

The Elephant in the Room:

The Trillion Dollar (and counting) Student Loan
Crisis and

How Lawyers Can Help Solve It

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How Bad Is The Student Loan Crisis?

Nearly Everyone Has Debt: Housing, Cars, Credit Cards....So why is Student Loan debt different?

A: Student Loan Debt is long-term, large-scale debt, mainly of the young, tied to the person and not to property, and difficult to discharge in bankruptcy, with extra-strong collection mechanisms in place.

The Scope of the Problem

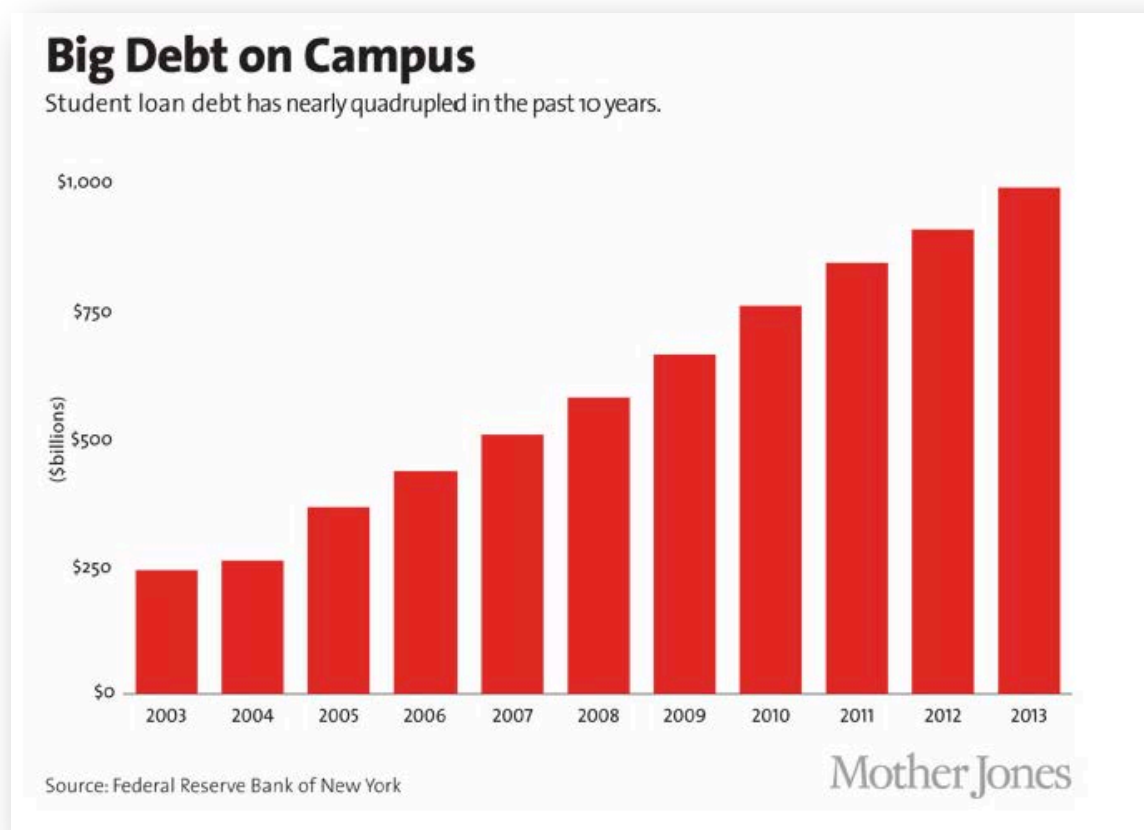
Excellent article in Mother Jones by Maggie Severns called:

The Student Loan Debt Crisis in 9 Charts

<http://www.motherjones.com/politics/2013/06/student-loan-debt-charts>

Lets look at the problem borrowers are facing:

