Coordinating Loan Repayment Assistance Programs with New Federal Legislation

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For decades, law school administrators, faculty members, students and graduates have worried about the problem of the ever-increasing cost of attendance at the nation's law schools, along with the rapidly rising average debt of graduating law students. The problem was particularly acute for students who desired careers in public service, because starting salaries in the government and non-profit sectors failed to keep pace with the increase in educational debt. In response, many law schools created loan repayment assistance programs (LRAPs), through which they subsidized loan repayment for some or all of their graduates who undertook public service jobs or careers. Most of these programs are insufficiently funded to meet the needs of the graduates who desire to use them. Moreover, demand for financial assistance for lower-income graduates has accelerated as the recession that began in 2008 caused private sector firms to reduce their hiring, prompting more student interest in public sector employment. In addition, many law schools had no LRAP programs at all.

Fortunately, Congress has significantly alleviated this problem, passing four laws between 2005 and 2010 that collectively reduce the debt repayment burdens on graduates, particularly (though not exclusively) those in public service. The new legislation also makes it possible for law schools to create or restructure LRAP programs in a way that provides significant debt relief to graduates in public service at the lowest possible cost to the law school. As of this writing (January, 2011), seven law schools—UC Berkeley, Georgetown,

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UCLA, Duke, Northwestern, Virginia, and Suffolk—have altered their LRAP programs to take maximum advantage of the federal legislation, and several others are currently considering modifications.

This article, together with an associated web-based calculator, provides guidance for law school administrators and faculty members who desire to coordinate law school LRAP benefits with those provided by federal law, and for law students and alumni who might want to suggest LRAP improvements to their schools. Part I reviews how the debt burden for law graduates has increased in recent years. Part II summarizes the efforts of law schools to create LRAP programs for their graduates. Part III describes the recent federal laws that have partially solved a problem that was beyond the abilities of most law schools to address by themselves. Part IV provides a road map for law schools desiring to link their own LRAP programs with federal benefits. It suggests that the linkage will enable schools to use their limited LRAP money more efficiently and will help schools to persuade potential donors to contribute funds for LRAP programs. Part IV also identifies the policy issues that schools must address as they restructure their LRAP programs in view of the federal legislation. An appendix compares the most significant features of the LRAP programs at the seven law schools that have already changed their LRAP programs to coordinate them with the new federal programs.[1] An associated website provides law school administrators and faculties with a calculator through which they can project the costs of new or revised LRAP programs so that they can design programs that are unlikely to exceed available funds.

I

In 1975, the average tuition at the nation's private law schools was $2,305, and average tuition at public law schools for in-state students was just $716.[2] By 1986, when the average private law school tuition was still only $8,286, law school administrators such as John R. Kramer, dean at Tulane Law School, predicted that the increasing educational debt that students were assuming would skew the aspirations of the nation's lawyers. They feared that by 2000, law schools would "be filled with many more students who, as they become lawyers, do so with the single-minded objective of milking the profession for all it is worth in order to pay retrospectively for their legal education."[3] They worried that graduates would inevitably "recoup their investment by ignoring the legal needs of four-fifths of the nation in order to service the one-fifth able to pay sizeable fees."[4]

1. The appendix summarizes only some key features of each of these programs. For more details, see the websites of each school, describing the programs.

2. John R. Kramer, Will Legal Education Remain Affordable, by Whom, and How?, 1987 Duke L.J.240, 242–43. (1987).

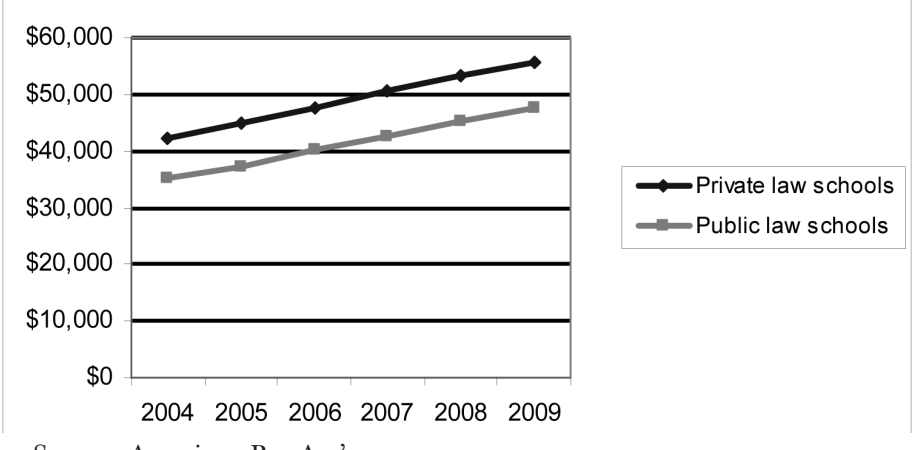
3. *Id.* at 240–41.

4. John R. Kramer, Who Will Pay the Piper or Leave the Check on the Table for the Other Guy, 39 J. Legal Educ. 655, 655 (1989). Professor David Chambers of the University of

When Kramer was writing, students graduating from his law school incurred law school debt of only $22,000 on average,[5] an astonishingly low number by today's standards. From 1985 to 2009, the average annual tuition at private law schools (that is, the two-thirds of law schools that are not publicly subsidized) rose 375 percent, while the cost of living rose only 97 percent. Similarly, average annual tuition at public law schools rose during that time period from $5,000 to more than $30,000.

Tuition is, of course, only part of the cost of attending law school. Figure 1 shows the rising total annual cost of attending law school in recent years (2004–2009) for private and public law school students.

Figure 1: Cost of Attendance at Law Schools, 2004–2009



Source: American Bar Ass'n.

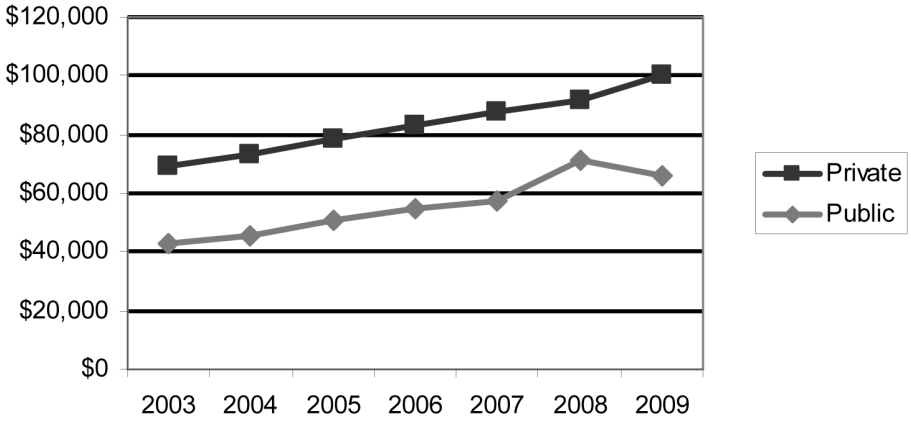
Few law students can afford to produce $150,000 or more out of pocket over a three year period. So the vast majority of law students take out loans. The average amount of money borrowed during law school, which they must begin to repay within six months of graduation, has been increasing rapidly in recent years, as shown in Figure 2.[6]

Michigan Law School responded that Kramer "is not nearly gloomy enough." David L. Chambers, Educational Debt and the Worsening Position of Small-Firm, Government, and Legal-Services Lawyers, 39 J. Legal Educ. 709, 709 (1989).

5. Kramer, *supra* note 4, at 672.

6. Approximately 85 percent of law students borrow money for legal education. The data on debt shown in Figure 2 exclude amounts borrowed for undergraduate education. In the early 1990s, undergraduates borrowed an average of $6,000 that they carried through law school, and which added to the total amount they owed at the time of law school graduation. *See* Kramer, *supra* note 4, at 672–73. By 2008, 72 percent of undergraduate students at private non-profit universities had student loans, and the average student loan debt for graduating seniors had increased to $23,200. So as an approximation of cumulative debt, $23,200

Figure 2: Average Debt for Legal Education, as of Graduation



Source: American Bar Ass'n.

Many law students attempted to repay their student loans on what the loan industry called the "standard" repayment plan: 120 equal monthly payments over a period of 10 years. But as the amount of debt increased, this effort became unsustainable for all but those at the largest, best-paying law firms. A federal loan debt of $150,000 at the current fixed rate of 6.8 percent interest for the Stafford Loan portion ($61,500) and the current fixed rate of 7.9 percent on the Graduate PLUS portion ($88,500) that was repaid on this plan would require annual payments of $21,252. That amount is more than half the gross income of a person earning $40,000, the median entry-level salary of a civil legal services lawyer,[7] and far more than half of that attorney's after-tax disposable income. A high-debt graduate needing to reduce monthly payments could elect an "extended" repayment plan, offering repayment over a period of as long as 30 years. A 30-year repayment plan for the same debt and interest rate would reduce the annual payments by nearly half to $12,576, but the borrower would still be paying more than a quarter of gross income toward loan repayment and would have to pay an additional $164,359 over the life of the loan ($377,577 rather than $213,218). Experts on debt manageability have consistently recommended that students who will earn in the range of $40,000 should not incur educational debt requiring repayment of more than 8 percent (at most 13 percent) of income.[8]

should be added to at least the 2008 and 2009 debt levels shown in the Figure. Project on Student Debt, Quick Facts about Student Debt, *available at* http://projectonstudentdebt.org/files/File/Debt_Facts_and_Sources.pdf.

