



OFFICE OF LEGAL AFFAIRS

To: Operations and Regulations Committee

From: Ronald S. Flagg, General Counsel and Vice President for Legal Affairs
Mark Freedman, Senior Assistant General Counsel
Stefanie K. Davis, Assistant General Counsel
Diana Camosy, Post-Graduate Fellow

Date: February 24, 2014

Re: Summary of the Final Set of Written Comments Received as Part of the 2013 PAI Rulemaking Workshops

In connection with the PAI rulemaking workshops in 2013, LSC solicited written comments before each workshop and final written comments by October 17, 2013. In addition to the comments received before the workshops, LSC received ten written comments by the October deadline. This memo summarizes their contents. All of the testimony, comments, summaries of the other comments, and other materials regarding the workshops and the panelists are posted on the PAI rulemaking webpage at <http://bit.ly/PAIrulemakingdetails>. The three topics of discussion are:

- Topic 1: LSC Pro Bono Task Force Recommendation 2(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.
- Topic 2: LSC Pro Bono Task Force Recommendation 2(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.
- Topic 3: LSC Pro Bono Task Force Recommendation 2(c)—LSC should reexamine the rule, as currently interpreted, 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.

The table below lists the final comments in the order in which they were received.

Author	Organization	Date Received
Kristie Cinelli	Legal Aid Society of Northeastern New York (LASNNY)	August 28, 2013
Mara Block	Legal Aid Foundation of Chicago (LAF)	August 29, 2013
Deborah Perluss	Northwest Justice Project (NJP)	September 17, 2013

Author	Organization	Date Received
Lewis G. Creekmore and Edwina Frances Martin	New York State Bar Association Committee on Legal Aid	October 9, 2013
Lisa Wood	American Bar Association, through its Standing Committee on Legal Aid and Indigent Defendants (SCLAID) and with substantial input from its Standing Committee on Pro Bono and Public Service (Pro Bono Committee)	October 11, 2013
Ann Routt & Michael Chielens	Legal Services Association of Michigan (LSAM)	October 15, 2013
Jim Bamberger & Caitlin Davis Carlson	Washington State Office of Civil Legal Aid and Legal Aid Foundation of Washington	October 15, 2013
Laurie Tarantowicz and Matthew Glover	LSC Office of the Inspector General (OIG)	October 17, 2013
Melissa Skilliter	Ohio State Legal Services Association (OSLSA)	October 17, 2013
Chuck Greenfield	National Legal Aid and Defender Association (NLADA)	October 17, 2013

Kristie Cinelli, Legal Aid Society of Northeastern New York

Ms. Cinelli wrote that LASNNY fully supports Recommendation 2(a). She commented that adopting this recommendation will help grantees foster effective relationships with partners in the legal community, as well as launch projects that would not be possible without such relationships, and sustain needed PAI programs. Law students, she noted, are capable service providers, but simply need the resources to enable them to provide assistance. Legal services providers should therefore be able to provide them with training using PAI resources because assistance from law students allows private attorneys to take on more pro bono matters.

Ms. Cinelli also wrote that LASNNY fully supports Recommendation 2(b). She stated that this recommendation should be adopted because grantees need effective screening systems in order to ensure both effective referrals and in-house assistance. The ability to apply PAI resources to this work is instrumental, she stated, to the provision of legal services.

She also wrote that LASNNY supports Recommendation 2(c). The rule, she commented, inhibits the ability of legal services programs to work with other community organizations by hindering the formation of partnerships. This means grantees lose the collaboration necessary to leverage their resources and expand their services.

Mara Block, Legal Aid Foundation of Chicago

Ms. Block introduced her comments by stating that expanding involvement with private attorneys and other volunteers is critical to maintaining legal services for poor people. She wrote that LAF generally supports the ideas that have emerged in the PAI workshops, especially the

proposals to count work with law students and other non-lawyers, as well as screening, towards PAI. She commented that LAF understands the concern that grantees not engage in or subsidize restricted activities. She suggested that, rather than trying to craft bulletproof regulatory language, LSC should broaden the regulation and then review grantees' annual PAI plans to determine if the PAI activities are allowable. She envisioned PAI plans as the vehicle to propose innovative projects and report on whether those projects' goals have been met. LSC would then have a much better handle on what grantees want to accomplish, and whether those activities are allowed. She added that grantees would have more flexibility to tailor their work to their service area, rather than follow a single model.

