

§ 1614.1

45 CFR Ch. XVI (10–1–07 Edition)

§ 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 as a result of work performed by an attorney who practices in the same firm with such former staff attorney.

[50 FR 48591, Nov. 26, 1985, as amended at 51 FR 21559, June 13, 1986]

§ 1614.2 General policy.

(a) This part implements the policy adopted by the Board of Directors of the Corporation which requires that a substantial amount of funds be made available to encourage the involvement of private attorneys in the delivery of legal assistance to eligible clients through both *pro bono* and compensated mechanisms, and that such funds be expended in an economic and efficient manner.

(b) In the case of recipients whose service areas are adjacent, coterminous or overlapping, the recipients may enter into joint efforts to involve the private attorneys in the delivery of legal services to eligible clients, subject to the prior approval of the Office of Field Services. 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 (12½%) of the aggregate of their basic field awards on PAI. In the case of recipients with adjacent service areas, 12½% of each recipient's grant shall be expended to PAI; provided, however, that such expenditure is subject to waiver under §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 throughout the entire joint service area(s).

(c) 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

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and effective client-centered legal assistance to eligible clients. Decisions concerning implementation of the substantial involvement requirement rest with the recipient through its governing body, subject to review and evaluation by the Corporation.

§ 1614.3 Range of activities.

(a) Activities undertaken by the recipient to meet the requirements of this part must include the direct delivery of legal assistance to eligible clients 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 § 1614.5 of this part, shall neither be used nor funded under this part nor funded with any LSC support;

(b) 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 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