

Commission on Loan Repayment and Forgiveness

A Resource Guide

for Creating State Loan Repayment Assistance Programs for Public Service Lawyers



The American Bar Association

STATE LRAP TOOL KIT

A Resource Guide for Creating State Loan Repayment Assistance Programs for Public Service Lawyers

The American Bar Association
Commission on Loan Repayment
and Forgiveness



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**STATE LRAP TOOL KIT
American Bar Association**

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The ABA Commission on Loan Repayment and Forgiveness is pleased to present the *State LRAP Tool Kit: A Resource Guide for Creating State Loan Repayment Assistance Programs for Public Service Lawyers*. The *State Tool Kit* contains a wealth of information about creating loan repayment assistance or forgiveness programs (“LRAPs”) for lawyers pursuing public service legal careers.

The Commission designed the *State Tool Kit* for bar association leaders and staff, bar foundation leaders and staff, state and local government officials, law students and graduates, public interest employers, state legislators and staff, state access to justice commissions, state higher education finance authorities, law school deans and others interested to create a state LRAP for lawyers who wish to pursue and/or remain in public service legal careers, such as those with a legal aid organization or prosecutor’s office.

Many of today’s law graduates are finishing law school owing in excess of \$80,000 in law school loans. Graduates who aspire to pursue public service jobs are faced with unique challenges, as they attempt to secure the means to meet their monthly educational loan obligations while facing the prospect of earning traditionally lower salaries. Many find that they cannot make ends meet on a public service salary and are forced to forgo the opportunity to serve their communities using their legal skills. Many who do accept public service legal jobs find they must leave after two to three years of service to accept higher-paying employment.

Loan repayment assistance or forgiveness programs help bridge this gap for graduates working for public service organizations or agencies. By providing much-needed assistance to these public service lawyers, LRAPs help public service employers attract and retain gifted and committed young lawyers, which in turn benefits the communities in which they live.

We would like to thank the Commission Members and Liaisons whose work and input was critical to the development of the *State Tool Kit*. A special thanks to the members of the Commission’s State Working Group for their efforts in developing this publication: Kelly Carmody, Curtis M. Caton, David J. DeVries, Diane Kutzko, Michael V. Saxl and Dwight S. Williams. We also thank the Directors of the existing state LRAPs, whose cooperation and sharing of critical information made this publication possible. We are grateful to Professor William Lyons, Richard H. Larson Professor of Tax Law at the University of Nebraska College of Law and Chair of the Section 108 and Other Exclusions Subcommittee of the Individual Income Tax Committee of the ABA’s Section of Taxation, for his assistance in reviewing and drafting the sections of the *State LRAP Tool Kit* pertaining to the tax consequences of a State LRAP. We also thank Steven Brown, Director, Financial Aid Office of Fordham Law School, for his assistance in providing comments to drafts of the *State LRAP Tool Kit*.

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I. INTRODUCTION

“Law graduates today are graduating with a staggering amount of educational debt. Many of the new graduates interviewing for positions with my office owe \$100,000 or more in law school debts. This debt places a substantial burden on their ability to work in the public sector. Since January 2000, I have lost 33 lawyers, most of them forced to seek higher salaries elsewhere in order to deal with the financial strain of repaying law school debt and providing for their families. By helping young law graduates accept and remain in public service careers, North Carolina’s LRAP makes a tremendous difference for the citizens of my state.”

Peter S. Gilchrist, III, District Attorney, Mecklenburg County, Charlotte, NC

BACKGROUND

Despite their deep commitment to ensure access to justice for all citizens, many law school graduates are forced to forego their dreams of public service. The rising cost of a legal education is forcing many law students to borrow increasingly higher amounts to support their legal education. In 2002, the average private law school tuition was \$24,144, while the average annual public law school tuition was \$9,376 for residents and \$18,131 for non-residents.¹ Due to rising tuitions, 86.4% of students borrowed in order to meet their total cost of legal education.² Many law students graduated in 2001 owing \$80,000 or more in law school loans.³ For law graduates on a standard ten-year repayment schedule, this debt load may result in payments of more than \$1,000 per month.

This scenario presents a unique challenge to graduates who wish to pursue public service careers with government or legal aid organizations. With the median entry-level public interest salary at \$35,000 (for 2001 graduates),⁴ many graduates do not have the resources to repay educational loans and support their basic living expenses. A recent study conducted by Equal Justice Works, National Association for Law Placement and the Partnership for Public Service found that law school debt prevented 66% of student respondents from considering

¹ The ABA Section of Legal Education and Admissions to the Bar, 2002 Annual Questionnaire.

² *Update on Annual and Cumulative Borrowing Trends Among Law and Other First-Professional Students, 1992-93, 1995-96 and 1999-2000*, Prepared by Kipp Research and Consulting for Access Group, Inc., June 11, 2002 (based on data from National Center for Education Statistics, NPSAS 1993, NPSAS 1996 and NPSAS 2000 surveys).

³ Estimates of the average and median debt for law school graduates vary. The ABA Section of Legal Education and Admissions to the Bar reports the following as average debt of 2002 law graduates: \$70,299 (private law schools); \$44,649 (public law schools) (Source: 2001-2002 Annual Questionnaire). Access Group, a private nonprofit lender, estimates the median debt for 2000 law graduates as \$84,400 (memo of July 2002 prepared by Jeffrey E. Hanson, Ph.D., Director of Debt Management, Access Group). This figure reflects borrowers who borrowed at least one Law Access Loan from Access Group while in law school. Those who borrowed only federal loans and/or the Bar Exam Loan but no Law Access Loan are not included in the analysis. Finally, the National Center for Education Statistics estimates the average debt of 1999-2000 law graduates at \$62,103 (http://www.nces.ed.gov/surveys/npsas/table_library/tables/npsas98.asp).

⁴ National Association for Law Placement, *Jobs & J.D.'s: Employment and Salaries of New Law Graduates and Starting Salaries: What New Law Graduates Earn (2001 Graduates)* (available at www.nalp.org).

a public interest or government job.⁵ Therefore, students graduating from law school are making real-life job choices partly based on their indebtedness.

In response to the issue of staggeringly high debt loads, a number of solutions for relieving the debt burden of some law graduates have developed, including public interest post-graduate fellowships, public service scholarships and loan repayment assistance or forgiveness programs (“LRAPs”). LRAPs provide financial aid to law school graduates, typically those working in the public interest sector, government, or other lower-paying legal fields. In most cases, this aid is given to graduates in the form of a forgivable loan to help them repay their annual educational debt. Upon completion of the required service obligation, the LRAP administrator will forgive or cancel these loans to program participants. Most LRAPs contain limits on the amount of income a recipient can earn while participating in such a program. There are various types of LRAPs, administered by law schools, state bar foundations, federal and state governments and public interest employers, providing debt relief to some law graduates.

THE ABA’S RESPONSE AND THE ABA COMMISSION ON LOAN REPAYMENT AND FORGIVENESS

In 1988, the ABA adopted a policy statement encouraging law schools, state and local bar associations and federal and state lawmakers to establish LRAPs.⁶ Since 1988, the ABA has adopted four additional policy statements supporting amendments to federal law that would help alleviate the impact of debt burden on public service lawyers.⁷

Recognizing the impact of educational debt on law graduates’ ability to enter and remain in public service jobs and the importance of this issue to the legal profession, ABA Immediate Past President Robert Hirshon made this issue a priority of his Presidential term. In 2001, the ABA Board of Governors created the Commission on Loan Repayment and Forgiveness (“Commission”) to examine and report upon the effects of the increasing educational debt burdening law school graduates and to seek changes that will lower this barrier to public service. Since August 2001, the Commission has worked to promote LRAPs and to guide ABA efforts to stimulate more LRAPS and public service scholarships and post-graduate fellowships provided by law schools, state/federal government, bar foundations and other sources to enable more law graduates to enter public service legal careers. The Commission will present its recommendations to the ABA during the Association’s Annual Meeting in August 2003.

⁵ *From Paper Chase to Money Chase: Law School Debt Diverts Road to Public Service*, Equal Justice Works, National Association for Law Placement and Partnership for Public Service, November 2002 (available from <http://www.equaljusticeworks.org/finance/index.php?view=detail&id=5595>).

⁶ In August 1988, the ABA House of Delegates adopted the following resolution: “*Be It Resolved*, That the American Bar Association encourages law schools, state and local bar associations, and federal and state law makers to establish Loan Assistance Repayment, Loan Forgiveness, and Income-Sharing Programs for law school graduates accepting low-paying, legal, public interest employment.”

⁷ The ABA House of Delegates has also adopted additional policies pertaining to easing the law student debt burden to enable graduates to enter and remain in public service careers, including resolutions to permit a full deduction for interest paid on student loans (Resolution 118, adopted August 1992); urging amendments to Section 125 of the Internal Revenue Code of 1986 to include an educational loan repayment program as part of a qualified benefit assistance program (cafeteria plan) that is sponsored by employers and offered to employees (Resolution 118, adopted August 1999); recommending that Congress increase the amount a law student may borrow annually in unsubsidized Stafford loans to at least \$30,000 (Resolution 300A, adopted February 2002); and urging Congress or the U.S. Secretary of Education to make improvements to the income-contingent repayment option of the William D. Ford Federal Direct Lending Program (Resolution 300B, adopted February 2002).

The Commission is composed of twelve members, including leaders in the profession drawn from the ranks of law school deans and faculty, law students, experienced public service lawyers, legislators, college/university presidents and administrators, the judiciary and the private bar. Since its creation, the Commission has studied the problem, researched existing programs, heard testimony from beneficiaries of LRAPs, lobbied for improvements at the federal level and worked to raise the profile of the issue.

Shortly after its creation, the Commission formed three Working Groups to carry out its proposed projects: Federal, Law School and State. The State Work Group assumed primary drafting responsibility for the Tool Kit.

ABOUT THE STATE LRAP TOOL KIT

To develop the *State LRAP Tool Kit*, the Commission first surveyed the existing state LRAPs and collected information about eligibility criteria, funding sources, program history, program operations and other pertinent issues and interviewed LRAP program administrators. The Commission sponsored a number of panels at national conferences, which were designed to collect and disseminate information about state LRAP activity. The Commission tracked legislative bills in various states and worked with advocates in these states to develop legislative language and strategies for creating alliances. The Commission also studied law school programs to supplement its knowledge of how these state programs work.

The Commission designed the *State LRAP Tool Kit* as a resource for states interested to create a LRAP. Although the *State LRAP Tool Kit* features sample LRAP legislation, the Commission is mindful that a legislative approach may not be feasible or the most effective way to create a program in each state. The Commission developed the LRAP Checklist (Section III), Sample LRAP Legislation (Section IV) and Analysis of Sample State LRAP Legislation (Section V) as a framework for advocates pursuing the legislative process, as well as those designing a program independent of the legislative process, such as creating an independent nonprofit organization to administer the program.

By including sample legislation, the Commission does not suggest that the creation of a program through the legislative process is preferable to a program's creation independent of the legislative process. When considering creating a program, there are a variety of factors to consider, which will be unique to each state. For example, in some states, the legislative approach may be preferred because the legislature is supportive of a program and has expressed willingness to appropriate adequate funds to support a program. In other states, the legislature may be opposed to the idea of creating a loan repayment program for lawyers in public service, but the President of the State Bar may be extremely supportive and willing to lead a campaign to develop a LRAP through the Bar's Foundation.

The Sample State LRAP Statute (Section IV) is designed as an exemplar authorizing statute, meaning that the statute permits the creation of a LRAP. In some states, an authorizing statute may be sufficient to start the program. In other states, an additional appropriation bill may be necessary to create a program with adequate funds to distribute.

II. HISTORY OF STATE LOAN REPAYMENT ASSISTANCE PROGRAMS

“Being the recipient of assistance through a LRAP has made a huge difference for me. MN-LRAP has enabled me to consider public service work as something I can do for my entire legal career, rather than simply for a year or two. I have two daughters to support, so LRAP has been very important to me – and them.”

Scott Heard, Staff Attorney, Southern Minnesota Regional Legal Services, Mankato, MN

State LRAPs currently exist in Arizona, Florida, Maine, Maryland, Minnesota, New Hampshire, North Carolina and Texas.¹ Tennessee previously administered a program, which has since been discontinued. The Arizona, Florida, Maine and New Hampshire programs are administered by State Bar Foundations and funded primarily with Interest on Lawyers Trust Accounts (“IOLTA”)² funds. The Maryland State Government administers the Maryland program, which was created by statute. The Minnesota and North Carolina programs are administered by independent 501(c)(3) organizations. The Texas Program is administered by the Texas Access to Justice Commission, an independent entity created by the Texas Supreme Court and staffed by the State Bar of Texas.

In 2001, the California and Texas legislatures enacted legislation creating statewide LRAPS, but neither legislature has appropriated funds. The California program is not operational. In September 2002, the Texas Access to Justice Commission announced that it had received private donations to create a temporary program until state funding becomes available and the legislative program becomes operational. In 2002, Georgia enacted legislation creating a statewide LRAP, but the legislature did not appropriate funds to support the program. Therefore, the program is not operating.

A short history of the existing state LRAPs follows.

MARYLAND

In 1988, Maryland’s General Assembly passed a LRAP bill to encourage doctors and lawyers to work in Maryland in certain critical positions with lower salaries.³ This was the first state legislation adopted to provide loan repayment assistance to public service

¹ The Massachusetts Legal Assistance Corporation (MLAC), a non-profit corporation established by state statute to fund civil legal services in Massachusetts, set up a Loan Forgiveness Fund in July 2001 to lend money to attorneys and paralegals employed by MLAC’s grantees in order to refinance student loans of those attorneys and paralegals. MLAC grantees may choose to nominate employees to receive loans from the Loan Forgiveness Fund, which MLAC will forgive upon completion of required service. MLAC will then reduce each grantee’s overall grant by the total amount of approved loans to its employees.

² Interest on Lawyer Trust Accounts or IOLTA programs (also referred to as IOTA, or Interest on Trust Accounts) are state-based programs that receive interest from lawyer trust account funds that are held for short periods of time or in such small amounts that net interest cannot be earned for clients. State IOLTA programs use the money to fund a number of charitable causes, including legal services for the poor, and in some states, LRAPs. For more information about IOLTA programs, please visit <http://www.abalegalservices.org/iolita>.

³ MD EDUC CODE §§ 18-1501-1505 (2003).

lawyers. The program, originally called Loan Assistance Repayment Program (or “LARP”), was created to provide educational loan repayment assistance to lawyers or doctors providing service to low income or underserved residents. The legislation authorized the State Scholarship Administration of the Maryland Higher Education Commission⁴ to administer the program and the General Assembly appropriated \$100,000 to support the program during its first year.

The impetus for Maryland’s program was the publication of a Maryland Legal Services Corporation study titled Action Plan for Legal Services to Maryland’s Poor.⁵ The report found, in part, that salaries of lawyers employed by programs providing civil legal services to the poor fell far below salaries provided to lawyers in private practice or government. Law graduates interested in working for legal services programs could not afford to do so, especially if they had substantial law school loans.⁶ The report suggested law school loan repayment as a solution to this problem.⁷ A coalition of representatives from legal services organizations, law schools, law students and the private bar, cooperating with supportive legislators, worked to create the Maryland program.

Since its creation, the program has expanded to include those who work in other public service fields designated as priority fields by the state legislature, such as nurses, social workers, physical therapists and other public service fields of employment in which there are a shortage of practitioners providing services to low income or underserved residents. In 2001, the program was re-named the Janet L. Hoffman LARP, in memory of Janet L. Hoffman, the first and longest-serving lobbyist for Baltimore City in Annapolis, Maryland. The program, which is still supported by funds from the General Assembly, makes annual grants to recipients. Any law school graduate working in Maryland in qualified employment may be eligible for these benefits.

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⁴ In 2002, the name of the agency administering the Maryland Program changed to Office of Student Financial Assistance, Maryland Higher Education Commission.

⁵ *Action Plan for Legal Services to Maryland’s Poor: A Report of the Advisory Council of the Maryland Legal Services Corporation*, January 1988.

⁶ *Id.* at 35.

⁷ *Id.* at 31.

NORTH CAROLINA

In 1989, students at North Carolina's law schools formed the North Carolina Legal Education Assistance Foundation ("NC LEAF"), a nonprofit organization designed to provide statewide loan repayment assistance for lawyers working in public service careers.⁸ When creating the program, the founders sought and received the support of deans of North Carolina's law schools and state bar organizations.

In 1990, the North Carolina IOLTA Program and the Z. Smith Reynolds Foundation provided seed money for the program's operations. The program's board hired NC LEAF's first director and in 1991 funded its first program participants. Each year, NC LEAF has sought to increase funding. Since 1993, NC LEAF has received funds from the North Carolina General Assembly. Initially, the state funding was \$25,000 per year, increased to \$125,000 for fiscal years 1999-2000 and 2000-01, and increased further to \$200,000 in recurring appropriations for 2001-02 and 2002-03. The program receives additional support from private lawyers, North Carolina law schools, bar organizations and other private donors.

Since its inception, NC LEAF has provided over \$1,000,000 in loan repayment assistance benefits to 165 public service lawyers. NC LEAF is a collaborative effort, symbolized by the composition of the program's board, which includes representatives from the five North Carolina law schools, legal services organizations, the North Carolina Academy of Trial Lawyers, the North Carolina Association of Public Defenders, the North Carolina Association of Women Attorneys, the North Carolina Bar Association, the North Carolina State Bar, the North Carolina Conference of District Attorneys, North Carolina Gay and Lesbian Attorneys and a representative from one of the state's largest law firms.

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MINNESOTA

The Loan Repayment Assistance Program of Minnesota ("LRAP-MN") originated through the efforts of students at each of the three Minnesota law schools and the Minnesota Justice Foundation, who worked to incorporate the program in 1991.⁹ The program was initially funded by a grant from the Otto Bremer Foundation and donations from the Minnesota State Bar Foundation, IOLTA and law firms. In addition, students from the University of

⁸ <http://www.ncleaf.org/>

⁹ For additional information, see <http://www.lrapmn.org/> and "The Minnesota Loan Repayment Assistance Program," by Sheila Siegel, NAPIL Connection, Winter 2000 (available at <http://www.equaljusticeworks.org/finance/index.php?view=detail&id=1206>).