Total Debt Owed Rises Every Year

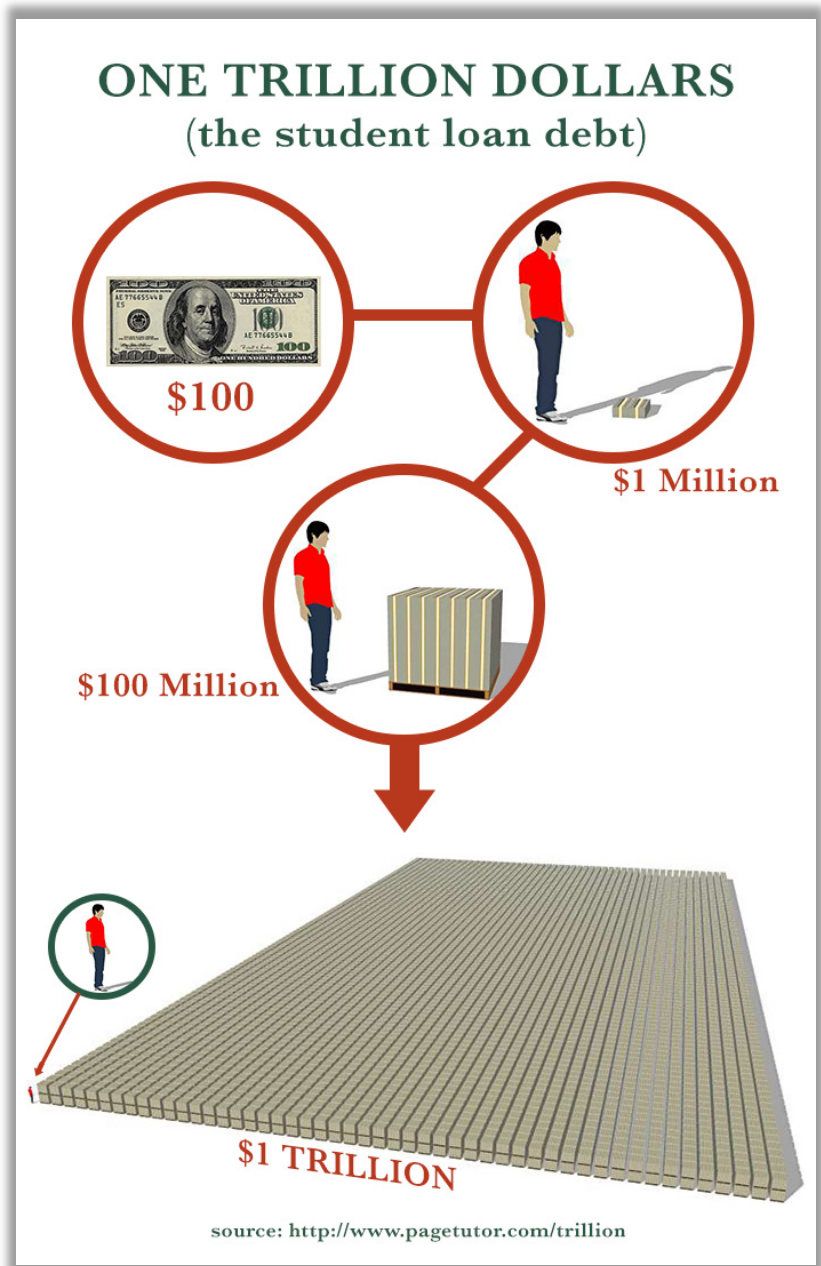


That's NOT a misprint – Current Student Loan Debt is over **1 Trillion Dollars**

The Trillion Dollar Problem

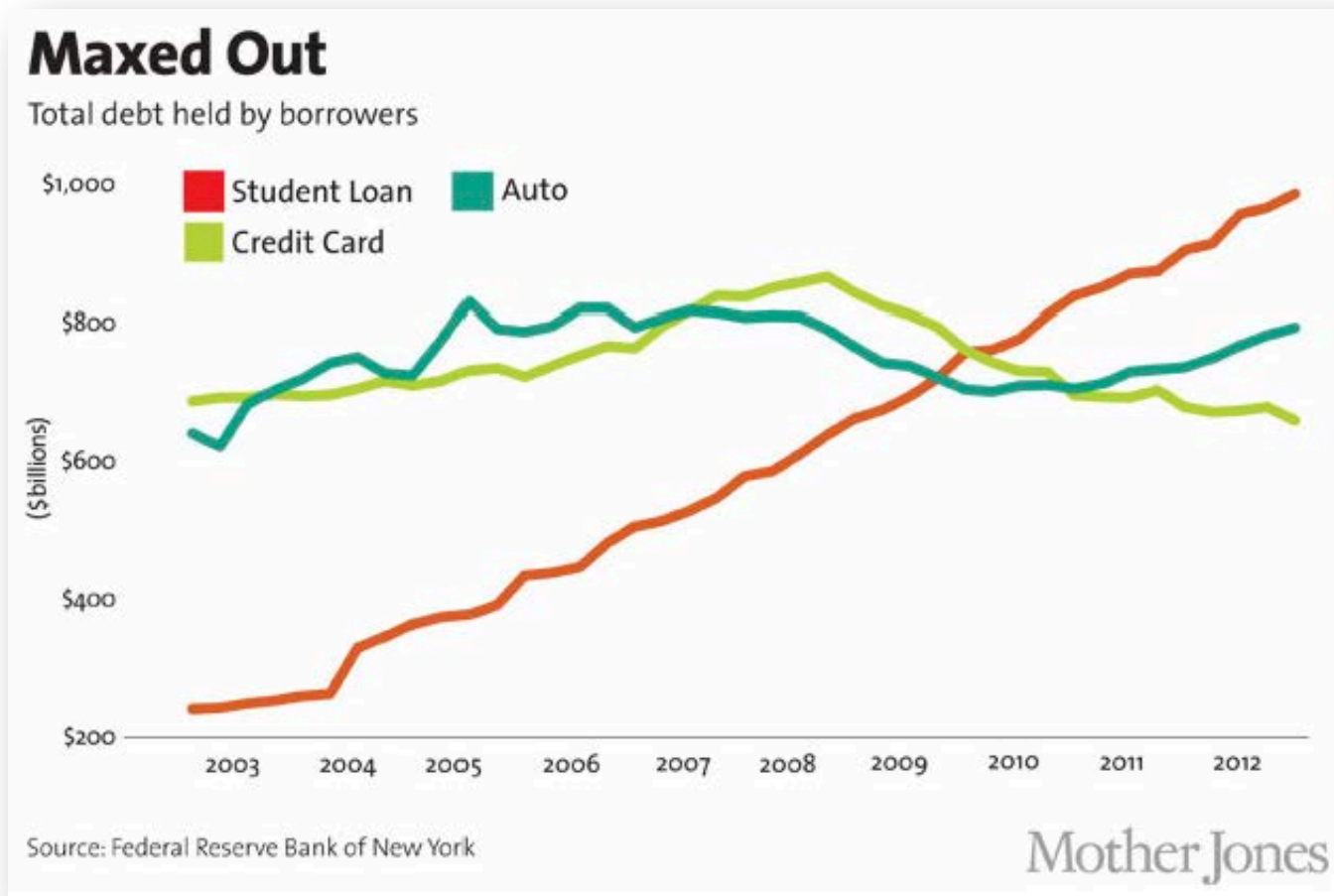
“The Consumer Financial Protection Bureau estimates that outstanding debt is approaching \$1.2 trillion as of May 2013. We also estimate that student loans guaranteed or held by the federal government have now crossed the \$1 trillion mark.”

