M E M O R A N D U M

To: CBF Advocacy Committee
From: Angela Inzano and Bob Glaves
Date: June 27, 2016 (updated on ongoing basis)
Re: Background on Student Debt Crisis and Potential Solutions

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The word crisis is often over-used when it comes to various challenges facing our profession or country. However, when it comes to student debt, the word's use has some merit.

The amount of student debt has exploded over the past two decades as average tuitions at all levels of higher education have risen at well above the rate of inflation. There is evidence that the relatively easy availability of government and private educational loans is simultaneously fueling both of these trends, with increasingly dire consequences for the growing number of graduates struggling with mortgage-sized debts and increasing risks for taxpayers if these loans go unpaid.

While we are looking at this primarily through the lens of lawyers and legal education—and particularly for lawyers pursuing careers in legal aid and public service—we need to look at issues and potential solutions through the broader lens of all student debt. Below is some background on the nature and extent of the current problem as well as a number of potential policy changes that might be part of a more comprehensive solution to the problem.

We see the following principles as fundamental to reaching a more comprehensive solution to the problem:

- Loans available at reasonable levels for people of all persuasions to be able to pursue higher education
- Loan repayment based on the income of graduates with forgiveness of any remaining balances in a reasonable amount of time
- Continuation of the public service loan forgiveness program to forgive loans more quickly for graduates pursuing public service careers
- Instill more market discipline for tuition at all levels of education
- Accountability for schools
- Accountability for students and grads

BACKROUND ON THE CURRENT PROBLEM

High-Level Causes

1. Rising Rates of Tuition
2. Ease of Receiving Student Loans
3. Reduced Government Funding for Higher Education at State and Local Levels
4. A Lack of Information and Comprehension for Borrowers
5. The Economic Environment

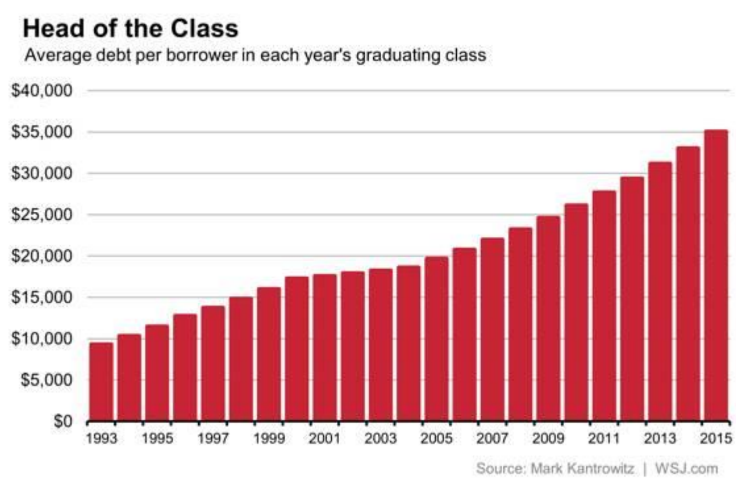
High-Level Implications

1. Limited Career Choice
2. Delayed Home Ownership, Marriage, and Family
3. Destabilized Financial Security and Retirement
4. Potential Stagnation of Overall Economic Growth

Student Debt Statistics

American students have accumulated **$1.3 trillion**[1] and counting in student debt, spread out across roughly **$43.3 million borrowers**.[2] This total is growing at an astounding **$2,726 per second.**[3] This places student loan debt above credit card debt ($733 billion) and second only to mortgage debt ($8.25 trillion). Here is how these totals break down:

- **Total Debt:** $1.3 trillion
- **Total Number of Borrowers:** 43.3 million
- **Average Debt per Person (Class of 2016)**: $37,172, see chart
- **Delinquency Rate:** 11.6%



Roughly **40%** of the **$1.3 trillion** total debt is incurred from **advanced degrees**. This means that approximately **$520 billion** of the debt total consists of financing **graduate degrees**. Out of approximately **20.2 million students** enrolled in higher educational institutions, an estimated **3 million** are enrolled in **post-graduate degree programs**. This means that 40% of the student debt is spread out across 3 million post-graduate students.