7. NALP, New Findings on Salaries for Public Interest Attorneys (2008), *available at* http://nalp.org/2008sepnewfindings. In 2008, the median entry level salary for public defenders was $47,435. For local prosecutors, it was $45,675, and for other public interest lawyers it was $41,000. *Id.*

8. For an exhaustive study of the literature as well as original recommendations of maximum student debt levels, see Sandy Baum & Saul Schwartz, How Much Debt Is Too

By 2002, a survey revealed that "law school debt prevented 66 percent of [law] student respondents from considering a public interest job or government job" and that "62 [percent] [of public interest employers] reported difficulties retaining experienced attorneys."[9] The following year, an American Bar Association Commission concluded that "high student debt bars many law graduates from pursuing public service careers;" that "many law graduates who take public service legal jobs must leave after they gain two to three years legal experience;" and that "public service employers report serious difficulty recruiting and retaining lawyers." As a result, the legal profession is "unable to promote and provide meaningful access to legal representation for all."[10]

Nevertheless, from 2002 to 2010, tuition, the cost of attendance, and law graduates' student debt continued to rise, as Figures 1 and 2 demonstrate.

II

Beginning in the 1980s, some law schools responded by creating LRAPs through which the law schools themselves would subsidize loan repayments for graduates who took low-paying public service jobs. Typically, a law school would define eligibility criteria, income criteria, and levels of support. For example, a school might limit eligibility to graduates who worked for non-profit organizations, or it might also extend benefits to those who worked for government agencies. Income criteria further limited eligibility to those earning less than a specified amount of money. Typically, a school would set an amount below which the graduate qualified for the school's maximum support allowance, and then the school would gradually phase out the payments for graduates earning more than that level. A small number of schools with very substantial resources imposed few if any limitations based on their graduates' jobs, defining eligibility by low income alone.

Each school with an LRAP program also had to set a level of support that it could afford. The support level had to be high enough to make a meaningful contribution to a graduate's repayment obligation. For a graduate paying $12,000 a year toward her loans, a law school contribution of less than $5,000 might not be very meaningful. At the same time, each school had to avoid being so generous that the school's other priorities would be impaired. Schools managed these competing concerns by the adjusting the eligibility criteria, the income criteria, and the maximum level of support. Some schools also capped their total payout, so if too many graduates took jobs that qualified

Much?, *available at* http://professionals.collegeboard.com/profdownload/pdf/06-0869.DebtPpro60420.pdf (commissioned by the College Board and the Project on Student Debt) (2006).

9. Equal Justice Works, NALP, and the Partnership for Public Service, From Paper Chase to Money Chase: Law School Debt Diverts Road to Public Service (2002), *available at* http://new.abanet.org/marketresearch/PublicDocuments/lrapsurvey.pdf.

10. ABA Commission on Loan Repayment and Forgiveness, Lifting the Burden: Law Student Debt as a Barrier to Public Service (2003), *available at* http://www.abanet.org/legalservices/downloads/lrap/lrapfinalreport.pdf.

for LRAP, even those whose incomes were below the level for maximum support would only receive a pro-rata share of that maximum, rather than a guaranteed amount. Some schools also adjusted the payout for students who lived in regions where the cost of living was particularly high, or for students who had dependents. Schools also had to devise rules for graduates who were temporarily out of the work force because of disability or parental leave.

By 1986, five law schools had initiated LRAPs, but by 1994, 48 law schools had LRAPs and it seemed as though growth of these plans was unlimited. However, between 1994 and 2000, although seven law schools had significantly increased the size of their programs, seven others had decreased or eliminated their programs, and the number of extant programs actually dropped by one. Even more ominously, of the seven million dollars being provided annually by LRAPs, more than half was being spent by just three law schools: Yale, NYU, and Harvard. 70 percent of the funds came from those three schools plus three others: Columbia, Stanford, and Georgetown.[11]

In the next eight years, many more schools created LRAP programs. By 2008, 76 of the nation's approximately 190 accredited law schools had functioning programs and were supporting 2,616 graduates with an average annual subsidy of $7,021. The total amount of money provided through the law school LRAP programs was $18,366,746.[12] However, as in 2000, a few programs at schools with large endowments provided the bulk of the support. In fact, the same six schools that provided 70 percent of the funds in 2000 also provided 70 percent of the funds in 2008.

Among the 76 programs, enormous variations could be seen in their eligibility criteria, income criteria, and levels of support. For example, while nearly all programs allowed benefits for graduates who became public defenders or staff attorneys at non-profit organizations,[13] 13 did not cover prosecutors, 15 did not permit assistance for graduates in other types of government service, and only 24 supported graduates doing judicial clerkships. Twenty-five programs permitted recipients to work in for-profit law firms that paid modestly and

11. National Ass'n for Public Interest Law [now Equal Justice Works], Financing the Future: NAPIL's 2000 Report on Law School Loan Repayment and Public Interest Scholarship Programs 10–11 (2000).

12. These figures are based on data supplied to Equal Justice Works by the 75 law schools. Email to Philip G. Schrag from Heather Jarvis, senior program manager, Equal Justice Works, May 10, 2010. NYU did not report to Equal Justice Works; the relevant figures for NYU were based on its 2007 (rather than 2008) statistics, as reported on its website, *available at* http://www.law.nyu.edu/financialaid/lrap/index.htm The numbers in the text slightly understate total expenditures and slightly overstate the average level of support because a few schools reported providing benefits to a small number of students but did not specify the average dollar amount of the benefit. In the absence of that information, those dollar amounts were treated as zero. However, this underreporting affected only 85 of the 2616 graduates being supported.

13. "Nearly all" does not mean all. For example, among those programs that were funded and supporting at least some graduates, six excluded public defenders and one disqualified non-profit staff attorneys.

did work that was equivalent to the work done by public interest non-profits. Nearly all schools had complex formulas for determining income-eligibility, with subsidies declining once a graduate's income reached a certain level, but a few simply provided a fixed amount of money, such as $1,500 or $5,000, to qualifying graduates. Most programs provided their subsidies in the form of a series of short-term loans for the repayment of the students' debts, which the schools forgave at the end of a specified period of public service, such as six months. The advantage of this arrangement was that, pursuant to a law that Congress passed in 1997, this particular type of forgiveness is not considered taxable income.[14] However, 20 law schools provided loan repayment assistance in the form of grants, even though the grants were taxable income to the recipients.[15]

The most striking differences among the programs involved the average level of loan repayment support provided to graduates in 2008.[16] While the average amount overall was $7,021, the average level per school varied from $600 to $26,978. Twenty-two schools provided $3,000 or less, while 27 schools provided at least $5,000, 10 of them providing more than $8,000 on average.

III

Since 2005, Congress passed four laws, the cumulative effect of which has provided substantial federal loan repayment assistance to lower-income individuals who had been recipients of student financial aid, particularly those with high debt burdens (e.g., people who had borrowed for graduate or professional education as well as for undergraduate education), and especially those working in public service.[17] Until 2006, students in graduate and professional schools could borrow only $18,500 a year, far less than the cost of attendance, in the form of government-guaranteed or government-extended Stafford loans. The interest on Stafford loans was relatively low, because even if the loan was extended by a private provider, the government

14. I.R.C. §108(f)(1)-(2).

15. Some of these schools may have been components of universities that were bound by by-laws or state legislation not to extend loans, or not to forgive loans, to graduates.

16. There were, of course, also large differences in the number of students being served by the program and, as noted above, the total LRAP budget. These differences were a function of several different variables: the size of the school, the percentage of students interested in and able to obtain public service jobs; the eligibility and income criteria used by the program (themselves a function, at least in part, of size of the school's endowment and operating budget), and the number of years that the program had been in operation. The average subsidy per student is a more accurate measure of a school's commitment to supporting its graduates in public service. That number is influenced by a school's ability to pay but is less affected by the size of the school or the duration of the school's LRAP program.

17. An earlier attempt by Congress to make it easier for graduates with low incomes to repay their student loans (the income-contingent repayment option) was a failure. Philip G. Schrag, The Federal Income-contingent Repayment Option for Law Student Loans, 29 Hofstra L. Rev. 733 (2001), republished as Philip G. Schrag, Repay as You Earn: The Flawed Government Program To Help Students Have Public Service Careers (Greenwood 2002).

guaranteed repayment. The students would have to borrow funds in excess of that amount from private lenders, such as banks, often at very high rates of interest. Effective in 2006, Congress raised slightly the ceiling on Stafford borrowing for graduate and professional education.[18] More important, it created the Grad Plus program, through which students could borrow the difference between the Stafford loan limit and the cost of attendance, at a fixed rate of 7.9 percent,[19] which was lower than the rate that private lenders would extend to 95 percent of borrowers.[20]

Then, in 2007, Congress passed the College Cost Reduction and Access Act. The principal focus of legislators and the media, when this law was being debated, was on Title I, which halved the interest rates on government-guaranteed loans for undergraduate education. Two other provisions of the law, which received much less attention at the time, significantly reformed the way in which graduates could repay student loans, making expensive post-graduate education, including graduate and professional education, much more affordable for graduates with lower incomes. These two provisions established a system of "income-based repayment" (IBR) and created the federal Public Service Loan Forgiveness (PSLF) Program.

One of us has elsewhere written in much greater detail about the effects of these two programs,[21] so we will only summarize them here. They are both, in essence if not in name, federal LRAP programs.

A graduate with federally-guaranteed or federally-extended loans, and who would have to pay more on a "standard" ten-year repayment plan than under the IBR formula, may choose IBR instead and pay a percentage of her income each month instead of the often much larger amount that would otherwise be due.[22] The required monthly payment is 1/12 of the annual payment, and the annual payment is 15 percent of the borrower's discretionary income,

18. Higher Education Reconciliation Act (HERA) of 2005, P. L. No. 109-171. For graduate and professional students the Act raised the annual Stafford borrowing limit from $18,500 to $20,500.