Minnesota Law School voted to donate \$116,000 in surplus funds from the student-run bookstore. The program placed some of these funds in an endowment, while using others to operate the program and extend loans. By 1992, LRAP-MN had secured donated office space and other services and awarded its first loans.

In 1997, LRAP-MN, working in collaboration with the state bar and legal services organizations, drafted a bill to provide state funds for the LRAP. Although the bill had bipartisan support and passed both chambers of the state legislature, (now former) Governor Carlson vetoed the bill.

Today, the program has continued its success in raising funds from various segments of the legal community, including private law firms, state and local bar associations, and the Legal Services Advisory Committee, which receives its funding through the State Judiciary budget and re-grants funds to legal services agencies.

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ARIZONA

In 1990, the Arizona Bar Foundation (now known as the Arizona Foundation for Legal Services and Education) established the Loan Repayment Program as a statewide program for law graduates with significant law school debt who are employed in nonprofit organizations dedicated to serving the needs of low-income individuals and families in Arizona.¹⁰ The program originated from a recommendation by the State Bar of Arizona's Legal Services Committee on ways to recruit and retain lawyers in rural areas, especially Native American reservations. The program is funded from IOLTA.

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¹⁰ <http://www.azflse.org>.

NEW HAMPSHIRE

In 2000, the New Hampshire Bar Foundation created the New Hampshire Bar Foundation Law School LRAP. The idea came from New Hampshire Legal Assistance, the staff of which helped develop the program in conjunction with the New Hampshire Bar Foundation. The program is funded by an annual grant from the IOLTA program of the Bar Foundation. The grant was \$30,000 each year for the first two years. For the third year (2002), the grant was \$57,000. There is no guarantee of funding from year to year. Staff lawyers who are employed by one of four identified New Hampshire legal services providers are eligible.

The New Hampshire Bar Foundation is currently working to develop a partnership with the Suffolk University Law School Alumni Association under which New Hampshire-based lawyers who graduated from Suffolk University Law School will raise funds to provide loan repayment assistance to Suffolk Law graduates working for one of the following organizations: New Hampshire Legal Assistance, Disabilities Rights Center, Legal Advice & Referral Center, Public Defender's Office or County Attorney's Office. The proposal anticipates that the New Hampshire Bar Foundation will administer the LRAP.

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TEXAS

In 2001, Texas Governor Perry signed two bills establishing state-administered LRAPs for lawyers employed by the Texas Attorney General's Office (HB 2766)¹¹ and legal aid lawyers and prosecutors working in rural areas of Texas (HB 2323).¹² One percent of law school tuition revenues (from resident student tuition only) will be diverted to a trust account for the loan repayment program for lawyers employed by the Texas Attorney General's Office. Implementation of the program created by HB 2766 will require a period of time for set aside funds to accumulate.

The Texas legislature did not appropriate any funding for the program benefiting legal aid lawyers and rural prosecutors. When state funding for the LRAP was not appropriated, the Texas Access to Justice Commission embarked on a private funding campaign to support loan repayment assistance for legal aid lawyers. In summer 2002, the Texas Access to Justice Commission announced that it received its first major contribution of \$25,000, which it used to create a temporary LRAP until state funding becomes available and the program created by HB 2323 becomes operational. Until resources are available

¹¹ TX EDUC §§ 61.951 – 61.962 (2003).

¹² TX EDUC §§ 61.951 – 61.958 (2003).

to meet the needs of all qualified applicants, the Commission will make grants of \$100 per month to approximately 25 legal aid lawyers. Only lawyers working for programs funded by the Texas Equal Access to Justice Foundation (Texas' IOLTA program) are eligible to apply.

The Texas Access to Justice Commission continues to seek state funding for a LRAP. The State Bar of Texas voted to pursue a \$450,000 legislative appropriation during the 2002-03 legislative session to support the LRAP.

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FLORIDA

The Florida Bar Foundation operated a LRAP from 1991-1995, which was suspended due to reduced available funding. In September 2002, the Board of the Florida Bar Foundation adopted two LRAPs for Interest on Trust Accounts ("IOTA") grantees receiving Legal Assistance to the Poor ("LAP") grants. The Foundation designed these programs to strengthen and expand legal assistance for the poor by supporting the recruitment and retention of the most qualified advocates by legal assistance programs in Florida through the provision of assistance to staff lawyers with educational debt. Program applicants must be employed on a full-time basis by an IOTA-funded LAP grantee.

The Foundation's primary forgiveness program is supported with IOTA funds. Participating LAP grantees pay for 20% of the loan repayment benefits for each LRAP participant (e.g. \$1,200 for a participant receiving \$6,000 in loans). The start-up funds for 2003 total \$90,000 plus the 20% charge to participating LAP grantees. The LRAP makes one-year loans to participants, which the Foundation will forgive annually at the end of each year provided the LRAP participant remains employed on a full-time basis by an IOTA grantee. Selection of participants will occur in December of each year, with distribution of funds in January and July.

The second program, or supplemental LRAP, is funded solely by reductions in Foundation grants to participating programs. The Foundation distributed the first round of benefits in January 2003.

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In October 2002, the Maine Bar Foundation adopted a Law School LRAP. The program came together after a series of discussions between Foundation leadership, Justice Action Group leadership (Maine's Access to Justice entity), law school and legal services providers. In establishing the program, Bar Foundation leadership recognized that, in recent years, increasing law school loan burdens deterred promising law school graduates from accepting staff attorney positions at the legal services programs that assist the poor and elderly in Maine. These debt burdens also caused the departure of experienced and talented staff attorneys at these programs who had hoped to remain at these organizations and whose skill and dedication greatly benefited their clients and the agencies they served.

The Law School LRAP will provide law school loan assistance, in the form of forgivable loans, to ensure the ability of Maine legal assistance providers to recruit and maintain a diverse body of highly qualified staff attorneys. The Maine Bar Foundation, which has allocated \$30,000 per year in IOLTA funds to support the LRAP for the first and second years of the program, anticipates making its first round of assistance awards in Spring 2003.

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In Fall 2001, the California legislature enacted a bill creating a loan repayment program for legal aid lawyers, prosecutors, public defenders and county lawyers who handle child support cases.¹³ There is no funding for this bill. If and when the program is funded, a state agency will administer it.

¹³ CA EDUC §§ 69740 – 69748 (2003).

GEORGIA

In May 2002, Georgia Governor Roy Barnes signed into law legislation creating a loan forgiveness program for lawyers working for the public interest, such as prosecutors, public defenders and civil legal aid lawyers.¹⁴ The original bill resulted from the work of the Georgia Legal Loan Forgiveness Task Force, a special body created by Governor Barnes to study the issue of creating a loan forgiveness program for Georgia lawyers entering public service, with a focus on the criminal justice system.¹⁵ The Georgia Legislature did not appropriate any funds to support the program. A sub-committee of the Georgia Access to Justice Committee is exploring funding options.

For program specifics, including guidelines and a state LRAP summary chart, please see Appendices.

“During the 16 years I have served as District Attorney, I have seen the gap in salaries of public and private sector lawyers grow. Along with that trend has been the increasing amount of higher education debt, with many lawyers graduating from law school owing \$30,000 to \$100,000 in student loans. Without assistance from LRAPs, many of these bright, idealistic students have no choice but to enter the private sector. Public service employers, such as legal services, public defenders and district attorney’s offices, are finding it increasingly more difficult to attract and retain new law graduates into public service careers. In addition to our failure to attract and retain these gifted and committed young lawyers, our communities do not receive the benefit of having a cross-section of the community represented in our offices.”

C. Colon Willoughby, Jr., District Attorney, Raleigh, NC

¹⁴ GA ST §§ 20-3-380 – 387 (2003).

¹⁵ Georgia Legal Loan Forgiveness Task Force, Final Report, December 14, 2001.

III. LRAP CHECKLIST: CREATING A STATE LOAN REPAYMENT ASSISTANCE PROGRAM

“Student loan indebtedness of new law graduates is a significant problem for public service employers who want to recruit and retain a diverse and high quality legal staff. Our staff attorneys may be eligible for loan repayment assistance from CLS and the Arizona Foundation for Legal Services & Education. These LRAPs have dramatically strengthened our ability to attract and retain skilled lawyers who are able to stay with us longer.”

Lillian Johnson, Executive Director, Community Legal Resources, Phoenix, AZ

The establishment of a LRAP, whether by legislation or otherwise, requires consideration of a number of elements and variables. The following list of factors and questions may be helpful in the formulation process:

LRAP Oversight

- Who will set policy for the program, develop eligibility guidelines, application process and selection criteria, and select recipients (agency, advisory board, etc.)?
- Who will administer the program on a day-to-day basis?
- Who is responsible for funding (e.g. legislature, bar foundation, private donors, etc.)? Who is responsible for fundraising?

Dispute/Grievance Resolution

- How will the program handle disputes or grievances? If the program sets up a dispute or grievance resolution system, how will it be structured?

Mission/Purpose of Program

- Will there be a mission statement or program purpose included in the program’s guidelines? This may be important in publicizing and advocating the program to particular important constituencies.

Program Structure/Benefit Disbursement

- Will the program issue a grant or make a forgivable loan to the recipient (see Section 108 (f) of the Internal Revenue Code)? A forgivable loan is preferred, as a grant will result in taxable income to the recipient and under certain circumstances a forgivable loan will not.
- If the program makes forgivable loans and requires participants to sign a promissory note, what are the terms? When will the program forgive the loans (Annually? Biannually? Quarterly? After several years?)?
- If the program issues forgivable loans, what form of agreement, promissory note and truth in lending statement will the program have?
- If the program makes grants, will participants be required to sign an agreement? If so, what are the terms?
- How long will the program last?

Graduation/License/Residency Requirement

- Are graduates of any law school eligible for the program or only those graduates of law schools located in the state or city in which the program is located?
- Will the program require that recipients be licensed in the jurisdiction in which the program is located? Will the program offer a waiver of bar passage for a certain number of months (e.g. 12 months, 24 months)?
- Will the program require that recipients be residents of the state in which the program is located?

Qualifying Employment

- What will be considered eligible employment? Those working for nonprofit agencies that provide direct legal services to the poor? Public defenders? Prosecutors? Judicial Clerks?
- If the LRAP is funded and administered by a funder (such as a bar foundation), is it only for employees of the funder's grantees (for example, if Bar Foundation X creates a LRAP, will Bar Foundation X limit eligibility to employees of Bar Foundation X's grantees)?
- Will the program offer assistance only to recipients who are employed full-time? What about part-time employees (will they receive pro-rated benefits)?
- Will the program require participants to commit to a specific term of employment, such as 1 year, 2 years, etc?
- How will the program ensure that recipients meet the service requirement (tracking mechanism such as employment verification form signed quarterly by employer)?

Eligibility Changes

- What happens if a recipient leaves the qualifying employment before satisfying the program's service requirement?

Leave of Absence

- Will the program permit a recipient to take a leave of absence (e.g. disability, pregnancy, etc.)? If so, what is the maximum length of such a leave? Will this affect the amount of the loan forgiveness provided?

Income/Salary Caps

- Will the program have a salary cap or maximum income?
- How will the program calculate income? What will be included? Salary? Interest or dividend earnings? Schedule C earnings? Side practice or other job?
- How will spousal income impact this cap? What about domestic partner income?
- Will the program include any of the following factors in calculating adjusted income and how will these factors be weighed:
 - Deduction for dependents?
 - Spouse's (or domestic partner's) annual educational debt service?
 - Spouse's (or domestic partner's) income?
 - Assets?

- Medical Expenses?
- Childcare Expenses?
- Child support?
- Will the program use a salary cap (fixed maximum income a recipient may earn) or sliding scale (a recipient's LRAP benefits may decrease as recipient's income increases)?
- If the program uses a salary cap, how often will it be reviewed? Will the salary cap be tied to inflation or the Consumer Price Index so active review is not required?
- If the program uses a salary cap, will it develop a sliding scale for payments so that if a recipient's salary increases during the loan term, then the program's payments will automatically decrease?

Treatment of Assets

- How will the program treat savings, home and retirement assets?

Eligible Loans

- What type of loans will be covered (law school loans, other graduate school loans, undergraduate loans, bar loans, family loans, etc.). Will the program cover federally guaranteed and/or commercial/private loans?
- Will the program require recipients to consolidate loans or select extended repayment terms (e.g. longer than 10 years)?
- Will the program have a debt ceiling or maximum? Or will there be a minimum annual debt eligibility to ensure the program is targeted to hardship situations? These figures will require periodic review. (For example, the program could require that a recipient's minimum annual debt service payment must exceed \$3,000.)

Program Contribution

- Will the program develop a formula or schedule to determine the program's contribution for each recipient?
- If so, will the program have a sliding scale for payments so that if a recipient's salary increases during the loan term, then the payments will automatically decrease?

Participant Contribution

- Will recipients be required to contribute a fixed percentage of income to repayment or partially match the loan forgiveness provided by the program?

Other LRAPs

- Will the program require participants to apply to other LRAPs for which they may be eligible prior to applying to this program (e.g., law school LRAP)? (See Section V for an example of a pro rata formula to use in determining award amounts from multiple LRAPs).

Federal Income Tax Liability

- Will the program guidelines include a section about potential federal income tax implications for recipients?

Information to Collect

- Collect statistics and identify contacts that will be needed to persuade the legislators, bar leaders or other decision makers, including the following:
 - Compile statistics about the average debt load of the potential recipients of the program. This includes information about graduates from the state's law schools and from employers that will have potential recipients.
 - Ask the affected employers about the impact of debt on recruiting and retention of staff. It may be useful to develop a survey of employers, especially if pursuing a legislative campaign.
 - Identify any state legal needs studies or assessments that may be useful in supporting the creation of a program, including information about specific constituencies which are unable to obtain legal services.
 - Identify lawyers with sympathetic stories to talk about the impact of educational debt on their ability to pursue and/or remain in public service jobs. These contacts will be useful when developing witnesses to provide legislative testimony and/or contacts for reporters writing stories about the coalition's efforts and the state's need for a LRAP.
 - Identify persons in the community who have benefited from legal services programs. The clients could share compelling stories about the legal problem(s) for which they sought help and the impact that the availability of legal services made on their life.

"For the last four years, I have worked as an Assistant Public Defender representing juveniles who have been accused of committing a crime. I find my work immensely rewarding. I graduated from law school with substantial law school loans and unfortunately, the salary for an assistant public defender is such that it was very difficult to meet my monthly living expenses. Without assistance from North Carolina's LRAP, I might not have been able to remain in my current job."

Eric Zogry, Assistant Public Defender, Guilford County, Greensboro, NC

IV. LOAN REPAYMENT ASSISTANCE PROGRAM

SAMPLE STATE LEGISLATION

The General Assembly/Legislature of [State X] hereby enacts as follows:

SECTION 1. SHORT TITLE

This act shall be known as the Public Service Legal Loan Repayment Assistance Program.

SECTION 2. PURPOSE

It is the intent of the Legislature to provide access to legal education and to meet the needs of the State of X in areas of law related to public service. Given the high cost of attending law school and the debt law graduates incur to finance their legal education, the Legislature finds that few lawyers are able to practice in areas of law relating to public service because the pay is substantially lower than the pay in other practice areas. The Legislature finds that encouraging law students and lawyers to practice in areas of the law related to public service is essential to ensuring access to the justice system in those areas. Therefore, it is the intent of the Legislature in enacting this act to provide for the partial or full repayment of educational loans of lawyers who provide legal services in a public service area of the law.

SECTION 3. PUBLIC SERVICE LEGAL LOAN REPAYMENT ASSISTANCE PROGRAM ESTABLISHED

The Public Service Legal Loan Repayment Assistance Program is established to provide loan repayment assistance to lawyers who practice in public service positions, as defined in Section 4 of this Act. The Program will provide loans to participants, as defined in Section 4 of this Act, for the purpose of repaying educational loans and upon a participant's completion of the required service obligation, as described in Section 6 of this Act, will forgive the loans. The [insert name of entity administering the Program] shall administer the Program pursuant to this Act.

SECTION 4. DEFINITIONS

Agency refers to the government agency or non-profit organization that will administer the Program.

Applicant refers to an individual who applies for assistance from the Public Service Legal Loan Repayment Assistance Program.

Eligible Educational Debt includes school-approved undergraduate, graduate and law school loans owed to government and commercial lending institutions or educational institutions. Educational loans extended by a private individual or family are not considered Eligible Educational Debt for purposes of this Act.

Eligible Employment means those areas of legal practice determined by the Agency, in consultation with the Advisory Board, to serve the public interest, including, but not limited to, providing legal assistance to low-income persons through a non-profit organization or legal services as an employee of a local, state or federal governmental entity.

Licensed lawyer means a lawyer licensed to practice law in the State of X.

Participant refers to a lawyer who is receiving loan repayment assistance through the Public Service Legal Loan Repayment Assistance Program.

Program is the Public Service Legal Loan Repayment Assistance Program.

Public Service Legal Loan Repayment Assistance Fund refers to a fund created in Section 8 of this Act and established in the State Treasury to support the Public Service Legal Loan Repayment Assistance Program.

Total Income includes income from sources identified by the Agency as income.

SECTION 5. POWER AND DUTIES OF AGENCY/ENTITY ADMINISTERING THE PROGRAM

The Agency shall adopt rules necessary to implement this chapter. Upon creation of the Public Service Loan Repayment Assistance Program, the Agency shall appoint an Advisory Board. The Advisory Board shall include at least one representative from the State Bar of X, one representative from the State X Access to Justice Committee, up to two representatives from each of the law schools located in State X and at least one law student from each law school in State X.

