school graduates

can afford to take the comparatively low-paying public service legal positions that are available in federal, state and local government agencies and in legal services and public defender offices that serve the poor. Even those graduates with the strongest commitments to public service shrink from the prospect that a third or more of their monthly income will be taken up in debt payments if they take a public service legal position.

The consequences are serious. Today, some public service employers, such as prosecutors, legal services and public defender offices and nonprofit organizations, have vacancies they cannot fill because new law graduates cannot afford to work for them. Many such public service employers report having a difficult time attracting the best qualified law graduates. Alternatively, those who do hire law graduates find that, because of educational debt payments, those whom they do hire leave just at the point when they provide the most valuable services.

Over the last decade, higher and higher proportions of the most able students graduating from law school with ambitions to work in public service are taking jobs instead in mid-sized and large private firms (where salaries have risen at close to the pace of the sums law students are borrowing) and those who do adhere to their aspirations and take jobs in public service can barely make ends meet.

Government, law schools and the legal profession as a whole must find solutions to this problem. All have long accepted responsibility for helping to ensure that legal services are available and affordable to low-income persons. All have a stake in ensuring that local, state and federal governments and public service organizations have lawyers providing the public with the highest quality representation.

The legal profession has a special responsibility to address this problem. At its foundation, the legal profession is about service: service to individuals and organizations; service to private and public entities. Not only does the profession have an obligation to represent clients who can afford to pay, but also to ensure access to justice for those individuals and communities that cannot afford a lawyer. The profession's public service responsibility is met both by lawyers working full-time in the public sector, such as for government agencies or legal services offices, and

"I am a non-traditional law student. I was a social worker before enrolling in law school. I would love to be able to work in the public sector as a lawyer and utilize my social work skills that I have acquired. However, it is impossible. I have graduate loans from social work school and will soon be faced with significant law school loans as well. If there were opportunities similar to that of the medical field where I could commit a certain number of years to a public service legal job for forgiveness on my student loans, then you could not stop me from signing up. Unfortunately, until that day comes, only money puts food on the table, not good intentions."

2003 Law School Graduate and member of the ABA Law Student Division

by the rest of the members of the bar who are expected to provide at least 50 hours of pro bono legal services to persons of limited means or to organizations designed primarily to address the needs of persons of limited means.¹

The opening words of the American Bar Association’s Model Rules of Professional Conduct provide that, “a lawyer is a...public citizen having special responsibility for the quality of justice.”² “As a public citizen,” the Preamble to the Model Rules continues, “a lawyer should seek improvement of...the administration of justice. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance, and should therefore devote professional time and civic influence in their behalf.”³ Study after study has found that large numbers of lower- and middle-income members of the public face civil legal problems that they are unable to resolve satisfactorily by themselves but for which they do not turn to the legal system for help, in large part because of the unavailability of legal services that they can afford.⁴

When law graduates are foreclosed from pursuing public service legal careers due to high educational debt burdens, the consequences to society and the profession are significant. Lawyers with dreams of serving their communities as prosecutors or civil legal aid lawyers are unable to use their skills to do so. The profession is unable to thoroughly promote and provide meaningful access to legal representation for all. When federal, state and local governments are unable to hire new lawyers or retain experienced lawyers, government and its citizens suffer. Lawyers play an important role in making government more effective – by developing and implementing public policy and enforcing consumer protection statutes or criminal statutes designed to protect the community. Finally, society suffers when its poor and moderate-income residents are unable to obtain legal assistance. Their inability to find a lawyer can have dire consequences in their everyday lives and impact the communities in which they live. They may lose housing, the family farm, or benefits, such as Supplemental Security Income, food stamps or Medicaid. They may live in fear due to threats to their personal safety by a spouse or other family member.

This Report is about the magnitude of the growing educational debt problem and about imaginative solutions that are being developed to deal with it. It is also a call to action to the legal profession. Given the educational debt problem’s far-reaching implications for the profession as well as society at large, the profession must make this issue a priority.

As an illustration of both the problem and one approach to a solution, consider a story reported on New Hampshire Public Radio about a law school graduate named Judith Jones.⁵ Ms. Jones took a job after law school at New Hampshire Legal Assistance Program in Portsmouth, NH. In 2001, at the time of the story, she had been with the program for four years and loved her work,

But she and her husband, a psychiatric social worker, are still just squeaking by. One big reason for that is her law school debt. Jones’s salary is in the mid-30’s. Her monthly student loan bill is a hefty \$775 a month. Jones and her husband drive old cars; they

¹MODEL RULES OF PROFESSIONAL CONDUCT Rule 6.1 (2003).

²*Id.* at Preamble.

³*Id.*

⁴ABA Consortium on Legal Services and the Public, *Agenda for Access: The American People and Civil Justice, Final Report on the Implications of the Comprehensive Legal Needs Study*, 1996 4-9; Institute for Social Research at Temple University, *Report on the Legal Needs of the Low-Income Public: Findings of the Comprehensive Legal Needs Study*, 1994. To access these studies, visit www.abalegalservices.org/sclaid/research.html.

⁵“Lawyers for the Poor Face Own Financial Struggles,” New Hampshire Today, New Hampshire Public Radio, July 3, 2001 (available at www.nhpr.org/content/fullmonty_view.php/974/).

don't take fancy vacations, and she buys her clothes at thrift shops. John Tobin, Executive Director of New Hampshire Legal Assistance, says many of his young associates go through similar struggles:

They end up having the same housing dilemmas as our clients. They can't afford to live in New Hampshire because they have these huge loan payments that are like a mortgage with no house. And they are also trying to live.

Tobin says in recent years it was getting harder and harder to hire and keep good lawyers.

Searching for a way to deal with his hiring and retention problems, Tobin teamed up with the New Hampshire Bar Foundation to create a program to help legal aid lawyers repay their loans. In 2000, the Bar Foundation began providing up to \$6,000 dollars in assistance annually to legal aid lawyers with large educational debts. Judith Jones received \$3,000 from the program, which covered only about one-third of her annual loan payments, but still helped relieve the financial pressures in her household.

The Commission's Report begins by describing the growing debts of law students and the harmful impacts of those debts on public service employers seeking to hire lawyers, and the communities these organizations serve. The body of the Report is devoted to ways to address these problems. The principal focus is on programs such as the one in New Hampshire, as well as those offered by law schools, states and employer-based programs begun by legal services offices and government agencies. The report also addresses aspects of the federal educational loan programs and particularly changes that might be made in a current but little-used statutory option that makes the size of payments due on federally-guaranteed loans contingent on a borrower's actual earnings. Taken together, the Commission believes that loan repayment or forgiveness programs and income-contingent repayment programs can increase the likelihood that able graduates of law schools will accept and remain in public service work.

THE CHANGING ECONOMICS OF LEGAL EDUCATION AND INITIAL EMPLOYMENT

Since the early 1970's, there has been a steep and persistent rise in the costs of legal education and in the tuitions charged to students by law schools. The reasons for the rise are many: as salaries in private practice rose sharply, law schools needed to raise their own faculty salaries to attract and hold fine teaching staffs; clinical education programs were added to law school curricula that cost a great deal more per student hour of contact than large lecture classes; faculty sizes increased to respond to the widening numbers of legal specialties; and in public schools, funding provided by state legislatures declined as a proportion of total costs.⁶ Table 1 tracks the changes in median tuitions at American law schools since 1985. By 2002, the median tuition for residents in public law schools was over five times as high as it had been in 1985. The average tuition in private law schools was nearly four times as high.

⁶Dennis, *Law Schools Can't Afford to Remain Apart from the Rest of the University*, Chronicle of Higher Education, September 15, 2000. The Commission is aware of the existence of additional viewpoints as to why law school tuitions are so high, and of proposals to reduce costs by radical changes in legal education methods. The Commission was created to study the impact of high educational debt on public service. The reasons underlying escalating law school costs fall outside the scope of the Commission's mandate. Accordingly, this Report does not attempt to provide an analysis of, or alternatives to, the issue of rising law school tuitions.

TABLE 1

Change over Time In Law School Tuitions

	1985	1990	1995	2000	2002
Median Public Law School Tuition for Residents	\$1,792	\$3,012	\$4,879	\$7,201	\$9,252
Median Public Law School Tuition for Non-residents	\$4,876	\$7,390	\$11,656	\$16,113	\$18,131
Median Private Law School Tuition	\$7,385	\$11,680	\$16,930	\$21,920	\$24,920

Figures based on data collected by the ABA Section of Legal Education and Admissions to the Bar through its Annual Questionnaire, 1985, 1990, 1995, 2000 and 2002.

As tuitions and the other expenses of attending law school rose, more and more students found that they needed to borrow. In the mid-1970s, only a modest percentage of students borrowed to pay the costs of legal education. The proportion rose steadily during the 1980s. Table 2 displays the pattern in the 1990s. By 2000, nearly seven of every eight law students were borrowing to attend law school and, during the 1990s alone, the average amounts they were borrowing more than doubled. In the year 2001, the amount borrowed by many students exceeded \$80,000.⁷

TABLE 2

Change over Time in How Many Students Are Borrowing and How Much They Are Borrowing

	1992-1993	1995-1996	1999-2000
Percentage of students attending law school who borrow to attend	74.8%	84.5%	86.4%
Average amount borrowed for law school by those who borrow	\$37,637	\$49,415	\$77,300

Report reflecting cumulative borrowing prepared by Kipp Research for Access Group, Inc. Figures based on data from the National Center for Education Statistics, NPSAS 1993, 1996 and 2000 surveys.

⁷Estimates of the average and median debt law school graduates incur to pay for their legal education vary. The ABA Section of Legal Education and Admissions to the Bar reports the following as average debt of 2002 law graduates: \$70,299 (private law schools); \$44,649 (public law schools) (Source: 2002 Annual Questionnaire). Access Group, a private nonprofit lender, estimates the median debt for 2000 law graduates as \$84,400 (memo of July 2002 prepared by Jeffrey E. Hanson, Ph.D., Director of Debt Management, Access Group). This figure reflects borrowers who borrowed at least one Law Access Loan from Access Group while in law school. Those who borrowed only federal loans and/or the Bar Exam loan but no Law Access loan are not included in the analysis. Finally, the National Center for Education Statistics estimates the average debt of 1999-2000 law graduates at \$62,103 (http://www.nces.ed.gov/surveys/npsas/table_library/tables/npsas98.asp).

At the same time that educational debts were rising greatly, salaries for public service lawyers were lagging. Table 3 displays the rise over time in entry-level salaries for lawyers in private firms, in government and legal services. Two aspects of the table stand out. The first is that at all points the entry-level salaries for government and legal services were significantly lower than those in private practice. The second is that, over the years since the mid-1970s, the median salaries in private practice have risen at a much faster rate than those in the other two sectors.

TABLE 3

Change over Time in Median Entry Salaries in Various Legal Positions

	1985	1990	1995	2000	2001	2002
Median starting salary in private practice	\$31,700	\$50,000	\$50,000	\$80,000	\$90,000	\$90,000
Median starting salary for government lawyers	\$24,200	\$30,000	\$33,000	\$40,000	\$41,000	\$42,000
Government median as a percentage of median in private practice	76.3%	60%	66%	50%	45.6%	46.7%
Median starting salary in public interest (such as legal services)	\$18,800	\$25,900	\$30,000	\$34,000	\$35,000	\$36,000
Public interest median as a percentage of median in private practice	59.3%	51.8%	60%	42.5%	38.9%	40%

Data from the National Association for Law Placement, Jobs and J.D.'s: Employment and Salaries of New Law Graduates, Class of 1985, 1990, 1995, 2000, 2001 and 2002. For more information, visit www.nalp.org.

The net effect of rapidly rising debt and a widening gap between the salaries in private practice and salaries in government and legal services has been calamitous.⁸ In the 1970s, law students who borrowed could easily repay their educational debts. Most borrowed nothing and only a few borrowed a lot in relation to their initial earnings. In the 1980s, most law students borrowed and increasing numbers felt pinched in paying back their loans. In the late 1990s and today, what was once a problem for a few has become a financial crisis for most.

AN ILLUSTRATION OF THE PROBLEM: THE STORY OF ONE AVERAGE LAW STUDENT TELLS THE STORY OF MANY

To convey the seriousness of the problem facing individuals making choices at various stages, the following is an illustrative story of a law student who attends a law school with the median tuition, who borrows the median amounts in college and law school, and who has career opportunities in various settings earning median salaries. The quandaries faced by this student – and thus by so many other law students in the same

⁸For a discussion on the salary chasm in legal services, see Tobin, *Urgent Memo to Ourselves: Legal Services is Not the Peace Corps (Addressing the Salary Chasm Now)*, Management Information Exchange Journal 5 (Spring 2003).

position – should also help make clear the dilemma faced by public service legal employers in attracting and retaining able lawyers.

The subject is Jane Median. Ms. Median is a college senior with good grades. She hopes to attend law school. Ms. Median's parents, high school teachers with two other children at home, have contributed many thousands of their savings to help pay for Jane's education, but, like 62.4% of those going to law school, Ms. Median has had to borrow to meet part of her undergraduate education costs.⁹ She has in fact borrowed just exactly the median among law students who borrowed as undergraduates – a total of \$16,079 across her four undergraduate years.¹⁰

What Ms. Median Borrows to Attend Undergraduate School: \$16,079

Ms. Median wants someday to be a prosecutor and perhaps a judge. She applies and is accepted at Right-in-the-Middle University School of Law, whose alumni have a distinguished record for public service. In 2000, when Ms. Median began law school, Right-in-the-Middle's annual tuition was \$21,920, which was the median tuition in the United States for private law schools.¹¹ In 2002, 64.1% of American law students enrolled at ABA-accredited law schools attended private law schools.¹²

***Ms. Median's Annual Tuition at a Private Law School:
First Year: \$21,920; Second Year: \$22,870; and Third Year: \$24,200***

Ms. Median matriculates at Right-in-the-Middle. She calculates that, if she shares a small apartment with several others and cooks nearly all her own meals, she can scrape by on annual living expenses of \$12,466 for the first year, \$12,980 for the second year and \$13,772 for the third year. Her total annual budget, including tuition, for each year she is enrolled is as follows: \$34,256 (2000-2001); \$35,941 (2001-2002); and \$37,916 (2002-2003).¹³ These figures represent the average total cost of attendance at ABA-approved law schools.

***Ms. Median's Expenses Other than Tuition: \$12,466 (2000-2001);
\$12,980 (2001-2002) and \$13,722 (2002-2003) for a total of \$39,218***

***Ms. Median's Total Annual Expenses, Including Tuition: \$34,256 (2000-2001);
\$35,941 (2001-2002) and \$37,916 (2002-2003) for a total of \$108,113***

Where will Ms. Median find \$108,113 she needs for a three-year period to pay for law school and meet her other expenses? Ms. Median's parents still face the college expenses for their younger children, so like most other American parents, they do not feel that they can afford to continue to contribute to Ms. Median's support now that she has finished her undergraduate education. Accordingly, during her three years of law school, Ms. Median becomes one of the 87% of law students who borrow to attend law school.¹⁴ She will need approximately \$108,113 to pay for tuition and other living expenses. Of this \$108,113, she will borrow a total of \$70,299, which is the average amount borrowed by American law student graduates of private law schools in the year 2002.¹⁵

⁹National Center for Education Statistics, Student Financing of Graduate and First-Professional Education, 1999-2000 (2002) at 103 [hereafter NCES Report]; available at <http://www.nces.ed.gov/pubs2002/2002166.pdf>.

