



AUDIT OF THE OFFICE OF JUSTICE PROGRAMS BUREAU OF JUSTICE ASSISTANCE JOHN R. JUSTICE GRANT PROGRAM

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EXECUTIVE SUMMARY

The 2008 John R. Justice (JRJ) Prosecutors and Defenders Incentive Act (JRJ Act) was designed to encourage qualified attorneys to choose careers as prosecutors and as public defenders, and to continue in that service by providing student loan repayment assistance.¹ Through the Department of Justice's (DOJ) JRJ program, which is administered by the Office of Justice Programs (OJP), Bureau of Justice Assistance (BJA), grants are provided to U.S. states and territories. Governor-designated state administering agencies (States) in these states and territories select eligible applicants for JRJ awards. The JRJ Act directed the DOJ Office of the Inspector General (OIG) to audit the cost of the JRJ program and its impact on the hiring and retention of prosecutors and public defenders.

From Fiscal Years (FY) 2010 – 2014, the BJA received over \$28 million through congressional appropriations to administer the JRJ program and fund grants to States. We found that from FY 2010 – 2013, the BJA distributed over \$24.7 million in grants to the States and used over \$1.1 million for BJA overhead, but did not closely monitor these awards.² For example, we found that the States had not provided almost \$500,000 in JRJ funds to public service attorneys after the 1-year grant periods had ended. Had the BJA monitored the awards more closely, it could have encouraged the States to implement the award fully, or requested the voluntary return of unspent funds.³ The BJA also could have identified States that were not using their funds effectively and adjusted future State allocations accordingly. In addition, our audit identified another \$650,000 in unused JRJ funds that we believe should have been put to a better use.⁴

We found that the BJA kept inadequate records on the use of JRJ funds by the States and failed to take appropriate steps to ensure that program beneficiaries repaid funds when they exited the program early. Specifically, the BJA could not

¹ 42 U.S.C.A. § 3797cc-21 (2008).

² The BJA applied \$353,664 of the FY 2010 – 2013 JRJ appropriations to OJP rescissions and sequestration. The BJA told us an additional \$2 million would be spent on funding and administering the FY 2014 JRJ grants, which had not been awarded as of February 2014. These figures are estimates of the JRJ program cost, but do not consider additional cost factors discussed below because of shortcomings in BJA's financial records.

³ OJP told us that it used unspent JRJ funds to meet OJP rescissions on unobligated balances. According to the BJA, unobligated funds from a prior year are applied towards the rescission mandated by the appropriations statute. If any funds remain after the rescission amount has been satisfied, then those residual funds may be returned to the program offices for use in the specific accounts from which the funds came.

⁴ The \$650,000 is comprised of unspent funds on closed awards that have not been de-obligated, funds unspent by territories not accepting and implementing the grants, and funds granted to a territory that told the BJA it did not have eligible applicants.

produce records on the total number of individual prosecutors and public defenders who received awards (JRJ beneficiaries) from the States or the amounts of grant funds awarded to these JRJ beneficiaries. The BJA also could not produce service agreements for many JRJ beneficiaries, who were all required to sign a service agreement committing to remain in eligible public service employment for at least 3 years. Additionally, we found that the BJA did not clearly delineate the States' responsibility for collecting and monitoring repayments from beneficiaries who leave their eligible public service positions prior to the expiration of their service agreements. Moreover, when we began our audit, the BJA did not have an effective mechanism to identify these situations and ensure repayment, or to verify that the States were doing so.

During our field work, State personnel informed us that there were beneficiaries who had left the program prior to completion of their service commitment without repaying JRJ funds. In some of these cases the States had not communicated this information to the BJA, but in others the States had informed the BJA of exiting beneficiaries yet the BJA had no record of repayment from these individuals. We therefore conducted a limited search for individuals who may have left the JRJ program within 3 years of entering and would therefore owe repayments to DOJ. Our search identified at least 288 attorneys who received over \$1.2 million in JRJ awards but left their initially-qualifying eligible employment before completing 3 years of service. As of February 2014, OJP had received approximately \$136,000 in repayments that were tied to individuals leaving the JRJ program early. We estimate a difference of at least \$1 million between total funds known to have been awarded to beneficiaries who left their initially-qualifying eligible positions prior to completion of their service commitment, and funds known to have been repaid by those exiting beneficiaries. While some of these beneficiaries may have been in circumstances that could have merited consideration for a waiver of repayment, BJA did not have a formal process to evaluate these cases and did not have records indicating that any repayment obligations had been formally waived at the federal level. We also note that this estimate may not reflect the full amount of funds that could potentially be owed by exiting beneficiaries, because the search we conducted was limited in scope: as of February 2014, 9 States had not provided the BJA any information on whether JRJ beneficiaries had left the program early, and only about half of the States had submitted detailed reports on exiting participants. We therefore do not believe that the BJA has a full picture of either the number of persons leaving the JRJ program early or the amounts potentially owed in repayments.

Further, there is limited evidence on whether the JRJ program has fully achieved its intended goals involving recruitment and retention of attorneys working in public service. While it is difficult to isolate the role of the JRJ program in an individual's decision to accept and remain in a certain employment position, the BJA did not collect standardized state assessments or other baseline information on specific staffing and retention rates for prosecutor and public defender positions. This resulted in limited data for a quantitative analysis of staffing and retention before and after the implementation of the JRJ program. We identified anecdotal comments from beneficiaries indicating strong appreciation for

the program, even though many also expressed frustration with aspects of its implementation.

We also identified several outside factors that affected the success of the JRJ program by unnecessarily limiting the financial benefits of the awards, and thereby likely influencing the continued participation of attorneys. One of these factors was the question of whether JRJ awards were taxable. We found that the BJA provided varying guidance to the States on this issue, resulting in some states treating the awards as taxable and issuing tax forms to JRJ beneficiaries, which then caused some JRJ beneficiaries to apparently pay taxes on their JRJ awards. Additionally, some beneficiaries indicated that the tax burden of the awards deterred them from re-applying to the program.⁵ Despite the significance of a ruling on this issue, it was not until December 2012 that BJA obtained from the IRS a general information letter which suggested that JRJ awards are not taxable as income. It therefore appears that some beneficiaries may have paid taxes on JRJ awards unnecessarily.

Our report makes 12 recommendations for the improved administration of the JRJ program.

⁵ Because by law JRJ benefits are paid by States directly to the loan-holding financial institutions, beneficiaries did not directly receive any monies as a result of the program. As a result, any required tax payments would have had to come from some other source of funding available to beneficiaries, which likely would have been difficult for program participants given their limited incomes and their request for assistance in repaying their student loans.

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AUDIT OF THE OFFICE OF JUSTICE PROGRAMS BUREAU OF JUSTICE ASSISTANCE JOHN R. JUSTICE GRANT PROGRAM

INTRODUCTION

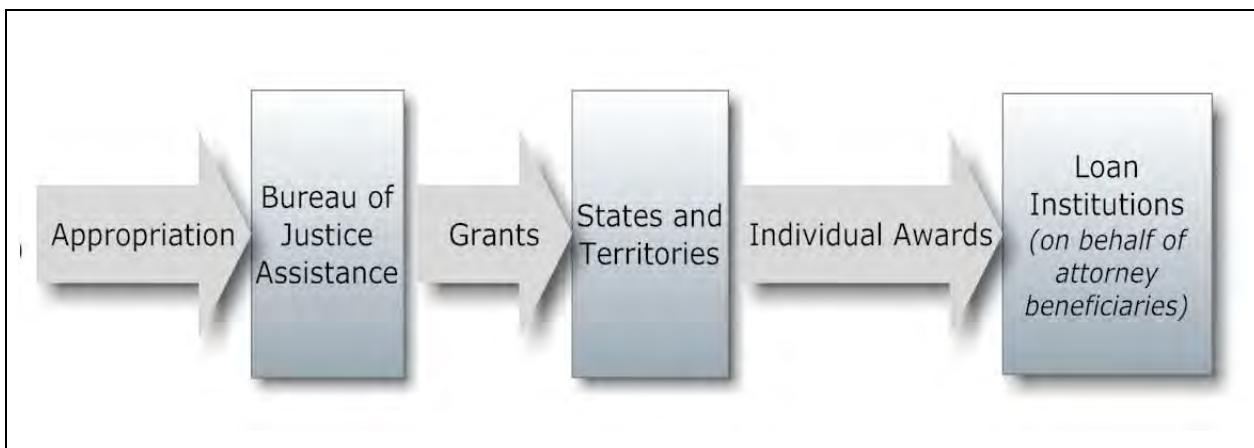
The 2008 John R. Justice Prosecutors and Defenders Incentive Act was designed to encourage qualified attorneys to choose careers as prosecutors and as public defenders, and to continue in that service. The John R. Justice (JRJ) grant program aims to improve recruitment and retention of talented attorneys who might otherwise choose higher-paying private sector careers, by providing loan repayment assistance on student loans held by attorneys working in public service as prosecutors and public defenders. Though a student debt relief program, the JRJ program is funded and administered by the Department of Justice (DOJ) and only attorneys serving as state and local prosecutors, or as federal, state, and local public defenders, are eligible to apply for JRJ loan repayment assistance.⁶ As a condition of the JRJ program, all beneficiaries must sign a service agreement with DOJ committing them to remain in eligible public service employment for at least 3 years. Beneficiaries who violate that agreement and leave their eligible positions of employment before completing 3 years of public service are required by the agreement to return JRJ funds.

The Office of Justice Programs (OJP), Bureau of Justice Assistance (BJA) administers the JRJ program and provides JRJ grants to U.S. states and territories. State administering agencies (States) in turn select eligible applicants for receipt of individual JRJ awards.⁷ The process for distributing program funds is depicted in Exhibit 1.

⁶ Federal prosecutors are not eligible to apply for JRJ awards. The DOJ Office of Attorney Recruitment and Management has a similar Attorney Student Loan Repayment Program available to DOJ attorneys at the federal level.

⁷ The governor for each state or territory (or the mayor of Washington, D.C.) designates the specific state administering agency (State).

EXHIBIT 1: PROGRESSION OF JRJ PROGRAM FUNDS



Source: OIG interviews with BJA personnel

As shown in Exhibit 2, the BJA was provided over \$28 million to administer the JRJ program and fund grants to U.S. states and territories. JRJ appropriations decreased over the 5 years the JRJ program was funded.

EXHIBIT 2: JRJ TOTAL FUNDING AMOUNTS FY 2010 – FY 2014

	Number of Grants	Appropriation
FY 2010	51	\$10,000,000
FY 2011	56	\$8,283,400
FY 2012	56	\$4,000,000
FY 2013	55	\$4,000,000
FY 2014	*	\$2,000,000
TOTAL:		\$28,283,400

Source: JRJ authorizing legislation and BJA records

*Note: According to the BJA, FY 2014 funds have been appropriated, but had not been awarded to States as of February 2014.

In FY 2010, the inaugural year of the JRJ program, all 50 states and the District of Columbia received JRJ grants. In subsequent years, five additional U.S. territories also received grants.⁸ JRJ grant amounts are based on a formula that involves a base amount, plus additional funds dependent on the size of the grantee population. The base amount in FYs 2010 and 2011 was \$100,000, and \$50,000 in FYs 2012 and 2013.⁹ In FY 2010, grants ranged from \$100,000 for the least populous grantees to over \$1 million for California. In FY 2013, grants to the states

⁸ These five territories are American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands. We note that the Northern Mariana Islands did not receive a FY 2013 JRJ grant.

⁹ The BJA lowered the base amounts to \$10,000 for FY 2013 grantees with populations under 500,000, which affected American Samoa, Guam, the Northern Mariana Islands and the Virgin Islands.

and territories ranged from \$10,117 (American Samoa) to \$130,730 (California). Appendix II contains more details on grant amounts.

State agencies were directed to give JRJ priority to eligible attorneys who had the least ability to repay their student loans, and states were encouraged to maximize the number of selected JRJ beneficiaries. States also were required to ensure that they allocated total funding equally between prosecutors and public defenders within each state. Individual awards to attorneys were not permitted to exceed \$10,000 in a year, though we found that States often provided much smaller awards, in the range of \$1,500 – \$5,000 per person. Though JRJ awards are made on a yearly basis and renewal is not automatic, States were encouraged to give existing beneficiaries priority consideration for JRJ funding during the second and third years of the 3-year service agreement, depending on the availability of funds. This has resulted in many FY 2010 beneficiaries receiving successive yearly awards.