- (a) Within 90 days of the effective date of this Act, the Agency shall appoint the Advisory Board with which it will work to establish regulations to administer the Program, including:
 - (i) Eligibility criteria for participation in the Program based upon the following:
 - (A) The applicant's need, which shall be based on salary, total income and Eligible Educational Debt as defined in Section 4.
 - (B) The Applicant's Eligible Employment, as defined in Section 4.
 - (C) The Applicant must be a member in good standing of the Bar of the State of X.
 - (ii) Guidelines pertaining to:
 - (A) Maximum amount of annual assistance to be provided by the Agency to each Participant.
 - (B) Maximum amount of cumulative total assistance for Program participants.
 - (C) A procedure and schedule for the provision of Program assistance to participants.
 - (D) At a minimum, an annual review of the eligibility of each Participant.
- (b) The Agency shall adopt any other regulations necessary to implement this chapter.

SECTION 6. REPAYMENT OBLIGATION

Participants in the Program who are awarded loan repayment assistance shall receive amounts from the Program for the purpose of repaying both principal and interest on Eligible Educational Debt.

- (a) Participants shall agree to meet the required service obligation by providing legal services in Eligible Employment, as defined in Section 4 of this Act.

- (b) Participants will sign a promissory note setting forth their obligation to the Program to repay assistance loans that are not subsequently forgiven.
- (c) Participants shall agree to allow the Agency to review loan records and to obtain information from lenders necessary to verify eligibility and to determine assistance payment amounts.
- (d) Payment of loan repayment assistance under this chapter shall begin no later than ninety days after an individual becomes a Participant. Provided that there is sufficient funding in the Public Service Legal Loan Repayment Assistance Fund, assistance payments shall be made quarterly to the Participant until Eligible Educational Debt is repaid or until the Participant is no longer engaged in Eligible Employment, whichever comes first.
- (e) Assistance payments under the Program shall cease on the date that the Participant discontinues Eligible Employment. The Agency shall determine the amount owed to the Program by Participants who serve less than the required service obligation.

SECTION 7. PARTICIPANT OBLIGATIONS

The Program is intended to enhance, and not to replace, existing loan repayment Programs from other sources, such as law schools. An Applicant must first apply for any educational loan assistance from his or her educational institution, employer or other sources for which he or she may qualify. Only if an Applicant has received no loan repayment assistance, or only partial assistance, from other sources, may he or she apply to the Program for assistance in repaying the balance of his or her Eligible Educational Debt.

A Participant shall contribute at least 5 percent of his or her monthly salary toward the repayment of his or her loans. The exact percentage obligation shall be determined by the Agency.

SECTION 8. LOAN REPAYMENT ASSISTANCE FUND ESTABLISHED

- (a) The Public Service Legal Loan Repayment Assistance Fund (“Fund”) is created in the State Treasury to fund the Public Service Legal Loan Repayment Assistance Program created in this chapter. Money in the Fund may be spent without appropriation and only to fund the Program and the administration of the Program.
- (b) The Agency shall deposit in the Fund account all money received for the Program. The Fund account shall be self-sustaining and consist of funds appropriated by the Legislature for the Program and private contributions to the Program.
- (c) The sum of _____ is hereby appropriated to the Agency to carry out the provisions of this Act. This appropriation shall be a continuing appropriation and shall not lapse at the end of the fiscal year. In addition to any funds specifically appropriated by this Act, all moneys received from any other source as contributions or supplements for the Program established in this Act and any interest or income earned shall be paid into the Fund established for this Program and shall be a continuing appropriation.
- (d) If the Program’s mission ever changes or the Legislature disbands the Program, all private contributions in the Fund must be transferred to a non-profit organization with a mission similar to the Program or returned to the private donors.

- (e) With the exception of the operating costs associated with the management of the Fund account by the Treasurer, the Fund account shall be credited with all investment income earned by the Fund account.
- (f) Money in the Fund account may be spent only for the purposes of the Program as specified in this chapter. Disbursements from the Fund account shall be made only on the authorization of the Agency.
- (g) The Treasurer shall routinely consult and communicate with the Agency on the investment policy, earnings of the Fund account and related needs of the Program.

SECTION 9. EFFECTIVE DATE.

This Act shall take effect [insert date].

V. ANALYSIS OF LOAN REPAYMENT ASSISTANCE PROGRAM SAMPLE STATE LEGISLATION

Note: The material presented below corresponds to the order of the sections of the sample state legislation.

SECTION 1: SHORT TITLE

The short title should reflect the type of program created and the purpose underlying its creation. If the program will provide assistance to a broad range of public interest lawyers, the title should so reflect. It also may prove useful to include “loan repayment” or “loan forgiveness” so the program’s purpose is clear.

Examples include:

- Public Interest Legal Loan Repayment Assistance Program
- Criminal Justice Lawyer Loan Repayment Assistance Program
- Public Interest Loan Repayment Assistance Program
- Public Service Loan Repayment Program
- Public Interest Legal Career Assistance Program

SECTION 2: PURPOSE

This section should provide the rationale for the program’s establishment. There are countless reasons underlying a legislative decision to establish a loan repayment assistance program to assist lawyers in certain employment settings. A common purpose is to provide access to legal services to the poor and/or meeting a state’s needs in the areas of public interest law. Attention should be paid to how the purpose is defined: if the purpose is defined too narrowly, it may prove difficult in the future to amend the statute to broaden the eligible class of lawyers.

Examples include:

- Access to Legal Services/Justice
- Reducing barriers for lawyers who wish to enter practice settings serving low-income individuals or groups serving these individuals
- Recruitment and/or Retention of Public Service Lawyers
- Increase Quality of Criminal Justice System

SECTION 3: LOAN REPAYMENT PROGRAM ESTABLISHED

Program Name

The name of the program should reflect its purpose. The name can be as simple as “State X [Insert State Name] LRAP” or could be named in memory of a prominent legislator or public interest lawyer. For example, Maryland recently renamed its program the “Janet L. Hoffman Loan Assistance Program,” in memory of Janet L. Hoffman, the first and longest-serving lobbyist for Baltimore City in Annapolis, Maryland.

Examples:

Other possible names include:

- Public Interest Lawyer Loan Repayment Program
- Lawyer Loan Assistance Program
- Public Service Loan Repayment Assistance Program
- Legal Educational Assistance Fund
- State X Lawyer Loan Assistance Program
- Public Interest Legal Career Assistance Program

Program Structure

The sample state legislation creates a “loan repayment assistance program” (LRAP), meaning that a Program will make new loans to allow participants to repay educational loans provided the participants are engaged in Eligible Employment. Upon completion of the required service obligation, the Program will forgive or cancel its loans to the participants.

Generally, a borrower whose loans are forgiven or canceled must include the amount forgiven in gross income for federal income tax purposes. This may not be the case with some state LRAPs. Before 1997, when a LRAP discharged a borrower’s loans, the borrower had taxable income equal to the principal amount of the discharged LRAP debt.¹ The Taxpayer Relief Act of 1997² permitted states or other entities to develop LRAPs so that loan forgiveness based on public service employment is not considered taxable income to the borrower under specific circumstances.³ Under § 108 (f) of the Internal Revenue Code, as amended by the Taxpayer Relief Act of 1997, student loans canceled after August 5, 1997 in exchange for public service employment generally do not cause the borrower to have taxable income, provided certain requirements are met.⁴ Those requirements are:

• Borrower/LRAP Recipient

A borrower/LRAP recipient must be employed in a governmental unit or by a nonprofit organization.⁵

• Qualifying Loans

The loan must be a forgivable loan, as opposed to a grant, made by a qualified lender (see below) to assist the borrower in attending an educational institution.⁶ The loan agreement must contain a provision that all or part of the debt will be canceled if the borrower works for a specified period of time, in a specified profession (generally public service employment) for a specific class of employers. The LRAP makes a loan, which a recipient uses to refinance the original educational loans a recipient incurred to attend school. Generally, a program will make a loan to a program recipient and the program will forgive this loan after the recipient satisfies the program’s service requirement.

• Qualified Lenders

The loan must be made by an educational institution, a tax-exempt organization or the

¹ See Rev. Rul. 73, 256, 1973-1 C.B. 56, § 2117 of the Tax Reform Act of 1976, and 26 U.S.C. § 108 (f) as originally enacted by the Tax Reform Act of 1984 (effective for loan discharges on or after January 1, 1983).

² Pub.L. 105-34 (1997).

³ 26 U.S.C. § 108 (f).

⁴ Id.

⁵ 26 U.S.C. § 108 (f)(2)(D)(ii).

⁶ 26 U.S.C. § 108 (f)(1).

government.⁷ *The recipient cannot be employed by the organization making the new loan or any benefits received are considered taxable income to the recipient.*⁸ Therefore, if a state agency provides forgivable loans to state government employees through a state-administered LRAP, the loan cancellation/forgiveness is considered taxable income to these recipients. In order to provide maximum benefits to all recipients, a state may choose to provide the state scholarship entity with the authority to create a separate nonprofit corporation to administer the loan repayment program. Georgia took this approach. The statute creating its loan repayment assistance program (“Georgia Public Interest Lawyers’ Fund”) authorizes Georgia’s Student Finance Authority to create a separate nonprofit corporation to administer the loan repayment program.⁹

Thus, it is the Commission’s understanding that while grants remain taxable income, forgiveness of loans made by non-employers and used by the borrower to refinance educational loans, does not produce taxable income to the borrower under the specific circumstances defined in Section 108(f). There is little authoritative legal guidance available to determine with certainty the proper tax treatment of loans forgiven under a LRAP. The vast majority of state and law school LRAPs are structured as forgivable loan programs. Given the lack of legal guidance on this issue, tax counsel should be consulted when structuring a program.

It is advisable to include a section in a program’s guidelines advising LRAP participants that each recipient remains responsible for determining his/her own federal tax liability and making all required disclosures to the Internal Revenue Service and any other taxing entity.

SECTION 4: DEFINITIONS

Including a section with definition of key terms is advised. The definitions provided in the sample legislation are suggested. While some definitions used are self-explanatory (e.g. “Program”), others may vary from state to state, depending upon circumstances unique to each state (e.g. “Eligible Employment”).

A discussion of select definitions included in the sample statute, including other options for defining, follows.

Eligible Educational Debt

This term refers to debts that will be considered in computing a graduate’s total educational debt burden, based on the purpose of the loan (e.g., to attend undergraduate university) and lending source (e.g., commercial lending institution).

Some states, such as California and Maryland, have chosen to include all higher educational debt, including undergraduate and graduate, associated with obtaining an education. Others cover only debt incurred to attend law school. Many law school graduates have incurred a combination of undergraduate and law school debt. If a LRAP covers only law school debt, some law graduates with large undergraduate debt may be unable to accept lower-paying public service jobs. Most LRAPs do not provide repayment for higher educational loans that are in default at the time of application.

⁷ 26 U.S.C. § 108 (f)(2).

⁸ 26 U.S.C. § 108 (f)(3).

⁹ GA ST § 20-3-384 (2003).

When developing a definition of “Eligible Educational Debt,” the lending source should also be considered. Most programs consider school-approved loans from college, university, government or commercial lending sources obtained for tuition, educational expenses or living expenses during school as eligible educational debt. Generally, loans made by an individual, such as a family member, are not considered eligible educational debt because of verification concerns.

Eligible Employment

This term refers to employment settings that qualify as eligible employment for program recipients. The definition used in the sample legislation broadly defines this class to include, but not limited to, lawyers providing legal services to the poor through a nonprofit organization or legal services as an employee of local, state or federal government. The definition also provides an Advisory Board with authority to expand the class of eligible employment. Legislators may choose to specifically define eligible employment or provide only a broad definition, while delegating authority to establish specific eligibility guidelines to an agency or advisory board responsible for administering the program.¹⁰

Many factors will influence how a program defines eligible employment for program recipients, including:

• LRAP’s Purpose

The definition of Eligible Employment will generally reflect the legislators’ purpose in establishing a program. Reasons may include promoting access to justice for the poor by enabling law graduates to pursue and remain in jobs with nonprofit organizations providing legal services to the poor, improvement of recruitment and retention efforts by public service legal employers etc. For example, if the program is designed to promote and facilitate the provision of access to justice for the poor, “eligible employment” may include only employees of nonprofit organizations providing direct legal services to the poor. If the program is designed to improve the state’s criminal justice system, “eligible employment” may include only state and local prosecutors’ offices and agencies providing indigent defense.

• Unique State Considerations

Eligible Employment will vary from state to state, depending on a number of factors. These may include salary levels, cost of living expenses, political considerations, numbers of public service lawyers, and recruiting and retention issues specific to a particular employment setting (for example, prosecutors or legal services lawyers in rural areas). As discussed in Section VII, it is advisable to collect background information, such as average and median tuition for law schools in the state, average graduating debt of law graduates from the state’s law schools (and those working in the state), starting public service law salaries in the state, etc. Also, including certain employment settings within the definition of “Eligible Employment” may help to strengthen advocacy efforts for the creation of a LRAP.

¹⁰ For example, Maryland defines “eligible field of employment” very broadly to include employment in the State by a nonprofit organization or by the State, or any local government in the State, except for judicial clerks. This includes professions in addition to the legal profession, such as nursing and social work. MD EDUC CODE § 18-1501 (2003).

• Funding

Funding for the LRAP may also be a consideration when developing a definition of eligible employers. If annual program funding is modest, it may prove more effective to include a narrowly-defined class of eligible lawyers so that the program may be in a position to impact substantially one area of public service law, as opposed to providing assistance to a small number of lawyers in a variety of public service employment settings. A broader definition will also result in a greater number of potential applicants.

It may be advisable to develop cost estimates to project the cost of a proposed program. When projecting costs, it is critical to permit room for growth, short and long-term. Some of the existing state programs started small and expanded as additional resources became available.

The following sample formula¹¹ may be used to project program costs:

- How much is the average monthly net salary per participant (based on an estimated 30% tax rate)?

$$N = \underline{\quad} \quad \text{Net monthly salary ("N")} = \frac{\text{average gross annual income} \times 0.7}{12}$$

- What is the average monthly loan payment for participants?

$$L = \underline{\quad} \quad \text{Loan payments based on a 15-year schedule} = L$$

- How much should the LRAP pay toward the participant's monthly educational loan obligation? [This formula assumes that no more than 20% of a participant's net salary is directed toward his/her monthly loan payment].

$$P = \underline{\quad} \quad L - [0.2 \times N] = P$$

- How many possible program participants do you anticipate?

$$A = \underline{\quad} \quad \text{Number of lawyers from the graduating class of 2002 working in qualifying employment as defined by the entity creating the state program (e.g., civil legal services, public defenders, etc.)} = A.$$

- How much will the program cost in year one?

$$Y1 = \underline{\quad} \quad 12 \times P \times A = Y1$$

- How much will the program cost after 10 years?

$$Y10 = \underline{\quad}. \quad 10 \times Y1 = \underline{\quad}$$

This formula assumes that a program will fund all eligible applicants in a state. The vast majority of existing LRAPs (funded by states or law schools) do not have the resources to fund all eligible applicants. This formula may be used by LRAP advocates to develop a proposed cost to fund all eligible applicants (which may be useful when approaching the legislature or a funder for funding) or to develop cost estimates for extending eligibility to certain categories of lawyers (e.g., government attorneys). Finally, this formula does not include the costs a program will incur to administer a LRAP.

¹¹ Equal Justice Works, LRAPs 201 Workbook, p. 19 (2002), available at www.equaljusticeworks.org.

• Other Employment Settings to Consider

Judicial Clerks

For the class of 2001, 11.6% of law graduates accepted employment as judicial clerks following law school graduation.¹² The decision about whether to include judicial clerks in a LRAP will vary from state to state. Many LRAPs exclude this employment category for several reasons. One, many federal judicial clerks accept higher-paying employment at private firms once the clerkship concludes. Two, judicial clerks are excluded for fiscal reasons – there may be a high number of judicial clerks in a given state and if a program’s funds are limited, an exclusion of this class of employees will decrease the number of potential applicants in favor of funding graduates with plans to pursue a longer career in public service.

Some programs that have excluded judicial clerkships include an exception for those lawyers who, following the clerkship, accept employment with an eligible public service employer. The former judicial clerk who accepts qualifying public service employment receives credit, for purposes of a loan deferral/loan forgiveness schedule, for time spent in the clerkship at income levels earned during the clerkship. Minnesota¹³ and North Carolina¹⁴ have such an exception for judicial clerks.

Lawyers in Private Practice

Another employment setting to consider including in the definition of “Eligible Employment” is a lawyer in private practice, whose practice is primarily comprised of court appointments or pro bono work on behalf of indigent clients and who meets any income caps set by the program. Income may be verified in various ways, including submission of the applicant’s most recent federal income tax return.

For example, in some jurisdictions, local or state government does not provide government-funded indigent defense. Rather, lawyers in private practice accept court appointments to represent indigent defendants in criminal proceedings. In some instances, these cases make up a significant percentage (e.g. 90%) of a lawyer’s practice.

Examples of possible definitions for this class of lawyers include:

- An applicant must provide legal services on a full-time basis to indigents in court-appointed cases. Each program application will be reviewed by the agency administering the program and/or advisory committee to verify eligibility. To verify income, an applicant must submit his/her most recent federal income tax return and an affidavit attesting that the applicant’s practice consists of providing legal services to indigent defendants in court-appointed cases.
- A self-employed lawyer may be eligible for loan repayment assistance provided that he/she is engaged full-time in a practice where the predominant focus (i.e. at least 75%) is spent on providing legal services to the indigent either through court-appointments or pro bono work.

Licensed Lawyer

The definition of licensed lawyer will likely vary from state-to-state, depending on the permitted means of legal study to sit for the bar exam. Some state LRAPs require recipients to be graduates

¹² *Jobs & J.D.’s: Employment and Salaries of New Law Graduates – Class of 2001*, National Association for Law Placement (Page 1 of Class of 2001 Summary Findings, available at <http://www.nalp.org/nalpresearch/erss01sum.pdf>).

¹³ Loan Repayment Assistance Program of MN Program Guidelines, Section 1 (updated October 4, 2001).

¹⁴ NC LEAF 2002-03 Program Guidelines (Revised 7/2002), Section III E. The guidelines are available at <http://www.ncleaf.org/>.

of ABA-accredited law schools. However, this requirement may not be appropriate for other states that do not limit licensure to J.D. graduates of ABA-accredited law schools.