¹⁰*Id.* at 103.

¹¹2000 ABA Annual Questionnaire, ABA Section of Legal Education and Admissions to the Bar.

¹²2002 ABA Annual Questionnaire, ABA Section of Legal Education and Admissions to the Bar.

¹³2000, 2001 and 2002 ABA Annual Questionnaire, ABA Section of Legal Education and Admissions to the Bar.

¹⁴NCES Report at 103.

¹⁵ABA Section of Legal Education and Admissions to the Bar, 2002 Annual Questionnaire. Ms. Median graduated in 2003, so the amount is probably higher.

Ms. Median's Total Expenses (including Tuition) during Law School: \$108,113**Ms. Median's Total Borrowing to Attend Law School: \$70,299**

As you see, Ms. Median does not borrow the entire \$108,113 that she will spend on tuition and living expenses. She borrows \$70,299, and like most other law students, works during the school year¹⁶ and during the summer between school years to earn the remaining \$37,814. For example, by working for 12 weeks during the summer after her second year at a 30-lawyer firm, Ms. Median is able to earn \$12,600, the median amount paid in the United States to summer associates by firms with 26-50 lawyers.¹⁷ Some of her classmates who want experience in a public service setting will work in a legal services office, earning less than a third as much as Ms. Median. Also, during the school years, Ms. Median takes a job waiting tables in a restaurant to earn extra money.

Ms. Median's Total Earned Income during Law School: \$37,814

Where does Ms. Median find the \$70,299 in loans to pay for her law school tuition and living costs? Like most other law students, she will turn to the financial aid office of her law school. She will be able to borrow \$55,500 through the Stafford Loan program, which is part of the Federal Family Education Loan Program.¹⁸ The Stafford Program offers a subsidized interest rate, and on the first \$8,500 borrowed each year, the Federal government pays the interest during the period the student is in school. In addition to the \$55,500, she will need to borrow \$14,799 from private sources. To do so, she is likely to turn to Access Group, the largest private loan program for law students and borrow the \$14,799 across three years at roughly 8.5% interest, with payments deferred until the end of law school.¹⁹

The Sources of Ms. Median's Law School Loans:

Subsidized Stafford Loans:	\$25,500
Unsubsidized Stafford Loans:	\$30,000
Loans from Private Lenders:	\$14,799
	\$70,299

It is now the fall of Ms. Median's third year of law school. She has been living quite frugally for the past three years. She still shares a small apartment with three other students and has gotten by without an automobile. She has been looking forward to finishing law school and beginning full-time work. By the end of her schooling, she will have law school loans totaling \$70,299. Coupled with her undergraduate loan of \$16,079, she will owe a total of \$86,378.

Ms. Median's Total Borrowing to Attend College and Law School: \$86,378

Ms. Median would like to pay her loans off over ten years, which is the standard repayment period for federal educational loans, and among payment schemes, the

¹⁶About 60% of law students work at least part-time during the terms they are in law school. NCES at 8. Fewer than 60% work during their first year, while more than 60% work during their second and third years.

¹⁷National Association for Law Placement, Summary of 2002 Associate Salary Survey, available at www.nalp.org.

¹⁸20 U.S.C. §§ 1071 to 1087-4.

¹⁹The interest rate will vary. This is the rate Access Group uses when developing projections (representing a "worst-case" scenario). Interest rates have been higher in the past, but recently, interest rates have been historically low. The current interest rate for Law Access Loans is 3.98% (effective July 1, 2003 through September 30, 2003). The interest rate for Law Access Loans is based on 3-month LIBOR (London InterBank Offered rate, plus 2.7%) and adjusted quarterly.

one with the lowest total payments in interest and principal. She calculates that, under the ten-year plan, she will have to pay approximately \$1,065 each month for ten years, a total of \$12,780 per year.²⁰

Ms. Median's Loan Payments on a Standard Ten-year Plan: \$1,065 per month and \$12,780 per year

Ms. Median has been a good student and has succeeded in obtaining two offers of employment. One is as an assistant prosecutor in the largest city in her state. It will pay her a gross salary of \$40,000. That was the median salary in 2002 for law school graduates taking jobs as prosecutors.²¹ The other offer is as an associate in a firm of 60 lawyers in the same city. That job would pay her \$80,000, the median salary for lawyers in firms of this size.²²

Ms. Median would like to take the government job. Like other law students thinking about government, she is attracted by the challenge of the work and the opportunity to contribute to society.²³ \$40,000 as a starting salary sounds very attractive – at least until she calculates how much disposable income she will have. As a single person with no dependents, her total federal and state income taxes and payroll taxes on an income of \$40,000 will be approximately \$10,293,²⁴ leaving her about \$16,927 to live on after taxes and the \$12,780 payments on her debt. \$16,927 is only slightly more than she has had available as living expenses as a student, so after law school she will be able to live only slightly better than she is now. She will be paying about 43% of her after-tax income toward her loans.

On the other hand, if she takes the job in the law firm that pays \$80,000, her taxes will be higher (approximately \$26,488),²⁵ but her loan payments will be the same and she will have about \$40,732 left over after paying taxes and her loan installments.

If Ms. Median Takes the Job as a Prosecutor:

Salary as a Prosecutor:	\$40,000
State and Federal Income Taxes and Payroll Taxes	\$10,293
Annual Loan Payments on Ten-Year Plan	\$12,780
Total of Taxes and Loan Payments	\$23,073
Discretionary Income for All Living Expenses	\$16,927
Ms. Median's Loan Payments as a Percent of Her After-Tax Income:	43.02%

²⁰This estimate assumes an interest rate of 8.25% for Stafford loans (the cap) and 8.5% for the private loan.

²¹National Association for Law Placement, Jobs & J.D.'s: Employment and Salaries of New Law Graduates, Class of 2002.

²²*Id.*

²³These are the two most common reasons for wanting to work in government found in the study of graduating law students in 2002. Equal Justice Works, National Association for Law Placement and Partnership for Public Service, *From Paper Chase to Money Chase: Law School Debt Diverts the Road to Public Service*, 22 (2002). The report is available at www.equaljusticeworks.org.

²⁴These calculations are based on 2003 income tax rates for federal and payroll tax, including an exemption of \$3,050, standard deduction of \$4,750 and state income tax rate of 5.5% (income tax rates vary from state to state, with some states as low as 0% and others as high as 9%).

²⁵*Id.*

If Ms. Median Takes the Job in the 60-lawyer Firm

Salary in Firm	\$80,000
State and Federal Income Taxes and Payroll Taxes	\$26,488
Annual Loan Payments on Ten-Year Plan	\$12,780
Total of Taxes and Loan Payments	\$39,268
Discretionary Income for All Living Expenses	\$40,732
Ms. Median's Loan Payments as a Percent of Her After-Tax Income:	23.88%

In circumstances similar to those that Ms. Median faces, many graduates of law school today choose the offer from the private firm over the offer from the prosecutor. The difference between \$16,927 and \$40,732 in disposable income is too great to resist. Assume, however, that Ms. Median is so committed to her government aspirations that she is willing to take the much smaller salary.

Before accepting the prosecutor's offer, Ms. Median meets with her law school's financial aid advisor, who suggests that she consider repayment plans other than the standard ten-year plan. Two seem plausible for her. The first is an extended payment plan that permits her to pay over 15, 20, 25 or even 30 years. The second is an income-contingent repayment option that permits her to pay each year a fixed percentage of her income and that, after 25 years, forgives unpaid balances under the loan. Below are illustrations of what Ms. Median would pay under a 20-year extended plan or under the income-contingent repayment option. The advantage of both of these plans is that they permit her to pay much less each month than she would pay under the ten-year loan payment plan. The disadvantages, however, are substantial. By the time she completes her loan payments in 2023, she will, under the 20-year plan, have paid a total of about \$210,000 in principal and interest, rather than a total of about \$106,000 under the regular 10-year plan. She might pay even more under the income-contingent repayment option, depending on her earnings. In addition, of course, she will be paying on her debt for ten to fifteen additional years, significantly affecting her standard of living during those years.

Ms. Median Takes the Job with the Prosecutor but Elects to Repay Loan over 20 Years

Salary as a Prosecutor:	\$40,000
State and Federal Income Taxes and Payroll Taxes	\$10,293
Annual Loan Payments on Twenty-Year Plan	\$ 9,000
Total of Taxes and Loan Payments	\$19,293
Discretionary Income for All Living Expenses	\$20,707
Ms. Median's Loan Payments as a Percent of Her After-Tax Income:	30.29%

Ms. Median Takes the Job with the Prosecutor but Elects to Repay Loan under Federal Income-Contingent Repayment Option

Salary as a Prosecutor:	\$40,000
State and Federal Income Taxes and Payroll Taxes	\$10,293
Annual Loan Payments on Income-Contingent Repayment Option	\$ 6,000
Total of Taxes and Loan Payments	\$16,293
Discretionary Income for All Living Expenses	\$23,707
Ms. Median's Loan Payments as a Percent of Her After-Tax Income:	20.00%

Assume that Ms. Median selects the 20-year payment option and begins work in the prosecutor's office. She does fine work and finds it stimulating and satisfying. Nonetheless, even after choosing the extended payment plan, she feels burdened by the \$750 monthly loan payments. They represent 30% of her take-home pay. She has disposable income after taxes and her loan payments of \$20,707, but if she spends \$650 in rent (sharing an apartment with a roommate), \$125 for utilities and telephone, \$250 in car payments and another \$250 per month for auto insurance, gas and repairs, \$300 per month for groceries and \$75 per month for lunches at work and meals not eaten at home, she will consume nearly all of her disposable income. She will have almost nothing left over to buy clothes, furnish her apartment, pay for medical expenses, take a vacation, or put any money aside for retirement. The cramped living standard she faces is not short term. If she stays in government work and her income increases only at the rate of the cost of living, she will live at this standard for the remaining 18 years of payment on her loan.

By her third year of work for the prosecutor, Ms. Median's salary has increased to \$43,000 and she has developed highly valuable experience as a trial lawyer for the county. Her boss, the county prosecutor, would like very much to keep her. Recruiting and training new staff is costly and time-consuming. Ms. Median would like to stay. Ms. Median knows, however, that her classmates, who began at the local firms at \$80,000, are now, in their third year, earning an average of \$95,000. A local firm, the same firm that made her the initial offer of \$80,000, now offers her \$95,000 to join them as a third-year associate. Ms. Median can no longer resist. Reluctantly, she accepts the job in the firm.

A HIGH PROPORTION OF LAW GRADUATES TODAY FACE EVEN GREATER BARRIERS TO TAKING PUBLIC SERVICE JOBS

The fictional Ms. Median is the median law student – median borrower as an undergraduate, median borrower as a law student, median earner in her job as a prosecutor. By definition, almost exactly half of all law students who borrowed to attend law school have borrowed more than Ms. Median. Consider the ranges of borrowing that are occurring today at American law schools. Almost 87% of all law students borrow funds to attend law school, with 81% borrowing federal funds.²⁶ At least a third of all law students also take out private loans (not including loans from family members).²⁷

²⁶NCES Report at 113.

²⁷*Id.*

TABLE 4

***Ranges of Cumulative Borrowing by American Law Students
Graduates of Class of 1999-2000***

Borrowed	Percentage
less than \$20,000	7%
\$20,000-\$39,999	10%
\$40,000-\$59,999	22%
\$60,000-\$79,999	19%
\$80,000-\$99,999	17%
\$100,000-\$119,999	5%
\$120,000-\$139,999	14%
more than \$140,000	6%

"Cumulative borrowing" includes any undergraduate borrowing, but excludes any borrowing from their families. Based on NPSAS data, 2000. Table prepared for the Commission by Kipp Research and Consulting.

As Table 4 reveals, in the year 2000, 25% of law students, one in every four, borrowed \$100,000 or more to finance their undergraduate and law school educations, much more than the median amount borrowed by Ms. Median in the illustration above. There are three principal reasons why so many law students borrow much more than Ms. Median. First, large numbers of students attend schools that are more expensive than Ms. Median's. Ms. Median paid the median tuition for students at private law schools. Almost two-thirds of American law students attend private schools and, today, at many of these schools tuition exceeds \$28,000 per year. Ms. Median also borrowed the median amount to pay for her undergraduate education, while many students attended undergraduate schools with higher tuitions and borrowed more than she. Second, large numbers of law students live in cities that are more expensive than Ms. Median's. Ms. Median scraped by during law school with living expenses of just over \$10,000 each year, excluding tuition. That is very difficult to do for students who live in large cities, such as Chicago, Los Angeles, New York or Washington D.C. Third, many students are unable to earn as much as Ms. Median did during the semesters and summers while they are in law school.

Some students who borrow more than Ms. Median will not face serious financial problems, because they take employment in high-paying private firms. Indeed, some of Ms. Median's classmates in the largest firms will elect to pay more toward their student debts each year than they have to, in order to reduce the interest payments on their loans and shorten the total years of payment. At the same time, many others who graduated in the same year as Ms. Median will be in a worse financial position than she is. Some have children or other dependents. Others are single but earn less than she did. Not everyone finds full-time legal employment upon finishing law school.

The earnings of recent law graduates vary widely. While this report focuses on those graduates who take jobs in public service, lawyers in other employment settings may also earn comparatively low incomes.

TABLE 5

Starting Salaries of New Law Graduates

	\$35,000 or less	\$35,001 - \$55,000	\$55,001 - \$75,000	\$75,001 - \$95,000	More than \$95,000	National Median
All Types	9.4%	39.1%	13.1%	8.8%	29.6%	\$60,000
Business	9.3%	33.6%	25.7%	14.5%	16.9%	\$60,000
Government	15.0%	74.6%	8.1%	1.7%	0.5%	\$42,000
Judicial Clerkships	20.5%	78.0%	1.5%	-	-	\$42,000
Private Practice	4.0%	22.9%	15.9%	12.1%	45.1%	\$90,000
Public Interest	45.5%	49.9%	3.4%	1.1%		\$36,000

National Association for Law Placement, Jobs & J.D.'s: Employment and Salaries of New Law Graduates, Class of 2002.

As Table 5 displays, most of those doing public interest work and many of those working in government earned \$36,000 or less in their first year after law school. While the percentage of those beginning in private practice who earn \$36,000 or less is much smaller than that of those beginning in government or public interest work, so many more graduates begin in private practice than elsewhere that the absolute numbers of low earners in private practice settings is large. Lower salaries are particularly common in solo or small firm practice settings in small towns and cities, settings to which many able law students aspire, but, like those considering public service work, often decide they cannot afford in light of their debts.

Even those who have opportunities to work in government at considerably more than \$40,000 often face financial quandaries as serious as Ms. Median's. Ms. Median borrowed the median amount among law students, \$70,299. The half of all law students who borrowed more than Ms. Median include a large number of very able persons who also want to practice in a public service setting, but who borrowed more than she did to attend law school. A student with a debt of \$100,000 who is offered a federal government job that pays \$50,000 and a large firm job that pays \$95,000 will have about three times as much after-tax discretionary income if she accepts the law firm position rather than the government position.

Measuring the precise effects that high debts exert on career choices is extremely difficult. The impact on careers may occur at any one of three points in a career path. The first is at the point of deciding whether to apply to law school at all. A college senior who is contemplating law school in order to practice law in a public service setting may decide not to apply because she can calculate in advance the debt payments she will later face will leave her too little income to maintain a reasonable standard of living after law school. The second point in time is during law school. Students who begin law school with a plan to work in public service may change their minds by the time of graduation because of the size of the debt payments they face. The third point in time is a few years later. Recent law graduates who take jobs in government, legal services, or other public service employment despite their debts may decide to leave after a few years because they want to improve their standard of living so that they can afford medical expenses or take an occasional vacation or earn more money to support a family.

