Federal Student Loan Repayment Assistance
for Public Interest Lawyers and Other Employees
of Governments and Nonprofit Organizations

Cite as: 36 Hofstra L. Rev. ___ (forthcoming, Fall, 2007)

Philip G. Schrag[1]

The problem of high monthly repayment obligations for educational debt has long plagued students, particularly graduate and professional students, who desired lower-paying public interest careers. Congress has recently responded very positively. In the College Cost Reduction and Access Act of 2007, Congress has made it possible for high-debt, lower-income graduates to manage debt repayment through an "income-based repayment" plan. In addition, Congress has created a new program through which public servants—including all government workers and all employees of all non-profit organizations that are tax-exempt under Section 501(c)(3) of the Internal Revenue Code—are entitled to have a substantial portion of their educational debt forgiven after making modest repayments during ten years of full-time employment. Together, these two new programs will enable student borrowers to choose their careers without being unduly influenced by their debt burdens and will enable governments and non-profit organizations to retain talented professionals who would otherwise be forced to resign after two or three years and seek higher-paying jobs so that they could repay their student loans. This article describes how the new law will apply to graduates serving in public interest jobs (including those who have already graduated and those who will graduate before the law goes fully into effect). A major purpose of the article is to help students and high-debt/low-income graduates understand how the new law may help them in their career and financial planning. The article also discusses additional reforms that Congress should adopt to complete its significant accomplishment in this area.

In two provisions of the College Cost Reduction and Access Act, Congress has significantly improved access to higher education, particularly graduate and professional education, for persons who would like to have lower-paying public service careers but who will be saddled by high educational debts incurred to obtain the education that they need to serve the public. This article describes why the legislation was necessary, how it will affect educational borrowers, and what further reforms are needed. For students and

[1] Professor of Law and Director of the Center for Applied Legal Studies, Georgetown University. In my capacity as Vice-chair of the Committee on Government Relations and Student Financial Aid of the American Bar Association's Section of Legal Education, I helped to advocate for the legislation discussed here. Literally hundreds or thousands of others participated in that effort, including, especially, Prof. Peter Winograd of the University of New Mexico Law School, former Dean Kinvin Wroth of Vermont Law School, Dean Nancy Rogers of Ohio State Law School (currently President of the Association of American Law Schools (AALS)), Former AALS President Judith Areen; Dean Jerry Parkinson of the University of Wyoming Law School, Dean Richard Morgan of the University of Nevada – Las Vegas Law School, Dean Emily Spieler of Northeastern University Law School, Dean T. Alexander Aleinikoff of Georgetown University Law Center; AALS Executive Director Carl C. Monk, and Kenneth Goldsmith of the staff of the American Bar Association. These lawyers, as well as many others who are too numerous to name, deserve the thanks of thousands of public servants in the decades to come. I also especially appreciate the assistance of Mark Kantrowitz, founder of the website FinAid.org, who advised me on technical aspects of student financial aid from time to time and commented on drafts of this article.

graduates, particularly those planning to become public interest lawyers, it is also a road map to the law's provisions for obtaining loan repayment assistance.

I. Why the New Law Was Needed

In a Hofstra Law Review article seven years ago, I described the plight of many people who decided to go to law school so that they could serve those who were most in need, including low-income clients, criminal defendants, immigrants, and victims of domestic violence.[2] These idealistic students often discovered, as graduation neared, that they owed so much on their educational loans that they could not afford to live on the low salaries offered by legal aid offices, public defender programs, and other non-profit organizations, or on the modest salaries offered by many state and local governments. By 1999, the vast majority of students borrowed to finance their legal educations, and most of those students graduated from private law schools with educational debt (from undergraduate and graduate education) exceeding $79,000; from public law schools, the corresponding amount was more than $52,000.[3] For students graduating from many law schools, the median debt figure was higher, and of course many individual graduates had debts much higher than the medians at their schools. On a "standard" ten-year repayment plan, a graduate with $75,000 of debt would have had to repay $11,112 annually, a huge percentage of the 1999 median public interest starting salary of $32,000.[4]

In the following years, as law school tuition and cumulative debt at graduation continued to increase, anecdotal accounts revealed the personal dilemmas of graduates and the difficulties that public interest employers faced. Paula Clifford took a $26,000 job as a prosecutor in Bristol County, Massachusetts, but to repay her $70,000 debt, she had to keep her college bartending job in Boston, "occasionally serving drinks to defense lawyers she had faced in court." After five years, at the age of 31, she was still living in her parents' house and driving a car with 235,000 miles on it. She had to quit for more lucrative employment. Similarly, Claudia M. Vitale worked as a legal aid lawyer and took a second job at a clothing shop so that she could buy clothes for court at a discount. After struggling for three years to make ends meet, she joined a private firm.[5] Angel Fox graduated from Capitol University Law School, where, hoping to become a public defender, she took classes in criminal procedure and part time jobs at a battered women's shelter and the state attorney general's office. But because she graduated with debt of $60,000, she gave up her career ambitions and took a job with an insurance company.[6]

---

[2] Philip G. Schrag, "The Federal Income-Contingent Repayment Option for Law Student Loans," [hereafter "Federal ICR Option"] 29 Hofstra L. Rev. 733 (2001). The article was republished in book form as Philip G. Schrag, REPAY AS YOU EARN (Bergin & Garvey, 2002).

[3] These figures are based on queries that Mark Kantrowitz made of the 1999-2000 National Postsecondary Student Aid Study (NPSAS) and represent median cumulative debt for the 85% of private law school students who borrowed and the 90% of public law students who borrowed. Email to the author from Mark Kantrowitz, Sept. 12, 2007. In his 2001 article, the author reported slightly lower cumulative debt figures based on other sources that were then available. Federal ICR Option at 745-46.

[4] Id. at 753.

[5] Jonathan D. Glater, "High Tuition Debts and Low Pay Drain Public Interest Law," N.Y. Times, Sept. 12, 2003.

[6] Adelle Waldman, "In Debt from Day One," Christian Science Monitor, March 9, 2004.

