

Confronting Law Student Debt

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This section addresses student debt—an issue of particular importance to law students. While the topic clearly has personal financial implications, it is important to understand student debt as part of a larger systemic problem that threatens to put higher education in general, and legal education in particular, out of reach for all but those with the most resources already at their disposal. This section provides some background information about law school tuition, the student debt crisis, and repayment options. As conversations about student debt take place within schools, communities, and legislatures, progressive voices are needed to inform the debate and ensure that those with the ability and will to succeed in law school are not deterred from becoming attorneys because of the financial burden.

Law School Tuition

There is no dispute that borrowing money to attend law school is a risky financial investment. Tuition is high, and the scarce jobs pay less than they used to. In 2010, 85% of students who graduated from ABA accredited schools had an average debt load of \$98,500. But nine months after graduating, only 68% were employed in positions that required a J.D. Adding to the problem, the median starting salary had fallen 20%.¹ Many painted the issue as one of oversupply: there's not enough demand for legal services to support so many lawyers. But when legal aid is forced to turn away half of the people who walk in because of a lack of resources, it's hard to see the issue as a lack of demand for legal services.²

Had the cost of law school tuition kept pace with inflation between 1985 and 2009, a public law school education would cost \$3,945 per year, or \$14,800 at a private law school. Instead, during that time period tuition at public schools increased 820%, and 375% at private schools.³ A Government Accountability Office (GAO) report to Congress concluded that a driving force behind the increase in law school tuition has been competition over the *US News* law school rankings (See “Understanding the Law School Tuition Crisis”). Any ranking system rests on certain assumptions about educational quality based on a normative standard and doesn't always reflect subjective differences between schools. The *US News* rankings in particular influence law schools to direct resources towards reinforcing traditional notions of prestige. While many factors go into determining a school's rank, median LSAT score is the most heavily weighted factor that law schools can directly affect. This is why law school admissions offices use merit-based scholarships as a way to attract students with the highest scores. By giving out money to the applicants with the highest LSAT scores, law schools can buy themselves a boost in the rankings. In 2009, more than 1 in 4 law students received merit scholarships at a total cost of \$500 million.⁴ This may sound like good news for the recipients of these scholarships, but the practice deserves a brief explanation and a word of caution to those courted by admissions offices on this basis.

Incoming students may be offered a substantial merit-based scholarship for all three years, but retaining the scholarship after the first year is usually contingent on maintaining a certain grade point average. This may seem easy for students who are used to excelling academically, but law school grading practices make it more difficult than it seems. First, students should be aware that up to half of the incoming class likely received a similar offer and the first year grading curve will inevitably limit the percentage of students who will maintain the required GPA and keep their scholarship past the 1L year. Second, do not assume you will be a law school prodigy. The methods of teaching, testing and grading are unlike anything encountered in college and can take time to

adjust to. Many first year classes only have one exam at the end which doesn't leave a lot of room for error.

If you are offered this kind of scholarship, ask questions: How many incoming students have been offered scholarships? What are the first year grading practices? What percentage of the first year class usually maintains the required GPA? How many students lose their scholarship after the first or second year? Admissions offices may be reluctant to tell you and you may need to do some research. But students should be aware of the very real risk that they will end up having to borrow money to pay for years two and three.

The greater concern is that this increase in merit-based scholarships has come at the expense of the need-based scholarships that lower-income students used to rely on. During the 1994-95 school year, before the *US News* rankings rose to prominence, 58% of aid was need-based while 42% was merit-based. In the 2009-10 school year, only 16% of scholarships were based on need while 84% were based on merit.⁵ Because LSAT is significantly correlated with socio-economic class, this means that those entering law school with the most social capital end up receiving the most financial aid, while those with lower scores pay full price⁶. Additionally, the over-emphasis on LSAT scores means that other relevant admissions factors, such as community service or overcoming personal difficulty, are sidelined. A definition of merit that tends to reflect and reinforce social inequality has particularly serious consequences for a legal profession that struggles to increase diversity and access to justice. You will inevitably encounter much hand-wringing over your school's place in the *US News* rankings and when you do consider it a chance to voice opposition to budget decisions that value traditional notions of prestige over access and equality of opportunity.

