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August 28, 2013

Mark Freedman
Assistant General Counsel
Legal Services Corporation
3333 K Street, NW
Washington, DC 20007

VIA EMAIL: pairulemaking@lsc.gov

RE: Proposed Changes to 45 C.F.R § 1614

Dear Mr. Freedman:

I am writing to express my interest in participating in the September 17 Rulemaking Workshop in Washington, DC, as noticed at 78 Fed. Reg. 27339. Below is a summary of my proposed testimony.

The key theme of my testimony is that LSC's focus should be on whether PAI efforts seek to increase and provide quality legal services to the poor. By definition, pro bono projects require collaboration between the sponsoring legal aid organization and its community of volunteers. Enduring pro bono programs are crafted to serve the needs of the local client population, but they must also balance the interests, capacity and preferences of the volunteer attorneys. LSC must ensure that its regulatory efforts do not result in unnecessary burdens that discourage private attorneys from participating and decrease the programs ability to support valuable pro bono projects.

Topic 1: Law Student and Law Graduate Pro Bono

We fully support the recommendation of the Pro Bono Task Force that "resources spent supervising law students, law graduates, deferred associates, and others should be counted toward grantees' PAI obligations."

Students and recent graduates are an extraordinary resource for our clients. They have enthusiasm, idealism, and perhaps most importantly, a lot of free time. The time spent cultivating these volunteers can lead to career-long support for legal aid's work. However, these relationships take time and effort. The pro bono professionals at legal aid are the most logical people to direct projects for students and recent graduates. We already have the structures and materials in place to lead these programs efficiently.

In addition to law students, pre-admission law graduates, deferred associates, and paralegals, we suggest that LSC consider the inclusion of licensed Certified Public Accountants (“CPAs”) in Part 1614. These professionals are licensed and highly qualified to provide professional advice that may be relevant to their legal representation, and such specialization is out of the typical experience of a legal aid attorney and many pro bono attorneys. In particular, we host a Low-Income Taxpayer Clinic and CPAs are able to provide significant assistance that can be superior to that offered by an attorney. We have also worked with volunteer accountants in domestic cases in which adverse parties were hiding or understating income.

Topic 3: Relaxed Case Documentation in PAI Cases

In 2008 LSC issued Advisory Opinion 2008-1001 which provided, in part, that “in order for OSLSA to allocate towards its Part 1614 PAI requirement the resources it provides to the clinics, the persons served by the clinics must be screened for eligibility and considered clients of OSLSA.” This decision was prompted by questions raised during a CSR/CSM review by LSC’s Office of Compliance and Enforcement (“OCE”) of the clinics supported by Southeastern Ohio Legal Services (“SEOLS”), a direct service component of OSLSA.

SEOLS supports a network of 16 brief advice clinics across our 30 rural counties. Rural counties present significant challenges for pro bono programs. Most local attorneys are solo practitioners or practice in two or three person firms that must work very hard to remain profitable. Potential volunteers worry about conflicting out paying clients or developing a reputation for providing free services. Many of our volunteers will not participate in pro bono outside of the clinic setting. SEOLS struggled for years to get significant pro bono help for the poor in its area from the small local bar associations until it developed the pro bono advice clinic model.

Each of the 16 pro bono clinics was created with significant input from the local bar and local judiciary. Several have been recognized or honored by the Ohio State Bar Association, Ohio State Bar Foundation, or the Ohio Legislature. Our clinics provide brief advice to thousands of low income people and they are highly regarded by the communities they serve. Based on its current interpretation of the PAI regulations, LSC has determined that we cannot count any of the time invested in the pro bono legal advice clinics towards our PAI requirement.

LSC’s determination is that in order to receive any legal advice, the clinic participant must be fully screened according to LSC’s case handling requirements, the participants must be included in the program’s case management system, and the participant must be considered a client of the legal aid program. We had considered our clinics to be a “Matter” and reported the clinic participants as people helped by an “Other Service.” The clinics did some minimal screening of income but did not engage in the full screening and documentation of the clinic participants, because (1) we did not seek to count them as a “case” for LSC purposes and (2) the local court or bar who supported and often ran the clinics did not wish to have and did not see the need for the burden of in-depth screening. They know the people coming to the clinics from their small communities are poor.