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[1] "U.S. Student Loan Debt Statistics for 2016 | Student Loan Hero." Student Loan Hero. Student Loan Hero, Inc., 2016. Web.
[2] Id.
[3] Berman, Jillian. "Watch America's Student-loan Debt Grow $2,726 Every Second." MarketWatch. N.p., 30 Jan. 2016. Web.

Breakdown of Loans by Type

	Federal Direct Loans				Other Federal Loans		Private Loans
	Stafford Subsidized	*Stafford Unsubsidized*	*Grad PLUS*	*Parent PLUS*	*Perkins*	*FFEL*	
Description	Government pays interest while student enrolled in school; financial need required	Student pays interest even while enrolled in school	Intended for grad students; interest paid by student even while enrolled in school	Parents may take out loan in their name to fund their child's education; interest paid by parents	Lent via the school but funding provided by Dept. of Ed.; gov. pays interest while attending school; financial need required	Gov. guaranteed private loans; no longer disbursed after 2010	Private vendors; variable interest rates based on credit score
Total Amount	$264.8 billion	$404.9 billion	$46.8 billion	$71.1 billion	$8.1 billion	$363.6 billion	Approx. $150 billion
Number of Borrowers	29.1 million	27.1 million	1 million	3.3 million	2.8 million	17.9 million	No stats
Interest Rate	4.29%	4.29% / 5.84% (grad students)	6.84%	6.84%	5%	6%-8.5%	2%-12%

Source: studentaid.ed.gov

Student Debt by Loan Status
****federal loans only****

	In Repayment	In Deferment	In Forbearance	In Default
Total Amount	$397.1 billion	$99.2 billion	$89.5 billion	$50.8 billion
Number of Borrowers	14.3 million	3.4 million	2.7 million	3.3 million
		Total Amount of Loans in Non-Payment		**$239.5 billion**
		Total Number of Borrowers in Non-Payment		**9.4 million**

Source: National Student Loan Data System (NSLDS)

Student Debt by College Type
(undergrad)

Type of College	Public	Nonprofit Private	For-profit Private
% Graduates w/ Debt	66%	75%	88%
Average Debt	$25,550	$32,300	$39,950

Source: Student Loan Hero (studentloanhero.com, 2016)

Student Debt by Degree--2012

Type of College	Average Debt
MBA	$42,000
Master of Science	$50,400
Master of Education	$50,879
Master of Arts	$58,539
Law	$140,616
Medical	$161,772

Source: newamerica.org, 2012

Flexible Repayment Options: There are four income-based repayment plans for federal student loans: Pay As You Earn (PAYE), Income Based Repayment (IBR), Revised Pay As You Earn(RPAYE), and Income Contingent Repayment (ICR). These plans vary but generally allow the borrower to pay about 10% (up to 20%) of their discretionary income a month towards their loans with the remainder being forgiven after 20-25 years. That forgiveness, however, is taxable to the borrower, and these repayment options are not part of the private student loan market.

Public Service Loan Forgiveness: Public Service Loan Forgiveness (PSLF) is a Federal student debt relief program[4] enacted in 2007 and designed to provide **complete forgiveness for Federal Direct loans** for those who are **employed full-time** in a public service career for **10 years or 120 qualifying payments.** This incentivizes graduates to pursue public service careers with more modest starting salaries despite the financial constraints that their debt imposes on them. As the 10 years since its enactment approaches, the government is faced with nailing down exactly how this program will be executed – no borrower has yet to have had their loans forgiven pursuant to this program, and procedural and substantive questions are still being outlined by the government. Here is what has already been established:[5]