No studies exist on the impact of the prospect of debt at the first of these points in time, the point of the decision to apply to law school. It is regrettable that more is not known about the factors that affect decisions to apply, because many of the

most able and public service-oriented lawyers may be lost to the profession and the public it serves at this point.

Most of the concern voiced in recent years about the impact of debt addresses the second point in time – the career decisions that law students make prior to and immediately following law school graduation. Many researchers have found that a high proportion of law students arrive at select law schools with dreams of working in government or with other public service legal entities, but that, after law school, most of this group take jobs in private firms instead.²⁸ Today, large numbers of students attribute their change of plans to the high debt burdens that they are assuming. In 2002, Equal Justice Works, the National Association for Law Placement and the Partnership for Public Service conducted a survey of graduating law students.²⁹ 1,622 graduating law students responded from 117 schools. While the respondents are not a representative sample of all American law students, they seem to be a representative sample of the students with debt who are interested in public service work. Sixty-six percent of the respondents reported that law school debt is preventing them from considering a public service career.³⁰

It is nonetheless difficult to determine how many law students abandon plans for public service work because of their debt, since reasons other than debt obviously contribute to the shift in career plans and affect their commitment to public service careers. To the extent that finances drive the decision, the size of a student's debt may be less significant in their choices than the huge difference in compensation between public service legal jobs, such as with legal services organizations³¹ or government, on the one hand, and those in most mid-size and large firms on the other. Recall that the median starting salary in legal services and other public interest work in 2002 was \$36,000, while the median starting salary in private practice was \$90,000 and much higher than \$90,000 in very large firms located in large cities. Accordingly, even if law schools were free and no one accumulated any debt, it would be unsurprising if many students who contemplated public service work changed their minds when very high-paying alternatives proved available.

Such changes in plans seem especially likely since large firms not only pay more than government, but also carry high prestige in the profession and are believed to offer flexibility for later career shifts.³²

"Since my decision to come to law school, I wanted to work in the public sector. I did not realize that the amount of debt that I would accrue to finance my legal education would be over \$120,000. This amount equates to over \$1,000 a month in repayment. This past summer, I worked in a local district attorney's office, where the starting full-time salary for an attorney is \$30,000. With that yearly salary, living expenses and my loan repayment, I would not be able to survive. Therefore, I had to forego my career dreams to serve my community as an assistant district attorney and seek a higher paying job. Hopefully, one day, I may be able to have that dream job, but my loan amounts have made that impossible."

2003 Law School Graduate and member of the ABA Law Student Division

²⁸Robert Stover, *Making it and Breaking it: The Fate of Public Interest Commitment During Law School* (1989); Robert Granfield, *Making Elite Lawyers: Visions of Law at Harvard and Beyond* (1992).

²⁹Equal Justice Works, *supra* note 23.

³⁰*Id.* at 19.

³¹*Supra* note 8.

³²Robert Stover conducted a study at the University of Denver School of Law in the late 1970s on the shift during law school away from public service, reporting that over half of those who expressed a strong interest in public interest work (including government) when they arrived at law school had changed career plans by their third year. When Stover did his work, law school debts were modest and Stover does not even mention debt as a reason why law students abandon public service aspirations. Instead, he emphasizes the high earnings available in private firms, the prestige associated with large firm work, the flexibility that large firm work provides for later career shifts, and the lack of effort by the law school to sustain public service aspirations. All of these remain factors today. *Supra* note 28.

As the size of educational debts rises while salaries in government and public interest work rise at much less fast a pace, it is almost certain that, if they did not have such high debts, many more students would hold on to their hopes for public service work. Remember Ms. Median. She had a choice between a government job at \$40,000 and a private firm job at \$80,000. That is a huge difference in earnings. Nonetheless, if she has no debt to pay off, she would have disposable income of about \$27,000 after taxes at the prosecutor's office, more than enough to provide a good standard of living for a single person. With her debt payments, however, she had a disposable income of only \$16,927, leaving her barely better off than she was as a student.

The third impact that debt has on career decisions occurs after law graduates have taken their first job. Some people who begin careers in public service and who would like to remain there leave after a few years when they find that their debt burdens are too severely constraining on their hopes for making ends meet, much less buying a house or raising children. Others who began their careers in a firm with plans to leave after a few years to take a public service job find that after a few years have passed, they still have such high debt payments that they need to stay where they are. Either way, public service offices end up without some of the most able lawyers who would like to work for them. Equally deprived are the needy people these employer organizations are designed to serve.

THE IMPACT OF STUDENT DEBT ON GOVERNMENT AGENCIES AND PROGRAMS PROVIDING LEGAL ASSISTANCE TO LOW-INCOME PERSONS

Public service employers worry a great deal about attracting and holding on to the most able employees. Two studies of public service employers have recently been conducted. In 2002, Equal Justice Works and the National Legal Aid and Defender Association conducted an "Employer Recruitment and Retention Survey" among public service employers.³³ The organizations surveyed over 2,000 public interest and government employers, including Legal Services Corporation grantees, non-Legal Services Corporation civil legal aid providers, public defender offices, state/district attorney offices and state attorneys general offices. In total, 326 public interest employers and government employers responded from all fifty states and the District of Columbia.³⁴ Sixty-eight percent of the responding agencies reported difficulty with attorney recruitment, with low salaries and educational debt being by far the most commonly cited reasons. Similarly, 62% reported difficulties with attorney retention, and again low salaries and educational debt were the more frequent reasons.³⁵

"Law graduates today are graduating with a staggering amount of educational debt. Many of the new graduates interviewing for positions with my office owe \$100,000 or more in law school debts. This debt places a substantial burden on their ability to work in the public sector. Since January 2000, I have lost 33 lawyers, most of them forced to seek higher salaries elsewhere in order to deal with the financial strain of repaying law school debt and providing for their families."

**Peter S. Gilchrist, III, District Attorney,
Mecklenburg County, Charlotte, NC**

³³Equal Justice Works, *supra* note 23.

³⁴*Id.* at 33. "Government" does not include the federal government due to a low response rate.

³⁵*Id.*

In 2002, a Committee of the New York State Bar Association completed a study by mail of New York public service employers, including government and legal services.³⁶ Of the 29 responding agencies and programs, 64% reported that candidates' student loan debts impeded the ability to recruit well-qualified attorneys. The same percentage reported that debts impeded their ability to retain attorneys earlier hired. Those that did not report such difficulties tended to be the federal and state government agencies that paid higher salaries.

Some public service employers report that they are unable to find any applicants willing to work for them at the salaries they are able to pay. According to Michael P. Judge, the Public Defender for Los Angeles County, "It is common for new lawyers to be encumbered by \$80,000 to \$100,000, and even more, in student loans upon passing the Bar. The confluence of enormous student debt load and exceptional disparity in private practice salaries has created a dramatic negative impact on my office's recruiting and retention efforts. In these past few years, I have seen far fewer candidates applying for positions with the Public Defender's Office than previously. Due to high student debt, there have been more than a dozen vacancies during the past few years, which have caused the Public Defender to be unable to handle more than 10,000 cases."

Legal services offices, especially those in rural areas, also report difficulty in recruiting and retaining lawyers. Consider the experience of Nebraska Legal Services:

"Due to the skyrocketing student debt of recent law graduates, Nebraska Legal Services has faced serious challenges in recruiting and retaining staff attorneys, especially in rural parts of Nebraska," according to Doug German, Executive Director of Nebraska Legal Services. German continues, "During the same time period, Nebraska Legal Services has had attorney positions unfilled in our North Platte and Scottsbluff offices for over two years. We have also experienced an increase in attorney turnover, with a turnover rate of 60% over a two-year period. During the past two years, newly hired attorneys stayed for an average of 17 months. It takes at least two years for an attorney to be effective. Nebraska Legal Services invests considerable time and resources into training and recruiting attorneys. Our clients, and the communities in which they live, suffer when we don't have the staff to meet their legal needs."

The more common claim of government agencies is not that they are unable to find new attorneys at all. The buyer's market for legal services is such that there are almost always recent law graduates willing to work. The consequence of high debts is rather that public service employers have a much smaller pool of applicants to draw upon than they otherwise would and that many of the most able potential applicants and the ones who are most committed to the mission of public service – the applicants with other employment opportunities – take private firm jobs instead. The additional consequence is that some of the most able attorneys who are already working for such employers choose to leave just at the point when they are contributing the most.

APPROACHES TO ALLEVIATING THE EDUCATIONAL DEBT PROBLEM

The Commission received testimony from the current generation of law students and recent law graduates, which confirmed what a pivotal factor cumulative educational debt has become. The Commission repeatedly heard about the devastating impact of high student debt on public service employers' abilities to recruit and retain lawyers. Law students shared stories of abandoning their dreams of using their legal skills to help their communities by working as a prosecutor or legal services lawyer because of their inability to make ends meet, while earning lower salaries and trying to satisfy

³⁶New York State Bar Association Special Committee on Student Loan Assistance for the Public Interest, *Attracting Qualified Attorneys to Public Service*, June 2002.

monthly debt obligations. Public service lawyers who had worked for two to three years in their current position revealed deep frustration at being forced to leave jobs they loved in order to satisfy student debt obligations while supporting their families.

A number of solutions for relieving the debt burden of some law graduates have developed, including loan repayment assistance programs, public service post-graduate fellowships and public service scholarships. Loan repayment assistance programs (“LRAPs”) provide financial aid to law school graduates, typically those working in the public interest or government sector. In most cases, this aid is given to graduates in the form of a new and forgivable loan to help them repay their annual educational debt. Upon completion of the required service obligation, the LRAP administrator will forgive or cancel the new loan. Most LRAPs contain limits on the amount of income a recipient can earn while participating in the program. There are various types of LRAPs, administered by law schools, state bar foundations, public service employers, and federal and state governments. The number of LRAPs is limited. Many of the existing programs have very limited resources and are able to provide assistance to only a small number of public service lawyers.

*“I graduated from NYU School of Law in 2002. From the time I applied to law school, I have been single-mindedly devoted to a career in public interest law. It sounds cliché, but it is the gospel truth that I have known that I wanted to be a civil rights lawyer since I read *To Kill a Mockingbird* the summer before I entered fifth grade. Growing up spending summers on my grandmother’s Ohio muck farm, I remember vividly the images of migrant work crews that inhabited the camp across the highway. I remember wondering why the laborers’ children slept in inadequate housing, while I slept in a farmhouse.*

After law school, I joined the Virginia Justice Center for Farm and Immigrant Workers, which represents Virginia farm workers and other low-wage workers in civil rights litigation. My starting salary was \$31,180. My total educational debt approaches \$85,000. Familial contribution to my tuition payments was well beyond the realm of possibility. In short, my law school’s loan repayment assistance program has been instrumental in allowing this farm kid to live his dream of growing up to be something like Atticus Finch.”

Andrew H. Turner, Virginia Justice Center for Farm and Immigrant Workers, Charlotte, VA

This Report includes information about some of the existing strategies that have been used to alleviate the law student debt burden and will highlight some success stories. The Report also provides specific recommendations – to the ABA, states, law schools, and the Federal Government – regarding strategies that should be explored to facilitate new law graduates’ ability to enter into and remain in public service legal jobs. In addition, the Report contains a number of appendices designed to summarize the Commission’s publications, educational outreach sessions and the ABA’s Federal factsheets highlighting how Congress could help solve the problem.

When law graduates are prevented from pursuing public service legal careers due to high educational debt burdens, the consequences to the profession and society are considerable. Lawyers with dreams of serving their communities as prosecutors, public defenders or civil legal aid lawyers are unable to use their skills to do so. The profession is unable to promote and provide meaningful access to legal representation for all. When federal, state and local governments are unable to hire new lawyers or retain experienced ones, government and its citizens suffer. The ABA has a long-standing commitment to promoting public service and access to justice for all persons, regardless of income. As part of this long-standing commitment, the ABA, as the representative of the legal profession, has a duty to continue making it a priority to promote mechanisms for lifting the burden of educational debt as an impediment to public service careers in the law.

OVERVIEW

The Commission was created for a two-year period to explore the impact of debt on law graduates' ability to accept and remain in public service jobs and to make recommendations to the American Bar Association ("ABA") about possible solutions to alleviate the problem. Although the Commission has completed a number of critical initiatives, much important work remains.

"[I]f large segments of the latest generation of lawyers continue to be locked out of public service and government opportunities, not only will these individuals suffer, but the founding principle of access to justice will evaporate in the revolving doors of understaffed legal services and public defender offices across our country."

Robert E. Hirshon, President, American Bar Association, 2001-2002

RECOMMENDATION

As an important component of its commitment to promoting access to justice, the ABA should continue to exert leadership regarding the impact of educational debt on law graduates' ability to enter and remain in public service legal careers. The ABA should build on the national momentum generated in the past two years by keeping this issue as a priority through such specific means as funding an appropriate structure to support ongoing work, seeking appropriate federal loan repayment legislation and convening an annual national LRAP summit or symposium of interested organizations and persons.

The ABA is committed to preserving and enhancing the legal profession's dedication to public service. The ABA has a long history of encouraging and supporting public service work throughout the legal profession, including supporting lawyers working full-time in the public sector, such as in legal services and government agencies, as well as promoting pro bono legal services by private practice lawyers. Through many of its entities, the ABA furthers public service within the legal profession by various programs and initiatives and its work with state and local bar associations to promote and support public service.

Equally important to the ABA is the promotion of meaningful access to legal representation for all citizens. The ABA has long supported programs designed to increase access to the justice system for all people, including programs designed to provide representation for children, the elderly, the poor and immigrants. The ABA has consistently advocated for the preservation of, and adequate funding for, the federal Legal Services Corporation.

When it created the Commission, ABA leadership recognized that the legal profession and society face a public service crisis. When law graduates are forced to forego public service legal careers because of educational debt, everybody loses – individual lawyers, public service employers, the legal profession and society. As ABA Immediate Past President Robert E. Hirshon stated, "...if large segments of the latest generation of lawyers continue to be locked out of public service and government opportunities, not only will these individual lawyers suffer, but the founding principle of access to justice will evaporate in the revolving doors of understaffed legal services and public defender offices across our country."³⁷

Through the Commission's work, the ABA has helped to raise the profile of this issue on a national level. The Commission has brought together leaders from within the Association and other national organizations to address the problem of skyrocketing

³⁷Hirshon, *Graduating under Pressure*, ABA Journal (November 2001) at 6.

law graduate debts. Since August 2001, the Commission has worked to promote LRAPs and to guide ABA efforts to stimulate more LRAPs and public service scholarships and fellowships provided by law schools, state/federal governments, bar associations and foundations and other sources to enable more law graduates to enter into public service careers. A number of national media outlets, state and local bar journals and other publications have featured articles about the impact of law student debt on graduates' ability to pursue and remain in public service careers.

The Commission was created for a two-year period to explore the impact of debt on law graduates' ability to accept and remain in public service jobs. Although the Commission has completed a number of important initiatives, important work is incomplete or needs continuing effort to achieve optimum impact. The Commission feels that, having raised consciousness and developed several resources to help alleviate the debt burden issue, it needs to find an institutional home within the ABA to take permanent custody of this subject matter.