The retention problem became acute for public interest employers. As of 2006, 42% of legal aid lawyers in Illinois planned to leave their jobs within the next three years, in significant measure because of law school debt.[7]

The American Bar Association created a commission to study this problem. It concluded that "many public service employers report having a difficult time attracting the best qualified law graduates. Alternatively, those who do hire law graduates find that, because of educational debt payments, those whom they do hire leave just at the point when they provide the most valuable services."[8]

Despite many press accounts of these problems, they only got worse. By 2004, the median cumulative debt of those graduating from private law schools had risen from the 1999 level of about $79,000 to a new high of more than $94,000, including more than $80,000 incurred just during the three years of law school. The cumulative debt of public law school graduates exceeded $57,000.[9] Yet in 2005, the median public interest law starting salary was only $40,000.[10]

President Bill Clinton and Congress made a failed attempt to address this problem through legislation enacted in 1993. With the President's strong encouragement, Congress created the "income-contingent repayment (ICR) option" for student loans. Under this option, a borrower may elect to repay federally-guaranteed and federally-extended loans over a period of 25 years, but in any given year, the borrower's repayment obligation is limited by a formula that ties it to the borrower's income.[11] Specifically, the borrower is not obligated to repay more than 20% of discretionary income, defined as adjusted gross income minus the federal poverty level applicable to the borrower's family size.[12] Any money that would be due under a 25-year repayment schedule that is not paid because of the income-contingent cap is added to the borrower's principal, so the principal can become much greater than the original debt. But to prevent that principal balance from growing geometrically, compounding of interest ceases when the principal balance reaches 110% of the original principal and does not resume even if the balance is reduced below that level.[13] Even with this limitation on the growth of the principal, however, a borrower with very high debts and a very low income might find that the principal would never stop growing, requiring monthly payments long after the borrower retired. To prevent this situation, Congress and the Department of Education provided

[7] Michael Higgins, "Exodus of state's legal-aid lawyers is forecast," Chicago Tribune, Dec. 27, 2006.
[8] ABA Commission on Loan Repayment and Forgiveness, "Lifting the Burden: Law Student Debt as a Barrier to Public Service," http://www.abanet.org/legalservices/downloads/lrap/lrapfinalreport.pdf (last visited Sept. 7, 2007). Accord, Equal Justice Works, Financing the Future: Law School Loan Repayment Assistance and Public Interest Scholarship Programs 16 (2004).
[9] Email from Mark Kantrowitz, supra n. ___; see also letter to Representative George Miller and Senator Edward M. Kennedy from Carl C. Monk, Executive Director, Association of American Law Schools, Sept. 4, 2007, http://www.aals.org/documents/millerkennedy2007.pdf (last visited Sept. 7, 2007).
[10] NALP, Jobs and JDs, Class of 2005 18 (2006).
[11] Those who borrowed from financial institutions must consolidate into federal direct consolidation loans to use income-contingent repayment but are allowed to do so. See text following n. __, infra.
[12] 34 C.F.R. Sec. 685.209(a)(2)(ii).
[13] 34 C.F.R. Sec. 685.209(c)(5).

that after 25 years of income-contingent repayments, the federal government would forgive the balance of the debt.[14]

The ICR option was made available, without much additional paperwork, to borrowers who had “direct” Stafford loans, that is, educational loans made by the U.S. Department of Education in the Federal Direct Student Loan Program (FDSLP), as opposed to government guaranteed loans made by banks and other financial institutions through the Federal Family Education Loan Program (FFELP). But law student borrowers are not allowed to choose whether they obtain their student loans from the federal government or from a financial institution. Their schools make that choice. In fact the vast majority of universities (and their law schools) chose to work with banks rather than to join the federal direct lending program. However, students with government-guaranteed bank loans could enjoy the benefits of ICR by consolidating their bank loans into a federal direct consolidation loan from the Department of Education.

The 1993 law assured students who had government guaranteed loans that they could consolidate into federal direct consolidation loans for the purpose of repaying through ICR plan. Specifically, they could elect to consolidate if their bank lender declined to offer them “income-sensitive repayment” on terms “acceptable to the borrower.” Income-sensitive plans adjust monthly repayments to lower levels for a few (usually three) years, while borrowers have lower incomes. But they do not solve the problems of borrowers who have very high repayment obligations relative to their incomes for extended periods of time. Furthermore, financial institutions that offer income-sensitive plans do not create repayment schedules that would leave balances remaining after 25 years and then forgive those balances, because federal regulations require that the monthly installments be sufficient to repay the debt within the applicable maximum time period of the loan.[15] Since financial institutions may not offer forgiveness, any borrower was able to consolidate into a federal direct loan with ICR by stating that an income-sensitive plan without an extended period of low monthly repayment and without partial forgiveness was not “acceptable.”

At first blush, the ICR plan seemed to respond to the needs of high-debt/low income borrowers such as law students who desired lower-paying careers with state or local governments, or with non-profit organizations. It lowered monthly payments, and it provided for eventual forgiveness of debt that would mount because the income-related cap on those payments left funds due but unpaid. But for two reasons, almost no law graduates voluntarily elected ICR.[16]

First, most law borrowers were aghast because they would have to make payments on their student loans for 25 years and would still be repaying their own loans

---

[14] The statute itself gave the Department authority to reduce this period of years. 20 U.S.C. Sec. 1087e(d)(1)(D). But the Department has not exercised that authority. 34 C.F.R. Sec. 685.209(c)(4)(iv).
[15] 34 C.F.R. Sec. 682.209(a)(6)(viii)(C).
[16] Some were involuntarily forced into the ICR plan because they were unable to keep up with repayment obligations under other plans and were about to default. Schrag, supra n. ___, at 831.

when their children were enrolling in college.[17] Second, only government-guaranteed and government-extended loans were eligible for ICR repayment and eventual forgiveness. To the extent that students borrowed commercially, they had to make monthly payments on those commercial loans on top of their income-contingent repayments. Between 1992 and 2005, Congress did not adjust the ceiling on the amount that graduate and professional students could borrow under the Stafford loan program, the main program through which law students obtained government-guaranteed or government-extended loans. It was frozen at $18,500 per year, or $55,500 for the three years of law school. As the cost of attendance rose, a larger and larger percentage of debt was commercial; by the late 1990s, students were borrowing about half of their educational funds from sources that could not be paid off through ICR. No longer was repayment limited as the ICR plan had contemplated.

