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**LOAN REPAYMENT ASSISTANCE PROGRAM
PROGRAM DESCRIPTION
2004**

Purpose: The purpose for the establishment and maintenance of this program is to strengthen and expand legal assistance for the poor by supporting the recruitment and retention of the most qualified advocates by legal assistance programs in Florida through the provision of assistance to staff attorneys with educational debt.

1. **Term of Assistance.** The program will provide a maximum of 5 years of benefits. Continued benefits are subject to the availability and allocation of future funding for this program by the Foundation. Once admitted as a participant an attorney may remain a participant for up to a maximum of five (5) years, subject to continued eligible employment, salary limitations, bar admission, re-application and local program endorsement.
2. **Benefits.** An amount equal to 75% of annual debt payments up to \$6,000 per year. For example, a staff attorney paying \$7,500 or more a year on law school debt will receive the maximum annual benefit of \$6,000.
3. **Nature of Benefits.** Benefits will be in the form of one year loans which will be forgiven annually at the end of each year provided the staff attorney remains employed on a full time basis by an IOTA LAP grantee. Benefits are designed to be non-taxable under federal tax law by making the benefits a one year loan forgivable at the end of the year and since the Foundation, not the participant's employer, will be providing the benefits. Loans shall be for one year with loan proceeds disbursed semi annually. The loan shall be evidenced by a promissory note in a form required by the Foundation executed by the borrower (participant) and shall bear interest at a rate of 1% above the short-term applicable federal rate under Section 1274(d) of the U.S. Internal Revenue Code of 1986, as amended.
4. **Eligibility Standard.** Applicants and participants must meet the eligibility standards:
 - A. Employed on a full-time basis by an IOTA funded legal assistance for the poor grantee;
 - B. Receiving an annual salary of not more than \$40,000 for a newly graduated staff attorney with \$3,000 increments to the salary for each year of legal experience;
 - C. Admission to The Florida Bar by the end of the first year after having been selected as a participant.
5. **Process for Selection of Participants.** The Foundation will select participants in this program through a process of program nominations. Programs will nominate applicants, utilizing program and applicant application forms designed by the Foundation. In any one year, programs shall be limited to no more than two nominations. The continuation of participants in this program after their initial selection shall not be considered a nomination for purposes of applying this limitation. The Foundation shall make final selection decisions.

6. Selection Guidelines. In making, reviewing and selecting nominations and selections, programs, and the Foundation shall be guided by the following: (a) demonstration by the applicant of a record of high quality effective representation of the poor; (b) demonstration by the applicant of a strong work ethic; (c) applicant's continuing commitment to address the legal needs of the poor; (d) demonstration by the applicant of a self motivated effort to develop professional skills and capabilities for the benefit of the poor; (e) program confirmation of the applicant's demonstration of factors (a), (b) (c) and (d) above; (f) relative need among applicants; (g) the need for diversity among staff attorneys in legal services in Florida; (h) the need, over a period of time, to provide highly qualified applicants from all programs an opportunity to participate; and (i) program and applicant commitment to and engagement in the state plan and its core values.
7. Timing of Selection, Payments and Forgiveness. Selection of participants will be in December of each year. Payments will be semi-annual (January and July). Mid-year loan disbursements are subject to and conditional upon participant's continuing eligible employment and certification as to the application of previous loan disbursement for law school loan payments. Forgiveness will occur in January.
8. Debt Eligibility. The program would cover only law school need-based government or private loans, such as GSL, ALAS-SLS-FISL, Law Access Loans (LAL), Law Loans and National Direct Student Loans (NDSL or Perkins Loans), or university or other private institutional loans. An annual debt payment load of at least \$1,800 will be an eligibility requirement.
9. Resourcing the Program. The Foundation will reduce a program's IOTA grant for 20% of the cost of the benefits (i.e. \$1,200 for a participant receiving \$6,000) per each participant employed by that program.
10. Size of Program-Total Benefits and Number of Participants. For 2004, IOTA funding of \$115,200 combined with the 20% program charge will cover up to 24 participants at a maximum benefit level of \$6,000 per participant. A projection, furnished only for demonstration purposes, for the continuation and expansion of this program, subject to availability and Foundation allocation of funding for future years is:

Year	Participants	Funding Needed	IOTA Funding	Program Funding
2004	24	\$144,000	\$115,200	\$28,800
2005	30	\$180,000	\$144,000	\$36,000
2006	36	\$216,000	\$172,800	\$43,200
2007	42	\$252,000	\$201,600	\$50,400
2008	42	\$252,000	\$201,600	\$50,400

Participants receiving less than the maximum benefit amount, drop-outs, participants maxing out and repayments may enable additional slots in any one year.