If the ABA were to institutionalize this important work, some suggested activities include:

(1) National Loan Repayment Summit/Symposium

Over the past two years, the ABA has served as the central convenor for contacts and discussion among bar leaders, law deans, public service employers, national organizations and others with an interest in this important issue. The list of representatives of national organizations serving as liaisons to the Commission testifies to the comprehensive network of constituencies interested in addressing the debt burden problem. A national convocation on the issue will strengthen this network, by building more awareness and providing a forum to share solutions. Proposed participants in a national summit include: national, state, local and territorial bar leaders, including the ABA President, members of the judiciary, law deans, faculty and staff, recent law graduates, law students, public service employers, funders, representatives of the national legal and education organizations working on this issue, lenders, federal and state legislators and others. The summit would explore ideas and strategies for resource development on a national level.

(2) Federal Legislative and Administrative Advocacy

The Commission, along with other ABA entities and the Association of American Law Schools, has focused some of its efforts on lobbying for additional federal loan repayment assistance programs for public service lawyers. An ABA entity should continue to coordinate various groups in lobbying for loan repayment legislation and/or rulemaking. This includes loan repayment provisions as part of the Higher Education Act reauthorization, increases in the amount of Stafford loans that law students may borrow and improvements in the income-contingent repayment option of the Federal Direct Lending Program.

(3) Promoting LRAPs to States, including State, Local and Territorial Bar Associations and Foundations

In May 2003, the Commission published the *State LRAP Tool Kit: A Resource Guide for Creating State Loan Repayment Assistance Programs for Public Service Lawyers*, a how-to manual including sample state LRAP legislation, for bar leaders and others interested in creating a statewide LRAP. The Commission distributed over 1,500

copies of the *Tool Kit* to ABA members, bar leaders and staff, Interest on Lawyer Trust Account (“IOLTA”) Program³⁸ leaders and staff, statewide Access to Justice Commission leaders and staff and law school deans. *The Tool Kit* will require periodic updates, as more states create programs and as existing programs amend program guidelines. Also, the Commission has provided technical assistance to a number of bar leaders interested to start a statewide LRAP. The ABA should continue these technical assistance efforts and continue to track state legislative developments.

(4) Information Services and Outreach Efforts

The ABA should continue to serve as a central information source on this issue through a website, by sponsoring an e-mail discussion list, by responding to inquiries and supplying technical assistance in creating or improving state loan repayment programs, and by sponsoring educational programming at appropriate conferences.

By focusing attention on the impact of law school debt on public service, the ABA has made a significant contribution to the profession. Although much progress has been made, at this critical juncture the ABA must continue to treat this issue as a high priority by allocating sufficient funding to assure continuity of essential activities.

³⁸Interest on Lawyer Trust Accounts or IOLTA Programs (also referred to as IOTA, on Interest on Trust Accounts) are state-based programs that receive interest from lawyer trust account funds that are held for short periods of time or in such small amounts that net interest cannot be earned for clients. State IOLTA Programs use the money to fund a number of charitable causes, including legal services for the poor, and in some states, LRAPs. For more information about IOLTA Programs, visit <http://www.abalegalservices.org/iolta>.

OVERVIEW OF FEDERAL LOAN REPAYMENT AND FORGIVENESS PROGRAMS FOR PUBLIC SERVICE LAWYERS

Congress has created limited loan repayment or forgiveness programs for certain professionals, including teachers, childcare workers and nurses.³⁹ Congress created these programs to encourage graduates to take lower-paying public service jobs in low-income or underserved areas, to address severe shortages in a particular profession and to promote occupations related to a national need. However, the federal government offers few options to assist lawyers in public service positions, and those offered are inadequate. The options include the following:

Loan Forgiveness under the Federal Perkins Loan Program

Many law students finance their education, in part, with Perkins Loans, which are available to students at some schools⁴⁰ based on the availability of funds at a given school⁴¹ and the financial status of the borrower. The borrower's school acts as lender. The maximum amount a law student may borrow under the Perkins Loan Program is \$5,000 per year and the total borrowing through this program may not exceed \$30,000 during the student's entire educational career (including undergraduate). Interest is subsidized and repayment of principal and interest begins nine months after termination of study. There are no origination or guarantee fees and the interest rate is fixed for the life of the loan at 5%. The repayment period is ten years.

Perkins Loans are unique among federal loans, because they offer a cancellation provision for persons in selected forms of public service. A Perkins Loan can be cancelled if the borrower

- pursues a career in teaching, nursing, or the armed forces,
- takes a full-time job at a public or non-profit child or family service agency providing services to high risk children and their families from low-income communities,
- works as a qualified professional provider of early intervention services, or
- becomes a full-time law enforcement or corrections officer.⁴²

Loan Forgiveness under Federal Stafford Loans

The vast majority of law students borrow under the Stafford Loan Program, which offers both subsidized and unsubsidized loans. The subsidized Stafford Loan is low-interest and need-based. A student may borrow up to \$8,500 per academic year (with a cumulative limit of \$65,000). The federal government annually re-determines the interest rate each July 1, which is capped at 8.25%. The interest rate (in repayment) for 2002-03 was 4.06% and the current rate for 2003-2004 is 3.42%, the lowest rate ever. The current in-school rate for Stafford loans is 2.82%. The federal government subsidizes the interest while a borrower is enrolled in law school at least halftime. There are two fees assessed when borrowing a subsidized loan, (1) an origination fee (currently 3% of the total amount borrowed) and (2) a guarantee fee of 0-1% of the total amount borrowed.

³⁹See, e.g., 20 U.S.C. § 1087ee(a)(2).

⁴⁰According to data collected by the ABA Section of Legal Education and Admissions to the Bar in its 2000 Annual Survey, 130 of the 185 ABA-accredited law schools offered these loans.

⁴¹The U.S. Department of Education allocates Perkins funds to universities. The median amount of Perkins funds disbursed by law schools was \$238,400 in 2000. *Id.*

⁴²20 U.S.C. § 1087ee(a)(2). Pursuant to 20 U.S.C. § 1087ee (a)(5), the amount of principal and interest cancelled due to a borrower's employment in one of these categories is not considered income for purposes of the Internal Revenue Code.

Repayment of the principal does not begin until six months after the borrower graduates or attends less than half time. Repayment may continue for ten to twenty-five years.

The Unsubsidized Stafford Loan is not need-based. Students may borrow up to \$18,500 in subsidized and unsubsidized loans per academic year. The federal government does not subsidize interest on the unsubsidized loan while the borrower attends school; interest will accrue and capitalize on the principal at a frequency determined by the specific lender. There are two fees assessed when borrowing an unsubsidized loan, (1) an origination fee (currently 3% of the total amount borrowed) and (2) a guarantee fee (currently 1% of the total amount borrowed). The interest rate and repayment conditions are the same as the subsidized Federal Stafford Loan.

Stafford Loans are partly forgivable for lawyers, but only if the recipient enters an AmeriCorps, Vista or Peace Corps program. Those entering an AmeriCorps or Vista program have their loans placed in forbearance during their service year, and receive a \$4,725 education award following service.

Loan Repayment Programs Administered by Federal Government Agencies

In 1990, Congress passed a law authorizing the use of loan repayment as an incentive in recruiting and retaining members of the federal workforce.⁴³ The law permitted loan repayment assistance of up to \$6,000 per year, with a maximum over time of \$40,000. Not until January 2001, however, did the Office of Personnel Management take any steps to implement these incentives. On January 11, 2001, the Office of Personnel Management finally issued regulations⁴⁴ allowing federal agencies to establish programs under which they may repay federally insured student loans of federal employees in order to recruit or retain highly qualified professional, technical or administrative personnel. To receive the benefit, an employee must sign an agreement to remain in the service of the agency for not less than three years. Agencies may pay up to \$6,000 a year per employee, not to exceed a total of \$40,000.

There is no general budgetary authority for these programs, so an agency must fund its loan repayment program by reallocating funds from its own existing budget. In fiscal year 2002, the Office of Personnel Management reported that 16 Federal agencies provided more than \$3.1 million in student loan repayments for 690 Federal employees.⁴⁵ In addition, eight other agencies reported that they had established an agency loan repayment plan and expected to use the program in the near future. Five additional agencies reported that they are in the process of establishing a program. In total, more than half (29) of the 57 reporting agencies stated that they either made student loan repayments in fiscal year 2002, have an agency loan repayment plan in place, or are in the process of establishing a student loan repayment plan.⁴⁶

The Department of State made the majority of loan repayments in fiscal year 2002, providing \$2 million in loan repayment assistance for 407 employees.⁴⁷ The assistance went to employees in many different job classifications; 13 lawyers classified as GS-905 received assistance.⁴⁸ Other agencies reported providing

⁴³5 U.S.C. § 5379.

⁴⁴5 CFR Part 537.

⁴⁵Federal Student Loan Repayment Program, Fiscal Year 2002, Report to the Congress, United States Office of Personnel Management, June 2003 (available at <http://www.opm.gov/oca/pay/studentloan/HTML/Report.PDF>).

⁴⁶*Id* at 3.

⁴⁷*Id* at 4.

⁴⁸*Id* at Attachment 2, Agency Reports – Fiscal Year 2002.

assistance to lawyers, including the Department of the Treasury, Federal Energy Regulatory Commission, General Accounting Office and Department of Justice.⁴⁹

In its report, the Office of Personnel Management found that: “[t]he student loan repayment authority is a valuable tool that enables agencies to entice potential candidates into Federal service and keep talented employees in the Federal workforce.”⁵⁰ The Federal agencies with loan repayment programs reported using them to accomplish both recruitment and retention goals, with some focusing only on specific positions.

Currently, any benefits provided under the loan repayment program are considered taxable income. Bills have been introduced in both the House (H.R.1056) and the Senate (S. 512) that would exclude from gross income amounts paid on behalf of Federal employees under Federal student loan repayment programs.

“We plan to use the loan repayment program to ensure that we have the right people in the right jobs at the right time. We know that many young lawyers are drawn to public service but ultimately choose private sector employment, where larger salaries make management of student debt burdens much easier. The institution of a loan repayment program will help the federal government better compete for and retain top talent.”

Larry D. Thompson, Deputy Attorney General, U.S. Justice Department, Washington, D.C.

U.S. Military

Many branches of the military offer some sort of loan forgiveness. For example:

Loan Repayment Program, U.S. Army

This program provides that individuals enlisted in the Loan Repayment Program earn 33 1/3% or \$1,500 (whichever is greater) toward the remaining original unpaid principal on all qualifying loans for each completed year of enlisted active duty up to \$65,000. “Qualified loans” include Stafford and Perkins loans; private loans are not covered. The Army authorizes Program payments toward the remaining original unpaid principal balances when a soldier enters active duty. The Army will not repay loans incurred after a soldier enters active duty. Payments are made directly to the lender and are subject to federal and state taxes.

Judge Advocate Continuation Pay

While the Judge Advocate Continuation Pay Program is not a loan repayment program, the Program is designed as an incentive for judge advocates to remain in service. The Judge Advocate Continuation Pay Program authorizes continuation pay of up to \$60,000 for active duty judge advocates who have completed their initial active duty service obligation.⁵¹ For example, in the Air Force, Judge Advocates are paid \$25,000 in Judge Advocate Continuation pay after they have served their initial four-year commitment, in return for agreeing to serve three additional years (thus guaranteeing they will serve at least seven years on active duty). Between years five and six, judge advocates who have been selected for “Career Reserve Status” (every judge advocate remaining on active duty who will compete for promotion to the rank of major) have the opportunity to agree to serve three more years (beyond seven) and be paid another \$25,000. Finally, at the ten-year point, judge advocates may agree to serve two additional years, for another \$10,000 through the Judge Advocate Continuation Pay Program. Therefore, only those who serve

⁴⁹*Id*

⁵⁰*Id* at 7.

⁵¹37 U.S.C. § 321.

12 years can obtain the total payment of \$60,000. Judge Advocates who participated in the Funded Legal Education Program are not eligible for Judge Advocate Continuation Pay Program.

In addition to the Air Force, the Army, Navy and U.S. Marine Corps have established Continuation Pay Programs.

Department of Defense - Payment of Interest on Student Loans

Public Law 107-314 (signed by President Bush on December 2, 2002) provides the Secretary of Defense with authority to pay interest and special allowances for 36 consecutive months on one or more student loans of an eligible member of the armed forces.⁵²

Other Federal Legislation Designed to Offset Loan Burdens

Income Tax Deduction for Student Loan Interest

Before 1986, interest paid on student loans was fully deductible. The Tax Reform Act of 1986 classified student loans as “personal loans” and eliminated the deductibility on interest from personal non-residential loans. Congress phased out the educational interest deduction over four years, abolishing it entirely for payments made after 1990.

The Taxpayer Relief Act of 1997 partially restored the student interest loan deduction by permitting borrowers to deduct some of the interest paid on student loans. Taxpayers who have taken loans to pay the cost of attending an eligible educational institution could deduct the interest paid on these student loans. The maximum deduction was \$2,000 in 2000 and increased for 2001 and after to \$2,500. The deduction was available only for interest payments made during the first 60 months in which interest payments are required on the loan and only for interest payments due on or after January 1, 1998. There were some income restrictions. For instance, to claim the maximum deduction, a taxpayer must have had a modified adjusted gross income of \$40,000 or less (\$60,000 for married taxpayers filing jointly); the deduction amount was gradually reduced at income levels above these.

The Economic Growth and Tax Relief Reconciliation Act of 2001⁵³ amended these provisions of the Taxpayer Relief Bill of 1997 by: (1) eliminating the 60-month limit requirement on eligible interest payments; and (2) increasing the modified adjusted gross income to \$50,000 - \$65,000 (individual taxpayer) and \$100,000 - \$130,000 (for a joint return). President Bush signed the Act on June 7, 2001 and it became effective January 1, 2002.⁵⁴

Income-Contingent Repayment of the Federal Direct Lending Program

In 1993, Congress created a Federal Direct Loan Program, through which the Department of Education (“the Department”) would offer loans directly to students.⁵⁵ Congress designed the Direct Loan Program to provide options in addition to loans by lending institutions offering federally guaranteed loans through the Federal Family

⁵²To view PL 107-314, visit <http://thomas.loc.gov/> and search for H.R. 4546.

⁵³PL 107-16.

⁵⁴26 U.S.C. § 221.

⁵⁵The Federal Direct Loan Program is now known as the William D. Ford Federal Direct Loan Program. See, 20 U.S.C. § 1087a-j.

Education Loan Program. When Senator Edward Kennedy introduced the legislation, he stated that one of its purposes would be “[to] provide borrowers with a variety of repayment plans, including an income-contingent repayment plan, so that borrowers[']... obligations do not foreclose community service.”⁵⁶ The legislative history is replete with references to the public service aspect of the income-contingent repayment option. For example, the report of the House Committee on Education and Labor stated that one of the purposes of the legislation was to provide “an income-contingent repayment plan...so that borrowers[']...obligations do not foreclose community service-oriented career choices for them.”⁵⁷

The legislation requires the Secretary to offer borrowers four repayment plans: (1) standard ten-year repayment; (2) extended repayment plan; (3) graduated repayment plan; and (4) an income-contingent repayment plan.⁵⁸ The legislation specifies that the period of repayment for income-contingent repayment was “not to exceed 25 years.”⁵⁹ As Congress did not authorize collection of the debt after 25 years, the legislation authorizes the Secretary to cancel outstanding balances at the end of that period.⁶⁰

The income-contingent repayment option is available only from the U.S. Department of Education. Graduates with federally guaranteed loans through the Federal Family Education Program may consolidate loans into a federal direct consolidation loan through the William D. Ford Federal Direct Lending Program and elect to repay pursuant to the income-contingent repayment option. Graduates with federal direct loans may also repay pursuant to the income-contingent repayment option. However, students with private, commercial loans without a government guarantee may not do so.

