

Student Loans, Politics, and the Crisis of Legal Education in the United States

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INTRODUCTION

US law does not guarantee access to free higher education. As a result, anyone who aspires to pursue their studies beyond high school is aware that such a decision ordinarily involves a financial investment.¹

American legal education is carried on the graduate level, future lawyers must first obtain a bachelor's degree (through college, usually in four-year, tuition-based programs), study hard and get satisfactory grades, pass the Law School Admission Test and only then enter the law school they are accepted by and, in many ways, can afford.

The costs of studying law in the United States are very high, and the better the school, the more expensive it becomes. In addition to tuition, students have to pay for a place in a dormitory on campus or rent an apartment and cover other living expenses (room and board). Annual tuition at top universities fluctuates even around \$70,000. For example, in 2020/2021 Yale University the winner of the ranking of the top one hundred law schools valued annual tuition at \$68,117. At the University of Pennsylvania, which is number six in the ranking, tuition was \$68,130, and at Columbia University, ranked fourth—\$74,995. At these schools, tuition is the same for all applicants. Other universities tempt their state residents with cheaper fees. For example, William and Mary Law School (thirty-fifth place in the ranking) charges tuition fees of \$44,620 to

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¹ Options of free education are currently limited to tuition-free colleges. Brianna McGurran, “What Are Tuition-Free Colleges?”, *Forbes*, September 30, 2022, <https://www.forbes.com/advisor/student-loans/tuition-free-college/>.

out-of-state students and \$35,000 to in-state residents, while Florida State University (forty-eighth place in the ranking) offers tuition at \$30,334 and \$25,834, respectively.²

On top of the cost of tuition, there is also the cost of living, the aforementioned room, and board, which means an additional minimum of several thousand dollars a year. As a point of reference, let's take the average annual earnings of American citizens, which in 2019 amounted to \$51,916.³

These rates do not necessarily limit access to legal education solely to wealthy candidates, as the long-time tradition proves that taking student loans (in various forms, mostly deriving from federal funds) to cover education expenses is the most popular way to pursue a legal education career.

Throughout the United States, there is an ongoing, and in recent years particularly lively and heated, debate over the need to reform and strengthen the system of educating future lawyers. This necessity is dictated by the growing crisis in the legal education sector. First of all, college and then law school are extremely expensive, and the education gained no longer guarantees a properly paid job, or sometimes even any job at all, especially after the 2008 economic crisis.⁴ It is worth adding that student loans do not qualify as grounds for bankruptcy for an individual, which also raises many controversies and legal problems.⁵ The knowledge of having taken a student loan fundamentally affects the decisions made by young lawyers in the financial, personal, and professional spheres.⁶

In 2011, *The New York Times* declared that American legal education was in crisis, pointing to the economic downturn that had left graduates with loans and "bleak job prospects" that in turn led to lawsuits against law schools.⁷

² "Best Law Schools 2022," US News and World Report, accessed December 22, 2022, <https://www.usnews.com/best-graduate-schools/top-law-schools/law-rankings>.

³ "Measures Of Central Tendency For Wage Data," Social Security Administration, accessed December 22, 2022, <https://www.ssa.gov/oact/cola/central.html>.

⁴ The debate is taking place in major US media outlets such as *The New York Times* and *The Washington Post*, as well as among the profession and faculty in a series of articles published in US legal periodicals. See "Legal Education Reform," *The New York Times*, November 26, 2011, Section A, 18, David Lat, "Law School Is Way Too Expensive. And Only the Federal Government Can Fix That," *The Washington Post*, April 8, 2015, A12, David Barnhizer, "Redesigning the American Law School," *Michigan State Law Review* 249 (2010): 250–310; Mary B. Beazley, "Finishing the Job of Legal Education Reform," *Wake Forest Law Review* 51, no. 101 (2016): 275–323.

⁵ John A. E. Pottow, "The Nondischargeability of Student Loans in Personal Bankruptcy Proceedings: The Search for a Theory," *Canadian Business Law Journal* 44, no. 2 (2006); Preston Mueller, "The Non-Dischargeability of Private Student Loans: A Looming Financial Crisis," *Emory Bankruptcy Development Journal* 32, no. 1 (2015); John P. Hunt, "Help or Hardship?: Income-Driven Repayment in Student-Loan Bankruptcies," *Georgetown Law Journal* 106, no. 5 (2018).

⁶ Recent surveys show, for example, that nearly half of young law students are postponing decisions to expand their families precisely because of this loan and just over half are giving up on buying their own home. American Bar Association, *ABA Profile of the Legal Profession 2020* (2020), 24, accessed December 22, 2022, <https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf>.

