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Doing More with Less: How the Loan Repayment Assistance Program of Minnesota Augments Federal Loan Repayment Assistance to Expand Legal Aid

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**DOING MORE WITH LESS:
HOW THE LOAN REPAYMENT ASSISTANCE PROGRAM
OF MINNESOTA AUGMENTS FEDERAL LOAN
REPAYMENT ASSISTANCE TO EXPAND LEGAL AID**

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I. NOT ENOUGH LEGAL AID, TOO MUCH SCHOOL DEBT

Just two days before Thanksgiving, a low-income, single mom found a note on the door of the home she was renting. The note ordered her to move out within forty-eight hours because the house was going into foreclosure. She turned to Mid-Minnesota Legal Aid, and attorney Genevieve Gaboriault, a recipient of the Loan Repayment Assistance Program of Minnesota (LRAP). Genevieve helped her new client stay in the home because the notice was invalid.

This was only the beginning of the single mom's troubles, however. Just a month after receiving the foreclosure notice, in the middle of winter, the furnace stopped working. Because the prior landlord no longer managed the property, Genevieve stepped in

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again and negotiated with the foreclosing bank to have the furnace repaired. Then the bank filed an eviction against Genevieve's client. And again, Genevieve came to the rescue, negotiating a plan on behalf of her client that allowed the single mom to stay in the home through the end of her lease term. The client had time to look for a suitable new home in the same area. As a result, her children were not forced to change schools, and the family was able to stay near their relatives.

Genevieve's client was fortunate; most low-income individuals do not receive the legal help they need for matters of basic subsistence.¹ Among other factors making low-income legal assistance scarce, staggering law school debt and low legal aid salaries create a barrier that prevents dedicated attorneys from accepting public interest law jobs to help these populations. The national average for private law school debt is nearly \$125,000,² while the median starting salary for public interest jobs is merely \$42,900.³ Not only do such disparities between debt and income deter law school graduates from public service work, but attorneys who accept such legal aid positions are often prevented from staying in those positions for the long term. High turnover rates reduce the efficiency and the capacity of legal aid organizations.

II. HOW LRAP INCREASES LEGAL AID

LRAP's mission is to increase desperately needed legal aid for low-income families and individuals by enabling attorneys to work in public service positions. In Minnesota, LRAP attorneys have an average total education debt of \$110,598, and an average salary of \$42,309.⁴ LRAP helps to alleviate this debt barrier by providing education loan repayment assistance to public interest attorneys with a demonstrated financial need. These attorneys, in turn, help

1. LEGAL SERVICES CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA app. at A-1 (Sept. 2009), available at http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf.

2. Debra Cassens Weiss, *Average Debt of Private Law School Grads is \$125K*, A.B.A. J. (Mar. 28 2012), http://www.abajournal.com/news/article/average_debt_load_of_private_law_grads_is_125k_these_five_schools_lead_to_m.

3. Press Release, Nat'l Ass'n for Law Placement, *Class of 2010 Graduates Saddled with Falling Average Starting Salaries as Private Practice Jobs Erode 2* (July 7, 2011), available at <http://www.nalp.org/uploads/PressReleases/Classof2010StartingSalaryFindingsPressRelease.pdf>.

4. Application Data, Loan Repayment Assistance Program of Minnesota (2011–2012) (on file with authors).

more than 12,000 low-income clients annually with basic essential needs like safety and shelter. The volume and quality of client service provided by these attorneys would be impossible without LRAP. The attorneys would be forced to leave the work they love or to take a second job if they did not receive help from LRAP. LRAP recipients have reported that based on their salaries alone, they would not be able to meet basic expenses including rent, childcare, and loan payments. LRAP funds also help recipients afford transportation expenses for client service and outreach.⁵