Total Income

“Income” should include an applicant’s public service salary and any other income earned from other sources, including investments or other employment. The California and Maryland statutes do not define “income,” but delegate the authority to determine an applicant’s eligible income, and other eligibility requirements, to the state agency administering the respective programs. See Section 5 below (“Eligibility Criteria”) for a more detailed discussion of this issue.

SECTION 5: POWERS AND DUTIES OF AGENCY/ENTITY ADMINISTERING THE PROGRAM

Entity Administering the Program

A statute creating a LRAP should identify the entity administering the LRAP and define the entity’s powers and duties in administering the program. Of the existing statewide LRAPs, one is administered by the State Scholarship Administration of the Higher Education Commission (Maryland)¹⁵, two are administered by independent nonprofit organizations (Minnesota and North Carolina) and two are administered by bar foundations (Arizona and New Hampshire). The authorizing legislation for the California¹⁶ and Texas¹⁷ programs provide for administration through a state agency, namely a state student financial aid agency (California) or higher education coordinating board (Texas).

The sample statute includes references to an example of a state governmental agency administering the program. Often, when a state agency is overseeing the LRAP, the authorizing legislation provides the parameters of a program, while providing the administering agency with the authority to develop regulations or guidelines to govern the program. The selection of a state agency or a nonprofit organization to be the administering agency is very state-specific, and will vary in each state. There might be advantages to selecting a state scholarship administration or student aid agency to administer a LRAP. For example, a state aid agency is already in the business of extending higher education loans and may be in a position to assume administration of a LRAP with little difficulty. If legislation proposes that the LRAP will be administered by a state agency, it is important to include representatives of the agency in any LRAP coalition meetings and/or share drafts of the legislation with agency staff, so that they may lend their expertise to the development process.

However, one major disadvantage exists to a state scholarship administration administering the program: if a state is administering the program and a state is also the recipient’s employer, the benefits to the recipient are likely to be considered taxable income under Section 108(f) of the Internal Revenue Code (see Section 3, “Program Structure,” for a discussion of the tax consequences). Therefore, if a state wants to include lawyers working for the state in the definition of “Eligible Employment,” a state may wish to provide the state scholarship administration with the authority to create a separate nonprofit organization to administer the program. Georgia’s LRAP statute takes this approach. The statute creating its

¹⁵ MD EDUC CODE §§ 18-1501-1505 (2003).

¹⁶ CA EDUC CODE §§ 69740-69748 (2003).

¹⁷ TX EDUC CODE ANN. §§ 61.951-61.962 (2003).

loan repayment assistance program (“Georgia Public Interest Lawyers’ Fund”) authorizes Georgia’s Student Finance Authority to create a separate nonprofit corporation to administer the loan repayment program.¹⁸

Statewide programs that are created by legislation tend to be administered by a state agency, whereas programs created independently, through efforts of private individuals or groups such as law students or lawyers, tend to be administered by an independent nonprofit organization (Minnesota and North Carolina) or a specific nonprofit, such as a bar foundation (Arizona and New Hampshire).

Advisory/Oversight Body

The statute should create a new entity, such as a board or committee, to work with the administering agency to help develop program guidelines and regulations, select recipients, fundraise, etc. If the LRAP is administered by a state agency, it may be useful to create an oversight body with expertise in public service areas of the law. This will ensure that the law school and legal communities will have input into the program’s design and administration.

The constituents to include on a LRAP advisory/oversight body will vary, depending on factors specific to a given state. When creating an advisory/oversight body, it will be important to explore a mixture of options. Be creative and decide what works best for the state. A list of suggested constituents to include in an advisory/oversight body follows.

Constituents to Include in an Advisory/Oversight Body

- Law school representatives
 - deans
 - faculty
 - administrators, such as dean of students, director of law school LRAP, director of public service
 - student leaders (provided the student does not have a pending application with the LRAP for assistance)
- Bar leaders
- Judges
- Public Service lawyers
 - Government lawyers
 - Legal Services lawyers
 - Prosecutors
 - Public Defenders
- Representatives of State Access to Justice Committee
- Representatives from funding community
 - IOLTA Programs¹⁹
 - Private Foundations with knowledge of or ties to public service legal community
- Other community leaders, including legislators or government officials.

¹⁸ GA ST § 20-3-384 (2003).

¹⁹ Interest on Lawyer Trust Accounts or “IOLTA” programs provide funding to a number of charitable causes. State-based IOLTA programs receive interest from lawyer trust account funds that are held for short periods of time or in such small amounts that net interest cannot be earned for clients. State IOLTA programs use the money to fund a number of charitable causes, including legal services for the poor, and in some states, LRAPs. For more information about IOLTA programs, please visit <http://www.abanet.org/legalservices/iolta>.

Potential Responsibilities to Delegate to Advisory/Oversight Body

The advisory/oversight body may advise the entity administering the LRAP in various areas, including:

- Designing program guidelines or developing regulations/rules to administer the program
- Developing eligibility criteria
- Designing application and selection process, including forms
- Selecting recipients
- Fundraising, including advocating for future appropriations
- Advocating for the program, including future re-authorizations
- Assisting with public relations or marketing efforts
- Designing grievance procedures and/or an appeals process.

Regulations/Guidelines to Administer the Program

Sections 5 (a) and (b) of the sample legislation provide the entity administering the LRAP, in conjunction with an advisory board, the authority to establish regulations pertaining to a variety of issues, which are discussed below.

Eligibility Criteria

A statute may either provide the administering entity with specific eligibility guidelines or provide broad eligibility parameters and delegate to the entity and/or oversight body the authority to develop specifics.

Applicant's Need

Qualifying Income

Income Caps v. Sliding-Scale

In most cases, recipients must have a low income, as compared to other lawyers in private practice, to qualify for LRAP assistance. Many programs establish an income cap, which is the fixed maximum annual income a recipient may earn to establish eligibility to receive LRAP benefits. For example, the Arizona Foundation for Legal Services and Education limits eligibility to those with an annual qualifying income of \$45,000 or less.²⁰

Some programs may opt to use a “sliding-scale,” in which LRAP benefits may decrease as a participant’s income increases. For example, if a recipient’s income is \$32,000, she receives the maximum LRAP benefit of \$5,000; if her income is \$36,000, she receives \$3,500 of program benefits. A program that uses a sliding-scale approach may also have an income cap.

A strict income cap may prove frustrating to some lawyers, who may lose program eligibility with their first raise or modest cost-of-living increase. If the cap is \$37,500, this means that a lawyer who earns \$37,501 is not eligible for assistance.

North Carolina’s LRAP sets an income cap that increases with each year of practice through the second year, then sets a cap for those who have practiced for at least 2 years.

²⁰ Program Guidelines, Arizona Foundation for Legal Services and Education Loan Repayment Program (revised 7/02).

The program's 2002-2003 guidelines provide the following schedule:

First year of practice - may earn up to \$37,000

Practice one year, but not yet completed second year – may earn up to \$39,000

Practiced at least two years – earn up to \$43,000.²¹

Therefore, whichever approach is chosen, it is critical to provide the entity administering the program and/or oversight body with the authority to make annual adjustments to the income cap and/or sliding scale. Programs should consider cost of living or local public service salary increases when making annual adjustments. If income caps are not periodically adjusted, some public service employers may artificially keep salaries below the program's income cap so that lawyers continue to remain eligible for the program. Also, recipients may be discouraged from seeking salary increases.

How is Qualifying Income Determined?

Programs employ a variety of approaches in defining "income," from the simple to using more complicated formulas. Income always includes a recipient's public service salary (and any other outside income from other employment), but some programs adjust income to include a deduction for dependents or child support and include separate definitions for joint income for those applicants with spouses or domestic partners.

For example:

Arizona Foundation for Legal Services and Education

"Qualifying Income" is defined as all income, including anticipated annual salary, minus \$5,000 per dependent or amount of child support paid. If the applicant is married, the applicant will be treated as having the higher of (a) the applicant's individual income or (b) one-half of the combined income of both spouses.²²

Eligible Educational Debt

See Section 4 for complete discussion.

Eligible Employment

See Section 4 for complete discussion.

Other Employment Issues to Consider

Changes in Employment Status

A program may wish to consider how it will handle changes in employment status, including leaves of absences (medical, maternity/paternity/family leaves), layoffs or job changes. Generally, programs treat a recipient who remains in "Eligible Employment" (while on approved leave) as an eligible recipient. Whenever possible, a program may wish to incorporate flexibility in its guidelines on these issues.

For example, North Carolina's guidelines include a provision for "available leaves," which are unpaid parental or disability leaves. The program considers a participant on unpaid parental or disability leave as a full-time employee up to a maximum period of six months.²³

²¹ See *supra* note 14, Section III F.

²² See *supra* note 20.

²³ See *supra* note 14 at Section III, Subpart I.

Full-time v. Part-time

Generally, most programs require recipients to work full-time, e.g. 35 hours of week, in qualifying employment. The program's guidelines should define full-time. A program may consider prorating assistance to lawyers working part-time or including an exception for those lawyers whose hours have been involuntarily reduced to part-time due to the employer's financial considerations. As more lawyers job-share or work part-time, programs may want to seriously consider eligibility for part-time employment.

Waiting Period

Most state programs are designed to provide assistance to new graduates working in public service jobs. However, a program emphasizing retention goals may impose a waiting period in which a lawyer becomes eligible for forgiveness only after 2-3 years of eligible employment (meaning that a program may begin disbursing loan proceeds, but loans will not be forgiven until a recipient completes a specified term of eligible employment). Although such a guideline may be designed to ensure a recipient's commitment to public service employment, it also may deter new graduates who cannot afford to pursue public interest jobs immediately following law school graduation. Also, a waiting period will likely cause administrative burdens to the administering program.

Educational/Licensing Requirements

A program should consider appropriate law school and licensing requirements for recipients. Will a program limit assistance to graduates of law schools located within the program state or will graduates of any law school working in qualifying employment be eligible? Will a program require a recipient to earn a J.D. from an ABA-accredited law school?

Limit Program to Graduates of Law School Located in State?

Most state programs consider all law graduates who have earned a J.D. and are licensed to practice law as eligible recipients. Initially, Maryland's program required a recipient to have earned a law degree from a law school located in Maryland. However, the legislation governing the Maryland LRAP was amended during the 2000 legislative session to make graduates of any law schools working in qualifying employment eligible. The decision to limit a program to graduates of a law school located in the program's state will be driven by a variety of factors, including political considerations.

Graduate of ABA-accredited law school

See Section 4 above.

Good standing with bar

The existing state programs require that a recipient is a licensed member in good standing of a state bar. A program may permit non-licensed lawyers who are waiting to take a bar exam to apply to a program. If a program chooses to include a requirement that all recipients must be licensed in the program's state, it may be advisable to include a waiver period for new graduates and those lawyers relocating

to the program state to accept public service employment. For example, Arizona's program guidelines provide a waiver of up to 24 months to provide recipients time to obtain an Arizona law license.²⁴

Maximum Amount of Assistance

Programs may have a program assistance cap, or maximum level of assistance a recipient may receive in a given year, regardless of a calculated award. Program assistance caps generally exist primarily due to budgetary reasons. Including a cap may also permit a program to estimate costs using fewer factors (primarily number of recipients times the program assistance cap). This type of program may be easier to administer than a program utilizing formulas accounting for income and annual debt service to determine a recipient's annual award.

For example, Florida's program assistance cap is \$6,000.²⁵

How Can a Program Determine the Amount of Annual Assistance?

A program may determine the annual amount of assistance awarded to individual recipient in a number of ways, including the use of a formula which takes into account a recipient's income and educational loan payments. Programs using such a formula may use a ten-year repayment schedule to calculate student loan benefits. While ten-year repayments may be common for federal loans, fifteen to twenty-year repayment schedules are common for private commercial loans.

Arizona uses a more flexible approach, which varies year-to-year to consider several factors, among them the number of applicants and budget fluctuations.²⁶

Cap on Number of Lawyers Receiving Annual Assistance

Programs may include a cap on the number of people who may receive assistance, likely for budgetary reasons. California's statute provides that the program may make up to 3,000 awards annually.²⁷ Given that most programs will face limited funding, it may be advisable to establish criteria for which applicants will receive priority for limited funds. For example, Minnesota ranks program applicants in order of need, which is determined by calculating a ratio of annual payments due on educational loans to income.²⁸ To keep a program smaller, a program may also consider limiting the categories of employment eligible for loan repayment assistance.

Program Assistance Caps - Lifetime of Program

Programs may also impose a program assistance cap for the lifetime of the program – i.e. the total amount of debt relief assistance to which a recipient is entitled over the life of the program. This cap may be a monetary figure or a term, such as a number of years. This cap is generally driven by budgetary reasons: programs may be wary of assisting a recipient until his/her loans are paid in full, and might prefer to provide adequate assistance to new lawyers

²⁴ See *supra* note 20.

²⁵ The Florida Bar Foundation, Loan Repayment Assistance Program, Program Description, p. 1 (2002).

²⁶ See *supra* note 20.

²⁷ CA EDUC CODE § 69741.5 (2003).

²⁸ See *supra* note 13, Section VII.

entering public service employment. Of course, some recipients may eventually exceed eligible income levels and lose eligibility, so a program may deem such a cap unnecessary.

For example, Minnesota's guidelines provide that once a lawyer receives LRAP assistance, he or she remains eligible for up to 15 years, provided he or she continues to meet the program's income and employment eligibility criteria.²⁹ North Carolina's program provides assistance through the end of the tenth year after graduation or until eligible loans are paid off, whichever comes first.³⁰ Given the increasing level of debt of many public service lawyers, if a term is used it should be reviewed as needed.

Loan Repayment Procedure/Schedule

The majority of state programs are currently structured to make loans to recipients, which are forgiven or canceled after recipients satisfy program service requirements.³¹ (See Sections 3 and 6 for a detailed discussion of this issue.) A program's guidelines should identify how funds will be disbursed and when loans will be forgiven.

A program may disburse assistance awards quarterly, semi-annually or annually. Recipients are required to execute a promissory note and loan funds should be disbursed directly to the recipient, who must use the money to pay his/her loans until the next disbursement. A program may also make retroactive awards, in which payment is made as a reimbursement to recipients for past educational loan debt payments.

A program may forgive loans quarterly, semi-annually or annually once service requirements are met. In other programs forgiveness begins after a longer period of service. This approach may encourage recipients to stay in public service employment for a longer period of time.

For example, New Hampshire's program forgives loans made to recipients on an annual basis. At the end of an award year, the program forgives one quarter of each annual loan for each quarter of service with a qualified employer provided during the applicable program year.³² Arizona's program forgives one month of each annual loan amount for each month of service provided during the program year.³³

In contrast, North Carolina's program forgives its loans after a longer period of service. If a participant remains in eligible employment through the end of year three, the program will begin to forgive the loans extended by the program. If a participant remains in eligible employment through the end of year five, the program forgives all of a participant's loans. If a participant leaves eligible employment before the end of year five, the loans not yet forgiven are repayable over a ten-year period. Money given to a participant during years four through ten of eligible employment will be forgiven on a year-by-year basis.³⁴

²⁹ *Id.* at Section XII.

³⁰ *See supra* note 14, Section VI.

³¹ Maryland's LRAP is structured as a grant program.

³² Program Description, New Hampshire Bar Foundation Law School Loan Repayment Assistance Program (August 2000), Section 8.

³³ *See supra* note 20.

³⁴ *See supra* note 14, Section VI.

Annual review of eligibility

Most programs annually review a recipient's eligibility. It is also advisable to review program guidelines to make necessary adjustments in eligible employment or income caps.

SECTION 6: REPAYMENT OBLIGATION**Program Structure - Grants or Forgivable Loans?**

Please see Section 3 for a detailed discussion.

Termination of Eligible Employment Prior to Required Service Payment

In the event a recipient leaves qualifying employment prior to the required service term, a program should develop a system to enforce outstanding promissory notes by collecting payments owed on any outstanding loans. Many programs alleviate or lessen the impact of this potential problem by making and forgiving loans on a short time basis, such as quarterly.

Promissory Notes

LRAPs structured as loan forgiveness programs generally require all participants to sign a promissory note (see Section 3 for a discussion of the potential benefits to recipients of a loan forgiveness program).

Financial Counseling

A program may consider requiring, or making available on a voluntary basis, financial counseling to program recipients. Such counseling could assist LRAP recipients identify helpful options, such as in some circumstances loan consolidation or the income-contingent repayment option³⁵, which may reduce a recipient's monthly debt service or otherwise benefit recipients.

SECTION 7: PARTICIPANT OBLIGATIONS**Coordination with Other Loan Repayment Assistance Programs**

With the growth of LRAPs, especially at the law school and employer level³⁶, it is possible that a program applicant may be eligible for assistance from other sources. It is important that a program develop guidelines to coordinate assistance with other LRAPs, so that a recipient does not receive assistance in excess of his/her loan payments. The availability of other LRAP assistance should not disqualify an applicant from receiving assistance at the state level.

For example, North Carolina's guidelines provide:

"The level of assistance available from NC LEAF for participants receiving assistance from non-North Carolina LRAPs will be based on the participant's annual debt obligation minus assistance received from the non-North Carolina programs, up to an aggregate of \$6,000 of

³⁵ The income-contingent repayment payment option ("ICR") of the William D. Ford Federal Direct Loan Program is available to all borrowers with federal direct loans and borrowers who consolidate their federally-guaranteed loans into federal consolidation loans. Congress created ICR to enable graduates, who have high educational debt, to take lower-paying community service or public service jobs. The ICR limits annual loan repayment obligations to an affordable percentage of a borrower's income. Any remaining debt is forgiven after 25 years of payments under the ICR plan. For more information about ICR, visit <http://www.finaid.org/loans/icr.phtml>.