- Rohit Chopra, CFPB

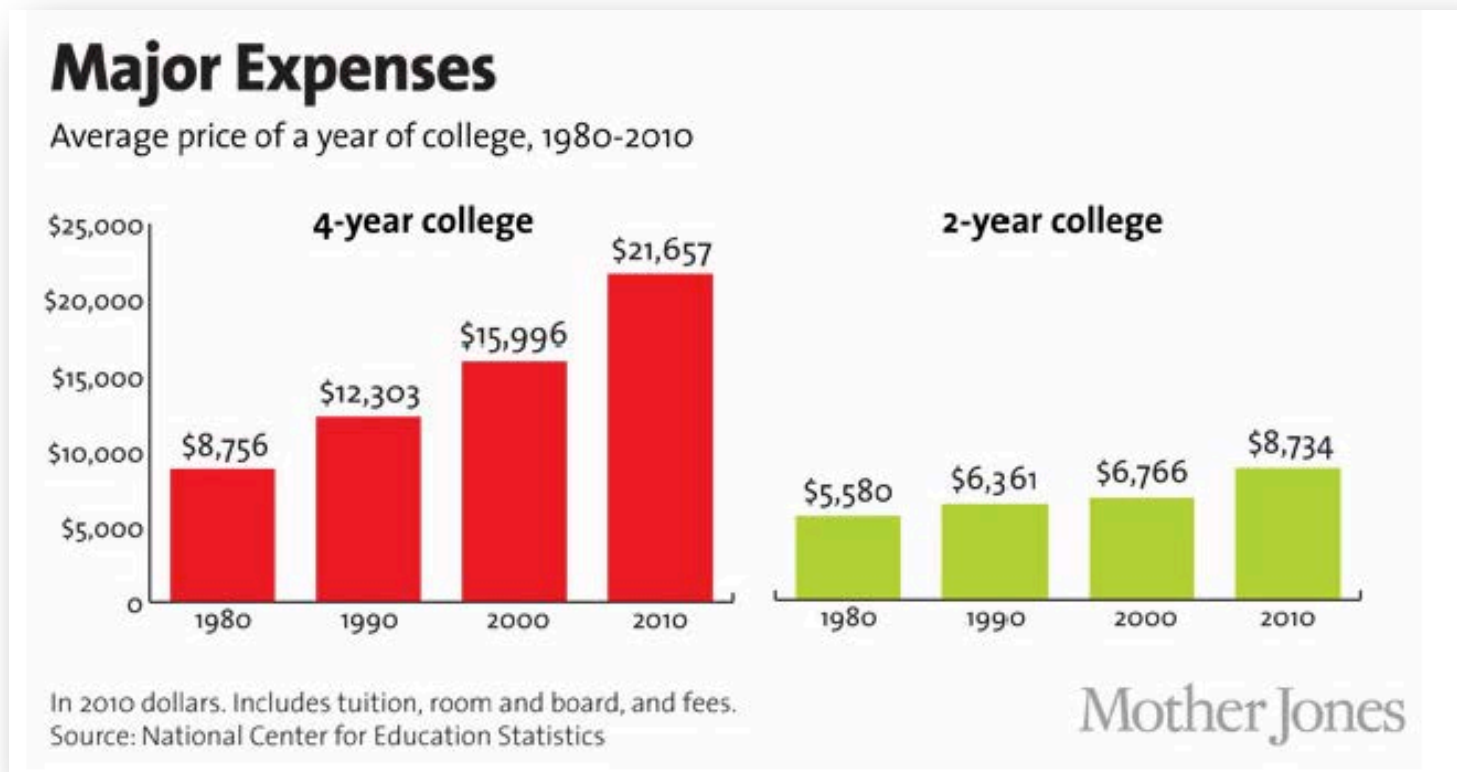


Student Loan Debt > Credit Cards

Student Loan Debt > Auto Loans



Average Price of College

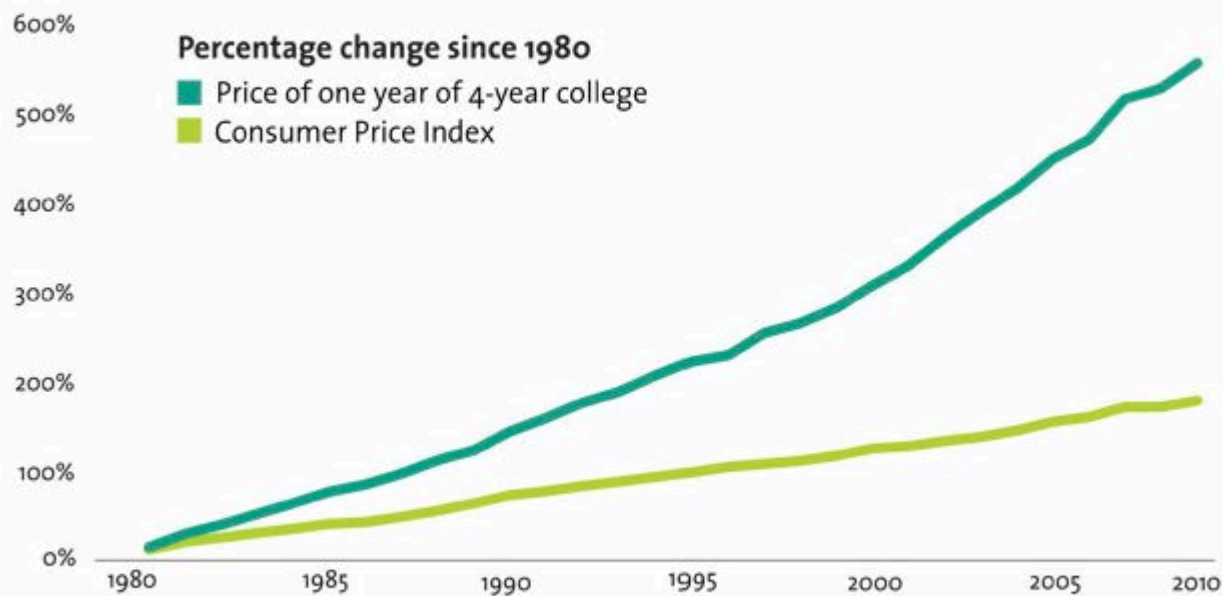


This increase in costs occurred even with actual household incomes in decline. Median income is down 9% from 1999 according to US Census Bureau.

College Costs Outpace Inflation

The Rising Cost of Getting Ahead

The price of attending college is fast outpacing inflation.



