
MEMORANDUM

TO: NALP Members

FROM: Commission on Recruiting in the Legal Profession

SUBJECT: Commission on Recruiting Report – Feedback Requested

DATE: January 7, 2010

This memorandum contains the report and recommendations of NALP’s Commission on Recruiting in the Legal Profession (the “Commission”) upon the completion of the first phase of its work.¹ The information is being presented here for your review and comment (See [Member Feedback and Comment section](#) of this report.) The Commission’s recommendations are based on extensive NALP member input and outreach, industry commentary, and our preliminary review of recruiting practices in other industries and countries.² (See www.nalp.org/commissiononrecruiting for more information about the formation of the Commission and its composition.)

The member feedback we received was consistent on at least two points. First, the status quo is not working during this period of rapid change in our industry. Second, significant change — not mere tweaks to the current system – is required to help members meet present and future challenges.

If adopted, the below recommendations will help NALP members meet the challenges of the recruiting process by affording them the time and opportunity to innovate, which will lead to better student and employer decision-making as well as better and more enduring employment “fits.” The underlying goal is not merely to extend the recruiting season, but to improve it. We believe that the time is right to move legal recruiting to a more mature model, drawing on the practices used in other professions and countries, and these recommendations are designed to create the space and the incentives for that maturation to happen.

In addition, these recommendations achieve a balance between giving employers additional time to process their hiring needs in light of year-end financial data and giving law schools adequate time to work with their students, especially those who are likely to be the most challenged in the recruiting process.

¹ During Phase I, the Commission’s emphasis was on potential changes that could be implemented as early as the 2010-2011 academic year. As a result, the findings and recommendations focus more on timing guidelines. The Commission plans more in depth discussion and possible recommendations on the topic of fundamental legal recruiting model changes during Phase II of its work. More information about the Commission’s process is contained in the cover [article](#) in the December *NALP Bulletin*.

² The Commission examined recruiting models used by other professions such as the medical profession, consulting firms, and accounting firms as well as the legal industry in Canada and the United Kingdom.

We hope you will read this memorandum carefully and provide us with your feedback by January 29, 2010. The Commission will incorporate your feedback into a set of final recommendations and present them to the NALP Board of Directors for consideration during their February meeting. If the Board approves these recommendations, we anticipate they would become effective, on a provisional basis, starting in August 2010 and following a provisional period, subject to member vote.

You can find more details about the implementation procedure and the ways through which you can provide input in the [Member Feedback and Comment](#) section.

At the heart of our recommendations is a shift away from rolling offer deadlines toward a framework based on specific dates (“Offer Kick-Off Days”) before which offers should not be made. In order to address the broadest array of the NALP membership’s current (and many longstanding) concerns (see [Member’s Current Concerns](#) section immediately below), it is essential that Offer Kick-Off Day(s) take place later in the recruiting season. This ensures that candidates can complete all their callbacks — and employers are able to consider their entire candidate pool — before offers are extended. This, in turn, permits the open offer response period (currently 45 days) to be substantially shortened without materially affecting student choice.

MEMBERS’ CURRENT CONCERNS

The concerns we heard from fellow NALP members, and which drove the Commission’s work, included the following:

Employers

- Difficulty in assessing future hiring needs far in advance (made worse by the economy).
- Continuing trend of law schools moving their on-campus interview programs (“OCIs”) earlier (not only compressing more school visits into fewer weeks, but heightening time and resources conflicts in August with associate integration, attorney vacations, etc.).
- Pressure to conduct callbacks and make offers as quickly as possible (in order to start the rolling deadline clock).
- Challenges managing yield (exacerbated by drastically reduced summer programs and other economic pressures that have reduced margins for error).
- Improving ability to identify the most talented candidates whose long-term interests more closely align with those of the employer.

Schools

- Recruiting activities’ increased interference with schools’ essential academic mission (due, in part, to rolling offers incentivizing students to schedule

interviews as early as possible, often at the expense of attending classes or other school obligations).

- Employers extending fewer offers due to heightened employer caution against oversubscribing their summer classes.
- Students hampered from pursuing a full range of employment options, including public interest organizations, government agencies, and small firms, all of which are unable to extend offers in time for them to be considered against OCI offers.
- Less time to prepare students for OCI process (because schools feel competitive pressure to schedule their OCIs as soon as practicable to best advantage their students under a rolling deadline regime).
- Insufficient time for students to make informed decisions about their employment options.

SUMMARY OF RECOMMENDATIONS

Guided by the Membership's expressed concerns, the Commission developed the following recommendations (see the [Detailed Discussion](#) section below for the rationale behind each):

1. 2L Recruiting

- a. Establish a 2L "Offer Kick-Off Day" in early/mid January ("January X") before which no offers may be extended. Offers need not be extended on January X; they can be made on any date beginning with January X.³
- b. Shorten the rolling period of time during which offers remain open from 45 to 14 days.
- c. Exempt summer offers to previously employed candidates (returning 1L summer associates) from the Offer Kick-Off Day guideline. These offers may be extended at any time, but need to remain open until January X + 14 days.
- d. Continue requiring students to hold open no more than 5 offers at a time, but substantially shorten the period of time for releasing additional offers from one week to close of business on the day following receipt of the 6th offer.
- e. Encourage employers to convey "no offer" decisions as soon as they are made; "no offer" decisions are not subject to the Offer Kick-Off Day and can be communicated to the candidate at any time.