19. *Id.* FFELP Grad Plus loans originated between July 1, 2006 and June 30, 2010 had an interest rate of 8.5 percent, while federal direct Grad Plus loans had an interest rate of 7.9 percent. In 2002, P.L. 107-139 amended the Higher Education Act of 1965 to change the variable rate formula then used to determine rates on federal loans to a fixed rate. The rate for all PLUS loans was set at 7.9 percent effective July 1, 2006. HERA, part of the Deficit Reduction Act of 2005, changed the interest rate only for the FFELP Plus loans and not Direct Loans. This was considered a drafting error.

20. Email to Philip Schrag from Mark Kantrowitz, July 23, 2010. Even when the Grad Plus rate was increased to 8.5 percent, that rate was lower than the rate commercial lenders offered to 90 percent of law student borrowers. The 90 percent figure is considered certain to increase when higher commercial rates accompany the end of the recession that began in 2008. *Id.*

21. 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), *available at* http://www.law.georgetown.edu/news/releases/documents/Forgiveness_000.pdf.

22. IBR became available to borrowers on July 1, 2009. Individuals who graduated and began repayment before that date could change their repayment method to IBR after that date.

defined as the borrower's adjusted gross income (AGI)[23] minus 150 percent of the federal poverty level for a family that is the size of the borrower's family. Because of the deduction from income for 150 percent of the federal poverty level, the formula in reality pegs the repayment obligation at about 10 percent of adjusted gross income (and less for those with large families). For a typical single law graduate with a total debt at graduation of $123,200[24] at 6.8 percent and an income of $50,000, this formula reduces the monthly repayment obligation during the first year from $1,417 (on a ten-year repayment plan) to $421.[25]

If the borrower's income rises, through salary increases (or for other reasons, such as the receipt of investment income), the monthly repayment obligation increases as well, but it will never exceed more than about 10 percent of adjusted gross income. If it rises so much that the borrower would pay less per month under a ten-year repayment plan, the borrower will pay the ten-year payment amount until the loan is repaid or forgiven. IBR includes an element of loan forgiveness, in that if a borrower repays through the IBR plan for twenty-five years, any balance of principal or interest still owing at the end of that time is forgiven.[26]

IBR interacts with the Grad Plus program in an important way. Only federally-guaranteed and federally-extended loans are eligible for repayment through IBR.[27] If Congress had created IBR without also having passed Grad Plus, only part of the debt of borrowers (such as law students) with high levels of debt would have been payable through IBR. But because since 2006 graduate and professional students could borrow the entire cost of attendance (tuition and living expenses) through federally-guaranteed or federally-extended loans, their entire debt (including any debt for undergraduate

23. Adjusted gross income is gross income minus a very limited category of deductions. *See* 26 U.S.C. § 62. For most people, it is the same as gross income.

24. This is the approximate median debt at graduation for graduates who borrowed for both undergraduate and legal education. *See supra* Figure 2 and note 8.

25. This example assumes no spouse or dependents. If income increases by 4 percent annually, monthly repayment in the tenth year will be $625. For any levels of debt and income, a borrower may easily calculate and compare the monthly repayment obligations under IBR and standard repayment plans by using the Income-Based Repayment Calculator, *available at* http://www.finaid.org/calculators/ibr.phtml.

26. 20 U.S.C. § 1098e(b)(7). In the example given above, with an average educational debt, a $50,000 AGI, and 4 percent salary increases, the government would forgive $96,464 of remaining debt in the 25th year. If a bank or other private lender is owed the money, the U.S. Department of Education will purchase the right to collect the remaining balance, paying off the lender, and then forgive the debt. Under current law, the forgiveness in the 25th year is taxable income, but Congress could change the tax law before 2034, when the first tax would be paid, to make it tax-exempt.

27. 20 U.S.C. § 1098(b)(1). Federally-extended and federally-guaranteed loans for undergraduate education may be consolidated with graduate school loans and repaid through IBR, but Plus loans for undergraduate education are made to parents, not students, and are not eligible. Private and commercial loans are not eligible for repayment through IBR or for forgiveness.

education or other graduate degrees) that resulted from federally-guaranteed or federally-extended loans can be repaid through IBR. The higher the debt and the lower the borrower's income, the greater the likelihood that some of it will be wiped out at the end of the twenty-five year period.

No public service is required for repayment of a loan through IBR. Eligibility to use the formula depends only on the source of the loan, the amount of debt, and the borrower's income. For lawyers in the private sector, this feature of the law became particularly important after the onset of the recession of 2008 and its resultant restructuring of the legal job market. Many graduates who before 2008 might have expected six-figure starting salaries have been unable to find work or have found themselves grateful to be employed at much lower wages. For these graduates, the IBR formula has been a huge relief, making it possible for them to make modest monthly payments and to avoid defaulting on their student loans. Making payments through IBR is better than utilizing forbearance and not making any payment at all, but, IBR is not a one size fits all program. Graduates should be made aware that when their payment amount is less than accruing interest, negative amortization may result.

The College Cost Reduction and Access Act is even more beneficial for graduates entering public service. They too can use IBR, but the benefits are much greater. Such graduates are eligible, through the federal government's Public Service Loan Forgiveness (PSLF) Program, to have the remaining debt forgiven after ten years, rather than twenty-five years. Because of the modest amount they will pay during that ten years (that is, about ten percent of adjusted gross income for ten years), a large fraction of their debt may be wiped out. For example, a single borrower who owes $123,200 when beginning repayment and spends ten years in public service, starting at $50,000 and receiving annual increases of 4 percent will pay, over the ten year period, a total of $62,111. At the end of the ten year period, the borrower will still owe $144,865 in principal and unpaid interest, and the federal government will forgive that entire amount.[28]

The law defines eligible public service very broadly. All employment by any level of American government (federal, state, local, or tribal) qualifies, as does employment by any organization that is tax-exempt pursuant to Sec. 501(c)(3) of the Internal Revenue Code.[29] Employment must be "full time," defined by the regulations as at least thirty hours per week unless the employer defines full-time employment to mean a larger number of hours.[30] The ten years of public service need not be continuous; what the law actually requires is 120 monthly payments during months in which the borrower was employed by a

28. These numbers were derived from the calculator cited in *supra* note 25. Additional examples appear in Schrag, *supra* note 21, at 42 (Tables III and IV).

29. 20 U.S.C. § 1087e(m)(3)(B)(i). Certain other types of employment also qualify, but these two categories are likely to encompass the vast majority of qualifying jobs.

30. 34 C.F.R. § 685.219(b)(1).

public service organization.[31] Therefore, a borrower may take parental leave or work for a non-qualifying organization for a period of time that does not count toward the 120 month count, and later return to public service and start counting the months again. If the borrower's income increases to the point at which IBR payments would be more than ten-year standard repayment, the borrower will begin making payments equivalent to those under the standard repayment plan, but these payments will also count toward the 120 months. There will be no unpaid interest and principal to be forgiven for those months, but the unpaid interest and principal resulting from the time when the borrower was using IBR will still be forgiven at the end of the ten year period.[32] Although forgiveness of a debt is usually taxable income, forgiveness under PSLF is tax-free.[33]

Under present law, most married borrowers in two-income families must file separate federal tax returns to get the maximum benefit from IBR and from PSLF. If a married borrower files a joint tax return with a spouse who has income, the government will attribute the spouse's income to the borrower. So a borrower with an AGI of $50,000, married to a spouse with income of $60,000, will be deemed to have an AGI of $110,000, greatly increasing the borrower's monthly payments under IBR, and thereby reducing the amount forgiven after twenty-five years without PSLF or after ten years with PSLF. However, if the borrower and spouse file separate tax returns, only the borrower's own income counts for purposes of the AGI calculation. A married person who files a separate federal income tax return is not permitted to take advantage of the earned income tax credit or the deductions for child care or student loan interest. But in almost all cases, the cost to the borrower of not being able to make use of these features of the tax law is far outweighed by

31. 20 U.S.C. § 1087e(m)(1)(A) and U.S. Dept. of Education, Public Service Loan Forgiveness Program Questions and Answers, Q.16, *available at* http://studentaid.ed.gov/students/attachments/siteresources/PSLF_QAs_final_02%2012%2010.pdf.

32. The retroactive aspects of the law are somewhat complicated. IBR did not become available until July, 2009, but payments under a standard repayment plan (or under IBR's predecessor, the income-contingent repayment option) that were made while the borrower was in public service starting in October, 2007, count toward the 120 payments required for PSLF. However, no payment counts toward the 120 payments unless the creditor was the federal government itself, rather than a bank or other financial institution holding a government-guaranteed loan. In other words, for a payment to count for PSLF purposes, the borrower must either have had a federal direct loan or must first have consolidated a government-guaranteed loan into a federal direct consolidation loan. *See* Schrag, *supra* note 21, at 46-50.