- **What does "full-time public service employment" consist of?** Any job within a governmental organization at any level (federal, state, local, etc.) qualifies, as does work with any tax-exempt not-for-profit under Section 501(c)(3) of the Internal Revenue Code. Other not-for-profits may also qualify, so long as they provide certain types of qualifying public services, such as emergency management, military service, public safety, law enforcement, public education, and public health.[6] Public employment that does *not* qualify consists of labor unions, partisan political organizations, for-profit organizations, and non-profit organizations that are not tax exempt and do not provide a qualifying service.
- **How long does it usually take to have one's loans forgiven?** The requirement of the program states that one must be employed in a qualifying public service career for *at least* 10 years. This essentially translates into 10 years of qualifying public service employment, whether those 10 years are consecutive or not.
- **Is PSLF an automatic benefit for those who qualify?** No. After making 120 qualifying payments, an individual will have to submit the proper paperwork themselves in order for their remaining balance to be forgiven. At that time, he/she will have to submit an application (currently in development) to the Dept. of Education. Additionally, he/she will have to be employed in a qualifying public service career (1) at the time the application is submitted and (2) at the time the balance is forgiven.
- **What kinds of loans qualify, and what is a qualifying payment?** PSLF only applies to Federal Direct loans. A qualifying payment must have been after October 1st, 2007, under a qualifying repayment plan (including flexible options), in full, no later than 15 days after the due date, and while you are a full-time, qualifying public service employee.
- **Current Status of PSLF:** It is, as yet, unclear how much money will be forgiven under PSLF. As we approach 2017's first class of eligible borrowers, there have been proposals in the House to cut the program entirely, as well as to cap the program (as in President Obama's recent budget proposals) at $57,500 (the maximum amount of money an undergraduate student can borrow).

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[4] 20 U.S.C. § 1087(e)(m)

[5] The information in this section, unless otherwise noted, was provided by The U.S. Department of Education, *available at* https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/public-service.

[6] Exhaustive list *available at* https://studentaid.ed.gov/sa/glossary#Qualifying_Public_Services.

High Level Overview: Potential Solutions

Identified Problem	**Potential Solution**

Amount of Available Federal Loans Too High and Can Encourage Larger Tuition Increases or Irresponsible Behavior by Borrowers	• Consider a more realistic cap on amount of grad school loans
	  ○ e.g, cap at median public school tuition and reasonable living expense, perhaps by geographic area similar to manner in which federal per diem rates are determined (http://www.gsa.gov/portal/category/104711)
	  ○ keep in mind degree/program cost differentiation and public v. private cost difference
	  ○ Already a hard cap on amount of undergrad loans at $57,500
	• Consider an overall cap on grad school loans for people who pursue multiple graduate degrees?
	• Require More Borrower Education
	• Address concerns about Impact on Low-Income Students
	  ○ Needs to be combined with reforms regarding private educational loans so does not inadvertently lead to greater private education debt without same protections
	  ○ Policies should encourage more scholarships based on need (rather than merit) and aid as opposed to loans-what can we do to incentivize this with the schools?
	  ○ Require some minimum percentage of scholarship aid need based?
	• Reduce interest rates on student loans and identify alternative sources of funding for programs such as Pell Grants and PSLF

Repayment and Forgiveness Programs for Federal Loans Too Complicated and Take Too Long for Forgiveness, and Any Forgiveness is Taxable to Borrower	• Consolidate programs to one payment plan for federal loans that is based on a reasonable % of income • 20 year maximum repayment schedule before forgiveness • Any loan forgiveness at end of term should not be taxable (as is the case with PSLF already) • Use tax code to incentivize more employers to offer repayment assistance as tax-free benefit
Not Enough Accountability for Schools Who Raise Tuition at Excessive Rates or Have Poor Employment Outcomes for Graduates	• Require “skin in game” for schools to receive federal loan payments ○ Sliding scale of money that school must be on hook for on defaults? (issue: defaults are a lagging indicator)