Based on average annual tuition price for a 4-year college, in actual dollars
Sources: Bureau of Labor Statistics, National Center for Education Statistics

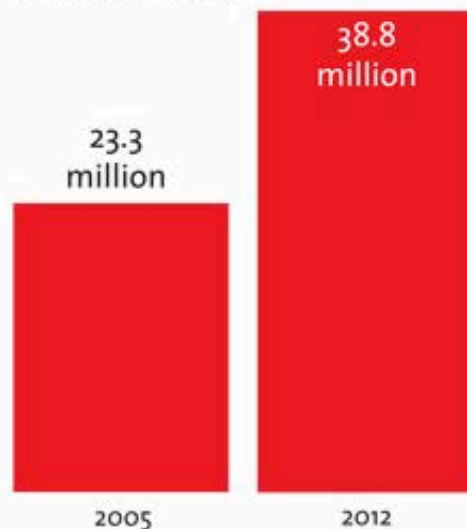
Mother Jones

Loan Balances and Number of Borrowers Continue to Grow

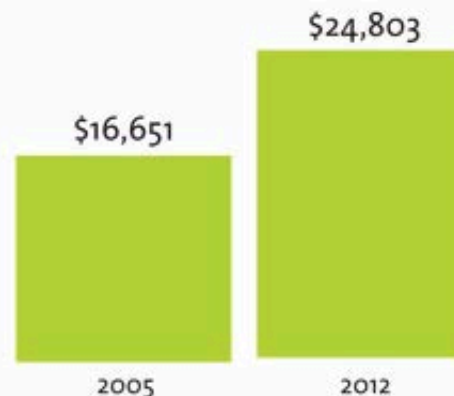
More Borrowers, More Debt

Between 2005 and 2012...

...the number of student borrowers increased 66%.



...the average student loan balance increased 49%.



