

§ 1614.1 Purpose.

Private attorney involvement shall be an integral part of a total local program undertaken within the established priorities of that program in a manner that furthers the statutory requirement of high quality, economical, and effective client-centered legal assistance to eligible clients. This part is designed to ensure that recipients of Legal Services Corporation funds involve private attorneys, and encourages recipients to involve law students, law graduates, and other professionals, in the delivery of legal information and legal assistance to eligible clients.

§ 1614.2 General policy.

(a) Except as provided hereafter, a recipient of Legal Services Corporation funding shall devote an amount equal to at least twelve and one-half percent (12-1/2 %) of the recipient's LSC annualized basic field award to the involvement of private attorneys, law students, law graduates, and other professionals in the delivery of legal services to eligible clients; this requirement is hereinafter referred to as the "PAI requirement". Funds received from the Corporation as one-time special grants shall not be considered in calculating a recipient's PAI requirement.

(b) Funds received from LSC as Native American or migrant grants are not subject to the PAI requirement. However, recipients of Native American or migrant funding shall provide opportunity for involvement in the delivery of services by private attorneys, law students, law graduates, and other professionals in a manner that is generally open to broad participation in those activities undertaken with those funds, or shall demonstrate to the satisfaction of the Corporation that such involvement is not feasible.

§ 1614.3 Definitions.

(a) **Law graduate** means an individual who, within the last two years, has completed the education and/or training requirements required for application to the bar in any U.S. state or territory.

(b) **Law student** means an individual who is, or has been, enrolled, full-time or part-time, within the past year, and not expelled from:

(i) a law school that can provide the student with a degree that is a qualification for application to the bar in any U.S. state or territory, or

(ii) an apprenticeship program that can provide the student with sufficient qualifications for application to the bar in any U.S. state or territory.

(c) **Legal assistance** means services on behalf of a client or clients that is specific to the client's

or clients' unique circumstances, involves a legal analysis that is tailored to the client's or clients' factual situation, and involves applying legal judgment in interpreting the particular facts and in applying relevant law to the facts presented.

(d) **Legal information** means substantive legal information not tailored to address a person's specific problem and that does not involve applying legal judgment or recommending a specific course of action.

(e) **Other professional** means an individual, not engaged in the practice of law and not employed by the recipient, providing services to a recipient in furtherance of the recipient's provision of legal information and legal assistance to eligible clients. For example, a paralegal representing a client in a Supplemental Security Income (SSI) case, an accountant providing tax advice to an eligible client, an independent social worker providing support services to a client, or an attorney not authorized to practice law in the jurisdiction in which the recipient is located would fit within the definition of "other professional."

(f) **PAI Clinic** means an activity under this part in which private attorneys, law students, law graduates, and other professionals are involved in providing legal information and/or legal assistance to the public at a specified time and location.

(g) **Private attorney** (1) means

(i) an attorney licensed or otherwise authorized to practice law in the jurisdiction in which the recipient is located; or

(ii) a retired attorney who is authorized to practice law pursuant to the rules of the jurisdiction in which the recipient is located.

(iii) an attorney employed less than 1000 hours per calendar year by an LSC recipient or subrecipient, but only as to activities conducted outside the scope of his or her employment by the recipient.

(2) **Private attorney** does not include:

(i) an attorney employed more than 1000 hours per calendar year by an LSC recipient or subrecipient; or

(ii) an attorney employed by a non-LSC-funded legal services provider acting within the terms of his or her employment with the non-LSC-funded provider.

(h) **Screen for eligibility** means to screen individuals for eligibility using the same criteria recipients use to determine an individual's eligibility for cases accepted by the recipient and whether LSC funds or non-LSC funds can be used to provide legal assistance (e.g., income and assets, citizenship, eligible alien status, within priorities, applicability of LSC restrictions).

§ 1614.4 Range of activities.

(a) Direct delivery of legal assistance to recipient clients.

