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May 4, 2005

The Honorable Michael B. Enzi

Chairman

Committee on Health, Education, Labor and Pensions

United States Senate

Washington, DC 20510

Dear Mr. Chairman:

As your Committee continues its consideration of reauthorization of the Higher Education Act, we want to bring to your attention the concerns of the American Bar Association over the high cost of an education in law and the effect this is having on both the legal profession and our justice system. We urge you to support debt relief for people who make long-term commitments to public service; remove protracted restrictions on the availability of federal financial assistance to individuals who have had a past drug offense; and reauthorize the Thurgood Marshall Legal Educational Opportunity Program.

Appropriate Debt Relief for Public Service Lawyers

Our system of justice depends on lawyers who are willing and able to commit long-term to public service. In fact, many law students enter school with an altruistic aim to do just that. However, despite the considerable financial planning involved in pursuing a legal career, the vast majority of graduating students will face the grim reality of substantial student loan payments. Eighty-six percent of students attending public and private law schools borrow money to do so, and they graduate on the average with more than \$85,000 in loans to repay.

The median starting salary for a non-profit public interest law career is \$36,000, which leaves the typical new lawyer who repays his loans over a 10-year period approximately \$14,000 a year for all living and medical expenses, after taxes. In one local survey, 66% of respondents cited this typical debt-to-income disparity as the reason they would not pursue public service jobs.

In 2001, the American Bar Association initiated a two-year study of things that students, schools, employers and government could do to ease the obstacles for students pursuing laudable public service careers. We would like to highlight two recommendations from that report for your consideration: (a) to amend the Income Contingent Repayment Option (ICR Option) of the William D. Ford Direct Loan Program to shorten the period of repayment for those who make long-term commitments to public service; and (b) to increase the unsubsidized Stafford Loan limit for law students to \$30,000.

Under the current ICR Option, borrowers repay their consolidated loans at an affordable percentage of their gross income rather than under the traditional 10-year repayment schedule. The difference between the traditional payment and what the student pays under the ICR Option is recapitalized on the loan principal. Repayment continues for up to 25 years, at which point any balance remaining is forgiven. Despite this flexibility, many are unwilling to choose this option because of the long repayment period. To encourage better use of this existing program and to provide a measure of relief for those who commit to long-term public service, we propose that Congress accelerate the period at which forgiveness occurs from 25 years to no more than 15 years. We leave to Congress how long the period of qualifying public service should be. In current legislation in the Senate and House, S.371, H.R. 1859 and H.R. 1293, this accelerated forgiveness would be available to most public interest workers.

We also would like to bring to the Committee's attention a built-in marriage penalty in the ICR Option that makes it less attractive for some borrowers. Regulations now impute the total income of both spouses to each spouse to determine the ICR Option repayment obligation. We believe the law should assume that only half of the total income of a married couple is available to each spouse.

The second recommendation from the ABA's report is to increase the maximum limit of unsubsidized Stafford Loans for law students to \$30,000. This increase would place law students on the same footing as their medical school counterparts and reflects the increase in legal education cost since 1992 when the current limit of \$10,000 was set. From 1992 to 2002 inflation rose 28%, public law school tuition increased as much as 134% for in-state tuition, and private law school tuition increased 76%. The consequence of this has been to price a legal education out of reach of many capable students who seek to make noble contributions to society. With the vast majority of students now forced to finance their studies, the static Stafford limits have placed greater emphasis on the private loan market, including loan products that carry more restrictive terms. In the case of public sector employees, the ability to consolidate or seek forbearances in times of hardship is more than simple convenience. We therefore ask that you consider increasing the unsubsidized Stafford loan limit for law students from \$10,000 to \$30,000.

Access to Financial Aid Despite Past Drug Offenses

While financial assistance is necessary for most students seeking an education in law, some individuals are prevented from even accessing loans, grants and scholarships because of a past drug offense. The American Bar Association believes that these prospective students should not be denied this assistance when there is no current evidence of drug abuse, especially when their debt to society has been paid. Such legal obstacles are inconsistent with the ongoing remediation of these individuals and limit the contribution to society they could make. The ABA urges you to support provisions like HR 1184, the Removing Impediments to Student Education (RISE) Act, which would repeal the provision of the Higher Education Act that prohibits persons with drug offense convictions from receiving financial aid.

Reauthorization of the Thurgood Marshall Legal Educational Opportunity Program

Finally, we urge the Committee to recommend reauthorization of the Thurgood Marshall Legal Educational Opportunity Program (Marshall Program). The Marshall Program was first authorized by Congress through the Higher Education Act Amendments of 1998 (P.L. 105-244) to provide technical assistance, training, coaching, and financial assistance to prospective law students who experience certain disadvantages, whether financial, cultural or others. The Program is administered by the Council on Legal Education Opportunity (CLEO), a program established in 1968 cosponsored by the ABA and six other legal education and bar associations. CLEO's mission is to help disadvantaged students enter and successfully complete law school with the aim that graduates will give back to their

communities, ending those same barriers for others. Since its inception, CLEO has helped more than 7,000 students receive their law degrees. The Marshall Program provides critically-needed financial and academic assistance to program fellows.

The Marshall Program helps persons regardless of race, but it also considers the particular challenges facing Native Americans, African Americans, Hispanic Americans, and other racial or ethnic minority groups. We believe the successful administration of justice requires public confidence in the decisions and results it produces. Yet we know from a national study we commissioned in 2000 that half of those polled believed that the justice system was unfair, treating people differently based on factors such as the color of one's skin. One key to addressing this negative perception and restoring the public trust is to ensure that decision makers and others represented in the system reflect the growing diversity of our population. With persons of color comprising more than 30% of the population, such lawyers comprise less than 10% of the profession, with no one minority group comprising more than 4%. The latest data indicates that applications for law school among some minority groups are in decline; financial disadvantage is cited as a primary reason. CLEO's work is now expanding to support several state-sponsored pre-law initiatives, and it will continue its outreach to foster new ones.

The ABA believes diversity in the profession is integral to the fair administration of justice. We also believe that success in achieving this broader representation requires a private-public partnership. To that end, in 1999 the ABA established the Legal Education Opportunity Fund through contributions from law firms, businesses and others. This fund makes annual awards to incoming minority law students at more than 35 schools, based on need. But this program alone cannot meet the overwhelming need. We urge you to maintain this partnership by reauthorizing the Thurgood Marshall Legal Educational Opportunity Program at \$5 million a year through 2011.

Thank you for your attention on these special higher education priorities of the American Bar Association. Please do not hesitate to contact us with any questions about these vital matters.

Sincerely yours,



Robert D. Evans

cc: Members of the Senate Health, Education, Labor and Pensions Committee