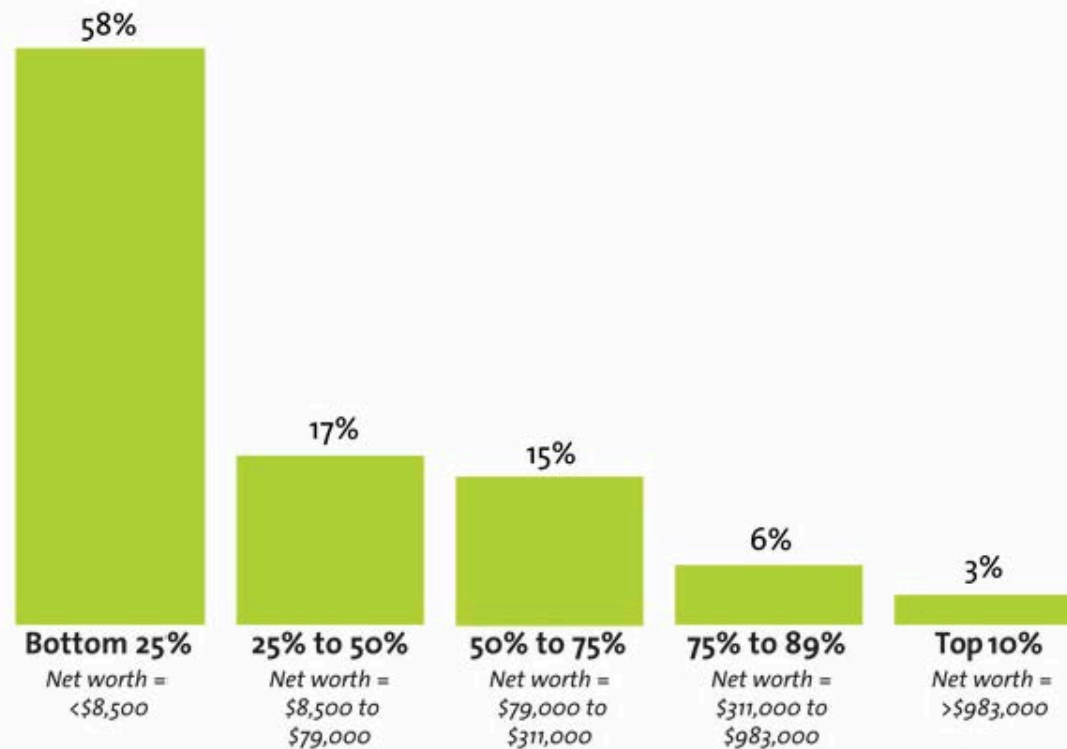
Source: Federal Reserve Bank of New York

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Majority of Student Loan Debt Is Held by Those With Little to No Net Worth

Who Owes the Most?

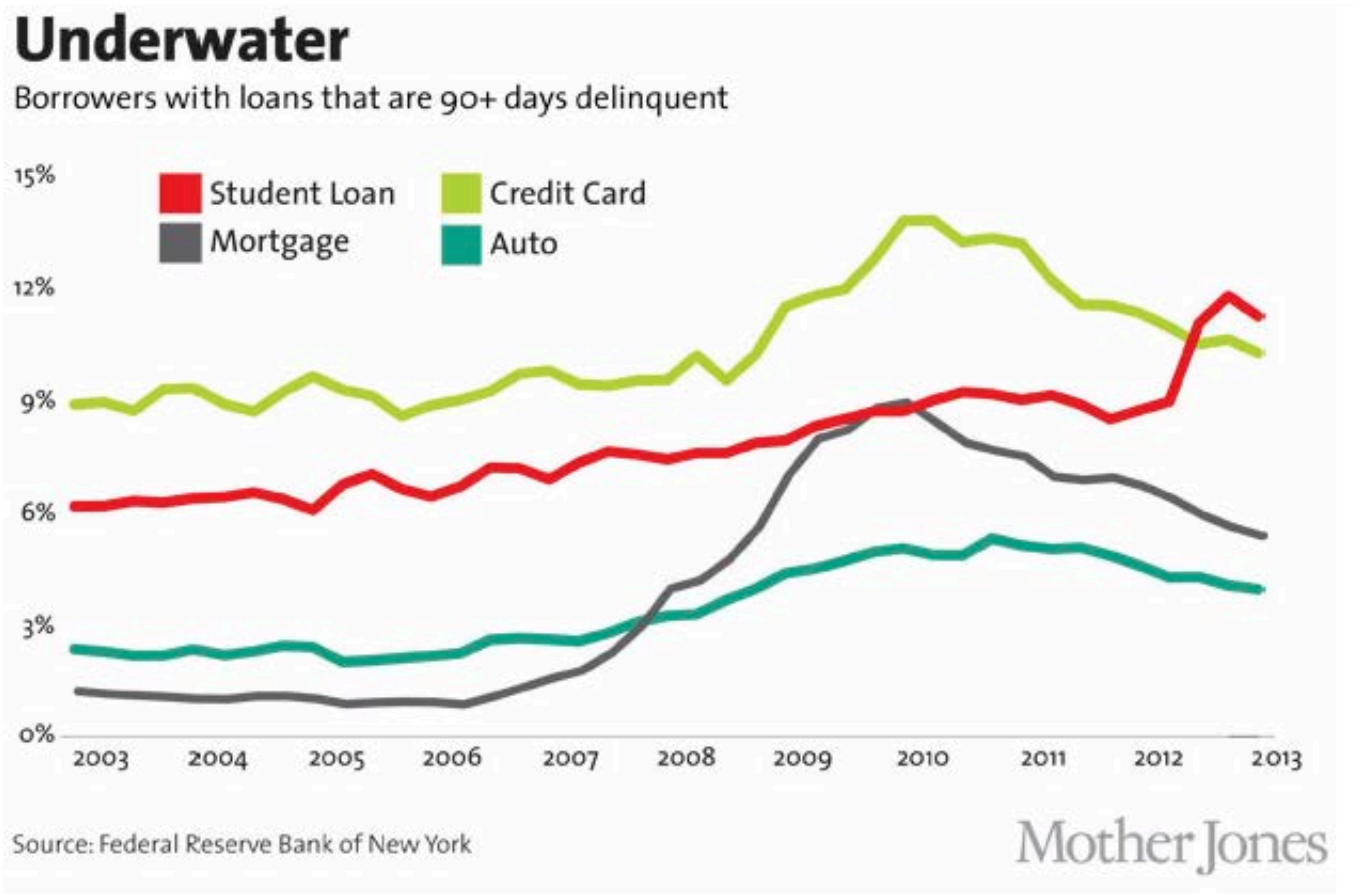
Distribution of total student debt by level of household net worth (percentile)