⁷ "Legal Education Reform," *The New York Times*, November 26, 2011, <https://www.nytimes.com/2011/11/26/opinion/legal-education-reform.html>.

Over a decade later, it is hard to discern any optimistic scenario, and *The New York Times* declaration seems to constitute a relevant warning to applicants considering legal education or any higher education in general and to the politicians hearing the frustrated voices.

This chapter will provide an overview of the financing system of higher education in the United States, show the numbers concerning law student loans, together with the major problems associated with those numbers in practice, and point to the political aspects of addressing the problem, with a particular focus on the most recent solutions offered by the Biden administration. The aim of the chapter is to analyze the issue of law student debts and try to see whether and to what extent they influence the legal education crisis. Factual and legal state of affairs in the chapter is current as of December 30, 2022.

FINANCING HIGHER EDUCATION IN THE USA

The possibilities of financing higher education in the USA can be generally divided into three groups: (1) own/family funds, (2) grant programs/scholarships, and (3) student loans.

The first group covers situations where funds are provided by students themselves or are organized within the family, meaning that no outside resources are necessary.

The second group concerns a wide variety of options, depending on the state where the university is located, as well as on the scholarship programs that can be offered by the school, by the state, by private or public institutions and organizations, and in which the money granted does not have to be repaid.⁸

The third group is the key one for this chapter and refers to loans provided primarily by the federal government. Since the mid-1960s, over 90% of the total money loaned for education purposes has come from the federal government through the US Department of Education offering fixed-rate loan programs.⁹

The federal law basis for the loans is the 1965 Higher Education Act¹⁰ (HEA) governing the administration of federal higher education programs, including the provision of financial assistance to students. Title IV covers Students Assistance and includes several loan programs, including the William D. Ford Federal Direct Loan Program (Direct Loan), which, according to the data, is the largest program, and several smaller ones, for example, Federal Family Education Loans or Perkins Loans, with

⁸ Federal Student Aid website provides a search options for all kinds of scholarship programs, December 22, 2022, <https://studentaid.gov/understand-aid/types/scholarships>.

⁹ US Department of Education, accessed December 22, 2022, <https://www2.ed.gov/fund/grants-college.html?src=rn>.

¹⁰ Higher Education Act, Pub. L. 89–329.

the latter currently operating.¹¹ Direct Loan allows students and also their parents to borrow money directly from the Department of Education in various forms of loans.

It needs to be underlined that there are also very popular non-loan (and as a result, with no repayment obligation) support programs offered by the Department of Education. These are known as Pell Grants and are addressed to candidates who display exceptional financial need and have not gained a bachelor's, graduate, or professional degree.¹²

In addition to the federal loan options, the remaining borrowing possibilities consist of loans coming from private institutions and banks with various interest rate proposals.

The federal grant or loan option is chosen by the majority of students, including those from families that could never raise the required sum for higher education, but also from wealthier families deciding that a long-term loan is a better option. The consequences of those decisions are reflected in the long-term obligations to repay the money. In fact, famous American politicians, including lawyers, have publicly admitted to their struggles with paying off their student debts.¹³

The general rules of higher education financing apply also to financing legal education. As shown in the Introduction, an investment in becoming a lawyer is a serious one and requires a good planning strategy.

FINANCING LEGAL EDUCATION IN THE USA

According to the Law Insider Dictionary, legal education means education at an accredited law school and any bar review preparation courses for the state bar examination.¹⁴ To become a practicing lawyer in the United States, a JD (doctor of jurisprudence) degree is required, followed by passing the bar exam. In most states, a JD degree must be obtained from an ABA-accredited law school. Such a requirement is obligatory for those seeking to take the bar exam in a particular state.¹⁵ The bar exam is based on the knowledge acquired in the course of legal education provided

¹¹ Alexandra Hegji, Kyle D. Shohfi, and Rita R. Zota, *Federal Student Loan Debt Cancellation: Policy Considerations*, CRS Report 2022, no. R47196, 4.

¹² Federal Pell Grant Program, accessed December 22, 2022, <https://www2.ed.gov/programs/fpg/index.html>.

¹³ Barack Obama, graduate of The Harvard Law School finished paying off his debt in his forties. See "Remarks by the President on College Affordability—Buffalo, NY," The White House, August 22, 2013, <https://obamawhitehouse.archives.gov/the-press-office/2013/08/22/remarks-president-college-affordability-buffalo-ny>.

¹⁴ "Legal education," in *Law Insider Dictionary* (online), <https://www.lawinsider.com/dictionary/legal-education>.

¹⁵ "Approval of Law Schools," American Bar Association, accessed December 22, 2022, https://www.americanbar.org/groups/legal_education/resources/frequently_asked_questions/.

by law schools, which is usually in the form of a three-year JD program consisting of a particular number of credits assigned to courses. Each credit costs a certain amount of money, which adds to the tuition costs.