Aversion to repaying for 25 years was the main reason why law students had little interest in ICR, even if they were interested in public service. The fact that commercial loans were not covered was the next-most-important reason.[18]

For similar reasons, law school financial aid advisors did not encourage students to elect ICR. About half of all advisors who knew about ICR did not inform students about it, and only 4% of them helped students do the math so that they could understand whether ICR would be useful for them.[19]

In 2006, Congress solved the commercial loan problem through passage of the Higher Education Reconciliation Act of 2005.[20] It raised the Stafford loan limit only slightly, to $20,500 a year beginning in 2007, but it created a new government-guaranteed and government-extended loan program, the Grad PLUS loan program, which all but replaced commercial loans for the gap between the Stafford annual limit and what students needed to borrow to attend school.[21] The interest rate on Grad PLUS loans was higher than on Stafford loans (though lower than on most private student loans), but in principle for ICR borrowers with high debt and low incomes, the interest rate was irrelevant; the ICR formula still capped monthly payments under its income-related formula (and in fact total payments would be much lower, because there would be no commercial loans to repay each month on top of ICR repayment), and regardless of the interest rate, balances resulting from consolidations of Stafford loans and Grad PLUS loans into federal direct consolidation loans were forgiven after 25 years.[22] But there

[17] Schrag, supra n. __ , at 791-93.
[18] Id at 791-92.
[19] Id. at 796.
[20] P.L. 109-171 (2006).
[21] At Georgetown University Law Center, in 2007, 85% of loans (by dollar volume) above the Stafford limits had been taken out through Grad PLUS rather than commercially. Interview of Charles Pruett, Director of Financial Aid, Georgetown University Law Center, by Philip Schrag, Sept. 13, 2007.
[22] Grad PLUS loans are "PLUS" loans extended directly to graduate students rather than to their parents. 20 U.S.C. 1078-2. Federal PLUS loans are eligible for consolidation into federal direct consolidation loans. 34 C.F.R. 685.220(b). Federal direct consolidation loans may be repaid through ICR. 34 C.F.R. Sec. 685.208

remained the problem that ICR required 25 years of repayment, making it very unattractive to most law student borrowers.

The evident solution to the problem of the failed ICR program was to shorten the period after which forgiveness would occur. Providing more rapid forgiveness for all ICR borrowers would have been very expensive, but the cost could be reduced by limiting the benefit of more rapid forgiveness "to those who had fulfilled a public service requirement, such as having spent at least ten of the previous fifteen years in full-time public service work," even if public service work was defined broadly to include all full-time work for any tax-exempt organization or any agency of any level of government.[23]

The ABA Commission concurred, recommending in 2003 that Congress reduce the period after which forgiveness would occur, provided that the borrower had engaged in substantial public service. According to the Commission, "shortening the forgiveness period to 15 years or less for those graduates who spend a specified period in public service would help the income-contingent repayment option meet its goal: ensuring that debt not foreclose community service-oriented career choices for young graduates."[24]

II. The Benefits of the New Legislation

In the College Cost Reduction and Access Act of 2007,[25] Congress significantly reduced the period after which public servants' educational loans were partly forgiven. It also reduced monthly payments for all high debt/low income borrowers, supplementing the income-contingent loan repayment program with a new "income based" repayment (IBR) program. The IBR repayment plan is similar to the ICR plan, with three important differences. First, the income-based formula for computing the amount due each month results in payments that are lower than under ICR. Second, instead of limiting the compounding of interest on funds that are not paid as a result of the income cap (as in ICR), the government pays any unpaid interest on the subsidized portions of the loans for up to three years after the borrower elects IBR.[26] Third, when a borrower's income rises so high that the borrower is repaying at the standard repayment rate, the unpaid interest is capitalized, avoiding geometric growth through compounding. The IBR program and the accelerated forgiveness program are contained in two separate titles of the new law, but they work in tandem.

Both of these new provisions will significantly help law students and lawyers who desire public interest careers, but their benefits are not limited to public interest lawyers. They will help all high debt/lower income borrowers to be able to pursue long-term public service careers in many different fields of work, including teaching, social work, military service, nursing, disability assistance, and emergency management. As

[23] Schrag, supra n. __, at 850.
[24] ABA Commission, supra n. __, at 39.
[25] H.R. 2669, approved by the House and Senate on Sept. 7, 2007 [REPLACE WITH Public Law Number].
[26] It should be noted, however that on loans being paid through IBR, the government will pay the interest on subsidized portions of loans for any three years in which the borrower is in deferment (under pre-existing law) and, in addition, for an additional three years chosen by the borrower. Sec. 230(a).

explained below, some of the provisions of the new law take effect immediately, on October 1, 2007, while others do not become effective until July 1, 2009.

Section 203: income-based repayment

Section 203, the brainchild of Senator Edward Kennedy (D–MA), creates a new "income-based repayment" (IBR) option for repaying student loans. This provision, which does not require a borrower to be engaged in public service, is modeled on the income-contingent repayment option, which remains available. But IBR is more generous for low-income borrowers. Its purpose is to help all high-debt/low-income borrowers to afford repayment of their student loans.

This section (which will go into effect on July 1, 2009) creates a method for borrowers to limit their annual educational debt repayment to a reasonable, affordable amount: 15% of discretionary income, where discretionary income is defined as adjusted gross income minus 150% of the poverty level for the borrower's family size.[27]

For example, suppose that a single borrower owes $100,000[28] at 6.8% (the current Stafford rate) and has adjusted gross income of $40,000 in the first year after graduation. On a standard ten-year repayment schedule, such a borrower would have to pay $1,155 per month (35% of adjusted gross income and a much higher percentage of after-tax income). But under Sec. 203, such a borrower would pay each month one-twelfth of 15% (40,000 – 15,315) = $309, or only 9% of adjusted gross income. That's the monthly repayment in the first year; as the borrower's income rises, the repayment amount will gradually rise, but that increase will be moderated by parallel increases in the federal poverty level. Assuming 3% annual increases in both income and the federal poverty level, the monthly payment in the second year will be $318. In the 10th year it will be $403. In the 25th year, it will be $627, still far less than the $1,155 that standard repayment would require monthly for ten years.[29]

It should be noted that over time, some borrowers who take low-income jobs will receive substantial raises or other income. When the amount that would be due under standard repayment no longer exceeds the amount due under income-based repayment, borrowers will no longer be eligible for income-based repayment (nor would income-based repayment result in lower payments than standard repayment). At that point, borrowers will begin to pay the remaining balance under a standard repayment plan. However, payments made pursuant to standard repayment while in public service will still count toward the ten-year requirement for accelerated forgiveness under Sec. 401 of

[27] For poverty level figures, see http://aspe.hhs.gov/poverty/07fedreg.htm. Recall that under ICR, a borrower repays, annually, 20% of (AGI minus the federal poverty level).
[28] This is a not untypical cumulative debt for a graduating law student who attended a private school rather than a state law school. It includes about $85,000 of debt resulting from borrowing for law school and $15,000 of unpaid undergraduate debt.
[29] All of the numbers in these examples are current dollar numbers. Assuming inflation, borrowers repay with funds that are worth less than the money originally borrowed. For a discussion of discounting future repayments to net present value, see Mark Kantrowitz, Net Present Value, http://www.finaid.org/loans/npv.phtml (last visited Sept. 9, 2007).

the Act, which is described below. Therefore, the funds that would have been due under standard repayment but were unpaid as a result of the IBR income cap before the borrower entered standard repayment will be eligible for forgiveness after ten years of public service.

