

**NYS Department of State
Office for New Americans
ONA Pro Bono Immigration Attorney**

Request for Applications #21-ONA-53

The responses to questions included herein are the official responses by the State to questions submitted by potential applicants and are hereby incorporated into RFA # 21-ONA-53 issued on March 23, 2022. In the event of any conflict between the RFA and these responses, the requirements or information contained in these responses will prevail.

1. Important Dates are hereby amended to read:

RFA Release Date: **March 23, 2022**

Questions Due: **April 8, 2022**

RFA Updates Posted: **April 22, 2022**

Application Due Date: **May 6, 2022**

2. Section II Funding and Project Period is hereby amended to read

Through this RFA, the New York State Department of State (DOS) ONA is making approximately **\$1,050,000** available to fund this program for the initial year of funding.

The RFA will have two parts, Part A - Downstate New York and Part B - Upstate/Western New York with approximately one award granted to organizations applying to either part of the RFA.

Awards will be granted to qualified not-for-profit organizations according to the following breakdown:

- **Part A - Downstate New York** – One award up to \$600,000
- **Part B - Upstate/Western New York** – One award up to **\$450,000**

If an agency wishes to apply for more than one part, a separate application must be submitted for each part.

Each contract will have the option of a one-time annual renewal at the same funding level as Year One. Funding in the subsequent year is contingent upon funds being appropriated in the State budget and the organization's ability to meet the program requirements as stipulated in this RFA. Matching funds are not required for this grant and no preference will be given to organizations that provide matching funds under this grant.

3. Section III Applicant Eligibility is hereby amended to add:

If the subcontractor is proposing to use an accredited representative for any of the work under this grant, the lead applicant must submit proof of both the subcontractor organization's and the representative's DOJ accreditation with the application. Applicants who do not document this accreditation will be disqualified.

4. Section V General Program Services, Part B is hereby amended to read:

Part B

Will fund one qualified not-for-profit organization to recruit, establish, and maintain a network of PBVAs to service a minimum of one of the following regions in Upstate/Western New York:

- Capital Region (Albany, Columbia, Greene, Rensselaer, Saratoga, Schenectady, Warren, Washington)
- Central New York (Cayuga, Cortland, Madison, Onondaga, Oswego)
- Finger Lakes (Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming, Yates)
- Mohawk Valley (Fulton, Herkimer, Montgomery, Oneida, Otsego, Schoharie)
- North Country (Clinton, Essex, Franklin, Hamilton, Jefferson, Lewis, St. Lawrence)
- Southern Tier (Broome, Chemung, Chenango, Delaware, Schuyler, Steuben, Tioga, Tompkins)
- Western New York (Allegany, Cattaraugus, Chautauqua, Erie, Niagara)

While Part B grantees will only be required to provide services in a minimum of one of the Upstate/Western New York regions listed above, the grantee may choose to support PBVAs, non-legal volunteers, and accept clients from any other regions listed under Part B of this grant. **Grantees applying for Part B must specify which will be their primary service region on the Regional Identification Sheet in Appendix B.**

5. Section VI.1. Recruit and hire or repurpose immigration lawyers to serve as Pro Bono Supervising Attorneys is hereby amended to read:

1. Recruit and hire or repurpose immigration lawyers to serve as Pro Bono Supervising Attorneys

Each grantee must hire or repurpose one or more Supervising Attorneys who each meet the following minimum qualifications:

1. Be a member in good standing of the bar of the highest court of any state in the country or U.S. territory; and
2. Have three or more years of experience as an attorney, including at least two years of immigration law experience OR work under the supervision of a managing attorney with three or more years of immigration law experience.

Each grantee will hire or repurpose a minimum of 2 Full Time Equivalent (FTE) Supervising Attorneys for Part A, Downstate New York, and a minimum of **1.5 FTE** Supervising Attorney for Part B, Upstate/Western New York for this grant.

6. Section VI.2. Outreach and Recruitment is hereby amended to read:

2. Outreach and recruitment

Each grantee will develop a plan and conduct targeted outreach to promote the Pro Bono program to recruit qualified PBVAs and non-legal volunteers, as well to attract clients in need of legal assistance. Outreach plans must include detailed timeline, method of outreach (presentations, printed materials, etc.), and potential volunteer recruitment partners, which can include but are not limited to law firms, private practices, bar associations, and/or law schools. Targeted outreach should be conducted on a regular basis throughout the contract year. The grantee is also encouraged to coordinate with current ONA partners in order to identify immigration clients for this program.

