

June 8, 2021

The Honorable Richard Cordray  
Chief Operating Officer  
Office of Federal Student Aid  
Office of the Undersecretary  
U.S. Department of Education  
Washington, D.C. 20002

RE: ABA Support for Student Loan Debt Relief

Dear Mr. Cordray:

On behalf of the American Bar Association (ABA), the largest voluntary association of lawyers and legal professionals in the world, I write to congratulate you on your confirmation to lead the Office of Federal Student Aid (FSA). I would also like to express the ABA's support for several specific measures to alleviate the student loan debt burden that continues to negatively affect many members of the legal community, especially the newest members of the profession, in addition to students currently enrolled in law school and their peers attending other institutions of higher education.

Much of your time and attention will be focused on identifying and addressing the most pressing challenges related to the funding and financing of higher education. Therefore, the ABA appreciates the opportunity to suggest three targeted reforms that merit your consideration:

- Authorize the suspension or forgiveness of student loan obligations;
- Extend the opportunity to participate in federal student loan repayment programs, and/or receive federal student loan repayment terms, to individuals who previously used alternative sources of credit from commercial lenders to fund their higher-education-related expenses in whole or in part; and
- Partner with Congress to enact measures that would allow student loan borrowers, including those participating in forgiveness programs such as the Public Service Loan Forgiveness program (PSLF), to refinance their federal student loans to more favorable federal rates offered in later years and allow them to convert any private loans into federal student loans.

### **Background**

According to the Congressional Research Service (CRS), 42.9 million individuals have approximately \$1.6 trillion in outstanding student loan obligations.<sup>1</sup> This enormous collective debt is staggering and personally affects the lives of tens of millions of students and graduates. For example, the National Center for Education Statistics (NCES) reports that the average cumulative

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<sup>1</sup> Alexandra Hegji, Cong. Research Serv., R46314, *Federal Student Loan Debt Relief in the Context of COVID-19* (2021).

loan amount borrowed by an undergraduate totals over \$30,000, which can be a daunting sum to repay.

Law school graduates, as well as others who are in the process of earning an advanced professional degree, should expect to experience much higher levels of debt after completing their studies. A 2019 CRS report found that students pursuing professional degrees owed, on average, more than \$175,000 upon graduation.<sup>2</sup> The findings of CRS were corroborated by the ABA Young Lawyers Division's (YLD) 2020 Law Student Loan Debt Report (Report), which found that, of the participants surveyed, the average debt for law school graduates has skyrocketed to more than \$150,000.<sup>3</sup>

Among those surveyed in the YLD Report:<sup>4</sup>

- More than 75 percent of respondents had at least \$100,000 in student loans at graduation;
- Over half had more than \$150,000 in student loans at graduation; and
- More than one of every four had \$200,000 or more in student loans at graduation.

To make matters worse, the student loan balances for many newer lawyers have actually increased during their early years of practice. The average loan balance of respondents at the time they took the survey was higher than at graduation: \$171,036 currently, compared to \$164,742 at graduation.<sup>5</sup> On further analysis, about 40 percent of the respondents had more debt at the time of the survey than when they left school. Of those admitted to the bar before 2014, and who have been working for several years, 45.4 percent have seen their debt increase since graduation,<sup>6</sup> which appears to be caused by several factors that require further study.<sup>7</sup>

In contrast to previous generations, the current level of student loan debt carried by new and younger attorneys has pressured a large percentage of them to delay or permanently forego major life decisions, such as forming a family or investing in local communities, which has a negative rippling effect on the American economy and society.<sup>8</sup> For example, the Report found that as a result of their excessive student loan debt and interest accrual, over 50 percent of survey respondents decided to postpone or not to purchase a home, which adversely affects housing, construction, and other related industries.<sup>9</sup>

Finally, the Report revealed that the toll of student loan debt disproportionately affects lawyers of color. White respondents, on average, had about \$150,000 in loans coming out of law school. However, similarly situated respondents across every other race had from \$25,000 to \$40,000 more

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<sup>2</sup> David P. Smole, Cong. Research Serv., IF10158, *A Snapshot of Federal Student Loan Debt* (2019).

<sup>3</sup> American Bar Association Young Lawyers Division. *2020 Law Student Loan Debt Report*. American Bar Association, 2020, available at [https://www.americanbar.org/content/dam/aba/administrative/young\\_lawyers/2020-student-loan-survey.pdf](https://www.americanbar.org/content/dam/aba/administrative/young_lawyers/2020-student-loan-survey.pdf).

<sup>4</sup> *Id.* at 3.

<sup>5</sup> *Id.* at 10.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 12.

<sup>8</sup> *Id.* at 13.

<sup>9</sup> *Id.*

in debt than their White or Caucasian counterparts.<sup>10</sup> Two-thirds of all Black respondents indicated an increase in student loan debt from when they graduated law school.<sup>11</sup> A noticeably smaller proportion of Black respondents have lowered their balance: 23 percent have lower amounts currently in contrast to 31-48 percent of the other groups.

For law students and others to earn the advanced professional degrees needed to provide critical services to the American public, they often must incur very high student loan debts. But as the Chief Operating Officer of the Office of Federal Student Aid, you have the authority and ability to help these individuals who are experiencing financial hardship due to their excessive student loan obligations. Therefore, we urge you provide this much needed relief by supporting the following proposals.