33. Letter to Rep. Sander Levin from Eric Soloman Assistant Sec'y of the Treasury, Sept. 19, 2008, *available at* http://www.ibrinfo.org/files/Treasury_response_levin.pdf; Letter to Skadden, Arps, Slate, Meagher & Flom LLP from Donna J. Welsh, Office of the Chief Counsel, Internal Revenue Service, April 7, 2009 (on file with the authors); U.S. Dept. of Education, *supra* note 31, Q.3.

the financial advantages of being able to exclude a spouse's income from AGI for purposes of loan repayment, particularly if the borrower is going to use PSLF.[34]

For married borrowers with children who file separate tax returns, the IBR formula has another advantage. The monthly repayment formula is 1/12 of 15 percent of (the borrower's AGI minus 150 percent of the poverty level for a family *of the size of the borrower's family*). A larger family entitles the borrower to a larger deduction, and therefore permits a smaller monthly payment. So by filing a separate tax return, the borrower excludes the spouse's income from the formula but is permitted to count the spouse and all the children for purposes of computing the deduction. If the separately filing borrower and spouse both have student loans and both repay through IBR, each of them may exclude the other's income and each may count all of the children for the purpose of computing the deduction from AGI.[35]

34. The interaction between the IBR rules and the tax laws is more complex for borrowers in community property states because state law may impute half of a couple's earned income to each spouse regardless of whether separate or joint tax returns are filed. Borrowers in community property states who have spouses with substantial incomes are disadvantaged compared to borrowers in other states, and borrowers in community property states who have spouses with little or no income of their own are advantaged compared to similarly situated borrowers in other states. *See* Schrag, *supra* note 21, at 54. But as of this writing, borrowers using IBR in community property states have apparently not yet experienced the possible advantages or disadvantages of living in those states because the U.S. Department of Education has until now been requiring borrowers repaying through IBR to verify their income using Alternative Documentation of Income forms rather than submitting copies of their tax returns. The Alternative Documentation form does not require borrowers to submit their tax returns. It requires borrowers to list "all taxable income you are currently receiving" but does not explicitly require disclosure of spousal income attributed to the borrowers by the law of community property states. In fact, the form requires disclosure of the existence of a spouse and of the spouse's income only if the borrower and spouse file a joint tax return. *See* U.S. Dep't of Education, Form ADI. Curiously, the use of this form may disadvantage borrowers in community property states whose spouses have little or no income, because in such instances state law would attribute half of the borrower's income to the spouse. By filing a separate tax return (identifying only half of the spousal income as belonging to the borrower) and providing only that return to the Department of Education, instead of listing the entire income of the borrower on the Alternative Documentation Form, the borrower would legitimately claim only half of the income as the borrower's AGI for purposes of IBR. The authors are not aware, however, of any complaints from single-income borrowers in community property states who have been required to list their entire incomes on the department's form. If and when borrowers in community property states demand equality with borrowers in other states, Congress could fix the problem by continuing to allow separately filing borrowers to count only their own incomes as their AGI for IBR purposes, but creating an additional option for joint filers (in all states), through which they could add their incomes and attribute half of the total to each spouse for purposes of IBR, thereby giving all borrowers the advantages now enjoyed by those in community property states.

35. Married borrowers with joint consolidation loans are both eligible to repay their student loans through IBR together even if they file joint returns. *See* U.S. Dept. of Education Form FRPS1. But although the paperwork is more complicated, filing separate tax returns and

It should be noted that although this article deals primarily with loan repayment and forgiveness for law graduates, nothing in the College Cost Reduction and Access Act limits the benefits of IBR or PSLF to lawyers. All graduates (including those who borrowed only for undergraduate education) are eligible to use IBR if their debt-to-income ratios make IBR advantageous, and all full-time government and "501(c)(3)" employment qualifies for PSLF. Doctors who spend ten years in the public health service or other types of qualifying public service will benefit from PSLF, as will virtually all teachers with high educational debt, whether they work in public school systems or for non-profit schools. Social workers, nurses, police and corrections officers, members of the armed forces, public administrators, and many more, particularly if they have received expensive post-graduate training, will benefit from these features of the law.

In 2008, a year after enacting the College Cost Reduction and Access Act, Congress created three additional loan forgiveness programs for particular categories of public interest lawyers: prosecutors, public defenders, and civil legal aid lawyers. Legislation creating the John R. Justice Prosecutors and Defenders Incentive Act of 2008 authorizes the U.S. Department of Justice to make funds available to repay the student loan debt of prosecutors and defenders who agree to serve in those capacities for at least three years.[36] A prosecutor or defender may be given up to $10,000 a year in loan forgiveness, with a maximum lifetime forgiveness of $60,000. Legislation creating the Civil Legal Assistance Attorney Student Loan Repayment Program authorizes the U.S. Department of Education to make forgiveness of up to $6,000 a year available to civil legal aid lawyers, with a lifetime maximum of $40,000.[37]

Unlike the 25-year and 10-year forgiveness features of the College Cost Reduction and Access Act, which are entitlements, these two newer loan forgiveness programs are operative only to the extent to which Congress provides appropriations for them. For FY 2010, Congress appropriated $10

paying student debt separately through IBR will almost always save money compared with paying jointly. On the other hand, borrowers who have already consolidated with their spouses may be unable to reverse their consolidation.

36. 42 U.S.C. § 3797cc–21.

37. 20 U.S.C. Sec§ 1078–12. Prosecutors and defenders may avail themselves of loan forgiveness under the John R. Justice Program and also use PSLF to forgive debt remaining after they have made required payments under the IBR formula. However, the statute that created the civil legal aid program includes a proviso stating that "No borrower may, for the same service, receive a reduction of loan obligations under both this section and section 1087e(m) [the PSLF Program] of this title." This language has not yet been interpreted in Department of Education regulations. Assuming that it means that borrowers who receive loan forgiveness through this program may not count the months during which such forgiveness is provided toward the 120 months of payment before PSLF takes effect, some borrowers could be better off declining the loan forgiveness under the 2008 law and using only PSLF, while other borrowers would be better off accepting the money earmarked for civil legal aid lawyers. Civil legal aid lawyers eligible for loan forgiveness under the new program who plan to spend at least ten years in public service must therefore engage in a complex mathematical projection of the advantages of using or forgoing benefits under the new program.

million for the John R. Justice program and $5 million for the civil legal aid program. Because the number of lawyers who apply for funds, multiplied by $10,000 (or $6,000), could exceed the appropriations, the federal departments could not actually award funds without first writing regulations establishing priorities for their disbursement. That process slowed down the distribution of money under the two new programs. But in May 2010, the Department of Education requested emergency approval from the Office of Management and Budget of an application form to be used by civil legal aid lawyers so that the FY 2010 funds could be expended by the end of that fiscal year, and the money began to flow.[38] At about the same time, the Department of Justice invited state agencies to apply for grants through which those agencies could begin to provide loan forgiveness to prosecutors and defenders.[39] In its proposed budget for FY 2011, however, the Obama Administration recommended no appropriations for the loan repayment assistance program for prosecutors and defenders, and the termination of the program for civil legal aid lawyers.[40] Despite this recommendation, Congress funded both programs at the FY 2010 levels in its continuing appropriation resolutions permitting the government to function into March, 2011.[41] It seems unlikely that the two programs will be funded, at least during the next few years of federal fiscal austerity.

38. U.S. Department of Education, Notice of Proposed Information Collection Requests, 75 Fed. Reg. 27997 (May 19, 2010). For FY 2010, the application period ended on August 16, 2010, and eligible applicants were awarded funds on a first-come, first-served basis. *See* Equal Justice Works, Civil Legal Assistance Attorney Student Loan Repayment Program, *available at* http://www.equaljusticeworks.org/resources/student-debt-relief/civil-legal-assistance-attorney-student-loan-repayment-program.

39. The Department of Justice required each recipient state agency to distribute funding equally between prosecutors and defenders within the state. In 2010, funds were made available to states based on the total population of each state with a minimum base allocation of $100,000. State agencies were required to give priority to those eligible beneficiaries who have the "least ability to repay their loans." The process of distributing processing applications and distributing funds is currently underway at the state level. Dept. of Justice, Bureau of Justice Assistance, John R. Justice Program, *available at* http://www.ojp.usdoj.gov/BJA/grant/johnrjustice.html.

40. President Obama's proposed budget for FY 2011 recommended no appropriations for the loan repayment assistance program for prosecutors and defenders, and the termination of the program for civil legal aid lawyers. *See* Budget of the United States, FY 2011, Department of Justice at 774-75, *available at* http://www.gpo.gov/fdsys/pkg/BUDGET-2011-APP/pdf/BUDGET-2011-APP-1-15.pdf, and Budget of the U.S. Government, Terminations, Reductions and Savings, Small Department of Education Programs, *available at* http://www.gpo.gov/fdsys/pkg/BUDGET-2011-TRS/pdf/BUDGET-2011-TRS.pdf. The administration's FY 2012 budget likewise recommended no appropriations for these new programs. Budget of the United States, FY 2012, Department of Education at 355, Department of Justice at 739, *available at* http://www.whitehouse.gov/sites/default/files/omg/budget/fy2012/assests/appendix.pdf. But decisions on the federal budget are ultimately up to Congress, not the administration, and even if a program is not funded in a particular year, it may be funded thereafter.

41. 4th Continuing Appropriations Act, 2011 of 12/22/10 (P.L.111-322); *available at* http://thomas.loc.gov/home/approp/app11.html, amending the 1st Continuing Resolution (10/1/10 through 12/3/10 (P.L. 111-242).

In 2010, notwithstanding its opposition to funding special loan repayment programs for public service lawyers, the Obama Administration proposed three more steps to reduce the loan repayment burden for higher education graduates more generally.[42] Congress acted favorably on these proposals. First, it terminated the government-guaranteed federal loan program and provided that loans for higher education would in the future be extended only by the U.S. Department of Education.[43] Borrowers who take out loans after June 30, 2010 and want to use PSLF are therefore spared the necessity of consolidating government-guaranteed loans into federal direct consolidation loans in order for their monthly payments to count toward the 120 payments that the program requires. In other words, all future borrowers will have direct federal loans, and the monthly repayments of such loans through IBR or standard repayment by borrowers in full time public service will count automatically toward public service loan forgiveness.