The Student Debt Crisis

The crushing debt faced by law students is part of a larger student debt crisis with wider social and economic implications. It used to be possible to graduate from many public universities and law schools practically debt free with the help of grants, scholarships, and work study jobs. The *Higher Education Act* of 1965 first provided for broad-based financial aid in the form of grants and loans, and created incentives for states to form their own grant programs.⁷ Grants were the largest type of student aid until 1982 when they were outpaced by loans.⁸ Now tuition continues to soar while state support for higher education declines dramatically.⁹ Consequently, students are taking on greater and greater amounts of debt. Outstanding student loan debt is now over \$1 trillion, this year surpassing even credit card and housing debt, while wages for college-educated workers who are employed outside of the finance industry have stagnated and fallen.¹⁰

A whole student loan industry has emerged to meet the growing demand. In the early 1990s, Sallie Mae developed something equivalent to mortgage backed securities: Student Loan Asset-Backed Securities (SLABS). Even after trading in asset-backed securities peaked in 2007 and crashed in 2008, SLABS are still considered safe investments.¹¹ This is because, in addition to federal guarantees, student loan debt has been non-dischargeable in bankruptcy since 2005 when the *Bankruptcy Abuse Prevention and Consumer Protection Act* extended non-dischargeability to all education loans. Not only is it inescapable through bankruptcy, but student loans have no statute of limitations and collectors can garnish not only wages, but even unemployment benefits and social security payments.¹²

Since student debt passed the \$1 trillion mark in March 2012, these issues have come to the forefront and individuals and communities around the country who believe that higher education is

a public good are organizing to address the student debt crisis. For example, in Oregon, legislators unanimously passed a bill that will make it possible for students to attend public universities essentially tuition free. Under the legislation, Oregon's Higher Education Coordination Commission will develop a public university financing model called "Pay It Forward, Pay It Back" that eliminates the role of big banks. Instead of loans, this will be a social insurance program that allows students to pay nothing while in school and commit to paying a small percentage of their income for a period of time after graduating. Students will have no debt, no interest, and their percentage would never change. There are more ideas and legislative proposals being discussed than could be listed here, but as public outrage mounts and the political response takes shape, you will likely encounter opportunities to get involved in shaping the solution. A list of further resources is included at the end of this section.

Repayment Options (It's not all bad news!)

Law school is not always a path to financial security, but financial security was probably not what set you on the path to law school. Instead, you likely plan to help underserved communities fight for justice. You will face an uphill battle and you may have to be willing to tolerate the debt. However, by investing your time in advancing justice you will discover a greater satisfaction than money can buy. While the price tag can be intimidating, in some ways a commitment to doing public interest legal work is a solution to huge student debt loads. By combining loan forgiveness and income-based repayment, borrowers can repay their student loans while doing gratifying work that serves the public interest. Of course, every debtor is different, so it is important that each individual make educated decisions about their own situations.

There may be forgiveness options available that make the cost of law school bearable, but use caution when planning a career because regulations or personal circumstances may change. When taking on a student loan, always borrow the bare minimum you need and don't assume that you will be able to forgive all or part of it later. Also, it is important to note that the IRS often considers forgiven loans to be taxable. If you do have some or all of your loans forgiven, the amount forgiven may end up affecting the amount of taxes owed in the year of the forgiveness. You should consult a tax professional for information regarding your specific situation.

Most federal loans are given directly to students through the Direct Loan program. There are also private student loans available through financial institutions that lend money without any financial backing from the federal government. Borrowers should be wary of private loans, since there are no interest rate limits and they do not have the same range of repayment options and borrower protections of government loans. The repayment options discussed here apply to federal loans.

Many repayment options are not available once your loan is in default. To avoid going into default, you may qualify for a deferment or forbearance in certain circumstances. Prior to income based repayment plans, deferment was the only legitimate option for unemployed or marginally employed borrowers. A deferment is generally available in the event of unemployment or economic hardship, if you are not already in default. You will not be charged interest on subsidized loans during a deferment period. If you do not qualify for a deferment, forbearance will allow you to temporarily suspend payments. While forbearance may be available even if you are in default, you will be charged interest during the forbearance period.

Student loan forgiveness and discharge are state or federal government programs that eliminate some or all of a student's debt if the student meets certain criteria. These programs help borrowers who work in areas of need or face unexpected circumstances. The difference between forgiveness

and discharge is the circumstances under which you can cancel your debt. Loan discharges are usually for circumstances such as death or a total and permanent disability, where it has become impossible for the student to repay the loan. Loan forgiveness programs usually apply to borrowers who work in public service. There are also special repayment programs for low-income borrowers that act as a type of loan forgiveness. Borrowers now have numerous repayment options, suggesting that the government may be more interested in avoiding defaulting borrowers than in recouping its full financial investment.

The following is a list of options that may be available:¹³

John R. Justice Student Loan Repayment Program

Eligible applicants to this forgiveness plan can receive up to \$4,000 per year, for a maximum of \$60,000. This program applies to Stafford loans, Grad PLUS loans, Consolidation loans and Perkins loans. To apply for this repayment plan, follow the procedures set forth by your state's designated agency.

