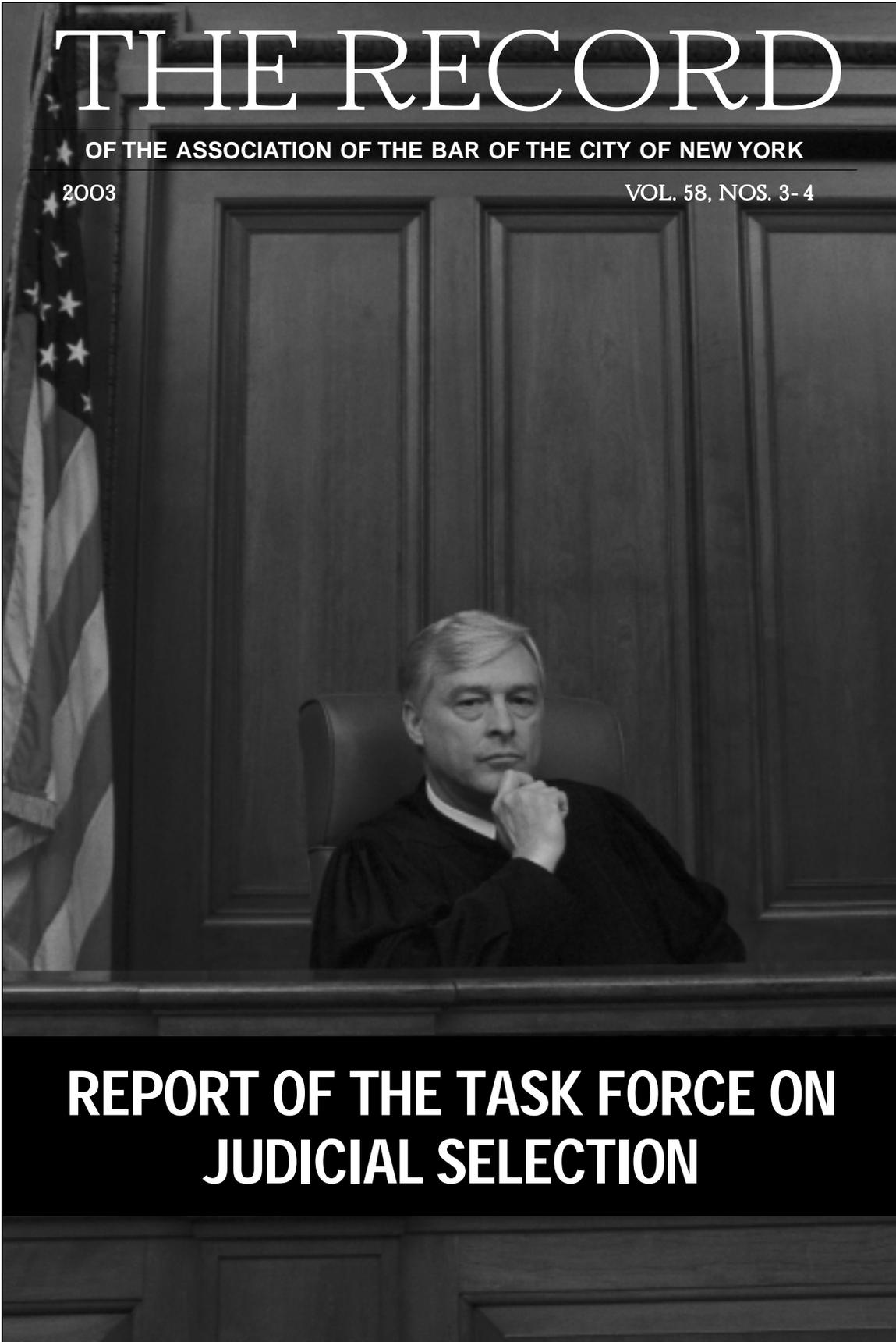


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**REPORT OF THE TASK FORCE ON
JUDICIAL SELECTION**

Law School Debt and the Practice of Law

The Committee on Legal Education and Admission to the Bar

I. INTRODUCTION

The large amount of educational debt assumed by many law students has important effects on both the provision of public interest legal services¹ and the quality of life of debt-burdened practicing attorneys. Some evidence indicates that rising law school debt may affect the ability of public interest and government legal service providers to recruit and retain attorneys to service clients' needs. Evidence also suggests that law school debt constrains law school graduates to pursue more remunerative private practice careers and deters practicing attorneys from transferring out of jobs that are lucrative but otherwise unfulfilling. Both developments should concern individuals and groups interested in either the provision of public interest and government legal services or the quality of life of practicing attorneys.²

Although law schools, legal employers, state bar associations and state

1. This report uses the term "public interest" to broadly refer to legal services by 501(c)(3) charitable organizations or by government and the term "public service" to broadly refer to legal services by 501(c)(3) charitable organizations and by government.

2. The cost of attending and completing law school has risen significantly in the last 15 years (see chart *infra* page). The reasons for these cost increases, the possibility of cutting costs, and possible alternatives in legal education are topics outside the scope of this report.

and federal legislatures have taken some action to ameliorate the effects of law school debt, those efforts have thus far been minimal, have not kept pace with the escalations of costs, and have been focused mainly on attorneys pursuing qualifying public interest careers. These programs offer differing, and sometimes competing, rationales for providing law school debt relief. Law schools boast of the financial benefits that their graduates enjoy from debt relief programs, while bar associations and other advocates extol debt relief programs as a means to encourage public service and to increase access to justice.

The consequences of high law school debt, however, may be felt more in the broader legal services market than in the public service sector. Although debt may not be a controlling factor in the initial career decisions of those motivated to enter public service, it may well divert other graduates from small-firm and solo practices. Because those practices primarily serve the middle and working classes, one consequence of high debt levels and the concomitant upward pressure on legal fees could be a decrease in the practical availability of legal services to those populations. Moreover, financial pressures have been identified as contributing to transgressions of ethical proscriptions and as contributing to the disturbing erosion of professionalism in the practice of law.³

None of the current debt-relief programs appear to address these concerns. But even if the effect on public service is the only concern, one must nevertheless assess and account for the effects of debt on private practitioners' availability for pro bono and assigned counsel representation.

This report first outlines the consequences of high law school debt. The report next considers the effect of high debt levels that has, to date, received the most attention—the effect on public interest law organizations—and summarizes a variety of existing and developing programs providing law school debt relief. To this end, the report attempts to identify, where possible, structural limitations that should be recognized in, and improvements that could be made to, current and developing debt relief programs, with particular attention to steps that might be taken to assure such debts are repaid with pre-tax dollars. The report then describes effects of high debt levels that have as yet not received very much attention—the effect on lawyers in private practice. The report concludes with five concrete conclusions and recommendations regarding the fu-

3. See, e.g., Leonard E. Gross, *The Public Hates Lawyers: Why Should We Care?*, 29 *Seton Hall L. Rev.* 1405, 1419 (1999); Marvin Hirshman, *BEWARE! Examples of Conduct Which Will Invite the Attorney Grievance Commission to Inquire and/or Seek Further Investigation*, *Md. Bar J.*, April/May 2001, at 59 (listing "Financial problems that affect one's practice").

ture study of the problem and the development of law school debt relief programs.

II. THE CONSEQUENCES OF HIGH LEVELS OF LAW SCHOOL DEBT

Some of the most compelling evidence of the crushing debt incurred by many law school students is found in the stories told by recent law school grads themselves. To those who joined the legal profession before 1990, the experiences of recent graduates must be shocking:

- Jonathan Sambur, a 2001 graduate of the New York University School of Law, told the *Wall Street Journal* that his student loan debt totals \$109,000, with payments of about \$1,200 per month. Currently working for the government, Sambur intends to consolidate his loans and extend the repayment term to 30 years to lower his monthly payments.⁴
- Adam Fox and Jessica Gadsen graduated in 1996 from the Cornell Law School with combined student loan debt totaling \$200,000. Now married and living in Los Angeles, their monthly student loan payment of \$2,500 is only \$500 less than their mortgage payment.⁵
- Rebecca Long, a 2000 graduate of the Georgetown University Law Center, has student loan debt totaling \$116,000—nearly four times the annual salary of \$31,000 she earns representing low-income clients at Utah Legal Services in Salt Lake City. She survives by taking advantage of Georgetown's loan repayment assistance program, which covers 100 percent of her monthly student loan payment if she stays at her job for five years.⁶

Bar association leaders and law school deans have also sounded the alarm about mounting debt burdens on new attorneys. Writing in the *New York Law Journal* on the occasion of Law Day 2001, Association president Evan A. Davis noted:

The current economics of law practice not only burdens bar and pro bono work, it also restrains the career options of younger attorneys. Many students graduating from law school face several tens of thousands of dollars of loans. . . .

4. Lynn Asinof, *Lean Times Worry Grads With Loans*, *Wall Street J.*, Dec. 24, 2001, at C1.

5. Kathy M. Kristof, *Money Make-Over: Laying Down the Law on Spending Priorities*, *Los Angeles Times*, Oct. 2, 2001, at C1.

