

July 6, 2024

To: ACUS, info@acus.gov; Matthew Gluth, Attorney Advisor, Administrative Conference of the United States (ACUS), email mgluth@acus.gov

From: Mitchell Berger, mazruia@hotmail.com (submitting in private capacity)

Re: Nonlawyer Assistance and Representation; Request for Comments, <https://www.federalregister.gov/documents/2024/07/08/2024-14915/nonlawyer-assistance-and-representation-request-for-comments>

Dear Mr. Gluth: In response to the ACUS request for input concerning suggestions for nonlawyer assistance, I write to suggest the following:

A. Emphasize simplification of proceedings and plain language: This RFI is consistent with a previous ACUS RFI on reducing burdens in administrative processes.¹ ACUS in its June 2023 recommendation on this matter emphasized such steps as interagency collaboration, working with staff and nongovernmental organizations to understand administrative burdens and quantifying costs and time expended by members of the public in accessing federal programs.² The Office of Management and Budget's work on accessing disaster assistance and early childhood programs are one example of such efforts.³ Emphasizing presumptive eligibility for programs such as Medicaid also can help broaden access to services and reduce the need for legal support.⁴

B. Support Navigators and organizations that help citizens navigate services: As one way of supporting nonlawyer assistance, ACUS can also recommend that agencies support navigator and peer navigator programs to help citizens access health care, medical care, mental health and other benefits and navigate these complex systems. As one example, the Affordable Care Act provides support to organizations employing certified application counselors and navigators who assist in patient enrollment into Marketplace plans.⁵ State health insurance assistance programs similarly assist patients and families with Medicare enrollment.⁶ Outside of health insurance, federal programs and other funders increasingly support programs to help vulnerable persons access and navigate systems providing care for HIV,⁷ cancer,⁸ and housing.⁹ Such services may help ensure early access to services and avoid the need for administrative and other proceedings.

C. Consider LAIR and previous ACUS recommendations: Overall, ACUS could update existing recommendations¹⁰ and also consider recent recommendations made by the Legal Aid Interagency Roundtable (LAIR),¹¹ which recommended "people-centered simplification of government forms,

¹ Re: Identifying and Reducing Burdens in Administrative Processes; Request for Comments, Feb. 15, 2023, <https://www.federalregister.gov/documents/2023/02/15/2023-03181/identifying-and-reducing-burdens-in-administrative-processes-request-for-comments>

² <https://www.acus.gov/research-projects/identifying-and-reducing-burdens-administrative-processes>

³ <https://www.performance.gov/cx/projects/>

⁴ <https://www.medicaid.gov/medicaid/enrollment-strategies/presumptive-eligibility/index.html>

⁵ <https://www.cms.gov/marketplace/in-person-assisters/programs-procedures/in-person-assistance>

⁶ <https://www.shiphelp.org/about-us>

⁷ <https://hivinfo.nih.gov/hiv-source/hiv-navigation-resources>; <https://www.samhsa.gov/grants/grant-announcements/sp-22-002>

⁸ <https://www.whitehouse.gov/ostp/news-updates/2023/11/27/cancer-navigation-improves-equity-outcomes-paying-for-it-matters-too/>

⁹ <https://www.hudexchange.info/resource/6673/covid19-homeless-system-response-housing-navigation/>

¹⁰ <https://www.acus.gov/document/nonlawyer-assistance-and-representation>

¹¹ <https://www.justice.gov/d9/2023-12/2023%20Legal%20Aid%20Interagency%20Roundtable%20Report-508.pdf>; <https://www.justice.gov/atj/legal-aid-interagency-roundtable>

processes, and language to increase access to government programs and reduce the need for legal help”¹² and highlighted examples of programs that foster non-lawyer legal assistance when needed.

D. Leverage law and paralegal students, retired and inactive attorneys: Federal agencies can also support programs that offer training and support to law and paralegal students, retired attorneys and inactive attorneys. While there are 1.3 million active attorneys, according to the American Bar Association, there does not appear to be an easily available source as to the total number of inactive attorneys.¹³ However, in California the state reported roughly 197000 active attorneys and 71000 inactive attorneys. Inactive attorneys may have passed the bar but are not currently practicing and in many states cannot represent clients. Thus, for the purposes of administrative proceedings many would be considered nonlawyers. Retired attorneys may or may not retain their licenses and bar membership or become inactive. Law students of which there are about 40000 annually¹⁴ as well as paralegal and legal assistant students also may have important skills. Many law schools have legal clinics that support access to medical, family and other services.¹⁵ Some states also have developed programs to support involvement of retired attorneys.¹⁶ Programs and support by federal agencies and others to train potential volunteers or even paid staff in these programs, provide support such as office space and training and help with outreach and recruitment could help enhance access to ‘nonlawyer’ assistance, helping to involve those with legal training but who may not have the specific training or experience with federal or other programs or be active attorneys.

E. Support Self-Help efforts through legal clinics, books and other tools: Some states and other areas support self-help clinics that may provide resources and low-level legal advice to assist citizens in less complex proceedings or submitting forms and materials.¹⁷ Several legal publishers offer books, forms and other assistance (which may vary in quality). ACUS has examined this issue before and can reiterate its recommendations given the reality that some may be unable to find lawyer and nonlawyer assistance or may simply prefer as feasible to take charge of their own administrative proceedings.¹⁸ Thank you for considering these suggestions.

Sincerely, 

Mitchell Berger, mazruia@hotmail.com

Note: Please note that I am submitting these suggestions in my personal/private capacity. The views expressed are mine only and should not be imputed to other individuals nor to any public or private entity.

¹² See also, <https://www.justice.gov/atj/blog/get-know-legal-aid-interagency-roundtable> and 2022 report, Access to Justice Through Simplification, a Roadmap for People-Centered Simplification of Federal Government Forms, Processes, and Language.

¹³ <https://publications.calbar.ca.gov/2023-diversity-report-card/diversity-inactive-attorneys#>:
<https://www.abalegalprofile.com/demographics.html>

¹⁴ <https://www.lawhub.org/trends/enrollment>

¹⁵ See e.g., <https://www.law.gwu.edu/clinics>; <https://medical-legalpartnership.org/>

¹⁶ <https://www.mdlab.org/senior-legal-corps/>

¹⁷ <https://www.peoples-law.org/self-help-services>

¹⁸ <https://www.acus.gov/document/self-represented-parties-administrative-proceedings>