III. NEW FEDERAL PROGRAMS ALSO FACILITATE PUBLIC SERVICE

LRAP is not, of course, the only resource for public service attorneys. In 2007, Congress passed the College Cost Reduction and Access Act of 2007 (CCRAA).⁶ The CCRAA helps public service attorneys with repayment of federal student loans in two ways.⁷ First, it offers Income Based Repayment (IBR), a new repayment plan that caps annual loan payments at fifteen percent of “discretionary income”⁸ (ten percent for qualifying borrowers graduating in 2012 and beyond).⁹ “Discretionary income” is defined as the “adjusted gross income minus 150% of the poverty level for the borrower’s family size.”¹⁰ For a borrower with an education debt of \$110,600 and a starting legal aid salary of \$40,000, monthly payments under IBR are estimated to be \$291 in the first year of repayment, and \$438 by the tenth.¹¹ By contrast, a fixed-repayment term of twenty-five years would be approximately \$768 per month, and a ten-year term would be a stifling \$1272 monthly.¹²

Second, under the Public Service Loan Forgiveness (PSLF) program, borrowers making 120 months (or ten years’ worth) of

5. Survey Responses, Loan Repayment Assistance Program of Minnesota (2011) (on file with authors).

6. College Cost Reduction and Access Act, Pub. L. No. 110-84, 121 Stat. 784 (2007).

7. EQUAL JUST. WORKS, THE FEDERAL STUDENT LOAN FORGIVENESS LAW 1 (Feb. 2008), available at http://www.equaljusticeworks.org/sites/default/files/ejw_ccraa.pdf.

8. *Id.*

9. *Income-Based Repayment Calculator*, FINAID.ORG, <http://www.finaid.org/calculators/ibr.phtml> (last visited Oct. 12, 2012).

10. *The Federal Student Loan Forgiveness Law*, *supra* note 7.

11. *Income-Based Repayment Calculator*, *supra* note 9.

12. *Id.*

IBR payments while working in a full-time qualifying public service position, including legal aid, are eligible to have the balance of principal and interest on eligible Federal Direct Loans canceled by the federal government.¹³ In the example above, the borrower would have more than \$142,500 forgiven after ten years of service.¹⁴ This loan discharge is not taxable to the borrower under existing law.¹⁵

The authors and proponents of the CCRAA designed the Act to improve access to higher education by making it more affordable.¹⁶ Making higher education more affordable, in turn, promotes fairness and equal access to educational opportunities, while also benefiting the economy by producing better-trained workers.¹⁷ Congress recognized the importance of providing affordable educational opportunities given the steep increases to tuition and the subsequent increase in debt that burdens many students upon graduation.¹⁸

Most relevant to the mission of LRAP, Congress was particularly concerned that many students would be forced to forego careers in low-paying but socially valuable careers because of their “crushing debt.”¹⁹ PSLF was thus designed to encourage and reward students who enter public service careers. To rally support for the Act, its proponents emphasized the importance of public service workers like firefighters, teachers, and nurses.²⁰ In particular, Congress recognized that today’s students are idealistic and want to help but cannot afford to do so without assistance.²¹ One representative aptly summarized the arguments in favor of the act and its loan provisions by noting:

13. *The Federal Student Loan Forgiveness Law*, *supra* note 7, at 2.

14. *Income-Based Repayment Calculator*, *supra* note 9.

15. *Taxability of Student Loan Forgiveness*, FINAID.ORG, <http://www.finaid.org/loans/forgivenessstaxability.phtml> (last visited Oct. 12, 2012) (citing Letter from Eric Solomon, Assistant Sec’y for Tax Policy, Dep’t of Treasury, to Rep. Sander Levin (Sept. 19, 2008), available at <http://www.finaid.org/loans/20080919treasurylevinforforgiveness.pdf>). For a more lengthy discussion of the CCRAA, see Philip G. Schrag, *Federal Student Loan Repayment Assistance for Public Interest Lawyers and Other Employees of Governments and Nonprofit Organizations*, 36 HOFSTRA L. REV. 27 (2007).

16. 153 CONG. REC. H10255 (daily ed. Sept. 7, 2007) (statement of Rep. Betty Sutton).