Under the income-contingent repayment option and the regulations implementing it, a borrower’s annual repayment will not exceed 20% of annual discretionary income.⁶¹ The interest rate is fixed for the life of the loan.⁶² The income-contingent repayment option program also indirectly subsidizes the interest by including an interest capitalization cap. If a borrower’s monthly payment does not cover the interest, unpaid interest is capitalized once a year. However, this capitalization is capped at 10% of the original loan amount. Any additional unpaid interest continues to accumulate but is not compounded.⁶³

⁵⁶Staff of Senate Committee on the Budget, 103D Congress, *Reconciliation of the Instructed Committees Pursuant to the Concurrent Resolution on the Budget* (H. Con. Res 64), 453 (Committee Print 1993).

⁵⁷H.R. Rep. No103-111, at 121 (1993), reprinted in 1993 U.S.C.C.A.N. 378, 489.

⁵⁸20 U.S.C. § 1087e (d)(1).

⁵⁹20 U.S.C. § 1087e (d)(1)(D).

⁶⁰*Id.*

⁶¹“Discretionary income” is defined as a borrower’s adjusted gross income minus the federal poverty level that corresponds to a borrower’s family size and the state in which the borrower resides. 34 C.F.R. § 685.209 (a) (3). In his article, *The Federal Income-Contingent Repayment Option for Law Student Loans*, Professor Phillip G. Schrag provides an example of a borrower with an adjusted gross income of \$28,350. The borrower’s repayment obligation would be 20% of \$20,000 (the borrower’s discretionary income) or \$4,000 annually (\$333 per month). If this borrower has \$55,000 of consolidated debt, the \$333 per month repayment obligation is much lower than standard repayment of \$674. Philip G. Schrag, *The Federal Income-Contingent Repayment Option for Law Student Loans*, 29 Hofstra L. Rev. 733, 771-72 (2001). See also, Philip G. Schrag, *Repay as You Earn: the Government’s Flawed Program to Help Students Have Public Interest Careers* (2002).

⁶²20 U.S.C. § 1087e(b); 34 C.F.R. § 685.202(a)(3)(i).

⁶³34 C.F.R. § 685.209 (c)(5).

The maximum repayment period is 25 years.⁶⁴ After 25 years, the Secretary forgives any remaining debt.⁶⁵ Anytime after electing the income-contingent repayment option, a borrower may prepay the debt without penalty or switch to a more rapid repayment plan.

For married borrowers, the income-contingent repayment option formula combines the income of both spouses for purposes of determining the monthly repayment obligation.⁶⁶ By combining the income of both spouses, the program effectively imposes a “marriage penalty” for married two-income, one-debt couples, compared to the repayment obligation for two borrowers who are not married.⁶⁷

To date, the program has not served the original purpose for which it was created – to encourage and enable graduates to take lower-paying community service jobs. Graduates shy away from the program because of the long period, 25 years, before forgiveness occurs.

RECOMMENDATIONS

The Commission offers the recommendations outlined below as a comprehensive package designed to provide relief for and incentives to lawyers who want to serve their communities through public service. In order to effectuate meaningful change and relief, the Commission urges Congress and/or the Administration to implement the recommendations so that law graduates can accept and remain in lower-paying public service jobs.

Congress should enact legislation or the Secretary of the U.S. Department of Education should amend existing regulations governing the income-contingent repayment option of the William D. Ford Federal Direct Loan Program by (1) permitting forgiveness sooner than 25 years after a borrower begins repaying loans and (2) eliminating or reducing the marriage penalty.

The income-contingent repayment option of the William D. Ford Federal Direct Loan Program is available to all borrowers, including law graduates, with federal direct loans. It also includes borrowers who consolidate their federally guaranteed loans into federal consolidation loans. Congress created the income-contingent repayment option to enable graduates with high debt to pursue careers in the traditionally low-paying fields of public interest or community service.

Although the income-contingent repayment option was designed to enable graduates to pursue public service careers, very few law graduates use it.⁶⁸ A survey of law students identified the top three reasons that most students do not elect income-contingent repayment option as: (1) an unwillingness to commit to a 25-year repayment term, even though the program is revocable; (2) the difficulty of long-term planning under conditions of uncertainty; and (3) the prevalence of high private debts not covered by the income-contingent repayment option.⁶⁹ When respondents were asked if they

⁶⁴34 C.F.R. § 685.209 (4) (i). Congress set a 25-year maximum before loans payable under the income-contingent repayment could be forgiven, but did not set a minimum. In 1994, the Department of Education set the 25-year maximum as the minimum. The Department could amend this regulation to permit forgiveness sooner, to make the program more attractive to borrowers. Even though fewer than 1% of borrowers elect the income-contingent repayment option, the Department has not amended the regulation.

⁶⁵34 C.F.R. § 685.209 (4) (iv). The amount of debt forgiven is treated as taxable income.

⁶⁶See, 34 C.F.R. § 685.209 (b).

⁶⁷See generally, Schrag, *The Federal Income-Contingent Repayment Option for Law Student Loans*, *supra* note 61, pp. 827-830.

⁶⁸Schrag states: “[P]olicymakers originally anticipated ICR would be used by 15-30% of borrowers. The Secretary of Education projected that between 1996-2000, 17% of all direct loans...would be repaid under the income-contingent repayment option. In fact, fewer than 1% of new borrowers at schools that offer federal direct loans choose income-contingent repayment.” *Id.* at 830-831.

⁶⁹*Id.* at 788-793.

disliked the twenty-five year repayment term because the term was simply too long in some absolute sense, a strong majority responded that they were averse simply because they could not bring themselves to sign up for a twenty-five year term.⁷⁰ Additionally, the study showed that many law school financial aid advisors discourage students from using the program, in part because they believe that twenty-five years is too long of an amortization period for graduates.⁷¹ Financial aid advisors also thought that few graduates would remain in the income-contingent repayment option long enough to obtain forgiveness and, even though the program is revocable, feared that graduates would pay too much compared to the standard repayment option.⁷²

Shortening the forgiveness period to 15 years or less for those graduates who spend a specified period in public service would help the income-contingent repayment option meet its goal: ensuring that debt not foreclose community service-oriented career choices for young graduates. The Commission is not suggesting how many years of public service should be required. However, in order to focus the benefits on those who choose public service as a career, and to keep the cost of the proposal manageable, a minimum period of at least five years may be necessary.

For graduates who are married or may plan to marry, an additional obstacle exists. For married borrowers, the income-contingent repayment formula combines the income of both spouses for purposes of determining the monthly repayment obligation. By attributing the income of both spouses to the borrower, the program effectively imposes a “marriage penalty” for married two-income, one-debt couples. Although the Commission does not recommend one specific solution to this problem, it is easily remedied. For example, the income-contingent repayment option formula could include only the borrower’s own income, or it could include one-half of the combined income of the borrower and the spouse.

The Secretary of the Department of Education has the authority to effectuate through regulatory amendment the improvements to the income-contingent repayment option that the Commission recommends. Although such action is an option, the Secretary of the Department of Education has not undertaken these initiatives. Currently, these issues are subsumed within the reauthorization of the Higher Education Act. Suggested statutory language to implement this policy proposal is attached as Appendix 4.

Congress and/or the U.S. Department of Education should increase to at least \$30,000 the amount a law student may borrow annually in unsubsidized loans under the Stafford Loan Program. This amount should be reviewed periodically thereafter and, at a minimum, adjusted for inflation and rising costs of higher education.

A key factor contributing to the large debt burdens facing students today is the \$18,500 cap (\$8,500 subsidized, \$10,000 unsubsidized) on the amount that graduate and professional students may borrow annually under the Stafford Loan Program. This amount is simply not sufficient to meet the borrowing needs of many students. For example, the average private law school tuition in 2002 was \$24,144, while the average annual public law school tuition was \$9,376 for residents and \$18,131 for non-residents.⁷³ These amounts do not include living expenses or incidentals such as books and supplies. Therefore, most law students must also borrow from private lenders at much higher interest rates, increasing their total debt burden.

Through 1992, Congress regularly increased the amount of Stafford loan funds that graduate and professional students could borrow annually at low interest rates.

⁷⁰*Id.* at 792.

⁷¹*Id.* at 793-803.

⁷²*Id.* at 801.

⁷³2002 Annual Questionnaire, ABA Section of Legal Education and Admissions to the Bar.

However, Congress has not adjusted the cap of \$18,500 since 1992. Meanwhile, from 1992 to 2002, the cost of tuition for public law schools increased 134% for residents and 100% for non-residents, and private law school tuition increased 76%. Consequently, the real value of the cap has diminished considerably over the past ten years.

In 1999, the Department of Education used its statutory authority to increase the unsubsidized Stafford limit for “students engaged in specialized training requiring exceptionally high costs of education” to \$30,000 for medical students and certain other students in health professions, including podiatry and veterinary students.⁷⁴ That same limit should now be applied equally to all graduate and professional students, including law students.

Raising the Stafford loan limit would also help law graduates and other graduate and professional students pursue public service careers by facilitating their participation in the income-contingent repayment option. As noted previously, the income-contingent repayment option is available to borrowers with federal direct loans and borrowers who consolidate their federally guaranteed loans into federal consolidation loans. It is not available for private, commercial loans that many graduate and professional students now must rely on to meet the gap created by the \$18,500 Stafford cap.

This reform is long overdue, because the limit for law students has not been increased in almost ten years. Medical, veterinary and podiatry students and certain other students in the health professions already may borrow \$30,000 annually each nine-month academic year. Lawyers, particularly those who enter public service, serve a critically important role in securing access to justice. The loan limits for law students should be raised to \$30,000 as well.

The Secretary of the Department of Education has the authority to raise the Stafford limit for law students, so this change can also be effectuated through regulatory amendment. Although such action is an option, the Secretary has not undertaken this initiative. This issue is now subsumed within the reauthorization of the Higher Education Act.

Congress should create loan repayment/forgiveness programs for lawyers in public service under the Stafford Loan Program.

In recent years, Congress has enacted several student loan repayment programs to help recruit and retain graduates with Stafford loan debt in employment settings offering modest salaries covering, for example, teachers, childcare providers, nurses and medical technicians.⁷⁵ The ratio of debt to salary for individuals in these occupations is usually far less than for new lawyers considering a career in public service, such as with a prosecutor’s office or legal aid office.⁷⁶

The overwhelming majority of law students utilize Stafford loans to finance their legal education. Providing loan repayment or forgiveness programs under the Stafford Loan Program for lawyers in public service employment settings, such as prosecutor’s offices, state and local government agencies, or legal aid offices, would provide significant relief to lawyers by reducing their annual student loan debt obligation. By alleviating a significant portion of their student debt burden, many more lawyers would be able to accept and remain in lower-paying public service jobs.

⁷⁴The following health profession students are permitted to borrow up to \$30,000 in unsubsidized Stafford loans for each 9-month academic year: osteopathic, dentistry, veterinary, optometry and podiatric. See GEN-99-21, Dear Partner, Dear Colleague Letter, U.S. Department of Education, July 1999.

⁷⁵See, e.g., 20 U.S.C. §§ 1078 10, 1078 11, 1087j and 1087ee.

⁷⁶S. REP. NO. 315. 107th Cong., 2d Sess. 36, available at www.thomas.loc.gov/.

A number of bills expanding or initiating loan forgiveness programs are pending in the 108th Congress. However, these bills primarily target teachers and members of the Armed Services, and do not cover lawyers.

On May 21, 2003, Senators Richard Durbin (D-IL), Michael DeWine (R-OH), Susan Collins (R-ME) and Russ Feingold (D-WI) introduced S. 1091, the Prosecutors and Defenders Incentive Act. The legislation would establish student loan repayment under the Stafford Loan Program for full-time prosecutors and public defenders, who agree to serve for a minimum of three years. The ABA supports this bill. The House companion legislation, H.R. 2198, was introduced by Representatives David Scott (D-GA) and Zach Wamp (R-TN). On June 23, 2003, Representative Robert E. Andrews (D-NJ) introduced H.R. 2562, the Public Interest Lawyer Assistance and Relief Act, which proposes to establish a loan repayment assistance program for public interest attorneys, including legal aid lawyers, federal, state or local government attorneys and judicial clerks.

Several other bills introduced in the 108th Congress would extend benefits to lawyers under existing or new loan forgiveness programs. On March 11, 2003, Senator Daniel Akaka (D-HI) introduced S. 589 to establish a pilot program for student loan repayment for federal employees in areas of critical importance to national security. The employee must remain in the position for at least three years and the program provides up to \$10,000 repayment per year with a total repayment cap of \$80,000. On March 18, 2003, Representative George Miller (D-CA) introduced H. R. 1306, to help fill shortages of highly skilled workers in key public service sectors by providing up to \$17,500 in loan forgiveness for graduates who enter teaching, child care, nursing, child welfare, and other high priority public service careers. House Resolution 1306 also includes provisions that would make the ABA-recommended changes to the income-contingent repayment option of the Federal Direct Student Loan Program.

The Commission recommends that Congress create Stafford loan forgiveness for public service lawyers as part of a comprehensive plan to encourage and enable law graduates to take and remain in lower-paying public service jobs. By establishing loan forgiveness under the Stafford Loan Program, Congress would create a powerful incentive to attract lawyers to public service jobs and provide them with the ability to remain in these jobs. For some law graduates, loan forgiveness could enable them to stay in public service jobs for many years or even their entire careers. Others, especially those supporting families and/or with large debt obligations, could take public service jobs as long as their Stafford loans were forgiven. However, once loan forgiveness ceased, some may not be able to remain in a lower-paying public service job for their full career. An improved income-contingent repayment option under the Federal Direct Lending Program could afford these graduates the ability and incentive to remain in public service jobs for their entire careers. Also, raising the Stafford loan limit would help law graduates pursue public service careers by facilitating their participation in the income-contingent repayment option.

Congress should extend loan forgiveness under the Perkins Loan Program to attorneys working in public service, such as public defenders and legal aid attorneys.

Currently, prosecutors are eligible, as law enforcement officers, to receive forgiveness of their Federal Perkins loans. At a minimum, Congress should also extend equivalent assistance to public defenders. By doing so, Congress would recognize that the enforcement of criminal laws requires lawyers to represent defendants just as it requires lawyers to prosecute them. For the adversarial system of criminal justice to operate, resources must be balanced for both prosecution and indigent defense.⁷⁷

⁷⁷*Id.*

In the past few years, a number of bills have sought to extend loan forgiveness under the Perkins Program to public defenders. Most recently, on May 21, 2003, Senators Richard Durbin (D-IL), Michael DeWine (R-OH), Susan Collins (R-ME) and Russ Feingold (D-WI) introduced S. 1091, the Prosecutors and Defenders Incentive Act. The legislation would establish student loan repayment under the Perkins Loan Program for full-time public defenders who agree to serve a minimum of three years and under the Stafford Loan Program for full-time prosecutors and public defenders who agree to serve for a minimum of three years. The House companion legislation, H.R. 2198, was introduced by Representatives David Scott (D-GA) and Zach Wamp (R-TN). S. 407, introduced on February 13, 2003 by Senator Mike DeWine (R-OH), would provide loan forgiveness for attorneys who represent low-income families or individuals involved in the family or domestic relations court systems.