Pro Bono grantees must have demonstrated experience to screen and vet qualified PBVA candidates for this program. At a minimum, PBVAs must be a member in good standing of the bar of the highest court of any state in the country or U.S. territory.

The Part A grantee will recruit and maintain a minimum of 20 PBVAs and a minimum of 10 non-legal volunteers per contract year. The Part B grantee will recruit and maintain a minimum of **15 PBVAs** and a minimum of **8 non-legal volunteers** per contract year.

PBVAs and non-legal volunteers are required to always maintain client confidentiality. Pro Bono grantees must track volunteer hours, services provided, and report said hours and services to ONA.

PBVAs are not considered subcontractors for the purposes of this grant.

7. Section VI.4. Legal Screenings and Case Placement is hereby amended to read:

4. Legal Screenings and Case Placement

The Pro Bono grantees will provide an initial legal screening of each immigrant client to evaluate an individual's case, which may or may not lead to placement of the case with a PBVA for further assistance. The Pro Bono grantees will use these screenings to evaluate whether the client's case is suitable to be placed with a trained PBVA for direct representation.

Supervising attorneys will use a "universal representation" model that serves any individual in the target population in need of legal representation. The target population for these funds are immigrants residing in New York; families of mixed status with at least one family member in New York; immigrants with a sponsor in New York; and/or immigrant business owners in New York.

For those cases the grantee deems not suitable to be placed with trained PBVAs, the grantee must refer clients to other immigration legal services.

Pro Bono grantees must be prepared to place and provide technical assistance to handle all types of immigration cases including, but not limited to:

- Deferred Action for Childhood Arrivals (DACA)
- Asylum
- U visas
- T visas

- Temporary Protected Status (TPS)
- Special Immigrant Juvenile Status (SIJS)
- Unaccompanied/separated minors
- Violence Against Women Act (VAWA)
- Convention Against Torture (CAT)
- Withholding of removal
- Removal proceedings, for those currently detained or not, including those with a prior order of removal
- Work permits
- Bond hearings
- Board of Immigration Appeals (BIA)
- ICE Case Review Process
- Federal litigation (e.g. habeas corpus petitions)¹
- Parole
- Guardianship/custody issues for minors in the face of potential deportation of parents or guardians
- Family reunification
- Consular processing
- Family-based immigration
- Complex naturalization, including considerations for individuals with intellectual and developmental disabilities, such as N-648's and naturalization related guardianship

Grantees should provide an initial screening of any immigrant seeking legal assistance, however, if the grantee is unable to take a case due to capacity or other constraints, they must provide a referral. There is no income eligibility requirement for clients to be served under this grant.

Supervising Attorneys may also propose a case prioritization model based on the needs of the assigned region and the proposed training of the Pro Bono Volunteer Attorneys. If proposing a case prioritization model, grantees must include data about the assigned region's needs to support the proposed model in their application. Grantees proposing a case prioritization model must also incorporate a referral process to other legal service providers as needed.

Pro Bono grantees in Part A will provide a minimum of 50 Pro Bono Case Representation Placements for the contract year. Pro Bono grantees in Part B will provide a minimum of 35 Pro Bono Case Placements Representation for the contract year. Cases for the purposes of this RFA are counted as each individual client.

The grantee will track and report on the outcome of each legal screening, whether or not a case is placed, and any referrals made.

¹ In certain circumstances, the final agency decision of the BIA can be further litigated in a U.S. Circuit Court of Appeals. Thus, the allowed Federal litigation will apply to challenging the following: U.S. Citizenship and Immigration Services' (USCIS) unreasonable delay in adjudicating an application or petition; USCIS' denial of an application for naturalization; the unlawful detention of someone in immigration custody; a removal order on legal or constitutional grounds.

All staff working directly under this grant and assisting with legal screenings and case placements will comply with all ethical and confidentiality rules.