17. *Id.*

18. *See id.*

19. *See id.* H10256 (statement of Rep. George Miller).

20. *Id.*; *see also id.* H10255 (statement of Rep. Betty Sutton).

21. *See id.* S11258 (statement of Sen. Ted Kennedy).

[P]ublic servants will receive complete loan forgiveness after ten years of service. This will assist our driven young people who want to serve their country in the military, law enforcement, or as first responders, firefighters, nurses, public defenders, prosecutors, and early childhood educators. It ensures that dedicated Americans will not be precluded from serving their country because of a preponderance of debt.²²

IV. MAXIMIZING LRAP'S IMPACT THROUGH THE CCRAA

Not only are these provisions of the CCRAA beneficial in and of themselves, the CCRAA provides a unique opportunity for LRAP to target the organization's limited resources toward the retention of experienced attorneys, which will result in increased service and better outcomes for low-income clients. What's more, the CCRAA provides an opportunity to multiply the benefits of LRAP's donors' gifts. The donors' investment in important but relatively modest annual loan repayment assistance awards can result in two- and three-fold amounts being forgiven after ten years.

LRAP Minnesota recently implemented program changes to align with the benefits of IBR and PSLF. These changes were guided by the following series of core principles.

1. *Long-term Commitments.* Encourage recipients' long-term commitments to public service, both as a benefit for the providers and clients whom they serve, and as a means to better enable recipients to take advantage of PSLF, the 10-year loan forgiveness component of CCRAA.
2. *Effective Awards.* Maximize the effectiveness of LRAP awards by using them to supplement the benefits of CCRAA.
3. *Avoid "Overpayments."* Avoid awards to recipients in excess of IBR payments, except in instances where need can be clearly demonstrated, such as for private loan payments.
4. *Establish the Continuing Need.* Enable LRAP's ability to tell a compelling story to potential donors about the continued need for, and even added value of, LRAP awards in light of CCRAA and similar programs.
5. *Make the Formula "Workable."* Maintain LRAP's

22. *Id.* H10268 (statement of Rep. Sheila Jackson-Lee).

traditional transparency and objectivity in the award process, as well as acceptable levels of predictability and relative ease of administration.

6. *Assist Current Recipients.* Maintain levels of awards for current recipients at or near the levels current recipients rely on.²³

V. LONG-TERM COMMITMENTS

LRAP recognizes that public service legal providers and recipients face specific challenges relating to retention. Attrition among attorneys with three to five years of experience can be a particular problem for providers—attorneys' value to the providers (and the providers' clients) increase with years of experience. Not only can an experienced attorney handle a larger caseload with more complex legal matters, but the attorney is more likely to have developed the network needed to resolve client matters outside of the litigation context. Six-year veteran Genevieve Gaboriault made a quick phone call to her contact at the power company and got power restored for a client whose landlord had failed to pay utilities for which he was responsible after the property went into foreclosure. At the same time, attorneys with increased years of experience may be more likely to face increased pressure to leave public service due to years of employment at relatively modest salaries because of life and family changes and for other reasons. Public service legal providers and their clients are well served by all of their attorneys, but the loss of experienced attorneys can place a unique burden on such providers.

With the introduction of CCRAA's ten-year loan forgiveness provisions, attorneys with increasing years of experience face an additional potential dilemma. In the range of three to seven years, public service attorneys may be relatively close to the ten-year period at which their federal loans are forgiven, but they are not so close that the loan forgiveness may yet be a tangible benefit compared to other, more immediate pressures. Both the public service providers' and the recipients' interests can be served by focusing LRAP awards on more experienced attorneys. LRAP's guideline changes weigh years of experience in qualifying

23. *Loan Repayment Assistance Program of MN Program Guidelines*, LRAP MINN., 1, <http://www.lrapmn.org/documents/5160812012%20Program%20Guidelines.pdf> (last visited Oct. 12, 2012) (emphasis added).

employment when ranking applicants for funding and determining percentage of annual IBR payment amount covered.

