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February 16, 2005

Hon. Michael Enzi, Chair
Hon. Edward M. Kennedy, Ranking Minority Member
Committee on Health, Education, Labor and Pensions
U.S. Senate
Washington, DC 20010

Dear Senators Enzi and Kennedy:

This year, the Committee expects to consider reauthorization of the Higher Education Act. The Association of American Law Schools recommends two important changes that would make higher education, particularly graduate and professional education, more affordable to those who can least afford it – Americans who want to devote their careers to public service in low-paying jobs. These changes in the Act would 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 166 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.

Our principal recommendation: improve the income-contingent repayment option for the most dedicated public servants.

We recommend that Congress amend the law to provide forgiveness of remaining balances after 10 or 15 years for borrowers who have been repaying federal direct or federal consolidation loans under the income-contingent repayment option and who have, during that period, worked for a number of years (the number to be specified by Congress) in full-time public service (that is, for government agencies or non-profit organizations).

Current law forgives remaining balances after 25 years for all borrowers, with no accelerated forgiveness for those who have performed years of public service.

We support either of the approaches embodied in two bills introduced in the 109th Congress. HR 1859, introduced by Rep. Rick Renzi (R. -AZ), would forgive remaining balances after 15 years of income-contingent repayment, for borrowers who had performed 8 years of full-time public service. Section 116 of S. 371, introduced by Senator Kennedy, would have forgive remaining balances after 10 years of income-contingent repayment and 10 years of full-time public service.

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 debt.

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 at the nation's private law schools now exceeds \$122,382. 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 \$76,563, 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 borrow more than this for their education. At the 75% percentile, the amount of accumulated educational debt (attributable to college and law school borrowing owed by a student graduating from a private law school is now more than \$106,000.

- Even at public law schools, the median debt incurred during law school is \$66,810, 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 only \$36,000. Even making payments over more than ten years (and accumulating additional interest obligations), it is nearly impossible to maintain any quality of life while earning this salary and repaying a total debt of \$85,000 or more.

In 1993, Congress created the income-contingent repayment option to enable students to enter into public service despite high educational debt. In principle, the option should be

attractive to borrowers with the highest debt and lowest incomes. The option is available to those with federal direct loans, and also to those with FFEL loans who obtain federal consolidation loans under 20 U.S.C. Sec. 1078-3. A borrower who elects this repayment option 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 are forgiven at the end of the 25-year period.

The income-contingent repayment option has not served its purpose. It is used only by borrowers who are forced into it involuntarily because they are about to default under other repayment plans. It is not 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 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 report that they can not imagine repaying pursuant to a schedule under which they will still be paying for their own educations while their children are in college.

This program has failed for two other reasons as well. First, only part of many borrowers' student loans can be repaid through the income-contingent repayment option. Nearly all federal or federally guaranteed debt is eligible for repayment through the income-contingent repayment option. However, because the annual Stafford loan limit is only \$18,500 for graduate and professional students other than those in the medical professions, many high-debt students borrow about half of their money from private sources. A student who elected the income-contingent repayment option and had borrowed half of his or her money privately would have a monthly repayment obligation about twice as large as the student would have if the entire debt could be paid through the income-contingent plan. The income-contingent program contemplates that students should not have to devote more than about 20% of their after-tax income to repaying educational debt. But a high-debt, low-income borrower who had to turn to commercial borrowing for half of his or her educational expenses would actually have to devote about 40% of his or her after-tax income to debt repayment. (Below, we also encourage Congress to raise the annual limit for unsubsidized loans for graduate and professional students to \$30,000).

Second, the Department of Education built an extraordinarily severe marriage penalty into the regulations. When a borrower repaying under this option marries, the Department imputes the entire income of both spouses to that borrower for purposes of computing his or her repayment obligation. 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. Congress should require the Department to 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).

The amendment we propose would provide more rapid forgiveness (after at most 15 years) only for those borrowers who initially elected the income-contingent repayment option had contributed the approximately 20% of their incomes toward repayment for that 15 year period, and had actually performed many years of full-time public service. We contemplate that full-time work for all local, state and federal agencies would qualify, as would full-time work for all tax-exempt non-profit organizations, including faith-based organizations. The Association of American Law Schools is not at this time suggesting how many years of public service should be required, but to provide the benefit only to the target population and keep the cost of our proposal to a minimum, it anticipates that the period of required public service should be between five and ten years.

Reforming the income-contingent repayment option in this manner would advance the goal of improving access to educational opportunities for all students. Some potential students are unable, at present, to reconcile their desire to obtain a legal education for the purpose of public service with the burden that educational debt will impose on their ability to help those in need. A more realistic income-contingent repayment option will make graduate and professional education more affordable for those students, while also making a larger pool of talented workers available to public and non-profit organizations.

We urge the Committee to support legislation like Sec. 116 of S.371 (109th Congress). This provision does not single out any particular profession for special treatment; it would promote public service by all graduates of colleges and by all advanced degree recipients.

Our second recommendation: equalize at \$30,000 the annual unsubsidized loan limit for all graduate and professional students.