Office of the Inspector General Audit Approach

The authorizing legislation for the JRJ program required the DOJ Office of the Inspector General (OIG) to report on: (1) the cost of the JRJ program, and (2) the impact of the program on the hiring and retention of prosecutors and public defenders.¹⁰ Our audit encompasses a review of awards from FYs 2010 – 2013.

As part of our audit work, we interviewed OJP and BJA officials, as well as other staff involved with the implementation and oversight of the JRJ program. We also discussed administration of the program with personnel from six States. We reviewed relevant financial documents and state correspondence with the BJA regarding the JRJ program. To gain context on the public service legal professions, we met with personnel from the Bureau of Justice Statistics as well as personnel from Equal Justice Works, a Washington, D.C., non-profit organization that works in public interest law. Additionally, we interviewed specialists in the Department of Education Federal Student Aid program to better understand how the JRJ program works in conjunction with other federal loan repayment programs. Appendix I contains a more detailed description of our audit objectives, scope, and methodology.

¹⁰ 42 U.S.C.A § 3797cc-21(h) (2008). The JRJ authorizing legislation provided that the DOJ Office of the Inspector General shall submit to Congress a report on JRJ within 3 years of the start of the program. The law provided that the program would start in August 2008. However, funding for the JRJ program was not appropriated until December 2009. Further, the solicitation deadline for the first year of JRJ awards, for FY 10, was not made until July 2010, and the funds were not made available to States until September 2010. Moreover, many States took several additional months to distribute these grant funds to awardees. In keeping with the intent of the authorizing legislation that the OIG submit a report to Congress within 3 years of the start of the program, we began our audit in FY 2012 so that we could review and report on the first 3 years of JRJ awards.

FINDINGS AND RECOMMENDATIONS

I. TRACKING OF JRJ PROGRAM FUNDS

The BJA could not produce complete records on the total number of JRJ participants, individual amounts awarded to participants, participants who left the program early, or total amount of repayments owed by individuals who left the program early. These shortcomings in the BJA's tracking of program funds enhanced the risk of individuals receiving funding from the program without fulfilling their public service obligations. Additionally, because many of the BJA's records were incomplete and unreliable, we were unable to calculate the exact cost of the JRJ program. We found that many JRJ beneficiaries who left their original eligible employment early had not repaid the JRJ funds they received, potentially resulting in \$1,080,192 which may be owed in repayments to OJP. While some of these beneficiaries may have been in circumstances that could have merited consideration for a waiver of repayment, BJA did not have a formal process to evaluate these cases and did not have records indicating that any repayment obligations had been formally waived at the federal level. In addition, the amount of repayments owed could be greater because as of February 2014, nine States had not provided the BJA any information on whether JRJ beneficiaries had left the program early, and only about half of the States had submitted detailed reports on exiting participants. Further, we identified over \$1.1 million in funds that were not spent effectively on awards on behalf of individual beneficiaries.

Cost of the JRJ Program

Based on information documented in OJP's Grants Management System (GMS) and correspondence with BJA officials, we estimate that about \$26 million in JRJ funds were allocated for State awards and BJA administrative costs in FYs 2010 – 13, as shown in Exhibit 3.¹¹

¹¹ GMS is an online system that OJP uses to oversee programmatic and financial aspects of awards.

EXHIBIT 3: ALLOCATION OF APPROPRIATED JRJ FUNDS
FY 2010 – FY 2013¹²

Funds	FY 10	FY 11	FY 12	FY 13	Total
Awards to States and Territories	\$9,895,860	\$8,002,181	\$3,563,762	\$3,304,635	\$24,766,438
BJA Administration	\$104,135	\$218,086	\$436,238	\$404,834	\$1,163,293
TOTAL:	\$9,999,995	\$8,220,267	\$4,000,000	\$3,709,469	\$25,929,731*

Source: BJA records on administrative costs and State awards

Note: "Awards to States and Territories" include state and territory budgeted administrative costs of approximately \$832,000; \$620,000; \$204,000; and \$184,000 for FYs 2010 – 2013 respectively.

* The difference between this amount and the \$26,283,400 appropriated for FY 2010 – 2013 JRJ awards was used for OJP rescissions and for sequestration.

The \$26 million provides a high-level financial overview of the JRJ program but does not consider other elements that factor into the cost of the JRJ program, such as unspent State funds and repayments from exiting participants. While we can estimate the costs associated with these other factors, we are unable to provide an accurate accounting of all JRJ costs because BJA records on specific grant project costs were unreliable and other financial records were incomplete or absent. Additionally, when we initiated our audit, the BJA had no effective process in place to track the States' JRJ award recipients and any required repayments. Exhibit 4 estimates the potential effect of these factors on the cost of the JRJ program.

¹² While FY 2014 funds have been appropriated, we did not include FY 2014 appropriated funds in the chart because these funds had not been awarded to States as of February 2014.

EXHIBIT 4: ESTIMATED COST OF THE JRJ PROGRAM*
FY 2010 – FY 2013

Estimated Use of Funds	Total
Total JRJ Funds Allocated	\$25,929,731
De-obligated Funds	
Funds Already De-obligated	(494,645)
Potential Funds for De-obligation	(651,949)
Returned Funds or Repayments	
OIG-Estimated Potential Repayments Owed	(1,080,192)
TOTAL ESTIMATED COST of JRJ PROGRAM:	\$23,702,945

Source: BJA records, Payment History Reports as of January 31, 2014, OIG analysis of State Federal Financial Reports as of January 31, 2014, OCFO repayment records as of February 2014, and OIG analysis of exiting beneficiary data available as of February 2014

*Note: This chart represents our best estimate of the breakdown of JRJ program costs. We discuss issues regarding the accuracy of records on this program further in the text below.

Insufficient Monitoring of State Expenditures

The JRJ program includes three significant financial requirements for States that receive grants. First, pursuant to the JRJ program's authorizing legislation, the program requires a fair allocation of JRJ repayment benefits among prosecutors and public defenders. According to the program solicitations, the BJA interprets the fair allocation stipulation to mean that the aggregate amounts States awarded to all prosecutors and all defenders should be equal; however, if a State demonstrates good cause for not equally allocating funding between prosecutors and public defenders, the Director of the BJA could grant a waiver of the requirement. Second, the authorizing legislation limits individual awards to \$10,000 for a single year and sets a \$60,000 limit on total funds any one beneficiary can receive. Third, the BJA set limits on the amount of grant funds States could spend on administering the awards.¹³

While the BJA reviewed State budgets submitted in the application process for compliance with program conditions, it did not adequately monitor States to ensure the effective and appropriate use of JRJ grant funds after these budgets had been submitted. We reviewed the budgets for all FY 2010 – 2013 JRJ awards and determined that States generally budgeted JRJ funds appropriately for administrative costs and planned to equally allocate funds between prosecutors and public defenders. States also planned to distribute awards in amounts less than the maximum individual limit. However, because the BJA did not monitor how the

¹³ In FYs 2010 and 2011, grantees were permitted to use up to 15 percent of the award for costs associated with administering the program; for FY 2012 and 2013 grants, the limit is 10 percent. According to the JRJ solicitation, the BJA indicated that it permitted higher administrative spending during the initial years of the JRJ program because the program was new.

grant funds were actually used, we were unable to determine whether states actually adhered to these program requirements. In addition, this lack of monitoring meant the BJA could not identify funds that could be better used, nor could it ensure JRJ funds were distributed according to the terms of the authorizing legislation. During our review, the BJA took steps to improve grantee monitoring for FY 2013 awards, which we discuss further throughout this section.

Unspent JRJ Award Funds

States must file quarterly Federal Financial Reports (FFR) that contain a summary of grantees' total expenditures for a quarter. Final FFRs, which are due within 90 days of the close of grant awards, include the cumulative expenditure history for each State's JRJ award. For a majority of the FY 2010 – 2012 JRJ awards, the award period ended after 1 year unless the grantee requested a grant period extension.¹⁴ According to Final Federal Financial Reports in GMS through the reporting period ending on January 31, 2014, we identified many States that had unspent JRJ funds at the close of the award periods. We found 14 of the FY 2010 grantees and 15 of the FY 2011 grantees listed unspent balances ranging from \$5,000 to \$35,000 in their Final Federal Financial Reports. In addition, seven of the FY 2012 grantees that had submitted Final Federal Financial Reports indicated unspent balances of over \$5,000, and the average amount of each of these States' unspent funds was more than the average payment to an attorney participating in the JRJ program.

While unspent grant money, if appropriately recovered, reduces the overall cost of the JRJ program, it simultaneously reduces the number of awards issued to beneficiaries and therefore limits the program's potential effectiveness. We are concerned that the unspent JRJ funds indicate both inefficiencies in State use of the JRJ funds as well as shortcomings in BJA's monitoring of the program. According to our review of the JRJ payment history reports from January 2014, the BJA de-obligated approximately \$495,000 from closed FY 2010 – 2012 awards. Any unspent funds that remained on the JRJ awards when they closed left the JRJ program and were not available for loan repayment to eligible attorneys. Had the BJA monitored the awards more closely, it could have encouraged the States to implement the award according to the States' approved budgets, or requested that States voluntarily return their unspent funds. At a minimum, the BJA could have

¹⁴ To obtain an extension on the grant period, States must submit a written request to the BJA and the BJA must approve the grant period extension. As of February 2014, the award period had ended for all but one FY 2010 grantee, three FY 2011 grantees, and six FY 2012 grantees. For most FY 2012 grants, the award period ended September 30, 2013; however, six FY 2012 grants were extended. The award period for FY 2013 awards did not begin until October 2013, so all FY 2013 awards remain open through at least September 2014.

identified States that were not using their funds effectively and adjusted future State allocations accordingly.¹⁵

In addition to the nearly \$495,000 de-obligated from closed awards by BJA, we identified almost \$652,000 in unspent JRJ funds that should also be put to a better use. Of this \$652,000, we found almost \$280,000 in funds remaining on closed JRJ awards to the States that the BJA should have identified and de-obligated, since the awards had already closed. In at least one case these funds remained on an award that had been closed for over a year. We also found that as of February 2014, several territories had not spent any of their JRJ funding, approximately 2 and a half years after the first round of funding was obligated in August 2011. These grantees were delayed in completing the necessary steps to accept the grants and did not comply with numerous BJA instructions to revise unacceptable budgets, submit past due progress reports, comply with special conditions, achieve financial clearance, or request extensions for the award periods – even after BJA issued multiple deadlines and notices. These territories therefore did not have the authority to make awards to individual beneficiaries.¹⁶ Specifically, we found that two territories – American Samoa and the U.S. Virgin Islands – received over \$320,000 in FY 2011 – 2013 awards, yet these funds remained unspent as of February 2014. Another territory – the Commonwealth of the Northern Mariana Islands – informed the BJA there had not been any applicants for JRJ program funds in FY 2011, yet this territory received over \$50,000 in 2012.¹⁷

EXHIBIT 5: POTENTIAL FUNDS FOR BETTER USE

Justification	Amount
Funds Remaining on Closed Awards	\$279,717
Funds Awarded to Non-compliant Territories	322,121
Funds Not Needed by Territories	50,111
Funds for Better Use:	\$651,949

Source: JRJ Payment History Reports and BJA correspondence

We therefore recommend that the BJA monitor JRJ funds more closely to identify States that are not using their awarded funds and encourage the States to

¹⁵ OJP told us that unspent funds from State awards that BJA subsequently de-obligated are used to meet OJP rescissions. According to BJA, unobligated funds from a prior year are applied towards the rescission mandated by the appropriations statute. If any funds remain after the rescission amount has been satisfied, then those residual funds may be returned to the program offices for use in the specific accounts from which the funds came.

¹⁶ As of January 2014, the funds remained obligated to these grantees. As of February 2014, BJA officials indicated that these grantees had experienced administrative difficulty implementing the grants.

¹⁷ In July 2013, the BJA told us that that it had set aside another \$10,000 in JRJ funds to the Northern Mariana Islands for FY 2013; however, in February 2014, the BJA informed us that this territory had formally declined its FY 2013 grant.

use their funds or voluntarily refund the unspent amounts for redistribution. We also recommend that the BJA put \$651,949 in unspent funds to a better use.¹⁸

No Tracking of JRJ Participants and Required Repayments

The JRJ legislation requires participants to enter into a written service agreement with DOJ. Under this agreement, JRJ beneficiaries receive JRJ awards in exchange for providing at least 3 years of public service. If JRJ beneficiaries leave the program prior to fulfilling their service obligations, the law requires them to reimburse DOJ for any funds paid on their behalf. Our audit revealed that the BJA did not have an effective process to track individuals participating in the program or to identify individuals who violated the terms of their service agreements.

