



Association of American Law Schools

June 12, 2007

Hon. John Sarbanes
House of Representatives
Washington, DC 20515

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Dear Representative Sarbanes:

The Association of American Law Schools strongly supports the Education for Public Service Act of 2007, which you introduced yesterday. This bill would effect two important changes in existing law that would make higher education, particularly graduate and professional education, more affordable for those who can least afford it – Americans who want to devote their careers to public service in low-paying jobs. They will advance the public interest by making it more possible for idealistic graduates – including graduates of our nation’s schools of law, social work, nursing, teaching, and medicine – to enter into public service, rather than being pushed by the burdens of educational debt repayment into careers in which they offer their labor primarily to wealthy individuals and corporations.

The Association of American Law Schools

The Association of American Law Schools, founded in 1900, is a non-profit association of 168 law schools. The purpose of the Association is the improvement of the legal profession through legal education. It serves as the learned society for law teachers and is legal education's principal representative to the federal government and to other national higher education organizations and learned societies.

The proposed reforms of the income-contingent repayment option

Your bill would amend the Higher Education Act to forgive the remaining balance on qualified educational debt after a borrower has made 10 years of income-contingent repayments on a federal direct loan or a federal direct consolidation loan while also performing 10 years of full-time public service (that is, service for government agencies or non-profit organizations). Current law (which would remain in effect for those who have not performed ten years of public service) forgives remaining balances after 25 years for all borrowers who repay their student loans under the income-contingent option.

Your bill wisely defines “public sector job” to include all full-time employment by government agencies and non-profit organizations.

This definition ensures that all public service employees will be able to qualify for the benefits of the bill. This approach is preferable to one that defines coverage by reference to particular public service occupations or trades, as any such list risks inadvertently excluding some categories of long-term public service workers.

Your bill would also reduce a severe marriage penalty that is built into the existing income-contingent repayment option.

Explanation:

Some students attend law schools, public health schools, and other institutions of higher education for the express purpose of entering into careers of public service. Some of them graduate with such high educational debt, in relation to the low salaries available in certain public service occupations, that they find they must abandon their idealistic career plans and accept lucrative job offers from private corporations or law firms simply to repay their educational loans.

A few numbers suggest how serious this problem is for those who would like to have careers in public service:

- The average three-year cost of attendance (tuition plus living expenses) at the nation's private law schools now exceeds \$135,000. Most U.S. law schools are private law schools (as opposed to law schools that are subsidized by state governments). Nearly all law students (86%) borrow money to attend law school.

- Borrowers attending these private schools incur educational debt of \$83,181, on average, just while they are in law school. In addition, many students graduate from law school still owing money on undergraduate educational debt. The median accumulated undergraduate debt of students graduating from law school in 2002 was about \$20,000. Some students repay a small part of this debt before attending law school, but others go directly from college to law school and continue to accumulate educational debt at the levels described above.

- Many students graduate from law schools owing more than \$100,000 for their educational expenses despite frugal living while attending school.

- Even at public law schools, the median debt incurred during law school is \$54,509, and the cost of attendance at public law schools has been rising much more steeply than at private law schools as cash-strapped states cut back on tuition subsidies.

- Yet the median gross starting salary at non-profit public service organizations such as legal aid societies is less than \$40,000. Even making payments over ten years, it is nearly impossible to maintain any quality of life while earning this salary and repaying a total debt of \$100,000 or more. For example, the after-tax income for a person earning \$40,000 is about \$30,000. But based on the standard ten-year loan repayment schedule, a person repaying \$100,000 in loans at 6.25% interest would have to devote \$13,476 per year – nearly half of her net income – to loan repayment. She would have less than \$17,000 for food, housing, clothing, medical care, and all of her other living expenses.

In 1993, Congress created the income-contingent repayment (ICR) option to enable students to enter into public service despite high educational debt. It is available both to those with federal direct loans and to those who have obtained federal direct consolidation loans under 20 U.S.C. Sec. 1078-3 so that they may repay through ICR. The option should be attractive to borrowers with the highest debt and lowest incomes. A borrower who elects ICR repays over a 25 year period and is not obligated to repay, each year, more than 20% of "discretionary income" (adjusted gross income less the federal poverty level). Funds that would be due in excess of this income-based cap are added to the borrower's principal balance, but any remaining balance is forgiven at the end of the 25-year period.

The ICR option has not served its purpose. It is used primarily by borrowers who are forced into it involuntarily because they are about to default under other repayment plans. Despite Congressional expectations, it is rarely selected by graduates who want to enter into low-paying public service careers.

The main reason for the failure of this program is that the 25-year period before forgiveness occurs is simply much too long. Although homeowners are accustomed to mortgages with terms of 30 years, a term of 25 years seems like forever to the 25-year-old graduates of our universities. The prospect of partial debt relief at the end of such a long period seems too remote. Many students are unable to contemplate repaying pursuant to a schedule under which they will still be paying for their own educations while their children are in college.

Graduates avoid the option for another reason as well. When a borrower repaying under this option marries, the Department of Education imputes the entire income of both spouses to that borrower for purposes of computing his or her repayment obligation, even if the spouse's income is not actually available to the borrower. 34 C.F.R. 685.209(b)(1). Therefore, when a borrower with high debt and low income marries a spouse with higher income, the borrower's repayment obligation increases substantially, and the borrower loses most or all of the benefits of possible forgiveness. Many students are disinclined to select a student loan repayment method which will put enormous pressure on them not to marry (or to obtain a divorce to lower their payments). Your bill would attribute half of the combined income of two spouses to each of them for purposes of income computation.

The failure of the income-contingent repayment option as presently constituted is documented in Philip G. Schrag, "The Income-contingent Repayment Option for Law Student Loans," 29 Hofstra Law Review 733 (2001), and Philip G. Schrag, *Repay as You Earn: the Government's Flawed Program to Help Students Have Public Interest Careers* (2002).

Reforming ICR option in this manner would advance the goal of improving access to educational opportunities for all students. It will enable those students who desire a lifetime of public service to obtain the education that they need to perform that service.

The reforms contemplated by your bill will also make it more feasible for federal, state and local agencies and nonprofit organizations to retain their talented workers, who now often leave such employment after two or three years because of the difficulty of repaying their educational debts. See, .e.g., Michael Higgins, "Exodus of state's legal aid lawyers is forecast," Chicago Tribune, Dec. 27, 2006 (reporting that 42% of the legal aid lawyers in Illinois are planning to leave their jobs within the next three years because of the burden of debt repayment).

Sincerely yours,

A handwritten signature in black ink that reads "Carl C. Monk" with a stylized flourish underneath the name.

Carl C. Monk
Executive Director