
LEGAL SERVICES CORPORATION

LSC ACT & OTHER LAWS

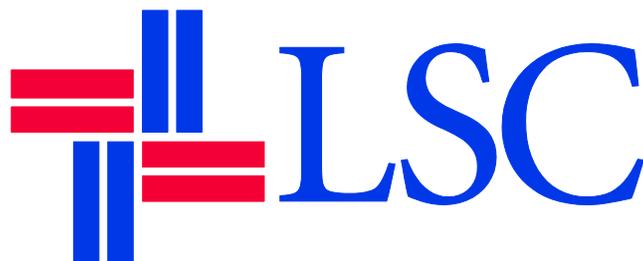
LSC APPROPRIATIONS FY 1996–FY 2015

LSC REGULATIONS

PROPERTY ACQUISITION
& MANAGEMENT MANUAL 2001

GRANT ASSURANCES 2015

March 2015





LSC Act and Other Laws
Directly Affecting LSC
(Current as of March 30, 2015)

LSC Act, 42 U.S.C. §2996 *et seq.* 1

Assisted Suicide Funding Restriction Act of 1997, Pub. L. 105–12..... A-1

Civil Asset Forfeiture Reform Act of 2000, Pub. L. 106–185 B-1

Victims of Trafficking and Violence Protection Act of 2000, as amended
LSC provisions C-1

Violence Against Women and Department of Justice
Reauthorization Act of 2005
LSC provisions D-1

The Legal Services Corporation Act
42 U.S.C. §2996 et seq.
(Current as of March 30, 2015)

§ 1001. Congressional findings and declaration of purpose. (§ 2996)	1
§ 1002. Definitions. (§ 2996a)	2
§ 1003. Legal Services Corporation. (§ 2996b)	2
(a) Establishment; purpose.	
(b) Principal office; agent for service of process.	
(c) Status of Corporation under tax laws.	
§ 1004. Board of Directors. (§ 2996c)	4
(a) Establishment; membership.	
(b) Term of office.	
(c) Board members not deemed officers or employees of United States.	
(d) Chairman.	
(e) Removal.	
(f) State advisory councils.	
(g) Open meetings; applicability of Government in the Sunshine provisions.	
(h) Quarterly meetings.	
§ 1005. Officers and employees. (§ 2996d)	5
(a) Appointment of president; outside compensation of officers prohibited; terms.	
(b) Power of president to appoint and remove employees; nonpartisan appointments.	
(c) Conflict of interest.	
(d) Compensation.	
(e) Officers and employees not deemed officers and employees of Federal Government; Corporation not deemed a department, agency, or instrumentality of Federal Government; review of annual budget.	
(f) Exceptions.	
(g) Freedom of information.	
§ 1006. Powers, duties, and limitations. (§ 2996e)	6
(a) Powers of nonprofit corporation; additional powers.	
(b) Disciplinary powers; representational questions; interference with professional responsibilities of attorneys; bar membership; restrictions; languages other than English.	
(c) Participation in litigation; lobbying activities.	
(d) Miscellaneous prohibitions.	
(e) Political activities of Corporation employees and staff attorneys.	
(f) Harassment; malicious abuse of legal process.	

§ 1007. Grants and contracts. (§ 2996f).....	9
(a) Requisites.	
(b) Limitations on uses.	
(c) Recipient organizations.	
(d) Program evaluation.	
(e) Corporation president authorized to make grants and enter into contracts.	
(f) Public notification.	
(g) Staff-attorney program study.	
(h) Study and report to Congress on special needs of eligible clients.	
§ 1008. Records and reports. (§ 2996g).....	14
(a) Authority to require reports.	
(b) Authority to require recordkeeping; access to records.	
(c) Annual report to President and Congress; contents.	
(d) Copies and retention of reports.	
(e) Publication in Federal Register of rules, regulations, guidelines and instructions.	
§ 1009. Audits. (§ 2996h)	15
(a) Annual audit; availability of records; filing and inspection of report.	
(b) Audit by General Accounting Office.	
(c) Annual financial audit of recipient persons or bodies.	
(d) Attorney-client privilege.	
§ 1010. Financing. (§ 2996i).....	16
(a) Authorization of appropriations.	
(b) Availability of funds.	
(c) Non-Federal funds.	
(d) Limitations on grant or contract authority.	
§ 1011. Special limitations. (§ 2996j).....	17
§ 1012. Coordination. (§ 2996k).....	18
§ 1013. Reservation of right to repeal, alter, or amend. (§ 2996l).....	18

§ 1001	2996.	Congressional findings and declaration of purpose.
§ 1002	2996a.	Definitions.
§ 1003	2996b.	Legal Services Corporation.
§ 1004	2996c.	Board of Directors.
§ 1005	2996d.	Officers and employees.
§ 1006	2996e.	Powers, duties, and limitations.
§ 1007	2996f.	Grants and contracts.
§ 1008	2996g.	Records and reports.
§ 1009	2996h.	Audits.
§ 1010	2996i.	Financing.
§ 1011	2996j.	Special limitations.
§ 1012	2996k.	Coordination.
§ 1013	2996l.	Reservation of right to repeal, alter, or amend.

SUBCHAPTER X—LEGAL SERVICES CORPORATION

§2996. Congressional findings and declaration of purpose

§ 1001

The Congress finds and declares that—

(1) there is a need to provide equal access to the system of justice in our Nation for individuals

who seek redress of grievances;

(2) there is a need to provide high quality legal assistance to those who would be otherwise

unable to afford adequate legal counsel and to continue the present vital legal services program;

(3) providing legal assistance to those who face an economic barrier to adequate legal counsel will serve best the ends of justice and assist in improving opportunities for low-income persons consistent with the purposes of this chapter;

(4) for many of our citizens, the availability of legal services has reaffirmed faith in our government of laws;

(5) to preserve its strength, the legal services program must be kept free from the influence of or use by it of political pressures; and

(6) attorneys providing legal assistance must have full freedom to protect the best interests of their clients in keeping with the Code of Professional Responsibility, the Canons of Ethics, and the high standards of the legal profession.

(Pub. L. 88–452, title X, §1001, as added Pub. L. 93–355, §2, July 25, 1974, 88 Stat. 378; amended Pub. L. 95–222, §2, Dec. 28, 1977, 91 Stat. 1619.)

AMENDMENTS

1977—Par. (3). Pub. L. 95–222 inserted provision relating to assistance in improving opportunities for low-income persons consistent with this chapter.

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95–222, §17(b), Dec. 28, 1977, 91 Stat. 1624, provided that: “The amendments made by provisions of this Act other than sections 11 and 15 [amending this section and sections 2996c, 2996e, 2996f, 2996g, 2996h, 2996i, and 2996j of this title] shall be effective on the date of enactment of this Act [Dec. 28, 1977].”

SHORT TITLE

This subchapter is known as the “Legal Services Corporation Act”, see Short Title note set out under section 2701 of this title.

§2996a. Definitions

§ 1002

As used in this subchapter, the term—

(1) “Board” means the Board of Directors of the Legal Services Corporation;

(2) “Corporation” means the Legal Services Corporation established under this subchapter;

(3) “eligible client” means any person financially unable to afford legal assistance;

(4) “Governor” means the chief executive officer of a State;

(5) “legal assistance” means the provision of any legal services consistent with the purposes and provisions of this subchapter;

(6) “recipient” means any grantee, contractee, or recipient of financial assistance described in clause (A) of section 2996e(a)(1) of this title;

(7) “staff attorney” means an attorney who receives more than one-half of his annual professional income from a recipient organized solely for the provision of legal assistance to eligible clients under this subchapter; and

(8) “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(Pub. L. 88–452, title X, §1002, as added Pub. L. 93–355, §2, July 25, 1974, 88 Stat. 378.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§2996b. Legal Services Corporation

§ 1003

(a) Establishment; purpose

There is established in the District of Columbia a private nonmembership nonprofit corporation, which shall be known as the Legal Services Corporation, for the purpose of providing financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance.

(b) Principal office; agent for service of process

The Corporation shall maintain its principal office in the District of Columbia and shall maintain therein a designated agent to accept service of process for the Corporation. Notice to or service upon the agent shall be deemed notice to or service upon the Corporation.

(c) Status of Corporation under tax laws

The Corporation, and any legal assistance program assisted by the Corporation, shall be eligible to be treated as an organization described in section 170(c)(2)(B) of title 26 and as an organization described in section 501(c)(3) of title 26 which is exempt from taxation under section 501(a) of title 26. If such treatments are conferred in accordance with the provisions of title 26, the Corporation, and legal assistance programs assisted by the Corporation, shall be subject to all provisions of title 26 relevant to the conduct of organizations exempt from taxation.

(Pub. L. 88-452, title X, §1003, as added Pub. L. 93-355, §2, July 25, 1974, 88 Stat. 379; amended Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095.)

AMENDMENTS

1986—Subsec. (c). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954” wherever appearing, which for purposes of codification was translated as “title 26” thus requiring no change in text.

TRANSITION TO LEGAL SERVICES CORPORATION PROGRAM

Pub. L. 93-355, §3(a)-(d)(1), (e), July 25, 1974, 88 Stat. 389, 390, provided that:

“(a) Notwithstanding any other provision of law, effective ninety days after the date of the first meeting of the Board of Directors of the Legal Services Corporation established under the Legal Services Corporation Act (title X of the Economic Opportunity Act of 1964, as added by this Act) [this subchapter], the Legal Services Corporation shall succeed to all rights of the Federal Government to capital equipment in the possession of legal services programs or activities assisted pursuant to section 222(a)(3), 230, 232 [sections 2809(a)(3), 2823, and 2825 of this title], or any other provision of the Economic Opportunity Act of 1964 [this chapter].

“(b) Within ninety days after the first meeting of the Board, all assets, liabilities, obligations, property, and records as determined by the Director of the Office of Management and Budget, in consultation with the Director of the Office of Economic Opportunity [now the Director of the Office of Community Services] or the head of any successor authority, to be employed directly or held or used primarily, in connection with any function of the Director of the Office of Economic Opportunity or the head of any successor authority in carrying out legal services activities under the Economic Opportunity Act of 1964 [this chapter], shall be transferred to the Corporation. Personnel transferred to the Corporation from the Office of Economic Opportunity or any successor authority shall be transferred in accordance with applicable laws and regulations, and shall not be reduced in compensation for one year after such transfer, except for cause. The Director of the Office of Economic Opportunity or the head of any successor authority shall take whatever action is necessary and reasonable to seek suitable employment for personnel who do not transfer to the Corporation.

“(c) Collective-bargaining agreements in effect on the date of enactment of this Act [July 25, 1974], covering employees transferred to the Corporation shall continue to be recognized by the Corporation until the termination date of such agreements, or until mutually modified by the parties.

“(d)(1) Notwithstanding any other provision of law, the Director of the Office of Economic Opportunity [now the Director of the Office of Community Services] or the head of any successor authority shall take such action as may be necessary, in cooperation with the president of the Legal Services Corporation, including the provision (by grant or otherwise) of financial assistance to recipients and the Corporation and the furnishing of services and facilities to the Corporation—

“(A) to assist the Corporation in preparing to undertake, and in the initial undertaking of, its responsibilities under this title [this subchapter];

“(B) out of appropriations available to him, to make funds available to meet the organizational and

administrative expenses of the Corporation;

“(C) within ninety days after the first meeting of the Board, to transfer to the Corporation all unexpended balances of funds appropriated for the purpose of carrying out legal services programs and activities under the Economic Opportunity Act of 1964 [this chapter] or successor authority; and

“(D) to arrange for the orderly continuation by such Corporation of financial assistance to legal services programs and activities assisted pursuant to the Economic Opportunity Act of 1964 [this chapter] or successor authority.