(1) Activities undertaken by the recipient to meet the requirements of this part must include the direct delivery of legal assistance to eligible clients by private attorneys through programs such as organized pro bono plans, reduced fee plans, judicare panels, private attorney contracts, or those modified pro bono plans which provide for the payment of nominal fees by eligible clients and/or organized referral systems; except that payment of attorney's fees through "revolving litigation fund" systems, as described in § 1614.8 of this part, shall neither be used nor funded under this part nor funded with any LSC support.

(2) In addition to the activities described in paragraph (a)(1), direct delivery of legal assistance to eligible clients may include representation by a non-attorney in an administrative tribunal that permits non-attorneys to represent individuals before the tribunal.

(3) Systems designed to provide direct services to eligible clients of the recipient by private attorneys on either a pro bono or reduced fee basis, shall include at a minimum, the following components:

- (i) Intake and case acceptance procedures consistent with the recipient's established priorities in meeting the legal needs of eligible clients;
- (ii) Case assignments which ensure the referral of cases according to the nature of the legal problems involved and the skills, expertise, and substantive experience of the participating attorney;
- (iii) Case oversight and follow-up procedures to ensure the timely disposition of cases to achieve, if possible, the result desired by the client and the efficient and economical utilization of recipient resources; and
- (iv) Access by private attorneys to LSC recipient resources that provide back-up on substantive and procedural issues of the law.

(b) Support and other activities. Activities undertaken by recipients to meet the requirements of

this part may also include, but are not limited to:

(1) Support provided by private attorneys to the recipient as part of its delivery of legal assistance to eligible clients on either a reduced fee or pro bono basis such as the provision of community legal education, training, technical assistance, research, advice and counsel; co-counseling arrangements; or the use of private law firm facilities, libraries, computer-assisted legal research systems or other resources;

(2) Support provided by other professionals in their areas of professional expertise to the recipient as part of its delivery of legal information or legal assistance to eligible clients on either a reduced fee or pro bono basis such as the provision of intake support, research, training, technical assistance, or direct assistance to an eligible client of the recipient; and

(3) Support provided by the recipient in furtherance of activities undertaken pursuant to this section including the provision of training, technical assistance, research, advice and counsel, or the use of recipient facilities, libraries, computer assisted legal research systems or other resources.

(4) PAI Clinics.

(i) Legal information provided in PAI clinics. A recipient may allocate to its PAI requirement costs associated with providing organizational support or technical assistance to other organizations conducting clinics, regardless of whether the clinic screens for eligibility, if the clinic provides only legal information.

(ii) Legal assistance provided in PAI clinics. If the clinic provides legal assistance to individual clients, a recipient may provide support for the clinic if the clinic screens for eligibility and provides legal assistance only to clients who may be served consistent with the LSC Act and relevant statutory and regulatory restrictions.

(A) A recipient may allocate to its PAI requirement costs associated with its support of such clinics for legal assistance provided to individuals who are eligible to receive LSC-funded legal services.

(B) Where a recipient supports or a clinic that provides legal assistance to individuals who are eligible for permissible non-LSC funded services, the recipient may not allocate to its PAI requirement costs associated with the legal assistance provided to such individuals. For example, a recipient may not allocate

to its PAI requirement costs associated with legal assistance provided through a clinic to an individual who exceeds the income and asset tests for LSC eligibility, but is otherwise eligible.

(C) For clinics providing both legal information to the public and legal assistance to clients screened for eligibility, a recipient may allocate to its PAI requirement costs associated with its support of both parts of the clinic.

(5) Screening and referral systems.

(i) A recipient may participate in a referral system in which the recipient conducts intake screening and refers LSC-eligible applicants to programs that assign applicants to private attorneys on a pro bono or reduced fee basis.

(ii) In order to allocate to its PAI requirement costs associated with participating in such referral systems, a recipient must be able to track the number of eligible persons referred by the recipient to each program and the number of eligible persons who were placed with a private attorney through the program receiving the referral.

(6) Law student activities. A recipient may allocate to its PAI requirement costs associated with law student work supporting the recipient's provision of legal information or delivery of legal assistance to eligible clients. Compensation paid by the recipient to law students may not be allocated to the PAI requirement.

