



The State Bar *of California*

OFFICE OF ACCESS & INCLUSION

Date: March 4, 2022

To: Members, LRAP and Loan Forgiveness Working Group

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Subject: Proposal for State Bar-Administered Attorney Loan Repayment Assistance Program

EXECUTIVE SUMMARY

Today, many law school graduates enter the legal profession with hundreds of thousands of dollars in debt from student loans. Attorneys of color are disproportionately impacted by this trend as they typically carry higher median student loan balances at graduation. The student loan crisis presents a major barrier to retention in public interest positions,¹ which usually provide lower compensation than do private law firms. In turn, this negatively impacts the availability of free or low-cost legal services for low- to moderate-income Californians. A number of loan repayment assistance programs (LRAPs) exist in order to mitigate the financial burden of monthly loan payments while working in the public interest, but they may not be available to all or can impose significant restrictions on the borrower.

As part of its mission, the State Bar of California supports greater “access to, and inclusion in, the legal system.” The State Bar has an opportunity to demonstrate leadership in this area of loan repayment assistance, which carries the potential to support recruitment and retention in public service positions, expand access to legal services, and increase and maintain diversity in the legal profession (the public interest sector in particular). This memorandum outlines a proposed State Bar-administered LRAP, the details of which will be further refined in consultation with State Bar leadership and this LRAP working group.

¹ Legal aid and government positions, but especially legal aid.

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BACKGROUND

LAW SCHOOL STUDENT LOAN DEBT AND PUBLIC SERVICE LOAN FORGIVENESS

The amount of student loan debt for law school graduates has increased exponentially in recent years. Current law students graduate with an average of \$164,742 in debt.² Attorneys of color have been disproportionately impacted by this trend; the median debt load for Black, Latinx, and Asian attorneys is approximately \$30,000-35,000 higher than for white attorneys at graduation.³

Graduates entering private practice may earn enough to pay off their loan debts, but many entering government or legal aid jobs⁴ report that their earnings are insufficient to meaningfully reduce their debt load.⁵ As a result, attorneys working in public interest positions frequently see their debt stagnate or increase over time, despite making regular payments.⁶

One option that attorneys wishing to work in public interest jobs often pursue is federal public service loan forgiveness (PSLF). Under the requirements of PSLF, attorneys with federal direct student loans may apply to have the remaining loan balance forgiven after they have made 120 qualifying payments (i.e., demonstrated that they worked in a government or nonprofit position for 10 years while making monthly payments on their federal direct loans).⁷ To qualify, attorneys must meet the employment criteria and enroll in an approved income-based repayment plan.

Even though PSLF repayment is income-based (generally 10-20 percent of discretionary income), when combined with already low compensation, many public interest attorneys in California continue to report financial strain due to cost of living and other life demands. This

² Including undergraduate loans, though this amount is mostly comprised of law school loans. American Bar Association Young Lawyers Division, [2020 Law School Student Loan Debt Survey Report](#), p. 7.

³ *Id.* at p. 17.

⁴ Referred to collectively throughout as “public interest” jobs.

⁵ The median starting salary of a legal aid attorney in California in 2019 was \$57,000. The starting salary for a Deputy Attorney General with the California Department of Justice at that time was \$67,224. Legal Aid Association of California (LAAC), [Justice at Risk](#) (2020), p. 24. The national average for a first-year associate at a private firm was \$155,000. The State Bar of California, [California Justice Gap Study](#) (2019), p. 17. The disparity may be larger now, as many private law firms increased salaries during the COVID-19 pandemic in 2020 and 2021 to attract and retain talent.

⁶ A survey of California public interest attorneys conducted by the State Bar of California in June 2021 yielded results indicating that 86 percent of respondents who graduated within the past 14 years either saw no change to their loan amount over time, or it increased. The State Bar of California, *Understanding Student Loan Debt Options for Public Interest Attorneys* [Unpublished data], (2021).

⁷ Federal direct loans are the most common type of loan held by law school graduates in public interest positions in California. Compared to those who reported holding federal direct loans, only a quarter reported holding private law school loans (which would be ineligible for PSLF). *Ibid.*

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makes it difficult, or even impossible, to save for future circumstances. Moreover, as noted above, the loan balance may not change significantly during the repayment period.

