

**Bureau of Justice Assistance (BJA)
John R. Justice (JRJ) Grant Program
FY 2010 State Solicitation
Frequently Asked Questions (FAQs)**

- 1. If a state does not have public defenders that are eligible, as defined by the statute, to apply for John R. Justice (JRJ) funds, is such state still eligible to administer the JRJ grant program?**

A state without eligible public defenders may still apply for JRJ funding. If a state does not have eligible “public defenders” (as defined by the JRJ statute) that state’s loan repayment disbursements will go to state and local prosecutors, by default. Please note that such practice is a technical violation of the JRJ Program’s “equal allocation” requirement. States should note that certain federal public defenders are eligible beneficiaries under the JRJ statute. Every state has full-time federal public defenders who practice within that state. Thus, the absence of eligible state or local “public defenders” will not, in and of itself, absolve the state from meeting the equal allocation requirement.

As noted on the top of page 3 of the JRJ solicitation, in order to waive the equal allocation requirement, a state will need to submit a waiver request with its application. To be considered, such waiver request must document the structure of the state’s public defender system and clearly outline why it will be unable to meet the “equal allocation” requirement. Requests for waivers of this requirement will be granted only at the discretion of the BJA Director.

- 2. Are individuals who are elected prosecutors or public defenders eligible for the JRJ program?**

No. Although the statute does not specifically prohibit the awarding of JRJ funds to elected officials (assuming they otherwise would qualify as an eligible beneficiary), BJA, in its discretion, has determined that policy and ethical considerations preclude elected officials from being eligible. This prohibition does not extend to persons who hold elected offices other than as a prosecutor or public defender (e.g., city council member status unrelated to prosecutor/public defender position), provided: (1) a reasonable person could conclude that the individual’s elected status did not form a basis for their selection for JRJ benefits; (2) that the person did not use their office to influence a decision pertaining to the application; and (3) that the person’s obligations to his/her elected office do not interfere with the fulfillment of the JRJ service obligation.

- 3. Has BJA administered the JRJ grant program prior to this year?**

No. This is the first year BJA is administering the JRJ grant program.

- 4. What amount of JRJ funding will each state receive?**

The state funding allocation list can be found on the BJA web site at: www.ojp.usdoj.gov/BJA/grant/10JRJAllocations.pdf.

5. How much money from the JRJ allocation can each state spend on administrative costs?

Each state can spend no more than 15% of their total allocation on administrative costs. Please refer to OJP's financial guide for further information on allowable costs (<http://www.ojp.usdoj.gov/financialguide/index.htm>).

6. Can a designated state agency contract with a private non-profit organization to manage the JRJ program?

Yes, a designated state agency may contract with a private non-profit organization to manage the JRJ program so long as the cost of such contract does not exceed 15% of the state's allocation. No more than 15% of a state's total allocation of JRJ funds may be spent on administrative costs.

7. Will BJA extend the application deadline upon request if a designated state agency requires additional time?

BJA encourages all states to submit their applications as quickly as possible. However, in effort to provided state agencies with sufficient time to create quality JRJ Loan Repayment programs, BJA will extend the deadline to July 27, 2010.

8. What additional information, other than the designation, is a state required to submit?

The governor of each state, and the Mayor in Washington, DC, must submit a letter designating a state agency to administer the JRJ program. Once the governor has designated such agency, that governor-designated agency must submit an application for JRJ funds. The JRJ state solicitation is available at: www.ojp.usdoj.gov/BJA/grant/10JohnRJusticeSol.pdf.

The solicitation closes on July 27, 2010 and states must submit their applications before such time to receive their allocated funds.

9. How does a prosecutor or public defender apply for JRJ student loan repayment benefits?

Prosecutors or public defenders who are interested in learning about, and/or applying for, JRJ loan repayment benefits should contact the state agency that has been designated by its governor to administer the JRJ program. Governor-designated state agencies along with contact information can be found at: www.ojp.usdoj.gov/BJA/grant/JRJStateAgencies.pdf

10. What is the award start and end date?

Start date: October 1, 2010
End date: September 30, 2011

11. How are the funds disbursed to the Governor-designated state agency and who will handle the individual loan repayment?

Funds are disbursed in the beginning of the award once a financial clearance is granted. BJA will make a one-time allocation of funds to the governor-designated state agency. The individual loan repayments will be handled directly by the governor-designated state agency.

12. Are there limitations regarding the number of years an attorney has been practicing?

There are no statutory or BJA imposed limitations regarding the number of years an attorney must practice before becoming eligible to apply for loan repayment benefits. The states, however, have the discretion to impose such a limitation if they so choose.

13. Is there a suggested means of determining the “cost of living adjustment” for applicants, as required for the plan to select the “least able to pay” within the entire applicant pool?

The governor-designated state agency has discretion on determining the “cost of living adjustment” for applicants. We encourage states to work with their Department of Labor to determine the appropriate formula and adjustment for cost of living.