Second, Congress made the IBR formula even more generous for borrowers who take out their first student loan after July 1, 2014. For those borrowers, the required monthly repayment will be only 10 percent of discretionary income (that is, AGI minus the poverty level for a family of the size of the borrower's family).[44] This feature cuts down the required repayment by about a third; in other words, each month borrowers will have to repay only about 6.7 percent, rather than 10 percent, of AGI. Because less will be repaid, a correspondingly larger amount will be forgiven under PSLF at the end of ten years. To continue with the illustration used above, a borrower who owes $123,200 at 6.8 percent interest and spends ten years working in public service with a first year AGI of $50,000 and 4 percent annual raises will pay only $41,407 (rather than $62,111) over that ten year period. That borrower will owe $165,569 in principal and interest at the end of ten years, and the federal government will forgive that amount, tax free.

Third, for borrowers who take out their first loans after July 1, 2014 and do *not* perform 10 years of public service, Congress reduced, from 25 years to 20 years, the period after which remaining debt will be forgiven. This will result in significant savings for those who have high educational debt and modest incomes over a 20-year period.[45]

42. *See* Paul Basken, Obama Seeks Better Terms for Low-Income Borrowers After College, The Chronicle of Higher Education, Jan. 25, 2010, *available at* http://chronicle.com/article/Obama-Seeks-Better-Terms-for/63721/.

43. Health Care and Education Reconciliation Act of 2010, H.R. 4872, Sec. 2201.

44. *Id.* at § 2213 (amending 20 U.S.C. § 1098e(e)).

45. *Id.* A web-based calculator through which borrowers eligible for the more generous IBR repayment provisions may calculate monthly payments, forgiveness after twenty years, and PSLF forgiveness after ten years is *available at* http://www.finaid.org/calculators/ibr10.phtml. The improved payment terms will probably not affect many borrowers who enter law school before 2017 or 2018, because they will have incurred at least some government-extended student debt at the undergraduate level before 2014. However, students who enter law schools (or other graduate or professional schools) after 2014 without having had prior government-extended debt will be eligible for the improved repayment terms.

IV

Most law school loan repayment programs have up to now taken no account of the new legislative landscape. They provide repayment for their public interest graduates' debts as if the College Cost Reduction and Access Act did not exist. They are paying the first dollars, rather than the last dollars, toward helping to repay the debts of their graduates in public service. Even if a graduate would only be required (under IBR) to pay $350 a month, law school LRAP programs may be providing more than $500 a month to help the graduate repay debt.[46]

For schools with enormous endowments, ignoring the new laws may make sense. They may want to free their students from having to make any out-of-pocket contributions to debt repayment while also enabling them to retire their debt more quickly than the federal programs would permit. These schools may also want to provide rapid forgiveness for graduates in lower-income private sector employment, whereas the federal government's rapid forgiveness programs are limited to graduates who do public service.[47]

But other schools with limited endowments or LRAP budgets (including a few that have already done so) may want to spread out their LRAP dollars to benefit the largest possible number of students, letting the federal programs take most of the burden off their graduates and using LRAP funds to supplement the federal benefits. The central idea behind coordinating LRAP and federal benefits is to restructure LRAP programs so that the federal programs do most of the heavy lifting, allowing the most effective use of limited law school LRAP funds.

Specifically, law schools (and other entities with LRAP programs)[48] can tie their programs to IBR, PSLF, and (to the extent that they are funded in future

46. For example, a law school program that assumes that its graduates are repaying debt on the basis of a standard 10-year plan, and that reimburses graduates earning less than $40,000 for their full debt repayment obligation, would pay $17,016 per year to such a graduate who had left law school with educational debt amounting to $123,200.

47. For example, Harvard's Low Income Protection Plan (LIPP) has always been concerned with its graduates who have low incomes, regardless of whether they do public service, so it has not used eligibility criteria that distinguish among types of employment. No participant contribution is required for those earning less than $44,000 annually. *See* Harvard Law School, Low Income Protection Plan, *available at* http://www.law.harvard.edu/current/sfs/lipp/index.html and http://www.law.harvard.edu/current/sfs/lipp/scenarios.html. Harvard's average annual payment per LIPP recipient in 2008 was $7,855. *See* email from Heather Jarvis, *supra* note 12.

48. Twenty-four states or statewide organizations have their own LRAP programs that provide assistance to certain categories of public interest attorneys. *See* information compiled by the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants, Loan Repayment Assistance Programs, *available at* http://www.abanet.org/legalservices/sclaid/lrap/downloads/Statewide_LRAPs_Summary_Chart.pdf. The total annual amount of assistance provided by these LRAPs varies widely, from a low of $15,000 for an entire state (Iowa) to $1.1 million in Florida. *See* American Bar Ass'n, Loan Repayment Assistance Programs, Annual Amount of Assistance Funded, *available at* http://www.abanet.org/legalservices/sclaid/lrap/downloads/Statewide_LRAPs_Funding_Chart.pdf. The

years) the more specialized federal loan forgiveness programs by requiring their graduates to use those programs (or at least assuming, for purposes of making their own funds available, that the graduates will do so). These schools would never provide a graduate with a larger amount of money than the graduate was required to pay, assuming that the graduate elected IBR. In other words, schools can use their own limited funds to *supplement* the federal programs, not replace them.

For example, Georgetown Law assumes that applicants who desire LRAP funds will repay their loans through IBR. That would require typical borrowers to repay about $350 or $400 per month toward their loans (depending on the graduates' AGIs). The eligibility criteria for Georgetown LRAP are almost identical to those that the federal government uses for PSLF.[49] Georgetown will pay the graduate's share of loan repayment (e.g., the $350 a month for a student whose IBR repayment is at that level), reducing the graduate's out-of-pocket repayment to zero. If the graduate's income rises to more than $75,000, the Georgetown contribution will diminish gradually, and the graduate will have to pay something out of pocket at that point, with Georgetown's funds being phased out completely if the graduate has an AGI of $135,000. But a graduate who earns less than $75,000 during ten years of public service (after which the federal government will forgive the remaining debt) will have attended Georgetown for free. As a result of loan forgiveness from the law school and the federal government, the graduate will pay nothing out of her own funds toward her law student loans.

In 2009, when Georgetown adopted this plan, it was able to increase the threshold income level, below which graduates in public service paid nothing out-of-pocket toward their student loans, from $41,000 (or higher in certain metropolitan areas) to $75,000, without increasing its LRAP budget. It could do this because it assumed (for purposes of LRAP eligibility) that graduates in public service were using IBR rather than 10-year, 30-year, or any other form of "standard" repayment.

One of the benefits of marrying an LRAP program to PSLF is that a school's development team can show prospective donors of scholarship funds how much more benefit they can provide to students for each dollar of assistance. Many donors donate to scholarship funds hoping that by reducing a student's borrowing, they will enable the student to choose his or her most desired career path, rather than having to work in the private sector in order to pay off debt. For example, consider a school with a $60,000 annual cost of attendance. A one-time gift of $50,000 would pay for less than a third of one student's three-year cost of attendance. But if the school adopts a LRAP

ABA data was developed by Carmody and Associates, Phoenix, AZ. In addition, some public service employers have LRAP programs for their employees. The median annual average award is only $2,400. Equal Justice Works, Student Debt Relief, *available at* http://www.equaljusticeworks.org/resources/student-debt-relief/employer-based-lraps#subtopico (data derived from the NALP Public Service Salary Report).

49. An exception is that Georgetown only provides benefits if the graduate's work is law-related.

plan that is integrated with PSLF (and assuming that modest increases in the graduate's earnings will be offset by future increases in the federal poverty level and by the arrival of dependents), the same gift would probably enable a student who is committed to public service to attend law school without having to repay any part of the three-year cost of attendance. LRAP and PSLF will multiply the value of the gift by a factor of more than three.

Law schools that desire to coordinate their LRAP programs with those of the federal government will have to make a series of policy decisions. Some of these decisions pertain to the schools' budgetary considerations and conceptions of how much money, if any, graduates should themselves contribute toward their loan repayment. Others address the relatively few gaps in the federal programs. The remainder of this Part addresses those policy decisions that will concern administrators and faculty members who want to design or redesign LRAP programs to take advantage of the new federal laws.

The consequences of IBR for employees who work for less than ten years in public service

A preliminary issue for law schools is whether they want to encourage their graduates to use IBR. For graduates who are fairly certain that they will remain in public service employment during 120 months of repayment, the answer is essentially a no-brainer, because the forgiveness benefits of PSLF are so large. For graduates who plan to do only one or two years of low-income public service work before transferring to higher-paying public service jobs, the answer is almost equally simple. IBR (together with law school LRAP) will help them to afford living on a low salary for those initial years, and the amount of additional interest that they will eventually have to pay when they are no longer using IBR will be small, because they will have used IBR for such a short period of time. But for any graduates who desire five to nine years of public service work before beginning a private sector career, IBR is not an unalloyed good. These graduates will run up substantial interest costs because IBR will limit their monthly repayment obligations, and because they don't do public service work for ten years, they will not receive any forgiveness from the federal government at the end of that time. After they leave public service and enter the private sector, their incomes may rise to the point where they will no longer be eligible for IBR, and they will have to pay the accumulated interest through standard repayment. (If their income remains low relative to their debt for 25 years—or 20 years for those who first borrow after July 1, 2014—they may remain eligible for IBR, and they may receive forgiveness of some portion of the debt at the end of that period of time, despite leaving the public sector.)

Law schools could take any of three approaches to this problem. They could decide not to tie their LRAP programs to IBR or to encourage the use of IBR by all graduates in public service. On this approach, they could simply pay a specified amount each month to each graduate in public service, even if graduates elected a repayment plan more demanding than IBR. To make

a substantial contribution to the repayments of graduates who were using standard repayment, however, the schools would have to pay much more than if they coordinate their programs with IBR.