If the borrower does *not* perform public service for ten years, most of the amount that is unpaid because of this income-based cap is added to principal and is carried over from year to year until it is capitalized when the borrower leaves the IBR plan,[30] but, as in the ICR plan, any remaining debt is forgiven after 25 years.[31] To continue with the example described above, assume such a person had 3% annual income increases for 25 years, and that the poverty rate also increased 3% per year. Over that period, the borrower will pay $135,000 in principal and interest. But at the 25-year mark, the borrower will still owe $98,229 in principal and $36,618 in unpaid interest, both of which the government will write off.[32]

To use IBR, a borrower need not consolidate. The borrower only has to elect the IBR plan.[33] (However, as noted below, a borrower with a government-guaranteed loan from a financial institution, as opposed to a federal direct loan, must consolidate to obtain the benefits of forgiveness after ten years in a public service job).

Virtually all government-guaranteed loans are eligible to be repaid through IBR, including Stafford and Grad PLUS loans. Parent PLUS loans, as opposed to Grad PLUS loans to students, are not eligible for repayment through this mechanism.[34]

Tables I and II illustrate representative repayment schedules for borrowers who elect IBR and do not qualify for more rapid forgiveness by spending ten years in full-time public service.[35]

---

[30] For the subsidized portion of loans, the government will pay the unpaid interest for the first three years. After that (and for the unsubsidized portion of loans), the unpaid interest will be added to principal. The interest is capitalized when the borrower elects to end IBR or no longer qualifies for the IBR cap.

[31] Under Sec. 203, the Secretary of Education has authority to reduce this period. In addition, periods in which the borrower was in "deferment" of loan repayment because of economic hardship count toward the 25 years. But periods in which the borrower was not making payments because of "forbearance" do not.

[32] These and similar calculations can be performed easily on the FinAid IBR calculator website, http://www.finaid.org/calculators/ibr_policy.phtml

[33] It is not clear that all financial institutions are required to offer IBR, but competition may drive nearly all of them to do so. For borrowers, it doesn't matter whether a lender offers IBR or not, because if a lender does not offer IBR to a borrower who desired it, the borrower is entitled to obtain a federal direct consolidation loan on the ground that the lender did not offer IBR. 20 U.S.C. Sec. 1078-3(b)(5), as amended by Sec. 203(b)(2)(B).

[34] Sec. 203 defines an "excepted PLUS loan" to be one that is made to a parent on behalf of the parent's dependent and provides that excepted PLUS loans may not be paid through IBR. But Grad PLUS loans are loans made directly to graduate students and are therefore not excepted PLUS loans.

[35] Readers who are viewing this article on an electronic database that does not reproduce tables may want to consult the print version of this article or the .pdf version on www.ssrn.com. Tables I and II assume 3% annual increases in the federal poverty level.

Table I – Repayment and forgiveness for representative single borrowers with $100,000 in qualifying debt at 6.8% who do not perform ten years of public service. [Standard repayment would require $1151 monthly for ten years, for a total repayment of $138,097]

Starting income[36]	Annual increases	Monthly payments, year 1	Monthly payments, year 10	Monthly payments, year 25	Total amount paid	Amount forgiven by federal government after 25 years
$35,000	3%	$246	$321	$500	$107,655	$162,345
$40,000	3%	$309	$403	$627	$135,000	$134,858
$40,000	4%	$309	$462	$893	$166,119	$97,975
$40,000	5%	$309	$526	$1151	$201,650	$48,672
$50,000	3%	$434	$566	$881	$189,688	$68,012
$50,000	4%	$434	$640	$1151	$227,701	$7,951
$55,000	4%	$496	$729	$1151	$213,228	$1,777[37]

[36] In all tables, starting income refers to adjusted gross income.
[37] The debt would be fully repaid by the borrower after 22 years. Nevertheless, there is a small federal writeoff because under IBR, the government pays the interest on the subsidized portion of the loan for three years.

Table II – Repayment and forgiveness for representative single borrowers with $75,000 in qualifying debt at 6.8% who do not perform ten years of public service. [Standard repayment would require $863 monthly for ten years, for a total repayment of $103,572]

Starting income	Annual increases	Monthly payments, year 1	Monthly payments, year 10	Monthly payments, year 25 (unless debt fully paid sooner)	Total amount paid	Amount forgiven by federal government after 25 years
$35,000	3%	$246	$321	$500	$107,655	$94,418
$40,000	3%	$309	$403	$627	$135,000	$61,396
$40,000	4%	$309	$462	$866	$165,767	$14,598
$40,000	5%	$309	$526	$863[38]	$159,236	$4,648
$50,000	3%	$434	$566	$807[39]	$154,286	$0
$50,000	4%	$434	$640	$863[40]	$142,600	$0
$55,000	4%	$496	$729	$863[41]	$129,163	$0

Several conclusions can be drawn from these tables:

- IBR significantly reduces monthly repayment obligations compared to standard repayment, and it most reduces them in the early years of repayment
- The size of the federal subsidy is much greater when the borrower's debt is very high, when the borrower's income is quite low, and when the borrower's annual income increases are 4% or lower
- When the borrower's debt is very high, there is a small federal subsidy after 25 years even when the borrower's beginning income is as high as $50,000, provided that annual increases are modest.
- As starting salaries and annual rates of increase become larger, the total amount that the borrower must pay over 25 years increases substantially, making standard repayment more attractive compared with IBR.
- Of course all of these relationships comport with the congressional intent behind IBR, particularly "straight" IBR without accelerated forgiveness for public servants: it is a program designed for those for those for whom standard repayment would be a great hardship.

Borrowers who are employed at high salaries will be unlikely to want to use the new IBR system. A borrower who owes $100,000 in educational debt and begins to work in a private law firm at a salary of $110,000, with 5% annual increases, would pay

[38] Highest payment in 22d year; debt is paid off before 23d year.
[39] Highest payment in 21st year; debt is paid off before 22d year.
[40] Highest payment in 18th year; debt is paid off before 19th year.
[41] Highest payment in 15th year; debt is paid off before 16th year.

$1151 per month in the first year, just as the borrower would under standard repayment. The debt would be repaid in ten years and the borrower would receive no forgiveness.[42]

As noted in the next section, if a borrower works in public service for ten years, the government's write off occurs much sooner and is much larger.