6. Margaret Graham Tebo, *The Debt Conundrum*, *ABA J.*, March 2001, at 42.

Some young lawyers end up in places they never intended to be and where they do not intend to stay. The costs of this unhappy situation are significant, as firms experience retention problems, able attorneys grow disillusioned and cynical about the profession, and government and other public service law offices are unable to meet their recruiting needs for diverse, able lawyers.⁷

Steven C. Krane, in an interview with the New York Law Journal given shortly after he became president of the New York State Bar Association, indicated that an initiative to help professionals inclined to work in public service pay off their school debts would be a priority of his presidency.⁸ Subsequently, the NYSBA announced the formation of a Special Committee on Student Loan Assistance for the Public Interest charged with the task of developing Krane's "Americorps-like" initiative, which committee is currently developing a repayment assistance program.⁹ Additionally, American Bar Association president Robert E. Hirshon announced in the November 2001 issue of the ABA Journal the creation of a new ABA commission to examine the problem of increasing debt and to recommend "concrete solutions."¹⁰ The work of the ABA commission is ongoing, and

7. Evan A. Davis, *Work Demands All Our Time*, N.Y. L.J., May 1, 2001, at S3.

8. John Caher, *New State Bar President Champions Openness, Service*, N.Y. L.J., June 11, 2001, at 1.

9. See *infra* notes—and accompanying text; see also New York State Bar Association, N.Y. State Bar Association Looking to Offer Law School Loan Relief for New Lawyers Willing to Work With the Poor, <http://www.nysba.org/media/newsreleases/2001/loanforgiveness.htm> (Aug. 31, 2001).

10. Robert E. Hirshon, *Graduating Under Pressure*, ABA J., Nov. 2001, at 6. Describing the problem, Hirshon wrote:

If you talk to recent law school graduates, you know of a new dynamic that is threatening the health of our profession. Graduates of the class of 1998 incurred average debt of about \$80,000. This debt burden continues to increase. Keep in mind that this doesn't affect just a few. At least 86 percent of the law school class of 1996 borrowed funds to pay their tuitions and expenses.

When I quoted these statistics to a group of students at Tulane University, a private school, most just smiled. Their average debt is in excess of \$100,000. Under current amortization rates, they anticipate paying \$1,200 to \$1,400 per month for the first 10 years of their careers. Admittedly, those graduates didn't claim that they were "economically disadvantaged." They knew that starting salaries in private practice had skyrocketed. But herein lies the rub: Because of debt, more and more graduates find themselves limited to working in large private law firms, thus surrendering any possibility of taking on socially critical and experience-rich positions in government or legal service offices, or other important but lower-paying jobs.

Id.

it is currently focused on “promoting LRAPs and guiding ABA efforts to stimulate more LRAPs and scholarships/fellowships provided by law schools, the federal government, state governments, and other private sources.”¹¹

Statistics confirm that growth in average law school debt has dramatically outpaced not-for-profit and for-profit salaries, inflation and even tuition. A comparison of the growth in average law school debt, tuition, salaries and inflation from 1987 to 2002 is staggering:

| | 1987 | 2002% | Increase |
|--|-----------------|-----------------|----------|
| AVERAGE DEBT LOAD (NATIONWIDE) | \$16,000 | \$80,000+ | 400% |
| AVERAGE ANNUAL TUITION AT PRIVATE LAW SCHOOLS (NATIONWIDE) | \$8,286 | \$21,000 | 153% |
| STARTING SALARY AT CRAVATH, SWAINE & MOORE | \$65,000 | \$125,000 | 92% |
| STARTING SALARY AT THE LEGAL AID SOCIETY OF NY | \$26,000 (1986) | \$42,000 | 61% |
| INFLATION (CPI) | | | 58% |
| MEDIAN SALARY OF ENTRY-LEVEL LAWYERS (NATIONWIDE) | \$36,000 (1983) | \$45,000 (1998) | 25% |

Access Group, Inc., a non-profit organization that provides private and federal loans to graduate and professional school students, reports that from 1993 to 1998 average borrowing by law school students that used Access Group’s services increased from \$47,000 to \$69,000.¹² Extrapolating from Access Group’s figures, the National Association for Public Interest Law estimates that the total debt of an average 1998 law school graduate was about \$80,000.¹³ According to U.S. News & World Report, law schools in New York City reported the following average borrowing *for law school alone* among their 1998 graduates:¹⁴

11. Commission on Loan Repayment and Forgiveness, American Bar Ass’n, *Commission Information and Loan Repayment/Forgiveness News*, <http://www.abanet.org/legalservices/lrap/> (updated May 23, 2002).

12. Rob Anderson, *Back to the Books*, New Orleans CityBusiness, Nov. 26, 2001, at 6B.

13. National Association for Public Interest Law, *Financing the Future: NAPIL’s 2000 Report on Law School Loan Repayment Assistance and Public Interest Scholarship Programs 13* (2000) (hereinafter “Financing the Future”). NAPIL arrived at its estimate by taking the average amount of private loans borrowed reported by the Access Group, and adding the maximum subsidized and unsubsidized student loan amount. See *id.* at 13 & n.*.

14. Data retrieved from U.S. News & World Report Online, *Compare Law Schools*, <http://www.usnews.com/usnews/edu/beyond/apps/gradlaw.htm> (last visited January 24, 2002).

LEGAL EDUCATION AND ADMISSION TO THE BAR

| LAW SCHOOL | AVG. INDEBTEDNESS (1998) |
|---------------------|--------------------------|
| Brooklyn | \$58,900 |
| Cardozo | \$70,500 |
| Columbia | \$83,788 |
| CUNY | N/A |
| Fordham | \$71,190 |
| New York Law School | \$65,193 |
| NYU | \$86,706 |
| St. John's | \$58,900 |

The U.S. News figures do not include undergraduate debt, which, in 1998, averaged about \$9,500.¹⁵

Considering the situation of an average attorney accepting public service employment in New York City brings the magnitude of her likely debt obligation into stark relief. Median starting salaries for 1998 graduates entering public service as reported by the seven New York City law schools that provided such information to U.S. News and World Report ranged from \$38,000 to \$42,000. Assuming a salary of \$40,000, a New York City attorney would take home approximately \$2400 per month.¹⁶ The monthly payments on \$80,000 of student loan debt total approximately \$900.¹⁷ Thus, a New York City lawyer with the average debt load who chose to work in public interest would face a job market in which the median salary left the lawyer with about \$1500 per month after taxes and student loan payments.

Fifteen hundred dollars per month is *less* than six of the seven New York City law schools calculate as the monthly non-tuition “cost of attendance” for students:¹⁸

15. See Philip G. Schrag, *The Federal Income-Contingent Repayment Options for Law Student Loans*, 29 Hofstra L. Rev. 733, 747 n.64 (2001)

16. The calculation assumes the lawyer was single, living in New York City, and took the standard deduction, resulting in \$5577 in federal taxes, \$2763 in state and city taxes, \$2480 in Social Security taxes, and \$580 in Medicare taxes per year using 2001 marginal rates.

17. See *Financing the Future*, *supra* note 5, at 421.

18. Figures were derived from Cost of Attendance information provided at Benjamin N. Cardozo School of Law, *Tuition and Fees*, <http://www.cardozo.yu.edu/admissions/tuition.html> (visited January 31, 2002); Brooklyn Law School, *Estimated Expenses, 2001-2002 Academic Year*, <http://www.brooklaw.edu/finaid/expenses2001.shtml> (visited January 31, 2002); Columbia Law School, *Admissions: Tuition, Financial Aid, and Housing*, <http://www.law.columbia.edu/admissions/tuit1.html> (visited January 31, 2002); CUNY School of Law, *Admission Requirements*, <http://www.law.cuny.edu/Apply/admission/main.html#budget>

LAW SCHOOL DEBT AND THE PRACTICE OF LAW

| LAW SCHOOL | MONTHLY (NONTUITION) COST OF ATTENDANCE |
|---------------------|---|
| Brooklyn | \$1765 |
| Cardozo | \$2413 |
| Columbia | \$1781 |
| CUNY | \$1304 |
| Fordham | \$2076 |
| New York Law School | \$1736 |
| NYU | \$2327 |
| St. John's | \$1631 |

Thus, although law school financial aid offices caution that the “cost of attendance” budget merely “allows for a simple lifestyle, that of a graduate student”¹⁹ and that “[s]tudent costs of attendance are just that, STUDENT costs . . . set to a different lifestyle than that of a New Yorker earning \$40,000 a year,”²⁰ a New York City lawyer earning \$40,000 a year and carrying the average debt load would have to live an even *more* spartan lifestyle than that expected of law students. Moreover, the lawyer would have to do so without the benefit of the subsidized housing that some of the City’s law schools provide and without payments on their undergraduate loans being deferred (as they are during law school).

Given these fiscal realities, it is perhaps not surprising that lawyers have the dubious distinction of having the highest default rates among students borrowing for graduate studies.²¹ In 1995, the *National Law Journal* reported:

From 1985 to 1995, at a time when salaries and available jobs were largely flat or headed south, borrowing among law students exploded, with average indebtedness upon graduation now rising at a rate of more than 20 percent a year. At the same time, private law school tuition was rising 7 percent to 10 per-

(visited January 31, 2002); Fordham University School of Law, Cost of Attendance, <http://law.fordham.edu/htm/fa-cost.htm> (visited January 31, 2002); and New York University School of Law, How Much Is the Budget, <http://www.law.nyu.edu/finaid/budget.html> (visited January 31, 2002), as well as through telephone inquiries to New York Law School and the St. John’s University School of Law made on February 4, 2002.

19. New York University School of Law, *supra* note 18.

20. Fordham University School of Law, Financial Planning, <http://law.fordham.edu/htm/fa-finpla.htm> (visited January 31, 2002).