(c) Determination of PAI activities. The specific methods to be undertaken by a recipient to involve private attorneys and other professionals in the provision of legal assistance to eligible clients will be determined by the recipient's taking into account the following factors:

- (1) The priorities established pursuant to Part 1620 of these regulations;
- (2) The effective and economic delivery of legal assistance to eligible clients;
- (3) The linguistic and cultural barriers to effective advocacy;
- (4) The actual or potential conflicts of interest between specific participating attorneys and individual eligible clients or other professionals and individual eligible clients; and
- (5) The substantive and practical expertise, skills, and willingness to undertake new or unique areas of the law of participating attorneys and other professionals.

§ 1614.5 Compensation of recipient staff and private attorneys; blackout period.

(a) A recipient may allocate to its PAI requirement costs associated with compensation paid to its employees only for facilitating the involvement of private attorneys, law students, law graduates, and other professionals in activities under this part.

(b) A recipient may not allocate to its PAI requirement costs associated with any compensation paid to a private attorney, law graduate, or other professional for services under this part:

(1) if the amount of compensation exceeds one-half of the average salary paid during the recipient's fiscal year to a recipient staff attorney, law graduate, or other professional, of comparable professional experience; or

(2) if the attorney, law graduate, or other professional provides more than 800 hours of services under this part.

(c) No PAI funds shall be committed for direct payment to any individual who for any portion of the previous two years has been employed more than 1000 hours per calendar year by an LSC recipient or subrecipient, except for employment as a law student; provided, however, that:

—(1) this paragraph shall not be construed to restrict the use of PAI funds in a pro bono or judicare project on the same terms that are available to other attorneys;

—(2) this paragraph shall not apply to the use of PAI funds in an incubator project in which a person is employed for less than a year at an LSC recipient as part of a program to provide legal training to law graduates or newly admitted attorneys who intend to establish their own independent law practices; and

—(3) this paragraph shall not be construed to restrict the payment of PAI funds as a result of work performed by an attorney or other individual who practices in the same business with such former employee.

§ 1614.6 Procedure.

(a) The recipient shall develop a plan and budget to meet the requirements of this part which shall be incorporated as a part of the refunding application or initial grant application. The budget shall be modified as necessary to fulfill this part. That plan shall take into consideration:

(1) The legal needs of eligible clients in the geographical area served by the recipient and the relative importance of those needs consistent with the priorities established pursuant to section 1007(a)(2)(C) of the Legal Services Corporation Act (~~42 U.S.C. 2996f(a)(2)(C)~~42 U.S.C. 2996f(a)(2)(C)) and Part 1620 of the regulations (45 CFR Part 1620) adopted pursuant thereto;

(2) The delivery mechanisms potentially available to provide the opportunity for private attorneys, **law students, law graduates, -and other professionals** to meet the established priority legal needs of eligible clients in an economical and effective manner; and

(3) The results of the consultation as required below.

(b) The recipient shall consult with significant segments of the client community, private attorneys, and bar associations, including minority and women's bar associations, in the recipient's service area in the development of its annual plan to provide for the involvement of private attorneys in the provision of legal assistance to eligible clients and shall document that each year its proposed annual plan has been presented to all local bar associations within the recipient's service area and shall summarize their response.

(c) In the case of recipients whose service areas are adjacent, coterminous, or overlapping, the recipients may enter into joint efforts to involve private attorneys, **law students, law graduates, and-or other professionals** in the delivery of legal services to eligible clients, subject to the prior approval of LSC. In order to be approved, the joint venture plan must meet the following conditions:

(1) The recipients involved in the joint venture must plan to expend at least twelve and one-half percent (12-1/2 %) of the aggregate of their basic field awards on PAI. In the case of recipients with adjacent service areas, 12-1/2 % of each recipient's grant shall be expended to PAI; provided, however, that such expenditure is subject to waiver under ~~§ 1614.6~~ § 1614.6;

(2) Each recipient in the joint venture must be a bona fide participant in the activities undertaken by the joint venture; and

(3) The joint PAI venture must provide an opportunity for involving **private attorneys, law students, law graduates, or other professionals** throughout the entire joint service area(s).