Until recent changes were implemented by the federal government, almost all applications for PSLF were rejected due to technical errors and misinformation provided by loan servicers to borrowers. This resulted in low confidence in the viability of the program.⁸ Similar concerns were expressed by public interest-minded law students who had not yet even entered the job market, potentially impacting their future career decisions.⁹

RETENTION ISSUES IN LEGAL AID

Legal aid employers experience high turnover rates.¹⁰ In addition to turnover, positions may remain unfilled for long periods of time. Many of these challenges may be attributed to compensation.¹¹ Coupled with high student loan debt, some attorneys find this arrangement untenable. Beyond the financial strain this puts on attorneys, there is also the fact that the work can be emotionally and psychologically taxing.

Frequent turnover and unfilled positions have significant downstream consequences for these employers. The immediate effect is that fewer services are available to the eligible client population, which compounds the fact that, even when fully staffed, demand often exceeds supply for these services. Further, it represents lost institutional knowledge and increasing costs to recruit and train new staff. This also impacts funding available for services—either by redirecting it to recruitment or, in the case of grant-specific funding, reducing an organization’s capacity to fulfill its planned services, which could diminish competitiveness for future funding requests.¹²

IMPACT ON DIVERSITY, EQUITY, AND INCLUSION IN THE NONPROFIT SECTOR

Turnover due to loan debt and financial pressure also negatively impacts diversity, equity, and inclusion efforts, both in terms of the attorney population as well as in serving a diverse client constituency. One of the State Bar’s goals in its most recent strategic plan is to “strive to achieve a statewide attorney population that reflects the rich demographics of the state’s population,” but much work is still required in this regard. For example, though the nonprofit sector is the most diverse of any sector in the legal profession, people of color are

⁸ *Justice at Risk* at pp. 33-34.

⁹ *California Justice Gap Study* at p. 21.

¹⁰ From the beginning of 2017 through the end of 2018, legal aid employers in California lost approximately one third of their workforce (averaging 16.4 percent per year), a trend that has accelerated in recent years. *Justice at Risk* at p. 2.

¹¹ Low salaries were the top reason cited by attorney who plan to leave their positions. *Id.* at p. ii. Less is known about retention in government positions. However, given the fact that government positions typically have higher compensation than legal aid, and many legal aid attorneys cite financial concerns as a factor for turnover, it might be speculated that this is a smaller concern in the government sector.

¹² *Id.* at pp. 7-9.

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underrepresented.¹³ This is particularly true in managerial and leadership positions.¹⁴ One possible contributing factor may be the disproportionate impact that student loan debt has on attorneys of color, motivating them to leave their legal aid positions due to financial pressure.

Moreover, legal aid and nonprofit organizations serve a variety of client populations; maintaining stable staffing is key for these organizations to build trust, ensure quality services, and demonstrate commitment to the communities they serve. Diverse teams of attorneys may also be better prepared to address the concerns of their clients by bringing a wider breadth of experience, ideas, and perspectives to tackling the very serious issues their clients face. Loan debt that creates a barrier to seeking employment with these organizations, and contributes to frequent staff turnover, detracts from these objectives.

OTHER STATE LRAP MODELS

According to the American Bar Association (ABA), at least 23 states and the District of Columbia offer—or have offered—LRAPs, though requirements vary from program to program.¹⁵ These programs obtain funding through a variety of sources, from Interest on Lawyers' Trust Accounts (IOLTA), to state legislatures, state bars, and even private donations.¹⁶ The ABA has encouraged other states to develop similar programs and even created an LRAP tool kit approximately 20 years ago to offer initial considerations and guidance when undertaking such a project.¹⁷

New York

The largest program by far in the ABA's survey of existing programs, both in terms of funding disbursement as well as number of beneficiaries, was the State of New York, which distributed \$2,579,999 to 772 attorneys in 2016.¹⁸ New York State may provide a relevant example to California in terms of administering a program with a large number of eligible applicants. The two states have comparable active attorney populations (New York has 185,076 versus California's 194,373).¹⁹

All funding for New York's program came from the State Legislature, and all recipients received up to \$3,400 in assistance per year.²⁰ All types of loans were eligible for repayment (public,

¹³ People of color comprise 60 percent of the state's population, but only 44 percent of attorneys in the nonprofit sector identify as people of color. The State Bar of California, [Report Card on the Diversity of California's Legal Profession](#) (2020), pp. 4, 16.

¹⁴ Thirty-five percent of legal nonprofit executives identify as people as color. *Ibid.*

¹⁵ American Bar Association (ABA), [Loan Repayment Assistance Programs State Chart Summary](#) (2018).

¹⁶ ABA, [Loan Repayment Assistance Programs State Funding Chart](#) (2018).

¹⁷ ABA Commission on Loan Repayment and Forgiveness, [State LRAP Tool Kit](#) (2003).