Law students, as graduate students, continue their higher education at law school and seek ways to finance their studies, they usually choose the possibilities summarized below.

The first one is scholarships and grants. As indicated earlier, a scholarship or grant is an award that does not require repayment. It may be awarded based on need, merit, or both. Although most scholarships are conferred by individual law schools, some organizations may also have scholarships to offer. Among these are local bar associations, fraternities, sororities, and other social clubs, religious or business organizations, and the US Department of Veterans Affairs. The availability of scholarships and grants varies and is usually quite limited, but certainly worth researching. Law school admission and financial aid offices can provide information about the resources available. It has to be noted that many scholarships and grants are merit-based and may require a certain level of academic performance. Some schools award merit money shortly after admission, while others may require separate scholarship application forms, and others award need-based institutional aid. Several companies also offer tuition reimbursement benefits to their employees and to their employees' dependents.¹⁶

Another option that allows law students in the United States to cover the costs of starting or continuing their studies is federal loans deriving from the general federal programs based on HEA through the Direct Loan. For legal education, we can distinguish between Federal Direct Unsubsidized Loan and Federal Direct PLUS Loan for Graduate Students (Grad PLUS).¹⁷

According to Federal Direct Unsubsidized Loan, law students may borrow up to a total of \$20,500 each year through the Federal Direct Unsubsidized Loan program from the US Department of Education. Information about the interest rate and fee structure for this loan is available at studentaid.gov. Interest starts accruing as “simple” interest (it is not compound interest while studying in law school) once the loan is disbursed. This loan has a six-month grace period before repayment begins. Flexible repayment plans exist, including options based on household income; payment relief (deferment or forbearance) is available when experiencing financial hardship during repayment, and refinancing is possible through the Federal Direct Consolidation Loan program. This loan also qualifies for inclusion in the Public Service Loan Forgiveness (PSLF) program.¹⁸

¹⁶ Based on: Law School Admission Council, *Financial Aid for Law School: A Preliminary Guide* (2016), 4, accessed December 22, 2022, <https://cas.nyu.edu/content/dam/nyu-as/casPrelaw/documents/financial-aid-brochure.pdf>.

¹⁷ The terms “subsidized” and “unsubsidized” refer to the terms of the loans, as all federal loans incur subsidy costs on the part of the federal government.

¹⁸ Law School Admission Council, *Financial Aid for Law School: A Preliminary Guide*, 5.

Significantly different from the Federal Direct Unsubsidized Loan is the Federal Direct PLUS Loan for Graduate Students (Grad PLUS). The Graduate Federal PLUS Loan is a credit-based loan to assist students with the costs of higher education. Eligible graduate loan borrowers are those who are enrolled at least part-time (six credits) per semester in a graduate or professional degree program that leads to a master's, law, or medical degree. The credits must be accepted towards the degree program. The student must be a US citizen or permanent resident, must not have an outstanding balance from a prior period of enrollment, and must be making satisfactory academic progress per the school guidelines.¹⁹

Summing up, the two main types of federal student loans offered by the US Department of Education are Direct Loans and Direct PLUS Loans with the former offering limited amounts and the latter providing unlimited borrowing opportunities.²⁰ It is worth pointing out how taking a loan translates statistically into installment repayment by students

Table 1. Example of monthly repayment amounts for different borrowing totals over ten- and twenty-year terms at a 5% interest rate

Borrowing Total (\$)	Monthly Payment (\$) (ten-year term)	Monthly Payment (\$) (twenty-year term)
10,000	106	66
20,000	212	132
30,000	318	198
40,000	424	264
50,000	530	330
60,000	636	396
70,000	742	462

Source: Data from Trustco Bank, *Federal Student Loans: Direct and PLUS Loans*. Accessed: December 22, 2022, <https://www.trustcobank.com/pdf/Financial%20Literacy/Education%20Planning/Federal%20Student%20Loans%20Direct%20and%20PLUS%20Loans.pdf>.

¹⁹ Boston University Financial Assistance, accessed December 22, 2022, https://www.bu.edu/financial/files/2021/05/plusrequest_grad.pdf.

²⁰ For dependent undergraduate students, the Direct Loan limits are \$5,500 for freshmen (including up to \$3,500 subsidized); \$6,500 for sophomores (including up to \$4,500 subsidized); and \$7,500 for juniors and seniors (including up to \$5,500 subsidized), with a maximum loan limit of \$31,000. For independent undergraduate students and dependent students whose parents are unable to obtain a PLUS Loan, the Direct Loan limits are \$9,500 for freshmen (including up to \$3,500 subsidized); \$10,500 for sophomores (including up to \$4,500 subsidized); and \$12,500 for juniors and seniors (including up to \$5,500 subsidized), with a maximum loan limit of \$57,500. For graduate students, the Direct Loan limits are \$20,500 per year (or \$40,500 for certain medical training), with a maximum loan limit of \$138,500 (or \$224,000 for certain medical training), including undergraduate borrowing. PLUS Loans have no dollar borrowing limits per year; graduate students and parents are able to borrow up to the full cost of attendance (minus other financial aid received).

