TO: Operations and Regulations Committee

FROM: Kara Ward, Assistant General Counsel

THROUGH: Victor M. Fortuno, General Counsel

SUBJECT: Proposed Notice of Rulemaking Workshops Regarding the PAI Rule.

DATE: March 25, 2013

On behalf of Management, the Office of Legal Affairs (OLA) requests that the Operations and Regulations Committee (Committee) recommend that the Board of Directors (the LSC Board) authorize publication of a proposed Notice of Rulemaking Workshops to explore rulemaking options for revising LSC's Private Attorney Involvement (PAI) Regulation in a manner responsive to the recommendations of the Pro Bono Task Force Report (the Task Force).

I)   Background.

In October 2012, the Task Force released its findings and recommendations. One of the Task Force's recommendations addresses LSC's PAI regulation, which requires grantees to expend an amount equivalent to 12.5 percent of their basic field grants to encourage the involvement of private attorneys in the delivery of legal assistance to eligible clients. The regulation prescribes certain activities that can be counted as meeting its PAI requirement. The Task Force found that the PAI regulation poses a number of challenges to grantees as they seek to expand their pro bono resources and assistance.

On January 26, 2013, the LSC Board authorized initiation of rulemaking to explore rulemaking options regarding the PAI requirement in light of the findings and recommendations of the Task Force

II)   Rulemaking Workshops.

The proposed Rulemaking Workshops (Workshops) will be two to three hour moderated discussions involving the LSC Board, Management, invited panelists, and members of the public. LSC will select panelists based on written requests to participate with the goal of obtaining a diversity of opinions. The Workshops will be held at LSC's headquarters in Washington with participation possible by webinar and teleconference.

The proposed Notice of Rulemaking Workshops includes several Topics of Discussion that lay out the general scope of the moderated panel discussion. The Topics of Discussion track the three recommendations of the Task Force. Public commenters are invited to make recommendations for additions, deletions, or modifications of the general Topics for Discussion prior to the Workshops and during a discussion at the first Workshop.

III)   Discussion of the Rulemaking Protocol.

LSC's Rulemaking Protocol, 67 Fed. Reg. 69762 (November 18, 2002), provides that

> As an adjunct to the Notice and Comment Process, LSC will, when appropriate, conduct Rulemaking Workshops. Rulemaking Workshops will enable LSC Board members and staff to meet with stakeholders prior to the development of a draft NPRM to discuss, but not negotiate, LSC rules and regulations. LSC believes the Notice and Comment process, including Rulemaking Workshops, will allow for an effective dialog between LSC and its recipients and other interested parties, in those instances in which Negotiated Rulemaking is not used.

With respect to procedure, the Rulemaking Protocol requires that the decision to undertake a Rulemaking Workshop be made by the Board:

> When the Board has decided to initiate a rulemaking and to conduct a Rulemaking Workshop, OLA will work with the Board and staff to select a date for the Rulemaking Workshop and will invite participants from the interested stakeholder community.

Id.

The Rulemaking Protocol envisions that LSC Board members will be participate in or be live observers of the Rulemaking Workshop. The LSC Board is also responsible for providing LSC staff with policy direction for any proposed regulatory change.

> Upon the conclusion of the Workshop, the Board shall provide LSC staff with policy guidance on the issues discussed to aid staff in the development of the Draft Notice of Proposed Rulemaking ("NPRM").

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IV)   Next Steps.

Management requests that the Committee recommend to the Board that LSC staff and the LSC Board conduct Rulemaking Workshops regarding changes to the PAI regulation.