RESOLVED That the American Bar Association opposes the proposal, made in the administration’s FY 2015 budget (or similar legislative proposals), that would limit forgiveness of student loans, after ten years of public service, to $57,500 (or such other cap that unreasonably limits the utility of the program), and that would require borrowers who are in public service and who have remaining balances exceeding that amount to repay them for fifteen more years, or until the debt was retired.

FURTHER RESOLVED, That the American Bar Association urges Congress and the Administration to support and continue public service student loan repayment and forgiveness programs, such as the current federal Public Service Loan Forgiveness Program, that enable law school graduates to embark upon less remunerative public service careers without having to make payments on their student loans for most of their working lives.

FURTHER RESOLVED, That the American Bar Association urges Congress and the Administration not to create, in student loan repayment programs, greater burdens for married couples than for similarly-situated couples who are cohabitating.
Introduction

Over the past fifteen years, the cost of legal education has risen dramatically. In 2012, the average annual private law school tuition was $40,634, while the average annual public law school tuition was $36,202 for non-residents. In 2000, these figures were dramatically lower—the average private law school tuition was $21,790 and the average public law school tuition was $15,683 for non-residents. Long ago, Tulane University Law School’s dean John Kramer analyzed why law school tuition increased so quickly: the quality of legal education had improved. The major factors he identified as causes of tuition increases were “reduced student-faculty ratios, computerization, expanded libraries, and increased scholarships.”

Although the American system of legal education is envied and increasingly copied throughout the world, the rising cost of legal education has burdened many of today’s law graduates, who, by the time they finish law school, have borrowed an average of $150,000 for their undergraduate and professional educations. For graduates following the “standard” 10-year repayment schedule, this may result in payments of more than $1700 per month for 10 years following graduation. With the average starting salary for a lawyer in the nonprofit sector at only $43,000, or a bit more for some jobs, these mortgage-size debts bar most graduates from pursuing public service legal jobs. In the absence of an affordable repayment plan, graduates who are able to take such positions immediately after graduation usually have to leave public service after two or three years to pursue more lucrative employment, because they are unable to start families while paying large fractions of their low salaries toward their student loans.

Beginning in 1993, the federal government began to address this problem by making loan repayment easier for persons with high educational debt. In that year Congress created the income-contingent repayment option (“ICR”) of the William D. Ford Federal Direct Loan Program. The ICR option was designed to enable graduates with high debt, including law students, to take low-paying community service jobs. ICR based annual loan repayment obligations on a borrower’s income and forgave any remaining balance after 25 years. But graduates pursuing public interest careers, whom the program was intended to benefit, did not use ICR. In particular, empirical research demonstrated that the 25-year horizon for

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1 ABA Section of Legal Education and Admissions to the Bar.
3 Debra Cassens Weiss, Average Debt of Private Law School Grads Is $125K; It’s Highest at These Five Schools, ABA Journal, Mar. 28, 2013 (reporting on graduates of private law schools in the class of 2012); in addition to this law school debt, the average undergraduate debt was $29,400 for the class of 2012. Blake Ellis, CNN Money, Dec. 5, 2013, [http://money.cnn.com/2013/12/04/pf/college/student-loan-debt/](http://money.cnn.com/2013/12/04/pf/college/student-loan-debt/)
4 $43,000 was the median starting salary for a legal services attorney in 2012. NALP, New Public Interest and Public Sector Salary Figures from NALP Show Little Growth Since 2004, [http://www.nalp.org/2012_pubint_salaries](http://www.nalp.org/2012_pubint_salaries)
5 For purposes of this report, "public service legal jobs" refers to a broad range of jobs, including employers such as federal, state or local government, prosecutors, public defenders and legal aid organizations.
repayment of the debt before the balance could be forgiven discouraged new law graduates from taking advantage of that program.\textsuperscript{6}

In 2001, ABA President Robert Hirshon appointed a Commission on Loan Repayment and Forgiveness. The Commission recommended that Congress should amend the law to provide more rapid forgiveness for high-debt borrowers who had served for a substantial period of time in full-time lower-income public service jobs.\textsuperscript{7} In 2003, the ABA’s House of Delegates supported this recommendation.\textsuperscript{8} Congress responded positively in 2007, creating the income-based repayment (IBR) loan repayment system and the Public Service Loan Forgiveness (PSLF) Program.\textsuperscript{9} The systems created in 2007 are described in the discussion below, along with three changes subsequently adopted by Congress and by Executive Branch rulemaking.