¹⁸ ABA, [Loan Repayment Assistance Programs State Funding Chart](#).

¹⁹ ABA, [National Lawyer Population Survey](#) (2021), and State Bar of California, [Attorney Demographics](#) (2022).

²⁰ [Loan Repayment Assistance Programs State Funding Chart](#) and [Loan Repayment Assistance Programs State Chart Summary](#)

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private, law school, undergraduate, etc.).²¹ Attorneys working in New York State in civil legal aid, as well as prosecutors and public defenders, were eligible, but other types of public interest employment were not.²² The program imposed a five-year limit on receipt of assistance, as well as timing restrictions (recipients had to be in their “fourth through ninth years of eligible employment”).²³

Oregon and Texas

Oregon and Texas provide insight into a State Bar-funded LRAP structure. These were the only two states with LRAPs funded through their State Bar at the time of the ABA’s survey. Like New York, all institutional loan types were eligible.

Oregon’s program started with seven participants in 2007 and grew to 23 participants in 2019. To fund the program, \$5 of each member’s dues are designated for use by the LRAP each year.²⁴ There are restrictions on income and type of work, which includes legal aids, district attorneys, and public defenders. The maximum assistance is \$7,500 per year for up to three years.²⁵

Texas funds its LRAP through its State Bar, the Texas Access to Justice Foundation (TAJF, which was established by the Supreme Court of Texas), and private donations. The program is actually administered by TAJF with input from the State Bar regarding the use of its funds. The maximum assistance is \$6,000 per year for up to ten years, under certain circumstances;²⁶ it allows extra funding for applicants serving in rural, underserved areas.²⁷ There are employment and income restrictions. The program supports over 150 attorneys per year but confines itself to employment in civil legal aid.²⁸

There appears to be a dearth of legal guidance on the topic of tax implications for these programs. However, both Oregon and Texas have structured their LRAPs as forgivable loans and indicate that it is their intent to exclude such payments from being considered taxable income. The authority to offer such a benefit appears in 26 US Code 108(f).²⁹

²¹ABA, [Loan Repayment Assistance Programs Eligible Loans](#) (2018).

²²ABA, [Loan Repayment Assistance Programs Eligible Employment](#) (2018).

²³ ABA, *Loan Repayment Assistance Programs State Chart Summary*. Though not explicitly articulated in the ABA’s materials, one might speculate that this particular program is targeted at retention of experienced attorneys.

²⁴Oregon State Bar, [Loan Repayment Assistance Program \(LRAP\) FAQ](#).

²⁵ *Ibid.*

²⁶ Texas Access to Justice Foundation (TAJF), [Texas Student Loan Repayment Assistance Program Frequently Asked Questions](#) (2020).

²⁷ TAJF, [Texas Student Loan Repayment Assistance Program, Program Guidelines](#) (2020).

²⁸ *Ibid.*

²⁹ The State Bar’s Office of General Counsel is currently conducting research on this topic. See Attachment B for full text of the cited code section.

EXISTING LRAP OPTIONS IN CALIFORNIA

There are several possible sources of LRAPs in California. Many appear targeted towards individuals seeking PSLF (e.g. maximum 10 years of participation, tying assistance to income-based repayment plans such as those that PSLF applicants must enter), even if they do not explicitly state that fact.³⁰ This list is not exhaustive but highlights options that are likely to be available to some, but not all, public interest attorneys in California:

Law Schools

There are three types of law schools in California: those approved by the American Bar Association (ABA), schools accredited by the State Bar through the Committee of Bar Examiners (CALS), and institutions that are registered as unaccredited schools. Many ABA law schools offer some form of loan repayment assistance for their graduates.³¹ In contrast, no CALS or unaccredited law schools report offering LRAPs.³² They also offer fewer scholarships and financial aid, and students at unaccredited schools are ineligible for federal direct loans (and consequently, for PSLF).³³

For ABA LRAPs, the benefits vary from school to school, but all seem to have an income threshold, as well as a qualifying employment requirement, and some even restrict the types of loans that qualify. Depending on the graduate's income-to-debt ratio, some of the LRAPs may cover the entirety of the monthly loan payment or only a portion. Time (some programs do not exceed a certain number of years after graduation) or changes in life circumstances can impact eligibility for assistance from the LRAP, regardless of whether the graduate is still working towards PSLF. For example, UCLA School of Law offers graduates in "public interest jobs, government positions or judicial clerkships" LRAP assistance if they earn \$100,000 or less.³⁴ However, if a graduate is married, UCLA's LRAP takes the applicant's partner's income into account (regardless of whether the applicant's loan repayment plan does the same), and there is a 10-year time limit to participation.