2. 3L Recruiting

- a. Leave in place the current guideline that allows full-time position offers to previously employed candidates (i.e., prior summer associates) to be extended at any time, and continue requiring that they remain open until November 15.

³ The Commission seeks member input on setting the optimal specific date in January. Considerations include: 1) the pressing need for schools to have time to work with students who turn out to be unsuccessful through the OCI hiring process; 2) the final exam schedule for at least one member school includes dates in the first three weeks in January; and 3) winter and holiday vacation schedules. More detail about establishing specific Offer Kick-Off Days can be found in the [Detailed Discussion](#) section below.

- b. Full-time position offers to 3Ls who were not previously employed by the offeror (“new 3Ls”) may be extended beginning on the 3L Offer Kick-Off Day of November 1 and need to remain open for 14 days.
- c. Exempt summer offers to previously employed candidates (pre-judicial clerkship summer associates) from the Offer Kick-Off Day guideline. These offers may be extended at any time, but need to remain open until January X + 14 days.

3. IL Recruiting

Maintain November 1 as the earliest date for providing career services and December 1 as the earliest date for permissible contact with employers.

4. Small Firms

In light of shortened general offer-response deadlines, eliminate exceptions for employers with fewer than 40 attorneys (as they are no longer necessary). Smaller employers will be subjected to the same timing guidelines as larger employers.

5. Public Interest/Government Extension

Leave in place current provisions governing offer deadline extensions for students seeking public interest or government opportunities.

6. Timing of On-Campus Interviews

While the Commission does not recommend that OCIs should take place at any particular time, our recommendations effectively relieve pressure on schools to schedule their programs on the earliest possible date and remove roadblocks to later fall scheduling. The recommended framework also affords schools the advantage of additional time (should they choose to move later) to better prepare their students (and for their students to better know their skills, interests, and potential options).

We recognize that it may be too late for many law schools to change the scheduled timing of their OCIs for this year, which likely will result in a more extended recruiting season in the fall of 2010. However, removing any future advantage to early scheduling empowers interested schools to move out of August and back to the fall starting with the 2011 recruiting season.

Regardless of whether and how quickly schools embrace the opportunity to shift their OCIs later, it is important to note that a certain lengthening of the recruiting season is intentionally built into the Commission’s recommendations. In fact, it is one of its central features.

The additional recruiting time opens up the possibility for students and employers to get to know one another better before committing to each other. Employers can experiment with new, more efficient — and more cost-effective — means of identifying the best candidates and following up with them. Time constraints imposed by the current recruiting model have prevented many employers from previously considering such alternatives. We note that some employers have already begun borrowing some of the more innovative, though time-consuming, recruiting methods that have been successfully

employed by investment banks, accounting firms, and law firms in the United Kingdom for some time.

We recognize that those who wish to continue doing things the same way they have always done them (notwithstanding the inevitable and rapid changes facing our industry) are not likely to immediately see the benefits of the additional time the recommendations provide, but they will be no worse off either. They do not risk losing candidates to their competitors due to the passage of time because, under the recommended approach, the talent pool remains intact — and students are not forced to commit to an employer — during the length of the period between interviews and offers.

In support of these recommendations and to facilitate an active dialogue, a redlined version of the current Part V Guidelines is nearing completion and should be available on the NALP website by mid-January. In addition, the drafting of revised Interpretations is underway and will be informed by the feedback received from members.

If these recommendations are adopted by the Board, part of Phase II of the Commission’s work will be to further examine innovative interview and hiring techniques employed by other industries and in the legal industries of other countries. The Commission will continue to report its findings and any recommendations to the membership.

DETAILED DISCUSSION

The rationale for our recommendations is contained below under the following headings:

1. [*The Infeasibility of Moving OCI into the Spring Semester*](#)
2. [*Advantages to an Offer Kick-Off Day Model*](#)
3. [*Possible Disadvantages to an Offer Kick-Off Day Model*](#)
 - a. Cheating
 - b. Unduly Extending the Recruiting Season
 - c. Creating Multiple “Rounds” of Offers
4. [*Determining Optimal Summer Offer \(2L Hiring\) Kick-Off Date*](#)
5. [*3L Hiring*](#)
 - a. Full-time Offers to Prior Summer Associates
 - b. Full-time Offers to “New” 3Ls (those not previously employed by the offeror)
 - c. Establishing the 3L Offer Kick Off Day and the Response Deadline
6. [*Summer Offers to Previously Employed Candidates*](#)
7. [*ILs*](#)
8. [*Small Firm Exception No Longer Necessary*](#)

1. The Infeasibility of Moving OCI into the Spring Semester

In sharing their concerns about the current model, several NALP members (and others in the industry) suggested that the Commission investigate whether the recruiting process could be moved in its entirety to the spring semester. On the surface, this option has tremendous appeal. It would give employers additional time to predict their future hiring needs. It would give law schools additional time to prepare their students for the OCI process and for their students to better know their skills and interests (all of which would enable them to make more informed decisions). Employers were also attracted by the possibility of having an additional semester of grades available for recruits.

