

(5) The director's determination that such communication is not the result of participation in a coordinated effort to communicate with elected officials on the subject matter. The determination shall include the director's certification that the communication was prepared by the attorney and client without consulting with persons who are participating in a coordinated effort to influence legislation.

(d) The governing body of a recipient shall adopt a policy by July 1, 1984, to guide the director of the recipient in determining when to approve a communication to a Federal, State or local official under paragraph (c) of this section. The policy adopted shall:

(1) Require periodic reports to the governing body on the communications approved, which shall include a report on the exhaustion of judicial and administrative relief;

(2) Ensure that staff does not solicit requests to undertake communications with elected officials nor participate in a coordinated effort to provide communications on a particular subject;

(3) Require that, in determining the amount of effort to be expended in preparing the communication, the director take into account the recipient's priorities in resource allocation.

(e) Notwithstanding the prohibition in paragraph (b) of this section of communications to elected officials that do more than bring a problem to the official's attention, a project director may approve a communication to an elected official requesting introduction of a specific "private relief bill," which for purposes of this part means a bill allowing a claim against a government for which there is no other remedy.

(f) Funds made available by the Corporation under the authority of Pub. L. 98-166 may be used to respond to request from Federal, State and local officials in accordance with the limitations of § 1612.5(f) to the extent compatible with meeting the demands for client service and priorities set by the recipient pursuant to Part 1620 of these regulations or to the extent compatible with the provision of support services to recipients relating to the delivery of legal assistance.

(g) Funds made available by the Corporation under the authority of Pub. L. 98-166 are subject to the requirements of § 1612.5 (b), (c), (d), (e), (g) and (h) unless inconsistent with the provisions of this section.

§ 1612.8 Enforcement.

(a) The Corporation shall have authority:

(1) To suspend or terminate the employment of an employee of the

Corporation who violates the provisions of this part; and

(2) To impose such sanctions as are appropriate (including but not limited to recovery of questioned costs) for the enforcement of this regulation against a recipient which fails to ensure that its employees refrain from activities proscribed by the Act or by this part.

(b) The Corporation shall have authority in accordance with the procedures set forth in Parts 1606, 1623 and 1625 of these regulations to suspend or terminate financial assistance or deny refunding to a recipient which fails to ensure that its employees refrain from activities proscribed by the Act or by this part.

(c) A recipient shall:

(1) Advise employees about their responsibilities under this part; and

(2) Establish procedures, consistent with the notice and hearing requirements of section 1071 of the Act, for determining whether an employee has violated a provision of this part; and shall establish a policy for determining the appropriate sanction to be imposed for a violation, including:

(i) Administrative reprimand if a violation is found to be minor and unintentional, or otherwise affected by mitigating circumstances;

(ii) Suspension and termination of employment; and

(iii) Other sanctions appropriate for the enforcement of this regulation; and

(3) Inform the Office of Compliance and Review within 30 days of imposing any sanction on any person for violation of this part.

(4) Make available to the Corporation the records of its investigation of any allegation of violations whether or not any sanctions were imposed. Such records shall be submitted on a quarterly basis to the Office of Compliance and Review.

§ 1612.9 Posting of notices.

By August 1, 1984 each recipient shall post conspicuously in each of its offices a notice provided by the Corporation's Office of Compliance and Review briefly summarizing the activities prohibited by these regulations. Such notice shall include a statement that apparent violations may be reported to the Office of Compliance and Review and the address and telephone number of that office.

Dated: December 27, 1984.

Richard N. Bagenstos,
Acting Deputy General Counsel.

[FR Doc. 85-177 Filed 1-3-85; 8:45 am]

BILLING CODE 6820-35-M

45 CFR Part 1614

Private Attorney Involvement

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: Since September the Legal Services Corporation has received comments concerning both substantive and procedural issues involving revisions to existing regulations and regulations newly put in place. After deliberation, the Board of Directors of the Corporation at its December 20, 1984 meeting decided to republish this Part of the regulations, along with four others, for further consideration and comment. This Part 1614, concerning private attorney involvement, was previously adopted by the Board on April 28, 1984, and published in final form in the *Federal Register* on May 21, 1984, 49 FR 21328. The regulation is currently in effect as published here.

