

**LEGAL SERVICES CORPORATION****45 CFR Part 1614****Private Attorney Involvement**

**AGENCY:** Legal Services Corporation.

**ACTION:** Notice of rulemaking workshops and request for expressions of interest in participating in the rulemaking workshops.

**SUMMARY:** The Legal Services Corporation (LSC) is conducting two Rulemaking Workshops (Workshops) and is requesting public comments on revising LSC's Private Attorney Involvement (PAI) rule to respond to Recommendation 2 of LSC's Pro Bono Task Force Report. The discussions in the Workshops and the other comments received will be considered in connection with rulemaking by LSC. LSC solicits expression of interest in participating as a panelist in the Workshops from the recipient community, the organized bar, pro bono organizations, and other interested parties.

**DATES:** Expressions of interest in participating as a panelist must be received by 5:30 p.m. EDT on June 25, 2013 for the first Workshop, and August 20, 2013 for the second Workshop. Written comments recommending additions, deletions, or modifications to the Topics for Discussion, including relevant alternatives, in the Workshops, or written comments on revising LSC's PAI rule, 45 CFR part 1614, to respond to Recommendation 2 of LSC's Pro Bono Task Force Report must be received by 5:30 p.m. EDT on June 25, 2013 for consideration for discussion at the first Workshop, and August 20, 2013 for the second Workshop. The final agenda for the first Workshop will be published on July 18, 2013, and on September 12, 2013 for the second Workshop. All written comments on revising the PAI rule, 45 CFR part 1614, must be received by 5:30 p.m. EDT on October 17, 2013.

**ADDRESSES:** Written comments submitted to LSC must be in .pdf format (if submitted electronically) and sent to [PAIRULEMAKING@lsc.gov](mailto:PAIRULEMAKING@lsc.gov). If submitted via facsimile, or in hard copy, please address the comments to Mark Freedman, Senior Assistant General Counsel, Legal Services Corporation, 3333 K St NW., Washington, DC 20007; (202) 337-6519 (fax). Written comments sent by any other means, or received after the end of the comment period, may not be considered by LSC.

**FOR FURTHER INFORMATION CONTACT:** Mark Freedman, Senior Assistant General Counsel, Legal Services Corporation, 3333 K St. NW.,

Washington, DC 20007; (202) 295-1500 (phone); 202-337-6519 (fax); or [PAIRULEMAKING@lsc.gov](mailto:PAIRULEMAKING@lsc.gov).

**SUPPLEMENTARY INFORMATION:****I. Background Information**

On January 26, 2013, the LSC Board of Directors (LSC Board) voted to authorize LSC to initiate rulemaking to consider revisions to 45 CFR part 1614, Private Attorney Involvement (PAI rule) to respond to Recommendation 2 of LSC's Pro Bono Task Force, available at [http://www.lsc.gov/sites/default/files/LSC/lscgov4/PBTF\\_%20Report\\_FINAL.pdf](http://www.lsc.gov/sites/default/files/LSC/lscgov4/PBTF_%20Report_FINAL.pdf). The recommendation suggests LSC should reexamine the regulation in three areas:

1. Resources spent supervising and training law students, law graduates, deferred associates, and others should be counted toward grantees' PAI obligations, especially in "incubator" initiatives;

2. 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; and

3. 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.

On April 14, 2013, the LSC Board voted to convene two Workshops in connection with the rulemaking. The Workshops will be held as a Web-broadcast via Internet connection (Webinar) from LSC's Board meeting in Denver, Colorado on July 23, 2013, at the Warwick Denver Hotel, 1776 Grant St., Denver, Colorado 80203 from 1:30 p.m.-4:30 p.m. MDT, and on September 17, 2013, at the F. William McCalpin Conference Center, Legal Services Corporation Headquarters, 3333 K Street NW., Washington, DC 20007, from 1:30 p.m.-4:30 p.m. EDT. Participants are invited to attend in person, via Webinar, or telephonically via a conference bridgeline. Information about how to participate is available on LSC's Web site at <http://www.lsc.gov/information-rulemaking-workshops-re-lscs-private-attorney-involvement-pai-regulation-and-request>.

**II. Nature of the Workshops**

Rulemaking workshops enable LSC to meet with interested parties to discuss, but not negotiate, LSC rules and regulations. The Workshops for the PAI rule will be meetings at which the panelists and participants hold open discussions to share ideas regarding

how to revise the PAI rule in a manner responsive to the Recommendation 2 of LSC's Pro Bono Task Force Report.

**III. Public Participation: Panelists and Open Comment**

LSC is inviting expressions of interest from the public to participate in either or both Workshops as a panelist. Expressions of interest in participating as a panelist should be submitted, in writing, to Mark Freedman, Senior Assistant General Counsel, Legal Services Corporation; via email to [PAIRULEMAKING@lsc.gov](mailto:PAIRULEMAKING@lsc.gov); via fax to 202-337-6519; or by hard copy mailed to 3333 K Street NW., Washington, DC 20007. All expressions of interest for the first Workshop must be received by 5:30 p.m. EDT on June 25, 2013 and August 20, 2013 for the second Workshop. LSC will select panelists shortly thereafter and will inform all those who expressed interest whether or not they have been selected.