IBR and other provisions of the CCRAA provide substantial (but not sufficient) assistance to prospective recipients. LRAP recognizes the benefit of supplementing the benefits of CCRAA. By molding its awards to now-reduced IBR amounts, there is an opportunity for LRAP to potentially spread the same awards among more than one recipient, while reducing or even eliminating both recipients' loan payments.

In the long-term, the opportunity is even greater. If, with the assistance of both IBR and LRAP, a recipient can be encouraged to stay in public service where the recipient might not otherwise have been able to do so, LRAP's individual awards can translate literally into tens of thousands of dollars of loan forgiveness for a single recipient. For example, if LRAP covers a significant portion of a recipient's IBR payments over ten years, LRAP's total assistance of less than \$37,000 during those years could enable a recipient to realize more than \$142,500 of loan forgiveness after year ten.

VI. CONTINUING EFFECTIVE AWARDS

LRAP recognizes that one of the least desirable outcomes of any award formula would be the possibility that LRAP's donors' dollars would be used for loans that are ultimately forgiven. LRAP is not in the business of assisting in the payment of loan amounts that prove not to be due. LRAP desires to avoid any instances in which its funds are effectively transferred to the federal government. Accordingly, all recipients' awards are now calculated as a percentage of the recipients' actual or estimated IBR calculations.²⁴ In this way, the benefits of donors' contributions continue to be maximized.

LRAP recognizes that programs such as CCRAA potentially create a misperception that the need for LRAP assistance is not great—that other government programs are already alleviating the extremely difficult financial position of public service attorneys. LRAP views a revised formula—tied to and supplementing CCRAA provisions—as both a necessity to continue to demonstrate the need for LRAP awards to its donors and as a significant opportunity

24. In some instances, recipients will have private debt or other reasons why a typical IBR does not reflect the recipients' repayment obligations. In these instances, a calculated IBR amount is assigned to the applicant. *Id.* at 4.

to add extra value to every donor's gift. Just as a "matching donation" fundraiser promotes giving by turning every dollar given into two or more dollars received, so does the CCRAA provide an opportunity to multiply the benefits of donors' gifts. With the combined effect of both IBR and LRAP programs, LRAP can do more than just reduce educational debt payments; it can substantially eliminate those payments for the neediest recipients. And for the most long-term recipients with the greatest commitment to public service, modest annual awards can result in two- and three-fold amounts being forgiven simply by LRAP and its donors being able to support that long-term commitment.

A challenge under the CCRAA is making a system that is reasonable, workable, and which can be relatively easily administered. IBR payments can be driven by a variety of factors, such as a recipient's adjusted gross income and even marital status (from the standpoint of whether a recipient files taxes jointly or has a spouse with federal debt payments as well). Timing can also be an issue because actual IBR decisions are currently due mid-year compared to the award-decision cycle for LRAP. IBR-based award calculations would also appear to result in substantially more potential for variation in individual awards. Under the previous award formula, many awards were set at an annual cap (usually ranging between \$3750 and \$4000), while under an IBR calculation, the amount for which a recipient is responsible (and therefore what LRAP might award) can range from \$0 to \$5000 or more. LRAP recognizes that any award formula should be administered in a manner that is timely, not unreasonably complicated, and transparent. For this reason, all award considerations start with either the actual IBR payments by a recipient or an estimated IBR calculation based upon publicly available resources.²⁵

In addition to all other considerations, LRAP desires to be mindful of current recipients. A shift toward IBR-based award calculations, for instance, could have a dramatic effect on current recipients not making IBR-based repayments on loans.

