



Association of American Law Schools

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Bloomington

May 14, 2012

MEMORANDUM 12-08

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TO: Deans of Member Schools

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FROM: *Susan* Susan Westerberg Prager, Executive Director
LDJ Linda D. Jellum, Associate Director

Serving through 2012

Dorothy Andrea Brown
Emory University

SUBJECT: Student Loan Repayment Program Developments – Please Forward

Ann C. Shalleck

American University

On January 17, 2012, I sent information to you regarding possible new student loan repayment benefits and their potential impact on 2012 graduates. Today, we are writing to update you on the Department of Education's (DOE) actions regarding this issue and to suggest that you forward this message to the appropriate members of your administrative staff.

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College of William & Mary

Background: On January 17, I noted that the President had recently announced changes to student loan repayment plans that would entitle law graduates who have relatively low incomes to have a large fraction of their student loan debt forgiven after twenty years of making modest monthly repayments (or ten years in the case of those who work in public service). I further noted that the regulations, which were not yet written, might condition graduates' eligibility for this benefit on their having executed a student loan instrument during the 2012 calendar year. Because the rulemaking was in its early stages and we could not predict whether new loans would be necessary, AALS made no recommendation at that time as to how law schools might advise their 2012 graduating students.

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Recent DOE Activity: We are grateful to Professor Philip Schrag, Georgetown University, who has been following this issue closely. Phil has advised that the DOE recently completed a negotiated rulemaking. The negotiators, who include stakeholders from industry sectors and representatives of borrowers, reached consensus on a proposed rule, which will be embodied soon in a notice of proposed rulemaking. Contrary to our concern in January about 2012 graduates, this proposed rule will apply to those students who graduate this year or in future

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years so long as they borrowed money from the government in 2011-12 and do not have government or government-guaranteed loans predating the 2007-08 school year. Specifically, a borrower will be eligible for the repayment plan if he or she “has no outstanding balance on a [federally guaranteed or extended] loan as of October 1, 2007, [meaning that the borrower did not borrow on such a loan before the 2007-08 school year] and either had a new loan disbursed after October 1, 2011, [thus disbursements for spring 2012 qualify] or received a direct consolidation loan based on an application received on or after October 1, 2011.” Thus, it will not be necessary for 2012 graduates to sign new loan documents to be eligible for this new repayment program.

There is one possible concern regarding the effective date of the new repayment program. We understand that these new terms may not be available until either February or July 2013 (the DOE has not yet decided which date). If our information regarding this effective date is accurate, a 2012 graduate who wants to repay under the new plan should take the following three steps:

- First, the graduate should not begin repayment at all until the “grace period” expires, which occurs six months after graduation (so, approximately December 1 for May graduates);
- Second, the graduate should elect “income-based” repayment (IBR) (15 percent of “discretionary income,” which works out to about 10 percent of adjusted gross income) for the ensuing two to seven months, depending on the effective date of the new plan; and
- Third, the graduate will have to obtain and execute new forms necessary to change the graduate’s repayment plan from an IBR plan to the new, more favorable “income-contingent repayment – A” [ICR-A] plan.¹

Additionally, there is another paperwork issue related to this proposed regulation: many law graduates for the next several years will have to complete consolidation paperwork. Specifically, if a graduate has both government-guaranteed student loans (which most law students received until June 30, 2010) and government-extended student loans (which virtually all law students have received since July 1, 2010), then the graduate will have to file paperwork to consolidate these loans into a federal direct consolidation loan to use ICR-A to repay the government-guaranteed portions of the loans. This paperwork consolidation requirement will affect all 2012 graduates, 2013 graduates who are in four-year legal education programs, and any future graduates who have undergraduate (or other graduate) government-guaranteed loans from 2007-08 or thereafter that the graduates want to repay through ICR-A along with their law school loans.

We are concerned that the necessity of having to elect two different repayment plans in rapid succession and the necessity of having to consolidate loans may be confusing to many of this year’s graduates. Several advocates of the ICR-A plan have asked the DOE to issue an interim

¹ There is also an older and much less useful “income-contingent repayment – B” plan, but the graduate will have to know to choose ICR-A.

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rule or procedure that would allow 2012 graduates to take advantage of the new repayment terms as soon as their grace period expired instead of having to wait until February or July 2013 to obtain and sign new forms. Others have urged the DOE to create a form by which a graduate could sign up for IBR when starting repayment and have the IBR automatically convert to ICR-A when ICR-A became available. To date, the DOE has not agreed to either.

Later this spring or summer, we expect the DOE to issue notice of proposed rulemaking based on the negotiated rulemaking procedure. We will update you when a final rule is promulgated. In closing, we want to acknowledge Professor Phil Schrag of Georgetown for all of his work to keep our member schools informed of these developments.