On closer inspection, however, a move to spring proved to be unworkable. The earliest possible spring semester OCI starting date would be mid-January with the process running until mid-March. Even with such an early start date, there would be very little time before final exams, graduation, and the start of the summer program for employers and students alike to re-enter the hiring market should they finish the hiring season with unsatisfactory results. Further, career services offices would have almost no time remaining in the school year to help their students who were unsuccessful in the process.

Moreover, summer associate classes that are not finalized until late March would leave employers scrambling at the last minute to coordinate the administrative logistics of their summer programs (assisting students with their summer housing needs, appropriating office space and equipment for incoming summer associates, filling assignment banks, assigning advisors, identifying secretaries, scheduling training sessions, planning social events, etc.).

A spring semester OCI would occur concurrently with government, public interest, and small employer interviewing, rather than in advance. While this seems like it would level the playing field, it actually would create several new issues, including: 1) exacerbating the problem — now relatively minor — of students' accepting unpaid or low-paid offers only to back out when they receive higher-paying ones; and 2) impairing the ability of students participating in OCI to adjust their job search strategies if they have overestimated their likelihood of success in that market and ignored other markets. Moreover, it would divert career services offices' resources from assisting first-year law students, those seeking public sector or public interest employment, and its resource-intensive LL.M. population. 1Ls would be disadvantaged by being forced to simultaneously compete with 2Ls for summer positions.

The possibility that severe weather might disrupt travel to Midwest and East Coast schools — with related impact on OCIs held at hotels or students traveling to callbacks from these schools — during a spring semester recruiting season further diminishes the appeal of this option.

Finally, the Commission learned that, at many schools, fall semester grades are not available until early February, which would mean that they would not be available prior to the initial on-campus interview at the earliest.

2. Advantages to an Offer Kick-Off Day Model

“Offer Kick-Off Day” is an approach in which employers would not extend offers to students before a certain date well into the recruiting season. It is referred to as a “Kick-Off” Day because it is not a deadline, it is a start date. Employers control the pace and timing (as long as they do not extend offers earlier than the Offer Kick-Off Day). Thus, employers may extend an initial set of offers beginning on the Offer Kick-Off Day and then extend additional offers on a rolling basis as their recruitment picture becomes clearer.

This approach addresses a number of members’ concerns by taking pressure off schools, employers, and students to schedule interviews at the earliest possible moment.

Schools can choose to schedule their OCIs later, which would address the scheduling compression and August resource concerns of employers. It would also enable schools to better prepare their students for the process (and for students to develop a better sense of their skills, interests, and potential options). It would increase the ability of transfer students to participate meaningfully in their schools’ OCIs.⁴

Employers would have a longer period of time to get to know their prospects better and more accurately assess their potential employment fit. They would be able to consider participating in OCIs at additional schools. They would also be able to complete interviews with all of their candidates and consider them as a pool prior to extending any offers.

Employer and law school members of the Commission have begun developing working drafts of suggested best practices to support NALP members in the implementation of these recommendations. These documents will continue to evolve throughout the feedback period and will be made available to NALP members in connection with final recommendations.

As mentioned in our [Summary of Recommendations](#), a January Offer Kick-Off Day also opens up the possibility for employers to experiment with more in-depth interviewing and assessment techniques [e.g., the use of hypothetical situations (commonly used now in public defender hiring environments), written tests, competency-based and behavioral interviewing, and even McKinsey style group projects], which they may have been unable to previously consider due to time constraints. Candidates who would not have been considered before because they did not fit the historical criteria (e.g., GPA cut-offs) might be considered for the first time. New techniques could greatly enhance employer decision-making.

⁴ In addition to these advantages, the possibility of their students interviewing closer in time to the offer decision date (when they are arguably uppermost in employers’ minds) may provide a further incentive for schools to move their OCIs later in the fall.

The additional time also opens up the possibility for experimentation by law schools. For example, OCIs could be stretched out over a longer period to better accommodate student class obligations or interview space limitations.⁵

With the additional time the Offer Kick-Off Day allows, employers can strike better balances between on-campus interviews and the start of their callback phase. Decompressing the callback phase that follows OCI will better enable both employers and students to find mutually agreeable interview dates that minimize conflicts with class schedules, attorney commitments, etc.

An Offer Kick-Off Day later in the season also has the potential to boost employers' ability to manage their yields by enabling the offer decision window to be narrowed. The later the Offer Kick-Off Day, the shorter the period of time offers need to remain open. The current 45-day offer window was not so much designed to permit students a lengthy period to deliberate on each offer in isolation, but rather to enable them sufficient time to gather multiple alternatives that could then be weighed against each other.

