RESOLVED, that, to relieve the burden of educational debt which bars many lawyers from careers in public service, the American Bar Association urges Congress to enact legislation, or the Secretary of the U.S. Department of Education to amend existing regulations, to improve 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 on this plan and (2) eliminating or reducing the marriage penalty under the William D. Ford Federal Direct Loan Program.
300B

REPORT

Introduction

Over the past fifteen years, the cost of legal education has risen dramatically. In 2000, the average annual private law school tuition was $21,790, while the average annual public law school tuition was $7,790 for residents and $15,683 for non-residents. In 1990, these figures were dramatically lower - the average private law school tuition was $11,278 and the average public law school tuition was $3,236 for residents and $7,365 for non-residents.

The rising cost of legal education has burdened many of today's law graduates with debt of $80,000 or more upon graduation. For graduates following the standard 10-year repayment schedule, this may result in payments of more than $900 per month for 10 years following graduation. With the average starting public interest salary at $34,000, these mortgage-size debts bar most graduates from pursuing public service legal jobs. Those graduates who do take such positions, when faced with major life decisions such as starting a family, may have to leave after two to three years of employment to pursue jobs with higher salaries.

Loan repayment assistance programs ("LRAPs") have emerged as a solution for relieving the debt burdens of some law graduates. Such programs generally provide debt forgiveness or repayment to graduates pursuing public service careers. Approximately 50 law schools have created LRAPs to assist graduates who pursue low-paying public service legal jobs. Most of these programs do not have sufficient funds to provide assistance to all graduates interested in pursuing public service legal careers. Six law schools make 70% of all LRAP disbursements, but due to limited funding appropriations, these programs have assisted few graduates.

Currently, a federal program exists that can assist law graduates seeking legal careers in public service - the income-contingent repayment option ("ICR") of the William D. Ford Federal Direct Loan Program ("FDLP"). The ICR option was designed to enable graduates, including law students, with high debt to take low-paying community service or public interest jobs. The ICR caps annual loan repayment obligations based on a borrower's income and forgives any

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1 ABA Section of Legal Education and Admissions to the Bar.
2 Id.
3 Id.
4 Id.
5 Id.
6 Id.
7 Id.
balance remaining after 25 years. Unfortunately, most law graduates—especially the graduates pursuing public interest careers who the program was intended to benefit—have not used the ICR. In particular, the 25-year horizon for repayment of the debt before it can be forgiven has discouraged new law graduates from taking advantage of the program. In addition, in calculating income subject to the cap, the program penalizes some married couples.

Therefore, the ABA Commission on Loan Repayment and Forgiveness recommends that the ABA support improvements to the ICR option under the William D. Ford Federal Direct Loan Program, including permitting forgiveness sooner than 25 years after a borrower begins repaying loans pursuant to ICR and eliminating or reducing the marriage penalty. The Department of Education could effectuate these improvements through regulatory change or Congress could make legislative changes as part of the impending reauthorization of the Higher Education Act. The adoption of this recommendation will improve the ICR so that it can serve its intended function of enabling graduates to enter public service.

Discussion

In 1993, Congress created the Direct Loan Program, through which the Department of Education ("the Department") would offer loans directly to students. 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 "[t]o provide borrowers with a variety of repayment plans, including an income-contingent repayment plan, so that borrower[s]'... obligations do not foreclose community service." The legislative history is replete with references to the public service aspect of ICR. 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 borrower[s]'...obligations do not foreclose community service-oriented career choices for them."

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. The legislation specifies that the period of repayment for ICR was "not to exceed 25 years." 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.

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4 The Federal Direct Loan Program is now known as the William D. Ford Federal Direct Loan Program. See 20 U.S.C. § 1087a.
5 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).
7 20 U.S.C. § 1087e (c)(1).
9 Id.
ICR is available only from the U.S. Department of Education. Graduates with federally guaranteed loans through the FFELP may consolidate loans into a federal direct consolidation loan through the William D. Ford Federal Direct Lending Program and elect to repay pursuant to ICR. Graduates with federal direct loans may also repay pursuant to ICR. Students with private, commercial loans that are not guaranteed by the government may not elect ICR.