We believe that this system has many advantages over the structure mandated by Advisory Opinion 2008-1001. We use a simplified income screening form and we can document that our clinics serve low income people. This limited screening can be quickly and easily conducted by

volunteers, and it allows for the clinics to be run as a “drop-in” service. More low income people are receiving legal advice from volunteers, because we do not require them to be screened and scheduled in advance. A member of our staff is on-site to provide support and oversight for the entire process, including answering questions from the volunteer attorneys about poverty law issues.

The quality and value of the product we provide has not been questioned. Nor does the legal community question that the clinics are serving the poor. The issue has always been one of procedure, documentation, and bureaucracy. At this point, our options are to either reduce the level of service offered to clinic participants so that they only receive “legal information” or to add an unnecessarily cumbersome screening process to the clinic which could reduce the number of clinics we could support and number of low income people who receive legal assistance.

Volunteers love these clinics because they are an option that allows them to make a limited time commitment and to make a direct contribution to the needy of their community. Because the ease of participation is one of the primary attractions for volunteers, regulatory complications that do not improve service to the clinic participants would hurt our efforts to retain and recruit volunteers. We urge LSC to adopt changes to its regulations that would take into account the nature of these brief advice clinics.

We propose that LSC allow programs, as a countable PAI activity, to sponsor or support brief advice clinics that have as their demonstrable primary purpose the delivery of legal services to those persons in the community who would be financially eligible for LSC-funded legal assistance. This standard is analogous to the provisions regarding the representation of groups in 45 C.F.R. § 1611.6(a)(2). This standard would allow programs to provide support for a clinic focused at serving the poor without requiring that all of the clinic participants are clients of the legal aid program. It allows for flexibility, but stays true to the purpose of the PAI requirement.

Further, we propose that LSC allow programs to conduct and support these clinics under the framework of being a “Matter” rather than require that each participant be considered a client. This allows the program (1) to refer applicants to the clinics when there is a conflict that prevents the program from otherwise helping the applicant and (2) to limit the circumstances where someone attending a clinic unnecessarily creates a conflict of interest for the program. As attorneys, legal aid providers are subject to their state’s Rules of Professional Conduct. As long as the program satisfies its ethical obligations, LSC should embrace the flexibility that this arrangement allows.

Summary of Qualifications

I have served as the Pro Bono Coordinator for Southeastern Ohio Legal Services since 2008, and my responsibilities include help establishing, supporting, and overseeing our 16 brief advice clinics. Prior to my work in pro bono, I was a staff attorney in our Zanesville office and I attended our brief advice clinic regularly to provide support to volunteer attorneys.

I am a 2004 graduate of the Georgetown University Law Center and I have been a licensed attorney in Ohio since November 2004. I am also admitted to practice in the U.S. District Court for the Southern District of Ohio and the United States Tax Court. I am a member of the Ohio

State Bar Association, the American Bar Association, and the Columbus Bar Association.

Thank you for this opportunity to share our comments on the proposed Part 1614 changes. Private attorney involvement and our brief advice clinics are crucially important to our program and to our communities. Their continued success is a very high priority for Ohio State Legal Services. If selected to participate in the September 17 panel, I would intend to participate in person.

Sincerely,

A handwritten signature in black ink, appearing to read "Melissa D. Skilliter". The signature is fluid and cursive, with a large initial "M" and a long, sweeping tail.

Melissa D. Skilliter, Esq.
Pro Bono Coordinator

Cc: Thomas W. Weeks, Executive Director, Ohio State Legal Services Association
James M. Daniels, Director, Southeastern Ohio Legal Services

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.

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

x	How are recipients currently using or supporting pro bono volunteers in brief service clinics?
x	What are the obstacles to recipients' use of pro bono volunteers in brief service clinics?
X	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?
X	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?
X	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:

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| | 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. |
| X | 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:

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

Topics 2 and 3:

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| | 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. |
| X | 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:

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| X | 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. |
| X | 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. |
| X | 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. |