



DISCUSSION GUIDELINES  
LEGAL SERVICES CORPORATION  
PAI RULEMAKING WORKSHOP  
SEPTEMBER 17, 2013  
WASHINGTON, D.C.

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This is the second of two Private Attorney Involvement (PAI) rulemaking workshops, which are designed to enable LSC to meet with interested parties to discuss, but not negotiate, LSC rules and regulations. The Workshops for the PAI rule are meetings at which the panelists and participants hold open discussions to share ideas regarding how to revise the PAI rule, 45 C.F.R. Part 1614, in a manner responsive to Recommendation 2 of LSC's Pro Bono Task Force (PBTF) Report.

Workshop materials, including the PAI rule, agenda, PBTF report, the referenced LSC Office of Legal Affairs opinions, and comments submitted for both workshops, are posted on the PAI rulemaking workshop webpage on [www.lsc.gov](http://www.lsc.gov) at <http://bit.ly/PAIrulemakingdetails>.

The workshops are forums for LSC to hear from the panelists and the public regarding the three identified topics to provide LSC with information and feedback. The written materials cover a number of issues from a variety of perspectives. Through the workshop, the panelists can discuss their perspectives on the issues raised by the workshop materials, by their fellow panelists, by the three recommendations of the Pro Bono Task Force (PBTF), and by public comments. The workshop is not designed to develop consensus on any specific issues. Rather, the workshop should improve LSC's understanding of the issues and the implications of different approaches.

The September 17 workshop will cover the three topics, related items for discussion, and additional questions as provided in the attached checklist. They also appear in the Federal Register notices at 78 Fed. Reg. 27339 (May 10, 2013) and 78 Fed. Reg. 48848 (August 12, 2013), which are provided on the PAI workshop webpage (as linked to above).

Moderator

Jim Sandman, LSC President, will moderate the workshop.

Scope of Discussion

The workshop is limited to discussion of the topics and related issues identified in the Federal Register notices, as listed in the attached checklist. Other aspects of the PAI rule and other LSC requirements and restrictions may be addressed as they relate to these topics.

### Familiarity with the Materials

The panelists should presume that all the participants are familiar with the regulation, the PBTF report, the referenced LSC Office of Legal Affairs opinions, the comments submitted, and other materials on the PAI workshops webpage. Presentations and discussion should build on, rather than report on, those materials.

### Additional Materials

The comment period will remain open through October 17, 2013. Panelists are encouraged to identify other materials that are useful and relevant to these topics. LSC can collect those materials after this workshop for addition to the PAI workshops webpage. Panelists are also encouraged to submit further comments based on the workshop discussion.

### Panelist Presentations and Discussion

Each panelist has six minutes per topic for a presentation about the issues that she or he considers most important for discussion at this workshop.

### Public Comment, Questions, and Discussion

For each of the three topics, there are 25 minutes for public comment, questions, and panelist discussion. Public comments, which must be brief, can be presented in person or through the call-in webinar, which permits oral comments or typed comments.

### LSC Board Members and Staff

LSC board members and LSC staff will not make presentations but they may ask questions for the panel to address.

### Regulatory Language

The workshop is not designed to develop specific regulatory language, although the discussions may involve identifying areas for clarification of, or changes to, the regulation. Changes to the regulation, if any, would occur at a later stage of the rulemaking process.

LSC PAI Rulemaking Workshop—September 17, 2013—Topics and Items for Discussion

**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.**

How are legal service providers engaging new categories of volunteers? What are the needs of these new categories of volunteers?

What are the obstacles to LSC grant recipients' full use of these volunteers?

Should LSC implement conditions and guidelines to allow LSC recipients to claim PAI credit for the supervision and training of these volunteers?

How can LSC ensure against fraud, waste, or abuse related to implementing this recommendation? What caution should LSC exercise to ensure against any unintended consequences?

To the extent applicable, discuss how any approaches you recommend might be implemented.

Other issues related to Topic 1

**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.**

How are recipients currently using integrated intake and referral systems?