Sources: Pew Research Center, Federal Reserve Bulletin

Mother Jones

With No Wealth Cushion Comes Increased Default Rate on Loans



Real Default Rates are WORSE Than NY Federal Reserve estimate

Quarterly Report on Household Debt

by Fed of NY 2014 Q4:

CLAIMS - 11.5 % of Student Loans are 90+ days past due)

BUT – Not all student loans are in repayment status – students in school are in deferment. Only about half of the student debt is currently in payment status (about \$600B). This means defaults of 90+ days are closer to 23% than 11.5%.

AND – this does not include those student loans < 90 days past due, or those in forbearance or temporary deferments.

Likely that 1/3 or more of the student loan debt being repaid is delinquent, default, or troubled debt.

What About MO Lawyers? Are We Better Off?

Informal, Non-scientific Poll of Listserv of MoBar

- Conducted Oct. 8 – Oct 10, 2013
- Voluntary Participation, NOT random sample
- Responses were Anonymous

AND NOW, THE NUMBERS:

SFIG Non-Scientific Voluntary Survey of MO Lawyer Student Loan Debt

Results:

71 Respondents, Results were rounded to nearest percent

Type of loan (Federal or private)

- 97% had federal loans of any type
- 52% had federal and private

Type of loan (undergrad or graduate/law school)

- 97% graduate school
- 42% undergraduate and graduate

Survey – Default or Forbearance

Respondents in forbearance or default

Of respondents with federal loans:

- 75% have been or currently are in forbearance
- 12% have defaulted

Compare to other default rates in the last decade:

First Mortgage - 1.5 to 5.5%

Credit Cards - 4.5 to 9%

Survey – Repayment Outlook

The Outlook for Repayment

- 18% of respondents think they will pay off their loans within 10 years
- 21% within 10-20 years
- 8% within 20-25 years
- 31% within 25-30 years
- 22% of respondents believe they will never realistically pay off their loans

Survey – Federal Loan Amounts

Crunching the numbers (federal loans only)

Median=\$83,500 Mean=\$83,200 Highest=\$207,000

39% > \$100,000 15% >= \$150,000

As a comparison: UMKC Law 3 yrs = \$62,000

59% federal debt > than price of 3 yrs. of law school

23% federal debt DOUBLE the price of 3 yrs. of law school

Survey Private Loan Amounts

Crunching the numbers (private loans)

Median \$15,000 Mean \$25,277 Highest \$85,000
(two outliers were \$150k, presumed to be typos)

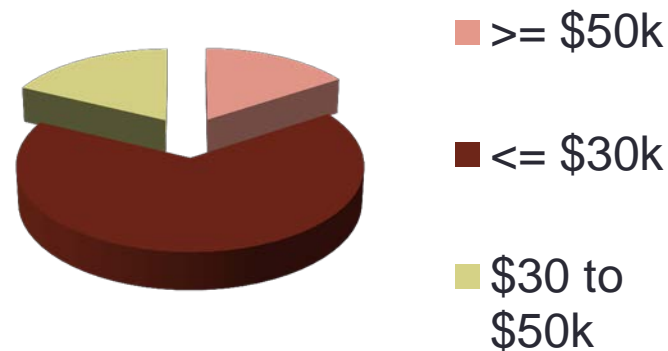
Amount of debt:

67% \leq \$30k

18% = \$30k to \$50k

16% \geq \$50k

Private Loan Amounts



Survey – Payments

Lawyer Monthly Student Loan Payments

Federal: median payment is \$352; mean is \$516
Highest is \$2,000; lowest (aside from \$0) is \$50

52% pay at least \$350 / mo.

Since 40% have \$100k or more in loans, many must be using non-standard forms of payment (e.g. extended or income based plans)

17% pay over \$1,000 / mo.

Private: median payment of \$200

High \$750 Low \$40

65% pay at least \$200 / mo.

ENOUGH about the PROBLEM: What are the SOLUTIONS?

- The Student Loan Crisis is NOT about thriving. It is about providing a way for borrowers to SURVIVE.
- Borrowers who cannot discharge their loans (read: MOST borrowers) need a way to manage their debt to make it affordable.
- Solutions involve breaking down the problem first, and taking the time to find out what the client really needs.