21. Dana Coleman, Dubious Distinction: Law Students Top Defaulters, N.J. Lawyer, Jan. 5, 1998, at 5.

cent a year, now averaging around \$15,000. Lawyers today default on student loans more often than doctors, engineers and business school graduates, lenders say. At some law schools, as many as 40 percent of the past decade's graduates have stopped paying their loans.²²

The default rate among law school graduates nationwide is estimated at between 15 and 20 percent.²³

On at least one occasion, the default rate at a particular school has led that institution to take measures to restrict the amount its students may borrow. In response to rising default rates, Nova Southeastern University sought to reduce its students' cost of attendance both by reducing the school's calculation of "reasonable" expenses and by limiting tuition increases.²⁴ Among other things, NSU reduced the housing portion of the "cost of attendance" budget, reasoning that modest housing with a roommate is more appropriate for a student living on credit than the previously assumed "one-bedroom garden apartment (with den or office) in a complex that had a pool and exercise facilities" in a high-rent area close to the University.²⁵ Second, it eliminated an allowance for traveling home over the semester break, reasoning that NSU students who are Floridians

22. Ann Davis, *Graduate Debt Burden Grows; Of All Professionals, Law Grads Have Compiled the Worst Loan Default Record*, Nat'l L.J., May 22, 1995, at A1.

23. *Id.*; see also Coleman, *supra* note , at 5. Educational loan defaults by law school graduates are of concern to the profession for several reasons. First, private lenders react to high levels of default by making it harder for students to borrow, thus either increasing the costs of a legal education (through higher interest rates) for those students who must borrow to attend law school or effectively foreclosing such students from attending law school. See generally Chris Klein, *A Leading Creditor Says It Will Make Student Borrowing Tougher*, Nat'l L.J., Nov. 25, 1996, at A16 (describing steps taken by the Access Group in response to high default rates among law school graduates). Second, graduates who default prior to being admitted to the bar may have difficulty passing a character and fitness evaluation. See, e.g., Joseph D. Harbaugh, *Legal Education Economics 101: A Primer for Bar Examiners*, *The Bar Examiner*, Nov. 2001, at 26 & n.38; Coleman, *supra* note , at 5. Third, lawyers already admitted to practice may face disciplinary action—including suspension of their licenses to practice -- as a result of defaulting on student loans. See *Notices to the Bar: Rule Proposed to Suspend Licenses of Lawyers Not Repaying Student Loan*, *N.J. Lawyer*, May 14, 2001, at 30; Nancy Ritter, *Student Law Deadbeats: Heat's on Lawyers*, *N.J. Lawyer*, Apr. 5, 1999, at 1. Finally, a high default rate simply reflects badly on the profession as a whole.

24. See Harbaugh, *supra* note 23, at 25. "Cost of Attendance" is defined in federal law, see 20 U.S.C. § 1087II, and serves as an upper limit to the amount students may borrow through educational loan programs. In general, "cost of attendance" includes tuition and fees as well as reasonable living and other allowable expenses as calculated by each school. *Id.*

25. Harbaugh, *supra* note 23, at 25 n.31.

(the majority) could drive, and the remainder “could turn to their families for fare assistance.”²⁶ These changes and other in NSU’s “cost of attendance” budget reduced the amount an NSU student could borrow by a total of \$12,450 over the course of three years of attendance.²⁷

Unsurprisingly, NSU reports that, as a result of these changes and other efforts to educate students about the perils of debt, student borrowing has indeed dipped commensurate with the reduced “cost of attendance.”²⁸ But reductions in the “cost of attendance” such as those enacted by NSU reduce student borrowing not by providing them a legal education at a lower cost, but instead by forcing students who must finance their educations to live more austere during law school. Taken too far, such a strategy could effectively foreclose some prospective students from attending law school if those students were unable or unwilling to live under the conditions the law school envisions are appropriate for the majority of its students. A single parent, for example, might not wish to live with a “roommate” as envisioned by NSU.

Nor do many law schools have the flexibility to substantially reduce “cost of attendance.” As noted above, New York’s law schools already consider their “cost of attendance” budgets to provide for “a simple lifestyle.” For many law students, then, incurring large debts may be their only way to afford to attend school.

III. THE PARTIAL ANSWER: EFFECTS ON PUBLIC INTEREST LEGAL SERVICE AND THE RISE OF LRAPS

The problem associated with the high debt loads of recent law school graduates that gets the most attention from the bar is the perceived impact on the number of lawyers seeking employment with public service law offices. The effect of debt on public interest organizations was mentioned by each of the bar association presidents quoted above, and it has also been referred to in newspaper articles,²⁹ radio news features,³⁰ and

26. *Id.*

27. *Id.*

28. *Id.*

29. See, e.g., Diane E. Lewis, *Probably Not in Public Interest: High Debt, Low Pay Drive Young Idealistic Lawyers from Hub*, *Boston Globe*, Aug. 24, 2001, at D1; James V. Grimaldi, *The Legal Eagles Are Taking Wing; Agencies Losing Recruiting Fight With Law Firms As Salaries Soar*, *Wash. Post*, May 9, 2000, at A29.

30. See, e.g., Trish Anderson, *Lawyers for Poor Face Own Financial Struggles* (New Hampshire Public Radio broadcast, July 3, 2001), available at http://www.nhpr.org/content/fullmonty_view.php/974/ (last visited January 15, 2002).

remarks to legislative bodies by leading members of the bench and bar.³¹ As Stuart A. Van. Meveren, President of the National District Attorney's Association told a subcommittee of the House Judiciary Committee,

With school loans frequently in the range of \$100,000, aspiring prosecutors and public defenders face a crippling debt burden that, for economic reasons, drives them to other career choices. I suspect that this financial burden hits minority students even harder and makes their choice to enter public service that much more difficult.³²

In response to this perceived problem, law schools, governments, bar associations and legal employers are increasingly offering a variety of programs to alleviate the debt obligations of attorneys pursuing qualifying public interest employment. As further explained below, these programs vary widely in the amount of benefits offered and the range of employment they seek to support. What they all have in common is that they reflect a choice to alleviate the debt burdens of some lawyers rather than others based on their choice of employment.

A. Law School Debt Repayment Programs

Loan Repayment Assistance Programs are the most common way law schools attempt to alleviate the debt burdens on their students. The National Association for Public Interest Law estimates that about fifty law schools have LRAPs of some form or another,³³ including six of the eight law schools in New York City.³⁴ Unfortunately, the funding for law school programs is extremely uneven and just six law schools currently award more than fifty percent of LRAP dollars given to graduates.

Typically, LRAPs provide funds to graduates in the form of loans,

31. See, e.g., State Supreme Court Justice Calls for Better Indigent Care, AP Newswire, January 18, 2002, available at Westlaw, 1/18/02 APWIREs 14:33:00 (describing speech by Chief Justice Norman Fletcher of the Supreme Court of Georgia to that state's legislature); Legislative Hearing on H.R. 4167, "The Innocence Protection Act of 2000" Before the Subcomm. on Crime of the House Comm. on the Judiciary, 106th Cong, 152-63 (2000) (testimony of Stuart A. Van. Meveren, President of the National District Attorneys' Association).

32. Legislative Hearing on H.R. 4167, *supra* note 31, at 162.

33. See Student Organizing Department, National Association for Public Interest Law, *Loan Repayment Information* <<http://www.napil.org/SUB-SO/Lrap/SO-lawschoollrap-FM.html>> (visited February 6, 2002).

34. St. John's University School of Law and the CUNY School of Law do not currently offer an LRAP.

which are subsequently forgiven. Providing funds in the form of loans qualifies the programs for favorable tax treatment pursuant to 26 U.S.C. §108(f)(2)(D)(ii): if the recipient is providing legal services to an underserved population, the funds provided are not taxable income. Another common feature is an income qualification, either in the form of a hard ceiling beyond which a graduate is not eligible for the program, a sliding scale that reduces assistance as income rises, or a combination of both.

LRAP programs vary widely in many important respects. These include (1) what loans are covered; (2) what type of employment qualifies a graduate for the program; and (3) how income is calculated. Set forth in Appendix A to this report is a comparison of the LRAPs offered by the Columbia Law School and the Fordham University School of Law, which illustrates the sometimes complex and contingent qualification requirements of these types of programs.

Unfortunately, evidence suggests that the complexities and contingencies associated with LRAPs may result in the inefficient use of LRAP funds. A 1995 study by professors Kornhauser and Revesz posited in part that, on a dollar for dollar basis, LRAP programs were less effective than scholarships in encouraging the pursuit of not-for-profit careers.³⁵ Based on this preliminary hypothesis, Kornhauser and Revesz launched the Innovative Financial Aid Study (the “IFAS”), which compared the effect of variously structured forms of career contingent financial aid study on the job choices of certain NYU graduates in the classes of 1998 through 2001.³⁶ Specifically, some students participated in a program structured as a “tuition waiver” whereby all tuition was waived during law school but would have to be repaid if the student did not pursue public interest employment, while other students incurred loans but were eligible for loan forgiveness if they pursued public interest employment.³⁷ Importantly, the study ensured that there was *no difference in the monetary values of the two financial aid packages*.³⁸

Analyzing the data from the IFAS, Erica Field of Princeton University

35. Lewis A. Kornhauser & Richard L. Revesz, *Legal Education and Entry into the Legal Profession: The Role of Race, Gender and Educational Debt*, 70 N.Y.U. L. Rev. 829 (1995).

36. See Office of Development and Alumni Relations, New York University School of Law, *Innovative Financial Aid Study*, < <http://www.law.nyu.edu/alumni/surveys/financialaid/> > (visited June 1, 2003).

37. See Erica Field, *Educational Debt Burden and Career Choice: Evidence from a Financial Aid Experiment at NYU Law School 4-5* (February 2003), available at < <http://www.princeton.edu/~emfield/Fieldnyu.pdf> > .

