State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Twin Lakes, City of, Freeborn County ..	270139	September 22, 1977, Emerg; May 3, 1982, Reg; November 19, 2014, Susp.	.....do	Do.

* do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: September 29, 2014.

David L. Miller,

Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

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LEGAL SERVICES CORPORATION

45 CFR Part 1614

Private Attorney Involvement

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule updates the Legal Services Corporation (LSC or Corporation) regulation on private attorney involvement (PAI) in the delivery of legal services to eligible clients.

DATES: The rule will be effective November 14, 2014.

FOR FURTHER INFORMATION CONTACT: Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007, (202) 295–1563 (phone), (202) 337–6519 (fax), *sdavis@lsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Private Attorney Involvement

In 1981, LSC issued the first instruction (''Instruction'') implementing the Corporation's policy that LSC funding recipients dedicate a percentage of their basic field grants to involving private attorneys in the delivery of legal services to eligible clients. 46 FR 61017, 61018, Dec. 14, 1981. The goal of the policy was to ensure that recipients would provide private attorneys with opportunities to give legal assistance to eligible clients ''in the most effective and economical manner and consistent with the purposes and requirements of the Legal Services Corporation Act.'' *Id.* at 61017. The Instruction gave recipients guidance on the types of opportunities that they could consider, such as engaging private attorneys in the direct representation of eligible clients or in providing community legal education. *Id.* at 61018. Recipients were directed to consider a number of factors in deciding which activities to pursue, including the legal needs of eligible clients, the recipient's priorities, the most effective and economical means of providing legal assistance, linguistic and cultural barriers to effective advocacy, conflicts of interest between private attorneys and eligible clients, and the substantive expertise of the private attorneys participating in the recipients' projects. *Id.*

LSC published the first PAI rule in 1984. 49 FR 21328, May 21, 1984. The new regulation adopted the policy and procedures established by the Instruction in large part. The rule adopted an amount equivalent to 12.5% of a recipient's basic field grant as the amount recipients were to spend on PAI activities. *Id.* The rule also adopted the factors that recipients were to consider in determining which activities to pursue and the procedures by which recipients were to establish their PAI plans. *Id.* at 21328–29. Finally, the rule incorporated the Instruction's prohibition on using revolving litigation funds as a method of engaging private attorneys. *Id.* at 21329.

Over the course of the next two years, LSC amended the PAI rule in several material respects. In recognition of LSC's belief that ''the essence of PAI is the direct delivery of legal services to the poor by private attorneys,'' LSC introduced a provision requiring recipients to meet at least part of their PAI requirement by engaging private attorneys to provide legal assistance directly to eligible clients. 50 FR 48586, 48588, Nov. 26, 1985. At the same time, LSC introduced rules governing joint ventures, waivers, and sanctions for failure to comply with the PAI requirement, in addition to establishing simplified audit rules. *Id.* at 48587–89. The following year, LSC made two substantive changes to the rule. First, LSC included a definition for the term *private attorney,* which the Corporation defined as ''an attorney who is not a staff attorney as defined in § 1600.1 of these regulations.'' 51 FR 21558, June 13, 1986. Second, LSC promulgated the ''blackout provision,'' which prohibited recipients from counting toward their PAI requirement payments made to individuals who had been staff attorneys within the preceding two years. *Id.* at 21558–59.

LSC last amended part 1614 in 2013 as part of the final rule revising LSC's enforcement procedures. 79 FR 10085, Feb. 13, 2013. The only effect of the 2013 amendments was to harmonize part 1614 with the enforcement rules by eliminating references to obsolete rules and replacing them with references to the new rules. *Id.* at 10092.

II. The Pro Bono Task Force

On March 31, 2011, the LSC Board of Directors (Board) approved a resolution establishing the Pro Bono Task Force. Resolution 2011–009, ''Establishing a Pro Bono Task Force and Conferring Upon the Chairman of the Board Authority to Appoint Its Members,'' Mar. 31, 2011, *http://www.lsc.gov/board-directors/resolutions/resolutions-2011.* The purpose of the Task Force was to ''identify and recommend to the Board new and innovative ways in which to promote and enhance pro bono initiatives throughout the country[.]'' *Id.* The Chairman of the Board appointed to the Task Force individuals representing legal services providers, organized pro bono programs, the judiciary, law firms, government attorneys, law schools, bar leadership, corporate general counsels, and technology providers.

The Task Force focused its efforts on identifying ways to increase the supply of lawyers available to provide pro bono legal services while also engaging attorneys to reduce the demand for legal services. Legal Services Corporation, *Report of the Pro Bono Task Force* at 2, October 2012, *available at http://lri.lsc.gov/legal-representation/private-attorney-involvement/resources.* Members considered strategies for expanding outreach to private attorneys and opportunities for private attorneys to represent individual clients in areas of interest to the attorneys. In addition, the Task Force explored strategies, such as appellate advocacy projects or collaborations with special interest groups, to help private attorneys address systemic problems as a way to decrease the need for legal services on a larger

scale than can be achieved through individual representation. *Id.* Finally, the Task Force considered ways in which volunteers, including law students, paralegals, and members of other professions, could better be used to address clients' needs. *Id.*

In October 2012, the Task Force released its report to the Corporation. The Task Force made four overarching recommendations to LSC in its report.

Recommendation 1: LSC Should Serve as an Information Clearinghouse and Source of Coordination and Technical Assistance to Help Grantees Develop Strong Pro Bono Programs

Recommendation 2: LSC Should Revise Its Private Attorney Involvement (PAI) Regulation to Encourage Pro Bono.

Recommendation 3: LSC Should Launch a Public Relations Campaign on the Importance of Pro Bono

Recommendation 4: LSC Should Create a Fellowship Program to Foster a Lifelong Commitment to Pro Bono

The Task Force also requested that the judiciary and bar leaders assist LSC in its efforts to expand pro bono by, for example, changing or advocating for changes in court rules that would allow retired attorneys or practitioners licensed outside of a recipient's jurisdiction to engage in pro bono legal representation. *Id.* at 25–27. Collaboration among LSC recipients, the private bar, law schools, and other legal services providers was a theme running throughout the Task Force's recommendations to the Corporation.

Recommendation 2 provided the impetus for the NPRM. Recommendation 2 had three subparts. Each recommendation focused on a portion of the PAI rule that the Task Force identified as posing an obstacle to effective engagement of private attorneys. Additionally, each recommendation identified a policy determination of the Corporation or an interpretation of the PAI rule issued by the Office of Legal Affairs (OLA) that the Task Force believed created barriers to collaboration and the expansion of pro bono legal services. The three subparts are:

2(a)—Resources spent supervising and training law students, law graduates, deferred associates, and others should be counted toward grantees' PAI obligations, especially in ''incubator'' initiatives.

2(b)—Grantees should be allowed to spend PAI resources to enhance their screening, advice, and referral programs that often attract pro bono volunteers while serving the needs of low-income clients.

2(c)—LSC should reexamine the rule that mandates adherence to LSC grantee case handling requirements, including that matters be accepted as grantee cases in order for programs to count toward PAI requirements.

Id. at 20–21.

The Task Force observed in Recommendation 2 that the ''PAI regulation has resulted in increased collaboration between LSC grantees and private attorneys,'' but that the legal market has changed since the rule's issuance. *Id.* at 20. The Task Force suggested that ''there are certain areas where the regulation might productively be revised to ensure that LSC grantees can use their grants to foster pro bono participation.'' *Id.* For example, the omission of services provided by law students and other non-lawyers and the poor fit of the ''staff attorney'' construct in the definition of ''private attorney'' created complications for recipients attempting to fulfill the PAI requirement. *Id.* at 20–21. The Task Force encouraged LSC to undertake a ''thoughtful effort to reexamine the regulation to ensure that it effectively encourages pro bono participation.'' *Id.* at 22.

III. History of This Rulemaking

After receiving the PBTF's report, LSC determined that it would be necessary to revise part 1614 to respond to some of the Task Force's recommendations. On January 26, 2013, LSC's Board of Directors authorized the initiation of rulemaking to explore options for revising the PAI requirement.

LSC determined that an examination of the PAI rule within the context of the Task Force recommendations would benefit from early solicitation of input from stakeholders. LSC therefore published two requests for information seeking both written comments and participation in two rulemaking workshops held in July and September 2013. The first request for information focused discussion specifically on the three parts of Recommendation 2. 78 FR 27339, May 10, 2013. The second request for information, published after the July workshop, supplemented the first with questions developed in response to issues raised at the July workshop. 78 FR 48848, Aug. 12, 2013. The closing date of the comment period for both requests for information was October 17, 2013.

The Corporation considered all comments received in writing and provided during the rulemaking workshops in the development of the NPRM. On April 8, 2014, the Board approved the NPRM for publication, and the NPRM was published in the **Federal Register** on April 16, 2014. 79 FR 21188, Apr. 16, 2014. The comment period was open for sixty days, and closed on June 16, 2014. *Id.*

LSC analyzed all comments received and sought additional input from the Office of Program Performance (OPP), the Office of Compliance and Enforcement (OCE), and the Office of Inspector General (OIG). For the reasons discussed in the Section-by-Section Analysis below, LSC is not making significant revisions to the proposed rule.

LSC presented this final rule to the Committee on October 5, 2014, at which time the Committee voted to recommend that the Board adopt the rule, subject to minor amendments. On October 7, 2014, the Board voted to adopt the amended final rule and approved it for publication in the **Federal Register**.