Sec. 401 – more rapid forgiveness for public service employees

If a borrower plans to work full time for at least ten years in a public service job,[43] the borrower may elect IBR and receive forgiveness after repaying the same monthly amounts—but if the borrower makes ten years of IBR payments after October 1, 2007, while engaged in full-time public service, the remaining balance is forgiven after only ten years of monthly repayments rather than 25 years.[44] Earlier forgiveness necessarily means that a larger amount is forgiven.

Tables III and IV show how the hypothetical borrowers described in Tables I and II would repay their loans if they spend ten years in public service, how much they would pay over the ten year period, and how much the government would forgive.[45]

---

[42] This example, and the next one, use the same assumptions about interest rates and poverty level rates of increase as the previous examples.
[43] The statute defines a public service job very broadly. See text accompanying n. __, infra. The statute does not define "full time" employment; presumably the Department of Education will define it.
[44] The borrower must still be employed in a public service job when forgiveness occurs under this provision. See text at infra n. ___ regarding breaks in breaks in continuous public service.
[45] Tables III and IV assume 3% annual increases in the federal poverty level.

Table III – Repayment and forgiveness for representative single borrowers with $100,000 in qualifying debt at 6.8% who perform ten years of public service. [Standard repayment would require $1151 monthly for ten years, for a total repayment of $138,097]

Starting income	Annual increases	Monthly payments, year 1	Monthly payments, year 10	Total amount paid during 10 years	For purposes of comparison, total paid without public service, over 25 years, from Table I	Amount forgiven by federal government after 10 years
$35,000	3%	$246	$321	$33,850	$107,655	$134,150
$40,000	3%	$309	$403	$42,448	$135,000	$125,552
$40,000	4%	$309	$462	$45,701	$166,119	$122,299
$40,000	5%	$309	$526	$49,132	$201,742	$118,868
$50,000	3%	$434	$566	$59,644	$189,688	$108,356
$50,000	4%	$434	$640	$63,710	$227,701	$104,160
$55,000	4%	$496	$729	$72,715	$213,228	$56,019

Table IV – Repayment and forgiveness for representative single borrowers with $75,000 in qualifying debt at 6.8% who perform ten years of public service. [Standard repayment would require $866 monthly for ten years, for a total repayment of $103,572]

Starting income	Annual increases	Monthly payments, year 1	Monthly payments, year 10	Total amount paid during 10 years	For purposes of comparison, total paid without public service, over 25 years, from Table II	Amount forgiven by federal government after 10 years
$35,000	3%	$246	$321	$33,850	$107,655	$92,150
$40,000	3%	$309	$403	$42,448	$135,000	$83,552
$40,000	4%	$309	$462	$45,701	$165,801	$80,264
$40,000	5%	$309	$526	$49,132	$159,236	$75,594
$50,000	3%	$434	$566	$59,543	$154,285	$64,059
$50,000	4%	$434	$640	$63,710	$144,291	$59,031
$55,000	4%	$496	$729	$72,715	$129,163	$46,463

It follows from Tables III and IV that:

- Borrowers who elect IBR and perform ten years of public service will end up repaying a far smaller percentage of their student loans than comparable borrowers who do not do ten years of service. Typically, a borrower who performs public service will repay only about one-fourth to one-third as much money as a borrower who does not.
- The savings to public service borrowers are substantial even at the relatively "high" end of the public service pay scale: employees who start at $50,000 and have 4% annual raises.
- Congress has achieved what it set out to do: provide some relief for all high debt/low income borrowers, while providing very substantial student loan repayment relief for those who make the sacrifice of choosing long-term lower-income public service careers.

What about outliers; that is, borrowers who have borrowed much more for their educations than the average graduate of a professional school? Consider, for example, a hypothetical student who needed to borrow every penny to attend a four-year college, obtain a two-year master's degree in social work, and a law degree. Such a person might finish school with $200,000 in debt that qualified for repayment through IBR. She might then go on to provide legal services to poor families. If this borrower began employment with adjusted gross income of $42,000 per year and had annual increases of 3.5% during ten years of public service employment, she would make monthly repayments of between $334 (the first year) and $466 (the tenth year). These amounts are much lower than the $2302 that she would owe monthly under standard repayment. During the ten year period she would repay a total of $45,572, as opposed to $276,193 during the same period under a standard repayment plan. At the end of the ten years, because of accumulating interest, she would still owe $288,428 . . . and the federal government would forgive this entire amount.

Stafford loans and Grad PLUS loans (but not PLUS loans to the parents of students) are eligible for repayment under this plan. To take advantage of this special 10-year forgiveness provision, however, a borrower who had government-guaranteed loans must first consolidate prior educational debt into a "federal direct consolidation loan." Section 203 (b)(1)(B) of the new law, amending 20 U.S.C. Sec. 1078-3 (b)(5), guarantees borrowers the right to make this consolidation for the purpose of using the public service loan forgiveness plan.[46] The law permits consolidation for any borrower who "chooses" consolidation "for the purpose of using the public service loan forgiveness program."[47] It does not require the borrower either to have obtained a public service job or to provide proof that such a job has been offered.

The law does not require that the ten years of public service be continuous. A borrower may, for example, take parental leave or may temporarily leave public service for some other reason (including work outside of the public sector). However, before the borrower qualifies for accelerated forgiveness, the borrower must make 120 payments under some combination of IBR, income-contingent repayment, or standard repayment while serving full time in a public service job and must also hold such a job when forgiveness occurs.

Section 401 defines the public service jobs eligible for this special ten-year forgiveness. The definition includes both a list of categories of jobs that are eligible *and* a catch-all clause that sweeps in many additional employers.

For lawyers and staff members of legal organizations, the specifically listed category of those eligible consists of those in "government" and in "public interest law services (including prosecution or public defense or legal advocacy in low-income communities at a nonprofit organization)."

Depending on how "public interest law services" is defined in regulations that will probably be written during 2008, that description may or may not capture all public interest lawyers and their staffs. For example, it may or may not cover those who work

[46] Some media descriptions of the bill have overlooked the consolidation option and incorrectly reported that the benefits of the program are available only to student who had direct federal loans as opposed to government-guaranteed loans.
[47] Sec. 203(b)(1)(B).

in educating groups of clients or the public, training other lawyers, policy advocacy, fundraising, or administration.[48]

Fortunately, virtually all non-governmental public interest lawyers will be swept into coverage by the catch-all clause, even if they do not work in what is ultimately defined as "public interest law services." The catch-all clause extends the benefits of Section 401 to all borrowers who work "in a full time job . . . at an organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code."[49]

Thus the benefits of Section 401 appear to apply to everyone who works for a government, everyone who works for a "501(c)(3)" organization, and certain other categories of persons (e.g., persons working in "public service for the elderly" even if they do not work for governments or "501(c)(3)" organizations).[50]

III. Transition Rules

The combined effect of Sections 203 and 401 will not be fully available to borrowers until July 1, 2009, but some of the benefits of Section 401 (working toward forgiveness after ten years) are available before then. This is how persons who have graduated or will graduate from law schools before July 1, 2009 may use the new law.[51]

1. *Borrowers who graduated[52] and entered loan repayment before October 1, 2007.*

Borrowers who began to repay their Stafford and Grad PLUS loans before October 1, 2007, may receive partial benefits under this law.[53] If they have

[48] It would be difficult, however, for the Department of Education to distinguish among public service lawyers according to the tasks that they perform, however, because many and perhaps most public interest lawyers perform many different kinds of tasks in the course of a week, often moving almost seamlessly among individual representation, issue advocacy, research, training, and public education.

