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September 4, 2007

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Hon. Mike George Miller  
Chair, House Committee on Education and Labor  
House of Representatives  
Washington, DC 20515

Hon. Edward M. Kennedy  
Chair, Senate Committee on Health, Education, Labor and Pensions  
U.S. Senate  
Washington, DC 20510

Re: Conference committee work on loan forgiveness for public sector employees in H.R. 2669

Dear Chairman Miller and Chairman Kennedy:

The Association of American Law Schools commends you and your committees for including, in H.R. 2669, a provision assuring partial forgiveness of the educational loans of borrowers who have spent ten years in full-time public service. This provision will prove to be very significant for the important minority of students who choose to go to law school because they desire careers in public service. It will make higher education, particularly graduate and professional education, more affordable for those who can least afford it – Americans who want to spend many years in low-paying public service jobs. It 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.

You are now approaching the task of reconciling the House and Senate versions of this provision. The Association of American Law Schools hopes that in the conference committee, you will clarify (as the House version does) that all public interest lawyers (that is, all lawyers who spend ten years working for governments and most nonprofit organizations) will be eligible for the benefits of this provision. We offer a suggested text below. We also offer some suggestions for other ways to improve this feature of HR. 2669, particularly by reducing the marriage penalty that currently exists in the income-contingent repayment plan and that appears to be carried over into income-based repayment under the current text of the bill.

## **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 House and Senate provisions**

Both versions of H.R. 2669 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 (or income-based) repayments on a federal direct loan or a federal direct consolidation loan while also performing 10 years of full-time service in a public sector job. 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. The House and Senate versions differ, however, in:

- a) the repayment schedule,
- b) the definition of a public sector job, and
- c) whether there is a salary cap restricting eligibility for forgiveness.

Neither version remedies the severe marriage penalty for those electing income-based repayment. I address that issue at the end of this letter.

## **Explanation of the importance of ten-year forgiveness for public sector employees**

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 as lawyers 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.

H.R. 2669 will 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. It 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).

## **Resolving the differences between the two versions**

### **a. The repayment formula**

Under the Senate IBR repayment formula, borrowers would schedule repayment over 25 years but the annual repayment obligation would be capped at the level of 15% of (adjusted gross income minus 150% of the federal poverty level). The House bill would apparently retain the current ICR formula: 20% of (adjusted gross income minus the federal poverty level). We prefer the Senate formula, as it will lower annual repayments and thereby make it much easier for borrowers to accept low-paying public service jobs. We note that the Senate formula more closely adheres to the 2001 recommendation of the U.S. Department of Education that “As a general rule, it is believed that an educational debt burden of 10 percent or greater will negatively affect a borrower's ability to repay his or her student loan and to obtain other credit such as a home mortgage.” U.S. Department of Education, Student Financial Assistance Policy, Indicator 1.4, <http://www.ed.gov/about/reports/annual/2001report/edlite-357.html> (last visited Sept. 1, 2007).

### **b) The definition of eligibility for forgiveness after ten years**

The House bill provides forgiveness after ten years of repayment and ten years of public service to any borrower who was employed in a public sector job, defined in Sec. 132 of the bill as one that either fits within certain categories of employment or one in which the employer is a government or “an organization that is described in Section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under Section 501(a) of such Code.” For lawyers, the categorical description of eligibility covers those in “public interest legal services (including prosecution or public defense or legal advocacy in low-income communities at a nonprofit organization).” Depending on how “public interest legal services” is defined, this categorical description may be underinclusive, because it could be interpreted to include only lawyers who provide “legal services” to clients and therefore exclude the substantial number of public interest lawyers whose work is education, training, issue advocacy, research, and administration. In addition, the phrase “low income communities” could exclude service to poor persons who happen to live in higher-income communities. However, the House language is satisfactory because the final “catch-all” clause of the House bill, covering every lawyer who works for a “501(c)(3)” organization, will sweep in nearly all of the public interest lawyers who might be omitted from coverage by a narrow interpretation of the term “public interest legal services” or the phrase “low income communities.”

Sec. 401 of the Senate bill lacks the catch-all clause that the House bill contains. Therefore, we much prefer the House language.

However, we would suggest tweaking the House language. We offer two alternatives, either of which would be excellent:

**ALTERNATIVE 1:** the term ‘public sector job’ means a full-time job in emergency management, government, public safety, law enforcement, public health, education (including early childhood education), social work in a public, child, or family service agency, public interest law (including but not limited to prosecution, public defense, or civil legal aid), or at an organization that is described in Section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under Section 501(a) of such Code.

or, more simply (doing away with the categories, which are not needed in view of the catch-all clause):

**ALTERNATIVE 2:** the term ‘public sector job’ means a full-time job in a government agency or at an organization that is described in Section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under Section 501(a) of such Code.

**(c) The salary cap.**

The Senate version reduces the amount of forgiveness for eligible borrowers by 10% for each year in which the borrower had a salary of more than \$65,000. The \$65,000 is not indexed to inflation, and Sec. 401 of the Senate bill is not subject to sunset, so over the years the value of the benefits will shrink. In addition, there is no adjustment for geographical areas in which the cost of living is particularly high and public interest lawyers’ salaries are therefore higher than average. The House bill has no cap. We recommend either that the salary cap be dropped or, if it is kept, that it be indexed to inflation and subject to a 10% upward adjustment by the Department for borrowers who live in areas of the United States that have a particularly high cost of living.

**The marriage penalty**

Much of the value of income-based or income-contingent repayment is eliminated, under current law, for borrowers who marry a spouse with his or her own income, whether or not the income of the spouse is actually available to the borrower. Under current law, for a married borrower, repayment under the income-contingent repayment option “shall be based” on the adjusted gross income of the borrower and the borrower’s spouse. See 20 U.S.C. 1087e(e)(2), which provides:


Repayment based on adjusted gross income. A repayment schedule for a loan made under this part [20 USCS §§ 1087a et seq.] and repaid pursuant to income contingent repayment shall be based on the adjusted gross income (as defined in section 62 of the Internal Revenue Code of 1986 [26 USCS § 62]) of the borrower or, if the borrower is married and files a Federal income tax return jointly with the borrower's spouse, on the adjusted gross income of the borrower and the borrower's spouse.

Although the “shall be based” language might allow the Department to attribute half of the combined spousal income to the borrower, the Department has chosen to impute the entire income of both spouses to that borrower for purposes of computing his or her repayment obligation. 34 CFR Sec. 685.209(b)(1). Therefore, when a borrower with high debt and low income marries a spouse with low debt and 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 pressure on them not to marry. In creating an income-based repayment plan this year, Congress should attribute half of the combined income of two spouses to each of them for purposes of income computation. The following small change would accomplish that objective:

Repayment based on adjusted gross income. A repayment schedule for a loan made under this part [20 USCS §§ 1087a et seq.] and repaid pursuant to income contingent repayment shall be based on the adjusted gross income (as defined in section 62 of the Internal Revenue Code of 1986 [26 USCS § 62]) of the borrower or, if the borrower is married and files a Federal income tax return jointly with the borrower's spouse, on the half of the combined adjusted gross income of the borrower and the borrower's spouse.

Thank you for your consideration of these suggestions.

Sincerely,



Carl C. Monk  
Executive Director