In addition to public defenders, Congress should also extend forgiveness to other public service lawyers, such as legal aid lawyers or state and local government lawyers. Thirty million Americans live in poverty. Ten million others live on the brink of poverty. This privation knows no boundaries of age, race, ethnicity or even employment status. The ranks of the poor are laden with the most vulnerable members of our society, such as the elderly, family farmers, veterans, victims of domestic violence and people with disabilities. They both need and deserve access to our system of justice. If the high educational debt of lawyers prevents local legal aid offices from hiring or keeping lawyers on staff, that access will be denied. The legal needs of low-income and moderate-income persons will remain unmet. The consequences of this inequity are dire, not only in terms of the legitimacy of our system of justice, but also in the day-to-day lives of the least fortunate among us. They may lose housing or sustenance benefits, such as Supplemental Security Income, food stamps or Medicaid, that make the difference between homelessness and shelter, between hunger and sustenance, between sickness and health, between personal safety and fear.

Congress should also extend forgiveness to lawyers working for state or local governmental agencies. Government lawyers serve their communities in a variety of ways – for example, by enforcing consumer protection statutes, by regulating child care programs, by protecting the public health and safety, or by overseeing mental health facilities. When the government and nonprofit organizations cannot hire and/or retain lawyers to undertake this important work, the community and its citizens suffer.

The Commission recommends that Congress create Perkins loan forgiveness for public service lawyers as part of a comprehensive plan to encourage and enable law graduates to take and remain in lower-paying public service jobs. By establishing loan forgiveness under the Perkins Loan Program, Congress would create a powerful incentive to attract lawyers to public service jobs and provide them with the ability to remain in these jobs. For some law graduates, loan forgiveness could enable them to stay in public service jobs for many years or even their entire careers. Others, especially those supporting families and/or with large debt obligations, could take public service jobs as long as their Perkins loans were forgiven. However, once loan forgiveness ceased, some may not be able to remain in a lower-paying public service job for their full career. An improved income-contingent repayment option under the Federal Direct Lending Program could afford these graduates the ability and incentive to remain in public service jobs for their entire careers. Also, raising the Stafford loan limit would help law graduates pursue public service careers by facilitating their participation in the income-contingent repayment option.

Congress should amend Section 125 of the Internal Revenue Code of 1986 to include an educational loan repayment program as part of a qualified benefit assistance program (cafeteria plan) that can be sponsored by employers and offered to employees.

Section 125 of the Internal Revenue Code allows employers to offer employees different types of nontaxable benefits that are collectively referred to as a “cafeteria plan.” Employers may set up a specific menu of benefits, such as medical, dental, child care, parking, and employees may choose to set aside pre-tax dollars to pay for these benefits. Funds are then deducted from the employees’ compensation pre-tax and applied to the appropriate benefit programs.

The addition of a student loan repayment program as an option under a cafeteria plan will assist employers in recruiting and retaining graduates, including law graduates. If allowed to offer such a benefit to its employees, legal employers may cultivate loyalty and provide graduates with greater flexibility. Additionally, this proposal is an effective way for employers to invest in employees who did not have comparable tax advantages for educational expenses. While Section 127 of the Internal Revenue Code provides educational benefits for employees incurring continuing educational expenses that will enhance an employee’s skills or expertise, no provision exists for the educational expenses of employees who already possess the requisite skills or who, prior to employment, borrowed to finance their education.

Also, graduates could greatly benefit from the inclusion of an educational loan repayment program as part of a cafeteria plan, especially in the early years of their careers, when they are earning entry-level salaries. If graduates could designate a specific portion of their compensation pre-tax to pay student loans, this would result in a reduction of their taxable income. Because many law graduates have such high educational debt burdens, many borrowers have found their salaries insufficient to meet their monthly student loan obligations. Although this proposal would not lower their student loan debt obligations, it could provide them with a greater amount of discretionary income so that they can more easily enter or remain in public service.

Congress should enact legislation to give incentives to public service employers to provide educational loan repayment programs.

Generally, a borrower whose loans are forgiven or canceled must include the amount forgiven in gross income for federal income tax purposes. This may not be the case with some LRAPs administered by states, bar foundations, law schools or other nonprofit organizations. Before 1997, when a LRAP discharged a borrower’s loans, the borrower had taxable income equal to the principal amount of the discharged LRAP debt.⁷⁸ The Taxpayer Relief Act of 1997⁷⁹ permitted states or other entities to develop LRAPs so that loan forgiveness based on public service employment is not considered taxable income to the borrower under specific circumstances.⁸⁰ Under § 108 (f) of the Internal Revenue Code, as amended by the Taxpayer Relief Act of 1997, student loans canceled after August 5, 1997 in exchange for public service employment generally do not cause the borrower to have taxable income, provided certain requirements are met.⁸¹ Those requirements are:

⁷⁸See Rev. Rul. 73, 256, 1973-1 C.B. 56, § 2117 of the Tax Reform Act of 1976, and 26 U.S.C. § 108 (f) as originally enacted by the Tax Reform Act of 1984 (effective for loan discharges on or after January 1, 1983).

⁷⁹Pub.L. 105-34 (1997).

⁸⁰26 U.S.C. § 108 (f).

⁸¹*Id.*

Borrower/LRAP Recipient

A borrower/LRAP recipient must be employed in a governmental unit or by a nonprofit organization.⁸²

Qualifying Loans

The loan must be a forgivable loan, as opposed to a grant, made by a qualified lender (see below) to assist the borrower in attending an educational institution.⁸³ The loan agreement must contain a provision that all or part of the debt will be canceled if the borrower works for a specified period of time, in a specified profession (generally public service employment) for a specific class of employers. The LRAP makes a loan, which a recipient uses to refinance the original educational loans a recipient incurred to attend school. Generally, a program will make a loan to a program recipient and the program will forgive this loan after the recipient satisfies the program's service requirement.

Qualified Lenders

The loan must be made by an educational institution, a tax-exempt organization or the government.⁸⁴ *The recipient cannot be employed by the organization making the new loan or any benefits received are considered taxable income to the recipient.*⁸⁵ Therefore, when an employer provides loan repayment assistance to an employee, the employee must pay income taxes on the amount of assistance, which significantly reduces the benefit to the employee.

Congress should consider amending the Internal Revenue Code to exclude from taxation LRAP benefits distributed by employers to employees. Currently some public service employers, such as legal aid organizations,⁸⁶ administer their own LRAPs, which are typically funded with general operating funds. Many employers report that LRAPs have a positive impact on recruiting and retention efforts. However, since all employer LRAP payments are taxable income to the employee recipient, the beneficial impact of the payments is significantly reduced.

Pursuant to 5 U.S.C. § 5379, Congress authorized federal agencies to set up loan repayment programs to repay federally insured student loans when necessary to recruit or retain highly qualified professional, technical, or administrative personnel. Congress currently authorizes the agencies to pay up to \$6,000 in assistance to an employee in a calendar year, with an aggregate cap of \$40,000. Congress should increase the annual cap to at least \$10,000, increase the aggregate cap, provide for inflation increases to keep pace with tuition increases and provide funding for federal agencies to implement these programs.

Currently, any benefits provided under the Federal Agency loan repayment program are considered taxable income. Bills have been introduced in both the House (H.R.1056) and the Senate (S. 512) that would amend the Internal Revenue Code to exclude from gross income amounts paid on behalf of Federal employees under Federal student loan repayment programs.

⁸²26 U.S.C. § 108 (f)(2)(D)(ii).

⁸³26 U.S.C. § 108 (f)(1).

⁸⁴26 U.S.C. § 108 (f)(2).

⁸⁵26 U.S.C. § 108 (f)(3).

⁸⁶For a list of LSC-funded organizations administering LRAPs, visit http://www.lri.lsc.gov/sitepages/management/management_lrap.htm. For a list of other employer-sponsored LRAPs, visit <http://www.equaljusticeworks.org/finance/>.

A recent Office of Personnel Management Report found that “[t]he student loan repayment authority is a valuable tool that enables agencies to entice potential candidates into Federal service and keep talented employees in the Federal workforce.”⁸⁷ The Report stated that the federal agencies identified lack of funding for the loan repayment program as the most common barrier to using the student loan repayment incentive effectively.⁸⁸ The agencies recommended several changes in the Federal student loan repayment program, such as eliminating the tax liability to employees, reducing the statutory three-year service requirement in exchange for student loan repayment, and increasing the annual payment limitation and the lifetime maximum payment limitation on student loan repayment.⁸⁹ One Federal official noted that although the General Accounting Office offered student loan repayments to 187 employees, nearly 10% rejected the offer due in part, to the additional tax burden that results from accepting the loan repayment.⁹⁰

Making the student loan repayment benefit tax-free will greatly increase its incentive potential. Furthermore, the ABA should support legislative efforts to review the annual and aggregate caps so that they keep pace with rising educational costs.

Congress should amend the Internal Revenue Code to allow a full deduction for interest paid on student loans obtained for the purpose of attending an institution of post-secondary education.

Borrowers who paid interest on a student loan may be able to deduct up to \$2,500 of the interest paid. This deduction is taken as an adjustment to income, so a borrower can claim it even if she does not itemize deductions. The amount of a borrower’s deduction depends upon his income level. If an individual’s modified adjusted gross income exceeds \$65,000 (or \$130,000 for a borrower filing a joint return), she may not take a student loan interest deduction.

Congress should amend the Internal Revenue Code to allow a full deduction for interest paid on student loans obtained for attending an institution of post-secondary education, such as law school. With the cost of law school tuition rising, law students are borrowing more funds to finance their legal educations. With many law students borrowing \$80,000 or more in loans, graduates are faced with monthly loan obligations in excess of \$1,000 (this figure may not include loans assumed to finance undergraduate and/or other graduate education). Especially in the years immediately following graduation, law students may pay in excess of \$10,000 of interest on law school loans.

By restoring the full deductibility of student interest loan payments, Congress could help borrowers reduce the actual cost of repaying money borrowed for law school. This restoration will provide a strong incentive for law graduates to accept lower-paying public service jobs by reducing their taxable income.

No legislation to restore the full deduction is pending. However, on March 18, 2003, Representative Miller (D-CA) introduced H.R. 1304, which proposes to change the current student loan tax deduction benefit to a tax credit, which will deliver a larger rebate on the interest paid on student loans to borrowers than is afforded under current law.

⁸⁷OPM Report to Congress on the Federal Student Loan Repayment Program, *supra* note 45, 7.

⁸⁸*Id.* at 6.

⁸⁹*Id.* at 6.

⁹⁰Quote attributed to David Walker, Comptroller General, in “Few Agencies Repay Student Loan to Keep, Hire Staff,” *Federal Times*, November 11, 2002.

The Legal Services Corporation should make loan repayment assistance and forgiveness a priority, by such means as promoting these programs to its grantees and/or exploring the creation of a loan repayment assistance program for its grantees.

The Legal Services Corporation (LSC) is a private, non-profit corporation established by Congress to seek to ensure equal access to justice under the law for all Americans by providing civil legal assistance to those who otherwise would be unable to afford it. LSC was created in 1974 with bipartisan congressional sponsorship and the support of the Nixon administration, and is funded through congressional appropriation.

An 11-member Board of Directors appointed by the President and confirmed by the Senate heads LSC. By law, the Board is bipartisan: no more than six members may be of the same political party. LSC does not provide legal services directly. Rather, it provides grants to independent local programs selected through a system of competition. In 2003, LSC funded 161 local programs. Together they serve every county and congressional district in the nation, as well as the U.S. territories. Special service areas also address the distinctive needs of Native Americans and migrant farm workers.

Recognizing that high student debt burdens make it impossible for talented lawyers, especially those who come from less privileged backgrounds, to accept or remain in legal services staff positions, some LSC-grantees have created their own LRAPs. Community Legal Services in Phoenix, AZ, is one such program. According to Community Legal Services' Executive Director, Lillian Johnson, "Community Legal Services established its own loan repayment assistance program in 1997 in response to the more than 35% turnover rate among its newly hired staff attorneys. As a result of the loan repayment assistance program, staff morale among attorneys improved and CLS' ability to attract a more diverse attorney applicant pool was enhanced."

LSC should take a leadership role to encourage and support its grantees' efforts to establish LRAPs for its staff attorneys and to work with other entities, such as law schools, statewide Access to Justice Commissions and other LRAP advocates, to establish statewide LRAPs. While LSC-grantee-sponsored programs have met with success, they are limited in scope and due to a lack of adequate funding, unable to provide assistance to all lawyers on staff in need of assistance. Also, under current law, LRAP benefits given by LSC-grantees to their employees is taxable income to the recipients.

Therefore, LSC should explore creating a LRAP for its grantees and/or explore other options, such as examining the cost of developing a LRAP program in partnership with LSC recipients, law schools and national and state partners. LSC can and should play a leadership role in supporting its grantees' efforts to recruit and retain a talented workforce to benefit their communities by serving the legal needs of the poor.

OVERVIEW OF LAW SCHOOL LOAN REPAYMENT AND FORGIVENESS PROGRAMS FOR PUBLIC SERVICE LAWYERS

Law schools have developed a number of approaches for relieving the debt burden of some law graduates, including loan repayment assistance programs (“LRAPs”), public service fellowships and scholarships. Approximately sixteen (out of the nation’s 187 ABA-accredited) law schools, such as Boston College Law School, Fordham University School of Law, Georgetown University Law Center, Loyola Law School, Los Angeles, New York University Law School and University of Kansas School of Law, have established scholarship programs for students who intend to pursue careers in public service law.⁹¹

Some law schools, along with other entities, including the Equal Justice Works Fellowship Program⁹² and the Skadden Fellowship Program,⁹³ have established post-graduate fellowship programs designed to fund public interest law-related positions for a limited period of time. These fellowships provide a temporary means to increase the number of legal services attorneys serving the poor. Also, there are fellowship programs, such as the Fiske Fellowship Program at the University of Michigan Law School, that enable law graduates to enter government service at the federal, state or local level. Public service fellowships generally include the recipient’s salary, fringe benefits and loan repayment assistance, all of which are provided for a limited period of time, such as two years.

Approximately 56 law schools offer LRAPs to their graduates. In the past two years, a number of law schools, among them Cornell Law School, Northwestern University School of Law and University of Virginia School of Law, have expanded existing LRAPs. The scope of law school LRAPs ranges from programs offering extensive assistance to a large number of graduates to smaller programs offering moderate assistance to a small number of graduates. The number of graduates receiving LRAP assistance from current law school LRAPs varies by school. Depending on the law school, this number may vary from one graduate to over 200 graduates receiving assistance.⁹⁴ The majority of these programs extend assistance to graduates working in lower-paying public service jobs, but a few offer assistance to graduates working in a variety of practice settings, including private practice, and tie eligibility to income. However, a national report published in 2000 found that of approximately 50 schools offering LRAPs in 2000, 70% of the total LRAP monies went to graduates of only six law schools.⁹⁵ Consequently, a program’s existence does not ensure that any of that school’s graduates will actually benefit from it.

⁹¹National Association for Public Interest Law, *Financing the Future: NAPIL’s 2000 Report on Law School Loan Repayment Assistance and Public Interest Scholarship Programs*, 2000. Most of these scholarship programs require that recipients complete service in public interest employment for a specified number of years following graduation. For students accepting employment in non-qualifying placements, many schools impose a moral obligation to repay the scholarship funds awarded.