[49] Sec. 401 defines a public interest job as "a full time job in emergency management, government, military service, public safety, law enforcement, public health, public education (including early childhood education), social work in a public child or family service agency, public interest law services (including prosecution or public defense or legal advocacy in low-income communities at a non-profit organization), public child care, public service for individuals with disabilities, public service for the elderly, public library services, or at an organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code. . ." (emphasis added).

[50] The term "public interest law services" may cover some lawyers who are not included in the "catch-all" clause at the end of the definition; for example, any lawyers providing civil legal aid in low-income communities for non-profit organizations that are tax-exempt under section 501(c)(4) rather than section 501(c)(3) of the Internal Revenue Code, and prosecutors employed by international tribunals.

[51] This analysis assumes that Congress will not pass a Technical Corrections Act simplifying the transition.

[52] In this article, the term "graduated" is used for the sake of clarity, though technically speaking, in the loan repayment industry, the date of consolidation rather than the date of graduation is what matters. However, borrowers may not consolidate until they are in the grace period after graduation or in repayment.

[53] It should be noted that Grad PLUS loans, which along with Stafford loans are eligible for repayment through ICR and IBR, and for forgiveness, became available only in 2006. Students who entered graduate and professional schools before Grad PLUS loans became available may have taken out private or

federal direct loans (very few law schools are part of the federal direct lending program) and plan careers in low-paying public service jobs, they may elect immediately to begin paying pursuant to the income-contingent repayment option (which has been available since 1993), and then they may switch to IBR on July 1, 2009. Their monthly repayments under ICR after October 1, 2007 will count toward the 120 months (10 years) of repayment after which forgiveness will occur (if they have remained in public service through the date of forgiveness). After October 1, 2007, payments that they make under a standard repayment plan while they are in the process of converting to income-contingent repayment (or after July 1, 2009, to income-based repayment) will also count toward the 120 payments.[54] But payments that they made through any repayment method before October 1, 2007, will not count.

Borrowers who entered repayment before October 1, 2007, and have government-guaranteed loans rather than federal direct loans may elect the income-contingent repayment option only by consolidating into a federal direct consolidation loan.[55] They may do so whether or not they want to enter public service and seek accelerated forgiveness. If they do want accelerated forgiveness, only payments made after this consolidation and after October 1, 2007 count toward the 120 payment requirement.[56] The right to consolidate into a federal direct loan in order to repay the loan through the income-contingent repayment option is guaranteed,[57] except that a borrower who previously consolidated may not consolidate again unless the loan has been submitted to a guarantee agency to

---

commercial loans for the difference between the ceiling on Stafford borrowing and the cost of attendance. Private and commercial loans are not eligible for ICR or IBR repayment or for forgiveness.

[54] Payments made under a standard ten-year repayment plan count toward the 120 month period, but to the extent that borrowers make such payments, they will not benefit from forgiveness, because what is forgiven is the difference between the funds owed under a standard plan and amounts owed under an income-contingent or income-based plan. Therefore, borrowers planning long-term public service careers should repay through IBR or ICR for as many of the ten years of repayment as they can.

[55] Under ICR, the monthly repayment requirement is higher than it will be under IBR. The ICR monthly repayment requirement is 20% of (AGI minus the federal poverty level). Using the earlier example of a borrower with $100,000 of debt, a starting salary of $40,000, and income growth of 4% annually, ICR would yield monthly payments starting at $497 in the first year and increasing to $726 in the tenth year, significantly higher than under IBR but still much lower than the $1151 standard repayment over a ten year period. But while the payments are somewhat higher, forgiveness of the remaining balance after ten years of public service will still occur, and an ICR borrower can start paying through IBR when that program starts in 2009. Section 401 specifically states that persons who have made 120 monthly payments (10 years) under either the IBR plan or the ICR plan (or a standard ten-year repayment plan, or any combination of these) while employed in a public service job are eligible for forgiveness of the remaining balance.

[56] Only payments made through ICR, IBR (after July 1, 2009), or at rates no lower than those of standard repayment count toward the 120 months for accelerated forgiveness.

[57] 20 U.S.C. 1078-3(b)(5). However, some officials of the Department of Education, which must process the consolidation, may not realize that the law permits such borrowers to consolidate. A 2005 law preventing consolidation at the option of the borrower was repealed in 2006 by section 7015 of Public Law 109-234, the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror and Hurricane Recovery. Borrowers who have trouble because officials do not realize that the law changed should contact the Federal Student Aid Ombudsman in the Department of Education. The Ombudsman may be contacted at 18775772575 or by email at fsaombudsmanoffice@ed.gov

prevent a default.[58] However, if a borrower who has already consolidated waits until after July 1, 2008 to seek a second consolidation and wants to consolidate to use the program for accelerated forgiveness for public service employment, the loan need not have been submitted for default aversion.[59]

2. Borrowers who graduate after October 1, 2007 but before July 1, 2008.

Direct loan borrowers may elect the income-contingent repayment option while waiting for the 2009 start date of IBR. All ICR or IBR payments made after October 1, 2007 while in public service will qualify for the 120-month period after which forgiveness of the balance occurs.[60] Borrowers with government-guaranteed loans must consolidate, as described above, before their payments will count.

3. Borrowers who graduate after July 1, 2008 and before July 1, 2009.

Those with direct federal loans may elect income-contingent repayment while waiting for IBR to begin, and all payments pursuant to this plan will count toward the 120 month requirement. Those with government-guaranteed loans must first consolidate into a federal direct consolidation loan.[61] But borrowers who previously consolidated and who do not plan to enter into public service for ten years will not be permitted to consolidate into federal direct consolidation loans for the purpose of using income-contingent repayment unless their loan has been submitted to a guarantee agency for default aversion.[62] May, 2009, graduates will be able to elect IBR within two months after they graduate. Those who plan public service careers and repayment through IBR will be able to consolidate for that purpose almost immediately after graduation and will be able to start repaying through IBR in July.