Eligibility:

- You must be a U.S. citizen or an eligible non-citizen and be an attorney continually licensed to practice law.
- One of the following institutions must also employ you full time:
 - A state or unit of local government that prosecutes criminal or juvenile delinquency cases
 - A state or unit of local government that provides legal representation to indigent persons in criminal or juvenile delinquency cases
 - A nonprofit organization operating under a contract or unit of local government that devotes substantially all of the employee's full-time employment to providing legal representation to indigent persons in criminal or juvenile cases
 - A defender organization that provides legal representation to indigent persons in criminal or juvenile delinquency cases

Perkins Loan Cancellation and Discharge

These are federal, low-interest loans that 1,700 participating schools award to high-need students. Perkins loans have unique requirements for loan cancellation based on the field in which the borrower works. Depending on the profession, Perkins loan borrowers can have up to 100% of their loan cancelled over the course of 5 years in most circumstances. Perkins loans also offer concurrent deferment if you are performing qualifying service. Combining that postponement with these cancellation options means you could potentially never have to make payments on these loans. For attorneys, you must be employed full time in a federal public or community defender organization. You must perform qualified service that includes August 14, 2008, or began on or after that date. You may receive up to 100% forgiveness of your loans.

Public Service Loan Forgiveness

This option applies to Direct Stafford loans, Direct Parent and Grad PLUS loans and Direct Consolidation loans, but not to Perkins Loans. Parent PLUS loans are only eligible if you consolidate them into a Direct Consolidation loan and repay them under the standard or income-contingent repayment plan. You can consolidate any non-Direct loans into Direct loans; however, the payments you made on the underlying loans do not qualify.

Public Service Loan Forgiveness dismisses the remaining balance of student loans after 120 qualifying payments under the standard, income-based, income contingent, or Pay As You Earn repayment plan. The 120 payments do not have to be consecutive to qualify the borrower for

forgiveness. Payments made before October 1, 2007, and payments made while in default, do not count. You must have been working full time (a minimum of 30 hours/week) at a public service or nonprofit organization when you make a qualifying payment, or working at least 30 hours at two or more part time jobs at eligible organizations. Switching between nonprofits or public service jobs does not affect eligibility. Eligible borrowers may receive up to 100% of the remaining outstanding balance after 10 years and 120 eligible payments. Each year you should file a certification that you made eligible payments. The form to apply for this forgiveness plan is available online: <http://studentaid.ed.gov/sites/default/files/public-service-employment-certification-form.pdf>.

Bankruptcy

It can be difficult to discharge federal student loans through bankruptcy. You must prove to a bankruptcy judge that repaying your loans would constitute an undue hardship. This generally requires you to show that there is no likelihood of any future ability to repay. If you are eligible, you can have up to 100% of your loan's amount forgiven. Loans that qualify are Stafford loans, Parent PLUS loans, Grad PLUS loans, Consolidation loans and Perkins loans. You must apply for this type of discharge in an adversary proceeding in bankruptcy court. To learn how to go about doing this:

<http://www.studentloanborrowerassistance.org/bankruptcy/>.

Income-Based Repayment

This option applies to Stafford loans, Grad PLUS loans and Consolidation loans, except loans that include Parent PLUS loans. You must make 25 years of eligible payments or 300 payments under the income-based repayment (IBR) program. Only payments made on or after July 1, 2009, count.

Not all borrowers will qualify for IBR. You must have a partial financial hardship—meaning that payments to your eligible loans exceed 15% of your discretionary income. IBR caps the maximum monthly payment at 15% of your discretionary income. This is the difference between your AGI (adjusted gross income) and 150% of the annual poverty guideline for your family size and state. If you are eligible, you can have up to 100% of your outstanding balance forgiven after 25 years (10 if you work in public service and apply for public service loan forgiveness). To apply for IBR, you need to submit two forms to your servicer: an application and an IRS Tax Form 4506-T.

Income-Contingent Repayment

This option applies to Direct Stafford loans, Direct Grad PLUS loans, and Direct Consolidation loans (including those with Parent PLUS loans). The government provides programs for low-income borrowers to avoid default on their student loans. You must make 25 years of eligible payments or 300 payments under the income contingent repayment (ICR) program. Payments are calculated each year and are based on your annual income (this includes your spouse's income if you file jointly), family size, and the total amount of your federal student loans. Payments are capped at 20% of your discretionary income. If you are eligible, you can have up to 100% of your outstanding balance forgiven after 25 years (10 if you work in public service). To apply for ICR, sign in to studentloans.gov and complete a request form.

Pay As You Earn Forgiveness

This option applies to Direct Stafford loans, Direct Grad PLUS loans, and Direct Consolidation loans, except those that include a Parent PLUS loan or a loan made prior to October 1, 2007. You must be a new Direct Loan borrower as of October 1, 2007, or have paid all your previous direct loans when you received new loans with a disbursement made after October 1, 2011. Any Direct Consolidation loan made on or after October 1, 2011—that does not include a Parent PLUS loan or

a loan made prior to October 1, 200—is eligible. Pay As You Earn provides better terms than the original Income Based Repayment Plans.