Federal student loans offer deferment options, fixed interest rates, subsidization in some cases, and, in most cases, students will not be required to have a co-signer. These options available with federal student loans are intended to assist borrowers and prevent them from entering default on their loans. Private loans, on the other hand, do not provide many of these protections and are more expensive for borrowers.²¹

Often, private student loans have variable interest rates, require a co-signer, and do not offer forbearance or deferment options. These differences make federal loans the better option for most student borrowers. However, some students still require private loans to cover additional costs not covered by federal loans, grants, or scholarships, or choose private loans because they are uninformed of the risks.²²

The options above are not exclusive ways to cover the costs of legal education. An example of another possibility to settle for financial assistance (at least to some extent) is The Federal Work-Study Program (FWS). The FWS is a federal needs-based financial aid program that provides funds for students to work within the school or outside of the school with a non-profit organization or government agency.²³ Many students work within the law school as research assistants, while other students work for outside non-profit organizations and government agencies.²⁴

A recently established financial aid opportunity for law students in the United States is Veterans Educational Assistance. The US Department of Veterans Affairs administers several educational benefit programs for veterans. These include, but are not limited to, the Montgomery GI Bill and the Post-9/11 GI Bill (9/11 GI Bill). The 9/11 GI Bill assists eligible individuals with tuition and fees, a monthly housing allowance, an annual books and supplies stipend, and a one-time rural benefit payment for eligible individuals. In addition to the 9/11 GI Bill providing an education benefit for eligible veterans, the education benefit may also be transferred to dependents under certain conditions. The 9/11 GI Bill also has a provision that established the Yellow Ribbon Program. This program assists with funding tuition and fee expenses not covered by the 9/11 GI Bill. The benefits of this program are exclusively for eligible veterans.²⁵

²¹ Wyndham Hubbard, "Understanding the Modern Private Student Loan," *Review of Banking & Financial Law* 37, no. 1 (2017): 20.

²² "What Are the Different Ways to Pay For College or Graduate School?," Consumer Financial Protection Bureau, August 4, 2017, <https://www.consumerfinance.gov/ask-cfpb/what-are-the-different-ways-to-pay-for-college-or-graduate-school-en-545/>.

²³ Authorized under Title IV of the 2008 Higher Education Opportunity Act (HEOA), Public Law 110-315.

²⁴ An example of such a program is well described by the "Financial Aid. Federal Work Study Program," Temple University Beasley School of Law, accessed December 22, 2022, <https://law.temple.edu/resources/financial-aid/work-study/>.

²⁵ Law School Admission Council, *Financial Aid for Law School: A Preliminary Guide*, 5. For more information on veterans' educational assistance, check with the US Department of Veterans Affairs and the Offices of Veterans Affairs on the campuses of the law schools that students are applying to.

Even though the list of options is quite extensive, reality and statistics prove that the vast majority of law students (or students choosing different majors on both the undergraduate and graduate levels) apply for student loans from the federal government.²⁶

IMPACT OF STUDENT LOANS ON LEGAL EDUCATION IN THE UNITED STATES

Research conducted by the American Bar Association between 2003 and 2020 reveals that the amount borrowed by many law students exceeds \$80,000. It went on to point out that in the last ten years, the cost of living in the US has risen 28%, while the cost of tuition for public law schools has risen one hundred 34% (for residents) and 100% (for non-residents) and private law school tuition has increased 76%. The same research indicates that the average total debt of a law school graduate is around \$145,000.²⁷ The survey showed that in 2020 more than 75% of respondents had at least \$100,000 in student loans on graduating; over half had more than \$150,000; more than one in four owes \$200,000 or more; over 85% of our lawyers had more than \$80,000 at graduation.²⁸ It is appalling that more than 90% of respondents came out of law school with at least \$65,000 in student loan debt. Student loan debt is a barrier to entry into the profession that nearly every law school graduate is forced to deal with. The research conducted leads to several conclusions.

Firstly, all law school graduates are impacted by student loan debt, with few exceptions. As mentioned above, after completing their legal education only about 5% of students are not obligated to repay their student loans, which is due to the lack of need to finance their studies with them.