§ 1614.7 Compliance

The recipient shall demonstrate compliance with this part by utilizing financial systems and procedures and maintaining supporting documentation to identify and account separately for costs related to the PAI effort. Such systems and records shall meet the requirements of the Corporation's Audit Guide for Recipients and Auditors and the Accounting Guide for LSC Recipients and shall have the following characteristics:

(a) They shall accurately identify and account for:

(1) The recipient's administrative, overhead, staff, and support costs related to PAI activities. Non-personnel costs shall be allocated on the basis of reasonable operating data. All methods of allocating common costs shall be clearly documented. If any direct or indirect time of staff attorneys or paralegals is to be allocated as a cost to PAI, such costs must be documented by time sheets accounting for the time those employees have spent on PAI activities. The timekeeping requirement does not apply to such employees as receptionists, secretaries, intake personnel or bookkeepers; however, personnel cost allocations for non-attorney or non-paralegal staff should be based on other reasonable operating data which is clearly documented;

(2) Payments to private attorneys for support or direct client services rendered. The recipient shall maintain contracts on file which set forth payment systems, hourly rates, and maximum allowable fees. Bills and/or invoices from private attorneys shall be submitted before payments are made. Encumbrances shall not be included in calculating whether a recipient has met the requirement of this part;

(3) Contractual payments to individuals or organizations that undertake administrative, support, and/or direct services to eligible clients on behalf of the recipient consistent with the provisions of this part. Contracts concerning transfer of LSC funds for PAI activities shall require that such funds be accounted for by the recipient in accordance with LSC guidelines, including the requirements of the Audit Guide for Recipients and Auditors and the Accounting Guide for LSC Recipients and 45 CFR part 1627;

(4) Other such actual costs as may be incurred by the recipient in this regard.

(b) Support and expenses relating to the PAI effort must be reported separately in the recipient's year-end audit. This shall be done by establishing a separate fund or providing a separate schedule in the financial statement to account for the entire PAI allocation. Recipients are not required to establish separate bank accounts to segregate funds allocated to PAI. Auditors are required to perform sufficient audit tests to enable them to render an opinion on the recipient's compliance with the requirements of this part.

(c) In private attorney models, attorneys may be reimbursed for actual costs and expenses.

(d) Fees paid to individuals for providing services under this part may not exceed 50% of the local prevailing market rate for that type of service.

§ 1614.8 Prohibition of revolving litigation funds.

(a) A revolving litigation fund system is a system under which a recipient systematically encourages the acceptance of fee-generating cases as defined in § 1609.2 of these regulations by advancing funds to private attorneys, law students, law graduates, or other professionals to enable them to pay costs, expenses, or attorneys' fees for representing clients.

(b) No funds received from the Legal Services Corporation shall be used to establish or maintain revolving litigation fund systems.

(c) The prohibition in paragraph (b) of this section does not prevent recipients from reimbursing or paying private attorneys, law students, law graduates, or other professionals for costs and expenses, provided:

(1) The private attorney, law student, law graduate, or other professional is representing an eligible client in a matter in which representation of the eligible client by the recipient would be allowed under the Act and under the Corporation's regulations; and

(2) The private attorney, law student, law graduate, or other professional has expended such funds in accordance with a schedule previously approved by the recipient's governing body or, prior to initiating action in the matter, has requested the recipient to advance the funds.

(d) Nothing in this section shall prevent a recipient from recovering from a private attorney, law student, law graduate, or other professional the amount advanced for any costs, expenses, or fees from an award to the individual for representing an eligible client.

§ 1614.9 Waivers.

(a) While it is the expectation and experience of the Corporation that most basic field programs can effectively expend their PAI requirement, there are some circumstances, temporary or permanent, under which the goal of economical and effective use of Corporation funds will be furthered by a partial, or in exceptional circumstances, a complete waiver of the PAI requirement.

(b) A complete waiver shall be granted by LSC when the recipient shows to the satisfaction of LSC that:

(1) Because of the unavailability of qualified private attorneys, an attempt to carry out a PAI

program would be futile; or

(2) All qualified private attorneys in the program's service area either refuse to participate or have conflicts generated by their practice which render their participation inappropriate.

