The following pages have been excerpted from a publication of the American Bar Association titled *State LRAP Tool Kit: A Resource Guide for Creating State Loan Repayment Assistance Programs for Public Service Lawyers*. The Tool Kit, published in 2003, contains a wealth of information about creating statewide, as opposed to law school-specific, loan repayment assistance or forgiveness programs for lawyers pursuing public service legal jobs. While the descriptions of specific statewide loan repayment assistance programs may be out of date, these excerpted chapters still serve as a useful guide to those who are interested in creating or refining state loan repayment assistance programs.
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
Co-Chairs
Curtis M. Caton
San Francisco, CA
Hon. Frank M. Coffin
Portland, ME

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Renton, WA
Peter A. Winograd
Albuquerque, NM

Staff
Dina R. Merrell
Commission Counsel
Chicago, IL
Dorothy Jackson
Assistant Staff Director
Chicago, IL
Tamaara Mason
Administrative Assistant
Chicago, IL
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   Appendix 5
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.

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Curtis M. Caton  
San Francisco, CA

Hon. Frank M. Coffin  
Portland, ME
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?
LRAP CHECKLIST: CREATING A STATE LOAN REPAYMENT ASSISTANCE PROGRAM

• 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 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

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4 Id.
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.

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\(^9\) 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.  

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.

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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 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 formula\(^\text{11}\) may be used to project program costs:

- How much is the average monthly net salary per participant (based on an estimated 30% tax rate)?
  \[ N = \text{average gross annual income} \times 0.7 \div 12 \]

- What is the average monthly loan payment for participants?
  \[ L = \text{Loan payments based on a 15-year schedule} = L \]

- 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].
  \[ P = L - [0.2 \times N] = P \]

- How many possible program participants do you anticipate?
  \[ A = \text{Number of lawyers from the graduating class of 2002 working in qualifying employment as defined by the entity creating the state program (e.g., civil legal services, public defenders, etc.)} = A. \]

- How much will the program cost in year one?
  \[ Y_1 = 12 \times P \times A = Y_1 \]

- How much will the program cost after 10 years?
  \[ Y_{10} = 10 \times Y_1 = \_ \]

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.

• 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. Minnesota\(^{13}\) and North Carolina\(^{14}\) 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

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\(^{13}\) 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), 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 California and Texas 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

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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 Programs\(^{19}\)
    - 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](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.

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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

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\(^{24}\) See supra note 20.


\(^{26}\) 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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{32} Arizona’s program forgives one month of each annual loan amount for each month of service provided during the program year.\textsuperscript{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.\textsuperscript{34}

\textsuperscript{29} Id. at Section XII.
\textsuperscript{30} See supra note 14, Section VI.
\textsuperscript{31} Maryland’s LRAP is structured as a grant program.
\textsuperscript{32} Program Description, New Hampshire Bar Foundation Law School Loan Repayment Assistance Program (August 2000), Section 8.
\textsuperscript{33} See supra note 20.
\textsuperscript{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.

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.”

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 ≤ 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:

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

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

<table>
<thead>
<tr>
<th>LRAP</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>State A LRAP</td>
<td>$1,000 (R)</td>
</tr>
<tr>
<td>Law School X LRAP</td>
<td>$5,000</td>
</tr>
<tr>
<td>Employer Y LRAP</td>
<td>$1,200</td>
</tr>
<tr>
<td></td>
<td>$7,200 (S)</td>
</tr>
</tbody>
</table>

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).
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:

<table>
<thead>
<tr>
<th></th>
<th>Total Funding</th>
<th>IOLTA</th>
<th>State Legislation</th>
<th>Law Schools</th>
<th>Private Donors</th>
<th>Private Foundations</th>
<th>State Bar Foundations</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>AZ</td>
<td>$30,000</td>
<td></td>
<td>100%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FL</td>
<td>$106,345</td>
<td></td>
<td>80%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>20%+</td>
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<tr>
<td>ME</td>
<td>$30,000</td>
<td></td>
<td>100%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>MD</td>
<td>$670,000+++</td>
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<td>100%</td>
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<td></td>
</tr>
<tr>
<td>MN</td>
<td>$148,000</td>
<td>10%</td>
<td>24%+++</td>
<td>19%</td>
<td>33%</td>
<td>14%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>NH</td>
<td>$63,140</td>
<td></td>
<td>100%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>NC</td>
<td>$301,000*</td>
<td>17.5%</td>
<td>66.5%</td>
<td>4%</td>
<td>3%</td>
<td>3%</td>
<td>6%**</td>
<td></td>
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<tr>
<td>TX</td>
<td>$33,375</td>
<td></td>
<td>100%***</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

+ 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

**IOLTA**

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.

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39 For more information about IOLTA programs, please visit [http://www.abalegalservices.org/iolta](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 Foundations\(^{42}\)**

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.\(^{43}\)

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\(^{41}\) 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.

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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. 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. 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. If no other entity has conducted or is in the process of conducting a statewide legal needs study, consider conducting one.

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

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

• 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