During our audit, the BJA was unable to provide a complete listing of JRJ beneficiaries from each State or even a reliable total number of beneficiaries in the JRJ program.¹⁹ Since the first year of the program, States have been required to submit participants' signed service agreements to the BJA before the States expend JRJ funds; however, we found the BJA did not enforce the requirement for at least the first three years of the program.²⁰ In October 2012, the BJA told us the agreements should be in GMS, but our review found that a majority of the service agreements for FYs 2010 – 2012 were not present in GMS as of that date: 75 percent of the JRJ States had not submitted any service agreements for JRJ participants. After we inquired about the missing agreements, the BJA reminded States in November 2012 of the requirement to submit signed service agreements and directed States to submit them to GMS for all JRJ participants. Yet, by July 2013, over 7 months later, nearly 40 percent of State grantees still had not submitted any service agreements for any award year. Without signed service agreements, the BJA had no reliable way to determine the number of JRJ participants.

Additionally, even if the BJA were to secure the signed service agreements, it may have difficulty identifying participants and the amounts of grant funds each

¹⁸ Funds for Better Use are funds not yet expended that could be used more efficiently if management took action to implement and complete audit recommendations. In this instance, we believe OJP can take more aggressive action to ensure funds on open awards are optimally used for the JRJ grant program. These actions could include encouraging the States to comply with program requirements, distribute funds in accordance with their submitted budgets, issue awards to beneficiaries in a timely manner, and return unspent funds before the end of the award period. In addition, OJP can refuse any further requests for award extensions from non-compliant states and de-obligate award funds immediately at the close of the award period.

¹⁹ BJA totals on program participation available at the start of our audit were based on incomplete state reports and did not take into account that many selected beneficiaries are repeat recipients from past years' awards. We therefore found the BJA estimates of participants are not reliable.

²⁰ The BJA has the ability to withhold access to grant funds whenever a recipient does not meet the terms and conditions of the award. The BJA did not establish special conditions for withholding on FY 2010, 2011, and 2012 awards that specifically addressed the submission of service agreements.

received from these documents. The BJA said it modeled the JRJ service agreements after the DOJ's in-house attorney student loan repayment program agreements. Those agreements include fields capturing participants' names and social security numbers, as well as a section for administrative use that captures the amount of funds provided and the exact dates of the service commitment. In contrast, the JRJ service agreement document does not capture the eligible public service position, the award amount, or the precise service commitment dates, and some agreements we reviewed did not even include a legible name.

In December 2012, BJA officials told us that it planned to conduct a 3-year review at the conclusion of the term of service required through the FY 2010 awards that would result in a comprehensive list of all beneficiaries, the dates of their service agreements, and verification of their eligible employment. In June 2013, the BJA sent all States a JRJ participant verification form, with fields designed to capture the award number, date each beneficiary signed the first service agreement, relevant public service position, and award amount. The BJA told States it would collect this form, due December 29, 2013, via email to the BJA grant manager.²¹

For the FY 2013 awards, the BJA also added special condition requirements involving withholding funds which are designed to promote the submission of both the required service agreements and the participant verification form. However, when we requested in January 2014 details on States' compliance with this special condition, the BJA informed us that only four States had fully complied at that time. When we conducted our own check of all State reporting in GMS for the FY 2010 – 2013 awards, we found that as of January 2014, 30 percent of State grantees had not submitted in GMS any service agreements for any award year. In addition, when we requested all available participant verification forms, we found that the BJA had collected verification forms from only 26 of 56 grantees as of February 2014.

Given that service agreements for many JRJ beneficiaries were still missing as of January 2014, we recommend that the BJA implement an enforcement mechanism adequate to ensure that States comply with the requirement to submit beneficiary service agreements. Moreover, without a complete listing of participant names, the amounts of grant funding provided to them, and their required length of service, the BJA cannot ensure participants are adhering to the conditions of the program or effectively collect repayments owed from beneficiaries who do not fulfill their terms of service. We therefore recommend that the BJA either update its service agreements to capture each beneficiary's name, State grant number, eligible position, award amount, and required service commitment dates, or maintain a separate list of all JRJ participants including each beneficiary's name, State grant number, eligible position, award amount, and required service commitment dates.

²¹ December 30, 2013 marked 90 days after the end of the award period for most FY 2012 grants and 3 years after the first cycle of JRJ awards. However, since States distribute individual awards to attorneys throughout the year, the beneficiary terms of service may not coincide with these dates.

Required Repayments from Existing Beneficiaries

We found that because the BJA did not establish at the start of the JRJ program a clear process for recouping funds from participants who exit the program early, there was a risk that beneficiaries could take advantage of JRJ program funds without completing their required term of public service. It is clear that should JRJ beneficiaries voluntarily leave their eligible positions before completing 3 years of public service, they are required by law to reimburse DOJ for any JRJ funds paid on their behalf, unless a waiver is granted. However, we found that the specific repayment processes and responsibilities of the BJA, the State agencies, and the beneficiaries were not clear from the solicitations, award documents, or individual service agreements.

The authorizing legislation requires repayment of JRJ funds if the beneficiary is involuntarily separated from employment on account of misconduct or voluntarily separates from employment before the end of the 3-year service agreement.²² The JRJ authorizing legislation also states, “[T]he Attorney General may waive, in whole or in part, a right of recovery” of JRJ repayments if pursuing repayment “would be against equity and good conscience or against the public interest.” BJA officials told us that the BJA Director has been delegated the discretion to grant a written waiver of JRJ repayment.

We found that the BJA lacks any formal process for granting waivers for repaying JRJ funds. During our review of BJA correspondence, we identified multiple instances – involving circumstances such as separation due to military service, lateral transfers, or election to office – where beneficiaries left their public service position; however, it was not clear whether their repayment obligation had been waived. While several of these beneficiaries had inquired whether they owed repayments, as of February 2014, the BJA told us it had not granted any formal waivers to JRJ beneficiaries. We found that the BJA had not developed an internal process to identify waiver requests and issue rulings. The BJA lacked a written waiver application or approval document and did not have any formal or documented criteria on which to base waiver decisions. This has resulted in an ambiguous repayment status for many JRJ beneficiaries who have left their initially-qualifying eligible positions. Furthermore, we believe the lack of a formal and consistent process for granting waivers could lead to inconsistent application of the waiver authority.

As of February 2014, there was no comprehensive listing of all JRJ beneficiaries who had left their initially-qualifying positions prior to completion of 3 years of service. When we began our audit, BJA officials told us that they had not anticipated beneficiaries would leave eligible employment and owe repayments to DOJ. BJA officials stated that they instead had relied on the States and individual beneficiaries to ensure adherence to the terms of the service agreement, and they

²² Beneficiaries who are involuntarily separated from their eligible employment for reasons other than misconduct are not required to repay their JRJ funds.

emphasized that it was the responsibility of individual beneficiaries to report to the States changes in their eligible employment status that would warrant repayment of JRJ funds. BJA officials further stated that JRJ beneficiaries were a "sophisticated" audience of attorneys who understood the terms of the service agreements they signed and their responsibility to report their program exit immediately.

We found that neither the solicitation nor the award for FYs 2010 – 2012 contained specific guidance or requirements on the repayment process for the States, and we did not identify any other specific guidance published prior to our audit requiring States to identify or monitor participants who were leaving the program early, notify the BJA of exiting participants, or perform any role in the recouping of JRJ funds. The only specific direction we identified was language in the service agreement – which is an agreement between DOJ and the participants – that indicates participants should notify in writing their respective State that they are leaving the program without delay.

Moreover, State officials we interviewed at the start of our audit provided varying responses on their role in the repayment process. While some States regularly checked to ensure beneficiaries were still working in eligible employment, others did not have any process in place to track beneficiary employment and consequently could not readily identify beneficiaries who had exited eligible employment. State personnel we interviewed also told us that the BJA had not provided the States with clear guidance detailing State responsibilities on handling situations when beneficiaries exit the JRJ program early. This resulted in States not reporting exiting beneficiaries to the BJA.

BJA personnel we interviewed originally told us that they were confident that any required repayments had been paid by exiting beneficiaries. However, State personnel informed us that there were participants who had left the program without repaying JRJ funds, unbeknownst to the BJA. Based on the limited information available, we therefore conducted our own search for individuals who may have left the JRJ program and would therefore owe repayments to DOJ.²³ We identified at least 288 attorneys who received over \$1.2 million in JRJ awards, but left their initially-qualifying eligible employment before completing their 3 years of service. We also found that, as of February 2014, OJP's Office of the Chief Financial Officer (OCFO) had received only about \$136,000 in repayments that could be tied to individuals who left the JRJ program.²⁴ We therefore estimate as questioned costs the difference of approximately \$1,080,192 between total funds known to have been awarded to beneficiaries who left their initially-qualifying positions and funds known to have been repaid by exiting beneficiaries.²⁵ While some of these

²³ At the time of our search, there was little or no available information for about 40% of the grantees.

²⁴ OJP's OCFO is responsible for obligating award funds and processing any repayments.

²⁵ "Questioned Costs" are expenditures that do not comply with legal, regulatory, or contractual requirements; are not supported by adequate documentation at the time of the audit; or are unnecessary or unreasonable. Methods for remedying questioned costs include offset, waiver, recovery of funds, and the provision of supporting documentation.

beneficiaries may have been in circumstances that could have merited consideration for a waiver of repayment, BJA did not have a formal process to evaluate these cases at the federal level and the BJA indicated that no official waivers had been granted as of February 2014.

As described above, during our audit the BJA developed new special conditions on reporting for the FY 2013 awards. In addition to the requirement that States must submit a complete list of JRJ beneficiaries, the special condition also requires the States to submit a list of any individuals who have left the JRJ program prior to fulfilling their service obligation. The BJA said these requirements could be fulfilled by the submission of participant verification forms that the BJA developed. However, the special condition allows States to provide this information “no later than one hundred and eighty days” from the date of the FY 2013 awards, which would mean for many States a deadline around March 2014. We note that the BJA specifically requested from the States information on exiting beneficiaries as early as November 2012. The BJA also informed the States in June 2013 that a final verification of beneficiaries who have either completed or not completed their service obligation would be due in December 2013. The extended period of time it has taken the BJA to obtain a complete listing of exiting beneficiaries has inhibited the efficient collection of owed repayments.

We note that as of February 2014, only 26 of the 56 States had provided participant verification forms with details on exiting beneficiaries. There was limited information available on exiting beneficiaries from the remaining 30 States, nine of which had provided no information at all on whether JRJ beneficiaries had left the program. Based on these findings, we do not believe that the BJA had a full picture of the number of beneficiaries leaving the JRJ program, nor did it have an accurate idea of the amounts potentially owed in repayments. We recommend that the BJA remedy \$1,080,192 in payments awarded to beneficiaries who are known to have left their initially-qualifying eligible positions.

In addition, our audit found that when the BJA learned from either State or participant notification of participants who had violated the terms of the service agreement, the BJA did not communicate this information to OJP’s OCFO, which could have either confirmed receipt of repayment funds or initiated the OCFO’s formal collection process for delinquent payments – a process that OJP had not once used to collect JRJ repayments when we began our audit. In fact, although BJA and State correspondence we reviewed revealed numerous instances when State personnel informed the BJA of exiting beneficiaries or similar circumstances, in many cases we found no evidence that, prior to our audit, the BJA had followed up on this information, determined whether repayments were warranted, or collected owed funds.

Further, while BJA officials stated that they believed 6 months was a reasonable timeframe for JRJ repayment, as of December 2012, the BJA did not have a clear deadline for returning JRJ funds, and the States did not appear to be aware of any deadline for repayment. The BJA also told us that it required repayments in full and that it had not planned to receive payments in installments.