DATE: Comments must be received on or before February 4, 1985.

ADDRESS: Comments may be submitted to Office of General Counsel, Legal Services Corporation, 733 Fifteenth Street, N.W., Room 601, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Acting Deputy General Counsel, (202) 272-4010.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation published a proposed rule setting forth the policy adopted by the Board of Directors on October 2, 1981, requiring that a substantial amount of recipient funds be made available to provide opportunities for involvement of private attorneys to deliver legal assistance to eligible clients. The proposed rule appeared in the *Federal Register* on March 23, 1984 (49 FR 10950). Interested parties were given until April 23, 1984, to submit comments on the proposed rule. Seventy-seven comments were received and fully considered including 34 from programs, 20 from bar associations, 8 from support programs, 1 from Congress, 9 from private parties and 6 others.

Section 1614.1 adopts a previous Board resolution defining "substantial amount" as at least twelve and one-half percent (12½%) of the recipient's Legal Services Corporation annualized basic field award. This definition of substantial amount was previously incorporated in Instruction 83-6. In response to comments, a waiver provision was added to the regulation to permit a recipient to request relief from the requirement when "the nature of the population served, and the available

attorney population" make compliance impossible. Recipients of migrant or Native American funding are to use their best efforts to meet the requirements or the Corporation must be satisfied that private legal involvement is not feasible.

Research demonstrates that there are several effective and economical ways in which to involve private attorneys, on either a voluntary or a partially-compensated basis, in the delivery of legal services to eligible clients. Over the years, it has become clear that mixed delivery systems provide for effective and economical delivery service.

Section 1614.1(c) is a newly added subsection, transferred from § 1614.4(c), and rewritten to indicate that it represents a statement of purpose, and not an absolute mandate. The purpose of the Corporation's policy of involving the private bar is to make the most of the limited resources available for legal assistance to eligible clients.

Section 1614.2(b) is modified by making the 12.5% requirement applicable to national and state support programs effective January 1, 1985.

Some comments suggested the removal of the language "subject to review and evaluation by the Corporation" from Section 1614.2(c) on the grounds that all activities of recipients are subject to such review and evaluation, and therefore the quoted language is either redundant or implies additional review. No additional review is implied, and the Corporation retains the language cited, which was previously published in the Instruction.

The regulation defines a wide range of activities permitted to involve the private bar in the delivery of legal assistance to eligible clients. The primary consideration is, of course, that the highest quality of civil legal services be provided to the clients in an effective and economical manner. In response to comments, § 1614.3(a)(1) has been modified to clarify that modified *pro bono* programs are considered permissible in fulfilling the PAI requirement. The regulation outlines specific methods to be undertaken by recipients to involve private attorneys in providing such legal assistance and states the components various systems should include.

Specific financial considerations and procedures which the recipient must utilize to account for costs allowable for private attorney involvement are set out in detail in § 1614.3(d). In response to comments, subsection (d)(5)(iii) has been modified to allow programs to use program-wide staff directives or inclusion in collective bargaining

agreements as well as job descriptions for assignment of responsibility for PAI activities. Subsection (d)(6) has been modified on the basis of comments received to exclude secretaries, intake persons, and receptionists from the keeping of timesheets.

Section 1614.3(d)(9) provides that grants for private attorney involvement shall be accounted for by recipients on a cost-reimbursable basis. This means that, at the end of a grant period, funds transferred for private attorney involvement activities to a sub-grantee must be returned to the recipient if not actually expended for private attorney involvement activities. It does not mean that costs must first be incurred by a sub-grantee and reimbursement sought from the recipient.

Section 1614.3(d)(10) no longer contains the requirement in the Instruction for interim billing. While such a practice would maximize efficient management and promote cash flow controls for recipients, numerous comments requested deletion of that requirement.