The Workshops will be open to public observation, and portions of the Workshop will be open for public comment from in-person, Webinar, and telephone participants. Prior to the meeting, participants will be asked to register with LSC to ensure that sufficient arrangements can be made for their participation. Panelists and in-person participants are expected to cover their own expenses (travel, lodging, etc.). LSC may consider providing financial assistance to a panelist for whom travel costs would represent a significant hardship and barrier to participation. Any such person should so note in his/her expression of interest for LSC's consideration.

Through this notice, LSC is also opening a written comment period. LSC welcomes written comments during the comment period outlined below, under Submission of Comments, and will consider the comments received in the rulemaking process.

**IV. Topics for Discussion**

The following three topics and items for discussion will be addressed during the Workshops and are the subjects on which LSC seeks written comments. Each topic is directly from Recommendation 2 of LSC's Pro Bono Task Force Report. Members of the public are welcome to recommend additions, deletions, or modifications to these Topics for Discussion, including relevant alternatives, for LSC's consideration through written comment prior to the Workshops or by participation in the first Workshop.

Workshop panelists, and those wishing to make comments, may find

additional background information on each of these topics on the designated Workshops Web site at <http://www.lsc.gov/information-rulemaking-workshops-re-lscs-private-attorney-involvement-pai-regulation-and-request>.

*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.*

The Pro Bono Task Force identified several categories of pro bono volunteers as potential resources for LSC recipients to expand in the delivery of legal assistance. The Task Force noted that the LSC definition of "staff attorney," which is based on a compensation scheme standard, is a barrier to full engagement by recipients of deferred associates, law students, and recent law school graduates. LSC welcomes a full discussion of engaging new categories of pro bono volunteers and of improvements to the PAI regulation that would facilitate that engagement.

*Items for Discussion on Topic 1:*

- 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.

*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.*

The Pro Bono Task Force identified the benefits of integrated intake and referral systems that link clients to volunteer attorneys. Resources used by recipients to staff these integrated systems have not traditionally been recognized as eligible for PAI funds. LSC welcomes a full discussion of the relationship between integrated intake and referral systems that link clients with pro bono volunteers and the use of PAI funds.

*Items for Discussion on Topic 2:*

- 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.

*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 Pro Bono Task Force encouraged brief service clinics in which pro bono volunteers rely on LSC recipients to provide technical assistance, research, advice, and counsel to the volunteers. If the recipient is not providing the client service, but is providing training to pro bono volunteers, the Pro Bono Task Force recommended that the resources the recipient uses to support the training be an eligible use for PAI funds, without obligating the pro bono volunteers to screen clients for LSC eligibility or requiring the recipient accept the people served by the clinics as its own clients. LSC welcomes a full discussion of the use of pro bono volunteers in such clinics and invites input on improvements to the existing regulations to facilitate such use.

*Items for Discussion on Topic 3:*

- 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.

**V. Submission of Comments**

Members of the public are invited to submit recommended additions, deletions, or modifications to the above described Topics for Discussion, including relevant alternatives, for LSC's consideration, through written comment prior to the Workshops, or by participation in the first Workshop.

Written comments received prior to the Workshops may be addressed in the Workshops. Written comments are requested by June 25, 2013 for LSC to consider including in the first Workshop discussion, and August 20, 2013 for the second Workshop discussion.

*Format of the Workshops*

LSC plans to host two Workshops to maximize the opportunity for participation. Both of the meetings will include a panel discussion of the Topics for Discussion in this notice. The first Workshop will also include discussion of any recommendations for additions, deletions, or modifications of these Topics for Discussion. Panelists will be selected to represent a diversity of opinions and perspectives.

In addition to the panel, LSC encourages observation and participation by all interested individuals and organizations. The meeting agenda will include opportunities for individuals in attendance who are not members of the panel to participate in person, by webinar, or via telephone, as well as incorporating previously submitted written comments by those unable to attend. LSC plans to transcribe the meetings and make the webinar available on its Web site.

LSC has developed a designated Web site for the purposes of these Workshops and will update it as information becomes available. The final agenda for the Workshops will be available on the LSC Web site for the Workshops approximately five days prior. The Web address is <http://www.lsc.gov/information-rulemaking-workshops-re-lscs-private-attorney-involvement-pai-regulation-and-request>.

## VI. Important Notes

Information received in response to this Notice of Rulemaking Workshops and Request for Expressions of Interest in Participation in the Rulemaking Workshops may be published or summarized by LSC without acknowledgement of or permission from you or your organization. Furthermore, your responses may be releasable to the public under the LSC's adoption of the Freedom of Information Act (FOIA), 42 U.S.C. 2996d, and the LSC FOIA regulation, 45 CFR part 1619. LSC, at its discretion, may request individual commenters to elaborate on information in their written comments.

Comments sent by any method other than email to [PAIRULEMAKING@lsc.gov](mailto:PAIRULEMAKING@lsc.gov), or hard copy to Mark Freedman, Senior Assistant General Counsel, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007, or received after the end of the comment period, may not be considered by LSC.

Dated: May 6, 2013.