All of the comments and related memos submitted to the LSC Board regarding this rulemaking are available in the open rulemaking section of LSC's Web site at *http://www.lsc.gov/about/regulations-rules/open-rulemaking.* After the effective date of the rule, those materials will appear in the closed rulemaking section at *http://www.lsc.gov/about/regulations-rules/closed-rulemaking.*

IV. Section-by-Section Discussion of Comments and Regulatory Provisions

LSC received eight comments during the public comment period. LSC subsequently received one additional comment. Four comments were submitted by LSC recipients—California Rural Legal Assistance (CRLA) (jointly with the Legal Services Association of Michigan (LSAM), an organization representing fourteen LSC and non-LSC civil legal services providers in Michigan), Northwest Justice Project (NJP), Legal Aid Society of Northeastern New York (LASNNY), and Legal Services NYC (LSNYC). The National Legal Aid and Defender Association (NLADA), the American Bar Association (ABA), through its Standing Committee on Legal Aid and Indigent Defendants and with substantial input from the Standing Committee on Pro Bono and Public Service, the New York State Bar Association, the California Commission on Access to Justice (Access Commission), and the LSC Office of Inspector General (OIG) submitted the other five comments.

Commenters were generally supportive of the changes LSC proposed that expanded opportunities to engage interested individuals in providing legal assistance and legal information to the poor; however, OIG took no position on the proposed changes. Overall, the public comments endorsed LSC's decision to adopt the part of Recommendation 2(a) of the PBTF report that advocated allowing recipients to allocate resources spent

supervising and training law graduates, law students, and others to their PAI requirements. The Access Commission noted that this proposed change ''reflects the reality that law students, law graduates, and other professionals can and do play an important role in helping to meet unmet legal needs in a cost-effective and sustainable manner.'' LSNYC stated that the changes would ''harmonize[] PAI regulations with the pro bono standards of other funders and the pro bono community at large.''

Comments from the public also praised LSC's decision to adopt the part of Recommendation 2(a) that advocated exempting attorneys who had participated in ''incubator'' projects from the two-year blackout period on payments to former staff attorneys. For example, NLADA commented that the revision would ''assist[] LSC programs in creating incubator programs that benefit new attorneys by giving them a start in practice [and] benefit[] recipients by providing trained attorneys to handle cases for a modest payment thus expanding the supply of available lawyers.''

Finally, the public comments supported LSC's decision to amend part 1614 in order to reverse the effect of two opinions published by OLA, AO–2011–001 and EX–2008–1001. These opinions interpreted part 1614 as requiring recipients to accept eligible clients as their own in order to allocate to their PAI requirements the costs incurred by either providing support to a pro bono clinic at which participants received individualized legal assistance or to screening clients and referring them to an established network of volunteer attorneys for placement. LSC's decision responded to Recommendations 2(b) and 2(c) of the PBTF report. NJP, which operates the screening and referral program that was the subject of AO–2011–001, specifically commented that it was ''heartened by the fact that under the proposed revisions it appears that NJP's significant support for the statewide pro bono delivery system in Washington, through its telephonic intake and referral system . . . will now enjoy recognition of the important role this support plays to enhance private bar involvement efforts statewide.'' The Access Commission supported the revision as a ''sensible and efficient proposal[] that promote[s] use of private attorneys, conservation of program resources, and meeting unmet legal needs.'' The ABA and NLADA similarly supported amending the rule to reverse the effect of the two opinions.

Proposed § 1614.1—Purpose.

LSC proposed revising this section to state more clearly the purpose of the PAI rule and to encourage the inclusion of law students, law graduates, and other professionals in recipients' PAI plans. LSC received no public comments on this section. LSC is making a technical change to the first sentence of the section to make clear that PAI programs are to be conducted ''within the established priorities of that program, and consistent with LSC's governing statutes and regulations[.]''

Proposed § 1614.2—General Policy

LSC proposed to consolidate all statements of policy scattered throughout existing part 1614 into this section. LSC received no public comments on this section. LSC is making technical revisions to § 1614.2 to make clear that the PAI requirement applies only to the annualized award to provide legal services to the general low-income population living in a specific geographic area (''Basic Field-General grants''). Three types of awards are not subject to the PAI requirement: awards to provide legal services to Native Americans living in a specific geographical area, related to their status as Native Americans (''Basic Field-Native American grants'') and awards to provide legal services to migrant farmworkers living in a specific geographical area, related to their status as migrant farmworkers (''Basic Field-Migrant grants''), and any grants outside of basic field grants, such as Technology Initiative Grants and the grants to be awarded from the Pro Bono Innovation Fund.

Proposed § 1614.3—Definitions

Organizational note. Because LSC is adding a definition for the term *incubator project* as § 1614.3(b), the terms defined in paragraphs (b)–(i) in the NPRM will be redesignated as paragraphs (c)–(j) in this final rule. In the following discussion of the comments and changes to the proposed rule, LSC will refer to the redesignated paragraphs by the designation used in the final rule, except where the proposed rule is explicitly referenced.

§ 1614.3(a) Attorney. LSC is making editorial changes to the proposed definition of the term *attorney* in response to staff comments. Some commenters found the proposed definition, which simply excepted *attorney* from the definition provided in 45 CFR 1600.1 for purposes of this part, awkward. LSC revised the definition to mirror the § 1600.1 definition to the extent possible and still have it make sense within the context of the PAI rule. LSC also retained the part of the NPRM definition that stated the § 1600.1 definition does not apply to part 1614.

§ 1614.3(b) Incubator project. LSC is adding a definition for the term *incubator project* in response to staff comments. LSC took the definition proposed in the version of the final rule presented to the Committee from proposed § 1614.5(c)(2), which described an incubator project as ''a program to provide legal training to law graduates or newly admitted attorneys who intend to establish their own independent law practices.'' 79 FR 21188, 21200, Apr. 15, 2014. At the Committee meeting on October 5, 2014, the ABA proposed revising the definition to include law students as individuals who could participate in an incubator project and to make clear that participation in an incubator project, rather than the project itself, is time-limited. The Committee agreed to revise the definition consistent with the ABA's proposal, and the version of the final rule approved by the Board contained the new language.

§ 1614.3(c) Law graduate. Section 1614.3(b) proposed to define the term *law graduate* to mean an individual who has completed the educational or training requirements required for application to the bar in any U.S. state or territory. LSC received no comments on this definition.

§ 1614.3(d) Law student. Proposed 1614.3(c) defined the term *law student* to include two groups. The first was individuals who are or have been enrolled in 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. The second was individuals who are or have been participating in an apprenticeship program that can provide the individual with sufficient qualifications to apply for the bar in any U.S. state or territory. LSC received no comments on this definition.

§ 1614.3(e) Legal assistance. This proposed definition was substantially adapted from the LSC CSR Handbook, and is different from the term *legal assistance* defined in the LSC Act and in § 1600.1 of these regulations. LSC proposed to adopt the CSR Handbook definition in the PAI rule for consistency in the treatment of legal assistance and compliance with eligibility screening requirements by both recipients and private attorneys. LSC received no comments on this definition.

§ 1614.3(f) Legal information. LSC proposed to define the term *legal information* as the provision of

substantive legal information that is not tailored to address an individual's specific legal problem and that does not involve applying legal judgment or recommending a specific course of action. This definition was also adapted substantially from the CSR Handbook for the same reasons stated above with respect to the definition of *legal assistance.* LSC received no comments on this definition.

§ 1614.3(g) Other professional. In the NPRM, LSC proposed to define *other professional* as any individual who is not engaged in the practice of law, is not employed by the recipient, and is providing services to an LSC recipient in furtherance of the recipient's provision of legal information or legal assistance to eligible clients. LSC intended this definition to cover a wide spectrum of professionals whose services will help recipients increase the effectiveness and efficiency of their programs. Such professionals include paralegals, accountants, and attorneys who are not authorized to practice law in the recipient's jurisdiction (such as an attorney licensed in another jurisdiction or a retired attorney who is prohibited from practicing by the bar rules). These individuals may provide services within their areas of expertise to a recipient that would improve the recipient's delivery of legal services. For example, a volunteer paralegal representing a client of the recipient in a Supplemental Security Income case or a volunteer accountant providing a legal information program on the earned income tax credit would constitute *other professionals* assisting a recipient in its delivery of legal information or legal assistance to eligible clients. LSC received no comments on this definition.

LSC will replace the phrase ''limited license to provide legal services'' with the term ''limited license to practice law'' to reflect more accurately what limited license legal technicians and others similarly situated are authorized to do.

§ 1614.3(h) PAI clinic. Proposed § 1614.3(g) defined the term *PAI clinic* as ''an activity under this part in which private attorneys, law students, law graduates, or other professionals are involved in providing legal information and/or legal assistance to the public at a specified time and location.'' PAI clinics may consist solely of a legal information session on a specific topic, such as bankruptcy or no-contest divorce proceedings, that are open to the public and at which no individual legal assistance is provided. Additionally, a PAI clinic may be open to the public for either the provision of individual legal assistance or a referral for services from another organization. Some clinics are hybrids of the two models, and some clinics are aimed at providing technical assistance to pro se litigants, such as help understanding the court procedures or filling out pleadings. The common thread among the activities considered to be *clinics* is that they are open to the public and distinct from a recipient's regular legal practice. LSC received no comments on this definition.