The regulation maintains the procedural measures implemented in Instruction 83-6 and 1984 Grant Applications. The recipient must develop a specific plan and a budget which shall be a part of the recipient's refunding application or initial grant application. In response to comments on the Instruction, the annual requirement that each program certify that it is spending the sums necessary to comply with this Part has been removed.

The regulation concludes that the Office of Field Services will not endorse or approve revolving litigation fund systems, whose purpose is to encourage the acceptance of fee-generating cases which are discouraged by the Act and 45 CFR Part 1609. This prohibition, however, does not prevent payment of costs or reimbursement of expenses incurred by private attorneys in normal situations where litigation might result in attorney fees. Examples of such situations would be case assignments through a *judicare* or *pro bono* panel.

List of Subjects in 45 CFR Part 1614

Legal services, Private attorneys.

For the reasons set out above, 45 CFR Part 1614 is set forth below in its entirety:

PART 1614—PRIVATE ATTORNEY INVOLVEMENT

Sec.	
1614.1	Purpose.
1614.2	General policy.
1614.3	Range of activities.
1614.4	Procedure.

Sec.
1614.5 Prohibition of revolving litigation funds.

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

§ 1614.1 Purpose.

(a) This part is designed to provide direction to recipients of Legal Services Corporation funding on allocating a substantial amount of the recipient's financial support from the Legal Services Corporation to encourage the involvement of private attorneys in the delivery of legal assistance to eligible clients. At least twelve and one-half percent (12½%) of the recipient's LSC annualized basic field award shall be devoted to the involvement of private attorneys in such activities. Funds received from the Corporation as one-time special grants shall not be considered in determining the private bar involvement requirement. The Corporation may in exceptional circumstances grant a waiver from the 12½% requirement upon application by a recipient and a demonstration to the satisfaction of the Office of Field Services that, because of the nature of the population served, and the available attorney population, the recipient is unable to comply with the requirement.

(b) Recipients of Native American or migrant funding shall provide the opportunity for involvement in the delivery of services by the private bar in a manner which is generally open to broad participation in those activities undertaken with those funds, or shall demonstrate to the satisfaction of the Corporation that such involvement is not feasible.

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

§ 1614.2 General policy.

(a) This Part implements the policy adopted by the Board of Directors of the Corporation on October 2, 1981, and ratified and modified by the Board on November 21, 1983, requiring that a substantial amount of funds be made available to encourage the involvement of private attorneys in the delivery of legal assistance to eligible clients through both *pro bono* and compensated mechanisms, and that such funds be expended in an economical and efficient manner.

(b) Effective January 1, 1985, recipients of national and state support grant awards shall apply the percentage requirement to that portion of their programs related to any direct advocacy activities on behalf of eligible clients.

(c) Private attorney involvement (PAI) shall be an integral part of a total local program undertaken within the established priorities of that program in a manner that furthers the statutory requirement of high quality, economical and effective client-centered legal assistance to eligible clients. Decisions concerning implementation of the substantial involvement requirement rest with the recipient through its governing body, subject to review and evaluation by the Corporation.

§ 1614.3 Range of activities.

(a) Activities undertaken by the recipient to meet the requirements of this Part might include, but are not limited to:

(1) Direct delivery of legal assistance to eligible clients through organized *pro bono*, reduced fee plans, judicare panels, private attorney contracts, and those modified *pro bono* plans which provide for the payment of nominal fees by eligible clients and/or organized referral systems; except that "revolving litigation fund" systems, as described in § 1614.5 of this Part, shall neither be used nor funded under this Part nor funded with any LSC support;

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

(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.

(b) The specific methods to be undertaken by a recipient to involve private attorneys in the provision of legal assistance to eligible clients will be determined by the recipient taking into account the following factors:

(1) The priorities established pursuant to Part 1620 of these regulations;

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

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

(4) The actual or potential conflicts of interest between specific participating attorneys and individual eligible clients; and,

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

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

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

(2) Case assignments which ensure the referral of cases according to the nature of the legal problems involved and the skills, expertise, and substantive experience of the participating attorney;

(3) Case oversight and follow-up procedures to ensure the timely disposition of cases to achieve, if possible, the result desired by the client and the efficient and economical utilization of recipient resources; and,

(4) Support and technical assistance procedures which are appropriate and, to the extent feasible, provide access for participating attorneys to materials, training opportunities, and back-up on substantive law and practice considerations.

