
45 CFR PART 1614—PRIVATE ATTORNEY INVOLVEMENT

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AUTHORITY: Sec. 1007(a)(2)(C) and sec. 1007(a)(3); (42 U.S.C. 2996f(a)(2)(C) and 42 U.S.C. 2996f(a)(3)).

SOURCE: 50 FR 48591, Nov. 26, 1985, unless otherwise noted.

§ 1614.1 Purpose.

(a) This part is designed to ensure that recipients of Legal Services Corporation funds involve private attorneys in the delivery of legal assistance to eligible clients. Except as provided hereafter, a recipient of Legal Services Corporation funding shall devote an amount equal to at least twelve and one-half percent (12½ %) of the recipient's LSC annualized basic field award to the involvement of private attorneys in such delivery of legal services; this requirement is hereinafter sometimes referred to as the "PAI requirement". Funds received from the Corporation as one-time special grants shall not be considered in determining a recipient's PAI requirement.

(b) Recipients of Native American or migrant funding shall provide opportunity for involvement in the delivery of services by the private bar in a manner which 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.

(c) Because the Corporation's PAI requirement is based upon an effort to generate the most possible legal services for eligible clients from available, but limited, resources, recipients should attempt to assure that the market value of PAI activities substantially exceeds the direct and indirect costs being allocated to meet the requirements of this Part.

(d) As of January 1, 1986, the term "private attorney" as used in this Part means an attorney who is not a staff attorney as defined in § 1600.1 of these regulations.

(e) After the effective date of this regulation, no PAI funds shall be committed for direct payment to any attorney who for any portion of the previous two years has been a staff attorney as defined in § 1600.1 of these regulations; provided, however, that, for the remainder of the 1986 fiscal year, recipients may honor contractual arrangements made to such private attorneys if these arrangements were made before the effective date of this regulation; provided, further, however, that 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; and provided further, however, that this paragraph shall not be construed to restrict the payment of PAI funds

(1) Support provided by private attorneys to the recipient in its delivery of legal assistance to eligible clients on either a reduced fee or *pro bono* basis through 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; and

(2) 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.

(c) The specific methods to be undertaken by a recipient to involve private attorneys 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; and

(5) The substantive and practical expertise, skills, and willingness to undertake new or unique areas of the law of participating attorneys.

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

(1) Intake and case acceptance procedures consistent with the recipient's established priorities in meeting the legal needs of eligible clients;

(2) 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;

(3) 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

(4) Access by private attorneys to LSC recipient resources, including those of LSC national and state support centers, that provide back-up on substantive and procedural issues of the law.

(e) 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 and Accounting Guide for Recipients and Auditors and shall have the following characteristics:

(1) They shall accurately identify and account for:

(i) 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;

(ii) 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;

(iii) 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 and Accounting Guide for Recipients and Auditors and 45 CFR part 1627;

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

(2) 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

(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)) and part 1620 of the Regulations (45 CFR part 1620) adopted pursuant thereto;

(b) A complete waiver shall be granted by the Office of Field Services (OFS) when the recipient shows to the satisfaction of OFS 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 OFS when the recipient shows to the satisfaction of OFS that:

(1) The population of qualified private attorneys 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 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 OFS and requesting and availing itself of assistance and/or advice from OFS 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 (12½ %) 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 (12½ %) 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 12½ % of Corporation funds on PAI activities, provided that the recipient has handled and expects to continue to handle at least 12½ % 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 OFS, if the recipient shows to the satisfaction of the Audit Division of OFS 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 the Audit Division with the concurrence of OFS; 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 the Office of Field Services (OFS) 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