38. See *id.* at 6-7.

found that recipients of the financial aid package styled as a tuition waiver were much more likely to pursue public interest employment than those eligible for loan repayment.³⁹ Indeed, students receiving tuition waivers had a 32% higher rate of first job placement in public interest law and a 91% higher rate of clerkships than students who paid tuition but were eligible for loan repayment assistance.⁴⁰ Field attributes the difference in participation rates to persistent levels of risk aversion or, more accurately, perceived risk aversion among law students.⁴¹ These conclusions are obviously of significant importance to those concerned with the relationship between law school debt and public interest legal services because they suggest a revenue-neutral way to more effectively encourage public service.⁴²

B. Government Debt Relief Programs

Although government-funded loan repayment assistance and loan forgiveness programs for medical doctors have become commonplace,⁴³ such programs for lawyers are rare. Only very limited federal assistance is available, and only one state—Maryland—offers an operational state-run assistance program. This section briefly outlines the federal programs and Maryland's program.

1. Federal Programs

Federal regulations provide that Perkins loans, which are made based on financial need and may total up to \$40,000 for students who have completed a post-graduate degree, may be forgiven if a graduate works in qualifying employment.⁴⁴ Qualifying employment includes full-time employment for twelve consecutive months in a nonprofit child or family service agency with high risk children from low income families or employment in an agency that enforces criminal law.⁴⁵ Loans are forgiven as follows: 15% for each of the first two years of qualifying employment; 20% for each of the third and fourth years of qualifying employment, and 30% for the fifth

39. *Id.* at 27.

40. *Id.* at 17-18.

41. *Id.* at 27-28.

42. See *id.* at 28.

43. See generally Association of American Medical Colleges, *Financing Your Medical Education: State and Other Loan Repayment/Forgiveness and Scholarship Programs*, < <http://www.aamc.org/students/financing/repayment/start.htm> > (visited February 8, 2002) (searchable database of various state and federal programs).

44. See generally 34 C.F.R. 674.1 et seq. (2001) (regulations governing the Perkins Loan program).

45. See *id.* §§ 674.56(b), (d), 674.57.

year of qualifying employment.⁴⁶ Thus, after five years, 100% of Perkins loans may be forgiven.

For graduates with Stafford Loans, the only federal relief available is through the income-contingent repayment option for repayment of direct student loans.⁴⁷ Graduates would have to consolidate their federally-guaranteed loans into a new direct loan for this purpose. Under the income-contingent repayment option, a graduate would be required to pay 20% of the difference between her adjusted gross income and the federal poverty level for a family of her size.⁴⁸ If the resulting payments are less than the interest payments on the loan, the difference will be added to the loan's principal, until the outstanding balance is 110% of the amount borrowed.⁴⁹ After the outstanding balance reaches the 110% level, any difference between payments made and interest due is accounted for, but is not capitalized into the loan balance.⁵⁰ In other words, beyond the 110% level, interest does not compound. After twenty-five years, any amounts still due are forgiven.⁵¹

In an extensive evaluation of the income-contingent repayment option with respect to law school loans published in the Spring 2001 issue of the *Hofstra Law Review*, Professor Philip G. Shrag, Director of the Center for Applied Legal Studies at the Georgetown University Law Center, found that the program as currently structured was not attractive to most graduates.⁵² Indeed, he noted that "virtually no law graduates use income-contingent repayment, but 2.8% of all law students take initial jobs as public interest lawyers."⁵³ Accordingly, he recommended several reforms, primarily including a reduction in the twenty-five year repayment/forgiveness period to fifteen or seventeen years.⁵⁴

The paucity of federal assistance may be changing, however. On May 21, 2003, Senator Richard Durbin introduced S. 1091, the Prosecutors and Defenders Incentive Act, in the United States Senate, and Representative

46. See id. §§ 674.56(d), 674.57(b)(2). During qualified employment, the Federal Government repays the loan to the institution that made it. See id. § 674.63.

47. See generally 34 C.F.R. 685.100 et seq. (2001) (regulations governing the William D. Ford Federal Direct Loan program).

48. See id. § 685.209(a).

49. See id. § 685.209(c)(5).

50. See id.

51. See id. § 685.209(c)(4)(i),(iv).

52. Schrag, *supra* note , at 774-93, 830-40.

53. Id. at 848.

54. See id. at 840-58.

LEGAL EDUCATION AND ADMISSION TO THE BAR

David Scott introduced an identical Bill, H.R. 2198, in the House of Representatives.⁵⁵ The Act would create a federal LRAP for attorneys working as prosecutors or public defenders in State courts.⁵⁶ Payments would be capped at \$6,000 per year and \$40,000 per person, and the initial appropriation would be \$20,000,000.⁵⁷ The bills are currently pending before the Senate Committee on Health, Education, Labor, and Pensions and the House Committee on Education and the Workforce.⁵⁸

2. Maryland's Janet L. Hoffman Loan Repayment Assistance Program

Maryland's state-funded Janet L. Hoffman Loan Repayment Assistance Program is the only operational state-run LRAP, and it is similar in structure to the law school LRAPs discussed above. The Maryland program provides assistance to attorneys (and other professionals) who are employed full-time in state or local government, or in a nonprofit organization in Maryland that helps low-income, underserved residents or underserved areas in the state.⁵⁹ To qualify, a participant's gross salary cannot exceed \$50,000, and, if the participant is married, the couple's combined gross salaries cannot exceed \$110,000.⁶⁰

Awards are calculated as follows: \$3,600 per dependent child under the age of 18 is subtracted from the participant's gross salary, and the result is used to calculate a participant's expected contribution toward loan payments as follows:⁶¹

| GROSS SALARY—DEPENDENT ALLOWANCE | EXPECTED CONTRIBUTION (as a percentage of salary) |
|----------------------------------|--|
| under 20,000 | 0% |
| 25,001 - 25,000 | 1% |
| 25,001 - 30,000 | 2% |
| 30,001 - 35,000 | 4% |
| 35,001 - 40,000 | 5% |
| 40,001 - 45,000 | 6% |
| 45,001 - 50,000 | 7% |

55. See 149 Cong. Rec. S6852 (daily ed. May 21, 2003) (Senate); *id.* at E1040 (House).

56. See S.1091, 108th Cong. § 2(a).

57. *Id.*

58. Current bill status is available at < <http://thomas.loc.gov> > by bill number.

59. See Maryland Higher Education Comm'n, *State Scholarship Program Descriptions*, < <http://polar.mhec.state.md.us/SSA/progdesc.htm#LARP> > (visited February 8, 2002). For the implementing legislation, see Md. Code. Ann., Education, 18-1501 et seq. (2001).

60. See Maryland Higher Education Comm'n, *supra* note 59.

61. Telephone Interview with Cis Whittington, Maryland Higher Education Commission, conducted February 21, 2002.

The participant's expected contribution is then subtracted from the total amount of his annual loan payments, and the difference is the amount of the award, up to a maximum of \$7,500.⁶² There are currently approximately 190 participants, including all eligible professions, in the Maryland program.⁶³ The number of attorneys participating is not available.⁶⁴

Other states have recently authorized the creation of state administered LRAPs, but have not yet appropriated funds. California and Texas enacted authorizing legislation for statewide LRAPs in 2001 and Georgia enacted authorizing legislation for a statewide program in 2002, but currently all three states' programs are un-funded and non-operational.

In February 2001, members of the New York State Assembly and Senate introduced two identical bills that would have created a state-funded loan repayment assistance program called the "Criminal Justice Loan Assistance Program." The program had bipartisan support, having been introduced in the Senate by Republican Senator Dale M. Volker, and in the Assembly by Democratic Assemblyman Brian M. McLaughlin.

The legislation's "Declaration of Policy and Legislative Intent" states that "attorneys in the public sector often wish to make a long-term commitment to public-service work," but are unable to do so because of "significant student debt" and the "grave difficulty in repaying this debt on a public-sector salary," and that, accordingly, many are forced to leave the public sector.⁶⁵ Further, because "the loss of so many capable public-sector attorneys has an adverse impact on the criminal justice system[] . . . it is in the State's best interest to offer financial assistance to eligible criminal justice attorneys."⁶⁶

The program provided "eligible attorneys" annual repayment assistance in the amount of the total annual educational loan repayments due from each attorney, less any amount of repayment assistance the attorney might receive from other sources, up to an annual maximum of \$3,400, during "each year of qualified service."⁶⁷ "Eligible attorney" was defined as a prosecutor or defense attorney working at an agency providing representation to indigent defendants, in the attorney's fourth through

62. *Id.*; see also Maryland Higher Education Comm'n, *supra* note 60.

63. Telephone Interview with Cis Whittington, *supra* note 61.

64. *Id.*

65. S.B. 2304, 224th Ann. Legis. Sess. (N.Y. 2001). As noted in the text, Assembly Bill 4430 is identical.

66. *Id.*

67. *Id.*

tenth year of employment in such a position, and who has held a law degree for no more than eleven years.⁶⁸ Thus, the program required a minimum four year commitment in qualifying employment before an attorney would be eligible, and would provide, at most, \$20,400 in benefits over six years.

The “Introducer’s Memorandum In Support” noted that the legislation did not present a “radical concept” in that the State’s Education Law already provides forgiveness awards to doctors working in underserved areas.⁶⁹ The Memorandum further noted that New York and other states offer scholarships and other forms of assistance to dentists, optometrists, teachers and others who provide services which are valuable and necessary.⁷⁰

The bills expired without committee action in the 2001-2002 sessions. Identical bills have been reintroduced, however, for the 2003-2004 Regular Sessions and are currently pending before the Judiciary and Ways and Means committees.⁷¹

C. Privately Run Statewide LRAPs

Seven states currently have LRAP programs administered by private organizations. Arizona, Florida, Maine and New Hampshire have programs that are administered by the states’ Bar Foundations. Minnesota, North Carolina and Texas have programs administered by independent 501(c)(3) organizations. All of these programs were developed relatively recently, with the Florida, Maine, New Hampshire and Texas programs having been developed since 2000. North Carolina’s program, the North Carolina Legal Education Assistance Foundation (“NC LEAF”) was developed in 1989 and is the oldest privately run statewide LRAP. NC LEAF was developed by students and deans at North Carolina’s law schools.⁷² As of January 22, 2002, NC LEAF had provided over \$700,000 in loan repayment assistance to 116 attorneys since its creation.⁷³ The eligibility requirements of the NC LEAF program are described in greater detail in Appendix B to this report.