Yet we identified one beneficiary who is repaying the approximately \$4,000 he owes in repayment in increments of \$25 or less, and neither the BJA nor the OCFO could readily explain the circumstances of these payments.²⁶

During our audit, the BJA updated its FY 13 JRJ Frequently Asked Questions to indicate that once a beneficiary has been determined to be in a “repayment status,” the OJP OCFO may demand repayment within 45 days or then refer the matter to the Treasury Department. However, the BJA has not articulated who – the BJA or the States – will determine when a beneficiary is in a “repayment status,” nor has it defined formal criteria for either designation in this status or waiver eligibility. In addition, the BJA has not explicitly outlined the interaction among the States, the BJA, and the OJP OCFO in the repayment process. Further, during our audit, we found that the BJA did not have a formal procedure for the BJA program office to inform the OJP OCFO that repayments are owed.

In order to improve the identification and collection process for required repayments, we recommend that the BJA: (1) identify a comprehensive list of participants who have left the program and determine the amount of repayments they owe the federal government; (2) clarify and circulate guidance on the responsibilities of the BJA, States, and beneficiaries when a beneficiary exits the JRJ program; (3) reconcile program information on exiting beneficiaries with OCFO records to improve tracking and collection of required repayments; and (4) develop a formal process for submitting and evaluating repayment waivers.

Conclusion

While the BJA has taken some steps to improve its administration of the JRJ program, we believe that the BJA must improve its record-keeping, as well as its oversight and communication with States and beneficiaries, to ensure responsible tracking of JRJ funds. We identified almost \$495,000 in de-obligated funds and nearly \$652,000 in additional unspent JRJ funding that the BJA could put to better use. These amounts totaling over \$1.1 million indicate that the BJA and the States were not spending the JRJ funding effectively on awards to individual beneficiaries. Additionally, the BJA must ensure greater accountability for JRJ funds by collecting required signed service agreements from beneficiaries and tracking program participation more accurately. It also must encourage States and beneficiaries to report exits from eligible employment to the BJA in a timely and accurate manner. We found JRJ beneficiaries who left their original eligible employment early received at least \$1,080,192 which may be owed in repayments to OJP. Once the BJA identifies exiting beneficiaries, it must recognize its responsibility to recoup repayments owed to DOJ and employ available methods for the recovery of JRJ funds. BJA officials told us that its planned review of the program after 3 years would result in a comprehensive list of any exiting beneficiaries; however, we believe the BJA must take a more proactive role in identifying individuals who leave

²⁶ The BJA updated the 2013 JRJ Frequently Asked Questions, which state that OJP does not offer payment plans and that uncollected debt is turned over to Treasury. However, as frequently asked questions can be revised, we would suggest that the service agreements may be a more appropriate method for communicating this policy decision.

the program and pursue repayments from attorneys known to have already left the JRJ program.

Recommendations

We recommend that the BJA:

1. Monitor JRJ funds more closely to identify States that are not using their awarded funds and encourage the States to use their funds or voluntarily refund the unspent amounts for redistribution.
2. Put \$651,949 in unspent funds to a better use.
3. Implement an enforcement mechanism adequate to ensure that States comply with the requirement to submit beneficiary service agreements.
4. Either update its service agreements to capture each beneficiary's name, State grant number, eligible position, award amount, and required service commitment dates, or maintain a separate list of all JRJ participants including each beneficiary's name, State grant number, eligible position, award amount, and required service commitment dates.
5. Remedy \$1,080,192 in payments awarded to beneficiaries who are known to have left their initially-qualifying eligible positions.
6. Identify a comprehensive list of participants who have left the program and determine the amount of repayments they owe the federal government.
7. Clarify and circulate guidance on the responsibilities of the BJA, States, and beneficiaries when a beneficiary exits the JRJ program.
8. Reconcile program information on exiting beneficiaries with OCFO records to improve tracking and collection of required repayments.
9. Develop a formal process for submitting and evaluating repayment waivers.

II. MONITORING OF PROGRAM PERFORMANCE

We found there is no empirical data and limited anecdotal evidence with which to assess the effect of the JRJ program on recruitment and retention of prosecutors and public defenders, which limited our ability to evaluate the program's effect on its designated goals. Although some JRJ recipients have reported that the funds were appreciated and helped alleviate some financial concerns, we found the BJA has not implemented an effective process for assessing the overall impact of the JRJ funds and the performance of the program in general. We also identified several factors – such as whether JRJ awards are taxable and how they interact with other federal loan repayment programs – that may have affected the success of the program by limiting the overall benefits of the awards for beneficiaries. We include in our recommendations steps the BJA can take to improve the impact of the JRJ program on its intended goals.

Impact of the JRJ Program on Hiring and Retention

Although shortcomings in the BJA's tracking of the JRJ program prevented us from determining whether the JRJ program has fully achieved its intended goals involving recruitment and retention of attorneys working in public service, we were able to identify several factors that may adversely affect the success of the JRJ program.

No Effective Assessment Process

The BJA did not implement any process to quantitatively assess the effect JRJ funding had on public sector attorney recruitment and retention. We acknowledge that it would be difficult to isolate the precise impact of the JRJ program on recruitment and retention because a variety of factors – such as economic conditions, competition for legal positions, salary amounts, family circumstances, and personal motivations – can influence an individual's decision to accept or stay in a public sector attorney position.²⁷ However, the BJA did not take the most basic steps that would have been necessary to conduct such an assessment. For example, at the start of the JRJ program, the BJA did not collect baseline information from States regarding specific staffing vacancies and retention rates for prosecutors or public defenders. Without this type of baseline data, it is difficult to compare employment environments before and after the implementation of the JRJ program. The BJA did not use its own Performance Measurement Tool (PMT) or standardized state impact assessments to gather reliable, relevant data in

²⁷ We also sought data from the Bureau of Justice Statistics (BJS) on hiring and retention rates for prosecutors and public defenders. BJS staff explained that various states employ a range of public defense systems, and the fact that not all states have a dedicated public defender office makes it difficult to capture traditional vacancy, hiring, and retention figures for these positions.

order to develop a fact-based assessment of the JRJ program. The data the BJA did collect did not provide comparable or reliable performance information on the effect of the JRJ program. All of these factors limited our ability to make an informed assessment of the JRJ program's effect on retention of prosecutors and public defenders.

Performance Measurement Tool (PMT)

The PMT is a means by which the BJA monitors programs it administers. According to the BJA, the PMT is designed to support the States' reporting of performance data, which the BJA said helps it determine the success of programs and make adjustments accordingly. However, we found the PMT questions for the FY 2010 – 2012 JRJ grantees did not elicit information necessary for an empirical measure of the program's effects on recruitment and retention, such as staffing levels and vacancy rates. Our review of the 22 PMT questions for the JRJ grantees found no question that addressed the effect of the JRJ program on public sector attorney retention and recruitment.²⁸ Additionally, we found no question in the PMT that directly captured the number of beneficiaries who had left the JRJ program or the circumstances under which they left. We also found that the BJA did not adequately validate the State responses in the PMT data, and our own review of the PMT responses identified a significant number of inconsistencies, duplicates, empty fields, and ambiguities in the data. For these reasons, we concluded the PMT data could not serve as an accurate indicator of the effect of the JRJ program on hiring and retention.

State Impact Assessments

In addition to the PMT, the BJA could have used state impact assessments to collect data that would indicate the effect of the JRJ program. The FY 2010 – 2013 JRJ solicitations required States to assess annually the impact of the JRJ program on the recruitment and retention of prosecutors and public defenders. During a Government Accountability Office audit on DOJ funding for indigent defense, the BJA said that it required grantees to submit these assessments as a means of assessing whether the JRJ program is achieving intended results.²⁹ However, in July 2012, the BJA was only able to provide us with impact assessments from 2 of the 56 JRJ grantees – nearly 2 years after the initial FY 2010 JRJ funds were awarded. These two grantees had voluntarily submitted their assessments, and the BJA had not collected the remaining 54 assessments.

Because the BJA did not enforce this reporting requirement detailed in the JRJ solicitations, the BJA did not capitalize on the opportunity to use

²⁸ See Appendix III for a complete listing of the PMT questions for JRJ grantees.

²⁹ U.S. Government Accountability Office, *Indigent Defense: DOJ Could Increase Awareness of Eligible Funding and Better Determine the Extent to Which Funds Help Support This Purpose*, GAO-12-569 (May 2012), 41.

State feedback for any oversight, monitoring, or assessment of the JRJ program before the start of our audit. In July 2012, a week after we first inquired about the assessments, the BJA requested that all grantees submit their impact assessments. However, by March 2013 – more than 8 months later – the BJA still had not obtained the required assessments from 7 of the 56 grantees. Further, as of July 2013, BJA officials told us that they had not reviewed the state impact assessments to identify trends in the responses and adjust the program accordingly.

In addition, we found that the structure and content of the state assessments the BJA did receive varied widely, partly due to the fact that the BJA did not establish consistent guidelines for the States to prepare the assessments. The FY 2010 – 2012 JRJ solicitations indicated only that State assessments “may be accomplished qualitatively, through surveys, leader interviews, a focus group or other methods,” and offered no further guidance. We found the grantee responses regarding the impact of the JRJ program ranged substantially in length, quality, and scope. Some assessments included letters from leaders in State prosecutor and public defender offices, while others included such materials as summary results from a three-question online survey, narratives from attorneys discussing the program, and one-page overviews written by State administrative personnel. Many of the assessments lacked even elemental information necessary for interpreting the results, such as the number of respondents who contributed to the assessments and their relation to the JRJ program.

As a result of these inadequacies, the state assessments only yielded anecdotal evidence and did not provide an adequate basis for general conclusions about the program’s effect. Our review found that many assessments reflected that participating attorneys struggle with their debt on a public service salary and appreciate any loan assistance available. We encountered numerous expressions of gratitude for the program and the appreciation for public service that the program reflects. We also commonly encountered the opinion that the program would be more effective in achieving its goals if it provided larger individual awards. Respondents also noted specific critiques of JRJ program implementation, centered on a few common topics which we discuss at length below.

However, due to the inconsistent nature of the State assessments, we were unable to use them to form broad, quantitative conclusions about the effect of the JRJ program. Therefore, we recommend that the BJA standardize the requirements for state impact assessments, ensure that the assessments are designed to support a rigorous analysis of the impact of the JRJ program, and examine the content of these assessments for potential adjustments to program implementation.

Factors That Affect the Success of the JRJ Program

Based on our review of beneficiary comments from state impact assessments, interviews with pertinent BJA and State administrators, and interviews with representatives of Equal Justice Works – a non-profit organization knowledgeable about attorney loan repayment assistance programs – we identified several factors that appear to be detracting from the success of the JRJ program in serving as a public service recruitment and retention incentive for attorneys. These factors include the question of whether JRJ awards are considered taxable income and the JRJ program’s interaction with other debt relief programs.

Uncertainty Regarding Taxability of Awards

For all 4 years of awards, the JRJ beneficiary service agreements included language stating that the JRJ awards may be taxable and that beneficiaries are responsible for any tax obligation resulting from JRJ loan repayments made on their behalf.³⁰ We found, however, that at least during the early stages of the JRJ grant program, the BJA provided varying guidance to the States through its Frequently Asked Questions and other communications about whether the awards were taxable.³¹ We further found that some states treated the awards as taxable and issued tax forms, and that some JRJ beneficiaries appear to have paid taxes on their JRJ awards. This tax issue was consistently a chief complaint reported by JRJ beneficiaries, and many indicated that the value of the JRJ program is reduced if the awards are taxed. In our judgment, the uncertainty of the tax consequences of the JRJ awards undermined a goal of the program to provide financial relief to the recipients.

Specifically, we found the BJA has provided varying answers to States and beneficiaries on the question of whether or not JRJ awards are taxable. For example, according to June 2010 correspondence from one State, BJA instructed in its Frequently Asked Questions that “payments issued by the state agencies through the JRJ Program are considered income, and are subject to applicable taxes and withholdings.” According to these documents, in 2010 the BJA initially instructed States that JRJ payments “are taxable” to the recipients and told the States they should issue an Internal

³⁰ By law, JRJ awards are paid to the loan-holding institutions and not individual attorneys.

³¹ We also found that the guidance about tax consequences for other debt relief programs structured like the JRJ program varied. For example, the authorizing legislation for a DOJ in-house attorney student loan repayment program indicates tax withholdings must be applied to loan repayments made through this program. Yet, for other loan repayment programs similar to JRJ, we located evidence that appeared to indicate that repayments in exchange for public service are not considered taxable income.

Revenue Service (IRS) 1099-MISC form to each recipient of JRJ funds.³² The BJA also indicated that States should withhold and pay employment taxes from the JRJ award payment, thereby decreasing the amount of the award that could be applied to loan repayment. This was the guidance available when States were first launching the program following the May 2010 publication of the first JRJ solicitation.