⁹²For more information, visit www.equaljusticeworks.org.

⁹³For additional information, visit <http://www.skadden.com>.

⁹⁴*Supra* note 91 at 286 and 298.

⁹⁵*Supra* note 91 at 10.

Law schools should create programs to help reduce student debt burdens and facilitate a student's decision to enter and remain in a public service job. These programs should include financial aid programs, such as loan repayment assistance programs ("LRAPs"), public service scholarships and post-graduate public service fellowships.

Many students enter law school with aspirations of using their legal skills to serve their communities through working in public service jobs after graduation. Some aspire to government service, such as working in a state attorney general's office enforcing consumer protection laws or representing elderly persons who have been the victims of abuse by family members. However, after borrowing significant sums to finance their legal education, many find that earning traditionally lower public service salaries and meeting their monthly student loan debt obligations are incompatible with their public service dreams.

Law schools, as the gateway to the legal profession, should facilitate the full range of career options for law graduates. Many law school deans and administrators realize that, at higher debt levels, graduates truly cannot support themselves and take public service jobs without making a significant sacrifice, such as moving back with their parents, taking a second job, and/or postponing major life decisions, like buying a home or having children. Schools also are aware of the important role they play in cultivating and supporting the public service bar.

Therefore, law schools should create programs, such as public service fellowships and scholarships and LRAPs to help alleviate the educational debt burden of law graduates who want to serve their communities by working in public service employment settings. By doing so, law schools are not only helping their alumni realize their dreams, but also they are making a positive impact on the communities in which they are located and on the legal profession.

- **Law schools should treat as a priority the funding of programs, such as LRAPs, designed to make public service work financially feasible for graduates.**

Most law schools' missions have, at the core, the goals of facilitating public service and improving society through the legal profession. LRAPs help law schools support their mission by making careers in public service possible. By creating and supporting a LRAP, a law school sends a message to its student body, alumni and the community in which it operates that it places a high value on public service to the community.

A responsive law school financial aid program is enhanced by a sound LRAP to help support graduates who want to enter public service. Financial aid is often provided to law students based on the assumption that borrowers can repay their student loans while earning relatively higher salaries. While this assumption may generally hold true for graduates who pursue jobs in the private sector, many graduates pursuing public service jobs are unable to meet their monthly debt obligations while earning lower salaries. Therefore, it is critical that law schools supplement available financial aid by making LRAP benefits available to graduates in public service careers.

There are many other reasons why law schools should make funding LRAPs a priority. LRAPs also help law schools cultivate a student body with diverse views and career plans. If more law graduates have access to LRAPs, then a larger and more diverse pool of attorneys will be afforded the opportunity to pursue and remain in public service legal careers. Loan repayment assistance programs can also act as a

strong recruiting tool. Pre-law students are increasingly savvy about financial aid options and the existence of LRAPs. Law school guides, such as *The ABA-LSAC Official Guide to ABA-Approved Law Schools*, contain information about LRAPs.⁹⁶ For many applicants, availability of LRAPs may help them decide which school to attend.

- **Law schools should assure that their LRAPs have a solid funding base to enable them to be effective.**

The mere existence of a law school LRAP for public service lawyers does not guarantee that the school can provide assistance to all applicants. While it might be preferable for a law school to start small and grow the program, it is critical that a law school provides adequate and stable funding to ensure a program's effectiveness. A law school should ensure that it has the resources to provide the promised level of assistance to recipients.

Many law schools fund their LRAPs through the school's operating budget. Some schools supplement this funding with contributions from individual donors or community foundations. A number of law schools – including Rutgers-Newark, Wake Forest Law School and the University of Maryland School of Law – received donations of between \$150,000 and \$1,000,000 from individuals to support a LRAP. A handful of law schools have created endowments to support a LRAP and to ensure that a school is in a position to offer LRAP benefits to future graduates. Some law school development offices have undertaken targeted development campaigns for a LRAP to raise funds from first-time donors. Other programs are supported by funds from student fundraising efforts, class gifts or student fees.

To encourage the establishment of LRAPs, the Commission created a Law School LRAP brochure to promote LRAPs to law school deans, development officers, other faculty and staff and potential donors. The brochure is available at www.abalegalservices.org/lrap.

- **Law schools with LRAPs should continually evaluate them to determine whether they are effectively meeting a school's goals.**

As is true of other programs and initiatives, a law school should periodically assess a LRAP's effectiveness to ensure that it is meeting a law school's goals, while fulfilling the mission of the LRAP program. When creating law school LRAPs, some law schools have set up a committee to set policy for the program and coordinate fundraising efforts. If a law school already established such a committee, then it may be charged with periodically evaluating its LRAP to ensure that it is an effective recruiting tool for incoming students and is meeting the needs of the graduates, by permitting them to enter into and stay in public service legal jobs. If a law school has not previously created a LRAP Oversight Committee, it should consider doing so. One successful model involves a committee reflecting a cross-section of the law school community with the following representatives: law faculty, financial aid officer, development officer, career services or public interest advisor, law student, LRAP participant, alumni and public service employers.⁹⁷

Law schools should take advantage of LRAP training and resources offered by Equal Justice Works, some of which focus on evaluating and expanding law school LRAPs. For more information visit www.equaljusticeworks.org.

⁹⁶See, e.g., *The ABA-LSAC Official Guide to ABA-Approved Law Schools* (2004) at 40-41 and *Directory of Law School Public Interest and Pro Bono Programs* (2003), published by the ABA Standing Committee on Pro Bono and Public Service, the Center for Pro Bono and the Division for Public Services, available at www.abaprobono.org/lawschools.

⁹⁷LRAPs 201 Workbook, Equal Justice Works (2002) at 9 (available at www.equaljusticeworks.org).

Law schools should provide more financial planning and guidance counseling to law students prior to matriculation, while enrolled, and following graduation, to help reduce debt load while attending law school, as well as adopt measures to achieve debt consolidation and reasonable payment scheduling to minimize default. At a minimum, the debt counseling function of a law school should include discussions of such methods of debt reduction as LRAPs, fellowships and other similar programs.

Many law students apply to law school with minimal knowledge of or experience with financial planning. For most, financing their legal education is the largest investment they have made, to date. With many students borrowing in excess of \$80,000, the majority have never encountered personal financial transactions and obligations of this nature. Law students and graduates will benefit from receiving information and guidance about sound debt management practices to help them handle this long-term financial obligation. Because law schools have three years with their students, they are in perhaps the best position to provide financial counseling services to law students.

Therefore, law schools should offer more financial planning and guidance to law students at critical junctures during their law school careers – prior to matriculation, while enrolled and following graduation, to help them make informed choices and effectively manage their debt. In addition to guiding students through the financial aid process, law schools should offer enhanced financial planning services to their students. Areas of focus should include borrowing prudently, managing credit card usage, developing a budget, credit history counseling and personal financial planning. If a law school lacks immediate resources to provide such services, at a minimum, it would be extremely valuable if it can recommend where students could obtain guidance on their own.

Because students who seek to pursue public service careers may face unique challenges meeting educational debt obligations while earning lower salaries, law schools should ensure that students are made aware of programs that exist to support public service lawyers. Law schools are required through existing ABA Accreditation Standards to take reasonable steps to minimize student loan defaults, including provision of debt counseling at the inception of a student's loan obligations and prior to graduation.⁹⁸ This duty should be expanded to include informing students of all possible financial assistance options of which it is aware, such as state, employer or law school-sponsored LRAPs or income-contingent repayment option of the Federal Direct lending Program, which might minimize the chances of default. Law schools should ensure that financial aid advisors are familiar with financial assistance options designed to help lawyers take and remain in public service jobs. If a school has a public interest advisor, she likely has collected resource materials about these programs that can be shared with the law school's financial aid office. There are many existing resources about LRAPs available at www.abalegalservices.org/lrap or www.equaljusticeworks.org, which should be useful to a financial aid advisor. By facilitating the exchange of additional information about these financial assistance options, law schools are providing information that may expand a field of career choices for some graduates.

Although live sessions with knowledgeable financial and financial aid professionals may be the ideal, schools can also provide this information by maintaining up-to-date websites and/or print publications presenting repayment options, fellowship, and LRAP information. These sessions and/or publications also will help the law school provide useful consumer information to its graduates, and

⁹⁸Standard 510, ABA Standards for Approval of Law Schools 2003. The Standards are available at <http://www.abanet.org/legaled/home.html>.

encourage them to keep borrowing to a minimum and minimize the chances of default. Finally, some law students may secure in-depth financial counseling through university offices designed for this purpose.

In addition to creating law school LRAPs, law schools should work with state and local bar associations and foundations, IOLTA programs and other LRAP advocates to support government, statewide and other loan repayment assistance programs for public service lawyers.

Given its unique role in its community, a law school is well-positioned to work with other entities to promote and support LRAPs for public service employers. Since each law school is different, the level and type of involvement will vary. For schools that already have a LRAP, it will be important to coordinate efforts with other LRAPs for which the school's graduates may be eligible. Law schools can become involved in statewide LRAP efforts, by participating in coalition efforts, providing legislative testimony, participating on state bar committees studying the debt problem and/or providing local public service employment placement and salary data and information about their graduates' and students' law school borrowing to LRAP advocates.

For additional information on creating a statewide LRAP, including tips on how to build a statewide coalition, consult the Commission's *State LRAP Tool Kit* at www.abalegalservices.org/lrap.

OVERVIEW OF STATE LOAN REPAYMENT ASSISTANCE AND FORGIVENESS PROGRAMS FOR PUBLIC SERVICE LAWYERS

State LRAPs currently exist in Arizona, Florida, Maine, Maryland, Minnesota, New Hampshire, North Carolina and Texas.⁹⁹ Tennessee previously administered a program, which has since been discontinued. State Bar Foundations administer the Arizona, Florida, Maine and New Hampshire programs, which are funded primarily with IOLTA funds. The Maryland State Government administers the Maryland program, which was created by statute. The Minnesota and North Carolina programs are administered by independent 501(c)(3) organizations. The Texas program is administered by the Texas Access to Justice Commission, an independent entity created by the Texas Supreme Court and staffed by the State Bar of Texas.

In 2001, the California and Texas legislatures enacted legislation creating statewide LRAPs, but neither legislature has appropriated funds. The California program is not operational. In September 2002, the Texas Access to Justice Commission announced that it received private donations to create a temporary program until state funding becomes available and the legislative program becomes operational. In 2002, Georgia enacted legislation creating a statewide LRAP, but the legislature did not appropriate funds to support the program. Therefore, the program is not operating.

Recognizing the importance of this issue to the profession, a number of state and local bar associations, such as the New York State Bar¹⁰⁰ and Washington State Bar Associations, have created special committees to explore the debt issue and develop solutions.¹⁰¹ The issue has also caught the interest of local bar foundations. In June 2002, the Chicago Bar Foundation announced a donation of \$100,000 to establish the Anderson Fellowship, a ten-year public interest fellowship that will honor and assist recent law school graduates working in public service in the Chicago-area with repayment of their law school loans.¹⁰² In January 2003, the Bar Association of San Francisco teamed up with Student Trust Inc. to establish the BASF Student Loan Consolidation Program.¹⁰³ The program focuses on new Bar members and allows them to refinance and consolidate their student debt, often reducing their monthly payments and in many cases, lowering their overall interest rates.

To encourage and support LRAP efforts by state, local and territorial bar associations and foundations, in May 2003, the Commission released *State LRAP Tool Kit: A Resource Guide for Creating State Loan Repayment Assistance Programs for Public Service Lawyers*. The *Tool Kit* includes information about the existing statewide

⁹⁹The Massachusetts Legal Assistance Corporation (MLAC), a non-profit corporation established by state statute to fund civil legal services in Massachusetts, set up a Loan Forgiveness Fund in July 2001 to lend money to attorneys and paralegals employed by MLAC's grantees in order to refinance student loans of those attorneys and paralegals. MLAC grantees may choose to nominate employees to receive loans from the Loan Forgiveness Fund, which MLAC will forgive upon completion of required service. MLAC will then reduce each grantee's overall grant by the total amount of approved loans to its employees.

¹⁰⁰The New York State Bar Association recently approved creation of a pilot NYSBA Loan Repayment Assistance Program. The New York Bar Foundation has granted \$25,000 in seed money to help start the program. Government and civil and criminal legal services jobs constitute qualifying employment. However, preference will be given to lawyers in civil legal services jobs until more funding is procured. The Bar is currently creating a loan application packet and program description and expects to solicit applications in Fall/Winter 2003. The first funds will be distributed in 2004.

¹⁰¹New York State Bar Association *supra* note 36.

¹⁰²*Chicago Bar Foundation Announces Kimball R. and Karen G. Anderson Public Interest Law Fellowship*, Chicago Bar Association Record, June/July 2002.

¹⁰³*San Francisco Bar Offers Help with Law School Debt*, Bar Leader, July/August 2003 at 5. For additional information, visit <http://www.sfbar.org/about/benefits.html>.

programs, sample LRAP legislation with an analysis, guidance on creating an independent nonprofit organization to administer a program and other resources to assist in the creation of these programs. The Commission distributed over 1,500 copies of the *Tool Kit* to state, local and territorial bar leaders and executives, members of the National Conference of Bar Foundations, leaders and staff of statewide Access to Justice Commissions, IOLTA Program leaders and staff, law school deans and ABA members. The *Tool Kit* is available through the ABA's website at www.abalegalservices.org/lrap.

RECOMMENDATIONS

As part of their commitment to access to justice, state governments should create and fund more programs, such as LRAPs, designed to enable law graduates to enter into and remain in public service legal careers.

Currently only three states provide legislative funding to support statewide LRAPs for public service lawyers – Maryland, Minnesota and North Carolina. Although LRAP legislation has been enacted in California, Georgia and Texas, none of these states has appropriated funds to support the LRAPs.

State governments have an interest in ensuring that their residents have access to essential government services and protections, and for those unable to pay, access to free or reduced-fee civil legal and criminal defense services. If lawyers are unable to accept or remain in public service jobs, state residents and their respective communities will suffer.¹⁰⁴ Many government, public defender and legal services offices report losing lawyers after two to three years of experience. Unfortunately, these lawyers leave at the point when they become efficient, well trained and have gained valuable experience to better serve their clients. When a prosecutor and/or public defender leaves her job after gaining two to three years of experience, financially strapped county offices are forced to spend time and money to recruit new hires and train them. The community also suffers, as the exodus of these lawyers negatively impacts the effectiveness of law enforcement efforts in the affected locale. The same is true for civil legal services offices, many of which are experiencing high turnover rates and the loss of trained advocates who have the requisite skill and knowledge to serve the organization's clients.

Therefore, as part of a state's commitment to access to justice, it is critical that state government support the creation of LRAPs for public service lawyers. It is suggested that state governments coordinate efforts with other LRAP efforts and collaborate with other local stakeholders in the state, such as the state legislature, state and local bar associations, law schools, law students, public service employers and the statewide access to justice commission.

For additional information on creating a statewide LRAP, including sample LRAP legislation, consult the Commission's *State LRAP Tool Kit* at www.abalegalservices.org/lrap.

¹⁰⁴See, e.g., *Final Report of the Georgia Legal Loan Forgiveness Task Force: Enhancing Public Safety for the Citizens of Georgia by Attracting Qualified Attorneys to the Criminal Justice System*, December 14, 2001 at 507. On July 23, 2001, then-Governor Roy Barnes appointed the Task Force to create a loan forgiveness program that would enhance the public safety in Georgia by attracting and retaining experienced and qualified lawyers to positions in the criminal justice system. *Id.* at Executive Summary. In its Report, the Task Force recommended that "as funding becomes available, civil legal aid attorneys be added to the program because of their role in protecting victims through the civil justice system." *Id.* at 28.