What is more, for many, their law school debt grows after graduation. Student debt in general is increasing as more students attend college. In the late 1980s and early 1990s, most high school students did not enroll in college or university; of those who did, less than half borrowed money to do so. By 2021, nearly two-thirds of recent high school graduates were enrolled in college, and most had taken out student loans.

²⁶ According to most recent statistics, about 92% of all student debt are federal student loans. Alicia Hahn and Jordan Traver, "2022 Student Loan Debt Statistics: Average Student Loan Debt," *Forbes*, September 19, 2022, <https://www.forbes.com/advisor/student-loans/average-student-loan-statistics/>.

²⁷ American Bar Association. *Lifting the Burden: Law Student Debt as a Barrier to Public Service—The Final Report of the ABA Commission on Loan Repayment and Forgiveness* (American Bar Association, 2021).

²⁸ Even accounting for inflation, \$80,000 in 2003 would now be about \$114,000. In short, a four conscious-shocking debt load for new attorneys in the early 2000s would be a windfall blessing for today's graduates.

The American Bar Association has also deduced the following from its research: student loans deeply impact the personal lives and the decisions taken by new lawyers; student loans force lawyers to take unwanted career paths; student loans take a disproportionate toll on lawyers of color; student loans negatively affect mental health; all law school graduates are impacted by student loan debt, with few exceptions; and student loans take a disproportionate toll on lawyers of color.²⁹

Whether at public or private law schools, many students incur life-changing debt to attend. While borrowing averages provide information about the entire population, they do not aptly convey the challenges faced by individual students. Some have undergraduate debt, others take out private loans to cover expenses related to taking the bar exam. Further, a vast borrowing range that lurks beneath school-wide and nationwide averages obscures students who borrow more than \$250,000. Salary outcomes differ by law school and geography, but most graduates who borrow will face some level of financial difficulty. The monthly payments are based on the resultant debt from the average amount borrowed across all law schools (\$120,000), as well as the tenth and ninety percentile law schools (\$77,000 and \$153,000, respectively). Four incomes are based on the 55%+ of law schools that publicly disclose 2016 graduate salary incomes. Each is the median value of the respondent schools for the given statistic (twenty-fifth, fiftieth, seventy-fifth, mean). The fifth income is the very high-end of 2016 salary outcomes.³⁰

According to the Average Law School Debt research carried out by the Education Data Initiative, the average debt among law school graduates is presented as follows in table 2.

Table 2. Average debt among law school graduates

Year	Contemporary (\$)	Adjusted for Inflation (\$)
2000	57,500	102,100
2004	82,100	132,000
2008	94,400	134,800
2012	140,400	183,900
2016	142,900	172,000
2020	160,000	182,700

Source: Data from "Average Law School Debt," Education Data Initiative, June 15, 2023, <https://educationdata.org/average-law-school-debt>.

²⁹ "Survey Reveals the Extent and Negative Effects of Law Student Debt, Recommends Solutions," American Bar Association, October 26, 2020, <https://www.americanbar.org/news/abanews/aba-news-archives/2020/10/survey-reveals-the-extent-and-ill-effects-of-law-student-debt--r/>.

³⁰ "Cost of Attendance," Law School Transparency, accessed December 22, 2022, <https://www.lawschooltransparency.com/trends/costs/debt>.

The research conducted by the Education Data Initiative yields the following findings:

- 45% of law school students begin their post-secondary education in debt,
- 41.9% of indebted law school graduates say they owe as much or more than they did at graduation,
- 39% of indebted lawyers have postponed or decided not to have children due to their law school debt,
- 26.7% of new lawyers decided to postpone marriage or remain unwed as a result of their debts, and 51.8% have put off purchasing property,
- 25.9% of indebted law school graduates choose a job that will give them a better chance of loan forgiveness than the job they actually wanted,
- 100% of law school graduates from Western New England University are in debt,
- Law school graduates from the University of Detroit Mercy are least likely to graduate in debt,
- Law school graduates from Southwestern Law School in Los Angeles borrow the most, at an average of \$188,160 each,
- \$46,010 is the lowest average debt among new lawyers, which is owned by 64% of graduates from Brigham Young University.³¹

In addition to the raw numbers, the voice of the students themselves who have taken advantage of the student loan option is important. In a survey conducted by the American Bar Association, we can find student statements that allow us to reflect on the statistics on the real life of young lawyers and legal education. Students comment on student loans and their impact on their lives as follows: “I am not able to help people who really need it because I have to focus on helping people who can pay the most. Those people typically are not the most deserving”; “Dramatically effects (sic) my everyday decisions in my career. I have NO flexibility in my career path because I am saddled with this debt”; “I chose a job in public interest because I wanted it but now have limited options for career advancement before the ten years is up”; “I chose and stayed in a job for years that was a bad environment and turned down a good job that didn’t pay enough”; “I don’t plan to leave my Big Law position until I am in a comfortable position with debt, homeownership, etc.”; “I took a job in a totally different career to make \$75,000 per year with benefits rather than earning \$50,000 per year as an attorney with zero benefits”; “Though I want to do public service, I am open to other opportunities. But I have restricted my jobs to only public service jobs for loan forgiveness purposes.”³²

³¹ “Average Law School Debt.”