As of September 2012, the BJA stated in published guidance for the program that JRJ benefits “may be taxable” to the recipients. The BJA also stated in this guidance that it was pursuing an opinion from the IRS on the taxability issue, and that States and beneficiaries were free to consult with the IRS or a tax advisor on the taxable status of JRJ awards.

The BJA told us that OJP’s General Counsel requested guidance from the IRS on the JRJ program in December 2010. However, we found that although the BJA had not received a response from the IRS to the request for guidance, it did not follow up with the IRS until July 2012. The BJA did not receive a response from the IRS until December 2012, 2 years after the original request was made. In February 2013, the BJA made the IRS guidance on the taxability of JRJ awards publicly available. The IRS response came in the form of a “general information letter,” which, according to published IRS guidance, is an advisory opinion and calls attention to a well-established interpretation or principle of tax law without applying it to a specific set of facts.³³ We reviewed the contents of this general information letter and spoke with individuals from the IRS regarding its meaning and effect. Although the general information letter contains a disclaimer stating that it is not a formal ruling, the content of the general information letter suggested that the JRJ awards are not taxable as income.

BJA officials told us that by obtaining a general information letter from the IRS, the BJA had provided a reasonable service to assist States and beneficiaries in making their own decisions about the tax consequences of JRJ awards. Furthermore, these BJA officials stated that the States and individual beneficiaries, not the BJA, were in the best position to present specific facts according to their unique circumstances that could affect an IRS decision. BJA officials also noted that they had provided the general

³² The IRS 1099-MISC form is used to report miscellaneous income that does not fall within the category of salary, wages, or tips.

³³ In this way, general information letters are different from “private letter rulings,” which IRS officials told us are written determinations issued in response to a taxpayer’s written inquiry, filed prior to the filing of returns or reports that are required by the tax laws, about the status for tax purposes or the tax effects of an act or transaction. The IRS only issues private letter rulings in response to a formal request procedure and, unlike general information letters, private letter rulings both interpret the tax laws and apply them to a specific taxpayer’s set of facts. Only individual beneficiaries could ask specifically if a certain source of funds would be considered gross income for tax purposes. However, the IRS indicated that OJP could request an opinion on whether parties responsible for administering the JRJ program (States) should include JRJ awards as income on tax forms they issue.

information letter to the States and updated the BJA website with links to OJP's original request letter to the IRS and the IRS general information letter.

The uncertainty regarding the tax consequences of these awards at the outset contributed to variations in the States' administration of the JRJ program. Our audit found that grantees were handling the issue of whether awards were taxable differently from state to state. In March 2013, we conducted a search for State guidance regarding this tax issue. Of the 18 States that had readily available online guidance, only one had published guidance stating that the IRS had recently determined that the loan forgiveness for most of the JRJ qualifying student loans was not taxable income. Another State indicated it would not issue 1099 tax forms but instructed JRJ beneficiaries to consult with the IRS or tax advisors on this issue and added that DOJ was seeking an opinion on this matter. Seven of these States mentioned issuing 1099 tax forms or gave some indication in their online guidance that the awards are or may likely be taxable. We confirmed with State officials that during the course of the JRJ program more than one State had treated the JRJ awards as taxable and issued tax forms.

In addition, during our subsequent review of the States' FY 2013 budgets, we found that two other States requested funds specifically for issuing tax forms. One of these States indicated that the State did not typically issue 1099 tax forms, but was under the impression that the JRJ grant required 1099 tax forms to be issued to beneficiaries. A third State that had indicated it would be issuing 1099 tax forms in public guidance available in March 2013, noted in its FY 2013 budget that it "intends and believes in good faith that the discharge of loans [via JRJ awards] will not create taxable income for loan recipients under the Internal Revenue Code." This State went on to note in its FY 2013 budget that, "however, there is very little authoritative legal guidance available to determine with certainty the proper tax treatment of this structure" and indicated the beneficiary remains solely responsible for any tax liability.

We found that the JRJ tax question is a significant concern among JRJ beneficiaries. Based on our discussions with State personnel and our review of beneficiary comments, it appears many beneficiaries may have paid taxes on their JRJ awards, despite the fact that the award funds are paid directly to loan-holding institutions. These beneficiaries expressed the opinion that taxing the awards was contrary to the intent of the JRJ program as a financial relief to public service attorneys struggling with debt. As one beneficiary noted, the "tax consequences were a major and unexpected" burden and "significantly diminished the value of the award(s)," which by law

are paid to the loan-holding institutions and not individual attorneys.³⁴ Some of these beneficiaries also stated that the tax burden of the awards deterred them from re-applying to the program by diminishing the value of the award. In light of the IRS general information letter, it appears some beneficiaries may have paid taxes on JRJ awards unnecessarily. We recommend that the BJA revise the language of future service agreements to reflect the latest IRS tax guidance the BJA has received regarding the JRJ awards.

Interaction of JRJ with Department of Education Debt Relief Programs

Many JRJ beneficiaries also participate in the U.S. Department of Education's (Education) Income-Based Repayment (IBR) and Public Service Loan Forgiveness (PSLF) programs, both of which make repayment more affordable for individuals struggling with student loan debt. However, evidence collected from JRJ program beneficiaries suggests that certain aspects of the implementation of the JRJ program may unintentionally reduce the assistance these beneficiaries receive from the IBR and PSLF programs, thus reducing the overall impact of the JRJ program on the hiring and retention of prosecutors and public defenders.

Individuals can qualify to enter into IBR based on certain factors relating to salary and debt amount.³⁵ Some of these individuals qualify for income-based payments through IBR, which involve a monthly repayment amount limited to 15 percent of a participant's discretionary income, calculated according to adjusted gross income and poverty guidelines.

According to Education personnel, one of the primary factors assessed when determining whether individuals qualify for income-based payment is taxable income. Thus, these Education personnel told us that if the JRJ awards were deemed taxable income, JRJ awards could result in an increase in IBR participants' payment amounts. Indeed, several JRJ beneficiaries whose JRJ awards were taxed commented in the state impact assessments that the JRJ awards had in fact affected their income calculation in the IBR program and resulted in higher overall monthly loan repayments. We believe that the increased income-based monthly payment amounts for some individuals who received JRJ awards are an additional example of the negative consequences of the lack of a definitive answer to the question of whether JRJ awards are taxable.

³⁴ Because by law JRJ benefits are paid by States directly to the loan-holding financial institutions, beneficiaries did not directly receive any monies as a result of the program. As a result, any required tax payments would have had to come from some other source of funding available to beneficiaries, which likely would have been difficult for program participants given their limited incomes and their request for assistance in repaying their student loans.

³⁵ Despite the program's name, there are two types of payments that can occur for persons accepted into IBR: (1) income-based and (2) non-income based. Non-income based payments are calculated by dividing the total debt owed over 10 years.

JRJ beneficiaries also reported negative consequences of JRJ awards on the loan repayment assistance they received from Education's PSLF program. Under the PSLF program, if borrowers make 120 on-time payments on eligible loans while remaining in full-time employment in a public service position, the remaining balance due on their eligible federal student loans may be forgiven.³⁶

According to JRJ beneficiaries, the fact that many states make JRJ payments in lump sums rather than in monthly payments affects both the amount of short-term debt relief the beneficiaries receive and extends the timeline for them to reach the PSLF's 120-payment requirement for loan forgiveness. While some beneficiaries recognized the long term benefit of lower amounts owed in interest as a result of lump sum payments, a common sentiment among JRJ beneficiaries was that debt relief was needed most urgently in the short term. We also identified comments in the state impact assessments indicating that beneficiaries would leave the JRJ program if their loan servicer only applied lump-sum payments toward the principal. We believe this is due to the marginal benefit the beneficiaries would receive from their participation in the JRJ program in such circumstances.

We confirmed that many States found it easiest to distribute the JRJ awards to beneficiaries in single lump-sum payments to the loan-holding institutions.³⁷ Under the terms of the PSLF, however, lump sum payments only count as one of the 120 required payments for loan forgiveness, meaning that an annual JRJ award amount may only be counted as one qualifying payment under PSLF even though the JRJ award amount is often substantially higher than a beneficiary's monthly payment.³⁸ In some circumstances, had the JRJ award been distributed differently, it could have funded more than one qualifying PSLF payment, which would have both provided more significant short-term debt relief to the beneficiary and also shortened the beneficiary's timeline for reaching the 120-payment PSLF requirement.

The JRJ program manager confirmed during an interview that the value of the JRJ award to the beneficiary may be diminished in some cases if States pay the award in a lump sum and agreed that participants in both JRJ

³⁶ If participants make a qualifying payment each month, the 120 payment obligation will be complete after a period of 10 years, at which time the participant's remaining debt may qualify for forgiveness. Education is the loan-holding institution for PSLF participant loans. Education then contracts with loan servicers, such as Sallie Mae, to process the repayments.

³⁷ Our evidence indicates that some attorneys were able to arrange with their loan holder to have the lump-sum award credited against monthly payments, but others were not, which may have depended on the unique circumstances of each individual and loan servicer.

³⁸ Education stipulates that lump-sum payments or payments made as advance payments for future months are not qualifying payments under PSLF. However, there are special rules on lump-sum payments for borrowers whose public service employment is with AmeriCorps or the Peace Corps.

and PSLF receive the greatest overall benefit when States structure the JRJ award as monthly payments. Education personnel also confirmed that JRJ awards paid in the form of multiple smaller checks would allow the JRJ award to count for more than 1 of the 120 payments required for loan forgiveness through PSLF and recommended this course of action.

In response to these concerns, BJA officials stated that many States lacked the resources and capacity to re-structure the lump-sum payments. We note, however, that the BJA allows States to use a percentage of JRJ funds to pay for the costs of administering the program, and that an adjustment in the payment schedule could in some cases maximize the impact of the JRJ program even if it results in increased administrative burden.

BJA officials told us that the JRJ program was not specifically designed to be compatible with other Education debt relief programs, nor was it required to do so. While we acknowledge that Education's IBR and PSLF programs are not within the authority or control of the BJA, the BJA is responsible for efficiently and effectively implementing the JRJ program to ensure the program achieves its goal of hiring and retaining public service attorneys. We therefore believe the BJA should explore options for adjusting the implementation of the JRJ program to maximize the financial benefit to beneficiaries and thereby improve overall retention of public service attorneys, and we recommend that the BJA consider adjustments to the JRJ program to improve its compatibility with Education debt relief programs.

Conclusion

Our audit work revealed limited evidence on which to base an assessment of the effect of the JRJ program on the hiring and retention of prosecutors and public defenders. BJA shortcomings in oversight and record-keeping prevented a meaningful quantitative analysis of the JRJ program's impact on employment environments in these public service professions. Additionally, many other factors beyond the JRJ awards could affect an individual's decision to accept and remain in a certain employment position. However, our work to determine the effect of the JRJ program did identify several issues that have influenced the success of the program in meeting its goals, including the question of whether JRJ awards are considered taxable income and the JRJ program's interaction with other debt relief programs.

We believe the BJA must address these issues in order to ensure the greatest overall impact of the JRJ program on the hiring and retention of public service attorneys. Doing so will require that the BJA not only improve tracking and reporting on the JRJ program, but also review the data obtained from the States to identify inefficiencies and other opportunities to maximize the financial relief the JRJ program affords to attorneys working in public service.

Recommendations

We recommend that the BJA:

10. Standardize the requirements for state impact assessments, ensure that the assessments are designed to support a rigorous analysis of the impact of the JRJ program, and examine the content of these assessments for potential adjustments to program implementation.
11. Revise the language of future service agreements to reflect the latest IRS tax guidance the BJA has received regarding the JRJ awards.
12. Consider adjustments to the JRJ program to improve its compatibility with Department of Education debt relief programs.

SCHEDULE OF DOLLAR-RELATED FINDINGS

DESCRIPTION:	AMOUNT	PAGE
<u>Questioned Costs</u> ³⁹		
Repayments Potentially Owed by Exiting Participants	\$1,080,192	
Total Questioned Costs	\$1,080,192	6
 <u>Funds for Better Use</u> ⁴⁰		
Funds Remaining on Closed Awards	\$279,717	8
Funds Awarded to Non-compliant Territories	322,121	8
Funds Not Needed by Territories	50,111	8
Total Funds for Better Use	\$651,949	8
 TOTAL DOLLAR-RELATED FINDINGS	\$1,732,141	

³⁹ **Questioned Costs** are expenditures that do not comply with legal, regulatory, or contractual requirements; are not supported by adequate documentation at the time of the audit; or are unnecessary or unreasonable. Methods for remedying questioned costs include offset, waiver, recovery of funds, and the provision of supporting documentation.