A second approach would be to take the view that students who leave the public sector after a few years are likely, over the course of their careers, to make enough money to repay the debt, including the additional interest, and that the purpose of their LRAP programs, with respect to such students, is only to help them get through the earliest, lowest-earning years of their careers. A school taking this approach could adopt a program that coordinated with IBR without concerning itself with the impact on graduates who left public service for the private sector.

A third approach would be for a school to adopt a special LRAP program for graduates who serve for a certain number of years in the public sector but then move to the private sector at a relatively low salary. The school might provide a limited amount of loan repayment assistance to such graduates, for a limited amount of time, to help them to make the transition to higher-paying private sector work.

Require or assume use of IBR?

Should an LRAP program require those using it to elect IBR in order for them to be eligible for LRAP? Or should it allow graduates to elect standard repayment, but pay them no more than would be required to reimburse them for debt repayment if they had elected IBR? There seems no reason to require students to use IBR, as most students will have sufficient incentive to keep loan repayment as low as possible. Some students who are not sure that they want to remain in the public sector for ten years may elect to repay more rapidly than IBR requires (whether or not they use standard repayment) or even hold the "extra payment" in a savings account to hedge against having to repay the additional interest in the event that they do not ultimately qualify for 10-year repayment under PSLF. They should have the right to do so, but law school counselors should advise them that if they elect extended repayment (e.g., flat 25 or 30 year repayment terms) they cannot qualify for PSLF, and that if they elect IBR but do not complete 120 months of public service, they will also not qualify for PSLF.

The onset of public service

Some graduates may want to work for a few years in the private sector *before* entering into public service. For example, they may desire to spend ten or more years in public service but would first like to take advantage of an offer from a particular mentor in the private sector for some years of supervised tutelage. Schools will have to decide whether graduates must enter an LRAP program within a few months (or years) after graduation, or whether they may enter it at any time. Schools are likely to save money (because graduates' incomes will be lower) and to focus their programs on the graduates who are

most dedicated to public service if they require prompt application for LRAP as a condition of eligibility.[50] Many schools currently require entry into their LRAP programs within two to three years after graduation.

Eligibility requirements more strict than those established for PSLF

Schools could decide that any graduate who meets the "public service" requirement for PSLF automatically meets that requirement for LRAP. But schools might decide that their LRAP programs should be more narrowly targeted. For example, PSLF does not require that a law graduate work in law-related employment; a law graduate who becomes a public school teacher or subsequently goes to medical school and becomes a public health service doctor is eligible for PSLF. A law school might decide that only graduates who take advantage of their legal education should receive law school subsidies, even if that graduate does other types of full-time public service. A school might therefore limit LRAP funds to graduates who accept employment that is "law related."[51] Also, judicial clerkships count as public service under PSLF, but a law school might take the view (if it is empirically true) that most or all graduates who accept such clerkships use them as stepping stones to lucrative private sector employment and that therefore judicial clerks should not be eligible for LRAP. Alternatively, law schools could elect to provide loan repayment assistance retroactively, for the year or two of clerkship, for graduates who enter into public service employment immediately after the clerkship.[52]

An interesting LRAP eligibility situation occurs when a graduate returns to a law school to participate in a school-sponsored teaching or research fellowship. In some instances, the student may be receiving academic credit toward an advanced degree, such as an LL.M., during the fellowship, while also performing work that would typically qualify for public service loan forgiveness. Since the graduate is now also a student, the school will report the enrollment status to the National Student Clearinghouse. Loan servicers will receive this updated information, and (if the borrower's enrollment status is half-time or greater) the graduate's federal loans will enter an in-school deferment, thereby suspending repayment obligations. A school offering

50. To avoid harsh consequences in unusual cases (e.g., where a graduate needed to earn more money for a period of time to support an ailing parent), schools could allow graduates to petition to be allowed to enter into an LRAP program at a date beyond that set for automatic entry.

51. A school adopting this approach should be careful to define what work is "law-related," as there can be many opinions on this subject, and schools normally want to avoid antagonizing their graduates.

52. If judicial clerks are made ineligible for LRAP, graduates should not be excluded from LRAP because they spent time as judicial clerks before entering public service employment. In other words, schools that decide to require LRAP recipients to enter into public service work as their first post-graduate full time employment and do not treat service as a judicial law clerk as public service work should allow their graduates to begin public service work after a clerkship, whether or not they provide retroactive benefits to those graduates.

LRAP benefits to its graduates must decide whether to provide or suspend those benefits because the graduate temporarily has no obligation to make loan repayments.[53]

Eligibility requirements more lenient than those imposed by PSLF

The PSLF definition of qualifying public service is reasonably expansive, but it does exclude some types of work that many lawyers consider public service. Three categories of work are particularly problematic for law school policy makers trying to create a comprehensive LRAP program. First, employment by an international or foreign organization, such as the United Nations High Commissioner for Refugees, one of the international criminal courts, or Doctors Without Borders, does not automatically qualify as public service for purposes of PSLF because these employers are neither U.S. government agencies nor non-profit organizations as defined by Section 501(c)(3) of the Internal Revenue Code. Yet, legal work for these organizations may qualify under the provision of the CCRAA defining public service work to include not only work for those entities but also "public interest law services."[54] Second, to the surprise of many law students, who think that advocating for "the rights of employees" is no different from advocating for "the rights of children" or "the rights of disabled persons," labor unions are not "501(c)(3)" organizations.[55] In addition, many small for-profit law firms think of themselves (and advertise themselves to potential employees) as public interest law firms because they represent non-profit organizations, municipalities, publicly-owned utilities, or other public interest organizations, because they pay low salaries, because they do a substantial amount of work without charging any fees, or for all of these reasons. Law graduates working for these organizations may be frustrated by the exclusion of their employers from PSLF's concept of public service and may suggest that their alma maters should be more inclusive than Congress has been.

Adhering to the federal definition has the merit of holding down the budget as well as simplicity. But at least as to employment by international

53. In the case of a fellowship that triggers an in-school deferment, Georgetown Law suspends LRAP eligibility until the fellowship is completed and extends the graduate's eligibility to enter the LRAP program, as if the graduate had a judicial clerkship.

54. 20 U.S.C. § 1087e(m)(3)(B). This definitional section provides PSLF for those in full-time employment where the employer is a government agency or a 501(c)(3) organization, but it also includes a long list of other qualifying professionals, including those in emergency management, law enforcement, public education, and "public interest law services" (including prosecution or public defense or legal advocacy on behalf of low income communities at a nonprofit organization). Some of these categories overlap with employment by 501(c)(3) or governmental entities, but others may expand coverage beyond employment by those types of institutions. At this writing, the Department of Education has not yet taken a position through a process of regulation or interpretation on the issue of legal employment by United Nations agencies or foreign public interest organizations.

55. Some labor unions have separately organized but affiliated organizations, such as group legal services programs for union members, that are tax-exempt under Section 501(c)(3).

organizations, it is difficult to see why law schools would not want to expand their LRAP programs just a bit. While Congress may have wanted to limit the federal largesse to employees of agencies and organizations in the United States, who provide services to denizens of America, law schools have a broader and more global mission. Extending LRAPs to labor unions and certain for-profit law firms involve closer questions. Alumni who represent corporations may see little principled difference between employment by a labor union and employment by a corporation that bargains with such a union, and may complain that the law school unfairly subsidizes unions by paying the debts of their employees. Drawing lines among for-profit law firms with varying degrees of representation of non-profit entities, different pay scales, and annually changing proportions of pro bono work is likely to prove very difficult for law schools.

Thresholds

The simplest way to integrate an LRAP with IBR and PSLF would be to provide that the LRAP will reimburse the graduate for all of the graduate's IBR repayments during ten years of public service, after which PSLF will forgive the remaining debt and there will be no need for the LRAP to pay anything further. This would be a good policy for any law school that can afford it, because the law school could then advertise to prospective students that by doing ten years of public service work, they will attend law school at no cost.[56] But not all law schools will be able to afford to adopt this policy because as graduates' incomes rise, their IBR repayment obligations also increase. By years seven through ten, the law school subsidy under this plan could be greater than the law school would want to pay. The school, therefore, may want to set a threshold AGI beyond which LRAP will reimburse part, rather than all, of the graduate's IBR repayments. The schools that have integrated their LRAPs with the federal law have established such thresholds.[57]

No school would want to cut off LRAP funding the moment a graduate passed the threshold, for then graduates might arrange with their employers to keep their salaries just below the threshold, at least until the ten year PSLF period had passed. So schools that establish a threshold will also want to adopt a formula for gradual reduction of the subsidy as the graduate's income increases above it. The formula will necessarily set a second threshold income level beyond which its LRAP will pay nothing at all.[58]

56. Grad Plus loans are available for the entire cost of attendance, not just tuition, and are repayable through IBR and eligible for forgiveness through PSLF.

57. *See* appendix. At least one school (Georgetown) has committed itself to eliminating the threshold, and reimbursing the entire IBR repayment obligation, when funding for its LRAP permits it to do so. Memorandum to the Georgetown Law faculty from the Financial Aid Committee, Oct. 28, 2009 (approved by the faculty, Nov. 11, 2009), pp. 10–11.

58. An alternative would be to cap reimbursement at a specified dollar amount. So, for example, an LRAP might provide that under no circumstances will a graduate receive an LRAP payment of more than $6,000 a year, no matter what the graduate's debt, income, or IBR obligation is.