³² American Bar Association—Young Lawyers Division, *2020 Law School Student Loan Debt*, accessed December 22, 2022, https://www.americanbar.org/content/dam/aba/administrative/young_lawyers/2020-student-loan-survey.pdf.

It is also important to look at the number of students in the United States, both those associated with legal education and those studying in other majors. According to College Enrollment & Student Demographic Statistics, the total number of students in the United States is shown in table 3.

Table 3. Historical student enrollment

Year	Undergraduate (in millions)	Graduate (in millions)	Total (in millions)
2010	18.1	2.9	21.0
2015	17.0	3.2	20.0
2016	16.9	2.9	19.8
2017	16.8	3.0	19.8
2018	16.6	3.0	19.6
2019	16.6	3.1	19.6
2020	15.9	3.1	19.0

Source: Data from “College Enrollment & Student Demographic Statistics,” Education Data Initiative, accessed December 22, 2022, <https://education-data.org/college-enrollment-statistics>.

Three main conclusions can be drawn from the above table. First, the number of undergraduate students declined from 2010 to 2020. Second, the number of graduate students from 2010 to 2020 remained stable, with a noticeable slight increase. Third, the total number of students from 2010 to 2020 fell by about two million. The number of law students in the United States is shown in table 4.

Table 4. Number of laws first-year students and JD students

Year	First-Year Students	JD Students
2010	52,404	147,525
2011	47,556	145,265
2012	43,171	138,081
2013	39,678	127,626
2014	37,917	118,833
2015	37,104	114,961
2016	37,105	111,095
2017	37,320	110,183
2018	38,391	111,620
2019	38,286	112,878

Source: Data from “Enrollment and Admission Standards,” Law School Transparency, accessed December 22, 2022, <https://www.lawschooltransparency.com/trends/enrollment/all>.

As law schools were pressured to become more transparent about job outcomes beginning in 2010, the media and prospective law students took notice of inflated enrollment, inadequate job prospects, and high prices—and enrollment dropped. After 1L enrollment peaked in 2010 at 52,404 new students, enrollment fell dramatically in each of the next three years, which was then followed by four years of even lower, but steady, enrollment between 37,000 and 38,000 new 1Ls. Then, in 2018, following a modest increase in demand for law school, 1L enrollment increased by 2.7% (992 students). In 2019, 1L enrollment decreased by 108 students, or 3%.

Declining enrollment may provide advantages for prospective law students. Fewer applicants means it is easier to get into a more prestigious school. With law schools competing to attract qualified applicants, strong students have more generous scholarship offers. At graduation, lower enrollment means fewer graduates to compete with for entry-level jobs. For law schools, however, drastically lower enrollment spells financial trouble when they cannot quickly shed costs or raise revenue, whether through tuition increases, fundraising, or borrowing. A law school that faces an unplanned or unwanted drop in first-year enrollment will feel the financial effect for three (or four) years. When first-year enrollment falls in sequential years, those effects multiply. Today, overall JD enrollment has roughly stabilized at a level not seen in over forty years. Compared to the peak in JD enrollment in 2010 (147,525 students), overall JD enrollment was down 23.5% in 2019. To say the least, law schools are facing incredible financial pressure, especially as the average price paid declines.³³

STUDENT LOANS AND CURRENT POLITICS

In March 2020, in the light of Covid-19 pandemic, President Trump announced a temporary suspension of all student loans as one of the anti-pandemic mechanisms through the Coronavirus Aid, Relief, and Economic Security Act³⁴ (CARES) passed by Congress. The law provided for temporary relief on federal student loans owned by the Department of Education through the suspension of loan payments, stopped collections on defaulted loans, and a 0% Interest rate. The extensions of the relief were further granted several times by executive orders of Presidents Trump and Biden.³⁵

³³ Enrollment data come from the American Bar Association. All Non-JD totals were computed by the ABA. Total JD enrollment totals before 2011 were computed by the ABA, but the totals in 2011 or later were totaled by LST, which aggregates individual school JD enrollment as reported by the ABA. First-year enrollment totals before 2010 were computed by the ABA, but the totals in 2010 or later were totaled by LST, which aggregates individual school first-year enrollment as reported by the ABA.

³⁴ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116–136.