Regarding Topic 1, Ms. Block stated that efforts expended by anyone not employed by a grantee should be counted in some way, whether as cases, outcomes, or PAI spending. She included law students, law graduates, deferred associates, paralegals, and anyone else devoting time to serving grantees' clients. This group of volunteers is broader than that originally countenanced by the PAI rule, but they will become long-term supporters of legal aid. She included professionals not in the legal community, such as financial experts, doctors and realtors. She recommended that the term "private attorney" should be defined as broadly as possible and include lawyers licensed elsewhere and permitted to practice in a grantee's jurisdiction. She also recommended that supervision, training, and mentoring of non-attorneys should count towards the PAI allocation. Ms. Block proposed that the attorney definition should be "any attorney not currently employed full-time by an LSC-funded organization, or by another legal services provider that is the recipient of LSC funds."

Regarding Topic 2, Ms. Block wrote that LAF supports the use of PAI funds for screening, referral, and advice. She noted that some grantees provide staff to clinics run by courts that forbid screening for LSC eligibility, and suggested that some PAI funds could be devoted to these efforts. Many of these clinics and help desks rely on private attorneys. To assuage concerns about tracking, Ms. Block suggested that grantees use an "additional descriptor" to identify and track these cases and matters that do not go through a full eligibility screening. She also stated that eligibility screening should be relaxed in such settings, where a lengthy process would impede the overall goal of the project, or where the grantee is a secondary sponsor. In such circumstances, there should be no screening beyond that required by the primary sponsor of the project; grantees would have to note in their reports on such projects that they believe the preponderance of clients served are LSC-eligible. Ms. Block discussed in detail collaborations in which the grantee cannot control access to the private attorneys. She also discussed identifying when the preponderance of clients in PAI programs would be LSC-eligible and how to exclude impermissible activities from such projects.

Regarding Topic 3, Ms. Block wrote that LAF supports using private attorneys and other volunteers in brief services and advice clinics. She explained that Illinois permits such services without full conflicts checks, which has increased interest by volunteer attorneys. She also recommended permitting grantees to report and count for PAI purposes cases handled in pro bono clinics or help desks that are outside of priorities, such as wills, where there private bar has an interest even though it is not a grantee priority.

Deborah Perluss, Northwest Justice Project

Regarding Topic 1, NJP proposed a change in the regulatory language to make PAI credit available to support the work of “any person licensed to practice law in the jurisdiction of the LSC recipient’s service area, who is not then otherwise employed by the recipient.” This would, in Washington’s case, allow service providers to capture a significant new resource in the state: limited license legal technicians (LLLTs), who are non-lawyers authorized to practice some very limited kinds of law. These LLLTs, Ms. Perluss said, mostly work in the area of family law, where there is the highest demand for low-cost or no-cost services, so they would be a significant help to grantees. This definition would also address concerns about excluding from the rule lawyers who worked at an LSC grantee within the past two years or who want to accept PAI fees but do not have other full-time legal income and thus are excluded by the income test in the current private attorney definition.

NJP also supports including anyone licensed in the jurisdiction under the applicable rules such as student attorneys, emeritus attorneys, or attorneys licensed elsewhere but permitted to provide indigent representation. NJP does not support expanding the scope of the rule to include people who are not authorized to practice law. Nor does NJP offer an opinion as to whether the PAI rule should include attorneys who work full-time as staff attorneys at nonprofit organizations that do not receive LSC funds.

Regarding Topic 2, Ms. Perluss stated that PAI services should not be tied to CSR requirements. She wrote that it was extremely difficult for NJP to get private attorneys who accept cases to comply with all case handling requirements. Conversely, local volunteer lawyer projects (VLPs) were very successful in recruiting attorneys to their programs which accept well-screened referrals from NJP through a hotline system with an integrated tracking system that captures the referral and confirmation of some private attorney service, but does not maintain ongoing oversight of the case. NJP does not support requiring that level of tracking for all grantees though. Under the current rule, NJP is unable to get any credit for the referral.

Regarding screening and conflicts, Ms. Perluss agreed that there was a legitimate concern about creating conflicts if PAI referrals are tracked in a case management system. She recommended that LSC defer to local conflicts rules to address those concerns and discussed ABA and Washington State rules regarding screening for referrals and conflicts.

Regarding Topic 3, NJP expressed no opinion on whether LSC should allow recipients to include, under the PAI framework, the time spent supporting clinics without eligibility screening. In its screening system, NJP has the capacity to screen for LSC eligibility and allocate time and costs accordingly. If there are other grantees in NJP’s situation that can screen and allocate costs, any concern about supporting clinics that do not screen should not be a basis to deny PAI-supported referral services to those clinics.