Whenever the Director of the Office of Economic Opportunity or the head of any successor authority determines that an obligation to provide financial assistance pursuant to any contract or grant for such legal services will extend beyond six months after the date of enactment of this Act [July 25, 1974], he shall include, in any such contract or grant, provisions to assure that the obligation to provide such financial assistance may be assumed by the Legal Services Corporation, subject to such modifications of the terms and conditions of such contract or grant as the Corporation determines to be necessary.

“(2) [Omitted. Provided for the repeal of section 2809(a)(3) of this title.]

“(e) There are authorized to be appropriated for the fiscal year ending June 30, 1975, such sums as may be necessary for carrying out this section.”

§2996c. Board of Directors

§ 1004

(a) Establishment; membership

The Corporation shall have a Board of Directors consisting of eleven voting members appointed by the President, by and with the advice and consent of the Senate, no more than six of whom shall be of the same political party. A majority shall be members of the bar of the highest court of any State, and none shall be a full-time employee of the United States. Effective with respect to appointments made after December 28, 1977, but not later than July 31, 1978, the membership of the Board shall be appointed so as to include eligible clients, and to be generally representative of the organized bar, attorneys providing legal assistance to eligible clients, and the general public.

(b) Term of office

The term of office of each member of the Board shall be three years, except that five of the members first appointed, as designated by the President at the time of appointment, shall serve for a term of two years. Each member of the Board shall continue to serve until the successor to such member has been appointed and qualified. The term of initial members shall be computed from the date of the first meeting of the Board. The term of each member other than initial members shall be computed from the date of termination of the preceding term. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which such member's predecessor was appointed shall be appointed for the remainder of such term. No member shall be reappointed to more than two consecutive terms immediately following such member's initial term.

(c) Board members not deemed officers or employees of United States

The members of the Board shall not, by reason of such membership, be deemed officers or employees of the United States.

(d) Chairman

The President shall select from among the voting members of the Board a chairman, who shall serve for a term of three years. Thereafter the Board shall annually elect a chairman from among its voting members.

(e) Removal

A member of the Board may be removed by a vote of seven members for malfeasance in office or for persistent neglect of or inability to discharge duties, or for offenses involving moral turpitude, and for no other cause.

(f) State advisory councils

Within six months after the first meeting of the Board, the Board shall request the Governor of each State to appoint a nine-member advisory council for such State. A majority of the members of

the advisory council shall be appointed, after recommendations have been received from the State bar association, from among the attorneys admitted to practice in the State, and the membership of the council shall be subject to annual reappointment. If ninety days have elapsed without such an advisory council appointed by the Governor, the Board is authorized to appoint such a council. The advisory council shall be charged with notifying the Corporation of any apparent violation of the provisions of this subchapter and applicable rules, regulations, and guidelines promulgated pursuant to this subchapter. The advisory council shall, at the same time, furnish a copy of the notification to any recipient affected thereby, and the Corporation shall allow such recipient a reasonable time (but in no case less than thirty days) to reply to any allegation contained in the notification.

(g) Open meetings; applicability of Government in the Sunshine provisions

All meetings of the Board, of any executive committee of the Board, and of any advisory council established in connection with this subchapter shall be open and shall be subject to the requirements and provisions of section 552b of title 5 (relating to open meetings).

(h) Quarterly meetings

The Board shall meet at least four times during each calendar year.

(Pub. L. 88-452, title X, §1004, as added Pub. L. 93-355, §2, July 25, 1974, 88 Stat. 379; amended Pub. L. 95-222, §§3, 4, Dec. 28, 1977, 91 Stat. 1619.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-222, §3, inserted provision relating to appointments made after Dec. 28, 1977.

Subsec. (g). Pub. L. 95-222, §4, substituted provisions relating to applicability of section 552b of title 5, for provisions setting forth requirements respecting availability of minutes of public meetings.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-222 effective Dec. 28, 1977, see section 17(b) of Pub. L. 95-222, set out as a note under section 2996 of this title.

COMPENSATION OF MEMBERS OF BOARD OF DIRECTORS

Pub. L. 97-377, title I, §101(d), Dec. 21, 1982, 96 Stat. 1876, provided: "That no member of the Board of Directors of the Legal Services Corporation shall be compensated for his services to the Corporation except for the payment of an attendance fee at meetings of the Board at a rate not to exceed the highest daily rate for grade fifteen (15) of the General Schedule and necessary travel expenses to attend Board meetings in accordance with the Standard Government Travel Regulations."

§2996d. Officers and employees

§ 1005

(a) Appointment of president; outside compensation of officers prohibited; terms

The Board shall appoint the president of the Corporation, who shall be a member of the bar of the highest court of a State and shall be a non-voting ex officio member of the Board, and such other officers as the Board determines to be necessary. No officer of the Corporation may receive any salary or other compensation for services from any source other than the Corporation during his period of employment by the Corporation, except as authorized by the Board. All officers shall serve at the pleasure of the Board.

(b) Power of president to appoint and remove employees; nonpartisan appointments

(1) The president of the Corporation, subject to general policies established by the Board, may appoint and remove such employees of the Corporation as he determines necessary to carry out the purposes of the Corporation.

(2) No political test or political qualification shall be used in selecting, appointing, promoting, or taking any other personnel action with respect to any officer, agent, or employee of the Corporation or of any recipient, or in selecting or monitoring any grantee, contractor, or person or entity receiving financial assistance under this subchapter.

(c) Conflict of interest

No member of the Board may participate in any decision, action, or recommendation with respect to any matter which directly benefits such member or pertains specifically to any firm or organization with which such member is then associated or has been associated within a period of two years.

(d) Compensation

Officers and employees of the Corporation shall be compensated at rates determined by the Board, but not in excess of the rate of level V of the Executive Schedule specified in section 5316 of title 5.

(e) Officers and employees not deemed officers and employees of Federal Government; Corporation not deemed a department, agency, or instrumentality of Federal Government; review of annual budget

(1) Except as otherwise specifically provided in this subchapter, officers and employees of the Corporation shall not be considered officers or employees, and the Corporation shall not be considered a department, agency, or instrumentality, of the Federal Government.

(2) Nothing in this subchapter shall be construed as limiting the authority of the Office of Management and Budget to review and submit comments upon the Corporation's annual budget request at the time it is transmitted to the Congress.

(f) Exceptions

Officers and employees of the Corporation shall be considered officers and employees of the Federal Government for purposes of the following provisions of title 5: subchapter I of chapter 81 (relating to compensation for work injuries); chapter 83 (relating to civil service retirement); chapter 87 (relating to life insurance); and chapter 89 (relating to health insurance). The Corporation shall make contributions at the same rates applicable to agencies of the Federal Government under the provisions referred to in this subsection.

(g) Freedom of information

The Corporation and its officers and employees shall be subject to the provisions of section 552 of title 5 (relating to freedom of information).

(Pub. L. 88-452, title X, §1005, as added Pub. L. 93-355, §2, July 25, 1974, 88 Stat. 380.)

REIMBURSEMENT OF OFFICERS OR EMPLOYEES

Pub. L. 97-377, title I, §101(d), Dec. 21, 1982, 96 Stat. 1876, provided: "That no officer or employee of the Legal Services Corporation or a recipient program shall be reimbursed for membership in a private club, or be paid severance pay in excess of what would be paid a Federal employee for comparable service."

§2996e. Powers, duties, and limitations

§ 1006

(a) Powers of nonprofit corporation; additional powers

To the extent consistent with the provisions of this subchapter, the Corporation shall exercise the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (except for section 1005(o) of title 29 of the District of Columbia Code). In addition, the Corporation is authorized—

(1)(A) to provide financial assistance to qualified programs furnishing legal assistance to eligible clients, and to make grants to and contracts with—

- (i) individuals, partnerships, firms, corporations, and nonprofit organizations, and
- (ii) State and local governments (only upon application by an appropriate State or local agency or institution and upon a special determination by the Board that the arrangements to be made by such agency or institution will provide services which will not be provided adequately through non-governmental arrangements),

for the purpose of providing legal assistance to eligible clients under this subchapter, and (B) to

make such other grants and contracts as are necessary to carry out the purposes and provisions of this subchapter;

(2) to accept in the name of the Corporation, and employ or dispose of in furtherance of the purposes of this subchapter, any money or property, real, personal, or mixed, tangible or intangible, received by gift, devise, bequest, or otherwise; and

(3) to undertake directly, or by grant or contract, the following activities relating to the delivery of legal assistance—

(A) research, except that broad general legal or policy research unrelated to representation of eligible clients may not be undertaken by grant or contract,

(B) training and technical assistance, and

(C) to serve as a clearinghouse for information.

(b) Disciplinary powers; representational questions; interference with professional responsibilities of attorneys; bar membership; restrictions; languages other than English

(1)(A) The Corporation shall have authority to insure the compliance of recipients and their employees with the provisions of this subchapter and the rules, regulations, and guidelines promulgated pursuant to this subchapter, and to terminate, after a hearing in accordance with section 2996j of this title, financial support to a recipient which fails to comply.

(B) No question of whether representation is authorized under this subchapter, or the rules, regulations or guidelines promulgated pursuant to this subchapter, shall be considered in, or affect the final disposition of, any proceeding in which a person is represented by a recipient or an employee of a recipient. A litigant in such a proceeding may refer any such question to the Corporation which shall review and dispose of the question promptly, and take appropriate action. This subparagraph shall not preclude judicial review available under applicable law.

(2) If a recipient finds that any of its employees has violated or caused the recipient to violate the provisions of this subchapter or the rules, regulations, and guidelines promulgated pursuant to this subchapter, the recipient shall take appropriate remedial or disciplinary action in accordance with the types of procedures prescribed in the provisions of section 2996j of this title.

(3) The Corporation shall not, under any provision of this subchapter, interfere with any attorney in carrying out his professional responsibilities to his client as established in the Canons of Ethics and the Code of Professional Responsibility of the American Bar Association (referred to collectively in this subchapter as “professional responsibilities”) or abrogate as to attorneys in programs assisted under this subchapter the authority of a State or other jurisdiction to enforce the standards of professional responsibility generally applicable to attorneys in such jurisdiction. The Corporation shall ensure that activities under this subchapter are carried out in a manner consistent with attorneys’ professional responsibilities.

(4) No attorney shall receive any compensation, either directly or indirectly, for the provision of legal assistance under this subchapter unless such attorney is admitted or otherwise authorized by law, rule, or regulation to practice law or provide such assistance in the jurisdiction where such assistance is initiated.

(5) The Corporation shall insure that (A) no employee of the Corporation or of any recipient (except as permitted by law in connection with such employee's own employment situation), while carrying out legal assistance activities under this subchapter, engage in, or encourage others to engage in, any public demonstration or picketing, boycott, or strike; and (B) no such employee shall, at any time, engage in, or encourage others to engage in, any of the following activities: (i) any rioting or civil disturbance, (ii) any activity which is in violation of an outstanding injunction of any court of competent jurisdiction, (iii) any other illegal activity, or (iv) any intentional identification of the Corporation or any recipient with any political activity prohibited by section 2996f(a)(6) of this title. The Board, within ninety days after its first meeting, shall issue rules and regulations to provide for the enforcement of this paragraph and section 2996f(a)(5) of this title, which rules shall include, among available remedies, provisions, in accordance with the types of procedures prescribed in the provisions of section 2996j of this title, for suspension of legal assistance supported under this subchapter, suspension of an employee of the Corporation or of any employee of any recipient by such recipient, and, after consideration of other remedial measures and after a hearing in accordance

with section 2996j of this title, the termination of such assistance or employment, as deemed appropriate for the violation in question.