³⁵ “How Did Provisions of the 2020 Coronavirus Aid, Relief, and Economic Security Act (CARES) Act Related to Student Loan Debt Affect BEA’s Estimates of Personal Interest Payments?”, Bureau of

Student loans became a highly regarded political topic, especially within the Democrat party, only in the 2020 presidential primaries as the problem grew and more people found themselves struggling to find money to invest in their children's higher education. Student debt concerns about 15% of the adult population in the United States, which is around 45 million people, equalling the same number of possible voters. The estimation shows a total of \$1.6 trillion in student debts.³⁶

All serious democratic candidates were raising the issue in their public debates: from Bernie Sanders calling for total forgiveness of all student debts and for free education, through Elizabeth Warren's promise to forgive debts up to \$50,000, to the more moderate position of Joe Biden, who supported education in community colleges but was far from promising total forgiveness of the debts, instead leaning toward smaller sums in relief.³⁷

As the presidential candidate, Joe Biden had to address the issue in his campaign. He kept extending the suspension of the loan payments granted in 2020 but eventually had to come up with a final solution. Three ideas brought by various institutions and organizations appeared on the table during campaign discussions: (1) to forgive student debts up to \$10,000, (2) to forgive student debts up to \$50,000, and (3) to eliminate the entire student debt in the country.³⁸

In addition, the question of whether the debt should be forgiven for all or only those in a worse economic situation needed to be answered. The best way to do this would be for Congress to act again and decide (through the amendment of existing law or through a new act). However, in the solidly divided House of Representatives and Senate, there was no political consensus to pass the relevant law. Even Democrats were divided between those believing that only part of the debt should be forgiven and only under some circumstances, and those who argued for total and unconditional forgiveness.³⁹ President Biden had to act on his own, under pressure that his actions would be subject to legal claims, and that the cases would be taken to courts as presidential actions in violation of the law.

The final move came in August 2022, along with the latest extension of the pay-off relief. President Biden decided to act based on the Higher Education Relief

Economic Analysis, US Department of Commerce, accessed December 22, 2022, <https://www.bea.gov/help/faq/1407>.

³⁶ Hegji, Shohfi, and Zota, *Federal Student Loan Debt Cancellation: Policy Considerations*, 1.

³⁷ "2020 presidential candidates on student loan debt," in *Ballotpedia—Encyclopedia for American Politics* (online), accessed December 22, 2022, https://ballotpedia.org/2020_presidential_candidates_on_student_loan_debt.

³⁸ Zack Freidman, "Student Loan Forgiveness of \$50,000 Gets Renewed Push," *Forbes*, June 4, 2022, <https://www.forbes.com/sites/zackfriedman/2022/06/04/student-loan-forgiveness-would-cancel-student-loans-for-this-many-borrowers/?sh=2cf559756588>.

³⁹ Douglas N. Harris, "Democrats' high-wire act on student loan forgiveness," *Brookings*, September 20, 2022, <https://www.brookings.edu/blog/brown-center-chalkboard/2022/09/20/democrats-high-wire-act-on-student-loan-forgiveness/>.

Opportunities for Students Act⁴⁰ (HEROES) of 2003 granting the Education Department the power to “alleviate hardship” in a time of national emergency. The presidential three-part plan on student debt relief is based on actions that will provide up to \$20,000 in debt cancellation to the recipients of Pell Grants with loans held by the Department of Education and up to \$10,000 to all non-Pell Grant recipients. In addition, there is an income eligibility criterion set at a maximum of \$125,000 (\$250,000 for married couples).⁴¹

In other words, idea number one has been chosen, extended, and doubled for those with the most difficult financial situation who benefitted from the federal grant programs.

In addition, a new repayment plan is proposed by the Department of Education protecting low-income borrowers by cutting monthly payments in half for undergraduate loans. The President also announced a larger increase in Pell Grants and argued for future free education at community colleges.⁴²

The decision on the forgiveness program sparked a heated debate with strong arguments against its content and projecting immediate court rulings suspending its application, especially in Republican states which argue that Biden does not have the power to decide on student loans (the 2003 law allowed to act only in national emergencies) and call it “illegal executive overreach.”⁴³

Indeed, the lawsuits came through. In November 2022, a federal judge in Texas struck down the program in the case of a borrower who did not qualify for the full \$20,000 in debt relief and another one who was not eligible at all. The lawsuit was based on the argumentation that the presidential order violated federal procedures by denying borrowers the opportunity to provide public comment before unveiling the forgiveness program.⁴⁴

Even though the Department of Justice had filed the appeal, the Department of Education suspended acceptance of applications for the relief (with more than 26 million already filed).⁴⁵ The White House administration decided that the suspen-

⁴⁰ The Higher Education Relief Opportunities For Students (HEROES) Act, Pub. L. 108–76.