11. Priorities for Participants for 2004. For the year 2004, the following priorities shall apply to the nomination, recommendation and selection of participants:
 - A. First priority. shall be given to former Equal Justice Works (formerly National Association for Public Interest Law) fellows who have completed fellowships at legal assistance programs
 - B. Second priority shall be given to those staff attorneys selected for the LRAP regular benefits in the prior year.
 - C. Third priority shall be given to attorney applicants who began their eligible employment between May 15, 2001 and January 1, 2003.

12. Supplemental Loan Repayment Assistance. In addition to the above described benefits, participants and funding for a loan repayment assistance program, the Foundation has also established a supplemental loan repayment assistance program for full-time staff attorneys of IOTA funded legal assistance programs which will be funded solely by reductions in Foundation grants to participating programs. Programs may nominate additional applicants for this supplemental program or designate additional benefits for participants in the regular program. The nominations for selections under this supplemental program shall be made directly by programs to the Foundation, with the Foundation making all final selection decisions. None of the restrictions, priorities, conditions or standards under the regular program shall apply to the supplemental program other than the employment requirement. All benefits under the supplemental program will be handled in the same manner as the regular program, specifically as enumerated in paragraphs 3, 7 and 8 of this program description.



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November 20, 2002

MEMORANDUM

TO: Jane Curran – Executive Director, The Florida Bar Foundation

FROM: William O. E. Henry and Jeffrey S. Levin

RE: Income Tax Consequences of Loan Forgiveness Program

DATE: November 20, 2002

You have asked us to review the federal income tax consequences of The Florida Bar Foundation's proposed Loan Forgiveness Program. Under the proposed program, a recipient's obligation to repay a loan repayment assistance grant ("Loan") from The Florida Bar Foundation (the "Foundation") would be forgiven if the recipient performs the requisite legal services for a qualified legal assistance agency and the Loan is used to satisfy the recipient's student loan obligations. As explained below, the proposed Loan Forgiveness Program has been structured to satisfy the statutory requirements of Section 108(f) of the Internal Revenue Code of 1986, as amended, which excludes from the recipient's income the amount of the cancelled debt obligation.

LOAN FORGIVENESS PROGRAM

The terms of the proposed Loan Forgiveness Program are presented in Paul C. Doyle's September 11, 2002 memorandum to the IOTA LAP/LSA Grant Committee. The key aspects of the proposed program are summarized below.

The proposal has two components, the basic program, which would be directly funded by the Foundation with a 20% offset against any grants made to the participating programs, and the supplemental program, which would also be directly funded by the Foundation, but with a full offset in the Foundation's grants

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to participating programs. The basic program would have a special selection criteria for recipients, which would not apply to the supplemental program. For both programs, grant recipients would have to satisfy certain eligibility requirements.

The key aspects of both programs are the eligibility requirement for the recipients of the Loans, the required use of the Loan proceeds and the status of the entity making the Loans.

The recipients must be staff attorneys for a legal assistance program in the State of Florida, which is an eligible recipient of Interest on Trust Account (IOTA) Legal Assistance for the Poor Grant Funds (referred to as "Qualified Agency"). In addition, for the basic program, a recipient's annual salary may not exceed \$40,000 for a newly graduated staff attorney with \$3,000 increments to the salary for each year of legal experience.

The lender is The Florida Bar Foundation. It is our understanding that the Internal Revenue Service has determined that the Foundation, as a Section 501(c)(3) organization, is an organization exempt from taxation under Section 501 of the Internal Revenue Code and that exemption has not been revoked since it was issued in 1962.

