

REPORT

Background

President Carolyn B. Lamm created the Commission on the Impact of the Economic Crisis on the Profession and Legal Needs to help lawyers navigate the dire economic conditions of 2009 and 2010. The Commission has taken a multi-faceted approach to assisting various lawyer segments. This report focuses on the needs of those most heavily affected by the unprecedented downturn in legal sector employment -- recent law school graduates, young lawyers, and law students carrying enormous burdens of law school debt. The Commission hopes that by alleviating their burden, they will in turn be in a position to provide greater assistance to the increasing number of Americans with unmet legal needs due to the economic crisis.

Student Loans

The American Bar Association has focused on three key avenues for relief of law school loan debt: extending federal student loan repayment terms and federal student loan programs to those who used alternative sources of credit from commercial lenders; making repayment terms in federal law school loans as beneficial to the borrower as possible to allow as many law students and graduates as possible to qualify for such programs as income-based repayment, consolidation, and other forms of loan repayment assistance; and, authorizing the use of TARP¹ or other federal funds to provide such individuals with temporary assistance to meet their obligations to lenders with a corresponding obligation to repay such assistance.

Students are often forced to rely on private sector loans either because available federal loan limits are insufficient to cover their tuition, or they are unaware of the federal loan programs available to them. Further, since federal loan programs do not cover the cost of bar exam prep courses, all bar study loans must be obtained through private lenders. Currently, nearly 70% of law students who have loans rely on private sector loans. Federal loan limits have not kept pace with the increase in law school tuition.

Legislation permitting borrowers to refinance or consolidate private loans into federal loans would greatly assist law school graduates, providing considerably lower interest rates and other such benefits as loan forgiveness, deferment, forbearance, and assistance for those entering public service. Regulatory and legislative adjustments to existing federal loan programs could significantly alleviate borrowers' burdens. Such adjustments could include changing income criteria for qualification; changing qualifying criteria for loan repayment under federal assistance programs such as Income-Based Repayment (IBR) and Income-Contingent Repayment (ICR); expansion of forbearance and deferment provisions in loans; increased loan forgiveness for public service; and changing the law to allow bar study loans to be considered educational loans

¹ Troubled Asset Relief Program

under Title IV of the Higher Education Act, 20 U.S.C. §§ 1070-1099e. President Obama in his State of the Union Address already proposed changes to the Income-Based Repayment (IBR) program to allow more people to benefit from it.

Passage of this resolution would allow the ABA to advocate to Congress and the Executive Branch for such improvements to better serve the legal community and those lawyers and law students burdened by high student debts.

Meeting Unmet Legal Needs with Under- and Unemployed Lawyers

The Commission on the Impact of the Economic Crisis on the Profession and Legal Needs was charged with helping not only all members of the profession, but the public at large. In order to meet existing legal needs resulting from the economic crisis it should be noted that the ABA has existing policy by virtue of HOD reports 112A and 112B from the 2006 Annual Meeting, which calls for: 1) legal counsel as a matter of right at public expense where basic human needs are at stake; and 2) a full range of high quality, coordinated and uniformly available civil law-related services to low-income or vulnerable populations to meet their civil legal needs.

Those vulnerable populations are now facing even greater need for legal assistance as already-strapped legal assistance programs experience increasing demands for help with expanding unmet legal needs in the most basic areas. At the same time, the slumping legal economy has left scores of recent graduates without prospects for employment. In 2009, the United States' largest law firms suffered the deepest cuts in their attorney numbers in more than 30 years.² According to the Bureau of Labor Statistics, in the twelve months ending in November 2009, the legal industry as a whole lost approximately 42,000 jobs.

Economic stimulus funds designed to promote economic stability and job creation could provide opportunities for these under- or unemployed lawyers to serve those communities in need. The use of Troubled Asset Relief Funds (TARP) and other federal funds to provide legal services could enhance the work of the Legal Services Corporation, supporting a network already in place to assist people in need, or could expand legal assistance through other programs such as Equal Justice Works Fellowships. In addition to existing programs, TARP and other federal funds could be leveraged for new programs such as providing the right to counsel in civil matters for those whose basic human needs are at issue. These “Civil Gideon” programs would ensure that Americans not only have a constitutional right to legal counsel in criminal matters, but in certain civil matters as well.