These programs provide significant financial support to their graduates, but due to the varying eligibility requirements, many graduates—especially attorneys with higher compensation or a two-income household—may find themselves excluded from participation. A recent survey by the State Bar asked respondents if they have ever been eligible for LRAP assistance (from any source). Of those who answered "yes" regarding their law school's LRAP, 29 percent of

³⁰ This makes sense in light of the fact that, especially among younger graduates, federal direct loans are overwhelmingly their main source of educational loan debt. The State Bar of California: *Understanding Student Loan Debt Options for Public Interest Attorneys* (2021), Unpublished data.

³¹ Two-thirds of ABA accredited law schools in California have such a program. *Justice at Risk* at p. 37

³² State Bar of California: *Law School Retention Study: Enrollment, Attrition, and Student Support of California's Law Schools* (2022), Preliminary findings.

³³ U.S. News & World Report, "[Student Loans and Technical, Alternative Education](#)" (April 7, 2021).

³⁴ The school will cover all loan repayment amounts for those with incomes at or below \$75,000 and partial repayment between \$75,000 and \$100,000. <https://law.ucla.edu/admissions/jd-admissions/financial-aid>

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attorneys working in public interest positions indicated they are currently eligible for LRAP assistance through their law schools, whereas 71 percent reported prior eligibility.³⁵

Legal Aid Employers

Some legal aid employers offer loan repayment assistance to their employees. There are a few different strategies for setting up such a program, which determines how the savings for employer and employee are calculated, but the general motivation is the same.³⁶ These payments typically do not count as part of an employee's taxable income, so they obtain the full benefit of the assistance, which can go entirely towards reducing the employee's debt. A small number of legal aid employers appear to already offer such an option, and others are seeking information about developing one. According to the California Access to Justice Commission, these programs could save an eligible employee up to \$7,400 per year while only costing the employer up to \$5,250 per employee.³⁷ The Access to Justice Commission, with the State Bar's support, has a pending proposal to strengthen and expand these employer funded LRAPs, discussed in more detail below.

Other Sources (Legal Services Corporation, Fellowships)

The Legal Services Corporation (LSC), the federal government's primary funder of civil legal aid, has offered an LRAP program for approximately 15 years to employees of LSC-funded organizations. California has 11 such organizations, which tend to be large employers. Nonetheless, this LRAP does not confer benefits to the civil legal aid attorneys at many other organizations throughout the state. Moreover, LSC frequently chooses participants through a lottery system because it does not have enough to fund each employee. Eligible participants can receive a maximum of three years of funding, up to \$5,600 per year. This LRAP is structured using forgivable loans.³⁸

Some postgraduate fellowship programs also offer LRAPs. For example, Equal Justice Works (EJW)—an organization that pairs law school graduates with sponsors to fund their work developing a new project at a host legal aid organization—offers two-year fellowships. During those two years, the attorney may be eligible for up to \$5,000 per year in loan repayment assistance, depending on their actual income-based monthly payments. Federal loans, whether graduate or undergraduate, are included.³⁹

³⁵ The percentage that reported ever receiving funds—in the past or currently—was even lower. *Understanding Student Loan Debt Options for Public Interest Attorneys* (2021), Unpublished data.

³⁶ There appear to be at least two options for employers in these situations, depending on their circumstances: Educational assistance programs under 26 US Code section 127 or forgivable loans as mentioned previously under section 108(f).

³⁷ California Access to Justice Commission: Summary of Key Work in 2021 and 2022.

³⁸ Legal Services Corporation, [LRAP Program Description](#).

³⁹ Equal Justice Works, [Fellowship Applicant Guide](#) (2021), p. 4.

Statutory LRAP

Twenty years ago, the California Legislature passed a bill establishing the Public Interest Attorney Loan Repayment Program, to be administered by the Student Aid Commission.⁴⁰ It included qualifying employment requirements and assigned funding limits to individual recipients. However, the Legislature did not provide a funding source, so the program remained inactive.

Several years later, in 2015, the Legislature added a funding source: escheated IOLTA funds held by the State Controller, to be transferred to the Treasurer.⁴¹ State Bar staff inquired in April 2021 regarding the status of escheated funds held by the Controller, which reported—as of April 5, 2021—approximately \$1,009,791 in funds. This was the total amount since the establishment of the reserve in fiscal year 2015-2016.⁴² (The statute allocates 25 percent to the Controller for administrative purposes under Code of Civil Procedure section 1564.5(b). The amount of funding that would be available for use would be closer to \$750,000.)