(6) In areas where significant numbers of eligible clients speak a language other than English as their principal language, the Corporation shall, to the extent feasible, provide that their principal language is used in the provision of legal assistance to such clients under this subchapter.

(c) Participation in litigation; lobbying activities

The Corporation shall not itself—

(1) participate in litigation unless the Corporation or a recipient of the Corporation is a party, or a recipient is representing an eligible client in litigation in which the interpretation of this subchapter or a regulation promulgated under this subchapter is an issue, and shall not participate on behalf of any client other than itself; or

(2) undertake to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative bodies, except that personnel of the Corporation may testify or make other appropriate communication (A) when formally requested to do so by a legislative body, a committee, or a member thereof, or (B) in connection with legislation or appropriations directly affecting the activities of the Corporation.

(d) Miscellaneous prohibitions

(1) The Corporation shall have no power to issue any shares of stock, or to declare or pay any dividends.

(2) No part of the income or assets of the Corporation shall inure to the benefit of any director, officer, or employee, except as reasonable compensation for services or reimbursement for expenses.

(3) Neither the Corporation nor any recipient shall contribute or make available corporate funds or program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office.

(4) Neither the Corporation nor any recipient shall contribute or make available corporate funds or program personnel or equipment for use in advocating or opposing any ballot measures, initiatives, or referendums. However, an attorney may provide legal advice and representation as an attorney to any eligible client with respect to such client's legal rights.

(5) No class action suit, class action appeal, or amicus curiae class action may be undertaken, directly or through others, by a staff attorney, except with the express approval of a project director of a recipient in accordance with policies established by the governing body of such recipient.

(6) Attorneys employed by a recipient shall be appointed to provide legal assistance without reasonable compensation only when such appointment is made pursuant to a statute, rule, or practice applied generally to attorneys practicing in the court where the appointment is made.

(e) Political activities of Corporation employees and staff attorneys

(1) Employees of the Corporation or of recipients shall not at any time intentionally identify the Corporation or the recipient with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office.

(2) Employees of the Corporation and staff attorneys shall be deemed to be State or local employees for purposes of chapter 15 of title 5, except that no staff attorney may be a candidate in a partisan political election.

(f) Harassment; malicious abuse of legal process

If an action is commenced by the Corporation or by a recipient and a final order is entered in favor of the defendant and against the Corporation or a recipient's plaintiff, the court shall, upon motion by the defendant and upon a finding by the court that the action was commenced or pursued for the sole purpose of harassment of the defendant or that the Corporation or a recipient's plaintiff maliciously abused legal process, enter an order (which shall be appealable before being made final) awarding reasonable costs and legal fees incurred by the defendant in defense of the action, except when in contravention of a State law, a rule of court, or a statute of general applicability. Any such costs and fees shall be directly paid by the Corporation.

(Pub. L. 88-452, title X, §1006, as added Pub. L. 93-355, §2, July 25, 1974, 88 Stat. 381; amended

Pub. L. 95-222, §§5(a), (b), 6, 7(a), 8, Dec. 28, 1977, 91 Stat. 1619, 1620.)

REFERENCES IN TEXT

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (a), is Pub. L. 87-569, Aug. 6, 1962, 76 Stat. 265, as amended, which is not classified to the Code.

AMENDMENTS

1977—Subsec. (a)(3). Pub. L. 95-222, §5(a), (b), substituted “, or” for “and not” and in par. (A) inserted exception for broad general legal or policy research.

Subsec. (b)(1). Pub. L. 95-222, §6(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(1). Pub. L. 95-222, §6(b), inserted provisions setting forth situations when the Corporation may participate in litigation.

Subsec. (d)(6). Pub. L. 95-222, §6(c), added par. (6).

Subsec. (e)(2). Pub. L. 95-222, §7(a), inserted provisions relating to staff attorneys.

Subsec. (f). Pub. L. 95-222, §8, substituted “the court shall” for “the court may”.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-222 effective Dec. 28, 1977, see section 17(b) of Pub. L. 95-222, set out as a note under section 2996 of this title.

§2996f. Grants and contracts

§ 1007

(a) Requisites

With respect to grants or contracts in connection with the provision of legal assistance to eligible clients under this subchapter, the Corporation shall—

(1) insure the maintenance of the highest quality of service and professional standards, the preservation of attorney-client relationships, and the protection of the integrity of the adversary process from any impairment in furnishing legal assistance to eligible clients;

(2)(A) establish, in consultation with the Director of the Office of Management and Budget and with the Governors of the several States, maximum income levels (taking into account family size, urban and rural differences, and substantial cost-of-living variations) for individuals eligible for legal assistance under this subchapter;

(B) establish guidelines to insure that eligibility of clients will be determined by recipients on the basis of factors which include—

(i) the liquid assets and income level of the client,

(ii) the fixed debts, medical expenses, and other factors which affect the client's ability to pay,

(iii) the cost of living in the locality, and

(iv) such other factors as relate to financial inability to afford legal assistance, which may include evidence of a prior determination that such individual's lack of income results from refusal or unwillingness, without good cause, to seek or accept an employment situation; and

(C) insure that (i) recipients, consistent with goals established by the Corporation, adopt procedures for determining and implementing priorities for the provision of such assistance, taking into account the relative needs of eligible clients for such assistance (including such outreach, training, and support services as may be necessary), including particularly the needs for service on the part of significant segments of the population of eligible clients with special difficulties of access to legal services or special legal problems (including elderly and handicapped individuals); and (ii) appropriate training and support services are provided in order to provide such assistance to such significant segments of the population of eligible clients;

(3) insure that grants and contracts are made so as to provide the most economical and effective delivery of legal assistance to persons in both urban and rural areas;

(4) insure that attorneys employed full time in legal assistance activities supported in major part by the Corporation refrain from (A) any compensated outside practice of law, and (B) any

uncompensated outside practice of law except as authorized in guidelines promulgated by the Corporation;

(5) insure that no funds made available to recipients by the Corporation shall be used at any time, directly or indirectly, to influence the issuance, amendment, or revocation of any executive order or similar promulgation by any Federal, State, or local agency, or to undertake to influence the passage or defeat of any legislation by the Congress of the United States, or by any State or local legislative bodies, or State proposals by initiative petition, except where—

(A) representation by an employee of a recipient for any eligible client is necessary to the provision of legal advice and representation with respect to such client's legal rights and responsibilities (which shall not be construed to permit an attorney or a recipient employee to solicit a client, in violation of professional responsibilities, for the purpose of making such representation possible); or

(B) a governmental agency, legislative body, a committee, or a member thereof—

(i) requests personnel of the recipient to testify, draft, or review measures or to make representations to such agency, body, committee, or member, or

(ii) is considering a measure directly affecting the activities under this subchapter of the recipient or the Corporation.

(6) insure that all attorneys engaged in legal assistance activities supported in whole or in part by the Corporation refrain, while so engaged, from—

(A) any political activity, or

(B) any activity to provide voters or prospective voters with transportation to the polls or provide similar assistance in connection with an election (other than legal advice and representation), or

(C) any voter registration activity (other than legal advice and representation);

(7) require recipients to establish guidelines, consistent with regulations promulgated by the Corporation, for a system for review of appeals to insure the efficient utilization of resources and to avoid frivolous appeals (except that such guidelines or regulations shall in no way interfere with attorneys' professional responsibilities);

(8) insure that recipients solicit the recommendations of the organized bar in the community being served before filling staff attorney positions in any project funded pursuant to this subchapter and give preference in filling such positions to qualified persons who reside in the community to be served;

(9) insure that every grantee, contractor, or person or entity receiving financial assistance under this subchapter or predecessor authority under this chapter which files with the Corporation a timely application for refunding is provided interim funding necessary to maintain its current level of activities until (A) the application for refunding has been approved and funds pursuant thereto received, or (B) the application for refunding has been finally denied in accordance with section 2996j of this title;

(10) insure that all attorneys, while engaged in legal assistance activities supported in whole or in part by the Corporation, refrain from the persistent incitement of litigation and any other activity prohibited by the Canons of Ethics and Code of Professional Responsibility of the American Bar Association, and insure that such attorneys refrain from personal representation for a private fee in any cases in which they were involved while engaged in such legal assistance activities; and

(11) ensure that an indigent individual whose primary residence is subject to civil forfeiture is represented by an attorney for the Corporation in such civil action.

(b) Limitations on uses

No funds made available by the Corporation under this subchapter, either by grant or contract, may be used—

(1) to provide legal assistance (except in accordance with guidelines promulgated by the Corporation) with respect to any fee-generating case (which guidelines shall not preclude the

provision of legal assistance in cases in which a client seeks only statutory benefits and appropriate private representation is not available);

(2) to provide legal assistance with respect to any criminal proceeding, except to provide assistance to a person charged with an offense in an Indian tribal court;

(3) to provide legal assistance in civil actions to persons who have been convicted of a criminal charge where the civil action arises out of alleged acts or failures to act and the action is brought against an officer of the court or against a law enforcement official for the purpose of challenging the validity of the criminal conviction;

(4) for any of the political activities prohibited in paragraph (6) of subsection (a) of this section;

(5) to make grants to or enter into contracts with any private law firm which expends 50 percent or more of its resources and time litigating issues in the broad interests of a majority of the public;

(6) to support or conduct training programs for the purpose of advocating particular public policies or encouraging political activities, labor or antilabor activities, boycotts, picketing, strikes, and demonstrations, as distinguished from the dissemination of information about such policies or activities, except that this provision shall not be construed to prohibit the training of attorneys or paralegal personnel necessary to prepare them to provide adequate legal assistance to eligible clients;

(7) to initiate the formation, or act as an organizer, of any association, federation, or similar entity, except that this paragraph shall not be construed to prohibit the provision of legal assistance to eligible clients;

(8) to provide legal assistance with respect to any proceeding or litigation which seeks to procure a nontherapeutic abortion or to compel any individual or institution to perform an abortion, or assist in the performance of an abortion, or provide facilities for the performance of an abortion, contrary to the religious beliefs or moral convictions of such individual or institution;

(9) to provide legal assistance with respect to any proceeding or litigation relating to the desegregation of any elementary or secondary school or school system, except that nothing in this paragraph shall prohibit the provision of legal advice to an eligible client with respect to such client's legal rights and responsibilities;

(10) to provide legal assistance with respect to any proceeding or litigation arising out of a violation of the Military Selective Service Act [50 U.S.C. App. 451 et seq.] or of desertion from the Armed Forces of the United States, except that legal assistance may be provided to an eligible client in a civil action in which such client alleges that he was improperly classified prior to July 1, 1973, under the Military Selective Service Act or prior corresponding law; or

(11) to provide legal assistance in a manner inconsistent with the Assisted Suicide Funding Restriction Act of 1997 [42 U.S.C. 14401 et seq.].

(c) Recipient organizations

In making grants or entering into contracts for legal assistance, the Corporation shall insure that any recipient organized solely for the purpose of providing legal assistance to eligible clients is governed by a body at least 60 percent of which consists of attorneys who are members of the bar of a State in which the legal assistance is to be provided (except that the Corporation (1) shall, upon application, grant waivers to permit a legal services program, supported under section 2809(a)(3) ^L of this title, which on July 25, 1974, has a majority of persons who are not attorneys on its policy-making board to continue such a non-attorney majority under the provisions of this subchapter, and (2) may grant, pursuant to regulations issued by the Corporation, such a waiver for recipients which, because of the nature of the population they serve, are unable to comply with such requirement) and at least one-third of which consists of persons who are, when selected, eligible clients who may also be representatives of associations or organizations of eligible clients. Any such attorney, while serving on such board, shall not receive compensation from a recipient.