---

[58] 20 U.S.C. Sec. 1087-3(a)(3)(B)(i)(V).

[59] Sec. 203(b)(1)(A), made effective July 1, 2008, by Sec. 203(c)(2).

[60] A borrower who previously consolidated and who misses this deadline but plans to perform ten years of public service to qualify for forgiveness might have to wait until July 1, 2009, to consolidate, but depending on how the new law is applied, might be able to consolidate between July 1, 2008, and July 1, 2009. 20 U.S.C. Sec. 1078-3(a)(3)(B)(i)(V)(bb), as amended by Sec. 401(b)(1)(A) of the new law, prohibits second consolidations for the purpose of obtaining federal direct consolidation loans but allows a borrower to obtain a subsequent consolidation loan for the purposes of using the new public service loan forgiveness program. The possible problem here, however, is that the part of the statute setting up the new program explicitly mentions IBR as a permissible method of repayment, but IBR does not start until July 1, 2009. Such a borrower will be permitted to repay the consolidated loan through ICR for one year and then switch to the lower payments permitted under IBR. But the Department of Education might permit this consolidation only if the borrower's loan was submitted to the guarantee agency for default aversion. It would therefore be best to apply before July 1, 2008.

[61] A borrower who previously consolidated might seek to consolidate to take advantage of the new public service program before July 1, 2009, even though the IBR part of that program will not yet have begun, because the amendment assuring the right to consolidate to use the public service program becomes effective on July 1, 2008. 20 U.S.C. Sec. 1078-3(a)(3)(B)(i)(v)(bb), as amended by Sec. 401(b)(1)(A) of the College Cost Reduction Act, effective July 1, 2008. See Sec. 401(c)(2) of the College Cost Reduction Act.

[62] After July 1, 2009, a second consolidation is permitted for the purpose of entering income-contingent repayment if the loan is already in default. Sec. 401(b)(2)(A)(ii).

4. Borrowers who graduate after July 1, 2009. The law will be fully effective.

Graduates with direct loans who plan to enter public service for ten years to qualify for forgiveness may simply elect income-based repayment. Those with government-guaranteed loans who plan to use the new forgiveness provision must consolidate their loans into a federal direct consolidation loan and choose income-contingent or income-based repayment; either type of repayment will qualify for the 120-payment public service forgiveness privilege. They have a right to obtain federal direct consolidation loans for this purpose.[63] Most such borrowers will elect income-based repayment because the monthly payments are lower and therefore the amount of eventual forgiveness is higher.[64] Borrowers who previously consolidated and who do not plan to enter public service for ten years may not consolidate for the purpose of using income-based or income-contingent repayment unless their loan has been submitted to a guarantee agency for default aversion or is already in default.

Borrowers who enter the ten-year forgiveness program but who leave public service employment before making 120 payments (and do not plan to resume public service and qualify for accelerated forgiveness) may continue to use ICR, standard repayment or, if they are eligible, IBR. But they will not qualify for forgiveness at the end of ten years.

In summary,

(a) High-debt borrowers who plan to spend at least ten years in public service careers should consolidated their student debt into federal direct consolidation loans,[65] use income-contingent repayment until July 1, 2009, and switch to income-based repayment on July 1, 2009.[66]

(b) High-debt borrowers who do not expect to do public service but nevertheless expect low incomes for a long period of time may also want to consider IBR, though this will cause their total payments to increase, and no forgiveness will occur until 25 years have elapsed.

(c) High-debt, low-income borrowers who are not in public service and who expect their incomes to rise substantially over time might use IBR to ease the repayment burden for a few years, but this repayment method will require a higher level of total repayment. They will probably repay the total amount owing before 25 years elapse, and therefore they will not qualify for forgiveness.

---

[63] 20 U.S.C. Sec. 1078-3(a)(3)(B)(i)(v)(bb), as amended by Sec. 401(b)(1)(A) of the College Cost Reduction Act, effective July 1, 2008. See Sec. 401(c)(2) of the College Cost Reduction Act.

[64] A borrower who is planning only a few years of public service before switching to a high-paying job should think carefully about whether it is advisable to use IBR or even ICR, because the amount due will build up as a result of capitalized unpaid interest, and the debt will not be forgiven. Each individual's circumstances will be different, so no blanket advice is feasible for borrowers who do not plan to remain in public service long enough to earn forgiveness.

[65] Borrowers already in direct lending need not consolidate.

[66] Borrowers in this category who contemplate marriage to a spouse who has income should be aware that unless the law is changed, the IBR formula imputes the spouse's income to the borrower. This will affect the repayment schedule and the expected amount of forgiveness. See text at n. __, infra.

IV. What remains to be done

In future months or years, this legislation should be improved in two ways.

Tax exemption of forgiveness. The forgiveness at the end of 10 or 25 years is, at present, taxable, even though forgiveness under most law school loan repayment assistance programs is tax-exempt.[67] Unless the law is changed within the next ten years, borrowers will incur a substantial tax liability when forgiveness occurs.[68] Congress should, before then, make forgiveness tax-exempt. This reform should be a high priority for public service organizations. (Congress could not practically have addressed this issue in H.R. 2669, because that legislation was developed by the education committees, while tax legislation must originate in the tax committees). Meanwhile, borrowers should be counseled to lay funds aside monthly in high-interest CDs or government bonds to pay a possible tax upon forgiveness.[69]

Reduction of the marriage penalty. The amount of monthly repayment for married IBR borrowers is based on the combined adjusted gross income of the borrower and the borrower's spouse, even if they file separate tax returns. (For two-IBR families, regulations will probably allow combining both the debt and the income for purposes of the calculation, as the Department of Education does under the current "income-contingent" repayment plan, so the problem described here is pertinent only to IBR borrowers married to non-IBR borrowers). This creates a strong disincentive to marry, or "marriage penalty." Upon marriage to a spouse with substantial income, an IBR borrower's monthly repayment obligation will increase sharply (even if the spouses keep their incomes separate and do not share them), and the amount of eventual forgiveness will correspondingly plummet. For example, a single borrower with an income of $35,000 and a debt of $100,000 would make first-year monthly repayments of $246, but as soon as the borrower married a spouse who also had a $65,000 income, the borrower's monthly repayments would balloon to $993. Congress undoubtedly believed that spouses should support each other financially, and it therefore did not want to exclude a spouse's income from consideration in determining the monthly repayment obligation. But this marriage penalty is too extreme. To reduce the disincentive to marry, Congress should attribute only half of the combined income of the two spouses to the borrower. If it did

[67] Sec. 108(f) of the Internal Revenue Code excludes law school repayment of student loan debt from taxable income. At least 61 law schools take advantage of this provision by structuring their loan repayment assistance programs to provide their own forgivable loans, rather than grants, to qualifying graduates. Equal Justice Works, Financing the Future 16 (2006), http://www.equaljusticeworks.org/financing-the-future2006.pdf (last visited Sept. 11, 2007).