The Controller's office reported that it was in the process of transferring the funds to the Treasurer but had experienced delay due to difficulties in setting up the necessary accounts in the state's accounting system. In any event, to date none of those funds have been disbursed to the Student Aid Commission to start administering the LRAP program.

If the program were to be implemented, the statute allows for a total of \$11,000 in loan repayment assistance per attorney, over a period of four years (up to \$2000 in the first year, and \$3000 per year thereafter).⁴³ Attorneys working for legal service organizations, public defender's offices, child support agencies and prosecuting attorney's offices are all eligible. There are no salary caps, but the statute directs the administrator of the program to look at "need and merit" when determining awards, including such factors as individual resources and commitment to public interest law, among others. It requires exhaustion of other LRAP sources before turning to the state's program.⁴⁴ Public and private loans are eligible, and it appears that payments would be made directly to the lender.

⁴⁰ California Education Code section 69740 et. seq. (See Attachment A.)

⁴¹ Business and Professions Code section 6032.5 and Code of Civil Procedure section 1564.5

⁴² This averages a little over \$200,000 in escheated funds per year, though some variability in the exact amount from year to year is likely.

⁴³ See Attachment A.

⁴⁴ The statute is somewhat ambiguous on this point. It specifically cites exhausting law school LRAPs but later says, "Only if an applicant has received no loan repayment assistance, or only partial assistance, *from other available sources*, may he or she apply to the program for assistance in repaying the balance of his or her educational loans." (Emphasis added.) It is unclear if applicants have to demonstrate ineligibility or rejection from sources other than law schools, such as those cited previously in this memo, before applying. (See Attachment A, section 69743.)

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ADDITIONAL PROPOSALS IN DEVELOPMENT

The California Access to Justice Commission is currently working on a proposal to encourage and guide more employers to implement their own LRAPs. The group has also indicated that it intends to seek up to \$10 million per year in funding from the Legislature to fund this project.

Meanwhile, this LRAP and loan forgiveness working group has also held meetings to discuss various alternatives. This includes investigating when and how to involve private companies in the effort to reduce student loan debt, as well as ways to mobilize resources for existing options, such as making statutory LRAP viable.

AVAILABLE STATE BAR CONTRIBUTION

The State Bar intends to sell its office building in San Francisco later in 2022. The timeline for this process remains to be determined. However, State Bar leadership has indicated that some of the proceeds from such a sale, up to \$5 million, may be set aside to fund a new LRAP administered by the State Bar. As this would be a completely new program, there are several decision points to address.

DISCUSSION

WHY THE STATE BAR SHOULD CONSIDER ADMINISTERING AN LRAP

As part of its mission, the State Bar of California works for “greater access to, and inclusion in, the legal system.” This includes support for free and low-cost legal service options (such as legal aid) for Californians who would otherwise not be able to afford the services of an attorney. It also includes increasing diversity in the legal profession and ensuring an inclusive environment for everyone who works in, or interacts with, the legal system.

Initiating an LRAP program for public interest attorneys could strengthen all of these efforts: It could help attorneys burdened by loan debt to stay in jobs they care about, alleviating some of the financial concern related to loan repayment, which in turn would help with staff retention and ensuring legal services are maintained or even expanded for low-income clients. Increased financial LRAP support could also directly address and reduce the disparities in loan debt that impact many attorneys of color, thereby helping to maintain and increase diversity in the public interest field. Increasing diversity in the profession can also improve public confidence in a legal system that is working to become more inclusive and representative of the diversity of California as a whole.

The State Bar investing its own resources to initiate a program to assist public interest attorneys would provide visible and necessary leadership on this topic. It would likely be an attractive program to many attorneys because, depending on how it is structured, it might not be considered taxable income, meaning all of the funds could go directly toward the loan

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repayment. Setting this example could also inspire other organizations to follow similar paths by starting their own LRAPs, particularly if this LRAP has a demonstrable impact on retention and diversity in the profession.

The State Bar's program could fill gaps for attorneys who might not qualify for assistance from other sources, either because their school or employer does not offer an LRAP, or their loans or income might not qualify them for it. Such a proposal would be complementary to other LRAP initiatives and support the public interest field overall.