8. Section VIII. Ineligible Expenses, #20 is hereby amended to read:

20. Advertising for purposes other than the recruitment of clients **or Pro Bono Volunteer Attorneys**

9. Section IX. Completing the Application, Letter A. is hereby amended to read:

A. Regional Identification and Contact Information

1. All applicants must submit the contact information sheet found in Appendix A indicating a contact person to whom correspondence regarding this application can be directed. This should be submitted with the application as **Attachment 1: Contact Sheet.**

2. If any applicant wishes to apply for both Part A and Part B, a separate application must be submitted for each Part.

3. All applicants for Part B must submit the regional identification sheet found in Appendix B indicating the **Primary Service Region** for which they are applying **along with Other Service Region(s) to be served.** For Part B applicants only, this should be submitted with the application as **Attachment 2: Regional Identification.**

4. Applicants must submit the MWBE Compliance Form found in Appendix E with the application. The form should be submitted as **Attachment 3: MWBE Compliance Form.**

10. Section IX. Completing the Application, Letter D. is hereby amended to add:

12. **If the applicant or their subcontractor is proposing to use an accredited representative for any of the work under this grant, the applicant must submit proof of both the organization's and the representative's DOJ accreditation with the application. Applicants who do not document this accreditation will be disqualified.**

13. **If applicable, describe plans to implement a case prioritization model for the proposed service region. Include demographic and other data to support the proposed model. Provide details on how clients would be vetted under this model and which specific types of immigration cases/demographics would be prioritized in the service region and why. Applicants must also describe how any individuals who would not be serviced under this model would be referred to other legal service providers. If the applicant is not implementing a case prioritization model, fully describe how clients will be serviced under this grant.**

11. Section IX. Completing the Application, Letter E.1. is hereby amended to read:

1. For Part A, a detailed and realistic budget for the first year for no more than \$600,000. For Part B, a detailed and realistic budget for the first year for no more than **\$450,000.** Budgets must contain allowable, reasonable, allocable and necessary costs that directly support program activities, using the ONA budget summary form in Appendix C. Administrative costs cannot exceed 10% of the budget.

12. Section X. Evaluating the Application, Letter B. is hereby amended to add:

13. If the applicant or subcontractor is proposing to use an accredited representative for any of the work under this grant, they submitted proof of both the organization's and the representative's DOJ accreditation with the application. This criterion will not be scored but applicants who do not document this accreditation will be disqualified.

14. If applicable, applicant described plans to implement a case prioritization model for the proposed service region. Applicant included demographic and other data to support the proposed model. Provided details on how clients would be vetted under this model and which specific types of immigration cases/demographics would be prioritized in the service region and why. Applicants also described how any individuals who would not be serviced under this model would be referred to other legal service providers. If the applicant is not implementing a case prioritization model, applicant fully described how clients will be serviced under this grant.

15. Section X. Evaluating the Application, Letter C.1. is hereby amended to read:

1. For Part A, the applicant provided a detailed and realistic budget for the first year for no more than \$600,000. For Part B, the applicant provided a detailed and realistic budget for the first year for no more than \$450,000. The budget contained allowable, reasonable, allocable and necessary costs that directly support program activities, using the ONA budget summary form in Appendix C. Administrative costs did not exceed 10% of the budget.

16. Appendix B Regional Identification Sheet is hereby amended to add a column to identify the Primary Service Region (only one) and Other Regions to be Served (as many as apply). Please use the revised Appendix B when submitting your application.

17. Attachment C to Appendix D: Sample Contract is amended to reflect the changes made throughout the RFA. Please refer to the revised RFA for changes.

Q1.

(a) Could you provide more details on what is expected for the grantee organizations to provide universal representation to the individuals benefitted by the grant? Is there any flexibility behind this required type of legal service? Any information you could provide on this would be helpful.

(b) What do you mean by universal representation? Does this mean that we have to take any case that comes in? Does this mean we have to serve people regardless of income level? How does this interact with the outcomes of the grant where we are only expected to handle 20 cases per year – with so few cases handled clearly we will have to prioritize by greatest need?

A1. A universal representation model serves any immigrant in need of immigration legal representation. For the purposes of this RFA, that means grantees should provide an initial screening of any immigrant seeking legal assistance, however, if the grantee is unable to take a case due to capacity or other constraints, they must provide a referral. Grantees must serve people regardless of income level, there is no income eligibility requirement for clients to be served under this grant. See A2 for additional information about prioritization of cases.

Q2.

(a) Can we focus on certain kinds of cases so that we can develop a resource library and cohorts of Pro Bono attorneys trained for specific kinds of cases?