§ 1614.3(i) Private attorney. Comment 1: LSC received four comments objecting to the exclusion of attorneys ''employed by a non-LSC-funded legal services provider acting within the terms of [their] employment with the non-LSC-funded provider'' from the definition of *private attorney.* 79 FR 21188, 21199, Apr. 15, 2014. NLADA, the Access Commission, and CRLA/LSAM all asserted that the proposed exclusion was ambiguous and overly broad, and would prevent recipients from including collaborations with certain other non-profit organizations within their PAI plans. The ABA also observed that the term ''legal services provider'' was ambiguous and could be interpreted as including private law firms.

CRLA/LSAM observed that

> [o]ften times, due to lack of profitability, logistics and conflicts the only law firms willing to join rural LSC recipients as attorneys willing to co-counsel education, housing and environmental justice cases in the remote rural communities we work in are attorneys employed by a non-LSC-funded, non-profit legal services provider who is acting within the terms of his/her employment . . . . For rural grantees to engage in co-counseling cases, they largely rely on non-LSC funded non-profits with an expertise in specific legal areas, but no geographic ties . . . to these rural communities.

Finally, they observed that AO–2009–1004 only prohibited recipients from allocating to their PAI requirements costs associated with subgrants to staff-model legal services providers to operate a hotline that provided advice and referrals. AO–2009–1004 did not, they continued ''exclude from PAI counting staff time facilitating, supervising, or co-counseling with these same non-profit, non-LSC staff model legal providers who donate their time to a recipient.'' It is the donation of the services, rather than the donor's nature as a provider of legal services to the poor, that ''is at the heart of pro bono legal services and should be at the heart of all LSC PAI plans.'' CRLA/LSAM recommended that LSC revise the exclusion to apply only to ''[a]n attorney who receives more than half of his or her professional income from a non-LSC-funded legal services provider which receives a subgrant from any recipient, acting within the terms of his or her employment with the non-LSC-funded provider.''

The Access Commission also observed that the ''proposed exclusion is ambiguous and overly broad and may unnecessarily restrict the pool of attorneys eligible to volunteer with LSC-funded legal services programs.'' Like CRLA/LSAM, the Access Commission highlighted California's particular concerns about having a limited pool of attorneys available to work in its ''vast rural and underserved areas.'' Unlike CRLA/LSAM, the Access Commission recommended that LSC narrow the exclusion to apply only to ''non-profit organization[s] whose primary purpose is delivery of civil legal services to the poor . . . .'' They urged that ''the proposed rules be flexible enough to encourage the participation of attorneys who do not usually serve low income clients while permitting LSC-funded legal services programs to recruit and work with available attorneys and organizations in their local communities.''

Finally, NLADA advocated the inclusion of attorneys who work for non-profit organizations whose primary purpose is not the delivery of legal services to the poor. As examples, NLADA offered two organizations: the American Association for Retired Persons (AARP), and the protection and advocacy systems (P&As) funded by the federal government to ensure the rights of individuals with the full range of disabilities. Nationally, AARP provides an array of services and benefits to members; in the District of Columbia, AARP supports Legal Counsel for the Elderly, which provides free legal assistance in civil cases to residents over the age of 60, and in disability cases to residents over the age of 55. P&As receive funding from the U.S. Department of Education, the U.S. Department of Health and Human Services, and the Social Security Administration, to engage in systemic advocacy efforts and to provide individual assistance to individuals with the full range of emotional, developmental, and physical disabilities. P&As may provide legal representation to individuals free of charge or on a sliding scale fee basis.

According to NLADA, these types of organizations ''have invaluable specialized expertise and often strong relationships/collaborations with private firms operating for profit. Partnerships with these organizations

provide significant opportunities for collaborations that expand a recipient's ability to effectively and efficiently serve clients and provide increased opportunities for private bar participation.'' Similar to the Access Commission, NLADA recommended that LSC limit the exclusion to attorneys ''employed by a non-profit organization whose primary purpose is the delivery of civil legal services to the poor during any time that attorney is acting within the terms of his or her employment with that organization[.]''

In its comment, the ABA stated that it agreed in principle with LSC's view that the purpose of the PAI regulation is to engage lawyers who are not currently involved in the delivery of legal services to low-income individuals as part of their regular employment. The ABA recommended that LSC clarify that the term ''legal services provider,'' as used in the rule, means ''an entity whose primary purpose is the delivery of free legal services to low-income individuals.''

Response: LSC will revise the language in § 1614.3(i)(2)(ii) to narrow the exclusion to attorneys acting within the terms of their employment by a non-profit organization whose primary purpose is the delivery of free civil legal services to low-income individuals. This definition is adapted from the New York State Bar Association's definition of ''pro bono service'' in the context of the Empire State Counsel Program, which annually recognizes New York attorneys' pro bono efforts, and is substantially similar to the definition recommended by the ABA. LSC understands the issues raised by CRLA, LSAM, the Access Commission, and NLADA, and appreciates the benefits that collaborations between LSC recipients and other non-profit organizations bring to the populations served by those collaborations. Within the context of the PAI rule, however, LSC believes that the focus should be on engaging attorneys who are not employed to provide free legal services to low-income individuals.

Although LSC is excluding legal aid attorneys acting within the scope of their employment from the definition of *private attorney,* the revised language permits recipients to allocate costs to the PAI requirement associated with co-counseling arrangements or other collaborations with attorneys employed by organizations whose primary purpose is not the delivery of free legal services to low-income individuals. For example, although CRLA may no longer be able to count co-counseling with a legal aid organization toward its PAI requirement, it could allocate costs associated with co-counseling a case with California's P&A to the PAI requirement. It also permits a recipient to count as a *private attorney* an attorney who is employed by an organization whose primary purpose is the delivery of free civil legal services to low-income individuals, but who is participating in a PAI clinic supported by a recipient *on the attorney's own time.*

LSC wants to be clear that its decision to exclude legal aid attorneys from the definition of *private attorney* does not mean that recipients should not collaborate with these providers in the delivery of legal information and legal assistance to eligible clients. LSC supports and encourages recipients to work creatively and to build relationships necessary to increase their effectiveness at achieving positive outcomes for their clients. The exclusion simply means that recipients may not allocate costs associated with those collaborations to the PAI requirement.

Comment 2: LSC received two comments on § 1614.3(h)(2)(i), which proposed to exclude from the definition of *private attorney* attorneys employed more than 1,000 hours per year by an LSC recipient or subrecipient. In their joint comment, CRLA and LSAM observed that proposed § 1614.3(h)(2)(i) precluded the participation of attorneys who retired or otherwise moved on from an LSC recipient, but wanted to volunteer to handle cases or support the recipient in some fashion. They stated that, according to the history of the PAI rule, the two-year restriction on PAI payments to attorneys who had left a recipient's employ was intended to prevent ''situations in which programs had laid off staff attorneys and then contracted to pay these attorneys for doing the same work they had done before as staff.'' 50 FR 48586, 48587, Nov. 26, 1985. They additionally noted that ''for our purposes here, a recipient could co-counsel with these former staff members within 24 hours of their leaving the employ of a recipient and the staff time spent co-counseling with the former staff member could be counted as PAI.''

NJP objected to proposed § 1614.3(h)(2)(i) on similar grounds. NJP argued that the rule would

> exclude attorneys (1) who leave a recipient's employ after 1001 hours during any year and then seek to volunteer for the program, including recently retired attorneys, attorneys leaving the recipient upon termination of a grant-based position, or attorneys leaving for private employment; and (2) who volunteer for a recipient, but may on occasion be employed on a short-term basis to fill temporary needs arising from staff vacancies or absences such as an extended family medical leave, military leave, short-term special project grant funding, or emergency needs occurring from a sudden staff departure.''

In NJP's view, ''[g]iven that a recipient cannot allocate non-PAI activity to PAI costs in any event, there seems little reason to limit who is considered a 'private attorney' for purposes of supporting their pro bono services based on duration of employment by a recipient, so long as costs are not allocated for time spent while they are employed by the recipient.'' NJP urged LSC to eliminate paragraph (2)(i) from the definition of *private attorney.*

Response: LSC did not intend the result described by the commenters. In response to their comment, LSC will revise the language in the definition of *private attorney.* LSC will replace the 1,000 hours per calendar year timeframe with a ''half time'' standard. LSC believes that using a half time standard will more clearly capture its intent that recipients assess an attorney's employment status with the recipient contemporaneously with the services for which they seek to allocate costs to the PAI requirement. In other words, if a recipient employs an attorney ten hours per week, and that attorney also wishes to volunteer to provide advice and counsel at a PAI clinic supported by the recipient, the recipient may consider the part-time attorney a *private attorney* at the time he or she is providing services at the PAI clinic.

LSC will also make two other changes to § 1614.3(i) in the final rule. First, LSC will define *private attorney* as meaning an attorney defined in § 1614.3(a), and relocate all the exceptions to the definition to paragraphs (i)(1)–(3). Second, LSC will add paragraph (i)(4) to clarify that *private attorney* does not include an attorney acting within the terms of his or her employment by a component of a non-profit organization, where the component's primary purpose is the delivery of free civil legal services to low-income individuals. In other words, attorneys working for the legal aid component of a non-profit social services organization whose overall mission is to deliver free social services to low-income individuals are not *private attorneys* for purposes of part 1614. This exclusion is consistent with the rule's primary purpose of engaging attorneys who do not provide legal assistance to the poor in the delivery of legal information and legal assistance to eligible clients.

§ 1614.3(j) Screen for eligibility. The proposed definition made clear that individuals receiving legal assistance

through PAI activities must get the same level of screening that recipients use for their own legal assistance activities. Screening for eligibility includes screening for income and assets, eligible alien status, citizenship, whether the individual's case is within the recipient's priorities, and whether the client seeks assistance in an area or through a strategy that is restricted by the LSC Act, the LSC appropriation acts, and applicable regulations. Screening for eligibility can also include determining whether a client can be served using non-LSC funds. LSC received no comments on this definition.