We concluded that, as long as the Offer Kick-Off Day is late enough to allow sufficient time for students and employers to complete callbacks and for employers to evaluate all of their candidates prior to any offers being extended, students should not need more than 14 days to consider their offers.⁶

In addition to the substantially shortened offer window, other features of the recommendations will help employers with yield management, including: 1) leaving the offer deadlines as rolling; 2) maintaining the 5 offer cap; and 3) significantly reducing the length of time that students have to give up the 6th offer (from one week to essentially one business day).

Better yield management can lead to offers being spread across a greater number of students (and may lead to even more offers).

3. Possible Disadvantages to an Offer Kick-Off Day Model

a. Cheating

One concern that an Offer Kick-Off Day model raises is the possibility of employer actions outside of the guidelines or cheating. Such conduct has the potential to undermine the relationship of trust between student and employer, which has already been strained

⁵ The Commission was informed that at least one school currently holds its OCI program over the course of successive weekend days in the fall.

⁶ Because the callback and evaluation phase will be completed, initial employer offers will likely be extended on the Offer-Kick Off Day, allowing students to consider nearly all of their offers together in a concentrated period.

by current economic conditions.⁷ It may also remind some of us of the enforcement difficulties schools have experienced with a similar approach used by the federal judiciary in the law clerk hiring process.

The potential to cheat or game the system exists under the current system and cannot be entirely eliminated under any alternative regime. Moreover, if an employer “cheats” by prematurely extending an offer or by signaling to a candidate an intention to extend an offer on Offer Kick-Off Day, the consequences for students are minimal as long as the employer leaves the offer open for the specified 14 days *after* the established offer kick-off date. Students then still would have the ability to consider this early offer from a “bad acting” employer against those from employers who respected the established offer kick-off date. No harm, no foul. Any employer requiring a student to respond earlier would be in clear violation of the guidelines and would presumably be dealt with in the same manner that employers who violate the current 45-day rule are handled.⁸

In support of the Offer Kick-Off Day approach, Interpretations for Part V of NALP’s Principles and Standards (the Guidelines) are being drafted and will address this point in particular. Any behavior on an employer’s part aimed at forcing a student to commit to an offer before the offer response deadline will be considered unethical and a violation of the Guidelines. The Interpretations will also clarify that a student should not be obligated in any way to respond to such an offer before the offer response deadline specified by the Guidelines and that a student’s (entirely appropriate) failure to respond should not jeopardize the student’s offer or disadvantage him or her in any way.

Under an Offer Kick-Off Day approach, employers would, of course, be permitted to have contact with candidates — via social and educational events on and off campus, electronic communication, and individual contact — to continue to build relationships and express interest. Employers would also be free to communicate to candidates at any time that they are no longer under active consideration (as students would be free to withdraw themselves from consideration). However, offers — overt or covert — should not be made until the Offer Kick-Off Day.

In analyzing the possibility, and resulting impact, of employer cheating, we considered the experience of students and school side members with the [Federal Judges Law Clerk Hiring Plan](#). The Plan’s conceptual framework is somewhat similar to an Offer Kick-Off Day approach in that it sets forth specified dates before which judges are not supposed to contact students and schedule interviews (though importantly it does not require offers to remain open for a period of time). We concluded that adherence to established dates would be much higher in the legal employer context. Even in a down economy, law

⁷ See the October 7, 2009 *National Law Journal* [article](#) entitled “Rules: The Latest Casualty of the Economic Crisis,” by William A. Chamberlain, Assistant Dean, Northwestern University School of Law.

⁸ Many schools require employers to abide by the NALP guidelines as a condition of participating in their OCI programs. Violators are dealt with by schools on a case-by-case basis. Commonly, employers found to have violated a school’s conditions of participating are banned from future participation for a period of one or more years.

schools would have greater leverage over employers than they do over federal judges to enforce observance of reasonable guidelines.

In the context of a fast-moving, less predictable, and more intensely competitive federal judicial clerkship application process, a student who receives a clerkship offer from a judge who violates the interview/Offer Kick-Off Day does not know whether he or she will receive another offer from a compliant judge before he or she has to take a position on the improperly extended offer. Nor can he or she assess the likelihood of receiving additional offers in this circumstance and is often coerced into accepting the offer. In the employer context, a candidate for whom an employer will “cheat” will likely be equally attractive to other employers that will abide by the offer kick-off date.

Further, the fact that in the federal judicial clerkship application process, offers are not required to remain open for a period of time results in many exploding offers, thus increasing the pressure on judges to make early offers or [else] risk losing competitive candidates to other “bad-acting” judges. Our recommendations address this issue by requiring offers to remain open for 14 days.

Finally, the risk of public shaming (via Above the Law, student blogs, and/or the informal law school grapevine) will further deter employers from violating established offer date guidelines.

b. Unduly Extending the Recruiting Season

In the course of the Commission’s deliberations about setting an Offer Kick-Off Day, members from both schools and employers acknowledged the legitimacy of the concern over the length of the interview and recruiting period under the recommended approach. During this period, schools will have to deal with anxious students and employers will have to deal with maintaining momentum with their most sought-after candidates.