(b) Can we design a program that focuses on TPS and asylum, due to the overwhelming number of cases at this time in the Afghan and Ukrainian communities

A2. Under this pilot initiative, ONA will allow Supervising Attorneys to propose a case prioritization model based on the needs of the assigned region and the training of the Pro Bono Volunteer Attorneys. If proposing a case prioritization model, grantees must include data about the assigned region's needs to support the proposed model in their application. Those applicants proposing a case prioritization model must also incorporate a referral process to other legal service providers as needed.

Q3. Would the ONA Supervising Attorney or recruited Pro Bono Volunteer Attorney (PBVA) be the attorney on record for retained cases, signing all E-28s and G-28s? Would the associated malpractice coverage be carried by the awarded organization or the PBVA directly?

A3. The recruited Pro Bono Volunteer Attorney (PBVA) will be the attorney on record for retained cases, signing all E-28's and G-28's. The associated malpractice coverage for the PBVAs is an eligible direct cost under this grant, which the grantee can include in their proposed budget.

Q4.

(a) Many immigration cases take longer to resolve than the duration of the grant or potentially the available commitment of Pro Bono Volunteer Attorneys (PBVA) – in some cases over 5 years. Would the awarded organization be responsible to assume representation for cases that either take longer to resolve than the grant can support, take longer to resolve than the Pro Bono Volunteer Attorney (PBVA) can commit, or in a situation where the PBVA must withdrawal or cannot complete a case?

(b) On Part II under Funding and Project Period, the RFA states that “each contract will have the option of a one-time annual renewal at the same funding level as Year One. Funding in the subsequent year is contingent upon funds being appropriated in the State budget and the organization’s ability to meet the program requirements as stipulated in the RFA.” Given that the RFP stipulates a universal representation model, and representation timelines for complex immigration cases, particularly for cases in removal proceedings, can last over four years, how will ONA manage representation needs for Pro Bono cases if funding is not secured through the State budget beyond the second year of services?

A4. Grantees and their attorneys must comply with all ethical obligations of attorneys in New York State as prescribed in the NY Rules of Professional Conduct.

Q5. Pg 9 – Eligible Costs: Are case management software and other computer software eligible costs?

A5. Yes. however these costs must be properly allocated across all funding sources.

Q6. Pg 9 – Eligible Costs: Are support staff (for example a program assistant) an eligible cost?

A6. Yes, if they are providing direct services under the grant (e.g. directly supporting the Supervising Attorney). If support staff are not providing direct services, these costs may be included under the Administrative Expenses line.

Q7. Pg 29 – Regional Identification Sheet: Should we only select the primary region we will be serving?

A7. Yes. Please see the revised Regional Identification Sheet in Appendix B and use this form for your application.

Q8. If we will accept clients from all regions should we select all regions?

A8. Yes, however, please indicate which will be the primary region of service. Please see the revised Regional Identification Sheet in Appendix B and use this form for your application.

Q9. What date range should we use for the program period to ensure an accurate budget?

A9. As stated in the RFA Section IX.E., the budget should be submitted for the first year of the contract. Applicants do not need to include a date range in the budget submitted with their application but costs should be calculated for one year.

Q10. Can the Part B grant be divided between 2 or even 3 agencies, as long as one agency performs over 50% of the services and the total FTE for attorneys totals 1 FTE?

A10. Yes, however as noted above the FTE requirement for Part B has been increased to 1.5 FTE.

Q11. Can we restrict our representation to just certain levels of service? Can we limit the scope of service for a client to just one phase of the representation or just one type of case. E.g. take on a case only for the initial application, but not appeals (if required); or take on just the appeal, etc.

A11. Grantees must ensure clients are provided representation during all phases of their case or provide an appropriate referral if necessary.

Q12.

(a) Can we fund accredited reps or legal assistants to help do this work under supervising attorney supervision?

(b) I want to confirm that after there is at least one full FTE supervising attorney, available funding could be used for an accredited representative.

A12. Yes, as long as they are not providing the services of the supervising attorney as outlined in the RFA. Any organization/subcontractor funding an accredited representative under this grant must be DOJ-accredited and proof of the organization's/subcontractor's and individual's DOJ accreditation must be included with the application.

