

REPORT

Purpose

Student loan debt is a prevalent problem for judge advocates in all the military services. New judge advocates are reporting student loan debt from law school alone that ranges from \$80,000 to \$93,000. Loan relief programs are severely limited within the Department of Defense. Student loan debt is hindering both recruiting and retention in all the military services. Recent initiatives for lawyer student loan relief in the public sector have not addressed the needs of military lawyers. This recommendation proposes to correct existing deficiencies in government sponsored debt relief for lawyers serving our nation in uniform.

Statement of Reasons

Under the Department of Education Income Based Repayment (IBR) implementing regulations, when two married borrowers both have student loans and file joint tax returns, they will be required to pay up to double the monthly loan payment of two unmarried borrowers in otherwise identical situations (the “marriage penalty”). Although S.2371, passed in December 2007, allows married borrowers to file *separate* income tax returns for purposes of calculating IBR payments, requiring borrowers to file separate income tax returns is not an adequate solution. Such borrowers forego valuable tax benefits by filing separately. This recommendation proposes that the College Cost Reduction and Access Act (CCRAA) be amended to eliminate the “marriage penalty.”

The Perkins Loan Cancellation authority currently provides loan cancellation to judge advocates performing duties in a “law enforcement” function. Some military counsels (*e.g.*, defense counsel) are also an integral part of the military law enforcement system and are not eligible for loan cancellation under current law. The Higher Education Opportunity Act of 2008 (HEOA) amended the Perkins Loan Cancellation authority to include full-time attorneys employed in a defender organization as established under 18 USC § 3006A(g)(2). This recommendation proposes that a similar expansion be made for military counsel serving under 10 USC §§ 806 and 827.

The current statutory authorization for deferment of loans insured by the Department of Education provides for deferment for those serving on active duty, but only “during a war or other military operation or national emergency.” That language and its definition under implementing regulations serve as a severe limitation on the application of deferments for military members, specifically in times of peace. This recommendation proposes that the quoted language be stricken from the law. 20 U.S.C. §§ 1078(b)(1)(M), 1087e(f), & 1097 dd(c)(2).

The Internal Revenue Code, 26 USC § 108(f), provides that discharges of student loans are excluded from gross income if they are pursuant to a loan provision authorizing discharge, and the borrower worked for a certain period of time in certain professions for any of a broad class of employers. The Department of the Treasury, Assistant Secretary for Tax Policy, by letter dated September 19, 2008, to Congressman Sander Levin, confirmed that Public Service Loan Forgiveness under the College Cost Reduction and Access Act meets the requirements of I.R.C. § 108(f). This recommendation proposes that amounts forgiven under CCRAA Public Service Loan Forgiveness be codified as an express provision under I.R.C. § 108(f).

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The Internal Revenue Code, 26 USC § 108(f)(1), provides that discharges of student loans are excluded from gross income if they are pursuant to a loan provision authorizing discharge, and the borrower worked for a certain period of time in certain professions for any of a broad class of employers. This recommendation proposes that I.R.C. § 108(f)(1) be amended to provide that amounts received as part of a Student Loan Repayment Program (SLRP) authorized under 10 USC 2171 and 2173 are excluded from gross income.

Respectfully submitted,

Colonel James M. Durant, III, Chair
General Practice, Solo and Small Firm Division

February 2010

GENERAL INFORMATION FORM

Submitting Entity: General Practice, Solo and Small Firm Division

Submitted By: Colonel James M. Durant, III, Chair
General Practice, Solo and Small Firm Division

1. Summary of Recommendation(s).

The Recommendation supports a correction to existing deficiencies in government sponsored debt relief for lawyers serving our nation in uniform.

2. Approval by Submitting Entity.

The ABA GPSolo Council voted to support the recommendation at its Fall Meeting in Los Angeles, California on October 17, 2009.

3. Has this or a similar recommendation been submitted to the House or Board previously?

No

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

The following Association policies may be relevant to this recommendation, but they would not be affected by its adoption.