First: Know the Type of Student Loans

Three types of Student Loans are available to borrowers:

Federal Loans – majority of loan volume

Private Loans – Very inflexible, bad underwriting

State Loans – Rare; funded directly by states

Types of Loans – Federal

Federal Loans

- **FFEL loans (Federal Family Educational Loan)**
 - Loans made by banks or others, but guaranteed by the Government
 - All pre-1993, and terminated in 2010
 - Includes “Stafford Loans” and consolidated loans
- **Direct Loans from Dept. of ED**
 - Cut out the “middle man” of the banks, loans made and backed by government
 - Serviced by private companies, and quasi government entities (e.g. Sallie Mae, MOHELA, AES, Nelnet, to name a few)
 - Includes most federal loans from 1993 onward, and all after 2010.
- **PLUS Loans - made under FFEL and DL Programs**
 - Parent Loan: Made to supplement when the student has maxed out undergrad
 - Grad Loan: Used to pay for Grad School, made by the student directly without parent
- **Perkins Loans** – funded by the government, but given (and collected) directly by the schools.

Types of Loans – Private

Private Loans

These loans are made direct to the borrower by lending institutions, NOT the federal govt.

Promissory notes often contain variable interest rate, lots of upfront fees, and are quickly assigned to other companies or business trusts.

A secondary tier of companies doing servicing and collection. Nearly always include broad default and attorney's fees provisions.

Types of Loans – How to tell?

How does a borrower know what kind of loan they have?

The Department of ED holds the key:

National Student Loan Data System www.NSLDS.ed.gov

If the loan isn't listed on NSLDS, then it is almost certainly a private loan, NOT a federal loan.

Note: Sallie Mae, MOHELA, AES, and other big loan servicers do BOTH federal and private loan servicing. A borrower who says “I have a Sallie Mae Loan” is only telling you half the story.

Types of Student Loan Trouble

FEDERAL:

Deferment: govt. pays the interest while deferred, but special conditions apply to obtain a deferment. Generally some sort of special hardship exists.

Forbearance: interest accumulates. Both discretionary and mandatory types of forbearance available.

Delinquency = 270 days or less of missed payments

Default >270 days after missed payment

Exception: Perkins Loans are defaulted after day 1

Types of Student Loan Trouble, Cont.

Default on FEDERAL Loans

- Collections by aggressive collectors
- Will be listed on credit report, hindering credit in the future
- Lawsuit by federal govt. against the borrower
- Triggers extraordinary remedies:
 1. AWG - Administrative Wage Garnishment – no lawsuit needed, but notice is required;
 2. Tax Refund Intercepts
 3. Social Security Offset
 4. If Federal Employee, can have additional offset of wages
 5. Ineligible to obtain federal employment while in default
 6. Ineligible for additional Title IV financial aid while in default

Types of Student Loan Trouble, Cont.

PRIVATE LOANS:

Inability to pay / lack of flexibility by lenders:

Since 2005, these loans can't easily be discharged in bankruptcy, so there is NO incentive for lenders to be flexible

Default on Loans:

Lawsuits common, usually associate circuit / limited action cases:

National Collegiate Student Loan Trusts, ECMC, Sallie Mae, others.

Credit Report Damage:

Loan will exist on credit report, even if no active collection efforts are being made. Very often inaccurate information being reported to CRA's

HINT: ALWAYS read the promissory note to determine date of default, remedies, and choice of law provisions.

Student Loan Solutions - Federal

- Administrative Discharge
- Bankruptcy Discharge of Loan
- Bankruptcy as a tool to manage debt
- Curing Defaults
 - Rehabilitation
 - Consolidation
 - Vacating a Judgment to do Rehab or Consolidation
- Altering Payment Structures
 - Consolidation
 - Extending payment options
 - ICR
 - IBR
 - PAYE
 - Public Service Loan Forgiveness
 - Teacher Loan Forgiveness
 - 9/11 Victim's Family Forgiveness
- Loan Settlements

SL Solutions - Federal - Cont.

Administrative Discharge For Disability

Granted by the Dept. of ED for FFEL, DL, Perkins for:

- VA rating as unemployable or
- SSDI granted for TPD
- Physician's certification

SL Solutions Federal - Cont.

Administrative Discharges related to the School:

School Closure:

If borrower was at the school within 180 days of closure of the school

For False Certification:

- School Certifies a non-HS grad could benefit, or
- Enrolls student in program they cannot meet employment requirements, or
- Forgery of loan docs or check, or
- ID theft

For Unpaid Refund: School failed to pay refund owed to student

SL Solutions - Bankruptcy

Bankruptcy Discharge of Loan

Post 2005, BOTH Federal and Private School Loans are NONDISCHARGEABLE without UNDUE HARDSHIP

School costs that could be eligible for discharge:

Tuition, loans to ineligible students or for non-Title IV program schools.