⁴⁰ **Funds for Better Use** are funds not yet expended that could be used more efficiently if management took action to implement and complete audit recommendations.

STATEMENT ON INTERNAL CONTROLS

As required by the *Government Auditing Standards*, we tested, as appropriate, internal controls significant within the context of our audit objectives. A deficiency in an internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect in a timely manner: (1) impairments to the effectiveness and efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations. Our evaluation of the internal controls of the Office of Justice Programs (OJP) and the Bureau of Justice Assistance (BJA) was *not* made for the purpose of providing assurance on their internal control structures as a whole. OJP and BJA management are responsible for the establishment and maintenance of internal controls.

Based on the audit work performed, we did not identify any deficiencies in OJP or the BJA's internal controls that were significant within the context of the audit objectives that we believe would affect their abilities to effectively and efficiently operate, to correctly state financial and performance information, or to ensure compliance with laws, regulations, and other applicable requirements. However, as noted in our report, OJP did not have an effective process for tracking JRJ recipients and consequently could not identify all required repayments. The *Cost of the JRJ Program* section of this report contains the specific details regarding this management improvement issue and our recommendations for corrective action.

Because we are not expressing an opinion on the internal control structure of either OJP or the BJA as a whole, this statement is intended solely for the information and use of the auditee. This restriction is not intended to limit the distribution of this report, which is a matter of public record.

STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

As required by the *Government Auditing Standards*, we tested, as appropriate given our audit scope and objectives, selected transactions, records, procedures, and practices to obtain reasonable assurance that the Office of Justice Programs' (OJP) management complied with federal laws and regulations for which noncompliance, in our judgment, could have a material effect on the results of our audit. OJP's management is responsible for ensuring compliance with federal laws and regulations applicable to the Department of Justice. In planning our audit, we identified the following laws and regulations that concerned the operations of the auditee and that were significant within the context of the audit objectives:

- 42 U.S.C.A. § 3797cc—21 (2008)

Our audit included examining, on a test basis, OJP's compliance with the aforementioned laws and regulations, and whether non-compliance could have a material effect on OJP's operations. We did so by interviewing BJA and State personnel, reviewing State reports on the program, assessing oversight procedures, and examining financial records on the JRJ grantees.

Nothing came to our attention that caused us to believe OJP was not in compliance with the aforementioned laws and regulations.

APPENDIX I

OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

We audited the Office of Justice Programs (OJP) Bureau of Justice Assistance (BJA) John R. Justice (JRJ) Grant Program to fulfill a provision of the JRJ Prosecutors and Defenders Incentive Act (JRJ Act), which called for the Department of Justice Office of the Inspector General to conduct an audit of the JRJ program and outlined two specific objectives for the audit.⁴¹ We conducted our audit to assess: (1) the cost of the JRJ program; and (2) the impact of the JRJ program on the hiring and retention of prosecutors and public defenders.

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our audit focused on BJA's tracking of program participation, the distribution and destination of JRJ funds, and grantee reporting on the program. The scope of our review primarily encompassed FYs 2010 – 2012, but we also considered adjustments for the new FY 2013 award cycle.

We began our audit work by reviewing the authorizing legislation and each year's JRJ solicitation published by OJP. We researched the legislative history of this program to better understand the goals of the program. We also reviewed BJA award records to determine the total funding figures for the JRJ program.

We conducted audit work at BJA offices in Washington, D.C., and conducted in-person and telephone interviews with State administrative personnel. We spoke with staff from Washington, D.C., Maryland, Virginia, California, Texas, and Nebraska to determine the effect of the JRJ program in these locations. We also discussed any difficulties the States experienced in implementing the program, along with best practices they had developed. In our discussions with State

⁴¹ 42 U.S.C.A. § 3797cc-21 (2008). The JRJ authorizing legislation provided that the DOJ Office of the Inspector General shall submit to Congress a report on JRJ within 3 years of the start of the program. The law provided that the program would start in August 2008. However, funding for the JRJ program was not appropriated until December 2009. Further, the solicitation deadline for the first year of JRJ awards, for FY 10, was not made until July 2010, and the funds were not made available to States until September 2010. Moreover, many States took several additional months to distribute these grant funds to awardees. In keeping with the intent of the authorizing legislation that the OIG submit a report to Congress within 3 years of the start of the program, we began our audit in FY 2012 so that we could review and report on the first 3 years of JRJ awards.

personnel, we also verified, to the extent possible, other records the BJA had provided on participation and funding levels for each location.

We interviewed the BJA Associate Deputy Director for Programs, along with the JRJ policy advisor and the JRJ program manager at the BJA, to determine the BJA's approach to administering the program. We discussed with them the early phases of the JRJ program's implementation and difficulties that arose in administering these grants. In addition, we met several times with OJP's Office of General Counsel to discuss the legal guidelines for the JRJ program. We also met with personnel from OJP's Office of the Chief Financial Officer and the Grants Financial Management Division to discuss financial record-keeping for JRJ grants and the tracking and collection of award repayments.

We collected and reviewed State budget documents for all JRJ grants for adherence to program requirements. We also obtained State-submitted Federal Financial Reports, which detail State spending of program funds. In addition, we reviewed payment history documents for all JRJ grants, which reflect OJP's record of the amount of JRJ funds spent by grantees. We searched OJP's Grants Management System (GMS) for signed service agreements submitted by States for JRJ participants. We also searched State correspondence to the BJA program manager, OJP financial records, GMS, State interviews, State budget documents, and State impact assessments for any evidence of exiting beneficiaries and amounts they could owe in repayment. In addition, we reviewed available participant verification forms provided by OJP.

To gain context on the legal employment environment, we reviewed American Bar Association statistics and publicly-available figures from other legal organizations, including the Association for Legal Career Professionals. We met with statisticians from the Bureau of Justice Statistics and discussed their experience with research on prosecutors and public defenders. We also met with Equal Justice Works, a non-profit organization located in Washington, D.C., and referenced in the legislative history of the JRJ Act, to gain context on debt issues that attorneys in public service encounter and the effects of available debt relief programs. We also met with the administrators of the Department of Justice internal Attorney Student Loan Repayment Program to identify any best practices from this similar program.

We reviewed hundreds of narrative comments from beneficiaries who responded in the State impact assessments and spoke directly with one JRJ beneficiary. We reviewed all submitted State assessments and examined state-reported Performance Measurement Tool (PMT) data on the JRJ program. We met with the contractor who oversees this PMT reporting and conducted preliminary analysis on this data ourselves.

We contacted officials at the Internal Revenue Service to understand further the tax implications of JRJ awards. We also contacted program specialists with the Department of Education to discuss specific ramifications of JRJ awards for

individuals who already participate in other Department of Education debt relief programs.

APPENDIX II

GRANT AMOUNTS TO STATES AND TERRITORIES FYS 2010 – 2013

State/Territory	FY 2010 Amount (\$)	FY 2011 Amount (\$)	FY 2012 Amount (\$)	FY 2013 Amount (\$)
Alabama	133,236	136,698	61,619	60,233
Alaska	100,000	105,453	51,748	51,552
American Samoa	N/A	100,510	50,163	10,117
Arizona	186,632	149,076	65,683	63,907
Arkansas	100,000	122,388	57,108	56,259
California	1,045,856	386,026	141,185	130,730
Colorado	142,179	138,613	62,379	61,009
Connecticut	100,000	127,441	58,663	57,619
Delaware	100,000	106,894	52,195	51,946
District of Columbia	100,000	104,620	51,495	51,342
Florida	524,545	244,351	96,105	90,995
Georgia	278,124	174,379	73,745	71,052
Guam	N/A	101,389	50,443	10,339
Hawaii	100,000	110,444	53,326	52,955
Idaho	100,000	112,035	53,834	53,386
Illinois	365,309	198,510	81,134	77,323
Indiana	181,746	149,781	65,766	63,873
Iowa	100,000	123,389	57,408	56,524
Kansas	100,000	121,905	56,946	56,124
Kentucky	122,071	133,316	60,570	59,296
Louisiana	127,106	134,806	61,068	59,766
Maine	100,000	110,199	53,213	52,821
Maryland	161,271	144,328	64,100	62,488
Massachusetts	186,570	150,271	65,937	64,104
Michigan	282,100	175,884	73,893	70,974
Minnesota	149,011	140,722	62,930	61,415
Mississippi	100,000	122,782	57,206	56,334
Missouri	169,423	145,981	64,541	62,780
Montana	100,000	107,596	52,415	52,133
N. Mariana Isles.	N/A	100,371	50,111	No award*

State/Territory	FY 2010 Amount	FY 2011 Amount	FY 2012 Amount	FY 2013 Amount
Nebraska	100,000	114,022	54,458	53,938
Nevada	100,000	120,734	56,588	55,855
New Hampshire	100,000	110,107	53,189	52,803
New Jersey	246,392	167,502	71,340	68,812
New Mexico	100,000	115,810	55,037	54,426
New York	552,939	248,780	97,091	91,531
North Carolina	265,439	173,211	73,361	70,695
North Dakota	100,000	105,164	51,655	51,485
Ohio	326,607	188,574	77,930	74,499
Oklahoma	104,328	128,802	59,173	58,096
Oregon	108,250	129,414	59,367	58,275
Pennsylvania	356,661	197,525	80,828	77,086
Puerto Rico	N/A	128,606	58,967	57,782
Rhode Island	100,000	108,081	52,543	52,229
South Carolina	129,064	135,512	61,320	60,024
South Dakota	100,000	106,251	51,994	51,769
Tennessee	178,157	148,724	65,491	63,701
Texas	701,233	293,061	112,112	105,302
Utah	100,000	121,220	56,816	56,059
Vermont	100,000	104,804	51,515	51,328
Virgin Islands	N/A	100,843	50,265	10,223
Virginia	223,043	161,430	69,588	67,372
Washington	188,568	151,629	66,523	64,637
West Virginia	100,000	114,227	54,489	53,937
Wisconsin	160,000	143,663	63,818	62,152
Wyoming	100,000	104,327	51,375	51,223
TOTAL BY YEAR:	\$9,895,860	\$8,002,181	\$3,563,762	\$3,304,635
CUMULATIVE TOTAL:			\$24,766,438	

Source: BJA award records

* The N. Mariana Isles territory declined FY 2013 JRJ grant funding. We also note that as of February 2014, the Virgin Islands had not formally accepted its FY 2013 award, though the award amount above had been obligated to this territory.

APPENDIX III

PERFORMANCE MEASUREMENT TOOL QUESTION CONTENT FOR JRJ STATE GRANTEES

No.	Performance Measure
1	Was there any grant activity during the reporting period? A) Please select yes or no B) If no, please explain (textbox)
2	Is the John R. Justice Program the first loan reimbursement program administered by the state-appointed agency? • Please select yes or no
3	Is the John R. Justice reimbursement program modeled after an existing state or local loan reimbursement program? A) Please select yes or no B) If no, please explain why (textbox)
4	What DOLLAR AMOUNT was allocated by the state-appointed agency for management and administration of the John R. Justice Program? • Enter dollar amount
5	Did the state's John R. Justice Program receive any other monetary contributions to operate? A) Please select yes or no B) If no, please explain why (textbox)
6	Indicate which requirements were considered when determining the "least ability to repay" calculation A) The beneficiary's total educational debt B) The beneficiary's gross or net income; or, if married, household gross or net income C) An adjustment for cost of living D) The ratio of beneficiary's total educational debt to total assets E) Number of dependents claimed by the beneficiary F) The beneficiary's non-educational debt financial obligations G) Other
7	Indicated which factors (in addition to "least ability to pay") were used for identifying eligible John R. Justice program applicants A) Salary cap for initial applicants B) Distribution of awards to ensure a range of geographic and demographic representatives (i.e. distribution to quadrants and rural/urban areas) C) Critical language needs (i.e. used to maintain critical languages which may include Spanish and tribal languages) D) Assistance from other sources E) Amount of qualifying loan debt (up to \$10,000 per beneficiary) F) Amount of repayment benefit G) Consideration of academic achievement (i.e. class rank, GPA) H) Meritorious service (i.e. high mark job evaluations) I) Other
8	Please describe any challenges with developing the loan repayment program application.
9	Please describe any challenges with developing or implementing the outreach plan.
10	Please describe any challenges with calculating and/or determining the "least ability to repay."
11	Please describe any challenges with following the 50/50 requirement distribution.