Loan Repayment and Forgiveness. Recommends that the amount a law student may borrow annually in unsubsidized loans under the Stafford loan program be increased to at least \$30,000. 02M300A

Urges Congress to enact legislation, or the Secretary of the U.S. Department of Education to amend existing regulations by (1) permitting forgiveness sooner than 25 years after a borrower begins repaying loans and (2) eliminating or reducing the marriage penalty. 02M300B

Reaffirms encouragement of law schools, state, local and territorial bar associations and foundations, IOLTA programs, public service employers and federal, state and territorial lawmakers to establish programs, such as loan repayment assistance or forgiveness programs and public service scholarships, to enable law graduates to accept and remain in lower paying government and public service legal employment. 03A113

Loan Repayment Assistance or Forgiveness Programs. Reaffirms encouragement of law schools, state, local and territorial bar associations and foundations, IOLTA programs, public service employers and federal, state and territorial lawmakers to establish programs, such as loan repayment assistance or forgiveness programs and public service scholarships, to enable

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law graduates to accept and remain in lower paying government and public service legal employment. 03A113

Educational Loan Repayment Program. Urge Congress to amend Section 125 of the Internal Revenue Code of 1986 to include an educational loan repayment program as part of a qualified benefit assistance program (cafeteria plan) that is sponsored by employers and offered to employees. Support legislation whose primary purpose is to give incentives to employers to provide educational loan repayment programs, which provisions should not impose income caps on the individuals receiving the benefit. 99A118

Interest Paid on Student Loans. Recommends that Congress amend the Internal Revenue Code to allow a full deduction for interest paid on student loans obtained for the purpose of attending an institution of post-secondary education. 8/92

5. What urgency exists which requires action at this meeting of the House?

6. Status of Legislation. (If applicable.)

There is no known legislation that would be effected.

7. Cost to the Association. (Both direct and indirect costs.)

None

8. Disclosure of Interest. (If applicable.)

Not Applicable

9. Referrals.

This Recommendation is being referred to all ABA Sections, Divisions, and Forum committees for co-sponsorship. The following ABA entities have agreed to be a co-sponsor: Government and Public Sector Lawyers Division, Section of Labor & Employment Law, Senior Lawyers Division, and Standing Committee on Law and National Security

10. Contact Person. (Prior to the meeting)

William T. Hogan, III
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11. Contact Person. (Who will present the report to the House)

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EXECUTIVE SUMMARY

1. Summary of the Recommendation

This recommendation proposes to correct existing deficiencies in government sponsored debt relief for lawyers serving our nation in uniform.

2. Summary of the Issue which the Recommendation Addresses

Student loan debt is a prevalent problem for judge advocates in all the military services. New judge advocates are reporting student loan debt from law school alone that ranges from \$80,000 to \$93,000. Loan relief programs are severely limited within the Department of Defense. Student loan debt is hindering both recruiting and retention in all the military services. Recent initiatives for lawyer student loan relief in the public sector have not addressed the needs of military lawyers.

3. Please Explain How the Proposed Policy Position will Address the Issue

Under the Department of Education Income Based Repayment (IBR) implementing regulations, when two married borrowers both have student loans and file joint tax returns, they will be required to pay up to double the monthly loan payment of two unmarried borrowers in otherwise identical situations (the “marriage penalty”). Although S.2371, passed in December 2007, allows married borrowers to file *separate* income tax returns for purposes of calculating IBR payments, requiring borrowers to file separate income tax returns is not an adequate solution. Such borrowers forego valuable tax benefits by filing separately. This recommendation proposes that the College Cost Reduction and Access Act (CCRAA) be amended to eliminate the “marriage penalty.”

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4. Summary of any Minority Views or Opposition which have been identified.

The ABA General Practice, Solo & Small Firm Division received feedback from the Section of Tax. The Section of Tax responded that the statutory changes called for in the Report and Recommendation seems to be premature. They believe that it may be unnecessary because student loan forgiveness may already qualify under section 108(f). To make the recommended change would thus not only be gratuitous, but also, by codifying loan forgiveness under one public interest program could put into question the tax-free status of loan forgiveness under other similar programs. As to the status of forgiveness of loans made under 10 USC sec. 2171 and 2173, which are loans made to serve in the Armed Forces, the Section of Tax recommends that officials in the Internal Revenue Service be consulted as to whether they consider (and would issue guidance) about qualification of military service as a "certain profession" under section 108(f). The Section of Tax notes that 10 U.S.C. sec. 2173 addresses loans for health care professionals, professions which the legislative history of section 108(f) explicitly addresses.(See Yin letter at link below). Revenue Ruling 2008-34, which involved loan forgiveness programs of law schools, demonstrates that administrative clarification of section 108(f) is possible. The Section of Tax believes that pursuit of the administrative route should precede any vote on amending section 108(f) and thus they would have a difficult time supporting the Report and Recommendation at this time.

http://taxprof.typepad.com/taxprof_blog/files/yin_letter.pdf