§ 1614.3(k) Subrecipient. LSC will add a definition for the term *subrecipient* to the final rule. As LSC considered the public comments, particularly the comments discussing the definition of the term *private attorney,* and recipients' use of subgrants and fee-for-service arrangements to carry out PAI activities, LSC discovered that the term *subrecipient* was over-inclusive for purposes of the PAI rule. *Subrecipient,* as defined in § 1627.2(b)(1) includes fee-for-service arrangements through which attorneys represent a recipient's clients, such as under a contract or a judicare arrangement, when the cost of such arrangement exceeds $25,000.

LSC did not intend to exclude from the definition of *private attorney* attorneys working for a subrecipient that meets the definition solely because an LSC recipient is paying the entity more than $25,000 to provide legal representation to the recipient's clients on a contract or judicare basis. For purposes of part 1614, LSC will define *subrecipient* as not including entities receiving more than $25,000 from a recipient to provide legal representation to the recipient's clients on a contract or judicare basis.

Proposed § 1614.4—Range of Activities

§ 1614.4(a) Direct delivery of legal assistance to eligible clients. In the NPRM, LSC proposed to consolidate existing §§ 1614.3(a) and (d) into one paragraph. LSC also proposed to add paragraph (a)(2), which stated that direct delivery of legal assistance to eligible clients may include representation by a non-attorney in an administrative tribunal that permits non-attorney individuals to represent individuals. LSC received no comments on this section.

§ 1614.4(b) Support and other activities. Comment: LSNYC expressed concern about LSC's proposal to revise existing § 1614.4(b)(1) to exclude from PAI support activities pro bono work done on behalf of the recipient itself, rather than for a client. It referred to the ABA and Pro Bono Institute definitions of ''pro bono,'' which include legal work provided to organizations ''in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate,'' and indicated that LSC's decision to exclude work on behalf of organizations ''deviate[s] from the well-reasoned standards of the pro bono community.'' LSNYC stated that if it could no longer count toward its PAI requirement pro bono work provided to LSNYC as an organization, it would either have to spend ''substantial amounts of money on attorneys for the organization'' or ''skimp[] on the resources that are available to effectively run the organization.'' Finally, LSNYC argued that LSC's proposed change would ''ignore[] the contribution of many transactional attorneys'' whose skill sets do not necessarily lend themselves to individual representation of clients or conducting legal information clinics.

Response: LSC will retain the language from the NPRM, including the statement that support provided by private attorneys must be provided as part of a recipient's delivery of legal information or legal assistance to eligible clients to count toward the PAI requirement. Since its original incarnation in 1981 as a special condition on LSC grant funds, the purpose of PAI has been to involve private attorneys in the delivery of legal services to eligible clients. It does not appear from the administrative record that LSC envisioned pro bono services to recipients themselves to be support activities within the context of the PAI rule. As a result, LSC views the language change proposed in the NPRM to represent a clarification of the existing rule, rather than a change in policy.

LSC wants to be clear that LSC supports recipients' efforts to leverage resources within their legal communities for the benefit of themselves and their clients. LSC recognizes the value or pro bono services provided to recipients themselves, as well as the value that providing such assistance returns to the pro bono attorneys. Recipients can, and should, continue to secure pro bono legal assistance with the issues they face as organizations whenever possible. For purposes of allocating costs to the PAI requirement, however, recipients must obtain services from private attorneys that inures primarily to the benefit of the recipients' clients rather than to the recipient in its organizational capacity.

Proposed § 1614.4(b)(4) PAI Clinics. Comment 1: LSC received three comments identifying ambiguity in the text of proposed § 1614.4(b)(4)(ii)(C). The Access Commission, the ABA, and NLADA remarked that although proposed § 1614.4(b)(4)(i) allows recipients to allocate costs to the PAI requirement associated with support to legal information clinics without screening for eligibility, § 1614.4(b)(4)(ii)(C) appears to allow recipients to allocate costs to the PAI requirement associated with ''hybrid'' legal information and legal assistance clinics only if the legal assistance portion of the clinic screens for eligibility. All three commenters asserted that this result does not make sense because recipients may provide legal information without screening. In NLADA's words, ''there is no reason to prohibit the allocation of PAI to an LSC program's support of a clinic's legal information activities which are severable from the legal assistance activities of the clinic.''

Response: LSC intended to allow recipients supporting hybrid PAI clinics to allocate to their PAI requirements costs associated with support to the legal information portion of the PAI clinic, regardless of whether the legal assistance portion of the PAI clinic screens for eligibility. In response to these comments, LSC will revise § 1614.4(b)(4)(ii)(C) to make clear that, in the context of hybrid PAI clinics, recipients may allocate costs associated with support of the legal information portion of the PAI clinic to their PAI requirements. If the legal assistance portion of a hybrid PAI clinic screens for eligibility and only provides legal assistance to LSC-eligible individuals, the recipient may allocate costs associated with its support of both parts of the clinic to the PAI requirement.

Comment 2: LASNNY commented that the proposed requirement for screening at legal assistance clinics would restrict it from continuing to participate in some of its current activities. As an example, LASNNY described its volunteers' participation in the Albany County Family Court Help Center, which provides support and assistance to pro se litigants in family court. LASNNY stated that the program does not screen for income eligibility, citizenship, or eligible alien status, and that it was participating in the program at the request of the court's presiding justice and the director of the court's Access to Justice initiatives. As a solution, LASNNY proposed that recipients could use non-LSC funds to

provide services to clients who have not been screened for eligibility.

Response: LSC believes that the screening requirement should not preclude recipients from providing support to unscreened clinics that give legal information to pro se litigants. In the NPRM, LSC proposed that recipients would be able to allocate to the PAI requirement costs associated with PAI clinics providing legal assistance only if the clinics screened for eligibility and only provided legal assistance to LSC-eligible clients. LSC believes this approach is consistent with the April 9, 1998 opinion of the LSC Office of the General Counsel (OGC), which addressed the regulatory requirements applicable to legal information provided by recipients in pro se clinics. In that opinion, OGC stated that the recipient, which had received a contract from the court to provide assistance to pro se litigants, did not need to comply with either the client retainer provision in part 1611 or the provision in part 1626 that requires recipients to obtain citizenship attestations or documentation of eligible alien status. Importantly, OGC opined that compliance with the relevant provisions of parts 1611 and 1626 was not required ''as long as the litigants are *pro se,* they do not enter into an attorney-client relationship with [a recipient] attorney, [and] they are not applicants for or are not seeking legal representation from [the recipient.]'' LSC believes that these principles should guide recipients' thinking about whether supporting a PAI clinic that serves pro se litigants may be considered legal information clinics that do not require screening, or instead constitute legal assistance clinics that do. Regarding LASNNY's suggestion that non-LSC funds could be used for services to unscreened clients, some restrictions, such as the alienage restriction in part 1626, apply to legal assistance that is provided with both LSC and non-LSC funds.

Comment 3: The ABA commented that the NPRM did not include several important types of clinics within its scope. One type was the hybrid legal information/legal assistance clinic discussed above. A second type was a clinic with two components: ''one in which LSC-eligible clients are provided pro bono advice by one group of lawyers, and another component in which non-eligible individuals are provided service by either staff of the clinic (who are not employees of a LSC recipient) or a separate group of pro bono lawyers.'' In the model described by the ABA, individuals are pre-screened and sent to the LSC recipient's private attorney if they are LSC-eligible, and to attorneys in another part of the clinic if they are not. The ABA believes that LSC should allow recipients to support such clinics ''because in many communities, the bar association wants to serve through its pro bono programs many people who cannot afford an attorney, not just those who fall within the LSC eligibility guidelines.''

The ABA described a final model, in which a court or local bar association contacts an LSC recipient to ask for assistance in planning a pro bono clinic. According to the ABA, at the time the court or bar association asks for the recipient's assistance, it may not be clear whether the clinic will provide legal information, legal assistance, or both, or whether it will screen for eligibility if it provides legal assistance. The ABA ''regards these support activities as permissible and as ones that should count toward the PAI requirement because the LSC recipient is not assisting lawyers who will be helping ineligible clients, but is simply engaging in discussions initiated by the court or bar to explore options.''

Response: As discussed above, LSC agrees that recipients may allocate to their PAI requirements costs associated with support of the legal information portion of a hybrid clinic, regardless of whether the legal assistance portion screens for eligibility. LSC also believes that recipients may support clinics of the second type described by the ABA. LSC's concern about recipients' providing support to clinics that do not screen for eligibility is that recipients will be diverting resources to activities that serve individuals who are not eligible for LSC-funded legal assistance. This concern is greatest in the context of a clinic where no screening occurs. It is still present in the context of a clinic that screens for eligibility and provides legal assistance to individuals who are not eligible for LSC-funded assistance, but the concern is lessened because the recipient's support is limited to the part of the clinic that is providing legal assistance to LSC-eligible clients.

With respect to the ABA's third scenario, LSC agrees that the type of technical assistance described is a valuable service provided by recipients in furtherance of the court or bar association's efforts to increase pro bono. LSC also agrees that it is consistent with the purposes of the PAI rule to allow recipients to allocate costs to the PAI requirement associated with providing support to courts or local bar associations in response to requests for assistance in setting up clinics at which private attorneys will provide legal information or legal assistance. However, LSC considers this type of assistance to be support provided to courts or local bar associations in their efforts to increase pro bono services, rather than as support for the operation of PAI clinic within the meaning of § 1614.4(b)(4). Once the clinic begins providing legal information or legal assistance to the public, the recipient may provide support consistent with proposed § 1614.4(b)(4).