The Commission weighed this concern against the substantial feedback it received from members, particularly those from employers, asking for the entire process to be moved later.⁹ The Commission accepted the providers of this feedback at their word that even a few additional months would help them with their future needs assessments.¹⁰

⁹ If the entire process were moved into the spring semester and no other changes to the timing guidelines were recommended, employers would begin extending summer offers in late January/early February as opposed to early/mid January under the Commission’s recommendations. The recommended approach would give employers nearly the same amount of additional time to better assess their future hiring needs.

¹⁰ Moreover, at least one member noted that what might actually take place during the additional time may be every bit as significant as its length. Events that might require employers to significantly reassess their future hiring needs can occur within a relatively short time span with little prior notice. Historical examples would include the developments in the economy over the course of September 2008, and the bursting of the dot.com bubble in 2000.

Also, while the recommendations lengthen the recruiting phase, they greatly shorten the offer response phase. In fact, as explained in Section 2, it's the longer recruiting phase that allows the shortening of offer response time by ensuring enough time for callbacks and candidate pool evaluations to be completed. Without a longer recruiting phase, a shorter response deadline would not be possible. As noted earlier, the significant shortening of the open offer response window will help employers with yield and may spread offers over a greater number of students.

Weighed against the potential benefits of our Offer Kick-Off Day approach (see [Section 2](#)), the costs of a lengthier time between interview and offer are minor. These costs may ultimately amount to no more than simply adjusting to a change in the way things have always been done. We note that even at its possible longest, the recruiting period is roughly the length of time between interviews and offers under the medical residency matching model. Nor will delays in decision making be an unfamiliar concept to law students who submit applications to law schools several months prior to receiving offers of admission.

While employers will face momentum challenges, they will be on the same footing as their competitors in this regard. As noted in [Section 3a](#), the recommendations contemplate that employers and candidates will continue to have contact with one another through social and educational events and communications.¹¹

Meanwhile, students will not be completely in the dark about their prospects of succeeding through OCI based on the number and kinds of callbacks and subsequent contacts (e.g., event invitations and update communications) they receive from employers as well as other informal interview feedback they may be able to obtain.

Finally, as noted earlier in this memorandum, a longer recruiting season opens up the possibility for members to come up with new ways of doing things.

c. Creating Multiple “Rounds” of Offers

Another potential negative of the Offer Day framework discussed by the Commission was the likelihood that it would create “rounds” of offers, which would signal to a second or third round student that he or she was not the employer’s first choice. The fact is, however, that many employers already engage in the practice of extending offers in rounds, particularly over the course of the most current recruiting season, which was governed by the current rolling offer Guidelines.

Those who have proceeded in this way — or proposed to proceed this way during the last recruiting season — claim that, in fact, it enables them to extend more offers to more students because they have better control over their yield. For them, it effectively addresses the problem of winding up with an undersubscribed summer class.

¹¹ The possibility of building a moratorium on recruiting activities during the school exam period (commonly the first three weeks in December) into the Guidelines or Interpretations was raised with the Commission. We would welcome member feedback on this concept.

Moreover, students are aware of this practice via law review e-mail discussion lists and student blogs that post real-time information about which firms are extending offers, to whom, and when.

Finally, based on feedback from law school members, the Commission concluded that students are not as concerned about not being an employer's "first pick" as many employers commonly fear. If they are otherwise interested in particular employers, students are generally pleased to have offers from them, even if the offers are received well after some of their classmates' offers.

4. Determining Optimal Summer Offer (2L Hiring) Kick-Off Date

Establishing a specific date for the Summer Offer Kick-Off Day required the Commission to balance competing concerns. Setting it too early risked doing too little to alleviate the current pressure to interview early and would do nothing to address the compression of schools' OCI schedules. Setting it too late would create some of the problems that proved fatal to the spring semester OCI alternative (see [Section 1](#)).

Considering spring semester dates led the Commission to the idea that it might be able to incorporate some of the benefits of the spring semester OCI alternative (discussed in [Section 1](#) above) into the proposed Offer Kick-Off Day model. However, it was clear that a very early spring semester date was needed in order to allow students who were unsuccessful through OCI to engage in an alternate job search (and for their schools to help them). As a result, the Commission settled on the early/mid January time period for the Summer Offer Kick-Off Day.

Establishing an early/mid January Offer Kick-Off Day provides employers with several additional months before they have to commit to the size and makeup of their summer classes.¹² Schools have more time to work with students so they are better equipped to decide among offers.

Additionally, a January Offer Kick-Off Day more closely aligns with the time period during which public interest, public sector, and smaller firm legal employers typically extend offers thus enhancing the ability of students to consider these alternatives against their offers received through the OCI process. Indeed, a January Offer Kick-Off Day might encourage more public sector and small firm employers to adjust their hiring timelines to match those of OCI employers, as they will be better able to predict their hiring needs in January than in the preceding Fall.

Against these benefits, the Commission weighed the cost of a January Offer Kick-Off Day to students who wind up without offers. These students arguably lose time they

¹² As noted in [Section 3b](#), member feedback on this point was that, although this still left a considerable gap between summer offer and permanent employment, an additional few months would assist employers in more accurately assessing future hiring needs.

otherwise would have had to seek alternatives if they had known definitively about their lack of success earlier. We believe this potential cost is minimal for at least two reasons.