(d) Program evaluation

The Corporation shall monitor and evaluate and provide for independent evaluations of programs supported in whole or in part under this subchapter to insure that the provisions of this subchapter and the bylaws of the Corporation and applicable rules, regulations, and guidelines promulgated

pursuant to this subchapter are carried out.

(e) Corporation president authorized to make grants and enter into contracts

The president of the Corporation is authorized to make grants and enter into contracts under this subchapter.

(f) Public notification

At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly, and shall notify the Governor, the State bar association of any State, and the principal local bar associations (if there be any) of any community, where legal assistance will thereby be initiated, of such grant, contract, or project. Notification shall include a reasonable description of the grant application or proposed contract or project and request comments and recommendations.

(g) Staff-attorney program study

The Corporation shall provide for comprehensive, independent study of the existing staff-attorney program under this chapter and, through the use of appropriate demonstration projects, of alternative and supplemental methods of delivery of legal services to eligible clients, including judicare, vouchers, prepaid legal insurance, and contracts with law firms; and, based upon the results of such study, shall make recommendations to the President and the Congress, not later than two years after the first meeting of the Board, concerning improvements, changes, or alternative methods for the economical and effective delivery of such services.

(h) Study and report to Congress on special needs of eligible clients

The Corporation shall conduct a study on whether eligible clients who are—

- (1) veterans,
- (2) native Americans,
- (3) migrants or seasonal farm workers,
- (4) persons with limited English-speaking abilities, and
- (5) persons in sparsely populated areas where a harsh climate and an inadequate transportation system are significant impediments to receipt of legal services ²

have special difficulties of access to legal services or special legal problems which are not being met. The Corporation shall report to Congress not later than January 1, 1979, on the extent and nature of any such problems and difficulties and shall include in the report and implement appropriate recommendations.

(Pub. L. 88–452, title X, §1007, as added Pub. L. 93–355, §2, July 25, 1974, 88 Stat. 383; amended Pub. L. 95–222, §§7(b), 9(a), (b)(1), (c), 10–13, Dec. 28, 1977, 91 Stat. 1620–1623; Pub. L. 105–12, §9(o), Apr. 30, 1997, 111 Stat. 28; Pub. L. 106–185, §2(d), Apr. 25, 2000, 114 Stat. 211; Pub. L. 111–211, title II, §234(d), July 29, 2010, 124 Stat. 2282.)

REFERENCES IN TEXT

The Military Selective Service Act, referred to in subsec. (b)(10), is act June 24, 1948, ch. 625, 62 Stat. 604, which is classified principally to section 451 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see References in Text note set out under section 451 of Title 50, Appendix and Tables.

The Assisted Suicide Funding Restriction Act of 1997, referred to in subsec. (b)(11), is Pub. L. 105–12, Apr. 30, 1997, 111 Stat. 23, which is classified principally to chapter 138 (§14401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 14401 of this title and Tables.

Section 2809 of this title, referred to in subsec. (c), was repealed by Pub. L. 97–35, title VI, §683(a), Aug. 13, 1981, 95 Stat. 519.

AMENDMENTS

2010—Subsec. (b)(2). Pub. L. 111–211 added par. (2) and struck out former par. (2) which read as follows: “to provide legal assistance with respect to any criminal proceeding, except to provide assistance to a person

charged with a misdemeanor or lesser offense or its equivalent in an Indian tribal court;”.

2000—Subsec. (a)(11). Pub. L. 106–185 added par. (11).

1997—Subsec. (b)(11). Pub. L. 105–12 added par. (11).

1977—Subsec. (a)(2)(B)(iv). Pub. L. 95–222, §9(a), substituted provisions setting forth factors which may be included in determining financial ability, for provisions setting forth factors required to be included in determining financial ability.

Subsec. (a)(2)(C). Pub. L. 95–222, §9(b)(1), expanded existing provisions by requiring the Corporation to establish procedures for determining and implementing priorities and criteria for such priorities, and inserted provisions relating to appropriate training and support services.

Subsec. (a)(5). Pub. L. 95–222, §9(c), in introductory text inserted prohibition relating to influencing the passage or defeat of State proposals by initiative referendum, in subpar. (A) substituted provisions relating to representation by an employee of a recipient for any eligible client, for provisions relating to representation by an attorney as attorney for any eligible client, and in subpar. (B) designated existing provision as cl. (i), inserted exception for testifying, drafting, or reviewing measures, and added cl. (ii).

Subsec. (a)(6). Pub. L. 95–222, §7(b), struck out provisions relating to prohibitions against political activities by staff attorneys of the types described under cls. (B) and (C) of this par. and section 1502(a) of title 5.

Subsec. (b). Pub. L. 95–222, §10, redesignated and reorganized provisions of former par. (1) as pars. (1) to (3) and, as so redesignated, enumerated criteria for assistance under such pars., redesignated former pars. (2) and (3) as (4) and (5), respectively, struck out former par. (4) relating to assistance to any unemancipated person of less than eighteen years of age, redesignated former par. (5) as (6), redesignated former par. (6) as (7) and, as so redesignated, inserted provision relating to initiation and provision relating to acting as an organizer, and struck out provisions relating to organization, assistance or encouragement to organize, or to plan for the creation, formation or structuring of entities, and provision respecting guidelines for assistance to clients, redesignated former par. (7) as (9) and, as so redesignated, inserted exception for legal advice to clients, reenacted par. (8) without change, and redesignated former par. (9) as (10) and, as so redesignated, inserted exception for actions concerning classifications prior to July 1, 1973.

Subsec. (c). Pub. L. 95–222, §11, substituted provisions requiring recipients to include at least one-third membership of eligible clients or eligible clients who may also be representatives of associations or organizations of eligible clients, for provisions requiring recipients to include at least one individual eligible to receive legal assistance.

Subsec. (f). Pub. L. 95–222, §12, inserted provision requiring notice to principal local bar association, if any, of community.

Subsec. (h). Pub. L. 95–222, §13, added subsec. (h).

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–185 applicable to any forfeiture proceeding commenced on and after the date that is 120 days after Apr. 25, 2000, see section 21 of Pub. L. 106–185, set out as a note under section 1324 of Title 8, Aliens and Nationality.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–12 effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, and also subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as an Effective Date note under section 14401 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by sections 7(b), 9(a), (b)(1), (c), 10, 12, and 13 of Pub. L. 95–222 effective Dec. 28, 1977, see section 17(b) of Pub. L. 95–222, set out as a note under section 2996 of this title.

Pub. L. 95–222, §17(a)(1), Dec. 28, 1977, 91 Stat. 1624, provided that: “The amendment made by section 11 of this Act [amending this section] shall be effective six months after the first day of the first calendar month following the date of enactment of this Act [Dec. 28, 1977].”

IMPLEMENTATION OF SYSTEM FOR COMPETITIVE AWARD OF GRANTS AND CONTRACTS

Pub. L. 101–515, title VI, §607 (part), Nov. 5, 1991, 104 Stat. 2153, provided: “That after October 1, 1991, (but not before) the Board of Directors of the Legal Services Corporation shall develop and implement a system for the competitive award of all grants and contracts, including support centers, except that nothing

herein shall prohibit the Corporation Board, members, or staff from engaging in in-house reviews of or holding hearings on proposals for a system for the competitive award of all grants and contracts, including support centers, and that nothing herein shall apply to any competitive awards program currently in existence”.

Pub. L. 101–162, title VI, §608 (part), Nov. 21, 1989, 103 Stat. 1036, provided: “That none of the funds appropriated under this Act or under any prior Acts for the Legal Services Corporation shall be used to consider, develop, or implement any system for the competitive award of grants or contracts until such action is authorized pursuant to a majority vote of a Board of Directors of the Legal Services Corporation composed of eleven individuals nominated by the President after January 20, 1989, and subsequently confirmed by the United States Senate, except that nothing herein shall prohibit the Corporation Board, members, or staff from engaging in in-house reviews of or holding hearings on proposals for a system for the competitive award of all grants and contracts, including support centers, and that nothing herein shall apply to any competitive awards program currently in existence; subsequent to confirmation such new Board of Directors shall develop and implement a proposed system for the competitive award of all grants and contracts”.

Pub. L. 100–459, title VI, §605, Oct. 1, 1988, 102 Stat. 2227, provided: “That a Board of Directors of the Legal Services Corporation, composed of individuals nominated by the President after January 20, 1989 and subsequently confirmed by the United States Senate, shall develop and implement a system for the competitive award of all grants and contracts, including support centers, to take effect after September 30, 1989.”

[¹ See References in Text note below.]

[² So in original. Probably should be followed by a comma.]

§2996g. Records and reports

§ 1008

(a) Authority to require reports

The Corporation is authorized to require such reports as it deems necessary from any grantee, contractor, or person or entity receiving financial assistance under this subchapter regarding activities carried out pursuant to this subchapter.

(b) Authority to require recordkeeping; access to records

The Corporation is authorized to prescribe the keeping of records with respect to funds provided by grant or contract and shall have access to such records at all reasonable times for the purpose of insuring compliance with the grant or contract or the terms and conditions upon which financial assistance was provided.

(c) Annual report to President and Congress; contents

*[Suspended by section 3003 of the Federal Reports Elimination and Sunset Act,
Pub. L. 104-66, 109 Stat. 707, 734 (1995)]*

(d) Copies and retention of reports

Copies of all reports pertinent to the evaluation, inspection, or monitoring of any grantee, contractor, or person or entity receiving financial assistance under this subchapter shall be submitted on a timely basis to such grantee, contractor, or person or entity, and shall be maintained in the principal office of the Corporation for a period of at least five years subsequent to such evaluation, inspection, or monitoring. Such reports shall be available for public inspection during regular business hours, and copies shall be furnished, upon request, to interested parties upon payment of such reasonable fees as the Corporation may establish.

(e) Publication in Federal Register of rules, regulations, guidelines and instructions

The Corporation shall afford notice and reasonable opportunity for comment to interested parties prior to issuing rules, regulations, and guidelines, and it shall publish in the Federal Register at least

30 days prior to their effective date all its rules, regulations, guidelines, and instructions.

(Pub. L. 88-452, title X, §1008, as added Pub. L. 93-355, §2, July 25, 1974, 88 Stat. 386; amended Pub. L. 95-222, §9(b)(2), Dec. 28, 1977, 91 Stat. 1621.)

AMENDMENTS

1977—Subsec. (c). Pub. L. 95-222 inserted provisions setting forth required contents of annual report.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-222 effective Dec. 28, 1977, see section 17(b) of Pub. L. 95-222, set out as a note under section 2996 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c) of this section relating to filing annual report with Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and item 2 on page 202 of House Document No. 103-7.

§2996h. Audits

§ 1009

(a) Annual audit; availability of records; filing and inspection of report

(1) The accounts of the Corporation shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants who are certified by a regulatory authority of the jurisdiction in which the audit is undertaken.

(2) The audits shall be conducted at the place or places where the accounts of the Corporation are normally kept. All books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Corporation and necessary to facilitate the audits shall be made available to the person or persons conducting the audits; and full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to any such person.

(3) The report of the annual audit shall be filed with the Government Accountability Office and shall be available for public inspection during business hours at the principal office of the Corporation.

(b) Audit by Government Accountability Office

(1) In addition to the annual audit, the financial transactions of the Corporation for any fiscal year during which Federal funds are available to finance any portion of its operations may be audited by the Government Accountability Office in accordance with such rules and regulations as may be prescribed by the Comptroller General of the United States.