⁴¹ “President Biden Announces Student Loan Relief for Borrowers Who Need It Most,” The White House Statement Release, August 24, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/24/fact-sheet-president-biden-announces-student-loan-relief-for-borrowers-who-need-it-most/>.

⁴² “President Biden Announces Student Loan Relief for Borrowers Who Need It Most.”

⁴³ Jeff Stein and Danielle Douglas-Gabriel, “GOP States Sue Biden Administration to Overturn Student Debt Relief,” The Washington Post, September 29, 2022, <https://www.washingtonpost.com/us-policy/2022/09/29/republicans-student-loan-forgiveness-lawsuit/>.

⁴⁴ “No one can plausibly deny that it is either one of the largest delegations of legislative power to the executive branch, or one of the largest exercises of legislative power without congressional authority in the history of the United States,” argued Judge Mark Pittman of the Northern District of Texas in his legal opinion. See *Myra Brown, et al. v. U.S. Department of Education, et al.*, Order No. 4:22-cv-0908-P (November 10, 2022).

⁴⁵ Information on the Federal Student Aid website: <https://studentaid.gov/>.

sion of the payments would be extended beyond December 31, 2022, until the legal battles are resolved.⁴⁶

Moreover, the Supreme Court of the United States, based on the Department of Justice's application to intervene in another case originating in Nebraska, granted certiorari and agreed to hear the arguments in expedited review already in February 2023 to decide if the lower courts' decisions withholding the presidential program will be upheld or not.⁴⁷

CONCLUSIONS

What do the above numbers and political moves mean for the situation of law students and law graduates who borrowed federal money to pursue their plans to become lawyers?

In the United States, students can take advantage of the following financial support options for legal education: scholarships and grants, federal loans (Federal Direct Unsubsidized Loan and Federal Direct Plus Loan for Graduate Students), private loans, the Federal Work-Study Program and Veterans Educational Assistance. The most popular of these continues to be the student loan. Recent analysis shows the average debt of a law school graduate stands at around \$145,000. Taking out such a loan involves not only the obligation to repay it, but, as the American Bar Association has pointed out, also several ailments in the form of deep impact on personal lives, taking unwanted career paths, a disproportionate toll on lawyers of color, and a negative effect on mental health.

As indicated by studies conducted in the United States and presented in the article, the number of student loans is increasing, with the size of the loan itself also increasing. The study also shows that the cost of a legal education is higher in larger cities such as Los Angeles, where the cost of a law degree stands at around \$190,000 than in small cities, where the cost is around \$60,000.

The political response from the White House to the overall crisis with student loans will be eventually evaluated by the judiciary. If the US Supreme Court (controlled by the Republican presidents' nominees) joins the arguments provided by lower courts opposing the presidential loan forgiveness program, repaying these debts will be suspended temporarily, and then either a new program will be announced or no forgiveness policy will enter the scene until Congress is ready to act and pass relevant laws through bipartisan agreement. Law school students and

⁴⁶ Stacy Cowley and Zolan Kanno-Youngs, "White House Extends Pause on Student Loan Payments," *The New York Times*, November 22, 2022, <https://www.nytimes.com/2022/11/22/business/white-house-student-loan-payments.html>.

⁴⁷ *Biden, President of U.S., et al. v. Nebraska, et al.*, 22-506 (22A444), December 1, 2022.

graduates burdened with loans will have slim chances of seeing the new program contain forgiveness scopes applicable to the highest amounts.

Even in the less likely scenario, when the US Supreme Court rejects the arguments and provides a “green light” for the Biden program, then the limits of relief included there remain well below the numbers of the law school costs, as was proved in this chapter, and hardly any of the students and graduates will be eligible to apply and reduce the debt.

With all of the above, can we talk about a crisis in legal education and blame it exclusively on students’ use of student loans? The answer is: yes, we can observe the crisis in legal education, but it is linked only partly to the financial disadvantages. Student loans are crucial but are only one of the elements that affect the decline in the overall number of students in the United States, as well as the decline in law students. Other factors, such as prospects on the job market, societal attitudes towards the legal profession, and overall satisfaction with one’s own work must be considered when presenting the current picture of law education.

Summary: Higher education in the United States is not guaranteed for free. Legal education in the United States is expensive and requires future lawyers a serious financial investment—usually deriving from a loan program. This chapter will provide an overview of the financing system of higher education in the United States, show the numbers concerning law student loans together with major problems associated with those numbers in practice, and point to the political aspects addressing the problem, with particular focus on the most recent solutions offered by the Biden administration. The chapter aims to analyze the issue of law student debts and try to see if and to what extent they influence the legal education crisis.

Keywords: American law, student loans, legal education

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