First, though they may not know as a matter of certainty that they will not be receiving offers in January, such candidates will be getting information over the course of the season that should enable them to accurately gauge their likelihood of success. This information, as mentioned in [Section 3b](#), would come in the form of the number of callbacks received, the amount and kind of follow-up in which employers are engaged (with respect not only to that particular student, but also to his/her classmates), other informal interview feedback channels, and, of course, notices that he/she is no longer being considered as a candidate (as permitted — indeed, encouraged — under the recommendations). Armed with such knowledge, students can choose — and their schools can advise them — to engage in non-OCI job searches of appropriate degree and kind.

Second, while unaware (or unmotivated) candidates may lose some time under this approach (parts of November and then December, which includes exams, exam prep and the holiday period), they are not likely to be foreclosed from alternate opportunities by not starting their search until January. Realistically, these same students likely would have been slower to initiate their alternate job searches regardless of the recruiting process framework in effect. Alternatives commonly available to such students (public interest/government/small private firms) do not typically develop prior to the beginning of the spring semester. Also, with a January X+14 day offer response window, employers who go back into the market to supplement their hiring will be doing so at about the same time.

The January Offer Kick-Off Day for 2Ls also allows employers to complete their 3L hiring process (which concludes in the fall semester under the Commission's recommendations — see [Section 5](#)) and know exactly who will be starting with them the coming fall before they have to commit to a specific size for their next summer class.

The recommendation for a January Offer Kick-Off Day results in a period of time between OCI and offers that will allow for and encourage a robust recruiting and hiring process.

5. 3L Hiring

The Commission's 3L recruiting recommendations rest on two foundational facts. First, in order to maximize meaningful, informed student choice (an essential organizing principle of the Guidelines), students must be able to consider their full-time offers from their prior summer employers concurrently with other full-time offers they receive. In order to obtain these alternate offers, 3Ls need time to complete the OCI process at their schools and participate in callback interviews.

The second foundational fact is that, in the event employers need to fill anticipated gaps in their starting classes, there must be available (i.e., uncommitted) 3L candidates still in the market. In order to do this, employers need sufficient time to interview and evaluate candidates who are new to them before these candidates are required by the Guidelines to accept their prior summer employers' full-time offers.¹³

These two foundational facts led us to conclude that regardless of the specific dates chosen, the deadline for responding to offers extended to “previously employed” candidates (prior summer associates) needed to correlate closely with the deadline for full-time offers to those “not previously employed” by the employer extending the offer.

a. Full-time Offers to Prior Summer Associates

When applied to full-time offers to prior summer associates, the Commission found that the Offer Kick-Off Day concept was not feasible.

A student who spent his or her summer with an employer might find it difficult to understand why he or she is forced to wait for a period of months before receiving an offer. A student would reasonably expect the employer to have all the information necessary to make a decision after the completion of the summer program. Applying the Offer Kick-Off Day approach to this student may have the unintended consequence of signaling to the student a lack of interest or a desire to “trade-up” through OCI on the part of the employer.

Further, employers who invest heavily, in terms of time and resources, in their summer associates, likely will not want to run the risk of having their valued former summer associates interviewing for other opportunities due solely to the timing of post-summer program offers.

Enforcing an Offer Kick-Off Day for prior summer associates would result in employers losing those candidates who were excited about them and who would otherwise enthusiastically and immediately accept an offer because the students will be forced into participating in the OCI process. These “back-up” job searches would be an ineffective use of the candidate’s time, as well as the time and resources of the employers with whom he or she interviews.

Accordingly, the Commission concluded that an offer response deadline, rather than an Offer Kick-Off Day, was a better approach for guiding the timing of full-time offers to prior summer associates. In [Section 5c](#) below, we discuss setting the optimal offer response deadline.

¹³ This necessity creates tension for employers who want their own prior summer associates to commit to them — and be out of the market — as soon as possible, but they want other employers’ prior summer associates to remain uncommitted for as long as possible, in case they need to go into the 3L market.

b. Full-time Offers to “New” 3Ls (those not previously employed by the offeror)

In contrast to its finding with respect to full-time offers to previously employed candidates, the Commission found that the rationale for establishing an Offer Kick-Off Day for summer offers applied with equal force to full-time offers to candidates not previously employed by the employer extending the offer.

A 3L Offer Kick-Off Day allows sufficient time for students to complete callbacks and for employers to evaluate candidates after seeing the entire pool of alternatives before offers are extended, leading both to more educated decision-making by candidates and to more settled hiring goals from employers. For example, a November 1 Offer Kick-Off Day would enable 3L candidates to complete callbacks and afford them a reasonable period (up to 14 days) to consider new full-time offers received on or after the Kick-Off Day alongside the offer from their prior summer employer, which expires on November 15 under the current Guidelines. By this same time employers would be hearing from their previously employed summer associates and would be more certain about their 3L needs.

c. Establishing the 3L Offer Kick Off Day and the Response Deadline

In setting the 3L dates, the Commission started with the current offer response deadline for prior summer associates of November 15. Commission members were aware (based on reviewed feedback and the results of their outreach) that many NALP members are dissatisfied with this date.