(2) Any such audit shall be conducted at the place or places where accounts of the Corporation are normally kept. The representatives of the Government Accountability Office shall have access to all books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Corporation and necessary to facilitate the audit; and full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to such representatives. All such books, accounts, financial records, reports, files, and other papers or property of the Corporation shall remain in the possession and custody of the Corporation throughout the period beginning on the date such possession or custody commences and ending three years after such date, but the Government Accountability Office may require the retention of such books, accounts, financial records, reports, files, papers, or property for a longer period under section 3523(c) of title 31.

(3) A report of such audit shall be made by the Comptroller General to the Congress and to the President, together with such recommendations with respect thereto as he shall deem advisable.

(c) Annual financial audit of recipient persons or bodies

(1) The Corporation shall conduct, or require each grantee, contractor, or person or entity receiving financial assistance under this subchapter to provide for, an annual financial audit. The

report of each such audit shall be maintained for a period of at least five years at the principal office of the Corporation.

(2) Upon request, the Corporation shall submit to the Comptroller General of the United States copies of such reports, and the Comptroller General may, in addition, inspect the books, accounts, financial records, files, and other papers or property belonging to or in use by such grantee, contractor, or person or entity, which relate to the disposition or use of funds received from the Corporation. Such audit reports shall be available for public inspection, during regular business hours, at the principal office of the Corporation.

(d) Attorney-client privilege

Notwithstanding the provisions of this section or section 2996g of this title, neither the Corporation nor the Comptroller General shall have access to any reports or records subject to the attorney-client privilege.

(Pub. L. 88–452, title X, §1009, as added Pub. L. 93–355, §2, July 25, 1974, 88 Stat. 387; amended Pub. L. 95–222, §14, Dec. 28, 1977, 91 Stat. 1623; Pub. L. 104–66, title II, §2111, Dec. 21, 1995, 109 Stat. 730; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.)

CODIFICATION

In subsec. (b)(2), “section 3523(c) of title 31” substituted for “section 117(b) of the Accounting and Auditing Act of 1950 (31 U.S.C. 67(b))” on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2004—Subsecs. (a)(3), (b)(1), (2). Pub. L. 108–271 substituted “Government Accountability Office” for “General Accounting Office” wherever appearing.

1995—Subsec. (c)(2). Pub. L. 104–66 substituted “Upon request, the” for “The” in first sentence.

1977—Subsec. (b)(2). Pub. L. 95–222 inserted provisions relating to duration of retention of books, etc., by Corporation.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–222 effective Dec. 28, 1977, see section 17(b) of Pub. L. 95–222, set out as a note under section 2996 of this title.

§2996i. Financing

§ 1010

(a) Authorization of appropriations

There are authorized to be appropriated for the purpose of carrying out the activities of the Corporation, \$90,000,000 for fiscal year 1975, \$100,000,000 for fiscal year 1976, and such sums as may be necessary for fiscal year 1977. There are authorized to be appropriated for the purpose of carrying out the activities of the Corporation \$205,000,000 for the fiscal year 1978, and such sums as may be necessary for each of the two succeeding fiscal years. The first appropriation may be made available to the Corporation at any time after six or more members of the Board have been appointed and qualified. Appropriations for that purpose shall be made for not more than two fiscal years, and shall be paid to the Corporation in annual installments at the beginning of each fiscal year in such amounts as may be specified in Acts of Congress making appropriations.

(b) Availability of funds

Funds appropriated pursuant to this section shall remain available until expended.

(c) Non-Federal funds

Non-Federal funds received by the Corporation, and funds received by any recipient from a source other than the Corporation, shall be accounted for and reported as receipts and disbursements separate and distinct from Federal funds; but any funds so received for the provision of legal assistance shall not be expended by recipients for any purpose prohibited by this subchapter, except that this provision shall not be construed to prevent recipients from receiving other public funds or

tribal funds (including foundation funds benefiting Indians or Indian tribes) and expending them in accordance with the purposes for which they are provided, or to prevent contracting or making other arrangements with private attorneys, private law firms, or other State or local entities of attorneys, or with legal aid societies having separate public defender programs, for the provision of legal assistance to eligible clients under this subchapter.

(d) Limitations on grant or contract authority

Not more than 10 percent of the amounts appropriated pursuant to subsection (a) of this section for any fiscal year shall be available for grants or contracts under section 2996e(a)(3) of this title in any such year.

(Pub. L. 88–452, title X, §1010, as added Pub. L. 93–355, §2, July 25, 1974, 88 Stat. 388; amended Pub. L. 95–222, §§5(c), 15, Dec. 28, 1977, 91 Stat. 1619, 1623.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–222, §15, inserted provisions authorizing appropriations for fiscal year 1978 and two succeeding fiscal years, and substituted provisions requiring appropriations to be made for not more than two fiscal years and payments in annual installments at beginning of each fiscal year in appropriated amounts, for provisions requiring appropriations to be for not more than two fiscal years, and, if for more than one year, in payments in annual installments at beginning of each fiscal year in appropriated amounts.

Subsec. (d). Pub. L. 95–222, §5(c), added subsec. (d).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 5(c) of Pub. L. 95–222 effective Dec. 28, 1977, see section 17(b) of Pub. L. 95–222, set out as a note under section 2996 of this title.

Pub. L. 95–222, §17(a)(2), Dec. 28, 1977, 91 Stat. 1624, provided that: “The amendment made by section 15 of this Act [amending this section] shall be effective with respect to fiscal years beginning after September 30, 1977.”

§2996j. Special limitations

§ 1011

The Corporation shall prescribe procedures to insure that—

(1) financial assistance under this subchapter shall not be suspended unless the grantee, contractor, or person or entity receiving financial assistance under this subchapter has been given reasonable notice and opportunity to show cause why such action should not be taken; and

(2) financial assistance under this subchapter shall not be terminated, an application for refunding shall not be denied, and a suspension of financial assistance shall not be continued for longer than thirty days, unless the grantee, contractor, or person or entity receiving financial assistance under this subchapter has been afforded reasonable notice and opportunity for a timely, full, and fair hearing, and, when requested, such hearing shall be conducted by an independent hearing examiner. Such hearing shall be held prior to any final decision by the Corporation to terminate financial assistance or suspend or deny funding. Hearing examiners shall be appointed by the Corporation in accordance with procedures established in regulations promulgated by the Corporation.

(Pub. L. 88–452, title X, §1011, as added Pub. L. 93–355, §2, July 25, 1974, 88 Stat. 388; amended Pub. L. 95–222, §16, Dec. 28, 1977, 91 Stat. 1624.)

AMENDMENTS

1977—Par. (2). Pub. L. 95–222 inserted provisions relating to function and appointment of an independent hearing examiner, and the time for any hearings.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–222 effective Dec. 28, 1977, see section 17(b) of Pub. L. 95–222, set out as a note under section 2996 of this title.

§2996k. Coordination

The President may direct that appropriate support functions of the Federal Government may be made available to the Corporation in carrying out its activities under this subchapter, to the extent not inconsistent with other applicable law.

(Pub. L. 88–452, title X, §1012, as added Pub. L. 93–355, §2, July 25, 1974, 88 Stat. 388.)

EX. ORD. NO. 11874. DELEGATION OF FUNCTIONS TO DIRECTOR OF OFFICE OF MANAGEMENT AND BUDGET

Ex. Ord. No. 11874 eff. July 25, 1975, 40 F.R. 31737, provided:

By virtue of the authority vested in me by Section 1012 of the Economic Opportunity Act of 1964, as amended by the Legal Services Corporation Act of 1974 (88 Stat. 388, 42 U.S.C. 2996k), and Section 301 of Title 3 of the United States Code, and as President of the United States, the Director of the Office of Management and Budget is hereby designated and empowered to exercise the authority vested in the President by said Section 1012 of the Economic Opportunity Act of 1964, as amended [this section], to direct that appropriate support functions of the Federal Government may be made available to the Legal Services Corporation in carrying out its activities, to the extent not inconsistent with other applicable law. Such functions shall be provided under terms and conditions as may be agreed upon by the Legal Services Corporation and the Federal agencies involved.

GERALD R. FORD.

§2996l. Reservation of right to repeal, alter, or amend

§ 1013

The right to repeal, alter, or amend this subchapter at any time is expressly reserved.

(Pub. L. 88–452, title X, §1013, as added Pub. L. 93–355, §2, July 25, 1974, 88 Stat. 388.)

Assisted Suicide Funding Restriction Act of 1997
Public Law 105-12, 111 Stat. 25
Enacted April 30, 1997
(Current as of March 30, 2015)

See 45 CFR Part 1643 for implementing LSC regulations.

Codified at 42 USC § 14401 *et seq.*
LSC Provisions Reprinted Herein

§14404. Restriction on use of Federal funds by advocacy programs

(a) In general

Subject to section 14402(b) of this title (relating to construction and treatment of certain services), no funds appropriated by Congress may be used to assist in, to support, or to fund any activity or service which has a purpose of assisting in, or to bring suit or provide any other form of legal assistance for the purpose of-

- (1) securing or funding any item, benefit, program, or service furnished for the purpose of causing, or the purpose of assisting in causing, the suicide, euthanasia, or mercy killing of any individual;
- (2) compelling any person, institution, [or] governmental entity to provide or fund any item, benefit, program, or service for such purpose; or
- (3) asserting or advocating a legal right to cause, or to assist in causing, the suicide, euthanasia, or mercy killing of any individual.

(b) List of programs to which restrictions apply

(1) In general

Subsection (a) of this section applies to funds appropriated under or to carry out the following:

(A) Protection and advocacy systems under the Developmental Disabilities Assistance and Bill of Rights Act of 2000

Subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15041 *et seq.*].

(B) Protection and advocacy systems under the Protection and Advocacy for Mentally Ill Individuals Act

The Protection and Advocacy for Mentally Ill Individuals Act of 1986 [42 U.S.C. 10801 *et seq.*].

(C) Protection and advocacy systems under the Rehabilitation Act of 1973

Section 509 of the Rehabilitation Act of 1973 (29 U.S.C. 794e).

(D) Ombudsman programs under the Older Americans Act of 1965

Ombudsman programs under the Older Americans Act of 1965 [42 U.S.C. 3001 *et seq.*].

(E) Legal assistance

Legal assistance programs under the Legal Services Corporation Act [42 U.S.C. 2996 *et seq.*].

(2) Nonexclusive list

Nothing in this subsection shall be construed as limiting the application of subsection (a) of this section to the programs specified in paragraph (1).

The Civil Asset Forfeiture Reform Act of 2000, Pub. L. 106–185, amended the LSC Act to add § 1007(a)(11) at 42 U.S.C. § 2996f(a)(11) and amended the federal civil forfeiture law.
(Current as of March 30, 2015)

**Title 18, United States Code
Chapter 46, Forfeiture**

Section 983—General rules for civil forfeiture proceedings
See 18 U.S.C. §981 et. seq. for the full provisions of this law.

§983

(b) Representation. -

(1)

(A) If a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the person is represented by counsel appointed under section 3006A of this title in connection with a related criminal case, the court may authorize counsel to represent that person with respect to the claim.

(B) In determining whether to authorize counsel to represent a person under subparagraph (A), the court shall take into account such factors as -

- (i)** the person's standing to contest the forfeiture; and
- (ii)** whether the claim appears to be made in good faith.

(2)

(A) If a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the property subject to forfeiture is real property that is being used by the person as a primary residence, the court, at the request of the person, shall insure that the person is represented by an attorney for the Legal Services Corporation with respect to the claim.

(B)

(i) At appropriate times during a representation under subparagraph (A), the Legal Services Corporation shall submit a statement of reasonable attorney fees and costs to the court.