In recent years, some individuals and organizations have called for a retrenchment of the current version of IBR. Some of these critics of IBR have praised PSLF, while others have criticized PSLF as well. In early 2014, in its FY 2015 budget proposal, the Obama administration suggested to Congress that it change the IBR and PSLF programs drastically, apparently to free funds for more forgiveness of undergraduate debt. The administration’s proposals would eliminate most of the benefits of the PSLF program for high-debt, lower-income borrowers, particularly public service lawyers.

Discussion

In 1993, Congress created the Federal Direct Loan Program (FLDP), through which the Department of Education ("the Department") would offer loans directly to students.\textsuperscript{10} Congress designed the FDLP to provide options in addition to loans by lending institutions offering federally guaranteed loans through the Federal Family Education Loan Program ("FFELP"). 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."\textsuperscript{11} The legislative history of ICR is replete with references to public service. 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

\footnotesize{\textsuperscript{6} Philip G. Schrag, The Federal Income-Contingent Repayment Option for Law Student Loans, 29 Hofstra L. Rev. 733 (2001).}
\footnotesize{\textsuperscript{7} ABA Commission on Loan Repayment and Forgiveness, Lifting the Burden: Law Student Debt as a Barrier to Public Service (2003), http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/llrap/llrapfinalreport.authcheckdam.pdf.}
\footnotesize{\textsuperscript{8} Resolution 300B (2003), http://www.americanbar.org/content/dam/aba/directories/policy/2002_my_300b.authcheckdam.pdf.}
\footnotesize{\textsuperscript{9} College Cost Reduction and Access Act, P.L. 110-84, Secs. 302 and 401.}
\footnotesize{\textsuperscript{10} The Federal Direct Loan Program is now known as the William D. Ford Federal Direct Loan Program. See 20 U.S.C. § 1087a-j. Today, nearly all student loans for legal education are done through this program.}
\footnotesize{\textsuperscript{11} Staff 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).}
plan...so that borrowers'...obligations do not foreclose community service-oriented career choices for them."  

The legislation required the Secretary of Education to offer borrowers an income-contingent repayment plan through which students would pay 20% of their income each year toward their federal student loan repayment, and the Secretary would cancel any remaining balance at the end of a period of repayment "not to exceed 25 years." The legislation did not offer more generous terms for borrowers who took public service jobs.

Although ICR was designed to enable graduates to pursue public service careers, very few law graduates used it. A survey of law students identified the top reason why most students did not elect ICR: an unwillingness to repay their student loans for as long as 25 years.

Additionally, the study showed that many law school financial aid advisors discouraged students from using the program, in part because they too believed that twenty-five years was too long of an amortization period for graduates.

In 2003, the ABA Commission on Loan Repayment and Forgiveness found that the high debt burden discouraged law graduates from entering lower-paying public service careers and recommended that borrowers who entered such careers should be given more favorable loan repayment and forgiveness terms than ICR provided. It particularly recommended a shorter repayment period for such borrowers than for borrowers generally. The House of Delegates endorsed these recommendations, and also urged that loan forgiveness programs should not be constructed so as to impose marriage penalties on borrowers.

Four years later, Congress improved on ICR in two ways. First, it created the income-based repayment (IBR) method of repaying student loans. Borrowers could pay 15% of their discretionary income each year (rather than 20% of their income as under ICR) toward their student loans, although the number of years of repayment before forgiveness of a remaining balance would occur remained at 25. Second, it created the Public Service Loan Forgiveness Program (PSLF). Borrowers who have spent ten years in full-time public service employment, while repaying through IBR, are entitled to forgiveness of the remaining balance.

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14 Philip G. Schrag, The Federal Income-Contingent Repayment Option for Law Student Loans, 29 Hofstra L. Rev. 733, 830-31 (2001). (“policymakers 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, [as of 2000] fewer than 1% of new borrowers at schools that offer federal direct loans [chose] income-contingent repayment.”)
15 Id. at 793-803.
17 Discretionary income is adjusted gross income minus 150% of the poverty level for a family of the size of the borrower’s family. For an explanation of the calculation, see EdFinancial Services, Income-based Repayment, http://www.edfinancial.com/IBR.
18 20 U.S.C. Sec. 1087e(m).
19 Public service employment is defined to include full-time service for any level of government and for any
after 10 rather than 25 years. For these individuals, forgiveness of the remaining debt is not taxable. All borrowers who meet the employment criterion—not just lawyers—are entitled to the more generous terms of PSLF.

