

108TH CONGRESS  
1ST SESSION

# S. 407

To amend the Higher Education Act of 1965 to provide loan forgiveness for attorneys who represent low-income families or individuals involved in the family or domestic relations court systems.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 13, 2003

Mr. DEWINE (for himself and Mr. ROCKEFELLER) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend the Higher Education Act of 1965 to provide loan forgiveness for attorneys who represent low-income families or individuals involved in the family or domestic relations court systems.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. FINDINGS.**

4       Congress makes the following findings:

5               (1) Across the United States, family, juvenile,  
6       and domestic relations courts experience shortages  
7       of qualified attorneys to represent the interests of

1 men, women, and children involved in their court  
2 systems.

3 (2) The Constitution of the United States pro-  
4 vides that everyone charged with a crime is entitled  
5 to adequate counsel.

6 (3) In 1967, the Supreme Court held, for the  
7 first time, that children were persons under the pro-  
8 visions of the 14th amendment to the Constitution  
9 relating to due process, and entitled to certain con-  
10 stitutional rights.

11 (4) In the case of *In re Gault* (387 U.S. 1), the  
12 Supreme Court held that juveniles are entitled to no-  
13 tice of the charges against them, legal counsel, ques-  
14 tioning of witnesses, and protection against self-in-  
15 crimination in a hearing that could result in commit-  
16 ment to an institution.

17 (5) Studies have indicated that many juveniles  
18 do not receive the due process protections to which  
19 they are entitled. More importantly, they frequently  
20 do not receive effective assistance of legal counsel.

21 (6) Lawyers who represent juveniles often labor  
22 under enormous caseloads with little training or sup-  
23 port staff.

24 (7) Public defenders who represent juveniles  
25 have, on average, more than 500 cases per year,

1 with more than 300 of those cases being juvenile  
2 cases.

3 (8) Public defenders often lack specialized  
4 training in representing juveniles. Approximately  
5 one-half of public defender offices do not even have  
6 a section devoted to juvenile delinquency practice in  
7 their office training manuals.

8 (9) Due to relatively low wages, there is a na-  
9 tionwide shortage of family law attorneys willing to  
10 represent juveniles.

11 (10) The shortage of family law attorneys re-  
12 sults in a severe, disproportionate, and negative im-  
13 pact upon children, impoverished parents, and vic-  
14 tims of domestic violence.

15 (11) Children involved in family court cases are  
16 assigned attorneys to protect their interests. Adults  
17 are entitled to representation by attorneys. The lack  
18 of available representation by family law attorneys  
19 causes children to spend more time in foster care be-  
20 cause cases are adjourned or postponed due to lack  
21 of appropriate representation. Victims of domestic  
22 violence seeking protection from their abusers often  
23 will remain in the abusive situation, choose to rep-  
24 resent themselves, or wait until an attorney becomes  
25 available, all of which risk their personal safety.

1           (12) In 1995, 3,100,000 children were reported  
2           to child protection agencies as being abused or ne-  
3           glected, which is about double the number reported  
4           in 1984. Of these, 996,000 children were confirmed  
5           after investigation to be abused or neglected. A 1996  
6           study by the Department of Health and Human  
7           Services found that the number of children seriously  
8           injured nearly quadrupled between 1986 and 1993  
9           from 141,700 to 565,000.

10           (13) As of 1995 year-end, about 494,000 chil-  
11           dren were in foster care, a considerable rise from the  
12           estimated 280,000 children in foster care at the end  
13           of 1986. Most of these children are in foster care be-  
14           cause of abuse, neglect, or abandonment by their  
15           parents. Many are also placed in foster care due to  
16           a court order during a child protection case.

17           (14) Some estimates suggest that in 70 percent  
18           of homes where there is domestic violence, there is  
19           also child abuse.

20           (15) Children who witness domestic violence  
21           can also develop posttraumatic stress disorder, low  
22           self-esteem, anxiety, depression, eating disorders,  
23           and destructive behavior that can last through adult-  
24           hood, limiting an individual's ability to achieve aca-  
25           demically, socially, and on the job. However, early

1 intervention and education can help prevent further  
2 danger to children.