68. Id.

69. Id.

70. Id.

71. See A.B. 2650, 226th Ann. Legis. Sess. (N.Y. 2003); A.B. 7463, 226th Ann. Legis. Sess. (N.Y. 2003); S.B. 1110, 226th Ann. Legis. Sess. (N.Y. 2003); S.B. 2081, 226th Ann. Legis. Sess. (N.Y. 2003).

72. See North Carolina Legal Education Assistance Foundation, North Carolina Legal Education Assistance Foundation, <<http://www.ncleaf.org>> (last visited February 10, 2002).

73. Id.

Nationwide, bar associations have also taken leading roles in promoting awareness of problems relating to law school debt and in advocating for LRAP programs. As noted above, in August 2001 the ABA created the Commission on Loan Repayment and Forgiveness. Curtis M. Caton, the Commission's Co-Chair says that the Commission's primary focus is on the "access to justice" issues presented by rising debt burdens. "There are vital legal services jobs in impoverished or rural areas that today's law school graduates simply cannot even consider because of their large debt loads" says Mr. Caton. The Commission issued an Informational Report to the House of Delegates in February 2003 summarizing its primary initiatives, including (1) coordinating lobbying for federal legislative and regulatory relief programs; (2) developing model LRAP legislation and working with state legislatures and bar associations to adopt statewide programs; and (3) working with law school administration and alumni to develop more and better law school LRAPs.

In June 2002, the New York State Bar Association's Special Committee on Student Loan Assistance for the Public Interest issued a report that proposed the establishment of a "New York State Loan Repayment Assistance Pilot Program."⁷⁴ The proposed program would be structured similarly to the NC LEAF program mentioned above. The State Bar Committee proposed that a not-for-profit corporation created by the NYSBA administer the Pilot Program, review and amend eligibility criteria and program guidelines, and be in charge of fundraising for the Program.⁷⁵ The proposal contemplated that the initial sources of funding for the program will be private, including law firms, individual attorneys, bar associations, and law schools. It expresses the hope that ultimately government funds will be made available to support the program.⁷⁶

The State Bar Committee's proposal was approved by the House of Delegates of the New York State Bar Association on June 22, 2002. Since then, the New York Bar Foundation has provided an initial donation of \$20,000, and the Committee is developing a program description and loan application packet.⁷⁷ The Bar Association expects to release

74. Special Committee on Student Loan Assistance for the Public Interest, New York State Bar Association, *Attracting Qualified Attorneys to Public Service* (June 2002), available for download at http://www.nysba.org/Content/NavigationMenu/Sections_Committees/Student_Loan_Committee/slapireport3.pdf.

75. *Id.* at 6.

76. *Id.* at 9-10.

77. E-mail from Lisa Bataille, New York State Bar Ass'n, to Ellen Lieberman, Committee on Legal Education and Admission to the Bar, Association of the Bar of the City of New York, dated May 22, 2003.

initial materials in Fall 2003 and make its first four awards (of \$6,000 each) in 2004.⁷⁸

D. Employer Run LRAPs

Some public service employers offer some sort of debt contingent aid. Groups such as Greater Boston Legal Services and Georgia Legal Services Program offer comprehensive LRAPs that substantially or entirely service law school debt during periods of employment. These programs also serve an important employee retention purpose by conditioning payment on an agreement to remain employed at the organization for a specific number of years and imposing a repayment obligation on attorneys who leave prior to the expiration of their commitment. The Georgia Legal Services Program has improved retention by conditioning debt payment on a three-year employment commitment. “We see increased attrition after three years which suggests that the program does help us retain attorneys” reports Executive Director Jack Webb.

Other employers, such as The Legal Aid Society of New York, offer special grants or fellowships based at least in part on a recipient’s debt obligations. The Legal Aid Society awards its Stein Fellowship to newly recruited attorneys based on individualized assessments of merit and need, including consideration of the size of a candidate’s debt obligation and the likelihood that the debt obligation will prevent a candidate from accepting employment with the Society. Such programs, therefore, provide employers greater discretion in awarding aid packages than do comprehensive LRAPs that have fixed eligibility criteria.

E. Federal Tax Relief for Qualifying Student Debt

Provisions of the Internal Revenue Code adopted in 1997 potentially allow most attorneys performing public interest work to repay student loans with before-tax dollars.⁷⁹ On their face, the application of these provisions appears limited to repayment assistance programs run by governments, public benefit corporations managing hospitals, and schools.⁸⁰ As described below, however, at least one public interest organization is taking advantage of these provisions through a foundation set up expressly for this purpose. Depending on tax bracket and applicable state and local income tax rates, this favorable tax treatment could result in

78. *Id.*

79. See 28 U.S.C. § 108(f).

80. See *id.* § 108(f)(2).

considerable savings to qualifying attorneys of between 25% and 40% of their annual debt payments.

The provisions concern the tax treatment for educational loan forgiveness to attorneys serving at-need populations.⁸¹ In most commercial settings, loan forgiveness, or “discharge of indebtedness” creates taxable income to the recipient of the forgiveness under the theory that having a loan forgiven is the financial equivalent of being paid an amount that is then used to repay the loan. Prior to 1997, the tax code seemed to provide only a narrow exception to this rule for forgiveness of loans made by a governmental entity.⁸² The 1997 legislation broadened the definition of qualifying “student loan” to include any loan made either by an educational institution or other 501(c)(3) that is forgiven pursuant to a program “designed to encourage [students] to serve in occupations with unmet needs or in areas with unmet needs.” Importantly, “student loans” also include loans made to “refinance” a loan obtained from another source—for example a loan from a school [or foundation] that is used to pay down bank originated financial aid and that is then forgiven.

Under the interpretation of these provisions adopted by at least one public interest legal organization—Greater Boston Legal Services—virtually any public interest employer could enable its employees to repay student debt with pre-tax dollars. Under this interpretation, public interest employers, working in conjunction with law schools, organize and fund “LRAP Foundations” from which loans to employees are made. The employer makes an annual contribution to the LRAP Foundation in an amount roughly equivalent to the total amount of its employees’ annual debt service obligations. The LRAP Foundation then administers the program by making semi-annual or quarterly loans to participating attorneys to pay down their school debt and then, if the employee remained similarly employed at the end of the year, forgiving the loans. Greater Boston Legal Services, working in conjunction with Massachusetts Legal Assistance Corp., currently employs such a structure to make LRAP payments to Greater Boston’s attorneys tax exempt.

The savings under such a program would be substantial. For a hypothetical large public interest organization with one hundred attorneys and an LRAP program, the savings could total \$300,000 per year if attorneys repaid their debt with pre-tax dollars. If we assume that each attor-

81. See *id.* § 108(f).

82. See Richard C.E. Beck, *Loan Repayment Assistance Programs for Public-Interest Lawyers: Why Does Everyone Think They are Taxable?*, 40 N.Y.L. Sch. L. Rev. 251, 253 (1996).

ney pays \$500 per month, or \$6,000 per year, to service his or her debt, and we assume a marginal tax rate of 33%, then annual income of \$9,000, less \$3,000 in taxes, would typically be needed to service each attorney's \$6,000 debt payments. Under a tax-exempt LRAP Foundation program, there would be a \$3,000 tax savings per attorney. This money could be used for additional public interest program services, could be shared with each attorney or could be passed along entirely to each attorney as increased income. Importantly, there is no phase-out or even any income ceiling for the tax benefits provided by Section 108(f), so LRAP Foundation programs would not have many of the administrative complexities that plague other LRAP programs. LRAP Foundation programs, therefore, potentially are an extremely important development in the law school debt landscape. Like re-structuring LRAPs in creative ways to increase participation rates, as discussed above, developing LRAP Foundation programs does not require infusion of any new public or private funds to further the objective of ameliorating the effects of rising law school debt.

Unfortunately, the lack of Treasury Department guidance on the treatment of "foundation" programs under these provisions leaves room for a far less favorable result. Specifically, it is possible that the Internal Revenue Service could disregard the formal structure of such a program (including the considerable loan administration work performed by the LRAP Foundation) and characterize the program as effectively providing a loan from each donor-employer directly to its own employees. Under sub-paragraph 108(f)(3) such a re-characterization would cause the loan forgiveness to become taxable to employees because the sub-paragraph excludes student loans that are forgiven "on account of services performed for" the lending organization. Nevertheless, given the potential benefits of LRAP Foundation programs, it is imperative that this program structure be explored and guidance obtained from the IRS concerning the issues raised by the 1997 legislation.

F. Are These Programs Effective?

Although all of these programs purport to make public interest employment more financially attractive, the relationship between rising debt levels and public interest employment is not as simple as it might seem. It is difficult to draw a direct connection or correlation between increasing law school debt levels and a decreasing attorney candidate pool or rising attorney salary demands. Interviews with recruiting and hiring coordinators at public interest legal organizations confirm that rising debt levels

do seem to have negative effects on not-for-profits' hiring practices, but in ways that are somewhat unpredictable and hard to generalize. As an example, increased debt levels may not uniformly affect different practice areas within the public interest segment. Susan Hendricks, the Deputy Attorney in Charge of The Legal Aid Society's Criminal Division, reports that, in her experience, sustained debt burden is both a cause of attorney attrition and an impediment to hiring a diverse attorney workforce. "For our criminal practice, it is incredibly valuable to hire attorneys who share a similar socio-economic background as our clients. Unfortunately, such attorneys are often burdened with a great debt load that discourages them from accepting an offer of employment." By contrast, Ronald Richter, the Deputy Attorney in Charge of the Juvenile Rights Division of The Legal Aid Society of New York, suggests that debt issues play out a little differently in his Division. "Most attorneys who come to Juvenile Rights know that they want to do this type of work even before going to law school and make financial preparations in advance. Sometimes people go to firms for a little while to pay down debt, but once they come here very few leave because of school loans."