Three changes were subsequently made to these systems. First, as originally passed, IBR was flawed in that it attributed to the borrower, for purposes of calculation of the annual repayment obligation, all of the income of the borrower’s spouse, even if the spouse kept his or her income separately, made it unavailable to the borrower, and filed a separate tax return. This provision created an enormous “marriage penalty;” a married borrower whose spouse had a substantial income would have a much higher annual repayment obligation than an otherwise identically situated borrower who cohabited with a partner, or who became divorced but still lived with the former spouse. It incentivized cohabitation and divorce. Congress could have alleviated the problem by attributing to the borrower only half of the combined income of the married couple, an outcome that occurs by operation of law for borrowers in community property states. It did not do so, but it addressed the marriage penalty issue in a different way. Two months after creating the IBR system, it passed a technical amendments act to the original legislation, providing that for purposes of IBR repayment, the borrower would count, as the borrower’s income, only the borrower’s own income, so long as the borrower and spouse filed separate tax returns.

Second, in 2010, Congress amended the law to provide that for those who first borrowed in 2014 or later, the repayment obligation would be only 10%, rather than 15%, of discretionary income, and the repayment period before forgiveness would be 20 rather than 25 years. The repayment period for those in full-time public service remained at 10 years.

Finally, in 2012, the administration issued new regulations that reprogrammed funds so that the more generous terms offered by the 2010 legislation could be offered not only to persons who borrowed after 2014 but also to those who obtained their first federal loans after 2007 and entered repayment in 2012 or later. The current version of IBR, as amended in 2010 and 2012, is called the Pay As You Earn (PAYE) plan.

PSLF is not a free ride for public service lawyers at the expense of taxpayers. First, all borrowers who use PAYE must pay 10% of their discretionary income toward their loans each year until the loan is retired or forgiven. 10% is approximately the limit that personal finance experts believe is the maximum amount that people should pay toward student loans—percentages higher than that result in economic and personal hardships (such as not being able to

organization exempt from taxation under Sec. 501(a) and described in Sec. 501(c)(3) of the Internal Revenue Code. 20 U.S.C. Sec. 1087e(m)(3)(B)(i).
buy a home or raise children) and risk eventual loan default. Second, taxpayers reap enormous benefits from the work done by public service lawyers, whether they work in federal, state or local governments or in nonprofit service organizations such as legal aid and public defender offices or faith-based charities. The public is particularly advantaged by programs like PSLF that enable government agencies to retain talented lawyers for ten or more years, by giving them incentives to remain employed in public service. Training lawyers who leave an agency after only two years to pursue higher-paying private sector employment is wasteful. It is a poor use of government resources. Finally, the government profits by making student loans, particularly to graduate students. It charges a 4% origination fee on each loan, and it borrows money (through treasury bonds) at much lower rates of interest than the interest it charges to borrowers. Although partial forgiveness of loans to public servants is a cost to the government, it is very small compared to the profit that the government makes on the student loan system as whole, and the profit margin on loans to lawyers is particularly high because of lawyers’ low default rates.

Public Service Loan Forgiveness is not merely a program for making graduate and professional education affordable for all Americans. It also provides substantial benefits for the public, through the services provided by talented individuals who are willing and able to accept moderate salaries in order to help people in need, particularly the poor. The leading surveys of the legal needs of the public, which were conducted by the American Bar Association in the 1990s, found that among the poorest 20% of the population, only 29% used a lawyer to solve a legal problem. This figure grew only to 39% for the middle 60% of the population. Later statewide studies made similar findings. PSLF makes it possible for lawyers to work and remain in legal aid and public defender offices. PAYE, which helps lower-income borrowers to repay their student loans, enables lawyers to serve middle-income clients, reducing the extent to which legal services in America are disproportionately directed to large corporations and wealthy individuals. And a broad swath of the public benefits indirectly from PSLF because it facilitates higher education for lower-income individuals in other professions, such as nurses, teachers, social workers, employees of state, local and tribal governments, and doctors who join the Public Health Service.

