



From the Chair...

by Jonathan D. Asher

Chair of the ABA Commission on IOLTA

I am privileged to begin another year as Chair of the Commission on IOLTA. In doing so, I am most pleased to welcome five new members to the Commission. I know that each of the new members, Michael Gunn, Bruce Iwasaki, Maureen Kelly, Kathleen McLeroy and Linda Rexer, bring impressive credentials, exceptional skill and an unquestioned commitment to the IOLTA community—which you can read more about in the IOLTA News and Notes on page 10. Please join me in thanking them for sharing their time and talent in this important work.

Despite the continuing uncertainty of the financial markets, a number of states have pursued revisions to their Supreme Court rules or state statutes mandating attorney participation in their IOLTA programs and/or requiring interest rate comparability. With the recent action of the New Mexico Supreme Court, as of January 1, 2009, 38 jurisdictions will have mandatory IOLTA programs, 12 will require attorneys to affirmatively opt out of the program and only 2 jurisdictions will remain with purely voluntary programs. Fully 23 jurisdictions will have comparability requirements of some sort by the beginning of next year, and many more are aggressively pursuing negotiated revenue enhancements. All these efforts are intended to maximize revenue despite the difficult economic times and to increase

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State Loan Repayment Assistance Programs: Why the Need Remains

by: Kelly Carmody

The educational debt of law school graduates continues to grow each year. Fortunately, recognition of the need to assist public interest attorneys with their debt burden is also growing. New loan repayment assistance on the federal level has raised questions as to the need for state loan repayment assistance programs (LRAPs). This article summarizes the new federal assistance and explains why public interest attorneys continue to need assistance with their educational debt from multiple sources, including statewide LRAPs.

Federal Loan Forgiveness Programs in the CCRAA

The College Cost Reduction and Access Act (CCRAA) created two new loan forgiveness programs: the Income Based Repayment program (IBR) and Public Service Loan Forgiveness. The new law also affects the existing Income Contingent Repayment program (ICR). These three programs provide reduced monthly payments for many of the borrowers' federal and federally guaranteed educational loans. They also provide forgiveness of the balance of the loans after differing periods of time, described below.

Income Based Repayment and Income Contingent Repayment Programs

The new Income Based Repayment program (IBR) goes into effect July 1, 2009. Any educational loan borrower (no public service required) with a "partial financial hardship" (high debt to income ratio) may be eligible. The program caps payments for *federal and federally guaranteed* loans, at 15 percent of the borrower's "discretionary income." This may be a large reduction from the payment amounts required under standard or extended repayment plans for some public interest attorneys. If payments are made for 25 years, the federal government forgives the remaining principal and interest.

The Income Contingent Repayment program (ICR) is similar to IBR, with forgiveness provided after 25 years. This length of time before forgiveness resulted in few individuals participating in ICR previously. IBR may have similar results.

Public Service Loan Forgiveness

The Public Service Loan Forgiveness provision in the CCRAA may be more attractive to public interest attorneys than ICR was previously because the forgiveness provisions are effective after ten years of public service. To be eligible for Public Service Loan Forgiveness, a borrower must meet four primary eligibility criteria:

- **Eligible Employment.** Borrowers must be employed full-time in public service during the month that a qualifying payment is made. Public service employment includes employment by a government or a tax-exempt, non-profit (501(c)(3)) organization, plus other employment areas, including "public interest law services (including prosecution or public defense or legal advocacy in low-income communities at a nonprofit organization)."
- **Eligible loans.** Borrowers must have loans that are in the Federal Direct loan program. Federal and federally guaranteed loans

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access to justice through their IOLTA programs. The Commission is proud to support and provide the technical assistance necessary to promote and implement these important efforts.

Despite these advances, of course, many states, if not all, are seeing interest rates decline and principle balances fall. Whether revenue is going up or down, however, the strategic use of IOLTA dollars is essential. The Commission and the National Association of IOLTA Programs (NAIP) are willing and able to provide assistance to programs as we all grapple with these uncertain economic realities. The Commission and NAIP are committed to maintaining and improving the resources designed to support the IOLTA community. Whether you are new to IOLTA or a veteran, we on the Commission and in NAIP all labor to ensure that the help you need, as an IOLTA director, staff or as a trustee or bar leader, is available, is timely and meets your needs.

The assistance and support includes the semi annual IOLTA Workshops, which are held in conjunction with the ABA Annual and Midyear Meetings. The Workshops held in New York this past August addressed banking issues, revenue

enhancement, new audit standards and managing across the intergenerational divide. Plans for the 2009 Winter Workshops are already underway. The Workshops provide two days of topical sessions and are a forum for discussing and sharing best practices and current issues. I hope that you plan to attend the Winter IOLTA Workshops which will take place February 12 and 13 in Boston. Detailed registration information is available online at www.abanet.org/midyear/2009. If you download the printable form, please make sure you use the registration form marked "IOLTA Workshops Registration."