Not-for-profits also report dramatically different experiences concerning the effects that debt has on hiring minority attorneys. Greater Boston Legal Services initiated a loan repayment assistance program (an "LRAP") in 2000 that provides substantial repayment assistance. Jody Sundquist, Greater Boston's Comptroller, reports that in the short time since the program started "it has been extremely effective in attracting minority candidates." This success suggests that, prior to the program's enactment, debt levels contributed to minority candidates' decisions to seek employment elsewhere. In contrast, Georgia Legal Services Program has a well-established and generous LRAP that has not succeeded in attracting minority candidates. Jack Webb, Georgia Legal Services' Executive Director, reports that "the primary beneficiaries of our program are middle class and white and most are women. This is the profile of our applicant pool. The program has basically operated as a middle class recruitment tool." This experience, in contrast to Greater Boston's, suggest that in Georgia Legal's case debt burden is not the primary obstacle to recruiting lower-income and/or minority candidates to public interest employment. Susan Lindenauer, Counsel to the President of The Legal Aid Society, confirms that it may be difficult to assert that LRAPs uniformly confer a benefit, in terms of a better applicant pool or otherwise, upon public interest employers that is distinct from the obvious benefits provided to employees. "Nobody disputes that LRAPs are great for our employees, but certainly there are people

here who say that if the point is to help the Society achieve its mission, the checks should be written directly to us.”

The limited amount of empirical research in the area further suggests that law school debt plays a subtle and perhaps secondary role in law students’ decisions to pursue for-profit or not-for-profit employment. Indeed, in the 1995 study referenced above, Professor Kornhauser and Professor Revesz found only a weak correlation between lower debt levels and selection of not-for-profit careers—although, interestingly, they also found that debt load played a more significant determinant of career choice for African American and Latino women law students than for other law students.⁸³ Accordingly, they concluded that “contrary to commonly held beliefs, law school debt does not have a significant effect on attorneys’ first job choice” and that the factors with the most significant effect on job choice are “race . . . , career plans, educational performance, and the relative wages in the different sectors of the profession.”⁸⁴

In summary, it should not be assumed that LRAPs confer a general benefit upon public interest legal organizations by dramatically increasing the size and composition of the public interest legal workforce. Rather, LRAPs primarily benefit discrete pockets within the public interest community by either successfully motivating a relatively small subgroup of debt-sensitive lawyers to select public interest careers or by granting an economic benefit to lawyers who would have, in any event, chosen to work in public interest law. And although granting economic benefits to public interest lawyers may be a laudable goal in and of itself, it is not the asserted goal of most LRAPs.

IV. THE UNDERADDRESSED PROBLEMS: THE EFFECT OF RISING LAW SCHOOL DEBT ON PRIVATE PRACTICE

Another problem less frequently attributed to the high debt loads of recent law school graduates is that graduates with significant debt might choose employment with a large firm, with a large salary and demands to match, even if they are more suited for—and, in the absence of their debt, would otherwise choose—employment in the private sector at a lower salary but with fewer demands. Most often, this problem is described in terms of lawyer burnout or dissatisfaction. Evan Davis, for example, referred to young lawyers “end[ing] up in places they never intended to be

83. Kornhauser & Revesz, *supra* note 22, at 915, 925-930.

84. *Id.* at 957.

. . . [and] grow[ing] disillusioned and cynical about the profession.”⁸⁵ Similarly, Justice Stephen Breyer, in remarks at the 2001 Annual Meeting of the American Bar Association, noted that the increasing financial pressures of private law practice are “aggravated for younger lawyers by law school loans that may amount to \$100,000 or more, which must be paid back from their earning in practice.”⁸⁶

In their 1995 study, professors Kornhauser and Revesz found that debt burden had a statistically significant effect on new graduates’ choice between “elite for-profit” jobs and “non-elite for-profit” jobs for women, but not for men.⁸⁷ More recent research by Robert M. Sauer, an economist at Brown University, concludes that indebtedness does not have a significant effect on graduates’ *initial* job choices, but that debt does have an effect on attorneys’ willingness to transition to a lower-paying job within the first few years after graduation.⁸⁸ It seems safe to conclude, therefore, that even years after graduation from law school, debt levels impel attorneys to stay in jobs that they do not like.

Moreover, it is important to remember that, unlike the graduates of elite law schools studied by Kornhauser and Revesz and by Sauer, many law school graduates do not have the opportunity to take a highly demanding but well-paying job in order to pay off their loans. Thus, these students cannot choose to alleviate their financial stresses by taking (or staying at) a job they dislike. Rather, they must live with the financial pressure of their debt—and all of the constraints that it brings—for the full term of their loans.

With very few exceptions, existing LRAPs do not provide assistance to lawyers in private practice, perhaps because high debt levels among lawyers in private practice appears on its face to be solely a problem for those lawyers, rather than for the profession or for society. Extreme financial stresses, however, may lead a lawyer to take actions he would not otherwise take, such as taking marginal cases out of desperation, “borrowing from” or otherwise misusing client funds, or breaching other ethical duties to clients, such as the duty to avoid conflicts-of-interest and the duty

85. Davis, *supra* note , at S3.

86. Justice Stephen Breyer, *Our Civic Commitment*, Address at the Annual Meeting of the American Bar Association (Aug. 4, 2001), available at http://www.supremecourtus.gov/publicinfo/speeches/sp_08-04-01.html (visited January 4, 2002).

87. Kornhauser & Revesz, *supra* note 22, at 918.

88. See Robert M. Sauer, *Educational Financing and Lifetime Earnings 25-26* (Dec. 2001) (unpublished manuscript, available from the author).

to take only those cases the lawyer will have time to adequately pursue. Financial stresses also may lead a lawyer to avoid taking on pro bono matters that would serve both a particular client in need and the public interest. Unfortunately, the Committee has found no study that has attempted to correlate lawyer educational debt with these potential problems.

V. CONCLUSIONS

Based on the empirical and anecdotal evidence currently available, this report offers five discrete conclusions that should guide the future development and adoption of law school debt relief programs.

1. Take Advantage of Heightened Interest in Debt Relief

Initially, public interest legal organizations should take advantage of the increasing attention to and support for public interest attorney debt relief programs. It is notable that in these difficult economic times there has been support for creating and expanding programs to assist public interest attorneys cope with their debts from both the government and private sectors. Public interest legal organizations should seek to leverage this support in ways that are most beneficial to both public interest attorneys and the organizations that employ them. For example, district attorneys' offices and public defender organizations should lobby in support of the recently-introduced Prosecutors and Defenders Incentive Act.⁸⁹

2. Re-evaluate and Tailor LRAP Goals

The prevailing wisdom frequently expressed by advocates of LRAP programs that debt levels generally deter law school graduates from pursuing public interest careers should be questioned and re-evaluated because it seems to have a stultifying effect on the creative administration of LRAPs. To date, the only empirical study of the issue indicates that career choice is not strongly correlated to debt levels, but is correlated to relative wages and pre-law school career plans. Thus, the common across-the-board structure of LRAPs that aspires to provide a level of partial debt relief to any attorney meeting certain financial eligibility criteria creates risks that the programs are over-inclusive; that is, they may provide debt relief to many attorneys who would have undertaken public service careers anyway and they are not sufficiently targeted to address particularized recruiting needs of public interest organizations.

89. See *supra* notes—and accompanying text.

It is hardly objectionable for LRAPs to provide a sort of generalized salary enhancement to existing public interest attorneys. However, it should be recognized that this role is different from the more compelling “access to justice” aspirations frequently expressed as necessitating LRAPs. If reducing the supposed deterrent effect of debt on student’s pursuit of public interest careers is indeed a primary motivation for a debt relief program, then that program should consider conversion to a scholarship program that grants tuition waivers to students who have pre-law school plans to work in public interest settings.

3. Maximize LRAPs’ Attractiveness to Students

LRAPs should be creatively designed to maximize their attractiveness to students. Professor Field’s conclusions that students are much more likely to participate in a program characterized as providing a “tuition waiver” over a financially equivalent program characterized as providing “debt relief” teaches the elemental lesson that LRAPs, like other things, must be marketed effectively. Other changes should be considered. For example, the current common practice whereby LRAPs make semi-annual or quarterly lump sum payments to attorneys who then use the payments to make their monthly loan payments, places an unfortunate administrative burden on the attorneys. The program would undoubtedly be more attractive to attorneys if LRAP providers administered loan repayments themselves, so that during periods of qualifying employment attorneys were truly relieved of all debt responsibilities.

4. Take Advantage of Tax Incentives

Programs must be developed to maximize the tax savings permitted under Section 108(f) of the Internal Revenue Code. LRAP Foundation structures similar to that proposed in this report should be adopted. To the extent that the tax treatment of such programs is in doubt, guidance must be sought from the Internal Revenue Service regarding the requirements for complying programs. Maximization of the tax benefits provided by Section 108(f) is of paramount importance because they potentially effectively reduce the financial burden of qualifying loans by thirty to forty percent.