LSC will address the ABA's proposal by including a new paragraph (b)(4) that allows recipients to count toward their PAI requirements costs incurred assisting bar associations or courts with planning and establishing clinics at which private attorneys will provide legal information or legal assistance to the public. Consequently, LSC will redesignate proposed paragraphs (b)(4)–(b)(6) to paragraphs (b)(5)–(b)(7) in the final rule.

Comment 4: NLADA recommended that LSC allow limited screening of individuals receiving legal assistance through PAI clinics. NLADA asserted that the eligibility screening requirement ''is not necessary to ensure compliance with the LSC Act and other statutory restrictions[,]'' and offered two alternatives. The first alternative was limited screening for financial eligibility and citizenship or eligible non-citizen status. NLADA suggested that ''a clinic participant could be determined LSC eligible if the applicant attests that he is a U.S. citizen or has a green card and either has zero income or receives assistance under programs such as SNAP, TANF, Medicaid or SSI. While this limited screening may rule out eligible clients, the screening could serve as an acceptable and workable method for clinic participants to determine who should and who should not be referred to LSC program staff participating in the clinic for legal assistance.'' The second alternative was periodic limited screening. Under this alternative, the clinic would occasionally conduct the limited screening described in the first option, and the recipient could use the results to ''calculate the percentage of LSC eligible applicants served by the clinic and appropriately apportion LSC program resources used to support the clinic that can be allocated to PAI.'' NLADA noted the additional benefit that ''the clinic would then have the option to have LSC grantees not participate in the provision of legal assistance to individual clients or have procedures in place to conduct limited or full screening with LSC grantees only providing legal assistance to LSC eligible individuals.''

Response: LSC will not revise the requirement for PAI clinics to screen for

eligibility prior to providing legal assistance to individuals. During the April 2014 Committee meeting in Washington, DC, LSC made clear that it was willing to consider alternatives to the proposed screening requirement if the alternatives were supported by a legal analysis of how the alternatives would ensure compliance with the LSC Act, the restrictions contained in LSC's appropriations acts, and LSC's regulations. No commenter, however, has offered any legal analysis supporting the assertion that screening ''is not necessary to ensure compliance with the LSC Act and other statutory restrictions.''

LSC considered the issue of limited screening at length during the development of the NPRM. During the July 2013 and September 2013 rulemaking workshops, and in response to the two Requests for Information published by LSC last year, multiple commenters recommended that LSC allow limited screening for PAI clinics. When discussing screening in this context, commenters expressed minimal concern about the potential for assisting clients who are ineligible for LSC-funded services. Most commenters focused on expanding the availability of private attorneys to provide pro bono legal services and not on the scope of LSC's legal obligations to ensure that LSC resources are not used for restricted activities. One commenter suggested that the test for the PAI rule should be whether the activity is targeted at the base of eligible clients, even if the recipient cannot know whether every person assisted would be eligible. Another spoke about screened advice clinics, recommending that recipients should be able to count resources toward the PAI requirement for the time recipients spend supervising such clinics. OIG expressed concern that a relaxed screening requirement for clinics would have the ''unintended effect of increasing subsidization of restricted activity.'' OIG urged LSC to exercise caution to ''ensure that changes to the PAI rule do not make it more difficult to prevent and detect noncompliance with LSC regulations and do not increase the risk that LSC funds will be used to subsidize, whether intentionally or not, restricted activity.''

LSC considered the commenters' views on screening and the burden that screening may place on recipients' support for clinics operated solely by them or through the joint efforts of community organizations. LSC considered those views in light of the statutory restrictions Congress places on the funds appropriated to LSC and on recipients of LSC funds. LSC concluded that, regardless of whether legal assistance is provided directly by a recipient or through PAI activities individuals must be screened for LSC eligibility and legal assistance may be provided only to those individuals who may be served consistent with the LSC Act, the LSC appropriation statutes, and the applicable regulations. Nothing in NLADA's comment causes LSC to reconsider its decision with respect to screening for eligibility in PAI clinics that provide legal assistance to individuals.

LSC recognizes that adopting either the simplified screening requirement or a test that a clinic was targeted at the LSC-eligible client population would allow recipients to support a broader range of clinics at which private attorneys provide legal assistance to low-income individuals. What neither of these mechanisms ensures is that LSC recipients are supporting clinics that provide services permitted by LSC's authorizing statutes to individuals eligible to receive those services. While Congress has repeatedly supported LSC's efforts to expand pro bono consistent with the recommendations of the Pro Bono Task Force, it has couched its support in terms of ''increasing the involvement of private attorneys in the delivery of legal services to their clients.'' S. Rep. 113–78, H.R.Rep. 113–171, *incorporated by reference* by Sec. 4, Pub. L. 113–76, 128 Stat. 5, 7 (2014). LSC does not believe that its responses to the Task Force's recommendations can include expanding the PAI rule to allow recipients to participate, directly or indirectly, in the provision of legal assistance to individuals who are not eligible to receive legal assistance from an LSC recipient.

Comment 5: OIG commented that it had ''observed some ambiguity in the discussion of PAI support for clinics that provide individualized legal assistance. The transcripts of meetings preceding publication of the NPRM appear to contain the suggestion that grantees will be able to count their direct participation in PAI clinics toward their PAI requirement.'' OIG urged LSC to clarify that costs incurred by a recipient in supporting a PAI clinic count toward the PAI requirement, while costs associated with clinics at which recipient attorneys themselves provide the legal information or legal assistance cannot be allocated to the PAI requirement.

Response: LSC understands OIG's concern and believes their comment is addressed by the definition of *PAI clinic.* In the NPRM, LSC defined *PAI clinic* as ''an activity under this part in which private attorneys, law students, law graduates, or other professionals are involved in providing legal information and/or legal assistance to the public at a specified time and location.'' 79 FR 21188, 21199, Apr. 15, 2014 (emphasis added). LSC clearly stated its intent regarding the application of § 1614.4(b)(4) in the preamble to the NPRM:

> This new regulatory provision will allow recipients to allocate costs associated with support to clinics to the PAI requirement. The new provisions of part 1614 will govern only those clinics in which a recipient plays a supporting role. Recipients will remain responsible for complying with the screening and CSR case-handling requirements for those clinics at which recipient attorneys provide legal assistance to individuals.
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> 79 FR 21188, 21193.

Comment 6: OIG also commented on LSC's proposal to promulgate clear standards for when a PAI clinic must screen for eligibility. OIG first noted that proposed § 1614.4(b)(4) ''describes in some detail eligibility constraints on three different types of PAI clinics: clinics that exclusively provide legal information not tailored to particular clients; clinics that exclusively provide individualized legal advice, and clinics that do both.'' OIG also cited the observation made by a member of the Board of Directors at the April Board meeting that ''without a change in meaning, one could remove the proposed eligibility constraints in Section 1614.4(b)(4) and substitute language pointing to generally applicable standards governing the use of LSC funds as the operative constraint on PAI activities, thereby reducing the complexity [of] the proposed rule.'' OIG stated its understanding that proposed § 1614.4(b)(4) merely explicated ''the straightforward implications of general eligibility requirements found in LSC's regulations and governing statutes,'' and recommended that if LSC intended to establish new eligibility requirements, LSC should clarify that intent before adopting a final rule. Finally, OIG recommended that LSC either significantly simplify § 1614.4(b)(4) to plainly state the ''generally applicable eligibility requirements'' or, if retaining the language proposed in the NPRM, including language ''to the effect that notwithstanding any other provision or subsection of the rule, a grantee may only count toward its PAI requirement funds spent in support of activities that the grantee would itself be able to undertake with LSC funds.''

Response: LSC agrees with OIG that it should be clear that the rule is not establishing new or additional eligibility requirements or screening requirements. LSC believes that the specificity of the

definition of the term *screen for eligibility* makes clear that individuals being served through PAI clinics must be LSC-eligible. The definition does not establish new or additional screening requirements for individuals being served by private attorneys through PAI projects.

LSC understands that part 1614 states its position on when individuals must be screened for eligibility more clearly than LSC has done in any prior issuance, and that the issue of eligibility to receive legal assistance from an LSC recipient is not unique to the PAI context. However, as discussed in the response to the comment above regarding screening, LSC believed that a clear statement in the PAI rule about its requirements for eligibility screening was necessary. LSC reiterates now that the screening requirements contained in § 1614.4(b)(4) do not create new standards for determining the eligibility of individuals receiving legal assistance through a PAI clinic.

§ 1614.4(b)(5) Screening and referral systems. Section 1614.4(b)(5) established the rules governing intake and referral systems. This addition to the rule adopted Recommendation 2(b) by expanding the situations in which recipients may allocate costs associated with intake and referral to private attorneys to their PAI requirement. Section 1614.4(b)(5) reflects the Corporation's decision to relieve recipients of the obligation to accept referred clients as part of their caseload and to determine the ultimate resolution of the clients' cases by considering intake and referral activities *other activities.* Cases screened and referred through these systems do not need to be accepted by the recipient as CSR cases and tracked in order for recipients to allocate costs associated with the system to the PAI requirement. LSC received no comments on this section.

§ 1614.4(b)(6) Law student activities. Section 1614.4(b)(6) established the rules for allocating costs associated with the work provided by law students to the PAI requirement. LSC received no comments on this section.