No.	Performance Measure
12	<p>Number of ELIGIBLE John R. Justice program applicants</p> <p>A) There were no applications collected during the reporting period B) TEXTBOX (to explain "A") C) Total number of APPLICANTS during the reporting period D) Total number of ELIGIBLE APPLICANTS (unique count) as of this reporting period E) Of those entered in item "D" enter the total number who are PROSECUTORS F) Of those entered in item "D" enter the total number of eligible applicants who are state or local public defenders G) Of those entered in item "D" enter the total number of eligible applicants who are federal defenders</p>
13	<p>Number of John R. Justice program applicants SELECTED to receive loan repayments</p> <p>A) There were no applications collected during the reporting period B) TEXTBOX (to explain "A") C) Total number of prosecutors SELECTED to receive loan repayments during the reporting period D) Total number of state or local public defenders SELECTED to receive loan repayments during the reporting period E) Total number of Federal public defenders SELECTED to receive loan repayments during this reporting period</p>
14	<p>DOLLAR AMOUNT of loan repayments AWARDED</p> <p>A) Funds were not AWARDED during the reporting period B) TEXTBOX (to explain "A") C) Total DOLLAR amount AWARDED to prosecutors as of this reporting period D) Total DOLLAR amount AWARDED to state or local public defenders as of this reporting period E) Total DOLLAR amount AWARDED to Federal public defenders as of this reporting period.</p>
15	<p>DOLLAR AMOUNT of loan repayments DISTRIBUTED</p> <p>A) Funds were not DISTRIBUTED during the reporting period B) TEXTBOX (to explain "A") C) Total DOLLAR amount DISTRIBUTED to prosecutors as of this reporting period D) Total DOLLAR amount DISTRIBUTED to state or local public defenders as of this reporting period E) Total DOLLAR amount DISTRIBUTED to Federal public defenders as of this reporting period.</p>
16	<p>How long PRIOR to the opening of the John R. Justice loan repayment application period was outreach conducted?</p> <ul style="list-style-type: none"> • 2 months prior • 1 month prior • 3 weeks prior • 2 weeks prior • 1 week prior • Other
17	<p>How long AFTER the opening of the John R. Justice loan repayment application process was outreach conducted?</p> <ul style="list-style-type: none"> • 2 months after • 1 month after • 3 weeks after • 2 weeks after • 1 week after • Other

No.	Performance Measure
18	Select the types of outreach that were conducted A) Website B) Email C) Letters D) Pamphlets/Brochures E) Fact Sheet F) Newsletter G) CD/DVD H) Conference calls I) Bulletin J) Conferences (State Bar Association conference, State Public Defenders) K) Other
19	Number of days application period remained open for applicants A) The date the application period OPENED for the John R. Justice repayment program B) The date the application period is/was SCHEDULED to CLOSE for the John R. Justice loan repayment program C) Is the application period ACTUALLY CLOSED for the John R. Justice loan repayment program? D) The DATE the application period ACTUALLY CLOSED for the John R. Justice loan repayment program
20	Number of days between the close of the application period and repayment of loans A) The date of the first payment made to a loan company B) There were NO payments made during this reporting period
21	Please describe any challenges you faced with issuing payments to the loan companies
22	Please describe any challenges you faced with other issues not stated previously

Source: BJA Performance Measurement Tool

APPENDIX IV

OFFICE OF JUSTICE PROGRAMS' RESPONSE TO THE DRAFT AUDIT REPORT⁴²



U.S. Department of Justice

Office of Justice Programs

Washington, D.C. 20531

MAY - 1 2014

MEMORANDUM TO: Michael E. Horowitz
Inspector General
United States Department of Justice

THROUGH: Raymond J. Beaudet
Assistant Inspector General for Audit
Office of the Inspector General
United States Department of Justice
KVM

FROM: Karol V. Mason
Assistant Attorney General

SUBJECT: Response to the Office of the Inspector General's Draft Audit Report, *Audit of the Office of Justice Programs, Bureau of Justice Assistance, John R. Justice Grant Program*

This memorandum provides a response to the Office of the Inspector General's (OIG's) April 3, 2014, draft audit report, entitled *Audit of the Office of Justice Programs, Bureau of Justice Assistance John R. Justice Grant Program*. The Office of Justice Programs (OJP) appreciates the opportunity to review and comment on the draft report.

The draft audit report contains 12 recommendations, \$1,080,192 in questioned costs, and \$651,949 in funds put to better use. For ease of review, these recommendations are restated in bold and are followed by OJP's response.

1. **We recommend that the BJA monitor JRJ funds more closely to identify States that are not using their awarded funds and encourage the States to use their funds or voluntarily refund the unspent amounts for redistribution.**

The Office of Justice Programs agrees with the recommendation. The Bureau of Justice Assistance (BJA) will enhance its monitoring efforts of funds awarded under the John R. Justice (JRJ) Grant Program to identify states and territories that are not using their funds. In addition to BJA's existing monitoring procedures, at the beginning of each application cycle, BJA will review the balance of previous grant awards and encourage states and territories to voluntarily return any unused funds and limit application amounts to levels commensurate to anticipated need. The amount of unspent funds that are returned and redistributed for JRJ program purposes is subject

⁴² Attachments to the Office of Justice Programs' response were not included in this final report.

to statutory rescission requirements and/or other Congressional reprogramming mandates. The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

2. We recommend that the BJA put \$651,949 in unspent funds to a better use.

The Office of Justice Programs agrees with the recommendation. To date, OJP has addressed \$206,342 of the \$651,949 in unspent funds (see Attachment 1). Most of the \$206,342 was as result of repayments received from beneficiaries after the JRJ grant was closed. BJA will review the status of the awards related to the remaining \$445,607 in funds that could be put to better use and determine the appropriate remedy. The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

3. We recommend that the BJA implement an enforcement mechanism adequate to ensure that States comply with the requirement to submit beneficiary service agreements.

The Office of Justice Programs agrees with the recommendation. Prior to the issuance of the draft report, BJA included the following withholding special condition as an enforcement mechanism on its fiscal year (FY) 2013 JRJ grant awards (see Attachment 2). This special condition will also be included on FY 2014 and future JRJ awards.

John R. Justice Student Loan Repayment Program (JRJLRP) Withholding of funds for the Submission of Service Agreements and Associated Information: Recipient may not obligate, expend, or drawdown funds unless and until it has uploaded to the Grants Management System (GMS) (or by a method otherwise prescribed by BJA) the following documents: 1) all John R. Justice Student Loan Repayment Program (JRJSLRP) Service Agreements, Secondary Service Agreements (including any addenda and associated documentation) properly executed by participating beneficiaries in the fiscal year supported by this award; 2) all outstanding JRJSLRP Service Agreements and Secondary Service Agreements (including any addenda and associated documentation) properly executed in prior fiscal years that have not already been uploaded into GMS by the Recipient; 3) a complete list of recipients of JRJ benefits issued by the Recipient, including a reference to the grant award number from which beneficiary funds were paid; 4) a complete list of individuals (if any) who have had JRJ benefits paid on their behalf by the Recipient, but who have left the program prior to fulfilling their service obligation, including a reference to the grant award number from which said JRJ benefits were paid. Recipient shall complete these tasks no later than one hundred and eighty (180) days from the date of this award. A Grant Adjustment Notice (GAN) is required prior to the removal of this special condition.

The Office of Justice Programs considers this recommendation closed and requests written acceptance of this action from your office.

- 4. We recommend that the BJA either update its service agreements to capture each beneficiary's name, State grant number, eligible position, award amount, and required service commitment dates, or maintain a separate list of all JRJ participants including each beneficiary's name, State grant number, eligible position, award amount, and required service commitment dates.**

The Office of Justice Programs agrees with the recommendation. On June 4, 2013, beginning with the FY 2013 awards, BJA started requiring that states submit verification forms that capture the list of the JRJ participants' names, state grant numbers, positions, award amounts, and service commitment dates, since the inception of the JRJ program in FY 2010 (see Attachment 3). To date, BJA has received verification forms from 46 of the 56 states and territories. With respect to the remaining 10 states, BJA will continue its outreach to obtain the verification forms. As noted in the special condition, FY 2013 JRJ funds, as well as any funds that may be awarded in FY 2014 or later, will not be released until the verification forms are submitted. The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

- 5. We recommend that the BJA remedy \$1,080,192 in payments awarded to beneficiaries who are known to have left their initially-qualifying eligible positions.**

The Office of Justice Programs agrees with the recommendation. The draft report does not provide details regarding how the estimate of \$1,080,192 was calculated. As such, BJA will coordinate with the states to develop a comprehensive list of participants that have left the JRJ program since the inception of the program in FY 2010, and determine if the participants are required to repay funds or are eligible for a waiver. As necessary, BJA will coordinate with the Office of the Chief Financial Officer (OCFO) to collect any JRJ grant funds that may be subject to repayment. The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

- 6. We recommend that the BJA identify a comprehensive list of participants who have left the program and determine the amount of repayments they owe the federal government.**

The Office of Justice Programs agrees with the recommendation. As previously stated in OJP's response to Recommendation Number 4, on June 4, 2013, beginning with the FY 2013 awards, BJA started requiring states to submit verification forms that capture the JRJ participants' names, state grant numbers, positions, award amounts, and service commitment dates, as well as identify whether the participants have left the program since the inception of the program in FY 2010 (see Attachment 3). To date, BJA has received and is validating the verification forms submitted by 46 of the 56 states and territories, and will continue its outreach to obtain the verification forms from the remaining 10. Based on the information included in the verification forms, BJA will develop a comprehensive list of participants that have left the JRJ program

and will determine if the participants are required to repay funds. The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

7. We recommend that the BJA clarify and circulate guidance on the responsibilities of the BJA, States, and beneficiaries when a beneficiary exits the JRJ program.

The Office of Justice Programs agrees with the recommendation. By September 30, 2014, BJA will clarify and circulate guidance regarding the responsibilities of BJA, the states, and JRJ beneficiaries when a beneficiary exits the program without satisfying their service obligation or obtaining a waiver. The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

8. We recommend that the BJA reconcile program information on exiting beneficiaries with OCFO records to improve tracking and collection of required repayments.

The Office of Justice Programs agrees with the recommendation. BJA is reviewing its records to confirm the amounts owed by JRJ beneficiaries that have exited the program. Once the amounts are confirmed, BJA will work closely with the OCFO to develop a process to collect and adequately track information on amounts repaid. The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

9. We recommend that the BJA develop a formal process for submitting and evaluating repayment waivers.

The Office of Justice Programs agrees with the recommendation. The JRJ authorizing statute, 42 U.S.C. 3797cc-21(d)(1)(D)), grants the Attorney General with discretion to “waive, in whole or in part, a right of recovery . . . if it is shown that recovery would be against equity and good conscience or against the public interest.” This is the basis for a waiver request and is included in the service agreement document. Additionally, the JRJ Student Loan Repayment Program Service Agreement contains the waiver criteria within its terms.

On February 18, 2014, BJA issued the FY 2014 FAQs for the JRJ Grant Program, which contained the following information regarding the formal process for states to submit waiver requests:

41. What is the process for requesting a waiver of the repayment of JRJ funds for exiting recipients who are within the terms of the JRJ Student Loan Repayment Program Service Agreement?

Waiver requests may be submitted via email at the dedicated mailbox: jrjwaiver@usdoj.gov also found at https://www.bja.gov/ProgramDetails.aspx?Program_ID=65

Waiver requests should include:

- i. A sworn statement, made by the recipient (requestor) under penalty of perjury, certifying and attesting to the truthfulness and accuracy of the information provided, in the form of an one (1) page Word document that includes an explanation for the waiver request;
- ii. Attached applicable supporting documentation, including any documentation in support of the waiver request received from the State JRJ Administering Agency.

By September 30, 2014, BJA will develop a process to ensure that participants are made aware of the process for requesting a waiver. In addition, BJA will develop written guidance for evaluating waiver requests, including ensuring that appropriate parties are notified of determinations. The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

10. We recommend that the BJA standardize the requirements for state impact assessments, ensure that the assessments are designed to support a rigorous analysis of the impact of the JRJ program, and examine the content of these assessments for potential adjustments to program implementation.

