

OFFICE OF LEGAL AFFAIRS

To: LSC Operations and Regulations Committee
Panelists for the September 2013 PAI Rulemaking Workshop

From: Ronald S. Flagg, General Counsel
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Re: Supplemental Questions for the September 2013 PAI Workshop

The September 17 PAI Workshop will include 25 minutes per topic for discussion and questions following the presentations of the panelists. Based on review of the materials submitted, LSC has the following additional questions that we would like the panelists to address during their initial presentations or during the discussion period, time permitting. These questions are meant to help LSC understand the suggestions of the panelists and the implications of the different options.

Law Students and Pre-Admission Law Graduates

Currently, legal aid programs have law student interns providing part-time and full-time legal assistance. Some of those internships are paid, some are unpaid, and some involve academic credit. Should Part 1614 include or exclude the expenses related to those internships? How would including those existing internships increase pro bono activities? Are internships “pro bono” if they are paid or carry academic credit? If not, should they nevertheless be recognized as private attorney involvement under Part 1614?

For law schools that have pro bono requirements, what are the criteria for meeting those requirements? How could Part 1614 relate to those requirements, and to the requirements for admission to the bar of New York?

If law students and pre-admission law graduates are included in the rule, then what types of activities should count as involvement in the delivery of legal assistance to eligible clients?

Non-Legal Professionals

A number of comments recommend including CPAs and other non-legal professionals providing free or discounted services relevant to representation of eligible clients. How would including them in Part 1614 lead to an increase in pro bono legal services?

Lawyers Not Admitted in the Relevant Jurisdiction

A number of comments suggest including lawyers who are on retired status, licensed in other jurisdictions, or otherwise not licensed in the grantee's jurisdiction. For states without rules permitting limited practice by those attorneys, what standards or criteria can LSC apply for the types of work that these lawyers can assist with that would constitute involvement in the delivery of legal assistance to eligible clients, without constituting the unauthorized practice of law?

Definition of a Private Attorney

The current definition of a private attorney is based on whether the attorney earns more than one-half of her professional income from LSC funds, an LSC grantee, or an LSC subgrantee or contractor. This presents problems for counting underemployed attorneys taking reduced fees in incubator projects. Also it means that whether an attorney qualifies may depend on fluctuations in her other professional income. If LSC addresses this issue, should LSC create exceptions for underemployed attorneys or should LSC revise the definition entirely?

Should the definition of a private attorney be based on whether the attorney has paid full-time or part-time LSC-related employment rather than on the attorney's earnings?

Please comment on Question A.6. from the additional questions, which asked:

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.

Screening

Some commenters recommend limited screening for pro bono clinics supported by LSC grantees. What would the requirements be for limited screening, how would they differ from the 1611 and 1626 requirements, and how would they satisfy compliance concerns?

Alienage screening is a particular concern, because the alienage restriction applies to all funding sources for LSC grantees. Can you suggest how to address alienage screening if LSC reconsiders the full screening requirement of OLA legal opinion EX-2008-1001 in clinics for which LSC grantees provide organizational and technical support?

Tracking Case Services

Many comments express the concern that tracking pro bono cases as grantee cases could create unnecessary conflicts for grantees. Please suggest methods of tracking pro bono case services and referrals to provide accountability without creating conflicts.

One comment suggested tracking pro bono casework to determine the outcome of the case and how the client benefited. Are there other minimum criteria that you recommend for tracking pro bono casework?

If LSC revises the requirement for tracking of pro bono cases and referrals, should all cases be tracked individually, or are there circumstances in which you recommend other methods of determining whether the referrals are effective?