Explanation:

The annual limit for Stafford borrowing for graduate and professional students was last adjusted in 1992, when it was set at \$8,500 subsidized and \$10,000 unsubsidized. The costs of graduate education have greatly increased since then. The average annual cost of attendance (tuition plus living costs) at the nation's private law schools now exceeds \$36,000, far above the \$18,500 borrowing limit. The average cost to students at public law schools is lower, but it is increasing at a more rapid rate than at private law schools. As a result, most students borrow to this limit and also borrow a substantial amount of money from private sources. Raising the annual Stafford limit would reduce the interest rate that borrowers have to pay on what is now the privately borrowed portion of their debt. Increasing the limit substantially would also help borrowers with the highest debts and lowest incomes (e.g., those who elect low-paying public service careers) by making it possible for such borrowers to repay a much higher portion of the debt through the income-contingent repayment option.

The annual Stafford loan limit for medical students and those in certain other health-related professions (such as podiatry and veterinary medicine) is now \$38,500 (\$8,500 subsidized and \$30,000 unsubsidized). This same level should now be established for all graduate and professional students. However, we do not propose to change the rule under which the

Secretary of Education limits borrowing to the cost of attendance at schools where that cost is lower than the annual Stafford limit.

Equalizing the annual Stafford loan limit for all graduate and professional students will eliminate the artificial discrepancy between the amount of lower-interest loans available to students in the health professions and students in other types of equally expensive graduate and professional education. It will also make the benefits of graduate and professional education affordable for a larger number of students, who may not be able to pay the higher interest rates associated with private loans. It will benefit the public, as well, by making it more feasible for graduates to undertake lower-paying careers in state and local governments and in other public sector employment.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Monk', written in a cursive style.

Carl C. Monk
Executive Director

Enclosure: H.R. 5270 (108th Congress)

CCM:drq

H. R. 5270

To make careers in public service more feasible for students who graduate with high educational loan debt.

IN THE HOUSE OF REPRESENTATIVES

October 7, 2004

Mr. RENZI introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To make careers in public service more feasible for students who graduate with high educational loan debt.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Education for Public Service Act of 2004'.

SEC. 2. FINDINGS.

Congress finds the following:

- (1) The Nation benefits greatly from the contributions of persons who obtain higher education, including graduate and professional degrees, and then devote much of their careers to public service. High educational debt is an impediment that discourages borrowers from pursuing low-paying public service employment.
- (2) In 1993, Congress created the income-contingent loan repayment option to help high-debt borrowers to have lower-paying public service careers.

(3) This plan has not yet succeeded in removing the barriers to public service created by high educational debt. The principal problem is that borrowers who elect this option do not receive debt forgiveness until they have been paying for 25 years. Graduates are unable to contemplate such a long period of repayment before their educational debts are forgiven.

Many of them expect to be helping to pay for their children's education within that period.

(4) The goal of income-contingent repayment can be better achieved by reducing the option's period of loan repayment and forgiveness so that public service professionals will not be forced to continue repaying their debt for 25 years after completion of graduate school.

(5) Some borrowers are discouraged from using the income-contingent repayment option because it includes a severe 'marriage penalty'. It attributes the incomes of both spouses to each borrower spouse, so that when a borrower marries, the amount of repayment due under the option is vastly increased. The option can be made more equitable by attributing only half of the income of a couple to each spouse.

(6) Making adjustments to the income-contingent repayment option will improve access to higher education opportunities and will enable more graduates to work in public service.

SEC. 3. STUDENT LOAN REPAYMENT.

(a) In General- Section 455(d) of the Higher Education Act of 1965 (20 U.S.C. 1087e(d)(1)(D)) is amended--

(1) in paragraph (1)(D), by inserting 'and subject to paragraph (6)' after 'prescribed by the Secretary'; and

(2) by adding at the end the following new paragraph:

“(6) MAXIMUM REPAYMENT PERIOD FOR PUBLIC SERVICE EMPLOYEES-

“(A) SHORTENED PERIOD IN RECOGNITION OF SERVICE- For purposes of paragraph (1)(D), in the case of borrowers who, after electing to repay a loan on the income contingent repayment plan, have been employed by a qualified public service employer, whether or not continuously, for at least eight years on a full-time basis, the extended period of time prescribed by the Secretary shall not exceed 15 years.

“(B) DEFINITION- For purposes of this paragraph, the term 'qualified public service employer' means any State, local government, Federal agency, or other organization (as such

terms are defined by section 3371 of title 5, United States Code), any other office or entity of the legislative branch, and any employer that is exempt from taxation under section 501(c)(3) or section 501(c)(4) of title 26, United States Code.'.

(b) Repayment Schedules for Married Borrowers- Section 455(e)(2) of the Higher Education Act of 1965 (20 U.S.C. 1087e(e)(2)) is amended by--

(1) by striking `, or, if the borrower' and all that follows and inserting a period; and

(2) by adding at the end the following: `If the borrower is married, one-half of the combined adjusted gross income of the borrower and of the borrower's spouse shall be attributed to the borrower.'.

END