5. Study the Effects of Debt Outside the Context of Public Interest Law

More study and attention should be given by law schools and bar associations to the problem of debt outside the context of public interest

law, to determine whether—and to what extent—law school debt contributes to possible ethical violations, to a reduction in the number of attorneys willing to undertake pro bono representation, and to the pricing of legal services at levels that render such services unaffordable for lower- and middle-income consumers. A lawyer with a \$1000 per month debt payment making \$50,000 per year in a major metropolitan area is facing heavy financial pressure whether she is working for the Legal Aid Society or for a ten-lawyer firm representing middle-class clients in matrimonial litigation. Moreover, law schools have an obligation to be responsive to the needs of all of their students, and not just those interested in public interest law.

July 2003

The Committee on Legal Education and Admission to the Bar

Lawrence M. Grosberg, *Chair*

Margaret M. Flint, *Secretary*

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APPENDIX A

**A Comparison of LRAPs Offered by Columbia Law School
and Fordham University School of Law**

Columbia's LRAP covers all formal indebtedness incurred by a student for payment of educational expenses, up to the standard student budget.⁹⁰ Inasmuch as Columbia currently estimates that the standard student budget is \$48,500,⁹¹ the total covered indebtedness could reach up to \$145,500. Personal loans, credit card indebtedness, consumer loans, and educational loans taken out by parents are not covered. Undergraduate loans are also not covered, although they are taken into account in calculating eligibility, as noted below.

Fordham has two separate repayment programs. The Revolving Loan Forgiveness Program ("RLFP") covers loans made directly by the school,⁹² which can total up to \$8,000 per year.⁹³ The Loan Repayment Assistance Program ("LRAP") covers Stafford loans taken out to fund law school,⁹⁴ which can total \$55,500. The amount of annual aid under the LRAP, however, is currently capped at \$7,000, which is less than the amount of annual payments on \$55,500 in loans.⁹⁵ No other loans are covered.

To qualify for Columbia's LRAP, graduates must be employed full-time in a position "that makes direct use of [the] graduate's legal education" for a government agency or in legal services for the poor.⁹⁶ "Legal services for the poor will ordinarily mean work for a non-profit organization providing legal services to a . . . low income population, but may

90. Columbia Law School, Loan Repayment Assistance Program (LRAP) for Columbia Law School, < <http://www.law.columbia.edu/finaid/lrap.html> > (visited February 7, 2002) (hereinafter Columbia LRAP).

91. See Columbia Law School, Columbia Law School: Tuition, < <http://www.law.columbia.edu/admissions/tuit1.html> > (visited February 7, 2002).

92. See Fordham University School of Law, Revolving Loan Forgiveness Program, < <http://law.fordham.edu/htm/fa-forgive.htm> > (visited February 7, 2002) (hereinafter Fordham RLFP).

93. See Fordham University School of Law, Fordham Aid: Fordham Loans, < <http://law.fordham.edu/htm/fa-needl.htm> > (visited February 7, 2002).

94. See Fordham University School of Law, Loan Repayment Assistance Program, < <http://law.fordham.edu/htm/fa-lrap.htm> > (visited February 7, 2002) (hereinafter Fordham LRAP).

95. See Fordham University School of Law, Loan Repayment Assistance Program: Loan repayment Assistance Awards, < <http://law.fordham.edu/htm/fa-lrap.htm> > (visited February 7, 2002) (hereinafter Fordham LRAP: Loan repayment Assistance Awards).

96. Columbia LRAP, *supra* note 91.

include private practice where[, in the judgment of the Law School,] the practice is limited to clients comparable to those served by government-supported and non-profit legal services organizations.”⁹⁷

To qualify for Fordham’s RLFP, graduates must be employed in government service or in a non-profit public interest organization providing legal services to “the poor, disabled, the homeless, the elderly or those deprived of their civil or human rights, or for the betterment of the condition of animals and the environment,” which organization has been specifically approved by the Committee administering the program.⁹⁸ To qualify for Fordham’s LRAP, graduates must be employed full-time “in law practice with an entity that has as one of its primary purposes providing legal services to or on behalf of persons who could not otherwise afford such services.”⁹⁹ Employment by the government does not qualify for Fordham’s LRAP.¹⁰⁰

The Columbia LRAP annually awards each participant the full amount of her loan payments per year, assuming a ten-year repayment schedule, and has no formal income ceiling.¹⁰¹ Participants are, however, expected to contribute a portion of their “adjusted gross income” to loan repayment, which contribution is deducted from any award.¹⁰² Specifically, participants must contribute 15% of any income between \$25,001 and \$40,000, and 34.5% of any income in excess of \$40,000, toward loan repayment.¹⁰³ Accordingly, the program has an effective cap of about \$95,000, as, above that level, a participant’s expected contribution would almost certainly exceed his annual debt service.¹⁰⁴

Columbia calculates “adjusted gross income” by taking adjusted gross income from the participant’s federal tax form, adding untaxed income and voluntary retirement contributions, and subtracting undergraduate

97. *Id.*

98. Fordham University School of Law, Revolving Loan Forgiveness Program: Qualifying Employment, < <http://law.fordham.edu/htm/fa-forgive1.htm> > (visited February 7, 2002).

99. Fordham University School of Law, Loan Repayment Assistance Program: Qualifying Employment, < <http://law.fordham.edu/htm/fa-lrap1.htm> > (visited February 7, 2002).

100. *Id.*

101. See Columbia LRAP, *supra* note 91.

102. *Id.*

103. *Id.*

104. The \$95,000 figure is derived by calculating the expected contribution for that income level (\$21,225 per year) and comparing it to the sum of 12 monthly payments on loans totaling \$145,500 amortized over ten years at 8% (\$21,183.84).

debt payments.¹⁰⁵ In the case of married participants, the greater of the participant's income or one-half of joint income is used.¹⁰⁶

The Fordham RLFP does not give "awards" per se. Instead, it suspends repayment and interest on loans for the first five years of the program, then forgives 1/3 of the total amount of loans at the end of the fifth, sixth, and seventh years of participation.¹⁰⁷ A participant's income must remain below a set ceiling in every year of participation, which ceiling is adjusted annually in accordance with changes in the Consumer Price Index.¹⁰⁸ Income is calculated by taking gross salary, adding income earned from stocks, bonds, and other investments, adding 5% of the participant's gross assets, and deducting education loan repayments, as well as \$5,000 for the first minor dependent child and \$2,500 for each additional minor dependent child.¹⁰⁹ For married participants whose spouse's income is higher, the average of the couple's incomes is used. For the class of 2000, the income ceiling was \$46,675. The Fordham LRAP annually awards each participant the full amount of his Stafford Loan payments for the year, up to a maximum of \$7,000.¹¹⁰ A participant's income must remain no greater than the amount paid by The Legal Aid Society in New York City to an attorney of the same class.¹¹¹ In 2001, that amount was \$41,973 for 2001 graduates, \$43,260 for 2000 graduates, and \$45,320 for 1999 graduates.¹¹² In the case of married participants, the participant's salary must remain below the applicable ceiling, and the couple's combined incomes must not exceed \$100,000.¹¹³ In addition, graduates with net assets in excess of \$25,000 are ineligible for the program.¹¹⁴

The Columbia LRAPs awards are in the form of replacement loans that are subsequently forgiven.¹¹⁵ The replacement loans are forgiven at a

105. Columbia LRAP, *supra* note 91.

106. *Id.*

107. Fordham RLFP, *supra* note 99.

108. Fordham University School of Law, Revolving Loan Forgiveness Program: Maximum Income Level, < <http://law.fordham.edu/htm/fa-forgive2.htm> > (visited February 7, 2002).

109. *Id.*

110. Fordham LRAP, *supra* note 99.

111. Fordham University School of Law, Loan Repayment Assistance Program: Maximum Salary Level, < <http://law.fordham.edu/htm/fa-lrap2.htm> > (visited February 7, 2002).

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

graduated rate, with no forgiveness at all during the first three years of participation, ten percent forgiven after the third year, and an additional fifteen percent each year thereafter until the replacement loans are completely forgiven after ten years.¹¹⁶ Columbia's program, then, requires a minimum of three years' work in qualifying employment before indebtedness is actually reduced, and a full ten years' employment before it is actually eliminated. Because the program assumes a ten-year repayment schedule, Columbia encourages participants to shorten their repayment schedules for their private loans (which typically have 15-20 year repayment schedules) to ten years so as to maximize benefits under the LRAP.¹¹⁷

As described above, Fordham's RLFP suspends interest accrual and repayment obligations for the first five years, after which one-third of a participant's loans are forgiven. An additional third is forgiven each year thereafter, so that the applicable loans are completely forgiven at the end of the seven years.¹¹⁸ This program, then, requires a minimum of five years' work in qualifying employment below the income ceiling before a participant's indebtedness is reduced, and seven years' commitment until the portion of a participant's indebtedness falling within the program is completely eliminated.

Fordham's LRAP awards, like Columbia's, are in the form of replacement loans.¹¹⁹ The loans are made twice a year (in January and June),¹²⁰ and are forgiven one year after they are issued, provided the participant has remained in qualified employment.¹²¹ If the participant has not remained in qualified employment, the replacement loans will be partially forgiven in proportion to the amount of time the participant spent in qualified employment.¹²²

Critically, the Fordham LRAP currently provides benefits for only three years.¹²³ Thus, while the structure of the program is such that it essentially begins to reduce a participant's indebtedness immediately, the total amount of indebtedness that can be reduced is limited by the three-year time con-

116. *Id.*

117. *Id.*

118. *Id.*

119. Fordham LRAP: Loan repayment Assistance Awards, *supra* note 99.

120. Fordham University School of Law, Loan Repayment Assistance Program: Disbursement of Funds, <<http://law.fordham.edu/htm/fa-lrap4.htm>> (visited February 7, 2002).