The support provided by the Commission and NAIP goes beyond the Workshops. The joint Commission/NAIP Technical Assistance Committee maintains a mentoring program that matches new IOLTA program executive directors with more experienced colleagues. There is also a list service for executive directors and staff and an ever expanding and improving website, www.iolta.org, which has a members-only area with a growing resource library. The website, IOLTA.ORG, is complemented by the Commission's own website and directory of IOLTA programs, which may be found at www.abalegalservices.org/iolta and by the IOLTA Clearinghouse, which maintains a database of

information about IOLTA programs together with a wealth of materials about the administration of IOLTA programs.

As helpful as the Workshops, mentoring opportunities, websites and clearinghouse are, none of these resources are more helpful than the Commission staff. Please make use, not just of experienced colleagues and mentors, but of Bev Groudine at the ABA in Chicago. Bev can be contacted at 312-988-5771 or bgroudine@staff.abanet.org. She is invaluable and is almost always where initial questions are best directed. She is experienced and dedicated to providing the very best support possible to the IOLTA community.

We are also fortunate to have a new assistant counsel to the Commission on IOLTA, Sofia Ali-Khan. Sofia worked for many years at Community Legal Services, Inc., in Philadelphia and brings with her a passion for and dedication to the delivery of legal services to the poor. Sofia can be reached at 312/988-5744 or ali-khas@staff.abanet.org. Please join me in welcoming Sofia to the IOLTA community.

I look forward to seeing you all in Boston for the February workshops, and to working together to support our IOLTA programs and to further access to justice and the important work our programs help support.

Need for LRAPs

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currently not in the Federal Direct program can be consolidated into the program as of July 1, 2008. The ineligible loans, generally, are non-federally-guaranteed loans made by a state or private lenders, and Parent PLUS loans.

- **Qualifying payments.** Borrowers need to make 120 payments after October 1, 2007 while working full-time in eligible employment. Counted payments do not have to be continuous—individuals may have breaks in their eligible employment.
- **Eligible repayment plan.** Borrowers must be in an IBR, ICR, standard 10-year repayment plan, or in an extended

payment repayment plan but paying at least the amount due under a standard 10-year plan. Since IBR is not available until July 1, 2009, borrowers in extended repayment plans who are unable to make a payment equal to a standard 10-year plan payment amount may change to an ICR repayment plan now and into an IBR repayment plan after July 1, 2009.

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Need for LRAPs

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Federal Loan Forgiveness and Repayment Programs in the Higher Education Act Reauthorization

The recently-signed reauthorization of the Higher Education Act (HEA) has three loan assistance programs for which certain public interest attorneys may be eligible. However, appropriations for these programs have not yet been made.

Civil Legal Assistance Attorneys

The Harkin provisions (named after Senator Tom Harkin who sponsored the original bill) authorize loan repayment assistance with federal loans for attorneys employed full-time by an eligible employer. Non-profit organizations that provide free legal assistance to low-income individuals in civil matters and protection and advocacy (P&A) organizations are the two types of eligible employers.

The assistance is limited to up to \$6,000 per year with a lifetime maximum of \$40,000. Assistance is provided to recipients in the form of a one-year loan. If the recipient works in eligible employment for three years, the initial one-year loan is forgiven. The recipient may also receive additional one-year loans. The service obligation required for forgiveness of loans received in subsequent years is unclear in the legislation, but may be shorter than a rolling three year period. This will be clarified through regulations.

The legislation also specifies priority for recipients of assistance, but these are complex and will require clarification through regulations to be issued in the coming months. In general, lawyers who have been in eligible public-service practice for a shorter period of time will receive priority, as will those who have previously received this assistance and/or are

in their first three years of required service under the program.

Public Defenders and Prosecutors

The provisions of the HEA reauthorization, called the John R. Justice Prosecutors and Defenders Incentive Act of 2008, authorize loan repayment of federal loans for full-time attorneys who are employed by an eligible employer. The three types of eligible employment are (1) as prosecutors for state or local governments, (2) as public defenders for state or local governments (or contractors for one of these governments), or (3) as certain federal public defenders.

The assistance is limited to up to \$10,000 per year with a lifetime maximum of \$60,000. As is true for lawyers in eligible civil public service employment, assistance is provided to recipients in the form of a one-year loan. If the recipient works in eligible employment for three years, the initial one-year loan is forgiven. The recipient may also receive additional one-year loans. The service obligation required for forgiveness of loans received in subsequent years is unclear in the legislation, but may be shorter than a rolling three year period. This will be clarified through regulations.

The legislation also specifies priority for recipients of assistance, but these are complex, and differ slightly from the priorities for civil public service lawyers. These, too, will require clarification through regulations to be issued in the coming months. In general, lawyers who have previously received this assistance and/or are in their first three years of required service under the program will receive priority for participation.