Majority View: *Brunner v. NYS Higher Ed. Serv. Corp.* 831 F.2d 395

8th Circuit Test: The Totality-of-the-Circumstances Test:

In re Long, 322 F.3d 549 (8th Cir. 2003)

In re Conway, 495 B.R. 416 (8th Cir. B.A.P. 2013) (debtor may discharge in Ch. 7 her private educational loans incurred as a student at Webster University, in light of the totality of her circumstances, despite gainful employment and making \$1,380 – \$2,040 per month net income.)

SL Solutions - Bankruptcy

Bankruptcy as a Tool to Manage School Loan Debt:

BK Stay: Allows client to make payments (or not) without risk of collection lawsuits or execution efforts, or even administrative wage garnishment, etc.

Co-Debtor Stay: May take some pressure off of private loan cosigners

Ch. 13 Advantage: Can direct payments directly to student loans, “automating” the payment of those loans for the period of the plan.

Ch. 7 Advantage: Discharge of other debts like credit card bills, etc., increases disposable income, enabling debtor to afford income based options for payment.

SL Solutions – Federal – Curing Default

First Method: Consolidation of Loan

1. New Direct Loans only since 2010
2. Can cure this way only once
3. 18.5% penalty will be added to the loan
4. Takes 30-90 days
5. A single loan CAN be consolidated into a new loan. In effect this is a “re-fi” of the old loan amount

SL Solutions – Federal – Curing Default

Second Method: Rehabilitation of Loan

1. Advantage – it removes the default from borrower’s credit report
2. Disadvantage – much slower to do than consolidation
3. DL and FFEL can be rehabbed with minor differences in process
4. 9 voluntary payments in a ten month period
 1. Same 18.5% fee added to loan
 2. Can be done only once
 3. Payments must be “reasonable and affordable” so could be as low as \$0.00 under IBR
5. Perkins Loans are different: Need 9 consecutive payments, and NO “reasonable and affordable” standard

SL Solutions – Payment Options

TYPICAL PLANS:

1. 10 year Standard
2. Graduated Payments for 10 years
3. Extended up to 25 years
4. Extended and Graduated up to 25 years

SL Solutions – Income Related

1. **Income Contingent Repayment (ICR)**

1. Uses loan balance and income formula
2. Parent Plus loans ineligible

2. **Income Based Repayment (IBR)**

1. If borrower qualifies, restrictions apply
2. Income formula only NOT based on balance
3. Can result in \$0.00 loan payment for some borrowers
4. Balance forgiven after 25 years of successful payments

SL Solutions – Income Related

3. **Pay As You Earn (PAYE)**

1. Effective 2012,
2. Even lower payment than IBR, for those who qualify
3. Balance forgiven after 20 years of successful payments

4. **The Future:** Proposal by Treasury to make ALL income related plans tax free forgiveness, instead of taxable income. Stay tuned to see if this is approved by Congress.

SL Solutions – Payment Options Cont.

Public Service Loan Forgiveness

Working for almost ANY nonprofit or public employer

includes government entities, schools, most hospitals, Legal Aid, Charities, nonprofit hospitals, etc.

Work full time and make 120 qualifying payments on loan =
A tax free discharge of the entire balance in 10 years!

EXCEPT: Proposed Budget of 2015 has proposed a cap of \$57,500 on forgiveness, with the remainder to be forgiven after 25 years.

SL Solutions – Payment Options

Teacher Loan Forgiveness

For Teachers who teach 5 consecutive years in a qualifying school:

\$17,500 in loan forgiveness if:

Science or Math H.S.

SpEd. in Elementary or H.S.

\$5,000 for other teachers

AND a forbearance for five qualifying years

Other Litigation Tools to Help Borrowers

Litigation – Defend Loan Lawsuits on the Merits

- Statute of limitations on private loans
- Assignments can cause plaintiff difficulty on proof
CACH v. Askew standard should apply
- Strong defense may provide enough leverage to do legitimate workout

FDCPA – improper debt collection practices

- Servicers and Collectors chasing defaulted debt are debt collectors under FDCPA
- Misrepresentations about debt are common and actionable
- Real Life Example – my second FDCPA case ever

Other Litigation Tools to Help Borrowers

FCRA

- CRA Issues - “Hey! This debt isn’t me”
 - Mixed credit files
 - Identity theft
 - Failure to properly re-investigate will trigger liability
- Furnisher Issues - “Hey! This debt isn’t accurate!”
 - Consumer disputes and CRA investigates by contacting furnisher
 - Furnisher continues to supply wrong information

TCPA

- Based on robocalls to home or
- Unauthorized faxes, or
- Unauthorized calls or texts to cell phone
- Damages increase per call

Conclusions

The Student Loan Crisis is REAL, and GROWING.

Our CLIENTS and our COLLEAGUES are at risk.

There are many different ways for borrowers to manage their loans and SURVIVE the crisis – but putting their heads in the sand isn't one of them.

Conclusions – More Resources

For a two day seminar on how to do Student Loan Law,
Go To Josh Cohen's Student Loan Law Workshop:
www.thestudentloanlawyer.com

Or see NCLC Student Loan Law Manual

Or these websites:

NCLC: www.studentloanborrowerassistance.org

Dept. of ED: www.studentloans.gov

Questions? Contact me anytime:

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