³⁶ *Financing the Future: NAPIL's 2000 Report on Law School Loan Repayment Assistance and Public Interest Scholarship Programs*, National Association for Public Interest Law (October 2000). (The National Association for Public Interest Law is now known as Equal Justice Works).

total annual assistance from all sources. The level of assistance available from NC LEAF for participants receiving assistance from North Carolina LRAPs (such as North Carolina law schools or employers) will be based on the Participant's annual debt obligation minus assistance received from North Carolina programs, up to an aggregate of \$9,500 of total assistance from NC Leaf and other North Carolina sources."³⁷

Another sample formula, developed by Equal Justice Works provides:

L = Lawyer recipient's annual educational loan payment (based on 10-year standard repayment schedule)

S = The sum of all loan repayment amounts for which a recipient is eligible

R = The amount of available loan repayment assistance from the source in question (for example, the state program)

If $S \leq L$, then the source in question pays the full amount for which the recipient is eligible.

If $S > L$, then use the following formula to determine the award amount paid by the source in question:

$$\frac{R}{S} \times L = \text{Pro rata share.}$$

For example, a prospective recipient who applies to State A's LRAP is potentially eligible for the following assistance from three LRAPs:

State A LRAP	\$1,000 (R)
Law School X LRAP	\$5,000
Employer Y LRAP	<u>\$1,200</u>
	\$7,200 (S)

Suppose the recipient's annual educational loan payment is \$6,000 (L).

In this example- S (\$7,200) is greater than L (\$6,000). Therefore, to determine State A's award, \$1,000 (R) divided by \$7,200 (S) X 6,000 (L) = \$834 as State A's pro rata share of the total available assistance.

Recipient's Contributions

The sample statute suggests that recipients should be required to contribute a small percentage, at least 5%, of his or her monthly salary towards the repayment of educational loans. This requirement may make the legislation more attractive to legislators, who may view the program as more of a partnership between the state and recipient, as opposed to an outright "gift."

The NC Program guidelines include a schedule for recipient contributions tying the percentage of payment obligation to a recipient's income (i.e. the more a recipient earns, the higher his/her required contribution).³⁸

³⁷ See *supra* note 14, Section IV.

³⁸ See *supra* note 14, Section V.

SECTION 8: LOAN REPAYMENT FUND ESTABLISHED

Funding

The existing state LRAPs are funded through a variety of sources, including legislative appropriations, private donations, IOLTA funds and private foundations, as follows:

LRAP Funding Sources: 2003

	Total Funding	IOLTA	State Legislature	Law Schools	Private Donors	Private Foundations	State Bar Foundations	Other
AZ	\$30,000	100%						
FL	\$106,345	80%						20%+
ME	\$30,000	100%						
MD	\$670,000++		100%					
MN	\$148,000	10%	24%+++	19%	33%		14%	
NH	\$63,140	100%						
NC	\$301,000*	17.5%	66.5%	4%	3%	3%		6%**
TX	\$33,375				100%***			

+ Participating Legal Assistance to the Poor (LAP) grantees pay 20% of the loan repayment benefits (i.e. \$1,200 for a participant receiving \$6,000 in loans) for each LRAP participant. The LAP grantees' 20% share of LRAP program costs is deducted from their general support IOTA grants from the Foundation. The Florida Bar Foundation also administers a second LRAP, which is funded with \$65,571 in funds received from LAP grantees.

++ In 2002-2003, Maryland made 234 award offers; 37 were made to lawyers.

+++ 24% comes from the Legal Services Advisory Committee, which receives its funding through State Judiciary budget and re-grants funds to legal services agencies.

* The state legislative appropriation and private foundation contributions are projected amounts.

** 6% represents interest and loan repayments from participants no longer in eligible employment plus administrative fee collected from participants who attended out-of-state law schools.

*** Private donors include clients settling a class action case, which included a charitable contribution settlement provision. Access to Justice Commissioners and several law firms also made significant donations.

Definitions: Funding Sources

IOLTA³⁹

Interest on Lawyer Trust Accounts or "IOLTA" programs receive interest from lawyer trust account funds that are held for short periods of time or in such small amounts that net interest cannot be earned for clients. State IOLTA programs use the money to fund a number of charitable causes, including legal services for the poor, and in some states, LRAPs providing assistance to lawyers who work for nonprofit organizations providing legal services to the poor.

State Legislative Appropriation

This term refers to funding appropriated from a state's general fund by a state's legislature to support loan repayment/forgiveness for public service attorneys. Currently, three states receive state legislative funds – Maryland, North Carolina and Minnesota.⁴⁰

³⁹ For more information about IOLTA programs, please visit <http://www.abalegalservices.org/iolta>.

⁴⁰ Minnesota receives some of its funding from the Legal Services Advisory Committee, which receives its funding through State Judiciary budget.

Three states have enacted authorizing legislation – California, Georgia and Texas – but the legislatures have not appropriated funding.

Law Schools

Law schools located in the state sponsoring the LRAP may contribute to a state LRAP, as the law school's graduates may benefit from the program. Minnesota and North Carolina currently receive a portion of their funding from law schools. The statute creating the LRAP for Texas Attorneys General requires each public law school in Texas to set aside one percent of tuition charges for resident students enrolled in law school to support the LRAP.⁴¹

Private Donors

In some states, such as Arizona, Minnesota, North Carolina and Texas, private donors, including individual members of the private bar, law firms and individual law students, provide a portion of funding for LRAPs.

Private Foundations

Philanthropic nonprofit organizations may be a source of funding for LRAPs. The types of foundations vary, from large foundations with a national scope to smaller local and/or family-funded foundations. Funding a statewide LRAP may appeal to a local or statewide foundation, as the funding will impact the local community in which the foundation operates. In 1990, the Z. Smith Reynolds Foundation, a foundation located in North Carolina, which makes grants supporting projects in North Carolina that benefit residents of North Carolina, provided a significant portion of the seed money to support the program's operations.

State Bar Foundations⁴²

State bar foundations are created to act as the charitable affiliate of a state bar association. The missions of bar foundations vary, but a common one is to improve access to justice for people who are impacted by poverty, abuse and discrimination. Bar foundations may accomplish their missions by awarding grants to legal aid and public interest law organizations. Several state bar foundations, such as Maine and Minnesota, provide support to LRAPs.

Other

"Other" refers to a number of additional funding sources for LRAP. For example, North Carolina identifies 5% of its funding from other sources. These are the fees generated from interest and loan repayment from participants no longer in eligible employment and an administrative fee collected from participants who graduated from out-of-state law schools.⁴³

⁴¹ TX EDUC §61.961 (2003). The program is not yet operational.

⁴² The Arizona, Florida, Maine and New Hampshire LRAPs are administered by state bar foundations; however, these particular state bar foundations act as the IOLTA provider in their respective states.

⁴³ Graduates from out-of-state law schools who are accepted as NC LEAF participants must pay each year 10% of the total annual assistance received under the LRAP as an administrative cost. NC LEAF encourages participants to obtain these funds from their respective law schools. *See supra* note 14, Section V.

Funding sources for individual programs will vary, depending on a number of state-specific factors. When proposing legislation, it is advisable to structure the loan repayment assistance fund to have the ability to accept private donations that are tax-deductible to donors.

Depending on the size of the program, a program administrator might wish to consider creating an endowment to ensure the program has a steady funding stream. An endowment involves setting aside large sums of money in an investment fund. Generally, the principal, or corpus, is not spent, but the interest income is used to fund a specific program, such as a LRAP. Some law school LRAPs are funded by endowments. Most set endowment spending at 5% of the corpus annually. With 5% spending, \$1,000,000 yields only \$50,000 in annual available funds.

Often, it may take 10-20 years to fully endow an endowment; therefore, creating an endowment is a long-term goal. There are several ways for a program to create an endowment, including: setting aside a certain percentage of annual revenue into an endowment; designating the proceeds from a large, one-time major gift for an endowment; or designating certain kinds of gifts, such as bequests, other planned gifts and/or class action residual funds, for the endowment.⁴⁴ Other strategies for building an endowment include matching donations, or creating other tax incentives for donors. In the event the program's mission changes or a program is disbanded by a legislature, it is important to include language in a statute to protect donors by requiring the transfer of such donations to a nonprofit organization with a mission similar to the program.

For more information about these and other funding resources, it may be instructive to examine information about legal services fundraising initiatives compiled and analyzed by the ABA's Project to Expand Resources for Legal Services.⁴⁵ The Project has developed materials discussing and evaluating suggestions for fundraising activities. With any statewide LRAP fundraising efforts, it will be critical to coordinate with statewide or local legal services fundraising campaigns.

Rotary or Non-lapsing Dedicated Fund

The sample legislation proposes the creation of a non-lapsing dedicated fund to support a program. Unlike accounts in a state's general fund which are only authorized for the current fiscal year, a rotary fund will be automatically appropriated for each subsequent year and will retain the balance in the fund from year to year. A statute should also provide that any interest earned from fund proceeds is also non-lapsing.

SECTION 9: EFFECTIVE DATE

The legislation's effective date, contingent upon a state's legislative schedule, will vary from state to state.

⁴⁴ *Innovative Fundraising Ideas for Legal Services – 1998 Edition*, ABA Project to Expand Funding for Legal Services, p. 2-15.

⁴⁵ For information about the Project or to order a copy of *Innovative Fundraising Ideas for Legal Services – 1998 Edition* (an updated edition is currently in development), see <http://www.abalegalservices.org/scloid/perls.html>.

VI. TIPS ON DEVELOPING A STATEWIDE CAMPAIGN FOR A LOAN REPAYMENT ASSISTANCE PROGRAM

“When interviewing for vacant staff positions, many talented, young lawyers are forced to turn down our job offers because they cannot afford to repay their law school loans and meet their basic living expenses. The number of law graduates coming in with significant law school debt is increasing each year. LRAPs have a positive, tangible effect on our ability to hire and retain new attorneys to serve the Latino population throughout Minnesota.”

Jorge Saavedra, Chief Legal Officer, Centro Legal, St. Paul, MN

When thinking about creating a statewide LRAP, it is important to consider the following aspects of developing and implementing a campaign.¹ Most of these items are applicable to legislative campaigns as well as campaigns for private programs or non-legislative funding.

• IDENTIFY PROGRAM SCOPE

- Determine if the program will benefit only public service lawyers, or include other “helping professions,” such as doctors, social workers, teachers, nurses, etc. In some states considering a legislative approach, it may be politically necessary and/or improve the chances for success if the coalition is broadened to include other professions.
- Define the program’s or legislation’s scope, as this will likely impact who the key stakeholders are (e.g. will the program have a narrow definition of eligible employment such as legal services organizations only, or a broader definition that may include others, such as local, state and federal government agencies. Once the scope has been identified, identify the key stakeholders and meet with them individually before building the coalition to get a sense of important issues, potential problems, etc.

• IDENTIFY POTENTIAL ALLIES

- Identify the groups who have an interest in this issue. This will vary from state to state, but may include: state, local, minority and specialty bar associations, access to justice commission, law schools (deans, faculty, administrators and students), legal services organizations, other public interest law organizations, prosecutors’ organization or association, public defenders’ association, attorney general’s office, other government officials, judiciary, state legislators and/or legislative staff, state student organizations, etc.
- Some of the groups involved may have extensive lobbying experience, which may benefit the coalition’s work. For instance, state bars and universities may have a legislative affairs office, which is staffed by experienced lobbyists. Bar associations may have leaders who are willing to speak to key legislators or funders. Law school deans may also have key contacts in the legislature or be useful to convince other community leaders of the importance of a program.

¹ For additional information about developing a LRAP campaign, see *Action: Creating Law School Loan Repayment Assistance and Public Interest Scholarship Programs*, National Association of Public Interest Law and American Bar Association Government and Public Sector Lawyers Division, 2000.

- If the coalition is considering a legislative proposal that includes LRAP administration by the state scholarship or financial aid administration, it is advisable to include staff or leadership from this agency in the coalition. These individuals probably have relationships with legislators and may be called to testify at legislative hearings on a bill proposing a state LRAP.

• **COLLECT AND DEVELOP INFORMATION**

- Research other state LRAP models. Loan forgiveness or repayment programs for other professions may already exist in the state. The coalition should consider using the existing programs as models for a proposed program or adding public service lawyers onto the existing programs.
- Talk to other statewide LRAP administrators about how the programs started, current program operations, funding sources, any issues faced in the program's history and how they resolved them. Although this Tool Kit contains much of this information, specific questions may arise that LRAP program administrators will be uniquely situated to discuss.
- Collect statistics and identify contacts that will be needed to persuade the legislators or other decision makers, including the following:
 - Compile statistics about the average debt load of the potential recipients of the program. This includes information about graduates from the state's law schools and from employers that will employ potential recipients.
 - Obtain current tuition figures and estimated student budget (to cover books, living expenses, etc.) for the law schools located in the state.
 - Obtain from local law schools the number of law graduates (most recent graduating class) who accepted employment in public service positions (civil legal services, other nonprofit organizations, public defender, state/district attorney, local/state government, federal government and judicial clerkships) and the average starting salaries for these positions.
 - Ask the affected employers about the impact of debt on recruiting and retention of staff.² It may be useful to develop a survey of employers, especially if pursuing a legislative campaign.³
 - Identify any state legal needs studies or assessments that may be useful in supporting the creation of a program, including information about specific constituencies which are unable to obtain legal services. If no other entity has conducted or is in the process of conducting a statewide legal needs study, consider conducting one.⁴

² For an example of a national study which examines the impact of law school debt on public service law employer's ability to recruit and retain lawyers, see *From Paper Chase to Money Chase: Law School Debt Diverts Road to Public Service*, Equal Justice Works, National Association for Law Placement and the Partnership for Public Service, 2002 (available at www.equaljusticeworks.org).

³ Id. In December 2001, the New York State Bar Association Special Committee on Student Loan Assistance for the Public Interest surveyed public service employers in New York about the impact of law student debt on recruitment and retention efforts (The Bar also surveyed young lawyers). The survey results are included in the Special's Committee's report *Attracting Qualified Attorneys to Public Service (June 2002)*, which is available at: http://www.nysba.org/Content/NavigationMenu/Attorney_Resources/Pro_Bono/Reports/Reports.htm.

⁴ To obtain samples of legal aid studies, visit <http://www.abalegalservices.org/sclaid/span.html>.

- Identify lawyers with sympathetic stories to talk about the impact of educational debt on their ability to pursue and/or remain in public service jobs. These contacts will be useful when developing witnesses to provide legislative testimony and/or contacts for reporters writing stories about the coalition's efforts and the state's need for a LRAP.
- Develop a one-page fact sheet with talking points that describes the proposed program and its benefits, and identifies a contact for additional information. If pursuing a non-legislative approach, this fact sheet may be used by coalition members to educate bar leaders, deans or other potential supporters of a program.
- When developing a proposal to create a LRAP, include as much information as available about how the program will be funded. Identify possible funding sources, which may include state appropriations, IOLTA funds or private donations, and a resource development plan.
- When developing a legislative campaign, line up witnesses to testify at legislative hearings. You may want to draw from lawyers with sympathetic stories to share about their dedication to public service work and the impact of high education debt upon their ability to do so. Other potential witnesses include employers to talk about the cost of high turnover and other impacts on the organizations.

• **DETERMINE IF COALITION WILL PURSUE LEGISLATIVE APPROACH OR WORK TO CREATE AN INDEPENDENT PROGRAM**

- The coalition should determine if it will pursue a legislative approach (including either state agency administration of the program and/or legislative funding for an independent program) or work to create an independent program, through an independent nonprofit organization (such as the Minnesota and North Carolina Programs) or a bar foundation (such as the Arizona, Florida and New Hampshire programs).
- This decision will depend upon many factors, which will vary from state to state, including the political climate, outlook for legislative funding, outcome of previous efforts to create a statewide LRAP for lawyers, the timing of the legislative session, other funding possibilities, etc.

• **IF A LEGISLATIVE APPROACH IS SELECTED**

- If the coalition decides to pursue a legislative approach, the coalition needs to familiarize itself with its state legislative calendar. Determine when the state legislature is in session and the length of the session. Identify when the bill must be introduced and when it must be reported out of the committees responsible for authorization and appropriation for state funds in order to secure passage.
- Identify a legislative sponsor. If a member of the coalition is a legislator, work with him or her to sponsor the bill or identify more appropriate sponsors in both chambers of the state legislature. Try to identify members who are in leadership positions, such as the Speaker of the House, Majority or Minority leaders and/or party whips, who may be able to successfully move the legislation through committees to passage.
- Meet with the Governor and his or her staff to educate them about the issue and ask for their support.

- Draft proposed legislation. The coalition should work with the sponsor to draft legislation. In addition to the Sample State LRAP Statute contained in Section IV, it may be useful to review any existing legislation in the state creating loan repayment programs for other professions as well as lawyer LRAP legislation from other states.
- The coalition should work with the sponsoring legislator and other supporters to develop creative ways to move the bill. It may help to include the LRAP provision as part a larger bill, such as a judiciary or higher education bill.

• KEEP IN REGULAR CONTACT WITH COALITION MEMBERS

- Depending on the size of the coalition, regular in-person meetings may be an efficient means of communication. E-mail and telephone conferences may also prove useful, especially during legislative session.
- If pursuing a legislative campaign, once the legislative session begins, in-person meetings may include only legislative staff and the lead lobbyist or representative from each bloc of the coalition. It is important to keep all coalition members apprised of developments, through e-mail. Send coalition members and other supporters program information, so they are aware of program components and legislative developments when writing or calling legislators.
- Remember that regular communication also sustains the coalition’s momentum.

“I graduated from law school in 2001 with a strong interest in working for a legal services organization. However, with my law school debt, I was concerned that I would be unable to earn enough money to meet my basic living expenses and pay back my student loans. Because I receive loan repayment assistance from the Arizona Foundation for Legal Services & Education, I did not have to sacrifice my dream. I am now able to use my legal skills to help members of my community with disabilities while satisfying my student loan obligations.”