Q13. What constitutes 20 cases – is it full representation, or can it be advice and counsel, pro se assistance, etc.?

A13. One case is one individual client. While the goal is for the 20 cases to be accepted for full representation, ONA will allow pro se assistance to be counted under this deliverable on a case-by-case basis, with prior approval from ONA.

Q14. For trainings, can legal trainings for non-legal staff (such as refugee resettlement programs) count towards the deliverables for volunteer trainings, given the work they do to provide case management, etc.?

A14. No. Trainings are intended for volunteers specifically recruited to assist the PBVAs under this grant.

Q15. Are translation and interpretation costs included as covered costs?

A15. Yes.

Q16. Is there any chance that the amount could be increased in the Part B grant to \$300,000 or even \$450,000 so that we could have supervising attorneys located in several different regions? We have a very strong partnership between agencies in Central and Western New York that would cover nearly all of Upstate New York, but realistically speaking we need 2 FTE or 3 FTE supervising attorneys so that we can do the level of work the communities need. (Of course such an increase would include a proportionate increase of grant deliverables)

A16. In recognition of the increased need in the communities in Upstate/Western New York, the RFA has been revised to increase the award amount for Part B to \$450,000 and also increase the FTE for the Upstate/Western New York Region to 1.5 FTE.

Q17. If we are splitting between regions, can it be 50% split of funding between two agencies (instead of a majority to one agency).

A17. As stated in Section III of the RFA under *Subcontracting*, “the lead applicant must provide the majority of direct programming or more than 50 percent.” Awards will be made to the applicant agency who must conduct the majority of the work in the Region for which they are applying. If an applicant wishes to accept referrals from another Region and subcontract that work out to another organization, they may do so as long as the lead applicant is still providing the majority of the deliverables required by the grant. The lead applicant is fully accountable for all activities under this grant.

Q18. If we already have pipelines of clients (primarily ONA funded programs like ONA Legal Counsel and Buffalo Immigration Court), does this grant require creating a new client recruitment effort for clients?

A18. No, you can continue using these recruitment efforts for this grant.

Q19. I just want to confirm a subcontractor could repurpose an attorney to work as a supervising attorney.

A19. As stated in Section VI.1. “Each grantee will hire or repurpose a minimum of 2 Full Time Equivalent (FTE) Supervising Attorneys for Part A, Downstate New York, and a minimum of 1.5 FTE Supervising Attorney for Part B, Upstate/Western New York for this grant.” It is acceptable for a subcontractor to repurpose an attorney to work as a supervising attorney for a portion of the FTE required in the corresponding region as long as the lead agency is providing more than 50% of the work under this grant. The lead agency is responsible for all of the work/deliverables required under the grant.

Q20. In a situation where there is the applicant and a subcontractor working together, could each agency hire a part-time supervising attorney which would add up to one full FTE supervising attorney.

A20. Yes, as long as the lead applicant is providing more than 50% of the work under this grant.

Q21. On Part IX under Completing the Application, there is no indication of a word or page limit for questions under organizational experience/history or the program proposal. Can you confirm that there is no limit.

A21. There is no word or page limit.

Q22. On page 81 of the RFA under “service description”, the RFA states that “Supervising attorneys will use a universal representation model that serves any individual in the target population in need of legal representation...for those cases the grantee deems not suitable to be placed with trained PBVAs, the grantee must refer clients to other immigration legal services.” On the same page under “outcome” the RFA states that “Pro Bono grantees in Part A will provide a minimum of 50 Pro Bono Case Representation Placements for the contract year [and] Pro Bono Grantees in Part B will provide a minimum of 20 Pro Bono Case Representation Placements for the contract year.” Upon reaching the aforementioned capacity, will ONA kindly confirm that the grantee is permitted to refer clients to other immigration legal services?

A22. Yes, upon reaching capacity, the grantee is permitted to refer clients to other immigration legal services.

Q23. On Part VIII under Ineligible Expenses, the RFA states that “the following costs are not allowable for reimbursement: 20. advertising for purposes other than the recruitment of clients.” Could ONA please confirm that marketing costs, e.g., for such tools as portals for the recruitment of PBVAs for case placements, and/or promotion of such opportunities via various media, including social media, are not ineligible under Part VIII or any other section of the RFA?

A23. Advertising costs for the purposes of recruitment of clients and PBVAs is an eligible cost.