3 (16) Continued adjournment forces victims to  
4 repeatedly confront their abusers in court. This not  
5 only increases the risk of retribution, but also the  
6 chance that the victim will abandon the process be-  
7 cause of the burden.

8 (17) Between 1984 and 1994 there was a 65  
9 percent increase in domestic relations cases and a 59  
10 percent increase in the number of juvenile cases.

11 (18) The caseload for child abuse in New York  
12 State alone has increased by more than 300 percent  
13 between 1984 and 1988.

14 (19) Judges in Chicago hear on average 1,700  
15 delinquency cases per month, and in Los Angeles  
16 judges for juvenile cases have about 10 minutes to  
17 devote to each case.

18 **SEC. 2. PURPOSE.**

19 The purposes of this Act are—

20 (1) to encourage attorneys to enter the field of  
21 family law, juvenile law, or domestic relations law;

22 (2) to increase the number of attorneys who will  
23 represent low-income families and individuals, and  
24 who are trained and educated in such field; and

1           (3) to keep more highly trained family law, ju-  
 2           venile law, and domestic relations attorneys in this  
 3           field of law for longer periods of time.

4 **SEC. 3. LOAN FORGIVENESS.**

5           Part B of title IV of the Higher Education Act of  
 6 1965 (20 U.S.C. 1071 et seq.) is amended by inserting  
 7 after section 428K (20 U.S.C. 1078–11) the following:

8 **“SEC. 428L. LOAN FORGIVENESS FOR FAMILY LAW, JUVE-**  
 9                           **NILE LAW, AND DOMESTIC RELATIONS AT-**  
 10                           **TORNEYS WHO WORK IN THE DEFENSE OF**  
 11                           **LOW-INCOME FAMILIES, INDIVIDUALS, OR**  
 12                           **CHILDREN.**

13           “(a) DEFINITIONS.—In this section:

14                   “(1) ELIGIBLE LOAN.—The term ‘eligible loan’  
 15                   means a loan made, insured, or guaranteed under  
 16                   this part or part D (excluding loans made under sec-  
 17                   tion 428B or 428C, or comparable loans made under  
 18                   part D) for attendance at a law school.

19                   “(2) FAMILY LAW OR DOMESTIC RELATIONS AT-  
 20                   TORNEY.—The term ‘family law or domestic rela-  
 21                   tions attorney’ means an attorney who works in the  
 22                   field of family law or domestic relations, including  
 23                   juvenile justice, truancy, child abuse or neglect,  
 24                   adoption, domestic relations, child support, pater-  
 25                   nity, and other areas which fall under the field of

1 family law or domestic relations law as determined  
2 by State law.

3 “(3) HIGHLY QUALIFIED ATTORNEY.—The  
4 term ‘highly qualified attorney’ means an attorney  
5 who has at least 2 consecutive years of experience in  
6 the field of family or domestic relations law serving  
7 as a representative of low-income families or minors.

8 “(b) DEMONSTRATION PROGRAM.—

9 “(1) IN GENERAL.—The Secretary may carry  
10 out a demonstration program of assuming the obli-  
11 gation to repay eligible loans for any new borrower  
12 after the date of enactment of this section, who—

13 “(A) obtains a Juris Doctorate (JD), and  
14 takes at least 1 law school class in family law,  
15 juvenile law, domestic relations law, or some  
16 other class that the Secretary determines equiv-  
17 alent to any such class pursuant to regulations  
18 prescribed by the Secretary; and

19 “(B) has worked full-time for a State or  
20 local government entity, or a nonprofit private  
21 entity, as a family law or domestic relations at-  
22 torney on behalf of low-income individuals in  
23 the family or domestic relations court system  
24 for 2 consecutive years immediately preceding  
25 the year for which the determination was made.

1           “(2) AWARD BASIS.—Loan repayment under  
2 this section shall be on a first-come, first-served  
3 basis and subject to the availability of appropria-  
4 tions.

5           “(3) PRIORITY.—The Secretary shall give pri-  
6 ority in providing loan repayment under this section  
7 for a fiscal year to student borrowers who received  
8 loan repayment under this section for the preceding  
9 fiscal year.

10           “(4) REGULATIONS.—The Secretary is author-  
11 ized to prescribe such regulations as may be nec-  
12 essary to carry out the provisions of this section.