Under the basic program, the Foundation would make a one year Loan in an amount equal to 75% of a recipient's annual debt payments up to \$6,000 per year. The Loan would be forgiven annually at the end of each year, provided the recipient remains employed by the Qualified Agency on a full-time basis for the entire year. The Loan would be evidenced by a promissory note and would bear a market rate of interest. The supplemental program would also involve a one year Loan with a similar employment requirement.

The Foundation would establish the procedures and criteria for the selection of the recipients of the Loans under both programs. This procedure and criteria are set forth in Mr. Doyle's summary memorandum.

Recipients would be required to apply the entire amount of their Loan from the Foundation to their annual debt obligations for student loans incurred to finance their law school education. The program would cover only law school need-based government or private loans, such as GSL, ALAS-SLS-FISL, Law Access Loans, Law Loans and National Direct Student Loans (NDSL or Perkins Loans), as well as university or other private institutional loans. An annual debt payment obligation of at least \$1,800 would be an eligibility requirement.

DISCUSSION

I. Statutory Provision

As indicated above, the program has been structured to satisfy the statutory requirements of Section 108(f). Essentially, if the requirements of this subsection are satisfied, a recipient could exclude annually from his or her gross income the amount of the cancelled Loan from the Foundation. This subsection provides, in its entirety, as follows:

STUDENT LOANS --

- (1) In general. -- In the case of an individual, gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of any student loan if such discharge was pursuant to a provision of such loan under which all or part of the indebtedness of the individual would be discharged if the individual worked for a certain period of time in certain professions for any of a broad class of employers.
- (2) **STUDENT LOAN.** -- For purposes of this subsection, the term "student loan" means any loan to an individual to assist the individual in attending an educational organization described in section 170(b)(1)(A)(ii) made by --
 - (A) the United States, or an instrumentality or agency thereof,
 - (B) a State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof,
 - (C) a public benefit corporation --
 - (i) which is exempt from taxation under section 501(c)(3)
 - (ii) which has assumed control over a state, county, or municipal hospital, and
 - (iii) whose employees have been deemed to be public employees under State law.
 - or
 - (D) any educational organization described in section 170(b)(1)(A)(ii) if such loan is made --
 - (i) pursuant to an agreement with any entity described in subparagraph (A), (B), or (C) under which the funds from which the loan was made were provided to such educational organization, or

- (ii) pursuant to a program of such educational organization which is designed to encourage its students to serve in occupations with unmet needs or in areas with unmet needs and under which the services provided by the students (or former students) are for or under the direction of a governmental unit or an organization described in section 501(c)(3) and exempt from tax under section 501(a).

The term "student loan" includes any loan made by an educational organization described in section 170(b)(1)(A)(ii) or by an organization exempt from tax under section 501(a) to refinance a loan to an individual to assist the individual in attending any such educational organization but only if the refinancing loan is pursuant to a program of the refinancing organization which is designed as described in subparagraph (D)(ii).

- (3) **EXCEPTION FOR DISCHARGES ON ACCOUNT OF SERVICES PERFORMED FOR CERTAIN LENDERS.** – Paragraph (1) shall not apply to the discharge of a loan made by an organization described in paragraph (2)(D) if the discharge is on account of services performed for either such organization.

II. Application of Statutory Provision to Foundation Program

A. "Discharge of Student Loan"

As indicated above, this section applies to the cancellation of indebtedness arising from the discharge of a student loan. The Foundation's Loan would not be directly made to "assist the individual in attending an educational organization" as required by the subsection (f)(2). The statute, however, was amended in 1997 to expand the definition of "student loan." See P.L. 105-84, Taxpayer Relief Act of 1997, Section 225(a)(1) (as clarified by technical corrections enacted in Section 6004(f) of the IRS Restructuring and Reform Act of 1998 with a retroactive effective date to the date of enactment of the 1997 Act), which added subsection (f)(2)(D). As a consequence of this amendment, student loan now includes "any loan made . . . by an organization exempt from tax under section 501(a) to refinance a loan to an individual to assist the individual in attending any such organization but only if the refinancing loan is pursuant to a program of the refinancing organization which is designed as described in subparagraph (D)(ii)."

The Foundation is an organization exempt from tax under Section 501(a). The Foundation's program requires that the proceeds of its Loans must be used to satisfy the recipient's direct repayment obligations for his or her student loans. As explained below, the Foundation's program has been designed to meet the requirements of a program under subparagraph (D)(ii). Accordingly, the Foundation's program Loans are properly classified as "Student Loans."