(ii) The court shall enter a judgment in favor of the Legal Services Corporation for reasonable attorney fees and costs submitted pursuant to clause (i) and treat such judgment as payable under section 2465 of title 28, United States Code, regardless of the outcome of the case.

(3) The court shall set the compensation for representation under this subsection, which shall be equivalent to that provided for court-appointed representation under section 3006A of this title.

The LSC provisions of the *Victims of Trafficking Protection Act* appear at Pub. L. 106–386, §§ 107(b) and (e), 114 Stat. 1464, 1475, 1477 (2000) as amended by Pub. L. 108–193, §§ 4, 117 Stat. 2875, 2877 (2003), codified in Titles 22 and 8 of the U.S. Code, reprinted below.

(Current as of March 30, 2015)

See 45 C.F.R. Part 1626 for implementation by LSC

TITLE 22. FOREIGN RELATIONS AND INTERCOURSE

CHAPTER 78. TRAFFICKING VICTIMS PROTECTION

§7102. Definitions

In this chapter:

(1) Abuse or threatened abuse of law or legal process

The term “abuse or threatened abuse of the legal process” means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

(2) Appropriate congressional committees

The term “appropriate congressional committees” means the Committee on Foreign Relations and the Committee on the Judiciary of the Senate and the Committee on Foreign Affairs and the Committee on the Judiciary of the House of Representatives.

(3) Coercion

The term “coercion” means-

- (A) threats of serious harm to or physical restraint against any person;
- (B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (C) the abuse or threatened abuse of the legal process.

(4) Commercial sex act

The term “commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

(5) Debt bondage

The term “debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

(6) Involuntary servitude

The term “involuntary servitude” includes a condition of servitude induced by means of-

(A) any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or

(B) the abuse or threatened abuse of the legal process.

(7) Minimum standards for the elimination of trafficking

The term “minimum standards for the elimination of trafficking” means the standards set forth in section 7106 of this title.

(8) Nonhumanitarian, nontrade-related foreign assistance

The term “nonhumanitarian, nontrade-related foreign assistance” means-

(A) any assistance under the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], other than-

(i) assistance under chapter 4 of part II of that Act [22 U.S.C. 2346 et seq.] in support of programs of nongovernmental organizations that is made available for any program, project, or activity eligible for assistance under chapter 1 of part I of that Act [22 U.S.C. 2151 et seq.];

(ii) assistance under chapter 8 of part I of that Act [22 U.S.C. 2291 et seq.];

(iii) any other narcotics-related assistance under part I of that Act [22 U.S.C. 2151 et seq.] or under chapter 4 or 5 [of] part II of that Act [22 U.S.C. 2346 et seq., 2347 et seq.], but any such assistance provided under this clause shall be subject to the prior notification procedures applicable to reprogrammings pursuant to section 634A of that Act [22 U.S.C. 2394–1];

(iv) disaster relief assistance, including any assistance under chapter 9 of part I of that Act [22 U.S.C. 2292 et seq.];

(v) antiterrorism assistance under chapter 8 of part II of that Act [22 U.S.C. 2349aa et seq.];

(vi) assistance for refugees;

(vii) humanitarian and other development assistance in support of programs of nongovernmental organizations under chapters 1 and 10 of that Act [Chapters 1 and 10 of that Act, referred to in par. (8)(A)(vii), probably means chapters 1 and 10 of part I of the Foreign Assistance Act of 1961, which are classified generally to parts I (§2151 et seq.) and X (§2293 et seq.), respectively, of subchapter I of chapter 32 of this title. For complete classification of these chapters to the Code, see Tables.];

(viii) programs under title IV of chapter 2 of part I of that Act [22 U.S.C. 2191 et seq.], relating to the Overseas Private Investment Corporation; and

(ix) other programs involving trade-related or humanitarian assistance; and

(B) sales, or financing on any terms, under the Arms Export Control Act [22 U.S.C. 2751 et seq.], other than sales or financing provided for narcotics-related purposes following notification in accordance with the prior notification procedures applicable to reprogrammings pursuant to section 634A of the Foreign Assistance Act of 1961 [22 U.S.C. 2394–1].

(9) Severe forms of trafficking in persons

The term “severe forms of trafficking in persons” means-

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(10) Sex trafficking

The term “sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

(11) State

The term “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and territories and possessions of the United States.

(12) Task Force

The term “Task Force” means the Interagency Task Force to Monitor and Combat Trafficking established under section 7103 of this title.

(13) United States

The term “United States” means the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the territories and possessions of the United States.

(14) Victim of a severe form of trafficking

The term “victim of a severe form of trafficking” means a person subject to an act or practice described in paragraph (9).

(15) Victim of trafficking

The term “victim of trafficking” means a person subjected to an act or practice described in paragraph (9) or (10).

§7105. Protection and assistance for victims of trafficking

(a) Assistance for victims in other countries

(1) In general

The Secretary of State and the Administrator of the United States Agency for International Development, in consultation with appropriate nongovernmental organizations, shall establish and carry out programs and initiatives in foreign countries to assist in the safe integration, reintegration, or resettlement, as appropriate, of victims of trafficking. Such programs and initiatives shall be designed to meet the appropriate assistance needs of such persons and their children, as identified by the Task Force, and shall be carried out in a manner which takes into account the cross-border, regional, and transnational aspects of trafficking in persons. In addition, such programs and initiatives shall, to the maximum extent practicable, include the following:

(A) Support for local in-country nongovernmental organization-operated hotlines, culturally and linguistically appropriate protective shelters, and regional and international nongovernmental organization networks and databases on trafficking, including support to

assist nongovernmental organizations in establishing service centers and systems that are mobile and extend beyond large cities.

(B) Support for nongovernmental organizations and advocates to provide legal, social, and other services and assistance to trafficked individuals, particularly those individuals in detention, and by facilitating contact between relevant foreign government agencies and such nongovernmental organizations to facilitate cooperation between the foreign governments and such organizations.

(C) Education and training for trafficked women and girls.

(D) The safe integration or reintegration of trafficked individuals into an appropriate community or family, with full respect for the wishes, dignity, and safety of the trafficked individual.

(E) Support for developing or increasing programs to assist families of victims in locating, repatriating, and treating their trafficked family members, in assisting the voluntary repatriation of these family members or their integration or resettlement into appropriate communities, and in providing them with treatment.

(F) In cooperation and coordination with relevant organizations, such as the United Nations High Commissioner for Refugees, the International Organization for Migration, and private nongovernmental organizations that contract with, or receive grants from, the United States Government to assist refugees and internally displaced persons, support for-

(i) increased protections for refugees and internally displaced persons, including outreach and education efforts to prevent such refugees and internally displaced persons from being exploited by traffickers; and

(ii) performance of best interest determinations for unaccompanied and separated children who come to the attention of the United Nations High Commissioner for Refugees, its partner organizations, or any organization that contracts with the Department of State in order to identify child trafficking victims and to assist their safe integration, reintegration, and resettlement.

(2) Additional requirement

In establishing and conducting programs and initiatives described in paragraph (1), the Secretary of State and the Administrator of the United States Agency for International Development shall take all appropriate steps to enhance cooperative efforts among foreign countries, including countries of origin of victims of trafficking, to assist in the integration, reintegration, or resettlement, as appropriate, of victims of trafficking, including stateless victims. In carrying out this paragraph, the Secretary and the Administrator shall take all appropriate steps to ensure that cooperative efforts among foreign countries are undertaken on a regional basis and shall brief Congress annually on such efforts.

(b) Victims in the United States

(1) Assistance

(A) Eligibility for benefits and services

Notwithstanding title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [8 U.S.C. 1601 et seq.], an alien who is a victim of a severe form of trafficking in persons, or an alien classified as a nonimmigrant under section 1101(a)(15)(T)(ii) of title 8, shall be eligible for benefits and services under any Federal or State program or activity funded or administered by any official or agency described in

subparagraph (B) to the same extent as an alien who is admitted to the United States as a refugee under section 1157 of title 8.

(B) Requirement to expand benefits and services

Subject to subparagraph (C) and, in the case of nonentitlement programs, to the availability of appropriations, the Secretary of Health and Human Services, the Secretary of Labor, the Board of Directors of the Legal Services Corporation, and the heads of other Federal agencies shall expand benefits and services to victims of severe forms of trafficking in persons in the United States, and aliens classified as a nonimmigrant under section 1101(a)(15)(T)(ii) of title 8, without regard to the immigration status of such victims. In the case of nonentitlement programs funded by the Secretary of Health and Human Services, such benefits and services may include services to assist potential victims of trafficking in achieving certification and to assist minor dependent children of victims of severe forms of trafficking in persons or potential victims of trafficking.

(C) Definition of victim of a severe form of trafficking in persons

For the purposes of this paragraph, the term “victim of a severe form of trafficking in persons” means only a person-

- (i) who has been subjected to an act or practice described in section 7102(8) of this title as in effect on October 28, 2000; and
- (ii)(I) who has not attained 18 years of age; or
- (II) who is the subject of a certification under subparagraph (E).

(D) Repealed.

Pub. L. 108–193, §6(a)(2), Dec. 19, 2003, 117 Stat. 2880

(E) Certification

(i) In general

Subject to clause (ii), the certification referred to in subparagraph (C) is a certification by the Secretary of Health and Human Services, after consultation with the Secretary of Homeland Security, that the person referred to in subparagraph (C)(ii)(II)-

(I) is willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons or is unable to cooperate with such a request due to physical or psychological trauma; and

(II)(aa) has made a bona fide application for a visa under section 1101(a)(15)(T) of title 8, as added by subsection (e) of this section, that has not been denied; or

(bb) is a person whose continued presence in the United States the Secretary of Homeland Security is ensuring in order to effectuate prosecution of traffickers in persons.

(ii) Period of effectiveness

A certification referred to in subparagraph (C), with respect to a person described in clause (i)(II)(bb), shall be effective only for so long as the Secretary of Homeland Security determines that the continued presence of such person is necessary to effectuate prosecution of traffickers in persons.

(iii) Investigation and prosecution defined

For the purpose of a certification under this subparagraph, the term “investigation and prosecution” includes-

- (I) identification of a person or persons who have committed severe forms of trafficking in persons;
- (II) location and apprehension of such persons;
- (III) testimony at proceedings against such persons; or
- (IV) responding to and cooperating with requests for evidence and information.

(iv) Assistance to investigations

In making the certification described in this subparagraph with respect to the assistance to investigation or prosecution described in clause (i)(I), the Secretary of Health and Human Services shall consider statements from State and local law enforcement officials that the person referred to in subparagraph (C)(ii)(II) has been willing to assist in every reasonable way with respect to the investigation and prosecution of State and local crimes such as kidnapping, rape, slavery, or other forced labor offenses, where severe forms of trafficking appear to have been involved.

(F) Eligibility for interim assistance of children

(i) Determination

Upon receiving credible information that a child described in subparagraph (C)(ii)(I) who is seeking assistance under this paragraph may have been subjected to a severe form of trafficking in persons, the Secretary of Health and Human Services shall promptly determine if the child is eligible for interim assistance under this paragraph. The Secretary shall have exclusive authority to make interim eligibility determinations under this clause. A determination of interim eligibility under this clause shall not affect the independent determination whether a child is a victim of a severe form of trafficking.

(ii) Notification

The Secretary of Health and Human Services shall notify the Attorney General and the Secretary of Homeland Security not later than 24 hours after all interim eligibility determinations have been made under clause (i).

(iii) Duration

Assistance under this paragraph may be provided to individuals determined to be eligible under clause (i) for a period of up to 90 days and may be extended for an additional 30 days.