Where should the first threshold be set, and what formula should be used to reduce reimbursements beyond that threshold? The answers depend on how much money the school will have available for LRAP. The calculation is not simple because a school will have to estimate the number of its graduates per year who will enter public service, the number who will leave public service at various points after the first year of LRAP payments, and the income levels of its graduates in public service (or their IBR repayment obligations). A school will have to commit to support of its graduates for ten years (so they can plan their careers in reliance on both the federal and LRAP commitments), and for the first ten years of the LRAP program, it will be adding new cohorts of graduates while continuing to support previous cohorts. Only after ten years will the amount expended necessarily level off, assuming that new graduates enter the program at about the same rate that graduates leave it when their debt is cancelled by the federal government.

To make it easier for law schools to set threshold levels that are consistent with their budgets, we have created a free online calculator, available at http://www.law.georgetown.edu/finaid/articles/index.html. Designers of an LRAP can enter the number of students they expect to enter the program annually (given the public service employment eligibility criteria set by the school), the degree of attrition expected per year, the estimated average AGI of their graduates in the program when they first qualify for LRAP, their expected average annual percentage of increased income, an income threshold beyond which full reimbursement will not be provided, and the rate at which LRAP support will diminish beyond that threshold. The calculator will return the school's projected LRAP payout during each of the next ten years. If that amount is lower than what the school can afford, it can increase the income threshold, relax the eligibility criteria, or phase out benefits more slowly after the threshold is reached. If it is higher than what the school can afford, it can lower the income threshold, adopt more restrictive eligibility criteria, or phase out benefits more quickly as income rises above the threshold.

Additional earned or unearned income

Some graduates may have additional income, such as investment income, in addition to their salaries. Should schools ignore income from sources other than salary or reduce LRAP benefits for graduates who have such income?

The problem with outside income is *not* that graduates with such income are less needy than those without it. A graduate with a salary of $35,000 and $10,000 of unearned income is just as needy as a graduate with a salary of $45,000. The school's income thresholds will screen out assistance for high-income graduates, whatever the source of their income. But there is a more subtle concern. The IBR formula is based on the borrower's AGI, which includes all earned and unearned income.[59] Therefore, to the extent that a graduate has substantial additional income but remains eligible to use IBR, the borrower's IBR repayment obligation is larger, and therefore the expected

59. However, AGI does not include tax-exempt municipal bond interest.

contribution from an LRAP that reimburses the graduate for monthly IBR payments is correspondingly greater. Schools may think that they should not be using IBR funds to reimburse graduates for payments that are larger than they would otherwise be as a result of their outside income.

Most LRAPs require applicants to submit copies of their tax returns annually. Schools might use the tax returns to calculate what the IBR repayment obligation would have been if the graduate only had salaried income, and reimburse IBR payments on that basis.

On the other hand, if few LRAP applicants had significant amounts of income from sources other than salary, schools might decide that performing this calculation and reducing payments accordingly introduces an unnecessary complexity into the LRAP formula.

Undergraduate debt

IBR and PSLF provide repayment and forgiveness for all of a borrower's government-guaranteed and government-extended student loans, including loans for undergraduate degrees and for other advanced degrees such as masters and non-law doctoral degrees. If an LRAP program reimburses graduates only for their law school loan repayment obligations under IBR, a graduate in public service who also has undergraduate debt might theoretically have to repay more because these other student loans will have to be repaid along with loans for legal education. Law schools might be unwilling to help to pay for education other than legal education. As a practical matter, however, this potential problem can be ignored, because for nearly all graduates in public service, debt attributable to legal education is so large that these graduates will repay the same amount through IBR whether or not they have other educational debt. Their repayments will be capped by the income limitation and the remainder forgiven at the end of ten years.

Periods of unemployment, illness, and parental leave

Borrowers who are paying through IBR and leave the work force temporarily are still required to make their monthly payments, though these payments may be reduced, even to zero, because they have little or no income. Such payments do not count for purposes of PSLF because the borrower is not employed in full-time public service. However, loan forgiveness through PSLF does not require ten years of *continuous* public service; it requires only that the borrower make 120 payments through IBR or standard ten-year repayment while in full-time public service.[60]

60. Payments made through a different and older income-related plan, called income-contingent repayment (ICR), also qualify, but IBR payments are lower than ICR payments, and there seems to be no reason for any borrower to elect to pay through ICR now that IBR is available. For a discussion of the failings of ICR, which suggested the need for the PSLF program that was enacted six years later, see Philip G. Schrag, The Federal Income-Contingent Repayment Option for Law Student Loans, 29 Hofstra L. Rev. 733 (2001).

Law schools will have to decide whether to terminate LRAP assistance when ten academic years have passed or to follow the PSLF model and make LRAP payments for up to 120 months of public service. Limiting the availability of LRAP to ten years will cause hardships for some graduates and will put pressure on them not to take leave from work when they have young children. LRAP programs with limited time frames are facially gender-neutral but may actually have a disparate impact on women. On the other hand, open-ended commitments to provide LRAP funds for 120 months of public service, whenever they occur, could complicate budget planning and could commit the school to operating its LRAP program for many decades into the future, regardless of changed circumstances. A middle ground would be to allow graduates one or more periods during which they could leave the work force without receiving LRAP funds or losing future LRAP benefits, but impose a ceiling such as fourteen years, after which LRAP funds would typically not be payable, even if the graduate were still making IBR payments that qualified for PSLF. Another option is to allow recipients to apply to the LRAP director for deferrals, up to a specified period of time.

Part-time employment

Part-time employees (in general, those who work fewer than thirty hours a week) are ineligible for participation in the PSLF program. However, recognizing that some graduates may need to work part time in order to care for small children or aging relatives, some law schools might want to make provision in their LRAP programs for part-time employees of public service organizations. For example, they might provide 50 percent of the otherwise available benefit to graduates who work in public service for at least fifteen hours per week.[61]

Marriage

As noted above, IBR attributes spousal income to a borrower if the borrower and spouse file a joint tax return. Including spousal income increases a borrower's monthly repayment obligation and therefore increases the LRAP contribution if LRAP reimburses the borrower. Law schools may therefore decide to make LRAP funds available to married graduates only if they take maximum advantage of the rules governing IBR; that is, if they file separate tax returns. Alternatively, if law schools did not want to press their graduates to file a particular type of tax return, they could require married borrowers who file joint returns to complete (but not file) separate tax returns, and provide LRAP benefits based on what the borrower's monthly payments would be if computed on the AGI shown on the graduate's separate return.

61. The authors are grateful to Heather Jarvis for this suggestion.

Prosecutors, defenders, and legal aid lawyers

Half or more of a school's LRAP recipients may be prosecutors, public defenders, or legal aid lawyers.[62] To the extent that Congress appropriates funds for the prosecutor, defender, and civil legal aid assistance programs that it created in 2008, many of these graduates may obtain very substantial loan repayment relief, without waiting ten years before forgiveness takes effect. Prosecutors and defenders who make three year commitments could receive loan repayment grants of up to $10,000 per year for up to three years, renewable once, provided that they made binding commitments to remain in their jobs for at least three years. The lifetime maximum grant is only $40,000, which for most graduates will be far less than their debt at graduation, but they can use standard ten-year repayment while receiving their grants, and then switch to IBR when they stop receiving these grants either because Congressional appropriations are insufficient to meet demand or because they reach their lifetime limits. If they remain in public service for a total of 120 months (whether or not they remain prosecutors or defenders), their remaining debt will be forgiven through PSLF.

Similarly, civil legal aid lawyers who commit to service for at least three years may receive loan repayment grants of up to $6,000 a year, also with a lifetime maximum of $40,000. They too may use PSLF after their loan repayment grants terminate, provided that they spend at least ten years in public service.[63] But regulations that have not yet been promulgated are likely to exclude the years in which they received legal aid loan repayment grants from the years that count toward the ten years for PSLF. Thus they may be required to repay their loans for nearly seventeen years (nearly seven years of $6,000 grants, and ten more years of IBR or standard repayment) before receiving forgiveness of the balance. Because of this feature of the law, civil legal aid lawyers may actually pay less in the long run if they avoid applying for the $6,000 and rely on PSLF instead.[64] On the other hand, civil legal aid lawyers who do not plan to spend ten years in public service and therefore will not qualify for PSLF would be well advised to take the money.

What should law schools do about these programs? Should LRAPs require graduates who are prosecutors, defenders, or legal aid lawyers to apply for these special loan forgiveness programs as a condition for receiving LRAP funds? Imposing such a requirement could save law schools some money,

62. At Georgetown, about half of LRAP recipients fall into one of these three categories.

63. It should be noted, however, that forgiveness under the programs for prosecutors, defenders, and legal aid lawyers may constitute taxable income, and this taxable income could also increase adjusted gross income, which is the basis for calculating the IBR repayment obligation.

64. For Equal Justice Works' view of how the law will be interpreted, see Equal Justice Works, Civil Legal Assistance Attorney Student Loan Repayment Program, *available at* http://www.equaljusticeworks.org/resources/student-debt-relief/civil-legal-assistance-attorney-student-loan-repayment-program (noting that under some circumstances, graduates could be better off by declining the funds offered by the legal aid program and relying only on PSLF).

provided that the law school suspended LRAP repayment, or offered only a token LRAP payment such as $1,000 per year, for as long as the annual grants exceeded the amount that the graduate would be required to pay under IBR.[65]

But there are also reasons why law schools might choose not to suspend LRAP payments for grantees. First, loan repayment grants by the government are not materially different from parental gifts, or inheritances.[66] If LRAP does not reduce its benefits as a result of these other sources of income, perhaps it should not do so as a result of the receipt of a federal government grant, though a loan repayment grant could be thought of as a type of salary supplement, and therefore distinguishable from a gift. Second, unlike IBR and PSLF, which are permanent legislation, the availability of grants is uncertain, depending on the magnitude of annual Congressional appropriations, the number of applicants for these grants, and whether the graduate is fortunate enough to receive one of them. These factors make planning by LRAPs or graduates difficult, even from year to year. Third, because of the amendment to the civil legal aid forgiveness program that may make it financially advisable for some of the most dedicated civil legal aid lawyers to forego the grants and rely only on PSLF, a law school requirement that legal aid lawyers apply for forgiveness grants may push these graduates into programs that are not in their interest.[67]

The discussion of these two programs may be moot, however, at least for the short term, because Congress might not appropriate funds beyond those already approved, at least until the U.S. economy recovers.[68]

Retroactivity

Should alumni who graduated before the LRAP program was adopted (or in the case of a school that already had an LRAP program, before it was modified to take account of the new federal programs) receive the benefits of the LRAP?[69] This depends on available funds and on whether the law school will save money by permitting the alumni to opt into the program.