VII. CONCLUSION

In sum, LRAP's mission works in harmony with the spirit of the CCRAA but does so in a way that helps translate Congress' broad

25. For a full version of the current LRAP Program Guidelines, see *id.*

goals into practical, real-life solutions. LRAP exists to support lawyers who provide important public services to low-income individuals. Like firefighters, teachers, and nurses, these lawyers provide socially valuable services but often struggle to pay back loans in the process. LRAP's awards help public service lawyers make ends meet so that they can focus on serving their clients. In that sense, LRAP is directly in line with Congress' goals of encouraging and rewarding students who work in public service careers.

But LRAP does not just mirror the CCRAA's provisions. Instead, LRAP's awards can help fill important gaps in the CCRAA's structure. The PSLF provides an important incentive for public interest lawyers to pursue their dream because it offers the chance to be released from thousands of dollars of debt if they are able to persevere in their career. But while PSLF offers a tantalizing reward, it does not necessarily provide a realistic means of achieving it. The construction of the CCRAA gives qualifying graduates the opportunity to make reduced payments on their loans and after 120 payments, be released from further obligations. One of the merits of the program is its simplicity, but an inevitable consequence of simplicity is the lack of nuance and flexibility. In particular, the straightforward formula for PSLF assumes that an individual's financial needs and ability to make payments stay constant over the ten-year period after graduation. In reality, public service employees who are three to five years out of school often face new pressures as they begin to start families, buy homes, and accrue financial obligations that cannot be easily met through their relatively modest salaries.²⁶ Even with reduced loan payments and the impending promise of complete loan forgiveness, these individuals may face pressures that are so immediate and severe that they are forced to change course and enter more lucrative private-sector jobs.

The temptation to abandon a public interest career in favor of better paying work is uniquely difficult to overcome for public interest lawyers as they work in positions in which they earn less than half of what their private sector peers earn.²⁷ Above and

26. Senator Ted Kennedy, for example, provided two relatively simple examples of how the program would benefit a teacher and a police officer. *See* 153 CONG. REC. S11258 (daily ed. Sept. 7, 2007).

27. *See New Findings on Salaries for Public Interest Attorneys*, NAT'L ASS'N FOR LAW PLACEMENT (Sept. 2010), <http://www.nalp.org/sept2010pubintsal> (reporting that

beyond the personal hardship of abandoning one's preferred career and missing out on the potential of achieving complete loan forgiveness, losing public interest lawyers to the private sector also represents a huge loss to the community; attorneys with three to five years of experience are just beginning to move beyond the initial years of training and skill development and are entering the most productive part of their careers.

This is the area in which LRAP is uniquely situated to assist in making Congress' laudable goals become an actual reality for working public interest lawyers. In an attempt to stem the attrition of experienced attorneys, LRAP's awards can help supplement the CCRAA's payments during the period of a public service attorney's career when he or she needs it most by focusing its awards on recipients with three to seven years of experience. At the point in a lawyer's life when even minimal student loan payments can make the difference between being able to afford a mortgage or a child's medical bill, LRAP can step in and give added relief and financial liberty. Helping these attorneys stay in public service until they reach 120 months of IBR payments not only keeps experienced, quality attorneys in public service positions, but it also helps recipients realize tens of thousands of dollars in loan forgiveness.

In the arena of low-income legal assistance, need continues to outpace demand, and deserving clients continue to go without aid. No set of programs can provide all needed service, but LRAP is enthused about the opportunity created by CCRAA to do more with less. In these early years of the program, awareness is key. Although the CCRAA has been much talked about in the news, such a program can seem elusive to the individual public interest attorney. LRAP has discovered a great need for community education about accessing these programs and has undertaken that new task. The steps for pursuing Public Service Loan Forgiveness are particularly complex and may even require that borrowers consolidate their loans with a new lender (Federal Direct). LRAP's guideline changes incorporating CCRAA have provided the organization with new opportunities to provide education through seminars and individual counseling that enable our recipients take full advantage of IBR and PSLF.

in 2010 the average salaries for public interest attorneys with five years of experience were between \$49,440 and \$62,320 whereas attorneys with five years of experience working in private firms made between \$95,600 and \$172,500).