B. Subparagraph (D)(ii) Program

This subparagraph applies to a program designed to encourage persons "to serve in occupations with unmet needs or in areas with unmet needs and under which the services provided by the . . . former students . . . are for or under the direction of a governmental unit" or an exempt organization.

The Foundation's program specifically meets this condition. The Foundation's Loan recipients must provide legal assistance to poor and disadvantaged persons throughout Florida in their capacity as an employee of an IOTA LAP grantee, which is either a quasi governmental agency or an exempt organization. Thus, the Foundation's program qualifies as a program described in subparagraph (D)(ii).

(C) Individual Worked in Certain Professions for any of a Broad Class of Employers.

For this special rule to apply, the individual recipient must have "worked for a certain period of time in certain professions for any of a broad class of employers." The statute does not provide any further guidance as to what is the requisite period of time, which professions are covered and what types of employers are required for this provision to apply. To date, no regulations or regulations have issued to provide further guidance on this subject.

The legislative history for the section indicates that when it was originally enacted in 1976, the professions to which the provision refers are medicine, nursing and teaching. Nonetheless, there is nothing in the statute itself, which limits the provision to only these three professions. Moreover, the legislative history for the 1997 amendment discussed above does not contain any such limitation. Rather, the 1997 Blue Book General Explanation of Tax Legislation Enacted in 1997, pages 89-40, indicates that this provision is intended to promote "the establishment of programs that encourage students to use their education and training in valuable community service." The expansion to include refinancing loans made by certain tax-exempt organizations requires that "the student's work must fulfill a public service requirement. The student must work in an occupation or area with unmet

needs and such work must be performed for or under the direction of a tax-exempt charitable organization or a governmental entity." The requirements of the Foundation's program as to employment of the recipient by a Qualified Agency are designed to insure that the recipient satisfies this public service requirement.

Ideally, one would prefer an express statement that this special provision applies to attorneys working for legal aid type organizations. To date, such a statement has not been issued. A converse statement that this provision does not apply to the legal profession has not been issued either. Thus, until more definitive contrary guidance is issued, it is reasonable to conclude, based on the broad language of the 1997 legislation, that this provision applies to attorneys employed by legal aid organizations. Consequently, attorneys who qualify for the Foundation's program could reasonably assert that they will have worked for a certain period of time in certain professions for any of a broad class of employers as required by this provision.

If greater assurance of the income tax consequences is desired, a favorable private letter ruling would have to be obtained from the Internal Revenue Service.

D. Discharge Pursuant to a Provision of Loan for Work Performed for a Certain Period of Time

Another requirement of this section is that the governing loan document provide for the Loan discharge if work is performed for a certain period of time. Presumably, the Foundation's Loan documents will incorporate the requirement that the discharge could only occur if the recipient works for the entire year for the designated IOTA LAP grantee. As a practical matter, the forgivenesses would not occur until the January following the completion of the one year service requirement. Accordingly, this statutory requirement would also be satisfied.

E. Lender Must not be Employer

Paragraph (f)(3), also added in 1997, provides that the special exclusion rule discussed above, would not apply if the lender in question required the performance of services for that lender. This is not the case for the Foundation's program.

Under the Foundation's program, the recipients are employees of IOTA LAP grantees and not the Foundation. Accordingly, although the program requires the performance of services, such services must be performed as an employee of the particular IOTA LAP grantee, not the Foundation, which is the lending organization. Thus, this exception to the exclusion rule would not apply to the Foundation's program.

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SUMMARY

The Foundation's program has been specifically designed to satisfy the statutory requirements of Section 108(f), which provides that a Loan recipient would not be subject to federal income taxation on the amount of the Loan forgiven under the program. There is no definitive guidance that either expressly precludes or includes attorneys from this sub-section. Nevertheless, the recent legislative history suggests an intent to promote public service by certain unspecified professions. Until an express prohibition is issued by the Internal Revenue Service, it is reasonable for Foundation's Loan recipients to rely upon this provision as a basis for excluding the amount of cancellation of indebtedness income from their gross income for federal income tax purposes.

W.O.E.H. and J.S.L.

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