Such programs would enhance not only the ABA’s ongoing focus on increasing access to justice for all but enable members of the profession who are under-employed greater opportunities to provide such service.

² Jones, Leigh, “2009 Worst Year for Lawyer Headcount in Three Decades,” *National Law Journal*, November 9, 2009

Conclusion

The ABA and the legal profession have long been concerned about the growing burden on young lawyers of student debt and its debilitating effect on prospects for public service. With the recession exacerbating the impact of such debt on recent graduates and exponentially increasing unmet legal needs of the poor and middle class, the need to advocate for relief of both pressing issues is paramount. Passage of this resolution would assist the ABA to advocate on these long-standing issues for the legal profession: helping law students and young lawyers with mounting student debt and increasing access to justice for all.

Respectfully submitted,

Allan J. Tanenbaum, Chair

Commission on the Impact of the Economic Crisis on the Profession and Legal Needs

February 2010

GENERAL INFORMATION FORM

To Be Appended to Reports with Recommendations
(Please refer to instructions for completing this form.)

Submitting Entity: Commission on the Impact of the Economic Crisis on the Profession and Legal Needs

Submitted By: Allan J. Tanenbaum, Chair

1. Summary of Recommendation(s).

This resolution calls upon Congress, the Executive Branch and/or Commercial Lenders to convert private law student loan debt into federal loans, which offer more flexible repayment options; and identify federal funding to cover interest payments for graduates who defer loans because of economic hardship. It also calls for more flexible repayment terms for federal law student loans.

2. Approval by Submitting Entity.

The resolution was approved electronically by the Commission on the Impact of the Economic Crisis on the Profession and Legal Needs on February 2, 2010.

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

The American Bar Association has adopted several policies concerning the repayment terms of student loans, including such terms as through pre-tax dollars, but the bulk of ABA policy focuses on public service lawyers only. The ABA also has policy adopted in 2002 concerning an increase in Stafford Loan limits. The present recommendation complements existing policy and seeks to extend flexibility in repayment to all who carry law school debt, in particular that obtained through private lending institutions. Further, the resolution would authorize the Association to enter into more fluid conversations with policy and lawmakers concerning additional programs to assist those who are under- or unemployed by virtue of the economic recession.

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

Stafford Loan limit increase – the resolution would in part directly authorize lobbying in support of the retroactive assumption of student debt post-graduation for the purposes of displacing private student debt with that which is backed by the federal government.

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

Law students and recent graduates are struggling with large student debts, and the current economic climate is making it extremely difficult for many graduates to find jobs that allow them to pay off their debts. Congress will look at economic plans and student loan programs this year, and this resolution would allow the ABA to advocate for lawyers struggling with high student debt.

6. Status of Legislation.

Legislation is pending in the Senate that would allow some refinancing of private educational loans into federal loans; similar legislation is expected to be introduced in the House shortly. [S.1541 sitting in committee. HR3221.] There are also many different bills proposed to help with the current economic situation, as well as different proposals to modify the current federal educational loan programs.

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

None.

8. Disclosure of Interest. (If applicable.)

There is no known opposition at this time.

9. Referrals.

The black letter recommendation will be circulated to all Sections and Divisions.

10. Contact Person. (Prior to the meeting.)

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11. Contact Person. (Who will present the report to the House.)

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EXECUTIVE SUMMARY

In the current economic environment, many recent law school graduates are unemployed or not making enough money to pay back massive student loans, which often top \$100,000. This resolution addresses the problem by calling upon Congress, the Executive Branch and/or Commercial Lenders to convert private debt into federal loans, which offer more flexible repayment options; and identify federal funding to cover interest payments for graduates who defer loans because of economic hardship. It also calls for more flexible repayment terms for federal law student loans.