Taking into account the legal profession's responsibility to ensure access to justice, state, local and territorial bar associations and foundations and IOLTA programs should promote the creation of programs, such as LRAPs, so that law graduates can enter into and remain in public service legal jobs.

A growing number of state, local and territorial bar associations and foundations and IOLTA programs are recognizing the tremendous impact that high law student debt has on law graduates' ability to accept and remain in public service legal jobs and in turn, on the public service employers who are facing recruiting difficulties and high turnover rates. Some have developed and funded LRAPs for public service lawyers, while others have created special committees or task forces to raise the profile of the issue within the bar and community, study the issue and develop solutions to help alleviate the problem.

State, local and territorial bar associations and foundations and IOLTA programs have an interest in ensuring access to justice for the neediest people. As part of the legal profession's responsibility to ensure access to justice, state, local and territorial bar associations and foundations and IOLTA programs should initiate efforts to create a statewide LRAP and/or support and coordinate with any LRAP efforts underway. Bar foundations and IOLTA programs can play a unique role in providing funding to support these efforts, which can be leveraged to assist in efforts to cultivate additional funding from other sources.

To support their recruiting and retention efforts, public service legal employers should create employer-based programs and support the creation of other LRAPs to allow law graduates to take and remain in public service employment.

In a recent study of public service employers, 68% of those surveyed reported difficulty recruiting the lawyers they need.¹⁰⁵ Additionally, 62% reported difficulties retaining experienced lawyers.¹⁰⁶ With regard to recruiting lawyers into public service organizations, 88% of employers cited educational debt as a large factor contributing to this problem, while 82% of employers surveyed cited educational debt as a major factor impacting retention efforts.¹⁰⁷

Recognizing that high debt burdens make it difficult, if not impossible, for new law graduates to accept or remain in public service legal employment, some public service employers have created their own LRAPs. For example, some Legal Services Corporation-funded programs have used general operating funds or donations to start modest programs, but the vast majority of the programs report that they do not have adequate funding to provide sufficient assistance to meet the need. However, the employers who have created these programs report that a LRAP has a positive impact on recruiting and retention efforts.¹⁰⁸

A big drawback of employer-sponsored LRAPs is the tax consequence to recipients: under current law, LRAP benefits given to employees by their employers are taxable income to the recipients. Therefore, public service employers should explore partnering opportunities, such as with a state or local bar association, foundation or IOLTA program. Public service employers should also collect recruiting and retention information and provide this information to the stakeholder(s) leading local or statewide LRAP efforts. Public service employers should take a leadership role at the state level, through a bar association committee, state access to justice committee or other interested entity, to promote the need for and importance of LRAPs.

Public service employers interested to learn more about creating a statewide LRAP should consult the Commission's *State LRAP Tool Kit* at www.abalegalservices.org/lrap.

¹⁰⁵Equal Justice Works *supra* note 23 at 30.

¹⁰⁶*Id.*

¹⁰⁷*Id.*

¹⁰⁸*Supra*, page 46, statement of Lillian Johnson, Executive Director of Community Legal Services.

The Commission was charged with examining the law student debt burden issue and its impact on law graduates' ability to serve their communities by accepting and remaining in public service legal employment, and with making recommendations to the American Bar Association and the legal profession about strategies to respond to this important issue. The Commission appreciates this opportunity to present its conclusions and recommendations to the leadership of the Association and to colleagues and organizations throughout the profession.

Respectfully submitted,

Curtis M. Caton, *Co-Chair*

Judge Frank M. Coffin, *Co-Chair*

Ramon P. Arias

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AUGUST 2003

APPENDIX 1

COMMISSION PUBLICATIONS

Lifting the Burden: Law Student Debt as a Barrier to Public Service, The Final Report of the ABA Commission on Loan Repayment and Forgiveness (August 2003)

Meeting the Challenge of Law Student Debt: Loan Repayment Assistance Programs (August 2003)

State LRAP Tool Kit: A Resource Guide for Creating State Loan Repayment Assistance Programs for Public Service Lawyers (May 2003)

All publications are available through the ABA's website at www.abalegalservices.org/lrap.

SUMMARY OF COMMISSION ACCOMPLISHMENTS

Federal Level

- Coordinated ABA lobbying efforts for the reauthorization of the Higher Education Act
- Lobbied Congress and the U.S. Secretary of Education to improve the income-contingent repayment option of the Federal Direct Lending Program
- Stafford Loan Program - advocated for the creation of loan forgiveness for lawyers in public service and an increase to the cap on annual amount borrowed
- Perkins Loan Program - advocated to extend forgiveness to attorneys working in public service, such as public defenders and legal services attorneys (broadening beyond existing categories of teachers, child and family service workers, and law enforcement, prosecution, and corrections personnel)

Law Schools

- Developed a brochure for use by law schools to promote LRAPs, *Meeting the Challenge of Law Student Debt: Loan Repayment Assistance Programs* (tri-fold brochure, August 2003)
- Encouraged *U.S. News & World Report* to include LRAPs as a feature in its annual rankings issue
- Submitted a proposed Interpretation to Accreditation Standard 510 to incorporate discussion of methods of debt reduction, such as LRAPs and post-graduate fellowships, into the ABA Standards for Approval of Law Schools. The Standards Review Committee of the Section of Legal Education denied the proposal. The Commission then submitted a proposed Policy Statement encouraging law schools to include discussion of debt reduction methods, such as LRAPs, for adoption by the Council. The proposed statement is pending and the Council will consider it at its August 2003 meeting.

States

- Developed sample LRAP legislation and a related resource manual, *State LRAP Tool Kit*, to interest and encourage states in considering legislation and to assist bar leaders in creating statewide LRAPs
- Mounted an educational campaign targeted to state and local bars and foundations

ABA Policy

- Developed policy pertaining to loan repayment for consideration by the House of Delegates. The Commission submitted Reports 300 A and 300 B (student loan resolutions) to the House of Delegates at the 2002 ABA Mid Year Meeting. The House adopted both resolutions, which were co-sponsored by a number of other ABA entities
- Developed policy reaffirming the ABA's support for LRAPs and other programs designed to facilitate law graduates' entry and retention in public service legal careers. The ABA House of Delegates will consider this recommendation when it meets in August 2003

Educational and Outreach Efforts

- Developed and participated in a number of national panels designed to educate members of the bar, public interest legal community and others about loan repayment assistance programs. Some of these conferences include the 2002 and 2003 ABA Mid Year Meeting, 2001 and 2002 National Legal Aid and Defender Association Annual Meeting, 2002 and 2003 ABA/NLADA Equal Justice Conference, 2003 National Association for Law Placement Annual Meeting, 2001 and 2003 Equal Justice Works Annual Career Fair and Conference and 2002 and 2003 National Conference of Bar Presidents Workshops at the ABA Annual Meeting
- Developed a website, www.abalegalservices.org/lrap, which includes information about the Commission's projects and other resources
- Sponsored a national discussion list serv of persons interested in loan repayment. Participants include law school faculty and administrators, state bar leaders and staff, state loan repayment assistance program administrators, legal services staff and board members and others interested in this issue. The list serv is managed through the ABA's network.



The Income-Contingent Repayment Option of the William D. Ford Federal Direct Lending Program

Many law students graduate from law school with crushing debt burdens, with many owing \$80,000 or more in law school loans. For law graduates on a standard ten-year repayment schedule following graduation, this may result in payments of more than \$900 per month. With the median entry-level public service law salary at \$35,000, these mortgage-size debts bar most graduates from pursuing public service jobs, such as those with some government agencies or legal services programs. Among the graduates who do take such positions, many are forced to leave after two to three years of employment.

Currently, a federal program exists that can assist graduates seeking legal careers in public service. The income-contingent repayment option (“ICR”) of the William D. Ford Federal Direct Loan Program is available to all borrowers with federal direct loans and borrowers who consolidate their federally-guaranteed loans into federal consolidation loans. Congress created ICR to enable graduates, who have high educational debt, to take lower-paying community service or public service jobs. The ICR limits annual loan repayment obligations to an affordable percentage of a borrower’s income. Any remaining debt is forgiven after 25 years of payments under the ICR plan.

Although ICR was designed to enable graduates to pursue public service careers, very few graduates use it, primarily because of an unwillingness to commit to a 25-year repayment term, even though a different repayment option can be elected at any time. Also, some married borrowers do not use the program because the Department of Education’s ICR formula adds the income of both spouses to determine one spouse’s monthly repayment obligation. By combining the income of both spouses, the program effectively penalizes married two-income, one-debt couples, compared to the repayment obligation for two borrowers who are not married.

- **In order to encourage graduates to use ICR and pursue public service careers, the American Bar Association urges Congress to make two changes to ICR.**
 - Forgiveness of a borrower’s remaining debt should occur after 15 years of repayment, rather than 25, once a specified number of years have been spent in full-time public service during the repayment period.
 - The treatment of married couples’ income under the program should be amended so that no more than half of the joint income of married borrowers is attributed to each spouse.
- **These changes would enable the ICR program to help graduates who enter public service careers, as Congress intended.** The central purpose of the ICR option of the William D. Ford Federal Direct Loan Program was to enable graduates with high debt to pursue public service careers. The changes recommended by the American Bar Association will enable this program to realize its intended goals.

The ABA strongly supports improvements to the income-contingent repayment option of the William D. Ford Federal Direct Loan Program. Congress should provide forgiveness after 15 years for those who have spent a specified number of years in full-time public service. It should also eliminate or reduce the program’s marriage penalty.

ABA Staff Contact: Kristi Gaines, 202/662-1763

February 2003

Stafford Loan Program Increase

The rising debt burden of law graduates and other graduates has a negative impact on the ability of highly qualified individuals to pursue careers in public service. A key factor contributing to this debt burden is the \$18,500 cap (\$8,500 subsidized, \$10,000 unsubsidized) on the amount that graduate and professional students may borrow annually under the Stafford loan program. With tuition and living expenses for law school often far exceeding this amount, students are forced to borrow from the private commercial market at substantially higher interest rates—increasing their total debt burden.

Many law students graduate from law school owing \$80,000 or more in loans. For law graduates following a standard ten-year repayment schedule, this will result in payments of more than \$900 per month. With the median entry-level public service law salary at \$35,000, these mortgage-size debts bar most graduates from pursuing public service jobs, such as those with some government agencies or legal services programs. Among the graduates who do take such positions, many are forced to leave after two to three years of employment.

In order to help alleviate this problem, the American Bar Association recommends an increase from \$10,000 to at least \$30,000 in the amount of unsubsidized Stafford loans that graduate and professional students may borrow annually.

- **The current limits for graduate and professional students under the Stafford Loan Program are insufficient.** Currently, graduate and professional students may borrow \$8,500 in subsidized loans and \$10,000 in unsubsidized loans annually under the Stafford program. However, in 2002, the average private law school tuition was \$24,144, while the average annual public law school tuition was \$9,376 for residents and \$18,131 for non-residents. These amounts do not include living expenses or incidentals such as books and supplies. Most students, therefore, must also borrow from private lenders, at much higher interest rates, in order to meet their total cost of education.
- **Congress has not adjusted the Stafford loan limit for graduate and professional students in almost ten years.** Through 1992, Congress regularly increased the amount of Stafford loan funds that graduate and professional students could borrow annually at low interest rates. However, Congress has not adjusted that figure, set at \$18,500, since 1992. Meanwhile, during the period from 1992-2002, inflation has risen 28%, while the cost of tuition for public law schools has risen 134% (for residents) and 100% (for non-residents) and private law school tuition has increased 76%. Consequently, the real value of the \$18,500 cap has diminished considerably over the past ten years.
- **All graduate and professional students should be treated equally.** In 1999, the Department of Education used existing statutory authority to raise the unsubsidized Stafford limit to \$30,000 for medical students and certain other students in health professions, including podiatry and veterinary students. That same limit should now be applied to all graduate and professional students, because most, especially those at private institutions, are unable to finance their educations by borrowing within the annual Stafford loan limits that Congress set in 1992.
- **Raising the Stafford loan limit would benefit law students and other graduate and professional students who want to pursue careers in government or public service.** An increase in the unsubsidized Stafford loan limit would benefit lower-income borrowers, such as those pursuing careers in public service, because they could consolidate a larger portion of their debt, which could then be repaid pursuant to the income-contingent repayment option of the William D. Ford Federal Direct Loan Program.

The ABA strongly supports an increase to at least \$30,000 in the amount of unsubsidized Stafford loans that a graduate or professional student may borrow annually.

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February 2003

APPENDIX 4

SUGGESTED STATUTORY LANGUAGE TO IMPROVE THE FEDERAL
INCOME-CONTINGENT REPAYMENT OPTION OF THE FEDERAL DIRECT
LENDING PROGRAM

20 U.S.C. § 1087e

(d) Repayment plans.

(1) Design and selection. Consistent with criteria established by the Secretary, the Secretary shall offer a borrower of a loan made under this part [20 USCS §§ 1087a et seq.] a variety of plans for repayment of such loan, including principal and interest on the loan. The borrower shall be entitled to accelerate, without penalty, repayment on the borrower's loans under this part [20 USCS §§ 1087a et seq.]. The borrower may choose--

(A) a standard repayment plan, with a fixed annual repayment amount paid over a fixed period of time, consistent with subsection (a)(1) of this section;

(B) an extended repayment plan, with a fixed annual repayment amount paid over an extended period of time, except that the borrower shall annually repay a minimum amount determined by the Secretary in accordance with section 428(b)(1)(L) [20 USCS § 1078(b)(1)(L)];

(C) a graduated repayment plan, with annual repayment amounts established at 2 or more graduated levels and paid over a fixed or extended period of time, except that the borrower's scheduled payments shall not be less than 50%, nor more than 150%, of what the amortized payment on the amount owed would be if the loan were repaid under the standard repayment plan; and

(D) an income contingent repayment plan, with varying annual repayment amounts based on the income of the borrower, paid over an extended period of time prescribed by the Secretary, not to exceed 25 years, except that

(i) the plan described in this subparagraph shall not be available to the borrower of a Federal Direct PLUS loan, and

(ii) in the case of borrowers who, having elected to repay a loan on the income contingent repayment plan, have been employed by a qualified public service employer, whether or not continuously, for at least [] years on a full-time basis, the extended period of time prescribed by the Secretary shall not exceed 15 years. For purposes of this provision, a qualified public service employer shall mean any state, local government, federal agency, or other organization as defined by Section 3371 of Title 5 of the United States Code, and any employer that is exempt from taxation under Section 501 (c) (3) or Section 501 (c) (4) of Title 26 of the United States Code. . . .

(e) Income contingent repayment

(2) Repayment based on adjusted gross income. A repayment schedule for a loan made under this part [20 USCS §§ 1087a et seq.] and repaid pursuant to income contingent repayment shall be based on the adjusted gross income (as defined in section 62 of the Internal Revenue Code of 1986 [26 USCS § 62]) of the borrower, ~~or, If the borrower is married and files a Federal income tax return jointly with the borrower's spouse, on the adjusted gross income of the borrower and the borrower's spouse. If the borrower is married, half of the combined adjusted gross income of the borrower and of the borrower's spouse shall be attributed to the borrower.~~