Service in Areas of National Need

The HEA reauthorization also authorizes loan forgiveness for borrowers who work in areas of national need. One of those areas is "public interest legal services (including prosecution, public

defense, or legal advocacy in low-income communities at a nonprofit organization)." Up to \$2,000 in federal loans may be forgiven after each year of service, up to a maximum of \$10,000 for five years of service.

Continued Need for Non-Federal Loan Repayment Assistance Programs

The criteria and funding for these new federal loan repayment assistance programs indicate that there is a strong need for the continuation of other existing LRAPs, including state, law school and employer programs.

1. The HEA programs do not have appropriations yet.

The HEA authorized up to \$10 million dollars annually for the civil legal assistance program and up to \$25 million annually for the prosecutor/public defender program. The amount for the Service in Areas of National Need program is authorized at "the sum necessary" for the program. Appropriating funds for FY2009 (10/1/08 - 9/30/09) is unlikely due to the timing of the election. This means appropriations may not be available for these programs until October 2009. Appropriations may be less than the amounts authorized, and even at their maximum amounts, will not be sufficient to address all of the needs of eligible attorneys.

2. Not all loans are eligible for federal loan assistance.

Only federal direct and federally guaranteed loans are eligible for forgiveness or repayment. Among attorneys with loans that were taken out before July 1, 2006, about half of the educational debt is attributable to private loans, which are ineligible for assistance through these programs. More recent graduates will have a higher percentage of eligible loans, but how much higher is not yet known. Because they are taking out higher amounts in loans, recent graduates may still have significant ineligible debt.

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Need for LRAPs

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3. Experienced attorneys will benefit least from the federal programs. As noted, experienced attorneys likely have less eligible debt because they have a higher percentage of private loans. Also, the HEA civil legal assistance program prioritizes attorneys with five years or less experience. However, many more experienced attorneys have significant educational debt that will preclude them from staying in public interest without assistance.

4. Part-time attorneys are ineligible for federal loan assistance. All of the federal programs require "full-time" employment for eligibility. The definition of full-time employment will be defined in regulations, which are at the proposed stage for the CCRAA programs and have not yet been drafted for the HEA programs. An increasing number of public interest attorneys, particularly mothers, are working less than full-time and will be ineligible for federal loan assistance.

5. Some married attorneys may be ineligible for the CCRAA programs. Married individuals may file separate

income tax returns if they do not want their spouse's income to count when determining eligibility for Public Service Loan Forgiveness. However, married individuals who file separately will lose certain tax deductions, making some attorneys unwilling to file separately and thus ineligible for the 10-year forgiveness.

6. Required payments will be more than some attorneys can afford. The Public Service Loan Forgiveness program forgives federal loans after 10 years of payments. For many attorneys, at lower pay—even reduced payments will still be difficult to make without assistance from an LRAP.

7. Not all eligible attorneys will want to enter ICR or IBR in order to receive Public Service Loan Forgiveness. Some attorneys will be unable or unwilling to make a ten-year commitment to public service for a variety of reasons including parenthood, spouse's job movement, other family commitments or not knowing if this career is for them. If these attorneys make only minimum payments on their educational debt while in ICR or IBR, the principal may increase when unpaid interest is capitalized.

8. More than ten years of service may be required for some. Attorneys who receive the

Harkin or the Services in Areas of National Need assistance may not be able to count their eligible employment time for the CCRAA's Public Service Loan Forgiveness 10 year obligation. The statute is unclear and advocates are attempting to clarify and possibly change this restriction.

Actions for Statewide, Employer and Law School LRAPs.

Continuation of existing state law school and employer LRAPs continues to be a priority. Because the federal programs only assist some public interest attorneys and assist others only partially. Design changes in current LRAPs may be needed to help make them more complementary of the federal programs, but necessary changes will not be fully understood until the regulatory process is complete. The only recommendation at this time is to eliminate any provisions that mandate that LRAP participants put their loans into extended repayment plans so that borrowers, who may want to participate in ICR, IBR or the Federal Loan Forgiveness Program, may be in an eligible repayment plan.

Kelly Carmody is a consultant on attorney educational debt and loan repayment assistance to the ABA's Standing Committee on Legal Aid and Indigent Defendants.

IOLTA News and Notes

The Commission on IOLTA welcomes new members **Michael P. Gunn, Bruce G. Iwasaki, Maureen P. Kelly, Kathleen S. McLeroy, and Linda K. Rexer**, for the 2008-2009 bar year.

Michael P. Gunn is in private practice at The Gunn Law Firm in St. Louis. He is a past president and past acting executive director of the Missouri Lawyer Trust Account Foundation. Gunn presently serves as board chair of Peter & Paul Community Services, an organization aiding homeless individuals



Michael P. Gunn

struggling with mental illness and HIV/AIDS.

An active leader in national, state and local bars, Gunn is currently a member of the ABA House of Delegates, Missouri State Delegate, and a member of the Nominating Committee. He has served as president of the Missouri Bar, the Bar Association of Metropolitan St.

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