(d) The receipt shall utilize financial systems and procedures to account for costs allowable in meeting this Part. Such systems shall have the following characteristics:

(1) They shall meet the requirements of the Corporation's *Audit and Accounting Guide for Recipients and Auditors*;

(2) They shall accurately identify and account for:

(i) The recipient's administrative, overhead, staff, and support costs related to private attorney involvement activities;

(ii) Payments to private attorneys for support or direct client services rendered;

(iii) Contractual payments to individuals or organizations which will undertake administrative, support, and/or direct services to eligible clients on behalf of the recipient consistent with the provisions of this Part; and,

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

(3) Income and expenses relating to the PAI effort must be reported separately in the year-end audit. This may be done by establishing a separate fund or by providing a separate

supplemental schedule of income and expenses related to the PAI efforts as part of the audit.

(4) Auditors will be required to perform sufficient audit tests to enable them to render an opinion on the recipient's compliance with the requirements of this Part.

(5) Programs must maintain the internal records necessary to demonstrate that funds have been utilized for private attorney involvement consistent with this Part. Internal records should include:

(i) Contracts on file which set forth payment systems, hourly rates, maximum allowable fees, etc;

(ii) Bills/invoices which are submitted before payments are made;

(iii) Job descriptions, program directives or provisions included in collective bargaining agreements which set forth specific program staff PAI requirements, and

(iv) Staff time records.

(6) If any direct or indirect time of staff attorneys or paralegals is to be allocated as a cost to private attorney involvement, such costs must be documented by detailed timesheets accounting for all of those employees' time, not just the time spent on private attorney involvement activities. This time-keeping requirement does not apply to such employees as receptionists, secretaries, in-take persons or bookkeepers.

(7) Direct payments to private attorneys shall be supported by invoices and internal procedures performed by the program to ensure that the services billed have actually been delivered.

(8) Non-personnel costs shall be allocated on the basis of reasonable operating data. All methods of allocating funds shall be clearly documented.

(9) Contracts concerning transfer of LSC funds for PAI activities shall indicate that such funds will be accounted for by the recipient in accordance with LSC guidelines. The organization receiving funds will be considered a sub-recipient or sub-grantee and will be bound by all accounting and audit requirements of the *Audit Guide* and 45 CFR Part 1627. These grants shall be accounted for on a cost-reimbursable basis so that the primary recipient will be responsible for unspent funds. This part does not pertain to contracts with individual lawyers or law firms who only provide legal services directly to eligible clients.

(10) Each recipient which utilizes a compensated private bar mechanism, whether judicare, contract, or some

other form, shall develop a system which includes:

- (i) A schedule or uniform encumbrances for similar cases;
- (ii) A procedure to determine net encumbrances;
- (iii) A mechanism to relate specific encumbrances to specific cases; and
- (iv) A way to determine whether encumbrances assigned are an accurate estimate of actual costs incurred.

(11) Encumbrances shall not be included in the calculation of whether a program has met the requirements of this Part, nor should they be recorded as an expense for audit purposes. Only actual expenditures or those amounts shown as accounts payable or accrued liabilities according to generally accepted accounting principles at the end of the fiscal period may be utilized to determine whether or not the program has met the requirements of this Part.

(12) In private attorney models, attorneys may be reimbursed for actual costs and expenses, but attorney fees may not be paid at a rate which exceeds 50 percent of the local prevailing market rate for that type of service.

§ 1614.4 Procedure.

