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June 7, 2007

The Honorable Edward M. Kennedy  
Senate Committee on Health, Education,  
Labor and Pensions  
United States Senate  
Washington, DC 20510

The Honorable Michael B. Enzi  
Senate Committee on Health,  
Education, Labor and Pensions  
United States Senate  
Washington, DC 20510

## **Re: Reauthorization of the Higher Education Act**

Dear Chairman Kennedy and Ranking Republican Enzi:

I write to you today to express the support of the American Bar Association (ABA) for several provisions of the Higher Education Act (HEA) to consider as your committee considers the Act's reauthorization. We sincerely appreciate your past support for these provisions in the 109<sup>th</sup> Congress and hope it continues until this vital legislation is enacted.

## **Loan Repayment Assistance for Long Term Public Servants**

Our justice system depends on lawyers who are willing to forego higher-paying private sector jobs to serve in public interest positions. Many students in law school aspire to this goal but feel that they are precluded from choosing such laudable career paths when faced with significant education debt. According to the Department of Education, 80% of students borrow money to finance their undergraduate degrees, accumulating \$20,000 in such debt. Law students graduating in 2006 accrued an additional \$54,509 in debt for degrees from public law schools and \$83,181 for private schools. If one compares the projected monthly payments on these loans (\$800-\$1200) with the median monthly salary for positions in legal services (\$3,125), non-profit (\$3,300) and state government (\$3,618), it comes as no surprise that two-thirds of graduates polled cited their debt-to-income disparity as the reason they would not pursue public interest jobs.

Public sector employers such as prosecutors, public defenders and civil legal aid offices report they are facing a crisis in recruitment and retention. The federal government, which has a vested interest in ensuring the administration of justice nationwide, can help alleviate this problem by providing some financial relief for those willing to make long-term commitments to public service.

To that end, we support Section 5 of S. 359 as a step in the right direction. As you know, that legislation would expand 20 U.S.C. 1087e(d)(1)(D), the Income Contingent Repayment Option (“ICR”), to help repay qualifying student loans for qualifying public interest positions after 10 years of successful repayment and service. We urge you to enact a similar provision, making clear that it applies to all borrowers who repay through ICR and have committed such a substantial portion of their careers to working in government, non-profits and other positions in vital service to our nation.

In addition, we respectfully request that you consider one additional modification to ICR – elimination of a “marriage penalty” under ICR. Department of Education regulations currently impute the total income of both spouses to determine the ICR repayment obligation of the one in repayment, even if the other spouse’s income is not available to the borrower. Accordingly, we urge you to amend this provision to provide that only half of the total income of a married couple is attributed to each spouse.

### **Access to Financial Aid Despite Past Drug Offenses**

The enormous rise in the cost of higher education relative to the cost of all other items in the economy has made financial aid requisite for all but a few students. Denial of aid is tantamount to denial of an education for most students, yet many lose access to loans, grants and scholarships because of a past drug offense. The American Bar Association believes that these prospective students should be allowed to rise above their past through education when there is no current evidence of drug related offenses, especially after their debt to society has been paid.

Progress in reducing the number of students blocked by this restriction was made in the 109th Congress but many prospective students are still being denied the second chance that higher education can provide. While the ABA supports the Committee’s plan to eliminate from the Free Application for Federal Student Aid questions regarding drug convictions, we remain concerned that such a change does not go far enough. We therefore urge you to repeal the provisions of the Higher Education Act that prohibit persons with specific drug offense convictions from receiving federal student financial aid.

### **Reauthorization of the Thurgood Marshall Legal Educational Opportunity Program**

Finally, we urge the Committee to approve 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 disadvantages, whether financial, cultural or others. It has since grown as a pipeline to reach promising undergraduate students and has helped launch independent state-based programs. The Marshall Program helps persons regardless of race, but it also considers the particular challenges facing African Americans, Native Americans, Hispanic Americans, and other racial or ethnic minority groups.

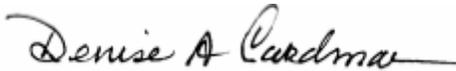
The program is administered by the Council on Legal Education Opportunity (CLEO), which was established in 1968. Cosponsored by the ABA and six other legal education and bar

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 7,500 students receive their law degrees.

We believe this program and others like it are vital not just to the students, but ultimately to the successful administration of justice in our multicultural society. The success of our system requires public confidence in the decisions and results it produces, yet we know from a national study we commissioned 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. Ensuring that the lawyers, decision makers, and others represented in the justice system reflect the diversity of our population will help restore public confidence. While persons of color comprise more than 30% of the population, lawyers of color comprise less than 10% of the profession, with no one minority group comprising more than 4%.

We believe that reaching greater diversity is a responsibility shared by every segment of society. For example, 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 cannot meet the overwhelming need, alone. We therefore urge you to maintain this public-private partnership by reauthorizing the Thurgood Marshall Legal Educational Opportunity Program at \$5 million a year through 2011. We further support CLEO's request for appropriate expansion of its mission and services to reach students while in secondary school; provide greater pre-law assistance including program focus; and authorization to provide assistance to state-based programs that are modeled after the federal program. We hope the Committee will act favorably on these proposals for improving HEA and for making law school more affordable for graduates who forego higher-paying opportunities in order to serve the public.

Sincerely yours,

A handwritten signature in cursive script that reads "Denise A. Cardman". The signature is written in black ink and is positioned below the text "Sincerely yours,".

Denise A. Cardman

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