§ 1614.4(c) Determination of PAI activities. Section 1614.4(c) adopted existing § 1614.3(c) in its entirety. LSC proposed to revise the phrase ''involve private attorneys in the provision of legal assistance to eligible clients'' to include law students, law graduates, or other professionals. LSC proposed this change to reflect the rule's inclusion of the other categories of individuals that recipients may engage in PAI activities. LSC received no comments on this section.

§ 1614.4(d) Unauthorized practice of law. Section 1614.4(d) made clear that the rule is not intended to permit any activities that would conflict with the rules governing the unauthorized practice of law in the jurisdiction in which a recipient is located. LSC received no comments on this section.

Proposed § 1614.5 Compensation of recipient staff and private attorneys; blackout period. In the NPRM, LSC proposed to introduce a new § 1614.5 establishing rules for the treatment of compensation paid to private attorneys, law students, law graduates, or other professionals under the PAI rules.

§ 1614.5(a). Section 1614.5(a) stated that recipients may allocate to the PAI requirement costs for the compensation of staff for facilitating the involvement of private attorneys, law students, law graduates, or other professionals in the provision of legal information and legal assistance to eligible clients under this part. This section was intended to make clear that recipients may not allocate costs associated with compensation, such as salaries or stipends, paid to individuals employed by the recipient who are providing legal information or legal assistance to eligible clients as part of their employment. LSC received no comments on this section.

LSC will make one technical edit to this section in the final rule. LSC will add ''or employees of subrecipients'' to make clear that compensation paid to employees of subrecipients, as defined in § 1614.3(k), may only be allocated to the PAI requirement if the compensation was incurred to facilitate PAI activities.

§ 1614.5(b). Section 1614.5(b) established limits on the amount of compensation paid to a private attorney, law graduate, or other professional that a recipient may allocate to its PAI requirement. LSC proposed to limit the amount of compensation to the amount paid for up to 800 hours of service during a calendar year. The reason for this limitation was that compensation at a higher level is inconsistent with the goal of the PAI rule to engage private attorneys in the work of its recipients. LSC received no comments on this section.

§ 1614.5(c). Section 1614.5(c) adopted a revised version of existing § 1614.1(e), which prohibits recipients from allocating to the PAI requirement PAI fees paid to a former staff attorney for two years after the attorney's employment has ended, except for judicare or similar fees available to all participating attorneys. LSC proposed to remove as obsolete the references to the effective date of the regulation and contracts made prior to fiscal year 1986. LSC also proposed to change the time period of the rule's coverage from attorneys employed as staff attorneys for any portion of the previous two years to any individual employed by the recipient for any portion of the current year and the previous year for more than 1,000 hours per calendar year, except for individuals employed as law students. LSC proposed the latter change to account for the expansion of the rule to allow recipients to engage individuals other than private attorneys in activities under this part. In recognition of the fact that law students are primarily engaged in educational endeavors, even while working at a recipient, LSC proposed to exclude law students from the scope of this provision. Finally, the rule exempted from this restriction compensation paid to attorneys who had been employed at a recipient or subrecipient while participating in incubator projects. LSC received no comments on this section during the public comment period.

LSC will make two technical changes to § 1614.5 in response to internal comments. First, LSC will replace the term ''PAI funds'' with references to allocation of costs to the PAI requirement. ''PAI funds'' was language carried over from existing § 1614.1(e), but as LSC staff pointed out, part 1614 is a cost allocation regulation, rather than authority for the expenditure of funds for a specified purpose. Consequently, the language of § 1614.5 has been revised to reflect more accurately the nature of the activity covered by the regulation.

The second technical change is related to the first. With the move away from using the term ''PAI funds,'' the language of proposed § 1614.5(c)(2) became difficult to understand. LSC will simplify paragraph (c)(2) by replacing ''PAI funds'' with ''allocation of costs to the PAI requirement'' and relocating the description of an incubator project to § 1614.3(b) as the definition of the term *incubator project.*

In response to the final rule presented to the Committee in advance of its October 5, 2014 meeting, NJP commented that the prohibition on payments to an ''individual who for any portion of the current or previous year has been employed more than 1,000 hours per calendar year by an LSC recipient or subrecipient'' was confusing. NJP stated that the prohibition seemed to conflict with § 1614.5(a), which permits recipients to allocate costs to the PAI requirement associated with compensation paid to employees for facilitating the involvement of private attorneys, law students, law graduates, and other

professionals in PAI activities. In order to make clear that the blackout period described in paragraph (c) applies to individuals who are no longer employed by the recipient, LSC proposed revising the language to state ''No costs may be allocated to the PAI requirement for direct payment to any individual who for any portion of the current year or the previous year was employed more than 1,000 hours per calendar year by an LSC recipient or subrecipient . . . .''

LSC staff brought NJP's concern and the language LSC proposed above to address the concern to the Board's attention. The Board accepted the change, which is now contained in the final rule.

Proposed § 1614.6 Procedure. LSC moved the text of existing § 1614.4, regarding the procedure recipients must use to establish their PAI plans, to § 1614.6. LSC proposed to include law students, law graduates, or other professionals as individuals that recipients may consider engaging in activities under this part during the development of their PAI plans. However, LSC did not revise proposed § 1614.6(b) to require recipients to consult with local associations for other professionals. LSC believed that recipients are in the best position to know which other professionals they may attempt to engage in their PAI programs, and encourages recipients to determine which professional associations they may want to consult in developing their PAI plans. In the interest of simplifying and improving the logic of the rule, LSC also proposed to relocate existing § 1614.2(b), regarding joint PAI efforts by recipients with adjacent, coterminous, or overlapping service areas, to § 1614.6(c) without substantive changes. LSC received no comments on this section.

Proposed § 1614.7 Compliance. Comment: NJP commented on the omission of current § 1614.3(e)(4) from the NPRM. Existing § 1614.3(e)(4) states that recipients must make available to LSC auditors and monitors ''all records pertaining to a recipient's PAI requirements which do not contain client confidences or secrets as defined by applicable state law.'' NJP expressed concern that the omission of § 1614.3(e)(4) ''seems to extend the proposed changes in 2015 Grant Assurances Nos. 10 and 11 (to which NJP strongly objects) to private attorneys providing services under a PAI contract. . . . Compelling a private attorney to disclose client information in contravention of applicable Washington law and Rules of Professional Conduct, creates a significant disincentive to participation in a compensated PAI program through NJP.'' NJP urged LSC to reinstate the language of existing § 1614.3(e)(4).

Response: LSC understands NJP's concern, but will not reinstate the language of current § 1614.3(e)(4). LSC notes that it rescinded the proposed changes to Grant Assurances 10 and 11 in response to comments made by NJP, discussed above, and others regarding the potential adverse effect of the proposed changes.

LSC intentionally omitted this section in the NPRM as the result of internal discussions with OIG. OIG and LSC came to the conclusion that existing § 1614.3(e)(4) was unnecessary because it did not establish recordkeeping or disclosure requirements beyond those stated in LSC's governing statutes and regulations. LSC has not included similar disclosure provisions in any of its other regulations. Instead, LSC has chosen to prescribe its access to records through the grant assurances that recipients must accept each year. Records pertaining to a recipient's PAI activities are not subject to different recordkeeping or access requirements than records pertaining to its in-house activities. LSC believes that its governing statutes, regulations, and grant assurances adequately describe the circumstances under which recipients must provide LSC access to records pertaining to their PAI requirements and the kinds of information that may be withheld. There is no need to include a provision explaining that access in part 1614.

LSC will make one technical change to the title of § 1614.7. LSC staff believed that the title ''Compliance'' was misleading because § 1614.7 governs only fiscal recordkeeping, rather than recordkeeping about all aspects of a recipient's operations, including compliance with parts 1626 (eligibility of citizens and certain non-citizens), 1620 (determination of priorities), and 1611 (financial eligibility). We agree with this comment, and will retitle § 1614.7 ''Fiscal recordkeeping.'' Programmatic recordkeeping requirements specific to the activities described in § 1614.4 are contained in the paragraphs to which they apply.

Proposed § 1614.8 Prohibition of revolving litigation funds. In the NPRM, LSC proposed to move existing § 1614.5, prohibiting the use of revolving litigation funds to meet the PAI requirement, to new § 1614.8. The only proposed substantive change to this section was the inclusion of law students, law graduates, or other professionals. LSC received no comments on this section.

Proposed § 1614.9 Waivers. LSC proposed to move existing § 1614.6, governing the procedures by which recipients may seek full or partial waivers of the PAI requirement, to new § 1614.9 without substantive change. LSC proposed to make technical amendments by replacing the references to the Office of Field Services (OFS) and the Audit Division of OFS, which no longer exist, with references to LSC. LSC received no comments on this section.

Proposed § 1614.10 Failure to comply. In the NPRM, LSC proposed to move existing § 1614.7, which established sanctions for a recipient's failure to comply with the PAI requirement or seek a waiver of the requirement, to new § 1614.10.

§ 1614.10(a). Comment: NLADA expressed concern that withholding of funds under § 1614.10(a) would not be considered an enforcement action under 45 CFR parts 1606, 1618, 1623, or 1630. Section 1614.10(a) authorizes the Corporation to withhold funds if a recipient fails to meet the PAI requirement for a given year and fails without good cause to seek a waiver of the PAI requirement. NLADA wanted to ''ensure that, although actions under 1614 are not to be construed as actions under the other regulatory sections referenced above, LSC will follow normal procedures of due process, including allowing recipients the ability to appeal a decision to withhold funds to LSC's President.''