Jose de Jesus Rico, Staff Attorney, Arizona Center for Disability Law, Tucson, AZ

National Organizations

ABA Commission on Loan Repayment and Forgiveness

Dina Merrell, Counsel

312-988-5773

merrelld@staff.abanet.org

www.abalegalservices.org/lrap

ABA Standing Committee on Legal Aid & Indigent Defendants

Terry Brooks, Counsel

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www.abalegalservices.org/sclaid

ABA Project to Expand Resources for Legal Services

Meredith McBurney, Project Director

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Equal Justice Works

Leslie Merzig, Program Assistant

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State LRAPs

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Legal Services Director

Arizona Foundation for Legal Services and Education

Loan Repayment Program

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Paul Doyle

Director, Legal Assistance for the Poor Grant Program

The Florida Bar Foundation

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PDoyle@Flabarfndn.org

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Marie Janiszewski

Janet L. Hoffman Loan Assistance Repayment Program (LARP)

Office of Student Financial Assistance

Maryland Higher Education Commission

State Scholarship Administration

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State LRAPs (continued)

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Cynthia Riley

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Texas Access to Justice Commission

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criley@texasbar.com

[http://www.texasbar.com/members/getinvolved/
accessjustice.asp](http://www.texasbar.com/members/getinvolved/accessjustice.asp)

A SNAPSHOT OF STATE LOAN REPAYMENT PROGRAMS

Prepared April 2003 by
the ABA Commission on
Loan Repayment and Forgiveness

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8 statewide LRAPs currently exist:

- The Arizona, Florida, Maine and New Hampshire Programs are administered by Bar Foundations.
- The Maryland Program was created by statute and is administered by the Office of Student Financial Assistance of the Maryland Higher Education Commission.
- The Minnesota and North Carolina Programs are administered by independent 501(c)(3) organizations.
- The Texas Program is administered by the Texas Access to Justice Commission, an independent entity created by the Texas Supreme Court and staffed by the State Bar of Texas.
- In 2001, California and Texas enacted authorizing legislation to create statewide LRAPs, but neither legislature has appropriated funds. The California program is not operational.
- In Texas, the Texas Access to Justice Commission received private donations to create a temporary program until state funding becomes available and the program created by HB 2323 becomes operational. Until resources are available to meet the needs of all qualified applicants, in October 2002, the Commission began making grants of \$100 per month to as many qualified applicants as possible. Only lawyers working for programs funded by the Texas Equal Access to Justice Foundation are eligible to apply.
- In 2002, Georgia enacted authorizing legislation to create a statewide LRAP, but the legislature did not appropriate funds to support the program. Therefore, the program is not operating.

Table 1: Age of the Programs

State Program	Year Created
AZ	1990
FL	2002*
ME	2002
MD	1988
MN	1991
NH	2000
NC	1989
TX	2002

*The Florida Bar Foundation operated a LRAP from 1991-1995; the Foundation resumed the program in 2002.

Table 2: Summary of Eligible Employment*

	Civil Legal Aid	Nonprofit Organizations	Prosecutors	Public Defenders	Gov't	Other Profession (such as teachers)	International Organizations
AZ	M	M					
FL	M****						
ME	M						
MD	M	M	M	M	M*	M	
MN	M	M		M	M**		M
NH	M						
NC	M	M	M	M	M**		
TX	M***						

* Seven of the eight programs are limited to lawyers.

** Only state and local government are considered eligible employment settings.

*** A judicial clerkship does not qualify as eligible employment, but the program makes special consideration for applicants who, upon completion of clerkships, secure eligible employment.

**** Only those attorneys who work for a program funded by Texas Equal Access to Justice Foundation may apply.

***** Only those attorneys employed by an IOTA-funded legal assistance for the poor grantee are eligible to apply.

Table 3: Time Limits on Eligibility

State Program	Limits
AZ	Applicants eligible as long as they have eligible loans (provided meeting income and employment eligibility criteria).
FL	Once admitted as a participant, an attorney may remain a participant for a maximum of five years (subject to meeting other eligibility criteria).
ME	Applicants eligible as long as they have eligible loans (provided meeting employment eligibility criteria).
MD	Priority for one year renewal if applicant continues to meet eligibility requirements; may reapply after two years, but not given priority.
MN	For first time award, attorneys must be within three years of law school graduation, with extensions available for judicial clerkships. However, once an attorney receives an award, s/he remains eligible for up to 15 years, provided s/he continues to meet income and employment eligibility criteria.
NH	Applicants eligible as long as they have eligible loans (provided meeting income and employment eligibility criteria).
NC	An attorney is eligible to receive funds as long as s/he meets requirements of eligible employment and salary thresholds, up to 10 years after graduation from law school or until loan debt is paid, whichever comes first.
TX	Applicants eligible as long as they have eligible loans (provided they meet other program eligibility requirements).

Table 4: Eligible Loans

	Law School Federal Gov't Loans	Law School Private or Commercial Loans	Bar Exam Loans	Undergraduate Loans	Post-graduate Education Loans
AZ	M	M	M	M	M
FL	M	M			
ME	M	M			
MD	M	M	M	M	M
MN	M	M	M	M	M
NH	M	M			
NC	M	M	M		M
TX	M	M	M	M	M

Table 5: Other Eligibility Requirements

	Full Time Employment	Income Cap	Residency Requirement	Employment in State Sponsoring Program	Law Licensure	Law School Graduation Requirements
AZ	M	\$45,000 ¹		M	M Must be a member of State Bar of AZ; may be waived for up to 24 months.	
FL	M	\$40,000 ²		M	M Admitted to the Florida Bar by the end of the first year after having been selected as a participant.	
ME			M			
MD	M Priority given to full-time employees.	\$50,000 ³	M Priority is given to MD residents.	M		Priority given to applicants who graduated within last three years.

¹ “Qualifying Income” is defined as all income, including anticipated salary, minus \$5,000 per dependent or amount of child support paid. If the applicant is married, the applicant will be treated as having the higher of the (a) the applicant’s individual income or (b) one-half of the combined income of both spouses.

² The salary cap for a newly graduated staff attorney is \$40,000 with \$3,000 increments to the salary for each year of legal experience.

³ \$50,000 for an individual; combined adjusted gross income of \$110,000 for married person. Also, applicants are expected to contribute towards loan repayment, which is based on fixed percentage of an applicant’s income.

Table 5: Other Eligibility Requirements (continued)

	Full Time Employment	Income Cap	Residency Requirement	Employment in State Sponsoring Program	Law Licensure	Law School Graduation Requirements
MN	M	\$37,500 ⁴		Graduates of ABA-accredited law school must work in MN; graduates of MN law schools may work in or out-of-state.		Applicants must be graduates of MN law school or ABA-accredited law school (provided applicant is by qualified MN agency).
						Graduates generally eligible to apply for three years from graduation from law school. ⁵
NH	Part-time attorneys eligible (receive pro-rated assistance).	None		M		
NC	Mat least 35 hours	\$37,000-\$45,000 ⁶		M	MMust be a licensed member in good standing of a state bar.	Applicant must have earned JD within 10 years of the date of application.
TX	M	\$70,000		Must be employed by organization receiving funding from TX Equal Access to Justice Program.		Must be a graduate of a law school within the last five years, with preference given to those who have graduated within the last three years.

⁴ Based on MN-LRAP’s calculation formula. Applicants are expected to contribute towards loan repayment, based on a fixed percentage of an applicant’s income.

⁵ Or from completion of another program furthering law school career goals. The MN program makes exceptions for those obtaining qualifying employment following completion of judicial clerkships.

⁶ First year - \$37,000; Practiced one year, but have not yet completed the second year - \$40,000; and at least two years of practice - \$43,000. When an applicant’s income increases to \$45,000, the applicant may enter a one-year transitional phase. Applicants are expected to contribute towards loan repayment based on a fixed percentage of an applicant’s income.

Table 6: LRAP Funding Sources: 2003

	Total Funding	IOLTA	State Legislature	Law Schools	Private Donors	Private Foundations	State Bar Foundations	Other
AZ	\$30,000	100%						
FL	\$106,345	80%						20%+
ME	\$30,000	100%						
MD	\$670,000++		100%					
MN	\$148,000	10%	24%+++	19%	33%		14%	
NH	\$63,140	100%						
NC	\$301,000*	17.5%	66.5%	4%	3%	3%		6%**
TX	\$33,375				100%***			

+ Participating Legal Assistance to the Poor (LAP) grantees pay 20% of the loan repayment benefits (i.e. \$1,200 for a participant receiving \$6,000 in loans) for each LRAP participant. The LAP grantees' 20% share of LRAP program costs is deducted from their general support IOTA grants from the Foundation. The Florida Bar Foundation also administers a second LRAP, which is funded with \$65,571 in funds received from LAP grantees.

++ In 2002-2003, Maryland made 234 award offers; 37 were made to lawyers.

+++ 24% comes from the Legal Services Advisory Committee, which receives its funding through State Judiciary budget and re-grants funds to legal services agencies.

* The state legislative appropriation and private foundation contributions are projected amounts.

** 6% represents interest and loan repayments from participants no longer in eligible employment plus administrative fee collected from participants who attended out-of-state law schools.

*** Private donors include clients settling a class action case, which included a charitable contribution settlement provision. Access to Justice Commissioners and several law firms also made significant donations.

ARIZONA FOUNDATION FOR LEGAL SERVICES & EDUCATION LOAN REPAYMENT PROGRAM

Program Description

The Arizona Foundation for Legal Services & Education is a non-profit organization that supports programs that promote access to justice in Arizona. The Foundation’s Loan Repayment Program was established in 1990 as a statewide loan assistance program for law school graduates employed in non-profit organizations dedicated to serving the legal needs of low-income individuals and families in Arizona. This program is designed to assist staff attorneys who have incurred significant debt to finance their law school educations so they can work in legal aid programs for the poor.

Eligibility

a. Licensure and Employment. Applicants must be members of the State Bar of Arizona. (This requirement may be waived for up to 24 months.) Applicants must be employed full-time with an approved non-profit legal organization. The following organizations have been approved by the Foundation. Other organizations may apply for approval to the Board of Directors.

Advocates for the Disabled	Community Legal Services
Arizona Capital Representation Project	DNA—People’s Legal Services
Arizona Center for Disability Law	Florence Immigrant and Refugee Rights Project
Arizona Center for Law in the Public Interest	Friendly House
Arizona Senior Citizens Law Project	Proyecto San Pablo
Catholic Social Service of Phoenix: Immigration Program	Southern Arizona Legal Aid
Catholic Social Service of Tucson: Asylum Project	Southern Arizona People’s Law Center
	William E. Morris Institute for Justice

b. Income. The applicant’s qualifying annual income may not exceed \$45,000 to participate in the program. Qualifying income is defined as all income, including anticipated annual salary, minus \$5,000 per dependent or amount of child support paid. If the applicant is married, the applicant will be treated as having the higher of (a) the applicant’s individual income or (b) one-half of the combined income of both spouses.

c. Eligible Loans. Undergraduate and law school loans will be considered in determining amount of assistance. Family and personal loans are excluded. Also excluded are loans for other than educational purposes.

Assistance

A maximum loan of \$6,000 per year may be awarded to each approved applicant. All assistance shall cease when the applicant’s qualifying income exceeds \$45,000 annually. Loan assistance shall be paid quarterly after the completion of each quarter of employment.

If the applicant terminates employment or is otherwise ineligible in mid-quarter, the applicant shall be eligible for a pro-rated payment for the qualified period. Assistance shall be paid directly to the applicant.

Funding of Program

The Foundation has a budget of \$28,250 for the 2002 program. Approximately eighty percent of the budget will be awarded during the first funding cycle of the program year. Twenty percent of the program budget will be awarded as needed throughout the program year for attorneys who may be hired after the first funding cycle or to give additional assistance to current recipients later in the program year. Continued operation and funding allocations are contingent on available funding.

Application and Verification Procedures

Applications are accepted quarterly. Applications must be completed with the required documentation and submitted to the Foundation for consideration. The Legal Services Committee of the Foundation reviews and makes decisions regarding eligibility and amounts of assistance.

If given an award, each recipient shall submit documentation according to the deadlines in the award letter, which include employment and loan repayment verification each quarter during the program year. Any financial or employment status changes shall be reported by the recipient to the Foundation immediately. Loan disbursements will be made on a quarterly basis only after the Foundation receives the required documentation.

Discharge of Loans

The loans granted by the Foundation will be forgivable to the extent that the recipient is employed by an approved non-profit organization and the recipient's qualifying annual income does not exceed \$45,000. The Foundation will forgive one month of each annual loan for each month of service actually provided during the applicable program year.

Federal Income Tax Liability

The Foundation attempted to design this program to provide maximum potential tax benefits to participants under changes in 1997 to Section 108(f) of the Internal Revenue Code. The Foundation believes it has structured this program so that the loan amounts forgiven by the Foundation are not considered taxable income to the recipient, and thus do not have to be reported as such. However, because the law has so recently been changed, there is very little authoritative legal guidance available to determine with certainty the proper tax treatment of this structure. Recipient remains solely responsible for any federal, state or local income tax liability s/he may incur because of the forgiveness of the Foundation loan.

Contact Information

For more information, contact Jessica Ponzio at (602) 340-7357 or Jessica.Ponzio@azflse.org.

THE FLORIDA BAR FOUNDATION LOAN REPAYMENT ASSISTANCE PROGRAM PROGRAM DESCRIPTION

Based upon the results of our survey of our IOTA LAP grantees concerning the impact of high law school debts on recruiting and retention of staff attorneys for legal assistance programs in Florida, the following is a summary plan for the reestablishment of a statewide loan forgiveness program:

Purpose: The purpose for the establishment and maintenance of this program is to strengthen and expand legal assistance for the poor by supporting the recruitment and retention of the most qualified advocates by legal assistance programs in Florida through the provision of assistance to staff attorneys with educational debt.

1. **Term of Assistance** - the program will provide a maximum of 5 years of benefits. Continued benefits are subject to the availability and allocation of future funding for this program by the Foundation. Once admitted as a participant an attorney may remain a participant for up to a maximum of five (5) years, subject to continued eligible employment, salary limitations, bar admission, re-application and local program endorsement.
2. **Benefits** - an amount equal to 75% of annual debt payments up to \$6,000 per year. For example, a staff attorney paying \$7,500 or more a year on law school debt would receive the maximum annual benefit of \$6,000.
3. **Nature of Benefits** - benefits would be in the form of one year loans which would be forgiven annually at the end of each year provided the staff attorney remains employed on a full time basis by an IOTA LAP grantee. Benefits are designed to be non-taxable under federal tax law by making the benefits a one year loan forgivable at the end of the year and since the Foundation, not the participant's employer, would be providing the benefits. Loans shall be for one year with loan proceeds disbursed semi annually. The loan shall be evidenced by a promissory note in a form required by the Foundation executed by the borrower (participant) and shall bear interest at a rate of 1% above the short-term applicable federal rate under Section 1274(d) of the U.S. Internal Revenue Code of 1986, as amended.
4. **Eligibility Standard** - applicants and participants must meet the eligibility standards:
 1. Employed on a full-time basis by an IOTA funded legal assistance for the poor grantee;
 2. Receiving an annual salary of not more than \$40,000 for a newly graduated staff attorney with \$3,000 increments to the salary for each year of legal experience;
 3. Admission to The Florida Bar by the end of the first year after having been selected as a participant.
5. **Selection of Participants** - the Foundation will select participants in this program through a process of program nominations and regional review committee recommendations. Programs will nominate applicants, utilizing program and applicant application forms designed by the Foundation. Each legal services region in Florida will form a loan-repayment assistance review committee to review all program

nominations within the respective region and recommend (or not recommend) and prioritize such nominations to the Foundation. Programs having statewide responsibilities, specifically Florida Legal Services, Southern Legal Counsel, Florida Justice Institute, Florida Institutional Legal Services and the migrant farmworker component of Florida Rural Legal Services shall be considered a region for the purposes of generating and reviewing applications for this program. In any one year, programs shall be limited to no more than two nominations. The continuation of participants in this program after their initial selection shall not be considered a nomination for purposes of applying this limitation. The Foundation shall make final selection decisions.

6. **Selection Guidelines** - In making, reviewing and selecting nominations and selections, programs, regional review committees and the Foundation shall be guided by the following: (a) demonstration by the applicant of a record of high quality effective representation of the poor; (b) demonstration by the applicant of a strong work ethic; (c) applicant's continuing commitment to address the legal needs of the poor; (d) demonstration by the applicant of a self motivated effort to develop professional skills and capabilities for the benefit of the poor; (e) program confirmation of the applicant's demonstration of factors (a), (b) (c) and (d) above; (f) relative need among applicants; (g) the need for diversity among staff attorneys in legal services in Florida; (h) the need, over a period of time, to provide highly qualified applicants from all programs to participate; and (i) program and applicant commitment to and engagement in the state plan and its core values.
7. **Timing of Selection, Payments and Forgiveness** - selection of participants will be in December of each year. Payments will be semi-annual (January and July). Forgiveness will occur in January.
8. **Debt Eligibility** - the program would cover only law school need-based government or private loans, such as GSL, ALAS-SLS-FISL, Law Access Loans (LAL), Law Loans and National Direct Student Loans (NDSL or Perkins Loans), as well as university or other private institutional loans. An annual debt payment load of at least \$1,800 will be an eligibility requirement.
9. **Resourcing the Program** - we would hope to engage private contributors and law schools in support of this program. The Foundation will reduce a program's grant for 20% of the cost of the benefits (i.e. \$1,200 for a participant receiving \$6,000) per each participant employed by that program.
10. **Size of Program-Total Benefits and Number of Participants** - the start-up funds of \$90,000 combined with the 20% program charge would cover up to 18 participants at a maximum benefit level of \$6,000 per participant. A projection for the continuation and expansion of this program, subject to availability and Foundation allocation of funding for future years is:

Year	IOTA Funding	Program Funding	Participants
2003	\$90,000	\$18,000	18
2004	\$126,000	\$24,000	24
2005	\$150,000	\$30,000	30
2006	\$180,000	\$36,000	36
2007	\$210,000	\$42,000	42
2008	\$210,000	\$42,000	42

Participants receiving less than the maximum benefit amount, drop-outs, participants maxing out and repayments may enable additional slots in any one year.

11. Priorities for Participants for 2003 - for the year 2003, the following priorities shall apply to the nomination, recommendation and selection of participants:

1. First priority shall be given to former Equal Justice Works (formerly National Association for Public Interest Law) fellows who have completed fellowships at legal assistance programs.
2. Second priority shall be given to attorney applicants who have been employed since October 1, 2001 in eligible employment but have not been so employed prior to May 15, 2000.