Ms. Perluss also addressed the question about distinguishing support for LSC-permissible and LSC-impermissible activities. She discussed NJP working with VLPs and bar associations on trainings and presentations for lawyers regarding legal topics relevant to low-income persons.

Those attorneys do not have to accept pro bono NJP cases, but NJP supports allocating those activities to PAI expenses because they encourage and support pro bono work. Trainings on restricted activities should not be supported by an LSC grantee.

Lewis G. Creekmore and Edwina Frances Martin, New York State Bar Association Committee on Legal Aid

Mr. Creekmore, Deputy Director of Legal Services of the Hudson Valley, and Edwina Frances Martin, a private attorney, submitted comments for the New York State Bar Association's Committee on Legal Aid (Committee). The Committee supports all three PBTF recommendations, and urged LSC to make sure that any amendments to the PAI rule do not have the unintended consequence of diluting good PAI initiatives

The Committee supports Recommendation 2(a), which would allow work with non-lawyers to count towards PAI obligations, especially for incubator initiatives. They noted that there are many such initiatives to expand services to low-income people in partnership with law schools, especially given the current focus on implementing the new pro bono requirements for bar admission. Amending the PAI rule will help New York grantees leverage the hundreds of thousands of pro bono service hours of law students that are becoming available.

The Committee supports Recommendation 2(b), which would allow PAI credit for the enhancement of screening, advice, and referral programs. This change would reduce the complexities that grantees must now navigate regarding what counts as pro bono time and what is a case or a matter. Grantees could, under a new PAI rule, expand their intake programs to provide access to more people.

Furthermore, the Committee supports Recommendation 2(c), reexamining the rule requiring adherence to CSR rules. Such a change, they wrote, would encourage grantees to allocate resources needed to recruit private attorneys to expand access for people, without the grantees necessarily providing direct representation themselves. They discussed the example of using volunteer lawyers to help build document assembly systems for self-help resources.

Lisa Wood, American Bar Association

Ms. Wood submitted comments for the American Bar Association through its Standing Committee on Legal Aid and Indigent Defendants (SCLAID) and with substantial input from its Committee on Pro Bono and Public Service (Pro Bono Committee). The ABA submitted earlier comments tracking the three topics for the July Workshop. The October comments track the supplemental questions provided by LSC.

Ms. Wood began with several issues regarding the purpose of the PAI. The current rule provides that it was enacted to ensure the involvement of private attorneys in the delivery of legal assistance to eligible clients. The ABA recommends that an amended rule should “emphasize the goal of expanding the provision of legal services to the poor and legal education to the low-income community by leveraging the resources of the entire legal community.” The

term “private attorney,” she continued, does not adequately reflect the range of members of the legal community who could assist in expanding services, including non-lawyer professionals.

The ABA recommends keeping the 12.5% requirement, which has served to actively engage lawyers not employed at LSC grantees in providing legal services to low-income people. It has also had the added positive impact of winning LSC financial and political support. A new rule, with a more expansive approach towards meeting the 12.5% requirement, will ease the burden on grantees that experience difficulty in meeting it.

Regarding the scope of the rule, the ABA supports including paralegals, law students, and law graduates awaiting bar admission. The ABA does not support including people outside of the legal community. The ABA recommends changing the title of the rule to “Legal Community Involvement” to better encompass additional categories of non-lawyer members of the legal community and to better describe the lawyers who can provide services such as government attorneys.

The ABA would specifically exclude attorneys employed by non-LSC staff-model legal aid organizations because they are already serving the low-income community. The ABA supports including pro bono activities of such attorneys if done outside of the scope of their legal aid employment.

The ABA also recommends changing the definition to include lawyers accepting reduced fees who do not have other significant law-related income (*e.g.* lawyers in incubator programs, stay-at-home parents, and underemployed attorneys). The ABA recommends eliminating the two-year waiting period for some reduced fees for former LSC grantee attorneys. While LSC should encourage grantees to have lawyers play a central role in activities under the rule, the rule should let grantees decide who to involve. Lastly, the ABA recommends that the rule include assistance to LSC recipients and the client community by attorneys licensed in other jurisdictions and non-lawyers who may provide representation in administrative proceeding.