Some individuals and organizations have criticized PAYE. Professor Brian Tamanaha argues that it sustains some law schools that “would go under” without it. The New America Foundation believes that the current PAYE repayment terms are too generous and should be pared back to a somewhat modified version of the IBR terms enacted by Congress in 2007. In

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25 Sandy Baum and Saul Schwartz, How Much Debt is Too Much? Defining Benchmarks for Manageable Student Debt (2005), http://www.cgsnet.org/ckfinder/userfiles/files/How_Much_Debt_is_Too_Much.pdf (“Individuals with incomes near the median should not devote more than about 10% of their incomes to education debt repayment.”)


27 Legal Services Corp., Documenting the Justice Gap in America (Sept. 2009) (surveying the legal needs of the poor in seven states).


2013, Rep. Thomas Petri (R.–WI) introduced a bill to require all borrowers to repay through an IBR system, but his bill would eliminate forgiveness entirely, even for public servants, so that some high-debt, lower-income borrowers would make payments on their student loans every year for their entire lives.\textsuperscript{30}

In 2014, the administration proposed in its FY 2015 budget to extend PAYE repayment terms to all borrowers, including those who borrowed before 2007. But that proposal would drastically cut back PAYE. Specifically, the proposal would require persons who borrow more than a total of $57,500 (the current borrowing limit for undergraduates), for their undergraduate and legal educations, to repay their loans for 25 years, rather than 20 years, unless they are fully repaid first.\textsuperscript{31} Two-thirds of all law students who borrow exceed this $57,500 limit. In addition, borrowers who have completed ten years of public service would receive only partial rather than full forgiveness. They would have $57,500 of their debt forgiven, but they would be required to make monthly payments on the remaining balance for 15 more years, or until the debt was repaid. For many, this would mean 25 years of repayment. Interest on the loans, however, would be capped at 50\% of the original balance.

For example, suppose that a typical law graduate borrower today enters repayment with a debt of $150,000 (including $25,000 of undergraduate debt) at 6.8\% interest.\textsuperscript{32} Suppose also that the borrower begins a legal aid job at $50,000 ($7000 higher than the median starting salary), earns raises of 3\% a year, and remains at the job for her entire career. Under present law, she will pay $37,252 over the ten year period, and the remaining balance of $239,427 in principal and accumulated interest will be forgiven. Under the administration’s proposal, accumulating interest would be capped and $57,500 would be forgiven of the $187,748 amount that the borrower would owe at the end of 10 years. That will leave a debt of $130,248, which the borrower would continue to repay over the next 15 years before finally obtaining additional forgiveness of $49,026. In other words, instead of paying about $37,000 over ten years, this legal aid lawyer will have to pay about $118,000 over 25 years. Few borrowers will seriously consider careers in legal aid under these circumstances. Careers in public interest law could become the province only of the independently wealthy.

The budget proposal also states that Congress should change the law to “calculate payments for married borrowers filing separately on the combined household Adjusted Gross Income.” The Department subsequently stated that this aspect of the proposal means that the income of a spouse should be added to the income to the borrower for purposes of the PAYE calculation, except that the total would be divided by two if both spouses are borrowers. For families in which only one spouse has student debt, the proposal would restore the severe marriage penalty that Congress addressed in the technical amendments act in 2007. It would encourage cohabitation and divorce and militate against marriage. It is true that the current law anomalously benefits borrowers who give up the benefits of filing a joint tax return so that they can entirely exclude the incomes of their spouses from the PAYE calculation. The current law

\textsuperscript{30} H.R. 1716 (113\textsuperscript{th} Cong.)  
\textsuperscript{31} U.S. Office of Mgmt. & Budget, Exec. Office of the President, Budget of the United States Government, Fiscal Year 2015 (2014) at 363-64. This change is arguably counterbalanced by the administration’s proposal to eliminate taxation on the amount forgiven at the end of 25 years. Id. at 190.  
\textsuperscript{32} This example assumes an applicable poverty level of $11,670 which increases at the same 3\% rate as inflation.
also provides a benefit in the majority of states that is not available to borrowers in community property states. A reasonable solution to this problem would be to base the PAYE determination, for all married borrowers, on an average of the borrower’s income and the spouse’s income. A marriage penalty would remain for some borrowers, but it would not be nearly as steep as the one caused by simply adding the two incomes.33

Even if Congress does not adopt the administration’s suggested plan, similar ideas may emerge during the process of reauthorizing the Higher Education Act. As noted above, one bill that was introduced by a senior member of the House Committee on Education and the Workforce would completely eliminate Public Service Loan Forgiveness.