**Atitaya C. Rok,**  
Staff Attorney.

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**BILLING CODE 7050-01-P**

## LEGAL SERVICES CORPORATION

### 45 CFR Part 1614

#### Restrictions on Legal Assistance With Respect to Criminal Proceedings in Tribal Courts

**AGENCY:** Legal Services Corporation.

**ACTION:** Request for information.

**SUMMARY:** The Legal Services Corporation (LSC) is requesting public comments on issues associated with amending its regulations to align with the statutory authority granted to LSC under the Indian Arts and Crafts Amendment Act of 2010 (the IACAA). The IACAA amended the LSC Act to provide authority for LSC funds to be used by grantees to represent eligible persons in any and all criminal proceedings in tribal courts. Previously, the LSC Act and related regulations permitted representation only in criminal matters involving misdemeanors or lesser offenses in tribal courts. The information received as a result of this request will be considered in rulemaking undertaken by LSC.

**DATES:** Written comments must be received by August 23, 2013.

**ADDRESSES:** Written comments must be submitted by mail, fax, or email to

Atitaya Rok at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section.

#### **FOR FURTHER INFORMATION CONTACT:**

Atitaya Rok, Staff Attorney, Legal Services Corporation, 3333 K St. NW., Washington, DC 20007; (202) 295-1500 (phone); 202-337-6831 (fax); or [lscrulemaking@lsc.gov](mailto:lscrulemaking@lsc.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background Information**

###### *A. New Statutory Authorities*

The IACAA amended the LSC Act to provide authority for LSC funds to be used by grantees to represent eligible persons in any and all criminal proceedings in tribal courts. Previously, the LSC Act and related regulations in 45 CFR part 1613 permitted representation only in criminal matters involving misdemeanors or lesser offenses in tribal courts.

A subsection of the IACAA, known as the Tribal Law and Order Act of 2010, Public Law 111-211, tit. II, 124 Stat. 2261 (the TLOA), includes new authorizations related to tribal court criminal proceedings. The TLOA increases the maximum jail sentence that any tribal court may impose from one to three years for any single offense. Prior to the TLOA, crimes (felonies, misdemeanors, or less serious offenses) within tribal jurisdiction (those not reserved to federal or state jurisdiction) that could result in jail sentences of more than one year upon successful prosecution were often referred by tribes to federal or state courts because of the tribal courts' inability to impose lengthier sentences.

In order to use this new sentencing authority, tribes must "opt in" and implement affirmative preconditions detailed in the TLOA, including, but not limited to, ensuring that judges in tribal courts have sufficient legal training to preside over criminal proceedings; affording the defendant the right to effective assistance of counsel and, if a defendant is indigent, providing the defendant with a licensed defense attorney at the tribe's expense; publishing the tribal government's criminal laws and rules of evidence and criminal procedure; and creating a system that maintains records of criminal proceedings. Public Law 111-211, tit. II, 124 Stat. at 2280.

In addition to the IACAA and TLOA, the Violence Against Women Reauthorization Act of 2013, Public Law 113-4, 127 Stat. 54 (the 2013 VAWA expands tribal courts' criminal jurisdiction to include crimes of domestic violence and dating violence

committed by non-Indians within a tribal court's jurisdiction.

###### *B. Current LSC Requirements*

LSC regulations currently reference the original language of the LSC Act, which explicitly carved out an exception to the general prohibition on the use of LSC funds in criminal proceedings for misdemeanors and lesser offenses in tribal courts: "[a] misdemeanor or lesser offense tried in an Indian tribal court is not a 'criminal proceeding.'" 45 CFR 1613.2.

On November 12, 2012, LSC Management informed grantees via Program Letter 12-3 that all grantees may use LSC funds to assist any eligible person charged with any offense in a criminal proceeding in a tribal court until such time the LSC Board of Directors (LSC Board) made an affirmative decision on the issue.

On January 26, 2013, the LSC Board authorized rulemaking to consider aligning the LSC regulations and the LSC Act. Pursuant to LSC's Rulemaking Protocol, 67 FR 69763 (Nov. 19, 2002), a Rulemaking Options Paper (ROP) is under development. This Request for Information (RFI) is issued to better understand the impact of the IACAA, TLOA, and the 2013 VAWA on grantees that are active in tribal courts.

##### **II. Request for Information**

LSC requests information from members of the public with any expertise or experience relating to criminal proceedings in tribal courts, the impact of TLOA or the 2013 VAWA on criminal laws of tribal government, or tribal court appointments of lawyers. Commenters are asked to respond to these general topics of discussion:

1. Do you or your organization currently undertake representations of criminal defendants in tribal courts?

a. If yes, please identify which tribal courts.

b. If no, do you or your organization have a formal or informal policy in place to provide or decline such representations?

c. Are you or your organization aware of any changes in the criminal laws of the tribal government and/or sentencing authority of the tribal courts that have been implemented in accordance with TLOA or the 2013 VAWA?

2. Do you or your organization anticipate undertaking representations of criminal defendants in tribal courts in the future?

a. If yes, please identify which tribal courts.

b. If no, will you or your organization create a formal or informal policy to provide or decline such representations?