Regarding screening and referral of applicants for placement with private attorneys, the ABA supports including those activities in the rule without requiring the grantee to consider those matters as “cases,” which could create conflicts for representation of future clients. Furthermore, the ABA recommended that LSC develop a new system to account for the number of individuals referred and screened. That information would help demonstrate the extent to which the legal community is engaged in serving the low-income community. The ABA believes that grantees can best evaluate referral placement organizations, meaning that the rule should not impose national standards and should not adopt as a requirement the ABA’s *Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means*, which are meant solely as guidelines.

Regarding support for unscreened work at private attorney clinics, the ABA supports requiring some limited screening as to income and alienage to qualify under the rule. Screening would be required when the grantee supports the clinic with activities such as screening and

referrals or training and support of clinic volunteers. The ABA noted that vital services are provided in these clinics, many of which might not exist without the support of LSC grantees.

Ann Routt and Michael Chielens, Legal Services Association of Michigan

Ms. Routt and Mr. Chielens wrote to encourage LSC to redesign 1614 in order to emphasize the values of flexibility and innovation. LSC and its grantees, they wrote, should be permitted to report and receive credit for all the work grantees do, particularly in order to educate funders and the public about those activities. LSC grantees in Michigan have reported that their pro bono programs are much larger than the limited PAI activities that LSC permits them to report. LSAM recommends a flexible approach to pro bono that would enable LSC and its grantees to more effectively discuss the full array of innovative and inspiring pro bono programs.

LSAM criticized treating PAI as a Case Service Reporting (CSR) compliance issue, which has created tremendous barriers to the breadth and quality of services provided by grantees. A comprehensive compliance system is appropriate for grantees, but it is neither workable nor appropriate for volunteer projects. LSAM noted that LSC encourages activities without individual CSR compliance in the TIG programs and legal education projects. They endorsed the State Bar of Michigan's earlier written recommendation that LSC use a test of good faith efforts to engage members of the private bar to expand services to clients using a "PAI matters" approach that would be inclusive, not limiting. LSAM recommends defining a private attorney as any person authorized to provide legal services who is not an employee of an LSC grantee. The term should also include law students and graduates awaiting bar admission.

Regarding Advisory Opinion 2009-1004, discussed in PBTF recommendation 2(b), LSAM criticized that opinion for preventing the reporting of 10,000 cases funded by LSC grantee programs serving LSC-eligible clients through a hotline program because LSC concluded that a staff model legal services provider cannot be a private attorney. LSAM also discussed the question of counting these cases as CSR cases regardless of PAI. LSAM argued that these cases should count as CSR cases for the grantees. LSAM further stated that the opinion would exclude from the rule many long-standing pro bono programs including law school clinical professors, attorneys at bar association pro bono programs, and attorneys working at corporations. Additionally, they argued that the opinion would result in excluding staff at a program even if the program only received a \$100 contract from LSC. LSAM recommends that LSC focus on expanding resources available to clients, regardless of the corporate status of the provider.

Jim Bamberger and Caitlin Davis Carlson, Washington Office of Civil Legal Aid and the Legal Aid Foundation of Washington

Mr. Bamberger and Ms. Carlson wrote that they were particularly concerned about the potential impact of the limited interpretation of the PAI rule adopted in Advisory Opinion 2011-1001. This is because NJP, the LSC grantee for Washington State, is part of a comprehensive, statewide plan for legal aid delivery. NJP has the primary roles for providing unified, consistent, and effective screening, intake, and referral of eligible clients to pro bono programs. NJP also

provides coordination, training, and support for local and statewide pro bono efforts. Mr. Bamberger and Ms. Carlson recommend allowing all of these services to be allocated as PAI expenses. Moreover, the PAI rule as currently written, they said, may be a disincentive to effective private attorney involvement. The current rule should be reviewed with an eye toward promoting innovation and allowing greater flexibility in meeting requirements.

Laurie Tarantowicz and Matthew Glover, LSC Office of the Inspector General (OIG)

The OIG prefaced its remarks by noting that it was difficult to offer comprehensive or conclusive comments on potential regulatory action in the absence of a definite proposal with specific language. As a result, its comments were necessarily provisional, and did not represent the OIG's final position on any proposed changes.