Conclusion

The American Bar Association continues to support federal programs, such as the Public Service Loan Forgiveness Program, that enable law graduates to accept lower-paying employment in public service. Congress should be discouraged from enacting proposals, like the one suggested by the administration’s FY 2015 budget, that would require public service lawyers to repay their student loans for more than ten years. Congress should also be wary of discouraging marriage, or encouraging divorce, by imposing a steep marriage penalty as part of a student loan repayment formula.

Respectfully submitted,
Lisa Wood, Chair
Standing Committee on Legal Aid and Indigent Defendants
August 2014

33 This recommendation was also made by the New America Foundation, New America Foundation, Safety Net or Windfall: Examining Changes to Income-Based Repayment for Federal Student Loans 12 (2012) at 14.
GENERAL INFORMATION FORM

Submitting Entity: Standing Committee on Legal Aid and Indigent Defendants

Submitted By: Lisa Wood, Chair

1. Summary of Resolution(s).

   Opposes changes in current educational debt loan forgiveness programs for public service lawyers; urges Congress and the Administration to support and continue public service student loan repayment and forgiveness programs, urges Congress and the Administration not to create, in student loan repayment programs, greater burdens for married couples than for similarly-situated couples who are cohabitating; encourages law schools to promote responsible borrowing and responsible repayment of student loans and to make legal education affordable for all law students.

2. Approval by Submitting Entity.

   The resolution was approved for submission at the April 10-11, 2014 meeting of the Standing Committee, upon motion duly made, seconded and adopted.

3. Has this or a similar resolution been submitted to the House or Board previously?


4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

   Resolutions 02M300B, 03A113, 10M301 and 11A111A are relevant. This resolution will build upon the foundations established by these prior resolutions, and is entirely consistent with the positions taken in those resolutions.

5. If this is a late report, what urgency exists which requires action at this meeting of the House?

   Not applicable.

6. Status of Legislation. (If applicable)

   No legislation has yet been filed, but the federal Administration’s budget request to Congress for FY2015 suggests changes addressed by the first resolved clause of this resolution.
7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

ABA Governmental Affairs Office will use this policy as a foundation for future lobbying.

8. Cost to the Association. (Both direct and indirect costs)

No direct or indirect costs are anticipated.

9. Disclosure of Interest. (If applicable)

No interests of the Standing Committee or its members are implicated by this resolution.

10. Referrals.

Law Student Division
Young Lawyers Division
Section of Legal Education and Admission to the Bar
Standing Committee on Pro Bono and Public Service
Commission on Interest on Lawyers' Trust Accounts
Commission on Homelessness and Poverty
Section of Individual Rights and Responsibilities
Commission on Racial and Ethnic Diversity in the Profession
Coalition on Racial and Ethnic Justice
Commission on Hispanic Legal Rights and Responsibilities
Commission on Immigration

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

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EXECUTIVE SUMMARY

1. Summary of the Resolution

Opposes changes in current educational debt loan forgiveness programs for public service lawyers; urges Congress and the Administration to support and continue public service student loan repayment and forgiveness programs, urges Congress and the Administration not to create, in student loan repayment programs, greater burdens for married couples than for similarly-situated couples who are cohabitating; encourages law schools to promote responsible borrowing and responsible repayment of student loans and to make legal education affordable for all law students.

2. Summary of the Issue that the Resolution Addresses

The current federal Administration budget request proposes changes to the public service loan forgiveness program, and there have also been proposals by others for even more draconian changes to such programs. These programs enable thousands of lawyers to enter and most importantly remain in public service careers. The proposed changes would drastically reduce the capacity for lawyers who are not independently wealthy to remain in public service careers.

3. Please Explain How the Proposed Policy Position will address the issue

The policy proposal will oppose any changes in the current programs, and articulates clear guidelines for the essential elements of effective public service loan forgiveness programs.

4. Summary of Minority Views

No minority views within the Association are known.