



TO: Operations and Regulations Committee

FROM: Kara Ward, Assistant General Counsel

THROUGH: Victor M. Fortuno, General Counsel

SUBJECT: Approval to Engage in Rulemaking on PAI Based on the Pro Bono Task Force Recommendations

DATE: January 9, 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 (“Board”) authorize an exploration into rulemaking options for revising LSC’s Private Attorney Involvement (PAI) Regulation pursuant to the recommendations made by the Corporation’s Pro Bono Task Force (“Task Force”).

I) Background.

In October 2012, the Pro Bono Task Force released its findings and recommendations. The Task Force, convened by LSC’s Board of Directors and co-chaired by Board members Martha Minow and Harry J.F. Korrell III, included more than 60 distinguished leaders and experts from the judiciary, major corporations, private practice, law schools, the federal government, and the legal aid community. Its charge was to identify and recommend innovative ways to enhance pro bono throughout the country.

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. To address these challenges, the Pro Bono Task Force recommended the following revisions to the regulation:

- a. Resources spent supervising and training law students, law graduates, deferred associates, and others should be counted toward grantees’ PAI obligations, especially in “incubator” initiatives.

- b. Grantees should be allowed to spend PAI resources to enhance their screening, advice, and referral programs that often attract pro bono volunteers while serving the needs of low-income clients.
- c. LSC should reexamine the rule that mandates adherence to LSC grantee case handling requirements, including that matters be accepted as grantee cases in order for programs to count toward PAI requirements.

II) Discussion of the Rulemaking Protocol.

LSC's Rulemaking Protocol (67 FR 69762) provides that

“The impetus for a rulemaking may come from any one of several sources; Congressional directive; internal LSC initiative (Board or Committee members and/or staff); or a formal request from a member of the regulated community or general public. Decisions on whether to undertake rulemakings will be made by the Board upon the recommendation of the Committee.”
67 FR 69763.

When Management believes that rulemaking on a given topic should be undertaken, it makes its recommendation to the Committee, which then determines whether to recommend to the Board that the Board initiate the rulemaking. In most instances, the Committee will base its recommendation upon consideration of a Rulemaking Options Paper (“ROP”) prepared by the Office of Legal Affairs (OLA”). The ROP will contain a discussion of the subject for the potential rulemaking, and will include an outline of the policy and legal issues involved, as well as the mechanisms to accomplish the rulemaking.

III) Next Steps.

Management requests that the Committee recommend to the Board that LSC fully explore rulemaking options regarding the PAI requirement in light of the findings and recommendations of the Task Force. The next step is the development of a Rulemaking Options Paper for the Committee's review.