For example, the California Access to Justice Commission is working to encourage LRAPs among legal aid employers; it will take time to develop some of these programs, and there may inevitably be some employers who are unable or unwilling to establish their own LRAPs due to limitations on resources and/or staffing. Making LRAP assistance available directly to the attorneys would ensure that these employers are not placed at a hiring disadvantage and would offer attorneys flexibility in choosing the right employer for their career goals and growth within the public interest field, as the LRAP would travel with them. Also, for those who receive assistance through short-term LRAP programs like those of LSC or EJW, this could help with retention by adding a bridge to continued assistance after eligibility for these other funds expires.

Moreover, the statutory LRAP that is supposed to be administered by the Student Aid Commission is currently nonfunctional. If the statutory LRAP program were implemented, there are aspects of the program that are not the most beneficial to the borrower. Though the Office of Federal Student Aid now allows lump sum payments to count for up to 12 months of individual payments into PSLF, it is unclear whether payments by a third party on the borrower's behalf would have the same effect. The tax treatment of such payments would also need to be investigated before the State Bar would support its implementation. In contrast, the State Bar's plan to design and establish its own program would allow the agency to tailor it to the anticipated needs of the program's participants.

PROPOSED FUNDING SOURCES

The State Bar would provide the initial funding to start the LRAP, investing up to \$5 million in the program. Given the fact that student loan debt is a topic of national conversation, the State Bar's investment in easing some of the loan debt burden could draw attention from other possible funders.

Two potential sources of additional funding include the California Legislature (through an earmarked contribution) as well as the dormant statutory LRAP program. The latter would require a statutory change to assign the State Bar as the administrator of the program, as well as sustained follow-up with the Controller's office and the Treasurer to ensure that the escheated IOLTA funds are transferred in a timely manner. The difficulty of achieving such a statutory change has yet to be assessed. However, there does not appear to be any movement

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from the Student Aid Commission to administer this program.⁴⁵ If the program were to become operable, with its deep understanding of the impact of loan debt on the legal profession, the State Bar would be better situated than the Student Aid Commission to foresee any challenges and recommend improvements to the LRAP as it progresses.

If the statutory LRAP program were reassigned to the State Bar, that would add approximately \$1,000,000 in funding right away as well as any other escheated funds that subsequently accrue (minus the Controller's permissible administrative costs under the statute). However, since this is a comparatively small amount of funding, a proposal to the Legislature to add to the State Bar's contribution (another \$10 million) might be appropriate, though how much is requested would also depend on the expectation of how quickly it must be distributed. Assessing whether to solicit donations from attorneys during their annual license renewal through the State Bar, or seeking donations from private companies, might also be worth considering.

PROPOSED LRAP CONSIDERATIONS

General Considerations

The State Bar's 2021 loan debt survey was distributed to over 16,000 attorneys in government, legal aid, and nonprofit positions. Of those who responded, 79 percent reported working in government, and 12.5 percent reported working in civil legal aid. Survey results indicated that two thirds of respondents currently hold student loans, and of those, over one third carry in excess of \$200,000 in debt.⁴⁶ This total far exceeds the anticipated amount of funding available, at least initially. Targeting resources to have the most impact would be a prudent course of action.

Eligibility

There are several decision points regarding the eligibility parameters of such a program.⁴⁷ First, there is the question of scope: Who qualifies for assistance and what type of debt is included? Relevant questions include:

- Should the program be restricted to participants working for a particular type of employer (e.g. only legal aid, but not government attorneys)?
- Will there be an income cap? Will an applicant's marital status and/or partner's income impact eligibility? Should payments gradually phase out until a certain income level is reached?
- Should graduates of law schools that do not offer an LRAP receive priority?

⁴⁵ Staff is awaiting a response from the Student Aid Commission to discuss this further.

⁴⁶ *Understanding Student Loan Debt Options for Public Interest Attorneys*, Unpublished data.

⁴⁷ If the statutory LRAP program were transferred to the State Bar, many of these questions would be moot, because the statute already addresses questions regarding qualifying employment and the existence of other LRAPs. However, the State Bar might wish to explore making other adjustments to the statute at the same time.

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- Will only law school debt be considered, or will undergraduate debt be included?
- Must an applicant demonstrate that they are working towards PSLF?
- What public policy preferences should the program embody?

As noted above, the State Bar identified at least 16,000 attorneys in public interest positions in California. An analysis of the most recent applications for State Bar-funded civil legal aid grants determined that approximately 1,700 attorneys work in civil legal aid.⁴⁸ Given the low compensation and high turnover in civil legal aid, as well as the smaller subset of attorneys who would be eligible, it might be more effective—and impactful—to target this population first.