12. Supplemental Loan Repayment Assistance - in addition to the above described benefits, participants and funding for a loan repayment assistance program, the Foundation is also establishing a supplemental loan repayment assistance program which will be funded solely by reductions in Foundation grants to participating programs. Programs may nominate additional applicants for this supplemental program or designate additional benefits for participants in the regular program. The nominations for selections under this supplemental program shall be made directly by programs to the Foundation, with the Foundation making all final selection decisions. None of the restrictions, priorities, conditions or standards under the regular program shall apply to the supplemental program other than the employment requirement. All benefits under the supplemental program will be handled in the same manner as the regular program, specifically as enumerated in paragraphs 3, 6 and 7.

LOAN REPAYMENT ASSISTANCE PROGRAM OF MN PROGRAM GUIDELINES

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Introduction

The philosophy of the Loan Repayment Assistance Program of Minnesota is to support and assist graduates choosing and wishing to remain in employment in the public interest, and to assist public interest organizations in retaining experienced lawyers. Implementation of this philosophy directs benefits to applicants who would otherwise be precluded from accepting qualifying employment or who would be unable to continue to work in qualifying employment because of low income coupled with high student loan debt.

LRAP-MN has a single grant award cycle with two sets of qualifying requirements. An applicant must fit into one of the categories listed below. The grant year is July 1 through June 30. Specific criteria are found elsewhere in these Guidelines.

- (a) A Minnesota law school graduate working full-time for a qualifying public interest agency.
- (b) A law school graduate working full-time for a qualifying public interest agency located in Minnesota.

In order to be awarded an LRAP-MN grant, applicants must submit the application form and supporting materials requested by the LRAP-MN Board of Directors. All of this information will be confidential.

Section I: Eligible Law School Graduation

Applicants must have graduated (by the time LRAP-MN grant payments begin) from one of Minnesota's four law schools: University of Minnesota, Hamline University, University of St. Thomas School of Law or William Mitchell College of Law. Each school will be awarded at least one grantee per cycle, when a qualified application is received from a graduate from each school. Applicants employed at a qualified Minnesota agency (as detailed below) who are not graduates from a Minnesota law school must be graduates of an American Bar Association accredited law school.

Graduates are eligible to apply for LRAP-MN benefits for three years from the date of graduation from law school or from completion of a program of uninterrupted education, which furthers law-related career goals. LRAP-MN normally defines uninterrupted as no more than nine months between law school graduation and initiation of related education (i.e. Masters in Education, joint degree programs, etc.). Special consideration may be granted at the discretion of the Grants Committee with ratification by the Board of Directors.

Exceptions are made for those obtaining qualifying employment following judicial clerkships. The deadline for such persons to apply to the LRAP-MN program is extended if:

- (a) the clerkship was the applicant's first full-time employment after graduation, and
- (b) the application to LRAP-MN is within three years of the clerkship's termination.

Section II: Qualifying Employment

Applicants must document full-time employment by the time LRAP-MN reimbursement payments begin, i.e., 35 hours or more per week, at a qualifying public interest organization. Qualifying organizations include:

- (a) Non-profits (IRS defined sections 501(c)(3), 501(c)(4), 501 (c)(5) and 501 (c)(6));
- (b) Local, state, or federal governments;

- (c) Native American tribal governments, court systems, and public interest organizations; and,
- (d) International organizations (governmental and non-governmental).

First priority is given to attorneys working in Qualifying Agencies whose primary function is to provide legal advice or representation based on financial eligibility criteria and/or to attorneys working in Qualifying Agencies whose primary function is to provide support services to Qualifying Agencies providing legal advice or representation based on financial eligibility criteria.

Second priority is given to attorneys providing direct legal representation to low-income and/or disadvantaged individuals or populations within Qualifying Agencies whose primary function is other than legal services, such as social service agencies, and/or to attorneys providing direct legal representation to low-income or disadvantaged individuals or populations within Qualifying Agencies whose primary function is to provide legal services to low-income and disadvantaged populations, but which do not impose financial eligibility requirements.

Contract public defenders working as independent contractors or through a law firm contract are not eligible.

Grant awards will be given to all qualified applicants employed by qualifying agencies in the first priority category before applicants employed by qualifying agencies in lower priority categories will be considered. To verify qualifying employment, applicants must submit the Employment Verification form, included in the application materials.

When legal assistance programs reduce a full-time position to part-time due to financial or other circumstances, renewing grantees whose hours have been involuntarily reduced may still re-apply, noting these circumstances.

Section III: Other qualifications

Applicants eligible for loan repayment funds from other sources (i.e. governmental programs, NAPIL fellowships, law school programs, etc.) must apply to these programs for assistance. Repayment provided by other sources will offset the amount of loan repayment provided by LRAP-MN. In those instances where a determination of ineligibility is a requirement for eligibility for another program, formal notification of ineligibility will be provided in writing to the applicant.

Section IV: Educational Debt which may be included in LRAP-MN grant application

Undergraduate and law school debt, and debt incurred in joint degree programs, where one degree is a juris doctor, may be covered. All institutional loans used for educational expenses may be covered under LRAP-MN. Loans from family and other private sources are not eligible.

Applicants must submit documentation verifying educational loan debt and repayment schedules. An applicant who is in default on a loan is eligible to apply. Applicants must submit information on each loan. In the interest of fairness, consistency and uniformity, LRAP-MN will calculate applicant’s educational debt according to a consolidation schedule as outlined below.

Applicants are required to provide original principal amount for each federal loan (Stafford, SLS, Perkins, etc.) and, for unsubsidized loans, the principal amount plus the capitalized or

accrued interest at the time of graduation. LRAP-MN will calculate the total monthly payment amount of all loans using a fixed consolidation repayment term of 15 years and interest rate of 7.5 percent.

The calculated monthly repayment will be used to determine the actual amount of loan repayment assistance to which an applicant is eligible.

Educational debt of applicant’s spouse will be used in calculating income when this debt and repayment schedule is documented: the amount of educational debt payments that a spouse must make during the award year will be deducted from an applicant’s income (whether or not the spouse is employed) when determining income eligibility.

Applicant’s calculated educational debt will be used in calculating rankings of the candidates. In this calculation, any grace period being extended by a lender will be ignored. (Grace periods may, however, affect the actual awards made in that award amounts will never exceed actual payments made.)

Section V: LRAP-MN Income Calculation

All resources available to applicants, including applicant’s income, spouse’s earnings, and assets, will be included in the calculation of LRAP-MN Income.

To be eligible for LRAP-MN program benefits, the applicant’s household income must be \$37,500 or less, as defined by the LRAP-MN Income formula. The LRAP-MN Board of Directors may adjust the income cap and the sliding scale of eligibility. Income guidelines will be decided for each year and will apply to all applicants for that year.

The Board’s decision to adjust the income cap and/or sliding scale of eligibility will be based on, but not limited to: a rising Consumer Price Index, cost of living in the geographic region where LRAP-MN recipients reside, salary changes in the public interest area, and the availability of LRAP-MN funds.

The formula used to calculate LRAP-MN Income is:

$$BI - EA - SD - SA + AI = LRAP-MN \text{ Income}$$

BI = Base Income

LRAP-MN Base Income (BI) equals all income sources minus current LRAP-MN award minus IRS personal exemptions. Income used to compute BI will be based upon applicant’s income from qualifying employment plus all other sources of income (including spouse’s income, alimony, other part-time jobs, rental income, etc. For purposes of determining household income, the first \$25,000 of a spouse’s income is excluded.). A prior year’s LRAP award is not included in the calculation of LRAP Income. LRAP-MN requires an applicant to submit the previous year’s income tax information to verify income data. This is accomplished by submitting a copy of applicant’s complete 1040, 1040A or 1040EZ, including all relevant schedules, attachments and amendments. LRAP-MN’s formula for determining income for eligibility, however, is not based on the tax code. The calculation of LRAP-MN income eligibility subtracts the IRS allowable personal exemptions for applicant and dependents.

LRAP-MN Income, for purposes of 1) determining eligibility and 2) determining award level, is calculated on projected annual income from qualifying employment and other sources for the year of the grant.

EA = Employment Allowance

The employment allowance reduces base income for the applicant whose spouse is employed and whose income is reported. In recognition of the employment-related costs incurred by an applicant's spouse, the LRAP-MN formula decreases base income in all cases where a spouse has employment income.

The dollar amount for this allowance is based on the approved allowance in the Effective Family Contribution formula (EFC) used for federal student loans to calculate financial need. The 2001 amount is: \$2,900.

SD = Spousal Annual Educational Debt

The actual amount of educational debt payments that an applicant's spouse must make during the award year will be deducted from the applicant's base income during calculations to determine income eligibility. Applicants must provide verification of spouse's debt from lenders and evidence of payments made. The spouse's debt will not be included in determining the amount owed by the applicant for educational debt (income/debt ration) nor will LRAP-MN make payments toward a spouse's debt.

DA = Daycare Allowance

The actual cost of daycare will be deducted from the applicant's base income up to a maximum amount established by the LRAP-MN Board of Directors. This amount was \$5,800 per year, per child in 1999. Thereafter, the maximum amount will be tied to the U.S. City CPI and adjusted accordingly each year. Applicants must submit documents verifying actual costs.

AI = Asset Inclusion

Twenty-five percent (25%) of the applicant's (and spouse's) assets in excess of \$15,000 will be added to the base income. Excluded are home, car, farm (if it is applicant's residence), and retirement accounts (such as IRAs, pensions, etc.). Only one home will be excluded. The applicant is not required to live in the home. Loss and/or gain on assets will be applied to income. It is the obligation of the applicant to report loss or gain information. LRAP-MN reserves the right to request additional documentation and verifications.

Section VI: Special Consideration

Applicants have the right to ask the LRAP-MN Board of Directors for special consideration in the determination of eligibility for LRAP-MN benefits. The Grants Committee will review the request to consider unusual circumstances or expenses that are beyond the control of the applicant and make a recommendation to the full Board.

Typically, special consideration is limited to whether or not non-discretionary expenses that are not reimbursed by other programs or insurance should be taken into account in determining income eligibility. The most typical expenses would be health care related, although the Committee may consider other extraordinary expenses on a case-by-case basis.

Applicants must include a written request with the application. In the request, the applicant 1) must request that specific non-discretionary expenses be used in the calculation of LRAP-MN income, 2) must be able to demonstrate that these expenses are necessary and are not reimbursed by other programs or insurance, and 3) must provide documentation. LRAP-MN reserves the right to request additional documentation and verifications.

The Grants Committee will make recommendations to the LRAP-MN Board of Directors on requests for special consideration. The Board must approve any request for special consideration. The Grants Committee, or other designee of the Board of Directors, will inform the applicant of the outcome of the request for special consideration. If the applicant’s request is granted, the applicant’s Base Income will be reduced by the actual expense amount.

Section VII: Rank-order of Need

After LRAP-MN Income is calculated, applicants are rank-ordered, highest need to lowest need, based on the calculated Annual-Payments-Due/Income ratio (APD/I) computed as follows:

$$\frac{\text{Calculated Annual Payments Due on Educational Loans}}{\text{LRAP-MN Income}}$$

Applicant’s educational debt is calculated as explained previously. In this calculation, any grace period extended by a lender will be ignored. (Award amounts, however, never exceed actual payments made.)

Section VIII: Selection of LRAP-MN Benefit Recipients

Selection of grantees will be made by a Grants Committee of the LRAP-MN Board of Directors according to the above stated criteria and formulae subject to ratification by the Board. LRAP-MN reserves the right to identify additional selection criteria, subject to Board approval, and to request additional information from applicants.

Section IX: Potential LRAP-MN Contribution for Loan Repayment

A potential LRAP-MN contribution is calculated for each applicant with LRAP Income of \$37,500 or less. This amount is the maximum amount of the applicant’s loan repayment burden for which LRAP-MN would pay benefits. LRAP-MN contribution is determined using the calculated LRAP-MN income and the sliding scale, as follows:

<u>LRAP-MN Qualifying Income</u>	<u>Participant’s Contribution to Loan Repayment</u>	<u>LRAP-MN Contribution</u>
Up to \$19,000	0%	100%
\$19,001 - \$25,000	20% LRAP Income > \$18,000	100% of balance*
\$25,001 - \$37,500	\$1,200 + 30% LRAP > \$24,000	100% of balance*

The calculation of the LRAP-MN contribution represents the maximum amount of benefit the applicant can receive from the program.

LRAP-MN reserves the right to adjust its Income cap (from \$37,500) and/or impose an automatic “expected” applicant contribution in addition to the “Participant Contribution” calculated above. These adjustments may be made in response to the availability of resources in any given year and will be applied to all applications.

Section X: Notification to LRAP-MN Applicants

All applicants will be notified by mail of the results of their application. Those applicants who are selected as benefit recipients will be mailed information and instructions with their award

* Up to the level of any cap the Board may vote to put on awards.

notices. Award Notices must be signed and returned by the end of the first quarter of the award cycle. Award Notices not signed and returned by that date will result in forfeiture of the grant award. Extenuating circumstances may be considered by the Grants Committee upon request.

Section XI: Benefit Disbursements to LRAP-MN Grantees

Loan repayment benefits begin immediately upon acceptance of the award notice. Repayment benefits are retroactive to July 1, and are effective through June of the following calendar year.

Payment is made as reimbursement to recipients for their educational loan debt payments. Each check will equal up to one-quarter of the total annual award amount. In order to receive the reimbursement check, the recipient must submit proof of educational loan payment(s) during the most recent quarter (three months). In order to receive the full LRAP-MN repayment, the proof of education loan payment must equal the LRAP-MN award, plus any participant contribution required. LRAP-MN repayment will, in no instances, be more than the amount of loan repayment paid by the grantee. In addition, the grantee must show that qualifying employment has been maintained during that same quarter. For example, to receive the first quarter's reimbursement check, the recipient must verify loan repayments and employment in July, August and September.

Section XII: Renewal of Benefits

LRAP-MN Grantees may apply for renewal benefits on an annual basis for fifteen (15) years after entry into the program or until the year in which the educational loans are repaid in full, whichever occurs first. The receipt of benefits in one grant cycle is not a guarantee of receiving benefits in subsequent cycles.

In order to be considered for renewal benefits in a subsequent grant cycle, recipients must submit verification documents for employment, loan debt, and income each year. Grantees will automatically receive an application for renewal benefits for the next grant cycle.

Section XIII: Eligibility Changes

If a current grantee changes employment to another qualifying agency or moves to a non-priority position in the same qualifying agency during an award cycle, the grantee's eligibility will be reviewed by the Executive Director.

If income qualifications are still met, there will be no change in the grant amount during the current cycle. If income qualifications are not met, the grant will be terminated at the time of the change. To receive benefits in the following year, the grantee will have to reapply and be considered along with new applicants.

When an LRAP-MN grantee has a salary increase during an award cycle, the grantee's eligibility will be reviewed by the Executive Director. If the increase renders the person ineligible (based upon actual income during the grant cycle), the grant will be terminated at the time the change goes into effect. If the person remains eligible, there will be no change in the grant amount during that award cycle.

If an LRAP-MN grantee marries during an award cycle and the grantee's spouse is employed, the grantee's income eligibility will be reviewed by the Executive Director. If spouse's income, minus the spousal allowance and spouse's educational debt, renders the

person ineligible (based upon actual income during the grant cycle), the grant will be terminated at the time the change goes into effect.

Section XIV: Leave of Absence Policy

In the case of parental or disability leave from a qualifying agency, a grantee may apply for a Leave of Absence (LOA) from LRAP-MN of up to six months. During the LOA, a grantee may receive up to three months of full LRAP award benefits paid as a loan. A grantee may apply for an additional three months of leave without benefits while still remaining in the program. At the end of the six months, if the grantee returns to full time public interest work, the loan becomes a grant. If the grantee does not return, s/he is terminated from the program and the money received during the LOA must be repaid on a schedule to be worked out with the Executive Director. Leaves for other than parental or disability needs will be decided on a case by case basis upon recommendation of the Grants Committee with approval by the LRAP Board of Directors

Section XV: Dispute Resolution

Disputes concerning any decision made by the Executive Director or the Grants Committees may be reviewed by the LRAP-MN Board of Directors upon request of an applicant or LRAP-MN grantee.

NORTH CAROLINA LEGAL EDUCATION ASSISTANCE FOUNDATION LOAN REPAYMENT ASSISTANCE PROGRAM 2002/2003 PROGRAM GUIDELINES SUMMARY

To encourage and enable recent law school graduates to enter and remain in public service, NC LEAF sponsors a loan repayment assistance program. The Program provides for loan deferral in the first three years of public service employment, followed by loan forgiveness for continued public service. To be eligible for consideration for the Program, an Applicant must meet the following requirements:

1. Have graduated within the last 10 years from an ABA accredited law school. In addition, a Participant must be a licensed member in good standing of a state bar.
2. Work full-time in a law-related public service job in North Carolina. Examples of qualifying employment include a federal, state or local government agency, an organization providing legal services to the poor, and a Section 501 (c) (3) nonprofit organization.
3. For attorneys in their first year of practice, have an Eligibility Determination Income, as defined under these Guidelines, of no more than \$37,000. For attorneys who have practiced at least one year but have not completed two years of practice, have an Eligibility Determination Income, as defined under these Guidelines, of no more than \$40,000. For attorneys who have practiced at least two years, have an Eligibility Determination Income, as defined under these Guidelines, of no more than \$43,000.
4. Must not be in default on any loan and must be current and not in forbearance on all law school educational loans.
5. Must use all funds provided by NC LEAF towards repayment of eligible educational loans and pay to his/her lender(s) the additional amount necessary to make the full loan payment each month.

THE BOARD RESERVES THE RIGHT TO MODIFY THE TERMS OF THE PROGRAM.

ELIGIBILITY AND CONSIDERATION BY THE BOARD DOES NOT GUARANTEE THAT ANY BENEFITS WILL BE RECEIVED.