You must make 20 years (10 if you work in public service) of payments under the Pay As You Earn repayment plan. Not all borrowers qualify for Pay As You Earn. To qualify, you must have a partial financial hardship—meaning payments to your eligible loans exceed 10% of your discretionary income. Pay As You Earn caps your maximum monthly payment at 10% of discretionary income (the difference between your AGI and 150% of the annual poverty guideline for your family size and state). If you are eligible, you can have up to 100% of your outstanding balance (after 240 eligible payments) forgiven. To apply for Pay As You Earn forgiveness, sign in to studentloans.gov and complete a request form.

Death

Stafford loans, Grad PLUS loans, Parent PLUS loans, Consolidation loans and Perkins loans may be discharged by the borrower's family if the borrower dies. Parent PLUS loans can be discharged if the borrower (the parent) dies or if the student on whose behalf the loan was borrowed dies. In the case of spousal Consolidation loans, only the portion of the loan attributed to the deceased borrower can be discharged. If you meet these requirements, you are eligible to receive up to 100% of your remaining balance discharged. In addition, payments made on behalf of the borrower after the borrower's death will be refunded. You must send an original or certified copy of the death certificate (or a photocopy of either) to all of the borrower's loan holders to discharge the loans.

Total and Permanent Disability (TPD)

A physician must certify that the borrower is unable to engage in substantial gainful activity due to a physical or mental impairment. This impairment must be expected to result in death or last for a continuous period of at least 60 months, or it must have already lasted for a continuous period of at least 60 months. The Secretary of Veteran Affairs (VA) can also certify the borrower to be unemployable due to a service connected disability. Effective July 1, 2013, borrowers may be eligible for discharge if they have been certified as disabled by the Social Security Administration (SSA) where the notice of award for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits indicates that the borrower's next scheduled disability review will be within 5-7 years.

Any remaining balance on your federal student loans will be discharged from the date that your physician certifies your application. If the VA certified your application, any federal student loan amounts owed after the date of the service-related injury will be discharged. If you were approved due to the SSA determination, any remaining balance on your federal student loans would be discharged as of the date the SSA determination is received by the Department of Education on or after July 1, 2013. You must return any disbursements made after the TPD certification approval within 120 days.¹⁴

Further Resources

Christa McGill. "Educational Debt and Law Student Failure to Enter Public Service Careers: Bringing Empirical Data to Bear," 31 *Law and Social Inquiry* 677, 698-701 (2006).

ABA Commission on Loan Repayment & Forgiveness, "Lifting the Burden: Law Student Debt as a Barrier to Public Service," 9 (2003).

Equal Justice Works Student Debt Relief: <http://www.equaljusticeworks.org/ed-debt>

National Consumer Law Center's Student Loan Borrower Assistance Project:
<http://www.studentloanborrowerassistance.org/>

Institute for College Access & Success Project on Student Debt: <http://projectonstudentdebt.org/>

The Debt Resistor's Operations Manual: <http://strikedebt.org/The-Debt-Resistors-Operations-Manual.pdf>

The Strike Debt Organizing Kit: <http://strikedebt.org/Strike-Debt-Organizing-Kit.pdf>

Cancel All Student Debt: <http://cancelallstudentdebt.com/>

¹ William D. Henderson and Rachel M. Zahorsky, "The Law School Bubble: How Long Will It Last if Law Grads Can't Pay Bills?" *ABA Journal* (January 2012).

² "Addressing the Justice Gap," *New York Times*, August 24, 2011. Available at: <http://www.nytimes.com/2011/08/24/opinion/addressing-the-justice-gap.html>.

³ Brian Z Tamanaha, *Failing Law Schools*, 108.

⁴ *Ibid.*, 78.

⁵ *Ibid.*, 99-100.

⁶ Abiel Wong, "Boalt-ing" Opportunity?: Deconstructing Elite Norms in Law School Admissions," *6 Geo. J. on Poverty L. & Pol'y* 214, 231-32.

⁷ Roger Geiger and Donald Heller, *Financial Trends in Higher Education* (Pennsylvania State University, 2011).

⁸ John Quintero, "The Great Cost Shift," 17 (March 2012).

⁹ Project on Student Debt, 2011. Available at: <http://projectonstudentdebt.org/>.

¹⁰ Malcolm Harris, "Bad Education," *N+1*, April 25, 2011. Available at: <http://nplusonemag.com/bad-education>.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ Please be aware that these programs are subject to change. For the most up to date information, consult studentaid.ed.gov or whichever agency administers your loans.

¹⁴ See generally: <http://www.studentloanborrowerassistance.org/>.