While a government attorney's salary may exceed their law school's LRAP income cap, the very fact that they tend to start at a higher salary and increase their earnings more quickly than legal aid attorneys may cut against an argument to fund an LRAP for these positions unless and until more funding is available. It also does not appear that government is experiencing the same kind of recruitment and retention crisis as legal aid—another reason, perhaps initially, to focus on legal aid positions.⁴⁹

Rather than limiting eligibility by type of public interest employment, another approach could use a needs-based analysis (e.g., debt-to-income ratio, availability of other LRAP options) to prioritize eligible applicants. It could also consider other factors that could meaningfully impact access to justice, like a stated desire to work in more rural or underserved areas, and/or factors related to diversity, equity, and inclusion, such as prioritizing individuals from groups that are underrepresented in the profession. Yet another option might be to target attorneys in the fourth through ninth years of practice, like New York's LRAP example.

Whichever criteria are chosen, keeping the process as simple as possible and reducing the barriers to eligibility through the State Bar's LRAP seem like worthy goals (i.e., not placing a hard cap on income, marital status, types of loans, whether pursuing PSLF, etc.); an analysis of need could still be included in the administration of the program. Because there are a number of other existing LRAPs in the state, it would make sense to require applicants to seek funding first from law schools and demonstrate that they are utilizing those available options. The stringent criteria of some of those programs exclude large swaths of attorneys, however, and many attorneys report still needing help with their loans.

Administration

The State Bar would need to develop a framework for administering this program. Questions relevant to the administration of the program include:

⁴⁸ The actual number is probably somewhat higher because not every organization that provides civil legal aid receives State Bar funds.

⁴⁹ This may not be true everywhere in California; smaller municipalities and/or rural areas likely have different challenges and needs than state government.

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- How will the funding be distributed—until it is exhausted (even if that means it is all spent in the first year), or will there be a cap from year to year?
- Will there be a cap on the number of recipients, or will the funding be divided among all applicants who are otherwise eligible? If the former, will the program be first come, first served?
- Will there be a cap on the total amount of funding an individual can receive, or the number or years for which they will be considered eligible?

When considering how much funding to offer from a retention perspective, attorneys who left their legal aid employers reported that anywhere between \$1,000-15,000 (median \$10,000) would make a material difference in deciding to stay with their employer.⁵⁰ Many legal aid attorneys in California find themselves a few years out of law school with an income exceeding the low cap for their law school LRAP—if their law school even has an LRAP—but not high enough to meet the cost of living in the state without experiencing financial strain. Even when seeking PSLF, when some of these other LRAPs expire, this is a difficult position to maintain: income-based loan payments eat into take-home pay while PSLF remains several years out of reach. For attorneys whose loans are ineligible for PSLF, this is an even larger burden; if no LRAP and/or income-based repayment is available, it might be impossible to remain in public interest employment.

Though it would be ideal to cover all outstanding loan payments where possible, this does not seem likely given the amount of initial available funding. Looking at the examples of other LRAPs mentioned above, most offer a up to \$10,000-25,000 (maximum \$60,000) over two to ten years (i.e., approximately \$3,000-6,000 per person per year maximum, subject to demand and available funding).

To make this program impactful, a minimum distribution of \$5 million dollars per year for the first three years is recommended.⁵¹ Developing a methodology for distribution would be essential in order to target the correct amount of funding that would be meaningful while reaching as many individuals as possible. State Bar administrators may also wish to consider a lower payment threshold (e.g., if the applicant would not qualify for more than \$100 or \$200 per month in assistance, for example, should that be considered too low and redistributed to individuals with higher debt loads?) to make sure the funding is impactful.

⁵⁰ *Justice at Risk* at p. 37.

⁵¹ Assuming all 1,700 civil legal aid attorneys were eligible and received the same amount of loan repayment assistance, if \$5 million were distributed, this would amount to about \$245 per month per person. Of course, even if half the attorneys receive all or some of their loan repayment assistance from other sources, this would increase the funding available to the remaining eligible attorneys. As highlighted earlier in the memo, New York State was able to assist almost 800 attorneys with \$2.5 million through its program.

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RECOMMENDED ACTION

Based on the considerations highlighted in the above, staff recommends the following:

Obtain additional funding

Additional funding from the Legislature should be sought, up to \$10 million, to support the anticipated \$5 million contribution by the State Bar. This would allow for distribution of up to \$5 million per year (minus administrative costs) for a period of three years. Data, including demographic data, should be collected and analyzed each year to determine any adjustments in the administration of the program and to demonstrate impact in support of continued funding.