Do LSC's current PAI regulations inhibit full use of integrated intake and referral systems?

Should LSC implement conditions and guidelines to allow LSC recipients to claim PAI credit for the resources used to create and staff integrated intake and referral systems?

How can LSC ensure against fraud, waste or abuse related to implementing this recommendation? What caution should LSC exercise to ensure against any unintended consequences?

To the extent applicable, discuss your organization's ability to execute any recommended approaches.

Other issues related to Topic 2

**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.**

How are recipients currently using or supporting pro bono volunteers in brief service clinics?

What are the obstacles to recipients' use of pro bono volunteers in brief service clinics?

Should LSC implement conditions and guidelines to allow LSC recipients to claim PAI credit for the resources used to support volunteer attorneys staffing brief service clinics?

If LSC were to allow recipients to claim PAI credit for the resources used to support volunteer attorneys staffing brief service clinics under circumstances where the users of the clinics are not screened for LSC eligibility or accepted as clients of the recipient, how could that change be implemented in a manner that ensures compliance with legal restrictions on recipients' activities and uses of LSC funds?

How can LSC ensure against fraud, waste or abuse related to implementing this recommendation? What caution should LSC exercise to ensure against any unintended consequences?

To the extent applicable, discuss your organization's ability to execute any recommended approaches.

Other issues related to Topic 3

LSC PAI Rulemaking Workshop—September 17, 2013—Topics and Items for Discussion

**A. Scope of Part 1614**

Topic 1:

1. Please provide specific suggestions for definitions, limits, or guidelines relating to the potential addition of law students, pre-admission law graduates, or paralegals to the scope of Part 1614 activities.
2. Are there any other categories of non-lawyers whose work should be considered for inclusion in Part 1614?
3. If you recommend changing the definition of a private attorney, then please provide specific recommendations addressing the scope of the definition and how the proposed definition relates to the purpose of the rule.
4. Please provide specific suggestions relating to the potential inclusion in Part 1614 of underemployed attorneys receiving reduced fees (e.g., in “incubator projects”) that may be their primary professional income.
5. Please provide specific suggestions relating to the potential inclusion in Part 1614 of attorneys who are not authorized to practice law in the jurisdiction of the LSC recipient but who may provide legal information or other Part 1614 services if permitted under local bar rules.

Topic 2:

6. Should Part 1614 include the use of non-LSC funds as a subgrant to provide support to attorneys working at a staff-attorney model legal aid program that receives no LSC funds? This question specifically addresses the situation in Advisory Opinion 2009-1004. Please identify how involving attorneys at non-LSC, staff-attorney model legal aid programs relates to the purposes of Part 1614.

**B. Tracking and Accounting for Part 1614 Work**

Topics 2 and 3:

1. What criteria and methods should LSC recipients use to identify and track Part 1614 services to provide sufficient information for reporting and accountability purposes about attempts to place eligible clients with private attorneys, or others, and the outcome of those efforts?
2. Please identify what criteria should apply to referral placement organizations, such as bar association programs, for them to qualify for Part 1614.
3. Please identify how LSC recipients can account for and track PAI services while not creating conflicts for the recipient regarding future representation of clients, consistent with local bar rules.

**C. Support for Unscreened Work of Private Attorney Clinics**

Topics 3:

1. Should LSC permit LSC recipients to obtain some credit under Part 1614 for support for these clinics if they do not screen for LSC eligibility and the clinics may provide services to both eligible and ineligible clients? Please provide specifics about screening concerns and methods to address them.
2. Should eligibility screening in these clinics for Part 1614 be the same as regular intake screening for LSC recipients or different? If different, then please identify methods or criteria for screening.
3. Please identify methods or criteria for LSC to ensure that LSC recipients providing support to these clinics, if permitted, are not improperly subsidizing either services to ineligible individuals or impermissible activities.
4. Please identify methods or criteria to distinguish between permissible activities supporting other entities and attorneys, such as general trainings, and impermissible subsidization.