Response: In light of NLADA's comment, LSC will establish a process for considering whether a recipient has failed without cause to seek a waiver of the PAI requirement, notifying the recipient of LSC's determination, and providing for review of an initial adverse decision. LSC believes that the opportunity for review by the President of the Corporation is appropriate when a recipient's failure to comply with a requirement may result in the loss of funds. LSC will use a process modeled substantially on the process described at 45 CFR 1630.7 because the withholding of funds for failure to comply with a requirement is most akin to a disallowance of questioned costs.

In considering NLADA's comment, LSC researched the regulatory history of existing § 1614.7(a). When it enacted existing § 1614.7(a) in 1986, LSC received comments from the field that the provision placed too much discretion with the staff to determine whether recipients were in compliance with the PAI requirement or had failed without good cause to seek a waiver. 50 FR 48586, 48590, Nov. 26, 1986. In response, LSC clarified that the Board

''intends for this section to minimize staff discretion. The only determination left to staff under § 1614.7 is whether or not a recipient has failed without good cause, to seek a waiver during the term of the grant.'' 50 FR 48586, 48590–91. The Board did not address whether a recipient had any recourse in the event that staff determined that the recipient failed without good cause to seek a waiver.

LSC will add § 1614.10(a)(2), which states that the Corporation will inform the recipient in writing of its decision about whether the recipient failed without good cause to seek a waiver. LSC will also add § 1614.10(a)(3), which states that appeals under this section will follow the process set forth at 45 CFR 1630.7(c)–(g). Finally, LSC will add two provisions that limit the applicability of the process described to actions under part 1614. Consistent with the Board's intentions, as stated in the preamble to the 1986 final rule, paragraph (a)(3)(i) will limit the subject matter of the appeal to the Corporation's determination that the recipient failed without good cause to seek a waiver. Paragraph (a)(3)(ii) will limit the method by which the Corporation may recover funds to withholding, consistent with the existing rule.

§ 1614.10(b). This section carried over from existing § 1614.7(b), and states that recipients who fail with good cause to seek a waiver, or who apply for but fail to receive a waiver, or who receive a partial waiver but do not expend the amount required will have their PAI requirement increased for the following year. The requirement will be increased by an amount equal to the difference between the amount actually expended and the amount required to be expended. LSC received no comments on this section.

§ 1614.10(c). Comment: The ABA commented on LSC's proposal to revise this section to allow LSC to reallocate funds withheld under § 1614.10(a) for any basic field purpose. The ABA agreed with LSC's proposal to allow it to compete the withheld funds outside of a recipient's service area if the recipient from whom the funds were withheld is the only applicant for the funds. However, the ABA opposed the proposal to make funds withheld for failure to meet the PAI requirement available for basic field grant purposes because it believed the proposal was contrary to the purposes of the PAI regulation. According to the ABA, ''[i]f the consequence of failing to use funds for PAI is that the funds become available for basic field services, this provides a disincentive to comply with the PAI requirement.'' Instead, the ABA recommended that LSC revise the rule to allow funds withheld under § 1614.10(a) to be competed for PAI purposes in another service area if the program from which the funds were withheld is the ''only LSC recipient applying for the funds in the competitive grant process.''

Response: LSC concurs with the ABA's comment and will revise § 1614.10(c) accordingly.

LSC will make two changes to this section in the final rule. First, LSC will include language stating that when the Corporation has withheld funds from a recipient and such funds are available for competition, LSC shall provide public notice setting forth the details of the application process. LSC's notice will include the time, format, and content of the application, as well as the procedures for submitting an application for the withheld funds. Second, LSC will add a new paragraph (c)(2) regarding the relationship of an award of funds withheld under § 1614.10(a) to a recipient's annual twelve and one-half percent (12.5%) PAI requirement. An award of funds pursuant to § 1614.10(c)(1) is an additional amount of funding to engage in PAI activities beyond a recipient's annual PAI requirement. In other words, LSC intends a § 1614.10(c)(1) award to expand a recipient's PAI activities, rather than to supplement the amount available to meet the recipient's annual twelve and one-half percent (12.5%) requirement. An award under § 1614.10(c)(1) will not increase the amount of the recipient's PAI requirement by the same amount in subsequent grant years. It is intended as a one-time award that has no future effect on a recipient's PAI requirement.

During the October 5, 2014 Committee meeting, the Committee noted that the phrase ''in another service area'' in the last sentence of paragraph (c)(1) appeared to limit LSC's options for competing withheld funds in the event the recipient from whom they were withheld was the only applicant for the funds. In other words, it seemed to preclude the Corporation from holding a competition in which the recipient's application would be considered along with applications from other LSC recipients in other service areas. LSC did not intend to limit competition in that manner. LSC adopted the Committee's proposed language—''in additional service areas''—in the last sentence of paragraph (c)(1) to reflect more accurately LSC's intention to allow expanded competition. The version of the rule approved by the Board contained the revised language.

§ 1614.10(d). LSC proposed to revise § 1614.10(d) to be consistent with the changes to the enforcement rules, 78 FR 10085, Feb. 13, 2013. LSC received no comments on this section.

Other Comments

LSC received three comments that did not pertain to particular sections of the proposed rule. NJP submitted one comment recommending that LSC raise the dollar threshold at which recipients must seek approval to make payments to private attorneys in excess of $25,000. The rule governing subgrants, 45 CFR part 1627, requires recipients to obtain approval before making payments in excess of $25,000 to a third party to provide services ''that are covered by a fee-for-service arrangement, such as those provided by a private law firm or attorney representing a recipient's clients on a contract or judicare basis[.]'' 45 CFR 1627.2(b)(1). NJP noted that the $25,000 limit has not changed since its enactment in 1983. They recommended that LSC increase the threshold to $60,000, which is the approximate amount that $25,000 in 1983 represents today.

The proposed change is outside the scope of this rulemaking, which is focused on changes to part 1614. Consequently, LSC will not revise part 1627 at this time. However, LSC has placed a priority on resuming the rulemaking initiated in 2011 to revise the subgrant rule in part 1627 and the transfer rule at 45 CFR § 1610.7 as part of the 2014–2015 rulemaking agenda. LSC will consider NJP's recommendation as part of that rulemaking.

OIG made two general comments regarding the rule. OIG first recommended that LSC retitle part 1614 to reflect the expansion of the rule to include services provided by individuals other than private attorneys. OIG recommended this change in part to avoid ''giving LSC's appropriators, oversight authorities, or outside observers the misimpression that all funding directed to what is now called private attorney involvement is devoted to securing the services of private attorneys.'' OIG suggested ''Volunteer and Reduced Fee Services'' or ''Private Provider Services'' as alternate titles.

OIG's second comment reiterated their belief that LSC should include reporting requirements in the rule. OIG recommended that the rule require recipients to provide information that would allow LSC to analyze the impact that the changes to the PAI rule have on services provided by private attorneys. OIG expressed its concern that ''if the PAI rule is revised to make PAI funds

available to activities other than the involvement of private attorneys, the legal services community may end up with fewer private attorneys involved in the provision of legal assistance to eligible clients.'' In OIG's view, it is essential that the new rule have mechanisms in place to measure the ''performance of the revised PAI rule from its inception. . . . These measuring mechanisms should, in the OIG's view, consist largely of reporting requirements that, at a minimum, break out the number of private attorneys (as distinguished from other service providers) involved in the program and the magnitude of their services.'' OIG concluded by opining that such reporting ''would minimize the opportunity for confusion on the part of LSC's appropriators, oversight authorities, or outside observers concerning the extent to which PAI funds are directed toward *pro bono* services of attorneys.''

Regarding OIG's first comment, LSC has determined that it will not change the title of part 1614. Part 1614 has been known as ''Private Attorney Involvement'' since 1986; recipients and stakeholders thus regularly use the term ''PAI.'' Moreover, because engaging private attorneys in the delivery of legal information and legal assistance to eligible clients remains the primary vehicle for carrying out the purpose of the rule, LSC does not believe a change is necessary.

With respect to the second comment, LSC agrees with the OIG regarding the importance of reporting requirements, but will not specify reporting requirements in the final rule. During the March 3, 2014 Committee meeting, LSC stated that it would not prescribe, through the rule, the types of information that recipients must keep about services and whether the services were provided by private attorneys or others. LSC informed the Committee of two factors relevant to this decision. First, LSC is in the midst of a project with the Public Welfare Foundation to improve the Corporation's data collection methods and measures. As part of this work, recipients have advised LSC about the types of data they provide to LSC and to other funders, and what types of data collection they find useful. Second, LSC typically informs recipients about the data that it wants them to provide through guidance, such as the annual grant assurances that recipients must accept at the beginning of each grant year. Particularly in light of its ongoing work with the Public Welfare Foundation, LSC believes the optimal approach is to prescribe data collection through policy documents so that LSC has the flexibility to adjust the data collection requirements in consultation with recipients and in a timely fashion. Promulgating specific data collection requirements in the regulation binds LSC and recipients to those requirements until the regulation can be amended, which is time-consuming and may delay desired changes. LSC agrees with the OIG regarding the importance of data LSC seeks from recipients, and intends to solicit OIG's input as it develops additional data collection requirements for PAI.

List of Subjects in 45 CFR Part 1614

Legal services, Private attorneys, Grant programs—law.

For the reasons stated in the preamble, the Legal Services Corporation revises 45 CFR part 1614 to read as follows:

PART 1614—PRIVATE ATTORNEY INVOLVEMENT

Sec.

Authority: 42 U.S.C. 2996g(e).

§ 1614.1 Purpose.

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

§ 1614.2 General policy.