(a) The recipient shall incorporate the plan and budget required by Instruction 83-6 to meet the requirements of this Part which shall be 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)) and Part 1620 of the Regulations (45 CFR 1620) adopted pursuant thereto;

(2) The delivery mechanisms potentially available to provide the opportunity for private attorneys to meet the established priority legal needs of eligible clients in an economical and effective manner; and

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

(b) The recipient shall consult with significant segments of the client community, private attorneys, and bar associations, including minority and women's bar associations, in the recipient's service area in the development of its annual plan to provide for the involvement of private attorneys in the provision of legal assistance to eligible clients.

§ 1614.5 Prohibition of revolving litigation funds.

(a) The Office of Field Services shall not endorse or approve revolving litigation fund systems which systematically encourage the acceptance of fee-generating cases by advancing funds to private attorneys for costs, expenses and/or attorney fees.

(b) This prohibition does not prevent reimbursement or payment of costs and expenses incurred by private attorneys in normal situations in which litigation may result in attorney fees, such as case assignments through a *judicare* or *pro bono* panel.

Dated: December 27, 1984.

Richard N. Bagenstos

Acting Deputy General Counsel.

[FR Doc. 85-178 Filed 1-3-85; 8:45 am]

BILLING CODE 6820-35-N

45 CFR Part 1620

Priorities in Allocation of Resources

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: Since September the Legal Services Corporation has received comments concerning both substantive and procedural issues involving revisions to existing regulations and regulations newly put in place. After deliberation, the Board of Directors of the Corporation at its December 20, 1984 meeting decided to republish this Part of the regulations, along with four others, for further consideration and comment. This Part 1620 concerning Priorities in allocation of resources, was previously adopted by the Board on March 30, 1984, and published in final form in the *Federal Register* on May 9, 1984, 49 FR 19857. The regulation is currently in effect as published here.

DATE: Comments must be received on or before February 4, 1985.

ADDRESS: Comments may be submitted to Office of General Counsel, Legal Services Corporation, 733 Fifteenth Street, N.W., Room 601, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Acting Deputy General Counsel, (202) 272-4010.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation published a proposed rule revising Part 1620 of its regulations governing the process of setting priorities for the allocation of resources on January 9, 1984 (49 FR 1088). Interested parties were given 30 days, until February 8, 1985, to submit comments on the proposed revisions.

Sixty (60) comments were received and thoroughly considered.

Section 1620.1 Purpose and 1620.3 Access. A number of comments expressed opposition to the added phrase "substantially equal access." Most noted that program, client and geographic differences made it virtually impossible to attain truly equal access, particularly in light of reduced funding levels. There was also confusion over the newly articulated mandate that eligible clients are entitled to "the same types of services and level of representation." There was a concern that such language would prohibit otherwise legitimate preferences such as for the handicapped, the elderly, etc.

"Equal access" does not mean "identical access". The spirit of the revision is to provide a strong mandate for priority setting. It does not require that clients be ranked on the basis of their financial resources, but it does permit distinct differences in resources to justify differences in access. Each program must do its best to provide the highest level of access possible. Each program is to set its own priorities according to its appraisal of the needs of the eligible client community it serves. Once the priorities are set, however, the proposed rule intends that all eligible clients have a reasonably equal opportunity to avail themselves of the range of services offered by the program.

In response to comments, the language of § 1620.3 has been modified in the final rule to make it clear that equal access is not to be considered an absolute standard, but is to be interpreted in light of the Act's requirement of economical and effective delivery of legal services, as well as in light of differing service needs and priorities in different sub-areas of a program's service area.

Section 1620.2 Procedure. This section, which establishes the procedure to be followed in setting priorities, has been modified in response to comments to eliminate the requirement of a needs assessment, and to replace it with the requirement of an appraisal as appeared in the old rule. Comments received indicated that a needs assessment was a complicated and expensive procedure, and that most programs had insufficient resources to carry it out. Therefore, the Corporation decided to remove that requirement, at least until such time as it can provide the necessary assistance to meet it.

The words "the governing body of" have been added to the opening language of § 1620.2(a) to indicate that priority-setting is a policy determination to be carried out by a program's board.