The Office of Justice Programs agrees with the recommendation. BJA recognizes that the data elements for state impact assessments are of great significance to the efficient administration of the JRJ program. BJA proactively required grantees to complete a local impact assessment, beginning with the FY 2010 JRJ solicitation, in an attempt to collect the types of information for such an evaluation. By December 31, 2014, BJA will standardize the requirements for state impact assessments, and ensure that a more robust, consistent, and effective methodology is included in the FY 2015 JRJ solicitation. The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

11. We recommend that the BJA revise the language of future service agreements to reflect the latest IRS tax guidance the BJA has received regarding the JRJ awards.

The Office of Justice Programs agrees with the recommendation. In light of the complexity of this issue, OJP's General Counsel sought and obtained an advisory opinion from the Internal Revenue Service, and posted the information in its entirety on the BJA website. BJA will review the content of its service agreement template, and update it to make applicants aware of where they can review the latest IRS tax guidance related to JRJ awards so that they can determine its applicability to their own personal situation. The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

12. We recommend that the BJA consider adjustments to the JRJ program to improve its compatibility with Department of Education debt relief programs.

The Office of Justice Programs agrees with the recommendation. Since December 2010, BJA has revised the JRJ solicitation language, FAQs, and emails to provide states with the flexibility to best administer the program within their localities. BJA will continue its coordination with the Department of Education to determine whether further adjustments can be made to improve the compatibility between the JRJ program and Department of Education debt relief programs. The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

Thank you for your continued support and assistance. If you have any questions regarding this response, please contact LeToya A. Johnson, Acting Director, Office of Audit, Assessment, and Management, on (202) 514-0692.

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APPENDIX V

OFFICE OF THE INSPECTOR GENERAL ANALYSIS AND SUMMARY OF ACTIONS NECESSARY TO CLOSE THE REPORT

The Office of the Inspector General (OIG) provided a draft of this audit report to Office of Justice Programs (OJP). The OJP response is incorporated in Appendix IV of this final report. The following provides the OIG analysis of the response and summary of actions necessary to close the report.

Recommendation:

- 1. Monitor John R. Justice (JRJ) funds more closely to identify States that are not using their awarded funds and encourage the States to use their funds or voluntarily refund the unspent amounts for redistribution.**

Resolved. OJP concurred with our recommendation. OJP stated in its response that the Bureau of Justice Assistance (BJA) will review the balance of previous grant awards at the beginning of each application cycle. The response indicated that the BJA would encourage states and territories to return voluntarily any unused funds and to limit application amounts to levels commensurate with anticipated need.

This recommendation can be closed when we receive evidence that the BJA enhanced its monitoring to identify States that are not using their awarded funds, and that the BJA encouraged these States to use their funds or voluntarily return the unspent amounts for redistribution.

- 2. Put \$651,949 in unspent funds to a better use.**

Resolved. OJP concurred with our recommendation. According to OJP, it has addressed \$206,342 in funds that the OIG identified for better use at the time of our analysis. The BJA also plans to review the status of the awards related to the remaining \$445,607.

We reviewed documentation provided by the BJA regarding the \$206,342 in funds that the BJA indicated it had addressed. Of this amount, the BJA included \$100,843 in funds awarded to the Virgin Islands, despite the fact that the BJA informed the OIG as recently as February 2014 that this territory had experienced administrative difficulty, failed to satisfy withholding special conditions, and been prevented from accessing grant funds. While we acknowledge that the Virgin Islands had reported \$100,843 in expenditures on its Final Federal Financial Report for the reporting period ending September 2012, the grantee had not drawn the funds down and was not compliant with financial terms as of February 2014.

Further, it appears that the BJA has granted extensions to territories it described in February 2014 as lacking financial clearance, appropriate budgets, or compliance with special conditions. The BJA not only granted extensions to these grantees for most awards that were past their end dates, but also did not plan to take action before the award period closed regarding unspent funds on awards which had not yet passed their end dates.

This recommendation can be closed when we receive evidence that all funds identified for a better use, including those awarded to the territories that have not demonstrated a need or ability to make JRJ awards, have been put to a better use.

3. Implement an enforcement mechanism adequate to ensure that States comply with the requirement to submit beneficiary service agreements.

Resolved. OJP concurred with our recommendation. Its response notes a withholding special condition OJP developed during our audit for the Fiscal Year (FY) 2013 and future awards, which calls for State submission of current and any outstanding service agreements. This special condition is discussed in greater detail on page 10 of our report.

OJP requested that this recommendation be closed. However, as of January 2014, 30 percent of State grantees had not submitted in GMS any service agreements for any award year, and many other States had made only incomplete submissions. Additionally, the BJA informed us that as of February 2014 – approximately 4 months after most States accepted the 2013 grants – only four States had fully complied with the relevant special condition.

This recommendation can be closed when we receive evidence that the BJA has collected of all the required service agreements.

4. Either update its service agreements to capture each beneficiary's name, State grant number, eligible position, award amount, and required service commitment dates, or maintain a separate list of all JRJ participants including each beneficiary's name, State grant number, eligible position, award amount, and required service commitment dates.

Resolved. OJP concurred with our recommendation and indicated that during our audit the BJA started requiring States to submit verification forms that are designed to capture the JRJ participants' names, state grant numbers, positions, award amounts, and service commitment dates. This document is referred to in our report as a "participant verification form" and is discussed on pages 10 and 13. According to OJP, the BJA has received verification

forms from 46 of the 56 states and territories and will continue its outreach to the remaining 10 grantees.

This recommendation can be closed when we verify that the BJA has collected and reviewed all participant verification forms, and that the BJA has followed up with States to resolve any inaccuracies or invalid entries.

5. Remedy \$1,080,192 in payments awarded to beneficiaries who are known to have left their initially-qualifying eligible positions.

Resolved. OJP concurred with our recommendation to remedy potentially-owed repayments awarded to beneficiaries who are known to have left their initially-qualifying eligible positions. OJP indicates that the BJA will coordinate with the States to develop a comprehensive list of participants who have left the JRJ program and collect any JRJ funds that may be subject to repayment.

OJP's response also states that the draft report did not provide details regarding how the estimate of \$1,080,192 was calculated. As noted on page 12 of the draft report, the OIG estimate was the difference between total funds known to have been awarded to beneficiaries who left their initially-qualifying positions and funds known to have been repaid by exiting beneficiaries. As described in the Scope and Methodology section in Appendix I, the OIG reviewed State correspondence provided by the BJA program manager, OJP financial records, Grants Management System (GMS) records, State interviews, State budget documents, State impact assessments, and available participant verification forms provided by the BJA for any evidence of exiting beneficiaries and amounts they could owe in repayment. The BJA provided the majority of the evidence supporting the calculation of the number of exiting beneficiaries and the amount they were awarded; the Office of the Chief Financial Officer (OCFO) provided details on repayments that OJP has received.

This recommendation can be closed when the BJA provides evidence to remedy the \$1,080,192 in payments awarded to beneficiaries who are known to have left their initially-qualifying eligible positions.

6. Identify a comprehensive list of participants who have left the program and determine the amount of repayments they owe the federal government.

Resolved. OJP concurred with our recommendation. OJP proposed that the participant verification forms the BJA developed would be the basis for such comprehensive listing. The response indicates that the BJA has received these forms from 46 of the states and territories and is working to obtain the forms from the remaining 10 grantees.

This recommendation can be closed when we receive evidence that the BJA has compiled a comprehensive listing of exiting beneficiaries, based on sources of relevant information available to it including, but not limited to, the participant verification forms from all States that have made JRJ awards. A fair and accurate determination of owed repayments would also involve subtracting repayments already received (see Recommendation 8), as well as excluding any beneficiaries to whom the BJA grants a waiver (see Recommendation 9). The BJA should also provide evidence that it has implemented a process to identify any future beneficiaries who exit early and therefore owe repayments.

7. Clarify and circulate guidance on the responsibilities of the BJA, States, and beneficiaries when a beneficiary exits the JRJ program.

Resolved. OJP concurred with our recommendation. According to the response, by September 30, 2014, the BJA plans to clarify and circulate guidance on the responsibilities of the BJA, States, and beneficiaries in these circumstances.

This recommendation can be closed when we receive evidence that the BJA has clarified and circulated guidance on the responsibilities of the BJA, States, and beneficiaries when a beneficiary exits the JRJ program prior to fulfilling the service obligation. This guidance should include how, when, and upon what criteria the BJA will designate and verify beneficiaries who should be in a "repayment status," and define the specific steps to be followed after such designation.

8. Reconcile program information on exiting beneficiaries with OCFO records to improve tracking and collection of required repayments.

Resolved. OJP concurred with our recommendation. According to the response, the BJA is reviewing its records to confirm the amounts owed by JRJ beneficiaries who have exited the program, and once the amounts are confirmed the BJA will work closely with the OCFO to develop a process to collect and adequately track information on amounts repaid.

This recommendation can be closed when we receive evidence that the BJA has developed a process to coordinate BJA and OCFO efforts to identify, track, and collect owed repayments.

9. Develop a formal process for submitting and evaluating repayment waivers.

Resolved. The BJA concurred with our recommendation. According to the response, the BJA issued Frequently Asked Questions (FAQ) in February 2014 indicating that waiver requests may be submitted to a dedicated mailbox via email or a link on the BJA website. According to these FAQs, waiver requests should include: i) a sworn explanation for the waiver request, made by the

recipient (requestor) under penalty of perjury, certifying and attesting to the truthfulness and accuracy of the information provided; and ii) applicable supporting documentation. The BJA indicated that by September 30, 2014, it will develop a process to ensure that participants are made aware of the process for requesting a waiver. The BJA will also develop written guidance for evaluating waiver requests, including ensuring that appropriate parties are notified of determinations.

This recommendation can be closed when the OIG receives evidence that the BJA has informed JRJ beneficiaries of the process for obtaining a waiver, and that the BJA has developed and adopted written guidance for evaluating waiver requests and providing waiver notifications. The OIG must also verify that the dedicated mailbox or link to the BJA website described in the OJP response is operable.

10. Standardize the requirements for state impact assessments, ensure that the assessments are designed to support a rigorous analysis of the impact of the JRJ program, and examine the content of these assessments for potential adjustments to program implementation.

Resolved. OJP concurred with our recommendation. According to the response, by December 31, 2014, BJA will standardize the requirements for state impact assessments and ensure that a more robust, consistent, and effective methodology is included in the FY 2015 JRJ solicitation.

This recommendation can be closed when we receive evidence that the BJA has informed the States of standardized requirements for future impact assessments that are designed to support a rigorous and consistent analysis of the program, including its effect on the intended goals of improving recruitment and retention of public service attorneys. The BJA should also demonstrate that it collects the impact assessments for the purpose of reviewing them to determine potential adjustments to program implementation.

11. Revise the language of future service agreements to reflect the latest IRS tax guidance the BJA has received regarding the JRJ awards.

Resolved. OJP concurred with our recommendation. During our audit, OJP's General Counsel obtained an informational letter from the Internal Revenue Service (IRS) and posted this document on the BJA website. According to the response, the BJA will also review the content of its service agreement template and update it to make applicants aware of where they can review the latest IRS tax guidance related to JRJ awards, so that they can determine its applicability to their own personal situations.

This recommendation can be closed when we receive evidence that the BJA has updated its service agreement document so that it serves as another

resource directing JRJ beneficiaries to IRS guidance regarding the taxability of JRJ awards.

12. Consider adjustments to the JRJ program to improve its compatibility with Department of Education debt relief programs.

Resolved. OJP concurred with our recommendation. According to OJP, since December 2010, the BJA has revised the JRJ solicitation language, FAQs, and emails to provide states with the flexibility to best administer the program within their localities. The response indicates that the BJA will continue its coordination with the Department of Education to determine whether further adjustments can be made to improve the compatibility between the JRJ program and Education debt relief programs. During our audit, the BJA also obtained and published a general information letter from the IRS addressing the taxability of JRJ awards, which may ameliorate the effects of JRJ awards on beneficiaries who also participate in Education's Income-Based Repayment (IBR).

This recommendation can be closed when we receive evidence indicating that the BJA has coordinated with Education to determine how to improve the compatibility of the JRJ, IBR, and Public Service Loan Forgiveness programs.