(c) A partial waiver shall be granted by LSC when the recipient shows to the satisfaction of LSC that:

(1) The population of qualified private attorneys, law students, law graduates, and other professionals available to participate in the program is too small to use the full PAI allocation economically and effectively; or

(2) Despite the recipient's best efforts, too few qualified private attorneys, law students, law graduates, and other professionals are willing to participate in the program to use the full PAI allocation economically and effectively; or

(3) Despite a recipient's best efforts--including, but not limited to, communicating its problems expending the required amount to LSC and requesting and availing itself of assistance and/or advice from LSC regarding the problem--expenditures already made during a program year are insufficient to meet the PAI requirement, and there is insufficient time to make economical and efficient expenditures during the remainder of a program year, but in this instance, unless the shortfall resulted from unforeseen and unusual circumstances, the recipient shall accompany the waiver request with a plan to avoid such a shortfall in the future; or

(4) The recipient uses a fee-for-service program whose current encumbrances and projected expenditures for the current fiscal year would meet the requirement, but its actual current expenditures do not meet the requirement, and could not be increased to do so economically and effectively in the remainder of the program year, or could not be increased to do so in a fiscally responsible manner in view of outstanding encumbrances; or

(5) The recipient uses a fee-for-service program and its PAI expenditures in the prior year exceeded the twelve and one-half percent (12-1/2 %) requirement but, because of variances in the timing of work performed by the private attorneys and the consequent billing for that work, its PAI expenditures for the current year fail to meet the twelve and one-half percent (12-1/2 %) requirement; or

(6) If, in the reasonable judgment of the recipient's governing body, it would not be economical and efficient for the recipient to expend its full 12-1/2 % of Corporation funds on PAI activities, provided that the recipient has handled and expects to continue to handle at least 12-

1/2 % of cases brought on behalf of eligible clients through its PAI program(s).

(d)(1) A waiver of special accounting and bookkeeping requirements of this part may be granted by the Audit Division with the concurrence of LSC, if the recipient shows to the satisfaction of the Audit Division of LSC that such waiver will advance the purpose of this part as expressed in §§ 1614.1 and 1614.2.

(2) As provided in 45 CFR 1627.3(c) with respect to subgrants, alternatives to Corporation audit requirements or to the accounting requirements of this Part may be approved for subgrants by LSC; such alternatives for PAI subgrants shall be approved liberally where necessary to foster increased PAI participation.

(e) Waivers of the PAI expenditure requirement may be full or partial, that is, the Corporation may waive all or some of the required expenditure for a fiscal year.

(1) Applications for waivers of any requirement under this Part may be for the current, or next fiscal year. All such applications must be in writing. Applications for waivers for the current fiscal year must be received by the Corporation during the current fiscal year.

(2) At the expiration of a waiver a recipient may seek a similar or identical waiver.

(f) All waiver requests shall be addressed to LSC or the Audit Division as is appropriate under the preceding provisions of this Part. The Corporation shall make a written response to each such request postmarked not later than thirty (30) days after its receipt. If the request is denied, the Corporation will provide the recipient with an explanation and statement of the grounds for denial. If the waiver is to be denied because the information submitted is insufficient, the Corporation will inform the recipient as soon as possible, both orally and in writing, about what additional information is needed. Should the Corporation fail to so respond, the request shall be deemed to be granted.

§ 1614.10 Failure to comply.

(a) If a recipient fails to comply with the expenditure required by this part and if that recipient fails without good cause to seek a waiver during the term of the grant or contract, the Corporation shall withhold from the recipient's support payments an amount equal to the difference between the amount expended on PAI and twelve and one-half percent (12-1/2 %) of the recipient's basic field award.

(b) The withholding of funds under this section shall not be construed as any action under 45

CFR parts 1606, 1618, 1623, or 1630.

(c) Any funds withheld by the Corporation pursuant to this section shall be made available by the Corporation for use in providing legal services in the recipient's service area through PAI programs. Disbursement of these funds shall be made through a competitive solicitation and awarded on the basis of efficiency, quality, creativity, and demonstrated commitment to PAI service delivery to low-income people.

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