The OIG began with recommending evaluation of the PBTF proposals, the written comments, and the workshop discussions in light of the rule's purpose. The OIG noted that a change in purpose may be appropriate, but that it should be considered in a deliberative manner rather than by accretion. The current purpose of the PAI rule is to ensure that grantees involve private attorneys in the delivery of legal assistance. This is because, when effectively used, PAI expands the base of attorneys representing poor people, increases the range of choices for clients, and provides a higher degree of specialization. Therefore, the question for the rulemaking is whether the recommendations at issue are calculated to increase private attorney involvement. If they are not—as with the proposed counting of law students' work towards PAI—the question is whether these proposals promise the benefit of, for example, greater choice for clients. Additionally, if the focus of the PAI rule is to be broadened to include less traditional “private” attorneys, the rule should undergo a more systematic restructuring to account for the shift, rather than retain the “private attorney” rubric. The OIG noted that for FY 2013 and FY 2014, both the Senate and the House appropriations committees for LSC have included report language encouraging involvement of private attorneys.

The OIG's second major point involves balancing free pro bono services and compensated reduced fee services under the rule. The current rule seeks increased participation of attorneys generally in pro bono and compensated programs. The House appropriations reports for LSC in FY 2013 and FY 2014 refer to both no-cost and low-cost additional services. The proposed changes, appear intended to encourage pro bono over compensated activities. If such a shift is intended, it should be made explicit in the regulation after study by LSC. This is because shifting the balance toward pro bono may result in a reduction of involvement by private attorneys, as some lawyers may withdraw if they only participate in compensated projects.

The OIG's third major point involves the focus on direct legal services. The current rule requires direct delivery services to eligible clients and permits other support activities. The OIG recommends retaining this focus on direct delivery because it speaks to the core of LSC's mission.

The OIG's fourth major point involves the rule's limitation on allocating to PAI reduced fee payments to former staff attorneys within two years of their employment at a grantee. That

limitation does not apply when the former grantee attorneys participate in a PAI program on the same terms as other attorneys. Rather it prevents favoritism. The proposal involving incubator projects implicates this limitation because some incubators involve temporary employment at an LSC grantee. While not opposed to the idea of adjusting this rule, the OIG recommended retaining some mechanism for addressing concerns regarding apparent favoritism, including a perceived unfair advantage in securing compensated work, and the fact that former grantee attorneys have already been involved in providing legal services to the poor. The OIG also noted concerns about subsidizing the legal practice of former grantee attorneys who could handle LSC-restricted cases in their private practice.

The OIG's fifth major point involves tracking and reporting to Congress. Some of the proposed changes could make it more difficult to track the outcomes of PAI programs, especially those proposals to include individuals who do not fit the traditional understanding of "private attorney." While involving law students, for example, may have real benefits for the client population, Congress has retained its principal focus on services provided by private attorneys in its consideration of LSC's pro bono efforts. Any changes to who counts as a "private attorney" should be accompanied by accounting mechanisms that track involvement of actual attorneys in directly providing legal services.

The OIG's sixth major point involves detecting and preventing noncompliance. The OIG noted that relaxing the case handling requirements, as recommended by the PBTF, could make it more difficult to prevent and detect noncompliance and could increase the risk that LSC funds will subsidize restricted activities. The current requirements that grantees must perform intake, proper case assignment, and oversight likely goes far in ensuring that PAI expenditures are consistent with funding restrictions. Additionally, the OIG believes that the case handling requirements provided LSC with the assurances it needed to relax the program integrity rule as applied to PAI. The OIG recommended careful consideration of compliance issues when modifying the rule.

The OIG's seventh point involves allocation of limited PAI resources. The OIG noted that making PAI resources more widely available to a broader pool of service providers likely will have the concomitant effect of diverting some resources away from attorneys who participate in PAI programs under the current requirements. Furthermore, the current rule does not prohibit the programs contemplated by the new proposals; it simply states that such programs cannot be allocated towards PAI. This issue involves a policy judgment about which the OIG did not express an opinion based on the available evidence.

Melissa Skilliter, Ohio State Legal Services Association

Ms. Skilliter wrote briefly to supplement her testimony at the September PAI workshop. She commented that LSC should consider relaxing the current requirement that all clinic participants complete a full screening for eligibility. This change would give legal aid programs the flexibility to be a community partner in local efforts without being seen as dictating how the clinic is to be run. She stated that this could be done in a way that would also ensure that LSC

funds are primarily being used to serve the low-income community. She included a newspaper article profiling a clinic that OSLSA participates in with support from the local judiciary.

Charles Greenfield, National Legal Aid and Defender Association

Mr. Greenfield wrote that NLADA is fully supportive of all of the PBTF's recommendations for changes to the PAI rule. NLADA also seeks, in a new PAI rule, a regulatory architecture that allows grantees the maximum flexibility to leverage the resources of the legal community in order to do what each deems most effective locally. Mr. Greenfield commented that the focus of any PAI program should be on expanding the availability of legal assistance and legal information for people in poverty and the client community.