(iv) Long-term assistance for children

(I) Eligibility determination

Before the expiration of the period for interim assistance under clause (iii), the Secretary of Health and Human Services shall determine if the child referred to in clause (i) is eligible for assistance under this paragraph.

(II) Consultation

In making a determination under subclause (I), the Secretary shall consult with the Attorney General, the Secretary of Homeland Security, and nongovernmental organizations with expertise on victims of severe form[s] of trafficking.

(III) Letter of eligibility

If the Secretary, after receiving information the Secretary believes, taken as a whole, indicates that the child is eligible for assistance under this paragraph, the Secretary

shall issue a letter of eligibility. The Secretary may not require that the child cooperate with law enforcement as a condition for receiving such letter of eligibility.

(G) Notification of children for interim assistance

Not later than 24 hours after a Federal, State, or local official discovers that a person who is under 18 years of age may be a victim of a severe form of trafficking in persons, the official shall notify the Secretary of Health and Human Services to facilitate the provision of interim assistance under subparagraph (F).

**TITLE 8. ALIENS AND NATIONALITY
CHAPTER 12. IMMIGRATION AND NATIONALITY
GENERAL PROVISIONS**

Current as of December 31, 2014

§1101. Definitions

(a) As used in this chapter-

(15) The term “immigrant” means every alien except an alien who is within one of the following classes of nonimmigrant aliens-

(T)(i) subject to section 1184(o) of this title, an alien who the Secretary of Homeland Security, or in the case of subclause (III)(aa) the Secretary of Homeland Security, in consultation with the Attorney General, determines-

(I) is or has been a victim of a severe form of trafficking in persons, as defined in section 7102 of title 22;

(II) is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking, including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking;

(III)(aa) has complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime;

(bb) in consultation with the Attorney General, as appropriate, is unable to cooperate with a request described in item (aa) due to physical or psychological trauma; or

(cc) has not attained 18 years of age; and

(IV) the alien would suffer extreme hardship involving unusual and severe harm upon removal; and

(ii) if accompanying, or following to join, the alien described in clause (i)-

(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien;

(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; or

(III) any parent or unmarried sibling under 18 years of age, or any adult or minor children of a derivative beneficiary of the alien, as of an alien described in subclause (I) or (II) who the Secretary of Homeland Security, in consultation with the law enforcement officer investigating a severe form of trafficking, determines faces a present danger of retaliation as a result of the alien's escape from the severe form of trafficking or cooperation with law enforcement.

(U)(i) subject to section 1184(p) of this title, an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that-

(I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);

(II) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) possesses information concerning criminal activity described in clause (iii);

(III) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and

(IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;

(ii) if accompanying, or following to join, the alien described in clause (i)-

(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien; or

(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; and

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in section 1351 of title 18) or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes;

LSC Provision of the *Violence Against Women
and Department of Justice Reauthorization Act of 2005*

Public Law 109-162, 119 Stat. 2960
Enacted January 5, 2006
(Current as of March 30, 2015)

Violence Against Women and Department of Justice Reauthorization Act of 2005

[Excerpt amends the FY 1998 LSC appropriation rider regarding LSC recipients providing services to immigrant victims of domestic violence, sexual assault and trafficking.]

See 45 C.F.R. Part 1626 for implementation guidance.

[119 Stat. 2979]

SEC. 104. ENSURING CRIME VICTIM ACCESS TO LEGAL SERVICES.

(a) In General- Section 502 of the Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (Public Law 105-119; 111 Stat. 2510) is amended--

(1) in subsection (a)(2)(C)—

[119 Stat. 2980]

(A) in the matter preceding clause (i), by striking “using funds derived from a source other than the Corporation to provide” and inserting “providing”;

(B) in clause (i), by striking “in the United States” and all that follows and inserting “or a victim of sexual assault or trafficking in the United States, or qualifies for immigration relief under section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)); or”; and

(C) in clause (ii), by striking “has been battered” and all that follows and inserting “, without the active participation of the alien, has been battered or subjected to extreme cruelty or a victim of sexual assault or trafficking in the United States, or qualifies for immigration relief under section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)).”; and

(2) in subsection (b)(2), by striking “described in such subsection” and inserting “, sexual assault or trafficking, or the crimes listed in section 101(a)(15)(U)(iii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)(iii))”.

(b) Savings Provision- Nothing in this Act, or the amendments made by this Act, shall be construed to restrict the legal assistance provided to victims of trafficking and certain family members authorized under section 107(b)(1) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7105(b)(1)).

LSC Provision of the Violence Against Women
and Department of Justice Reauthorization Act of 2005

[The amended text now reads as follows:

SEC. 502 (a)(2)(C) subsection (a)(11) of such section 504 shall not be construed to prohibit a recipient from providing related legal assistance to--

(i) an alien who has been battered or subjected to extreme cruelty or a victim of sexual assault or trafficking in the United States, or qualifies for immigration relief under section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U));
or

(ii) an alien whose child , without the active participation of the alien, has been battered or subject to extreme cruelty or a victim of sexual assault or trafficking in the United States, or qualifies for immigration relief under section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)).

SEC. 502(b) DEFINITIONS- For purposes of subsection (a)(2)(C):

(1) The term “battered or subjected to extreme cruelty” has the meaning given such term under regulations issued pursuant to subtitle G of the Violence Against Women Act of 1994 (Public Law 103-322; 108 Stat. 1953).

(2) The term “related legal assistance” means legal assistance directly related to the prevention of, or obtaining of relief from, the battery or cruelty , sexual assault or trafficking, or the crimes listed in section 101(a)(15)(U)(iii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)(iii)).]

**LEGAL SERVICES CORPORATION
SELECTED APPROPRIATIONS ACTS & SELECTED REPORTS**

FY 1996 – FY 2015

Including General Provisions for the Most Recent Years

**All appropriations after FY 1998 incorporate the FY 1998 restrictions, which
incorporate and modify the FY 1996 restrictions, as subsequently amended.**

FY 1996, PUB. L. 104—134, 110 STAT. 1321 (1996).....	1
New statement of restrictions expanding on restrictions in prior appropriations	
FY 1997, PUB. L. 104—208, 110 STAT. 3009 (1996).....	16
Incorporates and modifies FY 1996 restrictions	
FY 1998, PUB. L. 105—119, 111 STAT. 2440 (1997).....	19
Incorporates and modifies FY 1996 restrictions.	
FY 1999, PUB. L. 105—277, 112 STAT. 2681 (1998).....	24
FY 2000, PUB. L. 106—113, 113 STAT. 1501 (1999).....	25
Technology grants funding added	
FY 2002, PUB. L. 107—77, 115 STAT. 748 (2001)	27
Removes restriction ruled unconstitutional in <i>LSC. v. Velazquez</i> , 531 U.S. 533 (2001)	
FY 2008, PUB. L. 110—161, 121 STAT. 1844 (2007)	29
Modifies FY 1996 alienage restriction regarding H-2B forestry workers	
FY 2010, PUB. L. 111—117, 123 STAT. 3034 (2009)	32
Lifts the FY 1996 prohibition on attorneys’ fees	
DISASTER RELIEF APPROPRIATIONS ACT, 2013, PUB. L. 113—2, 127 STAT. 4 (2013)	38
Supplemental funding for Hurricane Sandy disaster relief services	
FY 2014, PUB. L. 113—76, 128 STAT. 5 (2014)	40
Pro Bono Innovation Fund grants funding added	
FY 2015, PUB. L. 113—235, 128 STAT. 2130 (2014)	53

Legal Services Corporation FY 1996 Appropriation

Public Law No: 104-134

110 Stat. 1321

April 26, 1996

OMNIBUS CONSOLIDATED RESCISSIONS AND APPROPRIATIONS ACT OF 1996

TITLE V—RELATED AGENCIES

[*1321-50]

LEGAL SERVICES CORPORATION

PAYMENT TO THE LEGAL SERVICES CORPORATION

For payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974, as amended, \$278,000,000, of which \$269,400,000 is for basic field programs and required independent audits carried out in accordance with section 509; \$1,500,000 is for the Office of the Inspector General, of which such amounts as may be necessary may be used to conduct additional audits of recipients in accordance with section 509 of this Act; and \$7,100,000 is for management and administration: Provided, That \$198,750,000 of the total amount provided under this heading for basic field programs shall not be available except for the competitive award of grants and contracts under section 503 of this Act.

[*1321-51]

ADMINISTRATIVE PROVISIONS — LEGAL SERVICES CORPORATION

Sec. 501. (a) Funds appropriated under this Act to the Legal Services Corporation for basic field programs shall be distributed as follows:

(1) The Corporation shall define geographic areas and make the funds available for each geographic area on a per capita basis relative to the number of individuals in poverty determined by the Bureau of the Census to be within the geographic area, except as provided in paragraph (2)(B). Funds for such a geographic area may be distributed by the Corporation to 1 or more persons or entities eligible for funding under section 1006(a)(1)(A) of the Legal Services Corporation Act (42 U.S.C. 2996e(a)(1)(A)), subject to sections 502 and 504.

(2) Funds for grants from the Corporation, and contracts entered into by the Corporation for basic field programs, shall be allocated so as to provide—

Text amended by Pub. L. 113-6, 127 Stat. 198, 268 (2013) (FY 2013 LSC Appropriation).

(A) except as provided in subparagraph (B), an equal figure per individual in poverty for all geographic areas, as determined ~~on the basis of the most recent decennial census of population conducted pursuant to section 141 of title 13, United States Code triennially by the Bureau of the Census, except that, with respect to fiscal year 2013, the change in allocation resulting from the amendment made to this subparagraph by the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2013 shall only be half of the change which would otherwise result from that amendment in order to phase in the change over a 2 year period~~ (or, in the case of the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, Alaska, Hawaii, and the United States Virgin Islands, on the basis of the adjusted population counts historically used as the basis for such determinations); and

(B) an additional amount for Native American communities that received assistance under the Legal Services Corporation Act for fiscal year 1995, so that the proportion of the funds appropriated to the Legal Services Corporation for basic field programs for fiscal year 1996 that is received by the Native American communities shall be not less than the proportion of such funds appropriated for fiscal year 1995 that was received by the Native American communities.

(b) As used in this section:

(1) The term ‘individual in poverty’ means an individual who is a member of a family (of 1 or more members) with an income at or below the poverty line.

(2) The term ‘poverty line’ means the poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) applicable to a family of the size involved.

Sec. 502. None of the funds appropriated in this Act to the Legal Services Corporation shall be used by the Corporation to make a grant, or enter into a contract, for the provision of legal assistance unless the Corporation ensures that the person or entity receiving funding to provide such legal assistance is—

(1) a private attorney admitted to practice in a State or the District of Columbia;

(2) a qualified nonprofit organization, chartered under the laws of a State or the District of Columbia, that—

(A) furnishes legal assistance to eligible clients; and

[*1321-52]

(B) is governed by a board of directors or other governing body, the majority of which is comprised of attorneys who—

(i) are admitted to practice in a State or the District of Columbia; and

(ii) are appointed to terms of office on such board or body by the governing body of a State, county, or municipal bar association, the membership of which represents a majority of the attorneys practicing law in the locality in which the organization is to provide legal assistance;

(3) a State or local government (without regard to section 1006(a)(1)(A)(ii) of the Legal Services Corporation Act (42 U.S.C. 2996e(a)(1)(A)(ii)); or

(4) a substate regional planning or coordination agency that serves a substate area and whose governing board is controlled by locally elected officials.

Sec. 503. (a)(1) Not later than April 1, 1996, the Legal Services Corporation shall implement a system of competitive awards of grants and contracts for all basic field programs, which shall apply to all such grants and contracts awarded by the Corporation after March 31, 1996, from funds appropriated in this Act.