One obvious source of employer dissatisfaction is that, while they wait for summer associates who cannot or will not make up their minds about their full-time offers, employers risk losing alternative candidates to the competition.

Applying the Offer Kick-Off Day concept to offers to new 3Ls (as long as it is closely correlates with the prior summer associate offer response deadline) addresses this concern by keeping alternative candidates in the talent pool while employers await offer decision from their prior summer associates.

In addition to concerns about the availability of alternates, employers also believe that the gap between the end of the summer program and the current November 15 offer response deadline is simply too long a period during which they are prevented from adequately assessing their need to make offers to additional graduating students.

Law schools are sympathetic to this concern. Nearly all would agree that a student who already spent several weeks with an employer does not require a long period of time to decide whether or not to accept that individual offer. However, schools want to ensure those who may have had a negative summer experience or who unexpectedly need to change geographic markets have the ability to develop alternative offers that they can then consider concurrently. Allowing a window of time for 3Ls to explore other opportunities will ultimately result in more educated decision making and a higher likelihood of retaining those who accept.

Setting an offer response date for prior summer associates earlier than November 15, however, would likely require an October 3L Offer Day Kick-Off Day since, as demonstrated above (see the very beginning of this [Section 5](#)), the two dates need to closely correlate. Such an early 3L Offer Kick-Off Day would subvert a central purpose behind moving to a new Offer Kick-Off Day paradigm overall, which is to relieve the pressure on all parties — schools, employers and students — to schedule interviews at the earliest possible moment. An October 3L Offer Kick-Off Day would eliminate the incentives created by these recommendations for schools to move their OCIs (and would reinforce, rather than alleviate, the pressure on employers in a good market to rush to schedule candidates for callbacks).¹⁴ The practical result is that all callbacks would have to be completed — and employers would have to finish evaluating their candidates and be prepared to make offers — before the Offer Kick-Off Day in order to be competitive. An October Kick-Off Day effectively rules out the possibility that interested schools could move their OCIs into the September/October period.

Because many employers do not regularly hire third-year students outside their summer classes — and because they may conceptualize those that they do hire as “laterals” — they may not view third-year law student participation in OCI as significant enough to impact the scheduling of the program. However, that is not necessarily the school perspective. At schools with large OCI programs (those that would be particularly influential in the marketplace, if they decided to move later), one-third to one-half of the third-year class typically participates in OCI. Moreover, third-year law student interview slots can account for several hundred slots at schools with larger OCIs.

In addition to maintaining the incentive for schools to schedule OCIs later and for employers to schedule callbacks later, the November 15 offer response deadline allows

¹⁴ In reaching this conclusion, the Commission relied, in part, on the history behind the adoption of the current November 15 offer response deadline. Prior to the latest Part V revisions, students had until November 1 to accept their prior summer offers (if the offer was extended prior to September 15). Third-year law students who were not previously employed by the offeror had until December 1. However, a few large OCI schools imposed their own deadline on employers of December 15 based on their late September/ early October OCI schedules (and their third week in October “flyback” period). Their rationale was that it was necessary to enable students to go through the OCI process as third-year law students and have the opportunity to obtain other offers.

The scheduling of callbacks at schools with late fall OCIs was a factor in the Part V Task Force’s recommendation to move the offer response deadline from November 1 to November 15.

While it is the case that the remaining law schools with large, late fall OCI programs did, in fact, move their schedules earlier in 2009, their move was not due to changes in the timing guidelines. Rather it was due to events that were unique to mid-September 2008, the period during which the full extent of the global economic crisis was just becoming known (the fall of Lehman Brothers, AIG, etc). On-campus interviews were already completed at many law schools and many offers had already gone out to students, but programs at the later Fall schools were just getting underway. Students at these schools perceived they were disadvantaged by the timing of their schools’ OCI programs as legal employers reassessed (some drastically) their hiring needs in light of unfolding events.

more time for the clerkship, fellowship, and government honors program application processes to run their respective courses. This may also have the added benefit of reducing the number of requests for extensions that would be necessary under an earlier deadline.

The recommendation for the 3L hiring structure is a combination of a response date deadline for previously employed candidates (November 15) and an Offer Kick-Off Date for not previously employed 3Ls (November 1). This allows for a full exploration of the market by both candidates and employers.

6. Summer Offers to Previously Employed Candidates

The same concerns employers, students, and schools have about Offer Kick-Off Days applying to full-time offers to previously employed summer associates (See [Section 5a](#) above) apply in the summer offer context, regardless of whether the summer offer is being extended to a returning 1L summer associate or to a 3L for his/her pre-judicial clerkship summer.

Accordingly, the Commission recommends a hybrid approach for summer offers similar to the one recommended for full-time offers: a response date, rather than a Kick-Off Day, for previously employed candidates, which closely ties to the Offer Kick-Off Day for those summer associate candidates not previously employed.