	- For example, below a certain threshold number school might not have to contribute, then a sliding scale percentage starting at 5% if above median default rate with higher amounts the more above that rate, and cut off from federal loan eligibility above that - Have other triggers for skin in the game? - See: Dept of Ed new rules which include accreditation flags and lawsuit triggers for review of a school - Be cognizant of law schools' status i.e. "in crisis," trying to downsize but hard to turn back tuition increases already done-can we stem the tide?
Public Service Loan Forgiveness Faces Longer-Term Uncertainty As Currently Structured	- Retain 10 year forgiveness schedule to encourage people to pursue public service careers - Perhaps put limits on forgiveness for people above certain income level or restrict definition of who is eligible for forgiveness - Caps should be looked at carefully taking into account the reasonable cost of graduate degrees and impact of interest rate accumulation; putting more realistic caps on front end a fairer way to address that than on the forgiveness side
Private Educational Loans Get Same Special Treatment As Federal Loans Against Discharge in Bankruptcy Without the Corresponding Protections and Forgiveness Options	- Take away special bankruptcy protection for private educational loans - Market discipline will then better limit those loans based on likelihood of repayment

Examples of Current Legislative Efforts

1. H.R. 3861 "Employer Participation in Student Loan Assistance Act" (Rep. Rodney Davis):
    a. Extends tax exclusion for employers providing assistance to employees in repaying student loans
2. S. 2191 "Partnerships Act" (Senate version of H.R. 3861, Sen. Ron Wyden):
    a. Extends tax exclusion for employers providing assistance to employees in repaying student loans
    b. Includes tax exclusions for the discharge of certain public interest student loans
3. S. 1873 "Protect Student Borrowers Act of 2013" (Sen. Jack Reed):
    a. Amends Higher Education Act of 1965 to require higher educational institutions benefiting from Federal assistance to accept "risk-sharing requirements" that establishes a maximum default rate for student borrowers that schools must not exceed, or else must pay a % of the defaulted balance
4. S. 2432 "Bank on Students Emergency Loan Refinancing Act" (Sen. Elizabeth Warren):
    a. Allows student borrowers with outstanding debt to refinance their loans at a lower interest rate as dictated by law or regulation, and allows private loans to be refinanced as Federal loans
    b. Incorporate income-based loan disbursements and interest rates
    c. Requires qualified borrowers to undergo loan counseling prior to refinancing
    d. Eliminates tax loopholes for millionaires and billionaires

5. H.R. 1713 "Student Loan Repayment Assistance Act of 2015" (Rep. Scott Peters):
    a. Excludes as income any money meant to assist in loan repayment
6. H.R. 449 "Discharge Student Loans in Bankruptcy Act of 2015" (Rep. John Delaney):
    a. Amends federal bankruptcy code to allow the discharge of student loans in bankruptcy
7. S. 2677 "In the Red Act of 2016" (Sen. Tammy Baldwin):
    a. Combining many existing House and Senate bills, it seeks to increase Federal funding based on increases in State funding to incentivize increased State educational appropriations
    b. Seeks to reduce interest rates on loans and to increase the Pell Grant to match inflation
8. H.R. 1330 "The Student Loan Fairness Act" (Rep. Karen Bass):
    a. "10-10" standard: 10 years of payments at 10% of discretionary income; remainder is forgiven
    b. Caps Federal interest rate at 3.5% and allows some private loans to be refinanced as Federal loans
    c. Reduce employment time period until forgiveness for those employed in a public service career
    d. Promotes financial responsibility of higher education institutions by incentivizing them to educate students on the implications of their education costs and limit tuition increases
9. HELP (Higher Education Loan Payments) for Students and Parents Act (Rep. Bob Dold):
    a. Excludes from income the amount that an employer contributes towards an employee's student debt repayment (current law recognizes these contributions as taxable income to the employee)
    b. Provides a tax credit to employers based on the amount contributed towards an employee's student debt repayment
    c. Excludes from income the amount that an employer contributes to a college savings account (529 plans) that an employee sets up for their child
    d. Provides a tax credit to employers based on the amount contributed to a 529 plan that an employee sets up for their child's college education
10. Mike Quigley (no bill yet?): allow students to refinance both federal and private student loans to a lower rate while expanding Pell Grants and making community college free for those with at least a B average (like at Chicago City Colleges currently)