(a) A recipient of LSC funding shall devote an amount equal to at least twelve and one-half percent (12.5%) of the recipient's annualized Basic Field-General award to the involvement of private attorneys, law students, law graduates, or other professionals in the delivery of legal information and legal assistance to eligible clients. This requirement is hereinafter referred to as the ''PAI requirement.''

(b) Basic Field-Native American grants, Basic Field-Migrant grants, and non-Basic Field grants are not subject to the PAI requirement. For example, Technology Initiative 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 legal information and legal assistance by private attorneys, law students, law graduates, or 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) *Attorney* means a person who is authorized to practice law in the jurisdiction in which assistance is rendered. For purposes of this part, *attorney* does not have the meaning stated in 45 CFR 1600.1.

(b) *Incubator project* means a program that provides legal training and support, for a limited period of time, to law students, law graduates, or attorneys who are establishing, or upon graduation and bar admission intend to establish, their own independent law practices.

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

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

(1) 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

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

(e) *Legal assistance* means service 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.

(f) *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.

(g) *Other professional* means an individual, not engaged in the practice of law and not employed by the recipient, providing services in furtherance of the recipient's provision of legal information or 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, 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.* An individual granted a limited license to practice law by a body authorized by court rule or state law to grant such licenses in the jurisdiction in which the recipient is located would also meet the definition of *other professional.*

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

(i) *Private attorney* means an attorney. *Private attorney* does not include:

(1) An attorney employed half time or more per calendar year by an LSC recipient or subrecipient; or

(2) An attorney employed less than half time by an LSC recipient or subrecipient acting within the terms of his or her employment by the LSC recipient or subrecipient; or

(3) An attorney acting within the terms of his or her employment by a non-profit organization whose primary purpose is the delivery of free civil legal services to low-income individuals; or

(4) An attorney acting within the terms of his or her employment by a component of a non-profit organization, where the component's primary purpose is the delivery of free civil legal services to low-income individuals.

(j) *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).

(k) *Subrecipient* has the meaning stated in 45 CFR 1627.2(b)(1), except that as used in this part, such term shall not include entities that meet the definition of *subrecipient* solely because they receive more than $25,000 from an LSC recipient for services provided through a fee-for-service arrangement, such as services provided by a private law firm or attorney representing a recipient's clients on a contract or judicare basis.

§ 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, 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) of this section, 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 legal assistance 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 or a subrecipient as part of its delivery of legal assistance or legal information 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 the private attorney's 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) Support provided to bar associations or courts establishing legal clinics. A recipient may allocate to its PAI requirement costs associated with providing a bar association or court with technical assistance in planning and establishing a legal clinic at which private attorneys will provide legal information and/or legal assistance.

(5) *PAI Clinics*—(i) *Legal information provided in PAI clinics.* A recipient may allocate to its PAI requirement costs associated with providing support to clinics, regardless of whether the clinic screens for eligibility, if the clinic provides only legal information.

(ii) *Legal assistance provided in PAI clinics.* A recipient may provide support to a PAI clinic that provides legal assistance if the PAI clinic screens for eligibility.

(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 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 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. If the clinic does not screen for eligibility, the recipient may allocate to the PAI requirement costs associated with the legal information portion of the PAI clinic, but may not allocate to the PAI requirement costs associated with the legal assistance portion of the clinic.

(D) In order to allocate to its PAI requirement costs associated with support of the legal assistance portion of a clinic, a recipient must maintain records sufficient to document that such clinic has an eligibility screening process and that each individual provided with legal assistance in the portion of the clinic supported by the recipient was properly screened for eligibility under the process.

(6) *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 report 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.

(7) *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, law students, law graduates, or other professionals in the provision of legal information and 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 this chapter;

(2) The effective and economic delivery of legal assistance and legal information to eligible clients;

(3) The linguistic and cultural barriers to effective advocacy;

(4) The actual or potential conflicts of interest between specific participating attorneys, law students, law graduates, 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.

(d) *Unauthorized practice of law.* This part is not intended to permit any activities that would conflict with the rules governing the unauthorized practice of law in the recipient's jurisdiction.

§ 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, or other professionals in activities under this part.

(b) A recipient may not allocate to its PAI requirement costs associated with compensation paid to a private attorney, law graduate, or other professional for services under this part for any hours an individual provides above 800 hours per calendar year.

(c) No costs may be allocated to the PAI requirement for direct payment to any individual who for any portion of the current year or the previous year was employed more than 1,000 hours per calendar year by an LSC recipient or subrecipient, except for employment as a law student; provided, however:

(1) This paragraph (c) shall not be construed to prohibit the allocation of costs to the PAI requirement for payments made to such an individual participating in a pro bono or judicare project on the same terms that are available to other attorneys;

(2) This paragraph (c) shall not apply to the allocation of costs to the PAI requirement for payments to attorneys who were employed for less than a year by an LSC recipient or subrecipient as part of an incubator project; and

(3) This paragraph (c) shall not be construed to restrict recipients from allocating to their PAI requirement the payment of 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)) and 45 CFR part 1620 adopted pursuant thereto;

(2) The delivery mechanisms potentially available to provide the opportunity for private attorneys, law students, law graduates, or 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, law students, law graduates, or other professionals in the provision of legal information and 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, or other professionals in the delivery of legal information and legal assistance 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 (12.5%) of the aggregate of their basic field awards on PAI. In the case of recipients with adjacent service areas, twelve and one-half percent (12.5%) of each recipient's grant shall be expended to PAI; provided, however, that such expenditure is subject to waiver under this section;

(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 Fiscal recordkeeping.

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, law graduates, or other professionals for support or direct client services rendered. The recipient shall maintain contracts on file that set forth payment systems, hourly rates, and maximum allowable fees. Bills and/or invoices from private attorneys, law graduates, or other professionals 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 or subgrants 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 or subgrants 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 parts 1610, 1627 and 1630;

(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) Attorneys, law students, law graduates, or other professionals 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 this chapter 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 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 LSC's governing statutes and 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 attorney 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, law students, law graduates, or other professionals an attempt to carry out a PAI program would be futile; or

(2) All qualified private attorneys, law students, law graduates, or other professionals 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, or 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, or 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 (12.5%) 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 (12.5%) 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 twelve and one-half percent (12.5%) of Corporation funds on PAI activities, provided that the recipient has handled and expects to continue to handle at least twelve and one-half percent (12.5%) 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 LSC, if the recipient shows to the satisfaction 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. 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)(1) If a recipient fails to comply with the expenditure required by this part *and* 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 grant payments an amount equal to the difference between the amount expended on PAI and twelve and one-half percent (12.5%) of the recipient's basic field award.

(2) If the Corporation determines that a recipient failed without good cause to seek a waiver, the Corporation shall give the recipient written notice of that determination. The written notice shall state the determination, the amount to be withheld, and the process by which the recipient may appeal the determination.

(3) The appeal process will follow the procedures for the appeal of disallowed costs set forth at 45 CFR 1630.7(c)–(g), except that:

(i) The subject matter of the appeal shall be limited to the Corporation's determination that the recipient failed without good cause to seek a waiver; and

(ii) Withholding of funds shall be the method for the Corporation to recover the amount to be withheld.

(b) If a recipient fails with good cause to seek a waiver, or applies for but does not receive a waiver, or receives a waiver of part of the PAI requirement and does not expend the amount required to be expended, the PAI expenditure requirement for the ensuing year shall be increased for that recipient by an amount equal to the difference between the amount actually expended and the amount required to be expended.

(c)(1) Any funds withheld by the Corporation pursuant to this section shall be made available by the Corporation for use in providing legal services through PAI programs. When such funds are available for competition, LSC shall publish notice of the requirements concerning time, format, and content of the application and the procedures for submitting an application for such funds. Disbursement of these funds for PAI activities 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. Competition for these funds may be held in the recipient's service area, or if the recipient from which funds are withheld is the only LSC recipient applying for the funds in the competitive solicitation, in additional service areas.

(2) Recipients shall expend funds awarded through the competitive process in paragraph (c)(1) of this section in addition to twelve and one-half percent (12.5%) of their Basic Field-General awards.

(d) The withholding of funds under this section shall not be construed as any action under 45 CFR parts 1606, 1618, 1623, or 1630.

Dated: October 9, 2014.

Stefanie K. Davis,

Assistant General Counsel.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 12

[PS Docket Nos. 13–75, 11–60; FCC 13–158]

Improving 9–1–1 Reliability; Reliability and Continuity of Communications Networks, Including Broadband Technologies

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, an information collection associated with the Commission's *Report and Order,* FCC 13–158, published at 79 FR 3123 on January 17, 2014, and at 79 FR 7589 on February 10, 2014. This notice is consistent with the *Report and Order,* which stated that the Commission would publish a document in the **Federal Register** announcing OMB approval and the effective date of requirements subject to OMB approval. Specifically, this document announces the effective date of initial and annual reliability certification requirements for covered 911 service providers, including any associated record retention requirements.

DATES: 47 CFR 12.4(c), 12.4(d)(1), and 12.4(d)(3) are effective October 15, 2014. The effective date of 47 CFR 4.9(h), which requires a modification of existing OMB information collection 3060–0484, will be published separately in the **Federal Register** once approved by OMB.

FOR FURTHER INFORMATION CONTACT: For additional information contact Cathy Williams, *Cathy.Williams@fcc.gov,* (202) 418–2918.

SUPPLEMENTARY INFORMATION: This document announces that, on October 1, 2014, OMB approved information collection requirements contained in the Commission's *Report and Order,* FCC