ALL PAYMENTS BY NC LEAF PURSUANT TO THIS PROGRAM ARE CONTINGENT ON THE AVAILABILITY OF SUFFICIENT FUNDING TO NC LEAF.

I. INTRODUCTION

The North Carolina Legal Education Assistance Foundation (“NC LEAF”) sponsors a loan repayment assistance program (the “Program”) to assist recent law school graduates who enter public service. The Program’s goal is to help remove the barriers to public interest practice faced by recent graduates who have incurred significant debt to finance their law school educations.

II. DEFINITIONS

As used in these Guidelines, these words are defined as follows:

- A. Applicant:** A law school graduate who applies to NC LEAF to receive loan repayment assistance funds.
- B. Participant:** An attorney who has been selected by NC LEAF to participate in and receive funds through the Loan Repayment Assistance Program set forth in these Guidelines.
- C. Domestic Partner:** An Applicant/Participant's spouse or another person with whom an Applicant/Participant is engaged in a serious, committed and exclusive relationship having essentially the same elements of mutual, long-term exclusive commitment and mutual support that characterizes a marriage,
- D. Dependent Family Member:** A domestic partner is a dependent if he or she makes less than half of the Applicant/Participant's income or has an income of less than \$25,000 per year. A family member other than the domestic partner is a dependent family member if either the Applicant/Participant or the domestic partner provides more than half of his or her financial support.
- E. Salary of an Applicant/Participant:** The annual contractual amount an Applicant/Participant earns, excluding benefits, while engaged in Full-time Law-related Eligible Employment as these terms are defined in Section III of these Guidelines.
- F. Salary of a domestic partner:** The annual amount the domestic partner earns, excluding benefits, while employed.
- G. Applicant/Participant's Adjusted Income:** Applicant/Participant's salary plus any other income of the Applicant/Participant, reduced by \$5,000 for each dependent minor child and each dependent family member.
- H. Joint Adjusted Income:** The salary of the Applicant/Participant plus the salary of the domestic partner plus any other income of the Applicant/Participant and the domestic partner, reduced by \$5,000 for each dependent minor child and each dependent family member, and reduced by the domestic partner's annual educational loan payments.
- I. Eligibility Determination Income:** The higher of (a) the Applicant/Participant's Adjusted Income, as defined above, or (b) one-half (1/2) the Joint Adjusted Income, as defined above, of the Applicant/Participant and his/her domestic partner.
- J. Current:** (a) The loan is in a repayment phase, i.e. that the Applicant/Participant is obligated to make installment payments on the loan, and (b) all payments required by the lender have been made and are being made in full and on time.

III. ELIGIBILITY

To be eligible for the Program, an Applicant/Participant must satisfy the following requirements.

- A. Law School Graduate:** An Applicant must have earned a J.D. within 10 years from an ABA accredited Law School.

- B. Law license:** A Participant must be a licensed member in good standing of a state bar. An attorney may apply to the Program while he or she is awaiting results of a bar exam or awaiting the opportunity to take a bar exam, but will not be eligible to participate in the Program until he/she has been licensed by a state bar.
- C. Full-time:** An Applicant must work or be paid for 35 or more hours per week.
- D. Law-related:** The nature of the Applicant's work must involve legal problem solving or analysis and must require skills acquired in legal education.
- E. Eligible Employment:** Eligible Employment is employment in North Carolina with (a) a federal, state, or local government agency, such as a United States Attorney's office or a Public Defender's office; (b) an organization that provides legal services to the poor, such as Legal Services of North Carolina, Inc.; or (c) a 501(c)(3) non-profit organization. A Participant does not become ineligible if he/she leaves one type of Eligible Employment for another.

Note: A judicial clerkship does not qualify as Eligible Employment, but a Participant who enters Eligible Employment after a clerkship may count the time in the clerkship in the forgiveness schedule as described below.

- F. Income Guidelines:** For an Applicant/Participant in his/her first year of law practice, Eligibility Determination Income, as defined in Section II above, must be no more than \$37,000. For an Applicant/Participant who has practiced as a lawyer for at least one year but has not yet completed two years of practice, Eligibility Determination Income, as defined in Section II above, must be no more than \$40,000. For an Applicant/Participant who has practiced for at least two years, Eligibility Determination Income, as defined in Section II above, must be no more than \$43,000.
- G. Eligible Loans:** All need-based federal, university and educational loans for law school education are eligible for inclusion in the Program calculations so long as they meet the requirements of the loan repayment status described below and **are not eligible for forgiveness or loan repayment assistance through another source.** See Section IV. Loans from family members and other private sources are not included. Loan consolidation is not required.
- H. Loan Repayment Status:** All law school loans must be in satisfactory repayment status. No loans may be in default. Additionally, all law school educational loans must be current, as defined in Section II of these Guidelines. In the Program Application, Applicant may include loans which are in deferral, but will become current, i.e., enter the repayment stage, during the NC LEAF funding cycle. For such loans, Applicant shall indicate the date that such loans will enter the repayment state.
- I. Available Leaves:** A Participant on unpaid parental disability leave is considered a Full-time employee up to a maximum period of six months. NC LEAF will continue to pay quarterly checks to Participant so long as Participant continues to make payments to lenders. If a Participant loses his/her job, he/she may apply to the Special Circumstances Committee of the Board of Directors of NC LEAF for a grace period before being required to leave the Program, and if applicable, repay the funds not yet forgiven.

J. Transitional Phase: When a Program Participant in good standing, receives an increase in income such that his/her Eligibility Determination Income (as calculated under these Guidelines) exceeds the Income Guidelines in Section III but is not more than \$45,000, that Participant may either terminate participation in the Program or elect to enter the Transitional Phase of the NC LEAF Loan Repayment Program so long as the Participant meets all other requirements and conditions of the Transitional Phase. A Participant may receive funds for only one year under the provisions of the Transitional Phase.

To qualify for the Transitional Phase a Participant must:

1. Satisfy all of the requirements set forth in these Guidelines except the level of Eligibility Determination Income set forth in Section III, Paragraph E.
2. Have an Eligibility Determination Income of not more than \$45,000 and
3. Perform all of the obligations of a Participant as set out in these Guidelines.

During the Transitional Phase, a Participant shall contribute **10%** of his/her Eligibility Determination Income towards repayment of eligible educational loans. NC LEAF's contribution will be the remainder of eligible debt obligation but not more than \$6,000 per year per Participant, not to exceed that amount Participant was receiving from NC LEAF before he/she entered the Transitional Phase.

IV. COORDINATION WITH OTHER LOAN REPAYMENT ASSISTANCE PROGRAMS

The NC LEAF Loan Repayment Assistance Program requires that each Applicant/Participant pursue and exhaust all other sources of loan repayment assistance, forgiveness and cancellation that are available to that Applicant/Participant. **The fact that other assistance is available does not disqualify an Applicant/Participant for NC LEAF assistance. However, once an Applicant is selected as a Participant in the NC LEAF Loan Repayment Assistance Program, the level of assistance NC LEAF provides will be coordinated with that which the individual is qualified to receive from other sources.**

The level of assistance available from NCLEAF for Participants receiving assistance from non-North Carolina loan repayment assistance programs will be based on the Participant's annual debt obligation minus assistance received from the non-North Carolina programs, **up to an aggregate of \$6,000 of total annual assistance from all sources.**

The level of assistance available from NC LEAF for Participants receiving assistance from North Carolina loan repayment assistance programs (such as North Carolina law schools or programs offered by North Carolina employers) will be based on the Participant's annual debt obligation minus assistance received from North Carolina programs, **up to an aggregate of \$9,500 of total annual assistance from NC LEAF and other North Carolina sources.**

V. CALCULATION AND PAYMENT OF BENEFITS

OBLIGATIONS OF THE PARTICIPANT

NC LEAF will provide loan repayment assistance through the end of the tenth year after graduation or until all Eligible Loans are paid off, whichever occurs first. A Participant must

contribute a percentage of his/her Eligibility Determination Income, calculated as provided in Section III above, towards his/her eligible debt repayment obligation, according to the following formula:

Eligibility Income:	Less than \$20,000	0% required contribution
	\$20,001-\$25,000	2% required contribution
	\$25,001-\$35,000	4% required contribution
	\$35,001-\$43,000	6% required contribution
	\$43,001-\$45,000	10% required contribution (Transition)

NC LEAF will give the Participant the remaining amount needed to meet his/her eligible debt repayment obligation, **up to \$6000/year**, subject to the requirements of Section IV above. NC LEAF will provide these funds to the Participant on a quarterly basis.

Graduates from out-of-state law schools who are accepted as NC LEAF Participants must pay each year **10%** of the total annual assistance received from NC LEAF as an administrative cost. NC LEAF hopes that these Participants will obtain these funds from their respective law schools and will assist in this process by sending information to the appropriate administrators identified by the Participant. However, the burden is on the Participant to obtain this fee, and it is up to the Participant to pay the required cost, if his or her law school does not.

It is understood that all of the North Carolina law schools will subsidize their graduates applying to NC LEAF for assistance by contributing 10% of the total award made by NC LEAF to that North Carolina law school’s graduates in the prior funding cycle. However, should a North Carolina law school NOT make their proportionate contribution, NC LEAF reserves the right to require graduates from that school who are accepted into the NC LEAF program to pay the same administrative fee as graduates from out of state, i.e. 10% of the annual award.

It is the **responsibility of the Applicant/Participant** to keep all loans current by payment of the required amounts in full and on time in order to continue participation in the Program. An Applicant may apply to the Special Circumstances Committee of the NC LEAF Board of Directors in the event that he/she is behind in his/her loan payments before they enter the Program. Further, should a Participant experience exceptional circumstances which prevent him/her from making his/her loan payments on time and in full, the Participant must notify the NC LEAF staff. The matter will be referred to the Special Circumstances Committee of the NC LEAF Board of Directors.

Throughout the year, NC LEAF will verify on a regular basis certain employment and loan information to determine Applicant/Participant’s continued eligibility. **To continue to receive NC LEAF funding**, a Participant must provide, in a timely manner, appropriate signed documents to enable NC LEAF to verify continued Full-time, Law-related, Eligible Employment, qualifying salary and income under these Guidelines, and appropriate loan repayment status for the Applicant/Participant and his/her domestic partner, if applicable. **In addition**, Participant must assist NC LEAF in obtaining the above information should the employer, lender, or other source of information so require. This includes providing NC LEAF with Participant’s **pin number** for his or her Lender so that NC LEAF staff may access

Participant's loan payment history online, if such information is available in this format, in order to verify that loans are current. **The Applicant/Participant shall notify NC LEAF of any changes during the year** in financial, employment, and/or loan or debt repayment information for the Participant and/or his/her domestic partner. **In order to remain in the Program**, every year each Participant shall also provide updated information, signed documents of the nature described above, a copy of his/her tax return and a copy of his/her domestic partner's tax return from the preceding year.

The level of benefits will be calculated once each year based on the then-current information. This annual benefit will be divided and distributed to the Participant in installments, except as provided below. **Payments will be recalculated or eliminated during the funding cycle in the following situations:**

1. Participant leaves Eligible Employment (Immediately disqualifies Participant from receiving further payments, may trigger loan repayment. See Structure of the Program, Section VI. below)
2. Participant's loans are not current (Disqualifies or suspends qualification for participation in Program depending on the determination of the Special Circumstances Committee of the NC LEAF Board of Directors.)
3. Participant's loan payments change significantly, e.g., due to renegotiation or consolidation. (Significant changes in Participant's obligation to his/her lender(s) may cause recalculation of payments from NC LEAF; minor changes, e.g., those due to small changes in interest rates on an adjustable rate loan usually will not cause recalculation of payments for the present funding cycle.)
4. Eligible loan is paid off. (If Participant has remaining eligible loan(s) for which payments are still due, payment to Participant will be recalculated based on those remaining loans. If all eligible loan(s) are paid off, Participant shall no longer receive payments from NC LEAF.)
5. Participant's Eligibility Determination Income, as defined in Section II, increases more than 20% but Participant's Eligibility Determination Income is still below the applicable Income Guideline set forth in Section III (E), above. (Recalculation of NC LEAF's future payments to Participant using new Eligibility Determination Income.)
6. Participant's Eligibility Determination Income, as defined in Section II, above, increases more than 20% and Participant's Eligibility Determination Income then exceeds the applicable Income Guideline set forth in Section III (E) by 10% or more. (Reduction of the remaining payment(s) for the present funding cycle by 50%; must be eligible under the Guidelines to continue into another funding cycle.)
7. Failure to notify the NC LEAF Board of changes and to request consideration by the for Special Circumstances Committee may result in termination from the program and disqualify Participant for the transitional phase.

Each Applicant/Participant shall read, sign and return to NC LEAF a copy of the Program Guidelines as part of the application process described in Section VIII and thereafter as requested to do so by NC LEAF, as set forth in the final paragraph of these Guidelines.

VI. STRUCTURE OF PROGRAM

YEARS ONE THROUGH THREE

For Years 1 through 3 of Eligible Employment, NC LEAF will lend its contribution to the Participant at no interest. If the Participant remains in Eligible Employment through the end of Year 3, the loans extended under the Program will begin to be forgiven. The table below shows the schedule of forgiveness of the Program’s loans. If the Participant remains in Eligible Employment through the end of year 5, all of the Participant’s loans from prior years are forgiven. If the Participant leaves Eligible Employment before the end of Year 5, the loans not yet forgiven are repayable over a ten-year period.

YEARS FOUR THROUGH TEN

Money given to the Participant during Years 4 through 10 of Eligible Employment will be forgiven on a year by year basis. A Participant who enters the Program after at least three years in Eligible Employment qualifies immediately for this phase. NCLEAF will calculate the total amount of assistance that a participant is eligible to receive during the fourth year of eligible employment, make a loan of that amount to the participant, and pay out that loan in four quarterly installments directly to the participant. In return, the participant agrees to repay the NC LEAF loan in full and to meet all terms and conditions of the program. If the participant completes the fourth year of eligible employment in good standing, the NCLEAF loan for both Year 2 and Year 4 will be forgiven at the end of the year. At the end of the fifth year of eligible employment, Year 1 and Year 5 are forgiven.

If a Participant leaves Eligible Employment before Year 5 then Participant must repay any NC LEAF funds not yet forgiven, according to the schedule below.

At the end of the sixth year of eligible employment, Year 6 is forgiven. The process then would be repeated for the seventh through tenth year of eligible employment. If a Participant in this phase leaves Eligible Employment before the end of a three-month payment cycle, the Participant will be required to repay a proportional amount of that cycle’s grant. Thus if in Year 7 the Participant leaves Eligible Employment after one month of a three month payment cycle, the Participant must repay two-thirds (two months out of three months) of that cycle’s loan.

Loan Deferral/Loan Forgiveness Schedule

Years of Eligible Employment Completed	NC LEAF Funds Forgiven
1	none
2	none
3	Year 3
4	Year 2 and Year 4
5	Year 1 and Year 5
6	Year 6
7	Year 7
8	Year 8
9	Year 9
10	Year 10

TAXABILITY

NCLEAF has attempted to design this Loan Repayment Assistance Program to provide maximum potential tax benefits to Participants under recent changes to federal tax laws. We believe we have structured this program so that the loan amounts forgiven by NCLEAF are not considered taxable income to Program Participants, and thus do not have to be reported as such. However, because the law has so recently changed, there is very little authoritative legal guidance available to determine with certainty the proper tax treatment of this structure. Each individual Participant remains responsible for any positions taken on his/her own federal income tax returns, and NCLEAF cannot give any Participant legal advice as to whether forgiven NCLEAF loans must be treated as taxable income.

Participants who are uncomfortable with this lack of certainty have the option to treat as taxable income the forgiveness of their NCLEAF loan. Participants are encouraged to seek legal advice for any questions about their particular tax situation.

JUDICIAL CLERKSHIPS

Judicial clerks do not qualify for loan repayment assistance. However, if an individual enters Eligible Employment after a judicial clerkship and is accepted into the Program, that individual will receive credit, for purposes of the loan deferral/loan forgiveness schedule, for time spent in the clerkship.

VII. ADMINISTRATION

The Board of Directors of NC LEAF will oversee the operation of the Program. The Board retains complete discretion in any particular year to determine which Applicants are to receive priority for assistance. In selecting Participants, the Board may consider, but is not limited to, the following factors: salary, Eligibility Determination Income, debt level, net worth, type of employment, location of employment (rural/urban and mountains/piedmont/coast), law school attended, and any special circumstances, such as financial responsibility for aging parents. In addition to the factors listed above, in selecting Participants the board has established the following preferences for distributing funds:

1. Graduates of North Carolina law schools
2. Graduates of out-of state law schools who are originally from North Carolina
3. All others

Once an attorney has been admitted to the Program, he or she may reapply each year for additional assistance. Although the Program will attempt to maintain payments to Program Participants who remain eligible once they have begun, prior receipt of benefits does not constitute a legal entitlement to future benefits.

The Board reserves the right to modify the terms of the Program. Applicants must understand that the Program's existence depends on continued funding.

VIII. APPLICATION PROCEDURES

Applicants must submit an Application and an Application Update annually. There will be a deadline for the Application and Update. It is the applicant's responsibility to submit a completed Application, including completed Employment Certification(s) and Lender

Verifications(s), a signed copy of these Guidelines, and other signed attachments which may be required by NC LEAF. The Board of Directors will not consider incomplete or late applications. Applications should be mailed to NC LEAF, 6070 Six Forks Road, Suite J; Raleigh, NC 27609. Questions about the Application, the Update, or the Program should be directed to the Executive Director at the above address, by email to NCLEAF@intrex.net or by phone at (919) 845-6089 or fax (919) 848-9259.

I, _____, acknowledge that I have read the foregoing Program Guidelines and agree that any assistance that I receive from NC LEAF is subject to, and governed by, these Guidelines. I understand that these Guidelines may be modified in the future, and that if they are, I will be asked to acknowledge the existence of such modified Program Guidelines and that my receipt of further assistance from NC LEAF will be subject to, and governed by, such modified Program Guidelines to the extent they conflict with the foregoing Program Guidelines.

Signature

Date