14. What is considered full-time employment for the purpose of this solicitation?

Full-time employment is considered “not less than 75% of a 40 hour work week” for the purpose of this solicitation.

15. Does a person have to be employed full-time at the time of selection to be eligible?

Not necessarily, but an applicant must be a “full-time employee” of a State or unit of local government (in the case of “prosecutors) or a “full-time employee” of a State, unit of local government, qualifying non-profit organization (under 42 U.S.C. §3797cc-21(b)(2)(B)(ii)) or qualifying full-time Federal defender (under 42 U.S.C. § 3797cc-21(b)(2)(B)(iii)) prior to actual receipt of benefits.

16. Are appellate attorneys handling criminal or juvenile delinquency case appeals eligible for this program?

Yes, provided they otherwise meet the definition of a full-time “prosecutor” or “public defender” under the statute (and the solicitation and guidelines).

17. Are attorneys who handle an exclusively civil caseload, such as civil forfeiture or dependency cases, eligible for this program?

No.

18. Are loans that were purchased or sold by the original holder eligible for payment?

Loans purchased or sold by the original holder are eligible for payment, assuming the other conditions of the statute (and the solicitation and guidelines) are met. The requester must submit proof that the original loan qualified under the JRJ statute .

19. May the designated state agencies issue co-payment of the loan repayment award jointly to the beneficiary and the lender?

No. The statute clearly provides only for "direct payments on behalf of a borrower to the holder of [the qualifying] loan." SAAs should issue their checks only by direct payment to the lenders, in accordance with the statute.

20. May a designated state agency use "salary" rather than "gross or net income" in determining which applicants have the least ability to repay their loans?

CORRECTION: Yes. A state may use an applicant's salary instead of gross or net income. Page 6 of the JRJ Solicitation, under "State Compliance with Statutory Requirements" reads: "States may use their own discretion in identifying a methodology that best identifies a person's ability to repay their loans; however, at a minimum, this plan **should** include an assessment of the following..." As this language suggests, states are given discretion and flexibility to identify the appropriate factors to determine "the least ability to repay." BJA is relying on these agencies to apply their knowledge and expertise to determine such formula. In the future, should a best practice be determined, BJA will provide additional guidance on the "least ability to repay."

21. How is "spouse" defined for the purposes of JRJ?

A state should defer to its own state law definitions of the term, or otherwise use its discretion in defining this term.

22. In determining which applicants have the least ability to repay their loans, if an applicant is married, must a state agency use "household income"?

A state may, but is not required to do so, and should use its discretion in making this determination.

23. Are there tax consequences associated with receipt of JRJ benefits?

CORRECTION: The Bureau of Justice Assistance has requested an opinion from the Internal Revenue Service (IRS) specifically pertaining to the taxability of JRJ benefits and is anticipating a response. In the interim, state agencies and individual beneficiaries are free to consult with the IRS or a tax advisor. Upon receipt of an IRS opinion, this FAQ will be updated.

24. Whether employees of Public Defender Service (PDS) in the District of Columbia qualify as "public defenders" as that term is defined under the John R. Justice statute (42 U.S.C. 3797cc-21(2)).

The statute defines "public defender" to mean an attorney who—

(A) is continually licensed to practice law; and

(B) is—

(i) a **full-time employee of a State or unit of local government** who provides legal representation to indigent persons in criminal or juvenile

- delinquency cases (including supervision, education, or training of other persons providing such representation);
- (ii) a full-time employee of a nonprofit organization operating under a contract with a State or unit of local government, who devotes substantially all of the employee's full-time employment to providing legal representation to indigent persons in criminal or juvenile delinquency cases (including supervision, education, or training of other persons providing such representation); or
- (iii) employed as a full-time Federal defender attorney in a defender organization established pursuant to subsection (g) of section 3006A of Title 18, that provides legal representation to indigent persons in criminal or juvenile delinquency cases. (Emphasis added).

The Omnibus Crime Control and Safe Streets Act of 1968, of which the John R. Justice statute is an amendment, defines (in relevant part) "unit of local government" at 42 U.S.C. 3791(a)(3)(D) to mean "for the purposes of assistance eligibility, any agency of the government of the District of Columbia or the Federal Government that performs law enforcement functions in and for—(i) the District of Columbia. . . ." Therefore, for purposes of the John R. Justice Loan Repayment Program (JRJLRP), as an entity providing a law enforcement function in the District of Columbia (public criminal defense legal services), PDS should be considered a "unit of local government," and otherwise eligible employees of PDS should be considered for eligibility as beneficiaries if they are full-time employees of PDS who also provide "legal representation to indigent persons in criminal or juvenile delinquency cases (including supervision, education, or training of other persons providing such representation."

25. Once awards are made, how will money be disbursed to the state agencies?

States will be able to access their award via a draw down, not in lump sum.

26. Is a person eligible if their loan is "past due," but still reported as in a payment status? Is a person eligible if their loan is in a "deferment" or "forbearance" status?