65. For example, consider a graduate public defender with a $100,000 debt and a $40,000 starting income. In the first year of IBR repayment, the borrower would have to repay $3,756, far less than the $10,000 grant, with the rest of the grant going toward reduction of principal. Because the grant would cover IBR loan repayment, LRAP could withhold funds until the borrower was no longer able to receive grant payments.

66. Gifts and inheritances are not income and therefore are not included in AGI for purposes of IBR calculations. 26 U.S.C. § 102.

67. Therefore, law schools that decide to require prosecutors and defenders to apply for loan forgiveness grants and to suspend or reduce LRAP payments for recipients of the grants might decide not to apply the same restrictions to civil legal aid lawyers. This distinction could also be justified by the lower annual amount of federal loan repayment grants available to civil legal aid lawyers.

68. In its FY 2011 budget, the Obama Administration recommended that no funds be appropriated for these programs. *See supra* note 40 and accompanying text.

69. Some law school alumni who worked in public service for many years before the enactment of CCRAA and who have become aware of PSLF think of themselves as members of a "lost generation" of public interest lawyers who can't benefit from PSLF because they incurred

Schools that are just creating LRAPs or making LRAP payments significantly larger than they had been before are likely to be reluctant to make them available to graduates in public service who qualify under the new LRAP program, despite requests from alumni for such assistance. To do so may be quite costly, depending on the number of alumni who would qualify.[70] Some schools, however, might be able to afford to extend the benefits of the new program to at least recent alumni in public service, or to those who were already receiving some LRAP benefits from the school.

For some schools that already have LRAP programs, however, the level of benefits that have to be paid to graduates who are already receiving them could be reduced under a plan tied to IBR repayments.[71] Schools might therefore want to encourage them to convert to the new LRAP program. Because the graduates have reliance interests in programs that were promised to them while they were in school, conversion should be voluntary rather than mandatory.[72]

Graduates with alternate career paths

Occasionally a graduate with an ultimate interest in public service desires to take a position with a private entity before entering public service. Such a graduate should consider both the type of debt that has been incurred and the graduate's financial needs. As discussed previously, only federal loans are eligible for IBR and PSLF. If a graduate enters a high-paying private field and uses the excess earning during the first several years to repay any private debt

private debt before Grad Plus was available, or because they have already repaid a significant part of their debt, or because the ratio between their remaining debt and their income render them ineligible for IBR, or for a combination of these reasons. Some of them are no longer eligible for law school loan repayment assistance, either, but they will be making payments on their law school loans for fifteen more years. Email to Philip G. Schrag from Heather Jarvis, Senior Program Manager, Equal Justice Works, June 18, 2010.

70. The cost would also depend on the income levels of the alumni, because the higher the income level, the greater the repayment required by IBR that would be reimbursed by LRAP. The longer the graduate has been out of school, the higher the income that the graduate is likely to have.

71. For example, for graduates with high debt and with incomes of $40,000, the IBR obligation, and therefore the school's maximum reimbursement, is $3,756. A school that is now paying $5,000 a year in LRAP benefits to such graduates would save money, at least in the first few years, by successfully encouraging such graduates to convert to the new LRAP program. However, LRAP might end up paying more than $5,000 a year to those graduates who remained in LRAP for ten years. A high-debt graduate with an initial income of $40,000 and who had annual increases of 4 percent would be obligated under IBR to repay $5,544 in the tenth year of repayment, just before remaining debt was forgiven.

72. Graduates might voluntarily convert because while the "old" program would pay them more in the early years, the "new" program could pay them more in later years. *See supra* note 71. Even for graduates for whom this was the case, law schools might also prefer that they convert, taking into account that a substantial fraction of graduates will not remain in the LRAP program for a full ten years and that school revenues will probably rise over that period of time.

that would not be eligible for forgiveness by the federal government, then entry to a lower paying, yet desirable career path is eased and the "golden handcuffs" of the higher-paying job are less of an issue.

Some graduates are older than others. For older graduates, the fact that IBR does *not* take assets into account should be considered. A graduate at the age of 25 has much more time to prepare for retirement and aggregate assets than a 38 year old. An older graduate who is committed to public interest employment may want to earn a substantial amount of money immediately after graduation, and before entering public service, to maximize retirement contributions or to save money for important financial goals such as a down payment on a home.

The question for schools with LRAPs is how to treat these graduates. Should they be required to enter the school's LRAP program very soon after graduation, and should their law school LRAP contributions be reduced to the extent that they have acquired substantial assets, such as a home? Schools may have different views on these issues. Some might allow older graduates (or all graduates) two or more years after graduation to enter the LRAP program. We recommend against reducing benefits for those graduates (generally older graduates) who own homes or have other assets. Since IBR benefits are based only on AGI, the graduate's required loan repayment, and therefore the school's outlay, is no higher as a result of the asset ownership. In addition, a graduate who has some assets is likely, for just that reason, to be in a more stable position for the duration of a public interest career and more likely to complete the full ten years for forgiveness.

Protecting graduates' reliance interests

Law schools might discover at some point that they have underestimated the costs of an LRAP program or overestimated future law school revenues, resulting in the need to terminate or restrict an LRAP. However, LRAP will not be attractive unless graduates can plan their careers in reliance on the LRAP funds that they expected to receive when they entered the law school. Therefore, while a school should be free to terminate an LRAP or reduce its benefits, any such changes should apply only to cohorts of students who were offered law school acceptance after the termination or reduction of benefits was announced and posted on the law school's website. Those who are receiving benefits, are enrolled in school, or have accepted offers to attend should be entitled to rely on benefits at least as generous as those offered to them when they accepted offers of admission.

Conclusion

Some law schools that have not yet created LRAP programs because of the anticipated expense might now be able to afford them by building programs that rely on the new federal legislation to provide the bulk of support for graduates who embark on public service careers, supplementing those programs by providing modest LRAP support to graduates who do full-time

public service work. Schools that already have LRAP programs might want to modify their programs by coordinating with federal benefits, thereby enabling their LRAP programs to serve more students or to provide a higher level of support. Schools that want to create or modify LRAP programs will want to consider the policy issues identified in Part IV of this article and to use our online calculator[73] to estimate the cost to the school of providing LRAP benefits that rely on IBR and PSLF for the bulk of loan forgiveness to graduates who are performing full-time public service.

73. http://www.law.georgetown.edu/finaid/articles/index.html.

Appendix: Law School LRAPs Coordinated with the College Cost Reduction and Access Act*

Note: This Appendix necessarily simplifies details of the programs and will soon be out of date. Law school websites should be consulted for detailed and up-to-date information.

Law School	Threshold	Rate of Reduction of Benefits After Threshold Reached	Eligibility Beyond Federal PSLF Program	Exclusions from Eligibility as Defined by PSLF**	Other Notes
UC Berkeley	$65,000	35 cents per dollar	Employment with international public interest organizations and foreign governments qualifies	Employment that is not law-related	If spouse's income is higher, AGI is half the combined income; income threshold is greater if graduate has spouse or dependents; undergraduate loans qualify if being repaid through IBR; LRAP coverage continues during family or medical leave but with a 10 year maximum; LRAP pays for 25 years if employer is a foreign or international entity
Georgetown	$75,000	Phased out at $150,000 (150 percent of the federal poverty level) ($123,000 if the poverty level is $18,000)		Employment that is not law-related	

Duke	$60,000	Phased out at $75,000		Budgeted funds limited; priority given to prosecutors, defenders, and applicants who "work on behalf of individuals who could not otherwise afford comparable legal services"	IBR repayment required. $80,000 lifetime cap on benefits
Virginia	$55,000	Phased out at $75,000	Private practice that focuses on an underserved part of the population	Employment that is not law-related, Service while on deferral from a private firm	IBR repayment required; Part-time employment eligible on pro-rated basis; Director may allow deferrals for parental leave, etc.
Northwestern	Complex formula based on income, size of debt, and dependents, which sometimes pays more than 100 percent of payment due under IBR			Recipient must be "attorney or manager" in PSLF-eligible entity	Formula allows greater eligibility for relief for graduates who are married or have dependents
UCLA	$60,000 plus $1000 per year after three years	35 cents per dollar; benefits end at $80,000	Federally guaranteed or extended undergraduate debt; certain private debt covered; international NGO employment covered; some foreign government employment covered	Employment that is not law-related	Threshold increases for graduates with children; 12 year limit on participation. $10,000 annually ($20,000 for married graduates) in saved assets is disregarded for income eligibility
Suffolk	$49,000	Eliminated at $59,000		Employment that is not law-related	Limited to 15 students per year. $6000 limit on annual payments

* As this article goes to press, Yale Law School, Northeastern University Law School, and George Washington University Law School are also revising their LRAP programs to coordinate them with CCRAA.

** All of the programs listed in this appendix exclude graduates while they are employed as judicial clerks for two years or less, though Berkeley makes an exception for clerks who plan subsequent public interest careers.