[68] No borrower will incur this liability until 2017, when forgiveness first occurs. But the law should be reformed before then so that students can count on the absence of tax liability as they plan public interest careers.

[69] There may be some interest in this reform on Capitol Hill. In 2007, for example, Senator Hillary Clinton introduced S.611. Some of the reforms proposed by that bill were adopted by the College Cost Reduction Act. But Section 6(b), which was not incorporated into the College Cost Reduction Act, would make ICR forgiveness tax exempt. S. 611 does not refer to forgiveness under the new ten-year public service forgiveness plan, because that plan did not exist when S. 611 was introduced.

so, the monthly repayment obligation of the married borrower in the example above would be $368.

The Senate has passed S. 1642, which in its present form would neither eliminate the taxability of loan forgiveness under the College Cost Reduction and Access Act nor reduce the marriage penalty.[70] It would, however, offer additional partial loan forgiveness to certain categories of public interest lawyers. Under Section 946, borrowers who planned to serve as civil legal assistance attorneys for at least three years could enter into agreements with the U.S. Department of Education, under which the government could repay the borrowers' educational loans. Annual repayment by the government would be limited to $6,000 per borrower per year and $40,000 during the borrower's lifetime. Unlike Section 401 of the College Cost Reduction and Access Act, which is an entitlement program, funds would be available under Section 946 only to the extent of annual congressional appropriations.[71] In the event that not enough funds were appropriated to fund loan repayment for all civil legal assistance lawyers who applied, priority would be given to those who had practiced for five years or less, had spent at least 90% of their time in practice as civil legal assistance lawyers, had received loan repayment under the program during the previous fiscal year, and had completed less than three years of the required service under an agreement with the government. Eligible borrowers could repay their loans through standard ten-year repayment plans.

Section 952 of S. 1642 would provide similar benefits for prosecutors and public defenders (including prosecutors and defenders of alleged juvenile offenders), although the priority rules for allocation of loan repayment benefits are somewhat different. Priority is to be given to those who have the least ability to repay their loans, except that the Attorney General, who would administer the program, would be directed also to "determine a fair allocation of repayment benefits among prosecutors and public defenders, and among employing entities nationwide." Priority would also go to those who had already received some benefits and who had completed less than three years of service under their first agreement with the Attorney General.[72] Many prosecutors and public defenders see enactment of these provisions as vital to the fairness of the criminal justice system, because many of their offices are having increasing difficulty in hiring and retaining lawyers, with the result that the remaining lawyers have untenable case loads.

S. 1642 is not inconsistent with the College Cost Reduction and Access Act; they would offer additional loan forgiveness to qualifying lawyers, focusing on providing loan assistance in the early years of employment rather than reducing payments in the early years and forgiving repayment for career public servants. Section 401 of the College

---

[70] Of course the House could address these problems when it takes up the bill.
[71] The bill authorizes appropriations of $10,000,000 for the first year and such sums as may be necessary in future years, but an authorization of an appropriation is not an appropriation.
[72] The bill authorizes a first-year appropriation of $25,000,000 for prosecutors and defenders and such sums as may be necessary for future years. The House has not yet taken up the bill, but George Miller, Chair of the Committee on Education and Labor, called S. 1642 a "very important blueprint" for the House bill, which he expects to have enacted by the House before the end of 2007. Libby George, "Democrats Promise to Put More Education Legislation in the Pipeline," CQ Today – Education, Sept. 7, 2007.

Cost Reduction and Access Act will help students to plan long-term careers in public service and will benefit a broad swath of employees who serve for a long time in government, the military, and non-profit organizations. It will also help public service employers to retain experienced staff members. S. 1642 will help prosecutors, defenders, and civil legal assistance organizations not only to retain their talented staff but also to hire the most qualified staff members upon their graduation from law school or after clerkships.

Whether or not Congress addresses the two major reforms needed in the College Cost Reduction and Access Act and passes S. 1642, the new law may stimulate reconsideration of the shape of certain existing programs administered by some law schools, states, and employers. About 100 of the approximately 190 American law schools have adopted their own law-school-funded loan repayment and assistance programs (LRAPs), though many of them have very limited funds to dispense and assist only a few alumni in public service each year.[73] In addition, some states and some public service employers, including several federal agencies, have created their own loan repayment assistance programs to assist certain lawyers.[74] Law schools, states, and public service employers may now want to restructure their own LRAP plans to make their funds go further and help more students.[75] For example, some law schools may desire to require LRAP recipients to elect IBR (whether or not they plan to spend a full ten years in public service) and may choose to provide students with LRAP assistance equal to the portion of funds they would have to repay (that is, 15% of (AGI – 150% of the poverty level)). Such students would therefore have to pay nothing at all out of their pockets toward their student loans, so long as they worked in public service. Schools that could not afford to pay the entire student portion could pay part of it (e.g., 7.5% rather than the entire 15% of the discretionary income that graduates had to repay under IBR), reducing the students' monthly payments, although not to zero.[76] Similarly, state and employer-based programs may want to rethink their own rules for loan repayment to use their funds most efficiently in view of the enactment of the new federal legislation.

[73] Equal Justice Works, Financing the Future iv (2006), http://www.equaljusticeworks.org/financing-the-future2006.pdf (last visited Sept. 11, 2007). Only 18 schools provided assistance to more than 20 graduates in 2004-05. Ibid.
[74] Id. at 21.
[75] Because of the complex transitional rules, these institutions and agencies might want to make any LRAP changes effective for classes graduating in May 2009, or later. They may also want to wait to see whether Congress enacts S. 1642. But publishing new LRAP rules much earlier than 2009 could help current students who will graduate in 2009 with their financial planning.
[76] For the sake of simplicity, law schools might treat all employment settings that are eligible for ten-year forgiveness under the federal law as also eligible for law school LRAP subsidies. A school with a very limited LRAP budget could decide to define eligibility more narrowly than under federal law, but it might decide that it is administratively simpler to define eligibility as in federal law and to accommodate its budget restrictions by requiring graduates to make, on their own, some portion of the required partial repayment under the IBR formula.