13           “(c) LOAN REPAYMENT.—

14           “(1) IN GENERAL.—The Secretary shall assume  
15 the obligation to repay—

16           “(A) after the third consecutive year of  
17 employment described in subparagraph (B) of  
18 subsection (b)(1), 20 percent of the total  
19 amount of all eligible loans;

20           “(B) after the fourth consecutive year of  
21 such employment, 30 percent of the total  
22 amount of all eligible loans; and

23           “(C) after the fifth consecutive year of  
24 such employment, 50 percent of the total  
25 amount of all eligible loans.

1           “(2) CONSTRUCTION.—Nothing in this section  
2 shall be construed to authorize any refunding of any  
3 repayment of a loan made under this part or part  
4 D.

5           “(3) INTEREST.—If a portion of a loan is re-  
6 paid by the Secretary under this section for any  
7 year, the proportionate amount of interest on such  
8 loan which accrues for such year shall be repaid by  
9 the Secretary.

10           “(4) INELIGIBILITY OF NATIONAL SERVICE  
11 AWARD RECIPIENTS.—No student borrower may, for  
12 the same service, receive a benefit under both this  
13 section and subtitle D of title I of the National and  
14 Community Service Act of 1990 (42 U.S.C. 12601  
15 et seq.).

16           “(d) REPAYMENT TO ELIGIBLE LENDERS.—The Sec-  
17 retary shall pay to each eligible lender or holder for each  
18 fiscal year an amount equal to the aggregate amount of  
19 eligible loans which are subject to repayment pursuant to  
20 this section for such year.

21           “(e) APPLICATION FOR REPAYMENT.—

22           “(1) IN GENERAL.—Each eligible individual de-  
23 siring loan repayment under this section shall sub-  
24 mit a complete and accurate application to the Sec-

1       retary at such time, in such manner, and containing  
2       such information as the Secretary may require.

3               “(2) CONDITIONS.—An eligible individual may  
4       apply for loan repayment under this section after  
5       completing each year of qualifying employment. The  
6       borrower shall receive forbearance while engaged in  
7       qualifying employment unless the borrower is in  
8       deferment while so engaged.

9               “(f) EVALUATION.—

10              “(1) IN GENERAL.—The Secretary shall con-  
11       duct, by grant or contract, an independent national  
12       evaluation of the impact of the demonstration pro-  
13       gram assisted under this section on the field of fam-  
14       ily and domestic relations law.

15              “(2) COMPETITIVE BASIS.—The grant or con-  
16       tract described in this section shall be awarded on  
17       a competitive basis.

18              “(3) CONTENTS.—The evaluation described in  
19       this subsection shall determine whether the loan for-  
20       giveness program assisted under this section—

21                      “(A) has increased the number of highly  
22       qualified attorneys;

23                      “(B) has contributed to increased time on  
24       the job for family law or domestic relations at-  
25       torneys, as measured by—

1           “(i) the length of time family law or  
2           domestic relations attorneys receiving loan  
3           forgiveness under this section have worked  
4           in the family law or domestic relations  
5           field; and

6           “(ii) the length of time family law or  
7           domestic relations attorneys continue to  
8           work in such field after the attorneys meet  
9           the requirements for loan forgiveness  
10          under this section;

11          “(C) has increased the experience and the  
12          quality of family law and domestic relations at-  
13          torneys; and

14          “(D) has contributed to better family out-  
15          comes, as determined after consultation with  
16          the Secretary of Health and Human Services  
17          and the Attorney General.

18          “(4) INTERIM AND FINAL EVALUATION RE-  
19          PORTS.—The Secretary shall prepare and submit to  
20          the President and Congress such interim reports re-  
21          garding the evaluation described in this section as  
22          the Secretary determines appropriate, and shall pre-  
23          pare and so submit a final report regarding the eval-  
24          uation by September 30, 2005.

1       “(g) AUTHORIZATION OF APPROPRIATIONS.—There  
2 are authorized to be appropriated to carry out this section  
3 \$20,000,000 for fiscal year 2004, and such sums as may  
4 be necessary for each of the 4 succeeding fiscal years.”.

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