The JRJ statute authorizes a program by which direct payments are to the holder of a qualifying loan on behalf of an eligible beneficiary (borrower) who is not in default on a loan for which the person seeks forgiveness. The term "default" is understood to have the same definition as it does under the applicable provisions of the beneficiary's loan agreement with his/her lender. Therefore, in reviewing applications, SAAs should confirm that the lender does not consider the applicant to be in a "default" status. Any individual who is considered by their lender to be in "default" status at the application stage should not be selected for JRJ benefits.

During the course of the service agreement, SAAs should require periodic certifications by the beneficiary (borrower) and/or lender to ensure that the beneficiary (borrower) is not, and has not been, in a "default" status and therefore has maintained his/her eligibility for JRJ benefits. The terms of the qualifying loan will control: if "past due," "deferment," "forbearance" or another similar status is not the equivalent of a "default" under the terms of the qualifying loan, then neither will it disqualify the person from eligibility under the JRJ

statute. Beneficiaries are required, under the terms of the service obligation agreement, to notify their SAA of a “default” status. Failure to do so will be considered a breach of the service obligation agreement. SAAs should notify their BJA grant managers upon notice of a beneficiary in “default” status.

27. When does the 3-year service obligation begin?

Ordinarily, the effective date of the beneficiary’s obligation to remain employed for three years as a qualifying “prosecutor” or “public defender” begins on the date that the beneficiary first enters into duty (as such qualifying “prosecutor” or “public defender”) after executing the service obligation agreement. The effective date of any service agreement subsequently entered into by the beneficiary (pursuant to 42 U.S.C. §3797cc-21(e) (“Additional agreements”)) will be the day following the expiration of the prior service obligation. Beneficiaries may not credit any service as a public defender or prosecutor prior to execution of the agreement toward the service obligation.

28. Is a beneficiary obligated to enter into a new service agreement of 3 years in addition upon completion of the initial 3-year service commitment if that person is selected by the SAA to benefit from the JRJ program?

In such a case, a new service obligation agreement between the U.S. Department of Justice and the beneficiary must be executed. Pursuant to the statute (42 USC 3797cc-21(e)(2)), the period of any new term of service obligation would have to be determined on a case-by-case basis.

29. Does the service agreement permit the Department of Justice to collect more than the principal amount of the award if the terms of the service agreement are not satisfied?

In the event of a breach of the service obligation agreement, a principal sum equal to the amount that the beneficiary is required to repay to the Department of Justice “shall be recoverable by the Federal Government” from the beneficiary (or the beneficiary’s estate, if applicable) by such methods as provided by law for the recovery of amounts owed to the Federal Government. The foregoing should not be understood to preclude the Federal Government from recovering any interest that may be owed in the collection of a debt.

30. If an SAA has received applications that include signed service agreement as part of their application, should the SAA require the applicant to re-execute the agreement upon selection for an award and/or prior to first repayment?

The service obligation agreement, once executed, is sufficient for its purposes. Please see the question regarding the beginning date of the service obligation above for further clarification.

31. Can a beneficiary hold some of the grant award to pay any tax liability rather than have all of these funds apply to repayment of a qualifying loan?

No. As an initial matter, the JRJ loan repayment benefits may not be paid directly to a beneficiary. Per 42 U.S.C. §3797cc-21(c), payments are to be made directly to the holder of the loan (*i.e.*, the lending institution) for the benefit of the borrower. Furthermore, the statute specifically authorizes repayment of loan obligations, not tax obligations of a beneficiary.

The beneficiary remains liable for their loan debt and for any late fees assessed by their lender. The JRJ program is intended as a supplement to, not a substitute for, each beneficiary's individual loan payments.

32. Will JRJ funds be available in FY2011?

A FY 2011 general appropriation for activities of the Department of Justice has not been passed by Congress or approved by the President. Though funding is anticipated for FY2011 either through continuing resolution or general appropriation, no such law has been enacted as of this date.

33. How will the JRJ grant program affect funding through the Public Service Student Loan Forgiveness program?

Grantees and beneficiaries should consult with the U.S. Department of Education to learn how receipt of JRJ benefits may affect awards through the Public Service Student Loan Forgiveness Program.

Law school, state-based, and employer-based Loan Repayment Assistance Programs (LRAPs) have individual policies regarding the effect of receiving benefits from other LRAPs (which may include JRJ benefits in some cases). Applicants are encouraged to contact the LRAP administrators of the programs in which they participate to determine whether JRJ benefits influence eligibility or award amount.

34. Should SAAs evaluate the percentage of eligible loans contained in a consolidated loan?

The SAA has a certain degree of discretion in determining an applicant's ability to repay his/her loan. As indicated in the solicitation, the SAA may (but is not required to) consider other loan obligations in the criteria used to make this assessment, and in doing so, may elect to consider the ratio of eligible loans to an applicant's total loan debt, including consolidated loans.