Under ICR and the regulations implementing it, a borrower's annual repayment will not exceed 20% of annual discretionary income. The interest rate is fixed for the life of the loan. The ICR 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.

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

For married borrowers, the ICR formula combines the income of both spouses for purposes of determining the monthly repayment obligation. 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.

Although ICR was designed to enable graduates to pursue public service careers, very few law graduates use it. A survey of law students identified the top three reasons that most students do not elect ICR 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 ICR. When respondents were asked if they 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.

"Discretionary income" is defined as a borrower's adjusted gross income minus the federal poverty level that corresponds to your family size and the state in which you reside. Professor Schrag provides an example of a borrower with an adjusted gross income of $28,350. The borrower's repayment obligation would be 20 percent 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. P. Schrag, supra note 9, at 771-72.

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300B

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.\textsuperscript{26} Financial aid advisors also thought that few graduates would remain in the ICR long enough to obtain forgiveness and even though the program is revocable, pay too much compared to the standard repayment option.\textsuperscript{27}

With improvements, the ICR could provide much greater assistance to law graduates interested in public service careers. In order for the ICR to provide the maximum benefits to graduates interested in pursuing public interest careers (those for whom the program was designed), the Department and/or Congress should make at least two changes to the program.

First, policymakers should reduce the repayment period under ICR from 25 years to a shorter period, such as 15 years, before forgiveness of the remaining debt occurs. This period could be shortened for all users of the program, or if that is too costly, for borrowers who pursue public service careers. As discussed above, a major obstacle to widespread use of the ICR is the 25-year repayment requirement.

The cost of reducing the ICR repayment period to 15 years has been estimated at approximately $8 million per year for law graduates or $44 million per year for all graduate students.\textsuperscript{28} To cover the costs of the revision, the Secretary could reallocate other existing funds or obtain additional appropriations. The Secretary has the authority to reduce the repayment period by regulation. Although the statute provides that the period of ICR repayment is “not to exceed 25 years,” this is a maximum, not a minimum.\textsuperscript{29}

Second, the ICR option should eliminate or reduce the marriage penalty. Currently, the regulations attribute the income of both spouses to a borrower, potentially creating a very strong incentive for cohabitation without marriage or for divorce (unless the spouse has little income or is also a high-debt, low-income borrower). The Department could allow married borrowers to elect to have assets and debts treated either jointly or on an individual basis or could consider other formulas to calculate a borrower’s income.\textsuperscript{30}

If efforts to persuade the Secretary are unsuccessful, then the ABA should seek these reforms during the impending reauthorization of the Higher Education Act.

Conclusion

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. To date, this program has not served this purpose. It has failed to meet the needs of lawyers interested in pursuing public service careers. Because of the excessively long period before loans can be

\textsuperscript{26} Id. at 793-803.
\textsuperscript{27} Id. at 801.
\textsuperscript{28} Id. at 848-850.
\textsuperscript{29} 20 U.S.C. § 1087(e)(2)(D).
\textsuperscript{30} Professor Schrag suggests that the Department consider a borrower’s income to be the higher of (a) the borrower’s own income; or (b) one-half of the combined income of the borrower and the borrower’s spouse. P. Schrag, supra note 8, p 836-57.
forgiven, very few law graduates participate in this program. The changes recommended here—shortening the 25-year repayment period and eliminating or reducing the marriage penalty—would enable this program to realize its intended goals.

The ABA, therefore, should support these much-needed reforms to the ICR.

With the impending reauthorization of the Higher Education Act, it is essential that the ABA adopt a policy on this issue. Congressional staff is already beginning to draft bills for next year’s reauthorization process. It is crucial that the ABA participate in the drafting process.