Determine program parameters

It would be best to start small and focus on a target population. Because civil legal aid attorneys constitute a smaller, discrete population that also happens to be experiencing an acute recruitment and retention crisis, this group is recommended for initial funding. If surplus funding is available, the State Bar would recommend that the working group consider expanding the program to parts of the government sector, such as public defenders, government attorneys working in rural/underserved regions of the state, or individuals from underrepresented groups in the profession working in government positions.

State Bar staff, with its expertise in grantmaking and working with civil legal aid, would take the lead in the effort to establish the LRAP. Recommended requirements for State Bar LRAP participants and general program guidelines follow:

- Full-time employment as an attorney (or in a position making substantial use of legal skills and training) at a 501(c)(3) nonprofit that provides assistance in civil legal matters. Full-time employment is defined as a minimum of 35 hours per week. Certify employment on a yearly basis.
- Income up to \$125,000 per year.⁵² Only the applicant's income will be taken into consideration.
- Yearly verification of loan balances and monthly payments owed. Any loan type (public, private), and both undergraduate and graduate loans, will be eligible.

⁵² In 2019, the median salary for all attorneys at direct service organizations in LAAC's survey was \$73,190. The median salary for all attorneys at support centers (which typically provide support to the direct service organizations) was \$99,413. However, the median for some senior positions was as high as \$120,000 or \$130,000. *Justice at Risk*, p. 26.

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- Requirement to exhaust law school-funded LRAPs; applicants must attest to the fact that no school-based LRAP is available to them (or that they are ineligible); if there is, they must indicate how much assistance they will receive from the school's program.⁵³
- Up to \$15,000 per year in loan repayment assistance per eligible applicant, based on the individual's projected monthly payments and amounts paid by other sources.
- If the need exceeds the amount available in a given year, a proportional reduction in LRAP funds based on debt-to-income ratios (i.e. those with higher debt loads will receive more assistance than those with relatively smaller balances).
- Right to deny applicants who would receive less than \$2,500 per year if the need exceeds the amount available in a given year.
- Issue LRAP payments directly to borrower in lump sum amounts for the year; structure as a forgivable loan and require proof of payment to the lender.

A minimum of five percent of the available funding is recommended for administrative purposes, at least to get the program off the ground and running. Some of the administrative costs to start the program will include:

- Minimum 1 full-time equivalent for State Bar to manage the program, possibly more, depending on the size of the applicant pool and the nature and amount of data collected for analysis
- Developing an LRAP administration platform, and ongoing costs for technical assistance, updates, and developing reports
- Ensuring staffing capacity to distribute funding efficiently

An advisory committee comprised of State Bar stakeholders should be established to oversee administration of the program and assist with policy decisions. Given how much work will be required in order to start such a program—from staffing to technology to monitoring compliance—the funding should be distributed in a manner that supports sustainability for the foreseeable future while also seeking additional financial support. While the State Bar would provide the seed money for the program, seeking additional funding from the Legislature would be imperative. The State Bar and other supporters should also consider advocating to reassign the statutory LRAP program to itself, which would provide additional funding.

CONCLUSION

State Bar staff will consult with this working group to further refine the details of the proposal. However, it seems clear that a State Bar-administered LRAP could be of great assistance to attorneys who currently receive no, or insufficient, loan repayment assistance. Structuring

⁵³ Law schools that offer LRAPs typically have well-established programs where eligibility requirements are easy to verify, though the eligibility categories tend to be more narrow. Requiring those who *do* qualify for school based LRAPs to seek that funding first ensures that the funding for the State Bar's program remains more available to attorneys with few, if any, other LRAP options while reducing the burden on State Bar staff of checking that every possible source of LRAP has been exhausted.

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payments as a forgivable loan could produce the biggest benefit for attorneys who would likely not need to report it as taxable income, allowing all the funding to go directly to debt reduction.

Student loan debt is an issue that has repeatedly gained national attention in recent years. In addition to the tangible financial impact this program can have on public interest attorneys, an agency like the State Bar of California is poised to highlight LRAPs more generally, drawing attention to the variety of options for attorneys to research and explore, and hopefully, find available assistance. This would complement existing and emerging LRAPs, strengthening the public interest field overall and maintaining the State Bar's commitments to access to justice and increasing diversity and public confidence in the legal profession.

ATTACHMENTS

A: Public Interest Attorney Loan Repayment Program ([Education Code 69740](#) et. seq.)

B: Income from Discharge of Indebtedness ([26 US Code 108\(f\)](#))