Regarding Topic 1, NLADA supports Recommendation 2(a), to leverage the work of law students, law graduates, deferred associates, paralegals, lay advocates, and others to expand the provision of legal assistance for the poor and legal information to the client community. Mr. Greenfield added a caveat that the primary focus of a PAI program should not be training law students. Lawyers should still have the central role of any PAI activity, with students, graduates, paralegals, and lay advocates working under their supervision. Mr. Greenfield suggested that non-lawyers could, with attorney supervision, do support work at clinics, present at legal education sessions, or represent clients in administrative proceedings.

This broadening of the PAI rule would be made possible by changing the definition of "private attorney." Mr. Greenfield noted that there is no clear definition of the term except by exclusion: that a private attorney is not a staff attorney of a grantee. Moreover, the term is misleading because in-house counsel, government lawyers, and law school adjunct professors can be considered "private attorneys" even though they are not in private practice. Mr. Greenfield suggested changing "private attorney" to "attorney and other legal community volunteers," to include all the above-mentioned non-lawyers, as well as attorneys not licensed in the jurisdiction, and attorneys with little or no other income. The emphasis of the regulation, he wrote, should be on expanding the availability of legal assistance, not on the income of attorneys and how they earn it. In general, grantees should be able to count towards PAI any time spent performing activities that support the goals of the rule, including seeking the assistance of non-attorney professionals.

Regarding Topic 2, NLADA supports Recommendation 2(b), so that resources spent on screening and referring cases to any attorney or other legal community volunteer or pro bono program—or spent on training volunteers and other support—can be counted towards PAI. Mr. Greenfield supported including non-LSC-funded legal aid programs and in the definition of private attorney and overturning AO-2009-1004. The test should focus on expanding resources through pro bono or judicare activities, rather than the attorneys' employment status at for-profit or non-profit law firms. He noted that the opinion resulted in grantees not reporting 10,000 LSC-eligible cases per year handled by a non-LSC-funded non-profit law firm providing hotline intakes services.

Regarding Recommendation 2(c), Mr. Greenfield noted that the application of CSR requirements to PAI has not been a good fit. It has discouraged the expansion of pro bono opportunities. It is an odd result, he commented, to have LSC prohibit PAI credit for a case accepted by a private attorney merely because the client referred to him is not a client of the grantee. The focus of the PAI rule is to get attorneys to take cases as their own while the grantee provides assistance with the process. The grantee's work could include recruitment, training, referrals, providing substantive expertise, and co-counseling. Mr. Greenfield suggested three approaches to report PAI case activity: (1) the current system of reporting PAI-referred cases that are also grantee CSR cases; (2) reporting PAI-referred cases as "other services" with the attorney who accepts the referral assuming all responsibility of handling the case and no requirement for detailed reporting of case data or outcomes; or (3) reporting the time expended in conducting PAI referrals with no requirement for detailed reporting of case data or outcomes.

NLADA did not support any specific criteria regarding organizations that accept PAI referrals for placement with private attorneys. Rather, grantees should be allowed to leverage the legal community's resources as they deem best for their programs. As long as the focus is on expanding legal assistance, resources expended in referrals to, cooperation with, and direct support for placement programs should count towards PAI.

Regarding conflicts and referrals, Mr. Greenfield noted that a number of states permit referrals after intake without creating conflicts for the program.

Regarding support for unscreened private attorney clinics, Mr. Greenfield stated that for legal information clinics, all grantee support should qualify for PAI. This approach is consistent with other grantee-supported legal information activities.

On the other hand, if the clinic provides legal assistance by private attorneys, then the grantee should determine (1) whether the clinic has as a principal activity of the delivery of services to those who would be LSC-eligible, and whether the legal assistance sought relates to that activity; and (2) whether those being provided with assistance are primarily those who would be LSC-eligible. The grantee would collect information to reasonably demonstrate that the clinic and people served meet LSC eligibility criteria. Mr. Greenfield suggested using any reasonable mechanisms for gathering information on financial and alien status eligibility, and he provided two examples. The clinic could conduct limited financial and alienage screening and direct ineligible persons to private attorneys with no further grantee support. The clinic could alternately conduct periodic limited screening to determine if clinic participants are primarily eligible clients.

For clinic screening and for other activities that support PAI efforts, such as trainings, Mr. Greenfield compared screening with the 45 C.F.R. § 1611.6 requirements for group eligibility in which groups are primarily composed of financially eligible clients or have a principle activity of serving such clients.