This will maximize the ability for second-year students (and third-year future judicial clerks) to consider summer offers from “new” employers alongside their prior summer employer offer.

Following on the recommendation for a January date (“January X”) as the appropriate summer Offer Kick-Off Day, the response date for summer offers to previously employed candidates should be January X+14 (except that offers extended after January X will remain open for 14 days). Employers can extend such offers at any time, but they must remain open until the response date.

7. 1Ls

The Commission did not receive very much feedback on 1L hiring. The current practices appear to be meeting the needs of students, law schools, and employers. This is especially true in the present environment of limited 1L hiring, but is reported as true during more active hiring seasons as well.

However, in reviewing the current 1L timing guideline, we noted that, in addition to prohibiting contact between employers and 1Ls prior to December 1, offers to 1Ls were prohibited before that date. The Commission was concerned that the current 1L guideline in combination with the proposed Offer Kick-Off Day recommendation for 2Ls would

theoretically allow a 1L to receive an offer before a 2L. Even though this eventuality is unlikely in practice, we did not want to create a perception that 1Ls may have an advantage over 2Ls. At the same time, we were reluctant to create an Offer Kick-Off Day for 1Ls because it might create an expectation that offers to 1Ls should be made on or near the Offer Kick-Off Day — something that would not be true in practice. Finally, due to the fluidity and variability of 1L hiring (it varies from employer to employer and from year to year), the Commission determined the concerns about setting false expectations outweighed the concerns about perceptions of unfair advantage.¹⁵

Accordingly, we encourage employers not to extend offers to 1Ls prior to the January Offer Kick-Off Day for 2Ls and suggest revising the existing guideline (Part V, D.2.) as noted below:

“Prospective employers and first year law students should not initiate contact with one another and employers should not interview ~~or make offers to~~ first year students before December 1.”

This does not change November 1 as the earliest date for law schools to provide career assistance or December 1 as the earliest date for permissible contact between employers and candidates, nor does it try to prevent interviews or other interaction between students and employers during December and early January — a time that is popular in many markets for receptions, lunches, and 1L employer visits.

8. Small Firm Exception No Longer Necessary

The Part V Guidelines currently include an exception for employers with 40 or fewer lawyers in all offices (B.4 and C.4). They are subject to a three-week offer window (for offers extended prior to December 15) or a 14-day window (for those extended after December 15). The across-the-board recommendation to shorten the offer response window to 14 days is sufficiently close to, and in fact often is better than, the current small firm response deadlines. Thus, a separate set of deadlines for small firms is no longer necessary. In addition to concerns from small employers, members from large employers expressed concern with the current regime and how they recruited for their smaller offices. Shortening the response deadline and implementing a single Offer Kick-Off Day will help these employers better manage their yield and allow students to consider these options more fully and parallel to larger employers.

The implementation of a 2L Offer Kick-Off Day in January will NOT give rise to a need for an exception for small employers since the hiring timeline at small employers tends to be winter or spring at the earliest. The placement of the new offer kick-off dates on the

¹⁵ Some have suggested that setting a third Offer Kick-Off Day for 1Ls much later than the 2L Offer Kick-Off Day (perhaps February 1) would address any possible misconceptions about this recommendation’s intent. The Commission would welcome member feedback on whether a third Offer Kick-Off Day for 1Ls is necessary or desirable.

calendar may, in fact, encourage smaller employers to consider participating closer in time to larger employers and thus increase the likelihood that students will be able to consider smaller employer alternatives at the same time as their offers from larger employers.

While it is true that eliminating the exception for small firms will subject them to the November 15 response deadline for full-time offers extended to prior summer associates, the feedback received indicates that the majority of small firms tend to initiate and complete their hiring processes on a later and different timeline than typical OCI participating employers. Even if this was not the case, the provision of a November 1 Offer Day for offers to “new” 3Ls — which preserves the 3L talent pool — would enable them to conduct a search for and make offers to suitable alternative candidates in the event a prior summer associate turns down their offer late in the game. Thus, the proposed timing guidelines for 3Ls should not result in difficulties for small employers or for small offices of larger employers.

MEMBER FEEDBACK AND COMMENT

The Commission seeks feedback and comments on its recommendations from all NALP members by **January 29, 2010**.

There are three ways to provide feedback.

1. Three teleconference calls will be held and scheduled to accommodate the time zones of various regions. These calls will be hosted by the Commission in order to solicit feedback on the recommendations. The calls are scheduled for:
 - January 19 at 2:00 pm EST / 1:00 pm CST / 11:00 am PST
 - January 20 at 5:30 pm EST / 4:30 pm CST / 2:30 pm PST
 - January 28 at 3:30 pm EST / 2:30 pm CST / 12:30 pm PST

Please mark your calendars now to participate in one of these calls and watch for further details from NALP.

2. NALP members are encouraged to submit their comments to the suggestion box: suggestionbox@nalp.org.
3. Finally, you are invited to call or e-mail any member of the Commission or the Board of Directors with your thoughts. See www.nalp.org/commissiononrecruiting for a list of Commission members. You can find their contact information in the NALP [Member Directory](#).