121. Fordham LRAP: Loan repayment Assistance Awards, *supra* note 99.

122. *Id.*

123. *Id.*

straint. As Stafford Loans are repayable over ten years, participants in the Fordham LRAP will be able to reduce their Stafford indebtedness by at most 21%-24%, depending on interest rates.

* * *

On the whole, the Columbia LRAP provides substantially more assistance and is more flexible than the combined Fordham programs. Participants in the Columbia program can, if they stay in the program for the entire ten years, have over \$140,000 in loans forgiven. Participants in Fordham's programs can have a maximum of about \$38,000 forgiven, and must pay over three-quarters of their Stafford Loans and all of their private loans without assistance. Such disparities are common among law school LRAPs, and prospective students contemplating a career in public service after incurring law school debt would be well advised to compare programs closely.¹²⁴

124. For an overview of a number of programs, see Financing the Future, *supra* note .

APPENDIX B

Summary of the NC LEAF Program

North Carolina's program began in 1989 with the formation of the North Carolina Legal Education Assistance Foundation ("NC LEAF") by students and deans at North Carolina's law schools.¹²⁵ As of January 22, 2002, NC LEAF had provided over \$700,000 in loan repayment assistance to 116 attorneys since it was created.¹²⁶

The NC LEAF program is similar in structure to law school LRAPs. To be eligible to participate in the program, attorneys must work in "eligible employment" and have an "eligibility income" below \$35,000 in their first year of practice, \$38,000 in their second year of practice, and \$40,000 in each subsequent year of practice.¹²⁷ A participant's "eligibility income" is the greater of either her salary plus any other income, reduced by \$5,000 for each dependent minor child and each dependent family member, or one-half of the combined salaries and other income of the participant and her domestic partner, reduced by \$5,000 for each dependent minor child and each dependent family member, and reduced by the domestic partner's educational loan payments.¹²⁸ "Eligible employment" is employment in North Carolina with a federal, state, or local government agency (excluding judicial clerkships), an organization that provides legal services to the poor, or a 501(c)(3) non-profit organization.¹²⁹

Participants must contribute a percentage of their gross income, ranging from 0% for participants with an income below \$20,000 to 10% for participants with a gross income above \$40,000, toward loan repayment.¹³⁰ Any remaining amount needed to meet a participant's loan repayment obligations is awarded by the program up to a limit of \$6,000 per year.¹³¹

125. See North Carolina Legal Education Assistance Foundation, North Carolina Legal Education Assistance Foundation, <<http://www.ncleaf.org>> (last visited February 10, 2002).

126. *Id.*

127. See North Carolina Legal Education Assistance Foundation, Loan Repayment Assistance Program: 2001/2002 Program Guidelines 1 (n.d.), available for download at <http://www.ncleaf.org/Docs/20012002_20012002_Program_Guidelines-Denise's.doc> (last visited February 10, 2002).

128. *Id.* at 2.

129. *Id.* at 3.

130. *Id.* at 5.

131. *Id.*

A participant's award will be reduced dollar-for-dollar for any repayment assistance received from out-of-state programs, and dollar-for-dollar for any repayment assistance over \$3,500 received from in-state programs.¹³²

Awards are made in the form of replacement loans, which are subsequently forgiven as follows: None of the replacement loans are forgiven for the first two years of program participation. After the third year of participation, the replacement loan received in the third year is forgiven. After the fourth year of participation, the replacement loans received in the second and fourth years are forgiven. After the fifth year of participation, the replacement loans received in the first and fifth years are forgiven. Thereafter, replacement loans are forgiven following the completion of the year in which they are received.¹³³ The program provides benefits for a maximum of ten years.¹³⁴ Accordingly, program participants must remain in eligible employment (below the salary cap) for at least three years to obtain any reduction in their indebtedness, and must remain in eligible employment (below the salary cap) for a full ten years to maximize their benefits.

132. *Id.* at 4.

133. *Id.* at 7.

134. *Id.*

APPENDIX C

Summary of the National Health Service Corps

The National Health Service Corps is a longstanding program of the Department of Health and Human Services that seeks to “help[] medically underserved communities recruit and retain primary care clinicians, including dental and mental and behavioral health professionals.”¹³⁵ The Corps was established on December 31, 1970, by the Emergency Health Personnel Act of 1970, Pub. L. No. 91-623, 84 Stat. 1868, 1868-69.¹³⁶ In 1972, amendments to the Act authorized scholarships for health professionals in return for service to underserved communities. In 1987, Congress authorized the NHSC Loan Repayment Program, which provides loan repayment assistance to enable the recruitment of clinicians for immediate service to shortage areas.

2. NHSC Scholarships

The NHSC Scholarship program is a competitive program that offers payment of all educational expenses plus a stipend for living expenses in exchange for service in an area defined by the NHSC as “underserved.” The program is open to U.S. citizens who are full-time students (at a U.S. accredited school) of allopathic (M.D.) and osteopathic (D.O.) medicine, students of medical dentistry, and students pursuing studies leading to qualification as a family nurse practitioner, as a nurse midwife, or as a primary care physicians assistant.

An NHSC Scholarship pays tuition and required fees for up to four years of education, as well as a monthly stipend. For the 2002-03 school year, the monthly stipend is \$1,065. In addition, the scholarship pays a single annual payment to cover all other reasonable educational expenses, such as books, equipment clinical travel, etc.

For each year of support, a recipient incurs an obligation to provide one year of service in an underserved area (with a 2-year minimum com-

135. U.S. Dep’t of Health and Human Servs., National Heal Service Corps, <<http://nhsc.bhpr.hrsa.gov/>> (last visited October 30, 2002).

136. See also Emergency Health Personnel Act Amendments of 1972, Pub.L. No. 92-585, 86 Stat. 1290, 1290-95 (amending program); Health Professions Educational Assistance Act of 1976, Pub. L. No. 94-484, 90 Stat. 2243, 2268-90 (same); Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, 97 Stat. 357, 902-13 (same). For some of the legislative history of those statutes, see S. Rep. No. 1062, 92d Cong., 2d Sess., reprinted in 1972 U.S.Code Cong. & Admin. News 4832; H.R. Rep. No. 266, 94th Cong., 1st Sess. (1975), reprinted in 1976 U.S.Code Cong. & Admin. News 4947; and S. Rep. No. 887, 94th Cong., 2d Sess. (1976).

mitment). A recipient must choose a service site from a list of “high priority” sites in designated Health Professional Shortage Areas (HPSA), identified by NHSC. A recipient is free to negotiate a compensation package with any site on the list; there is no official limit on what a recipient may earn during his or her years of service.

Scholarships are awarded on a multi-year basis. Accordingly, upon the recipients signing of a contract with NHSC, enough funds to pay for the remainder of the recipients education—up to four full years—are immediately set aside. In other words, recipients do not have a year-to-year funding risk depending on the level of funds appropriated by Congress. On the other hand, recipients do undertake some financial risk in the event their professional goals change or they are otherwise unable or unwilling to fulfill their service obligations: in such cases, a recipient is liable for damages of three times the amount of the scholarship plus interest.

In fiscal year 2001, NHSC awarded 365 scholarships at a cost of over \$34 million. It anticipates increasing awards to 592 scholarships at a cost of over \$57.2 million in fiscal year 2003. The scholarships are highly competitive, with more than seven applicants per award.

3. NHSC Loan Repayment Assistance Program

The NHSC LRAP is similar—albeit more generous—to many of the LRAPs for attorneys discussed above. It is open to U.S. Citizens who have completed training and are practicing physicians, primary care certified nurse practitioners, certified nurse-midwives, primary care physician assistants, general practice dentists, registered clinical dental hygienists, clinical or counseling psychologists, clinical social workers, psychiatric nurse specialists, marriage and family therapists, or licensed professional counselors.

To be eligible for awards, applicants must make at least a two-year commitment to full-time employment in an underserved area. Preference is given to applicants who agree to serve in areas of greatest need (as determined by HPSA scores). In addition, NHSC considers an applicant’s “disadvantaged background status” and “Biographical Statement,” with the goal of identifying “individuals who demonstrate characteristics that they are likely to remain in an HPSA.”

Award amounts are up to \$25,000 for each year of service, based upon the recipient’s outstanding educational debt balance. If a recipient has less than \$50,000 in loans, the program will pay half of the total amount annually, so that all of the recipient’s debt is paid by the end of the two-year commitment. Thus, unlike programs where the amount awarded is

limited by an applicant's annual debt service (i.e., payments), the NHSC LRAP is limited to \$25,000 a year or by an applicant's *total indebtedness*, whichever is less. All educational loans, whether commercial or governmental, are eligible for repayment. In addition to loan repayments, the program provides tax assistance payments equal to 39 percent of the total amount of loan repayments.

In another contrast to most LRAPs for attorneys, participation is not limited in any way by assets or income. Recipients are free to negotiate for any level of salary and benefits with prospective employers, so long as they serve in a HPSA.

Awards are for two years, although an recipient may seek an amendment to extend his or her participation. As in the case of NHSC Scholarships, recipients do undertake some financial risk in the event their professional goals change or they are otherwise unable or unwilling to fulfill their service obligations: in such cases, a recipient is liable for damages of the amounts paid plus \$7,500 per uncompleted month or service, plus interest.

In fiscal year 2001, NHSC made 372 new awards, 305 amendments, and 14 adjustments at a total cost of over \$36.6 million. It anticipates making 900 awards in fiscal year 2002 and 1170 awards in fiscal year 2003, at a total cost of over \$49.8 million and \$74.6 million, respectively.