Respectfully Submitted,

Curtis M. Caton             Hon Frank M. Coffin

Co-Chairs
Commission on Loan Repayment and Forgiveness

February 2002
GENERAL INFORMATION FORM

Submitting Entity: Commission on Loan Repayment and Forgiveness
Submitted By: Curtis M. Caton and Judge Frank M. Coffin, Co-Chairs

1. Summary of Recommendation(s).
This recommendation proposes that the ABA urges Congress and/or the U.S. Department of Education to support improvements in 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 under this plan and (2) eliminating or reducing the marriage penalty.

2. Approval by Submitting Entity.
Approved by the Commission on Loan Repayment and Forgiveness on January 18, 2002 by unanimous vote. The vote was held via email.

Approval by Co-Sponsors:
Approved by Law Student Division on January 25, 2002.
Approved by Section of Legal Education and Admissions to the Bar on January 23, 2002.
Approved by Standing Committee on Legal Aid and Indigent Defendants on January 24, 2002.
Approved by Standing Committee on Pro Bono and Public Service on January 25, 2002.
Approved by Young Lawyers Division Assembly on consent calendar on February 2, 2002.

3. Has this or a similar recommendation been submitted to the House or Board previously?
No.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?
The proposed recommendation does not affect existing ABA policy.

5. What urgency exists which requires action at this meeting of the House?
With the impending reauthorization of the Higher Education Act, it is essential that the ABA adopt a policy urging improvements to the income-contingent repayment option of the William D. Ford Federal Direct Loan program. Congressional staff is already beginning to draft bills for next year’s reauthorization process. It is crucial that the ABA participate in the drafting process.
6. **Status of Legislation.** (If applicable.)
Not applicable.

7. **Cost to the Association.** (Both direct and indirect costs.)
Not applicable.

8. **Disclosure of Interest.** (If applicable.)
Not applicable.

9. **Referrals.**
On January 18, 2002, the Commission distributed copies of the recommendation with report to:
Section of Business Law, Criminal Justice Section, Government and Public Sector Lawyers
Division, Law Student Division, Section of Legal Education and Admissions to the Bar, Standing
Committee on Legal Aid and Indigent Defendants, Standing Committee on Pro Bono and Public
Service and Young Lawyers Division.

10. **Contact Person.** (Prior to the meeting.)
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**Staff Liaison**
Dina Merrell
Counsel, Commission on Loan Repayment and Forgiveness
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11. **Contact Person.** (Who will present the report to the House.)
Robert N. Weiner
555 12th Street, NW
Washington, DC 20004
202/942-5855
EXECUTIVE SUMMARY

Submitting Entity: Commission on Loan Repayment and Forgiveness
Submitted By: Curtis M. Caton and Judge Frank M. Coffin, Co-Chairs

1. Summary of Recommendation:

This recommendation proposes that the ABA urges Congress and/or the U.S. Department of Education to support improvements in 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 on this plan and (2) eliminating or reducing the marriage penalty.

2. Summary of Issue Addressed by Recommendation:

The rising cost of legal education has burdened many of today’s law graduates with debt of $80,000 or more upon graduation. With the average starting public interest salary at $34,000, these mortgage-size debts bar many graduates from pursuing public service legal jobs.

A federal program exists that can assist law graduates seeking legal careers in public service - the income-contingent repayment option (“ICR”) of the William D. Ford Federal Direct Loan Program. The ICR option was created to enable graduates, including law students, with high debt to take low-paying community service or public interest jobs. The ICR caps annual loan repayment obligations based on a borrower’s income and forgives any balance remaining after 25 years.

To date, this program has not served this purpose. It has failed to meet the needs of lawyers interested in pursuing public service careers. Because of the excessively long period before loans can be forgiven, very few law graduates participate in this program. The changes recommended here – shortening the 25-year repayment period and eliminating or reducing the marriage penalty – would enable this program to realize its intended goals of enabling graduates, including law graduates, to enter public service.

3. Explanation of How Proposed Policy Will Address the Issue:

The improvements proposed in the attached recommendation would enable the ICR to realize its intended function of enabling graduates, including law graduates, to enter public service.

4. Summary of Any Minority Views or Opposition Which Have Been Identified:

None.