### **Suggested Actions & Reforms**

#### *1. Student Loan Debt Relief*

The ABA strongly supports the federal suspension or forgiveness of some level of student loan debt. An increasing number of Americans now also support student loan debt relief,<sup>12</sup> and there has been an accelerating momentum and recognition at the national level to address the student loan crisis as well.<sup>13</sup> Multiple proposals have been introduced in Congress that would forgive or cancel various amounts of student loan debt, such as Sections 110501(a) and 110502(b)(1)(B) of H.R. 6800, the Heroes Act, which passed the House of Representatives during the 116th Congress. That legislation would have provided up to \$10,000 of student loan debt relief to borrowers.

The ABA appreciates congressional efforts designed to help resolve this pressing concern, but we also urge the executive branch to assist student loan borrowers by forgiving or canceling some level of debt. For example, one suggestion by Senator Elizabeth Warren (MA) is for the Department of Education to consider using § 432(a) of the Higher Education Act of 1965 (20 U.S.C. 1082(a)(6)), which grants the Department the authority to modify, "... compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right of redemption." Implementing this or similar ideas would also align with President Biden's goal to aid student loan borrowers.

#### *2. Public Service Loan Forgiveness Reforms*

The ABA supports protecting and strengthening the Public Service Loan Forgiveness (PSLF) program, which helps to ensure that motivated lawyers have the option and ability to accept lower paying public service jobs despite the immense cost of the advanced degree required for professional licensure. Coupled with eligible income-driven repayment options that tie monthly repayment to actual income, PSLF is a powerful recruitment and retention tool for government and

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<sup>10</sup> *Id.* at 18.

<sup>11</sup> *Id.*

<sup>12</sup> Stewart, Emily "[\*Americans Want to Cancel Student Loans — But Not All of Them.\*](#)" Vox.com, 11 Dec. 2020. Accessed 19 May 2021.

<sup>13</sup> Minsky, Adam S. "[\*How 'Cancel Student Debt' Went From A Fringe Idea To Mainstream.\*](#)" Forbes.com, 21 Sept. 2020. Accessed 19 May 2021.

community employers who deliver critically needed services to their communities. The program further ensures that students from economically disadvantaged backgrounds have vitally important access to higher education provided that they are able to meet the unrivalled commitment that PSLF requires.

Prior to PSLF, the nation's public sector faced a sizeable projected employment gap, meaning that critical positions went unfilled or were subject to high turnover. The problem is particularly acute in rural areas where an increasing number of poor and middle-class residents do not have access to legal services due to a lack of attorneys. The shortfall of public service attorneys is particularly troubling given that many of these positions, such as prosecutors and public defenders, are constitutionally required and essential to the proper functioning of the justice system.

PSLF rightfully makes rigorous demands of student loan borrowers, but those demands can be unnecessarily complicated or rendered unclear through poor administration of the program. As CRS notes:

[a] foundational concept in the PSLF program is defining what comprises employment in public service. Statutory provisions provide broad guidance but do not precisely define what constitutes qualifying employment, and regulatory and sub-regulatory administrative decisions have resulted in operationally defining it based primarily on employer characteristics rather than borrower job functions. This has led to some perceived inequities among borrowers and difficulties in identifying eligible employers.<sup>14</sup>

CRS further noted that the Department of Education has focused “largely on the type of employer at which an individual is employed, rather than on the type of services rendered by the employee.”<sup>15</sup> Today, borrower confusion caused by the lack of administration clarification threatens public confidence in the program and the ability of employers to fill critical services. The mere presence of the program averted a national crisis for 10 years without costing taxpayers anything, and FSA should take the required steps to provide certainty to borrowers considering entering public service roles.

We therefore respectfully request an opportunity to work with you to simplify the program and to nationally promote PSLF eligibility requirements more clearly. FSA should clarify the jobs and positions that qualify for PSLF. For example, it would be helpful for FSA to clarify whether a private attorney who contracts full-time with a county court to provide indigent defense services—and thus performs essentially the same role a public defender—qualifies for PSLF. We believe the answer would be yes.

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<sup>14</sup> Alexandra Hegji, Cong. Research Serv., R45389, *The Public Service Loan Forgiveness Program: Selected Issues* (2018) at 7.

<sup>15</sup> *Id.* at 7.

### *3. Refinance Federal Loan Rates*

We urge you to partner with Congress to enact measures that would allow student loan borrowers to refinance their federal student loans when interest rates drop, and to convert any private loans into federal student loans.

Presently, federal student loan interest rates can exceed five percent, and private student loans often exceed 10 percent.<sup>16</sup> High interest rates make it difficult for student loan borrowers to pay down their loan balances, especially if they are unable to refinance their loans. This problem adversely affects many students who graduated or are attending institutions of higher education. But the problem becomes especially acute for those who have earned or are presently seeking law or other advanced degrees due to the extremely high cost of obtaining specialized professional degrees and certifications.

Offering student loan borrowers the opportunity to refinance their federal student loans, as well as the ability to convert their private loans into federal loans, would encourage more people to enter private and public careers that provide critically-needed services to communities across America. This is especially true for those student loan borrowers providing legal services and for those borrowers in other occupations that require specialized education.

### **Conclusion**

Congratulations again on your new role and thank you for your thoughtful consideration of the American Bar Association's positions and concerns. Current and former students across the country who invested in their educations but are now suffering from excessive student loan debt loads are in desperate need of the relief that you can provide, and the ABA strongly urges you to take the necessary steps to help address this crisis.

Should you have any questions or need more information, please contact ABA Legislative Counsel Michael O'Neill at (202) 662-1767 or [michael.oneill@americanbar.org](mailto:michael.oneill@americanbar.org).

Sincerely,



Patricia Lee Refo  
President, American Bar Association

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<sup>16</sup> <https://www.cnbc.com/select/average-interest-rate-on-private-and-federal-student-loans/#:~:text=Average%20interest%20rates%20on%20federal,from%202.75%25%20to%205.30%25>.