(2) Any grant or contract awarded before April 1, 1996, by the Legal Services Corporation to a basic field program for 1996—

(A) shall not be for an amount greater than the amount required for the period ending March 31, 1996;

(B) shall terminate at the end of such period; and

(C) shall not be renewable except in accordance with the system implemented under paragraph (1).

(3) The amount of grants and contracts awarded before April 1, 1996, by the Legal Services Corporation for basic field programs for 1996 in any geographic area described in section 501 shall not exceed an amount equal to 3/12 of the total amount to be distributed for such programs for 1996 in such area.

(b) Not later than 60 days after the date of enactment of this Act, the Legal Services Corporation shall promulgate regulations to implement a competitive selection process for the recipients of such grants and contracts.

(c) Such regulations shall specify selection criteria for the recipients, which shall include—

(1) a demonstration of a full understanding of the basic legal needs of the eligible clients to be served and a demonstration of the capability of serving the needs;

(2) the quality, feasibility, and cost effectiveness of a plan submitted by an applicant for the delivery of legal assistance to the eligible clients to be served; and

(3) the experience of the Legal Services Corporation with the applicant, if the applicant has previously received financial assistance from the Corporation, including the record of the applicant of past compliance with Corporation policies, practices, and restrictions.

(d) Such regulations shall ensure that timely notice regarding an opportunity to submit an application for such an award is published in periodicals of local and State bar associations and in at least 1 daily newspaper of general circulation in the area to be served by the person or entity receiving the award.

[*1321-53]

(e) No person or entity that was previously awarded a grant or contract by the Legal Services Corporation for the provision of legal assistance may be given any preference in the competitive selection process.

(f) For the purposes of the funding provided in this Act, rights under sections 1007(a)(9) and 1011 of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(9) and 42 U.S.C. 2996j) shall not apply.

Sec. 504. (a) None of the funds appropriated in this Act to the Legal Services Corporation may be used to provide financial assistance to any person or entity (which may be referred to in this section as a ‘recipient’)—

(1) that makes available any funds, personnel, or equipment for use in advocating or opposing any plan or proposal, or represents any party or participates in any other way in litigation, that is intended to or has the effect of altering, revising, or reapportioning a legislative, judicial, or elective district at any level of government, including influencing the timing or manner of the taking of a census;

(2) that attempts to influence the issuance, amendment, or revocation of any executive order, regulation, or other statement of general applicability and future effect by any Federal, State, or local agency;

(3) that attempts to influence any part of any adjudicatory proceeding of any Federal, State, or local agency if such part of the proceeding is designed for the formulation or modification of any agency policy of general applicability and future effect;

(4) that attempts to influence the passage or defeat of any legislation, constitutional amendment, referendum, initiative, or any similar procedure of the Congress or a State or local legislative body;

(5) that attempts to influence the conduct of oversight proceedings of the Corporation or any person or entity receiving financial assistance provided by the Corporation;

(6) that pays for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, administrative expense, or related expense, associated with an activity prohibited in this section;

(7) that initiates or participates in a class action suit;

(8) that files a complaint or otherwise initiates or participates in litigation against a defendant, or engages in a precomplaint settlement negotiation with a prospective defendant, unless—

(A) each plaintiff has been specifically identified, by name, in any complaint filed for purposes of such litigation or prior to the precomplaint settlement negotiation; and

(B) a statement or statements of facts written in English and, if necessary, in a language that the plaintiffs understand, that enumerate the particular facts known to the plaintiffs on which the complaint is based, have been signed by the plaintiffs, are kept on file by the recipient, and are made available to any Federal department or agency that is auditing or monitoring the activities of the Corporation or of the recipient, and to any auditor or monitor receiving Federal funds to conduct such auditing or monitoring, including any auditor or monitor of the Corporation:

[*1321-54]

Provided, That upon establishment of reasonable cause that an injunction is necessary to prevent probable, serious harm to such potential plaintiff, a court of competent jurisdiction may enjoin the disclosure of the identity of any potential plaintiff pending the outcome of such litigation or negotiations after notice and an opportunity for a hearing is provided to potential parties to the litigation or the negotiations: Provided further, That other parties to the litigation or negotiation shall have access to the statement of facts referred to in subparagraph (B) only through the discovery process after litigation has begun;

(9) unless—

(A) prior to the provision of financial assistance—

(i) if the person or entity is a nonprofit organization, the governing board of the person or entity has set specific priorities in writing, pursuant to section 1007(a)(2)(C)(i) of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(2)(C)(i)), of the types of matters and cases to which the staff of the nonprofit organization shall devote time and resources; and

(ii) the staff of such person or entity has signed a written agreement not to undertake cases or matters other than in accordance with the specific priorities set by such governing board, except in emergency situations defined by such board and in accordance with the written procedures of such board for such situations; and

(B) the staff of such person or entity provides to the governing board on a quarterly basis, and to the Corporation on an annual basis, information on all cases or matters undertaken other than cases or matters undertaken in accordance with such priorities;

(10) unless—

(A) prior to receiving the financial assistance, such person or entity agrees to maintain records of time spent on each case or matter with respect to which the person or entity is engaged;

(B) any funds, including Interest on Lawyers Trust Account funds, received from a source other than the Corporation by the person or entity, and disbursements of such funds, are accounted for and reported as receipts and disbursements, respectively, separate and distinct from Corporation funds; and

(C) the person or entity agrees (notwithstanding section 1006(b)(3) of the Legal Services Corporation Act (42 U.S.C. 2996e(b)(3)) to make the records described in this paragraph available to any Federal department or agency that is auditing or monitoring the activities of the Corporation or of the recipient, and to any independent auditor or monitor receiving Federal funds to conduct such auditing or monitoring, including any auditor or monitor of the Corporation;

(11) that provides legal assistance for or on behalf of any alien, unless the alien is present in the United States and is—

[*1321-55]

(A) an alien lawfully admitted for permanent residence as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20));

(B) an alien who—

(i) is married to a United States citizen or is a parent or an unmarried child under the age of 21 years of such a citizen; and

(ii) has filed an application to adjust the status of the alien to the status of a lawful permanent resident under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), which application has not been rejected;

For additional permissible alien representation under other statutes, please see 45 C.F.R. Part 1626, as revised in 2014.

Underlined text added in 2008 via § 540, Pub. L. 110-161, Div. B, Title V, 121 Stat. 1844, 1924 (FY 2008 LSC Appropriation).

(C) an alien who is lawfully present in the United States pursuant to an admission under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) (relating to refugee admission) or who has been granted asylum by the Attorney General under such Act;

(D) an alien who is lawfully present in the United States as a result of withholding of deportation by the Attorney General pursuant to section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h));

(E) a nonimmigrant worker admitted to, or permitted to remain in, the United States under section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) for forestry labor or an alien to whom section 305 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1101 note) applies, but only to the extent that the legal assistance provided is the legal assistance described in such section; or

[8 U.S.C. 1101 note, Immigration Reform and Control Act of 1986, Pub. L. 99-603, sec. 305. Eligibility of H-2 Agricultural Workers For Certain Legal Assistance.

A nonimmigrant worker admitted to or permitted to remain in the United States under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) for agricultural labor or service shall be considered to be an alien described in section 101(a)(20) of such Act (8 U.S.C. 1101(a)(20)) [“lawfully admitted for permanent residence”] for purposes of establishing eligibility for legal assistance under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.), but only with respect to legal assistance on matters relating to wages, housing, transportation, and other employment rights as provided in the worker's specific contract under which the nonimmigrant was admitted.]

(F) an alien who is lawfully present in the United States as a result of being granted conditional entry to the United States before April 1, 1980, pursuant to section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7)), as in effect on March 31, 1980, because of persecution or fear of persecution on account of race, religion, or political calamity;

(12) that supports or conducts a training program for the purpose of advocating a particular public policy or encouraging a political activity, a labor or antilabor activity, a boycott, picketing, a strike, or a demonstration, including the dissemination of information about such a policy or activity, except that this paragraph shall not be construed to prohibit the provision of training to an attorney or a paralegal to prepare the attorney or paralegal to provide—

(A) adequate legal assistance to eligible clients; or

(B) advice to any eligible client as to the legal rights of the client;

~~(13) that claims (or whose employee claims), or collects and retains, attorneys' fees pursuant to any Federal or State law permitting or requiring the awarding of such fees;~~

(14) that participates in any litigation with respect to abortion;

(15) that participates in any litigation on behalf of a person incarcerated in a Federal, State, or local prison;

(16) that initiates legal representation or participates in any other way, in litigation, lobbying, or rulemaking, involving an effort to reform a Federal or State welfare system, except that this paragraph shall not be construed to preclude a recipient from representing an individual eligible client who is seeking specific relief from a welfare agency if such relief does

[*1321-56]

~~not involve an effort to amend or otherwise challenge existing law in effect on the date of the initiation of the representation;~~

Stricken text overruled by Legal Services Corp. v. Velazquez, 531 U.S. 533 (2001) and removed by Pub. L. 107-77, 115 Stat. 748, 794 (FY 2002 LSC Appropriation).

(17) that defends a person in a proceeding to evict the person from a public housing project if—

(A) the person has been charged with the illegal sale or distribution of a controlled substance; and

(B) the eviction proceeding is brought by a public housing agency because the illegal drug activity of the person threatens the health or safety of another tenant residing in the public housing project or employee of the public housing agency;

(18) unless such person or entity agrees that the person or entity, and the employees of the person or entity, will not accept employment resulting from in-person unsolicited advice to a nonattorney that such nonattorney should obtain counsel or take legal action, and will not refer such nonattorney to another person or entity or an employee of the person or entity, that is receiving financial assistance provided by the Corporation; or

(19) unless such person or entity enters into a contractual agreement to be subject to all provisions of Federal law relating to the proper use of Federal funds, the violation of which shall render any grant or contractual agreement to provide funding null and void, and, for such purposes, the Corporation shall be considered to be a Federal agency

See § 533, Pub. L. 111-117, Div. B, Title V, 123 Stat. 3034, 3157 (FY 2010 LSC Appropriation) for lifting of attorneys' fees restriction.

and all funds provided by the Corporation shall be considered to be Federal funds provided by grant or contract.

(b) Nothing in this section shall be construed to prohibit a recipient from using funds from a source other than the Legal Services Corporation for the purpose of contacting, communicating with, or responding to a request from, a State or local government agency, a State or local legislative body or committee, or a member thereof, regarding funding for the recipient, including a pending or proposed legislative or agency proposal to fund such recipient.

(c) Not later than 30 days after the date of enactment of this Act, the Legal Services Corporation shall promulgate a suggested list of priorities that boards of directors may use in setting priorities under subsection (a)(9).

(d)(1) The Legal Services Corporation shall not accept any non-Federal funds, and no recipient shall accept funds from any source other than the Corporation, unless the Corporation or the recipient, as the case may be, notifies in writing the source of the funds that the funds may not be expended for any purpose prohibited by the Legal Services Corporation Act or this title.

(2) Paragraph (1) shall not prevent a recipient from—

(A) receiving Indian tribal funds (including funds from private nonprofit organizations for the benefit of Indians or Indian tribes) and expending the tribal funds in accordance with the specific purposes for which the tribal funds are provided; or

(B) using funds received from a source other than the Legal Services Corporation to provide legal assistance to a covered individual if such funds are used for the specific purposes for which such funds were received, except that such funds may not be expended by recipients for any purpose prohibited by this Act or by the Legal Services Corporation Act.

[*1321-57]

(e) Nothing in this section shall be construed to prohibit a recipient from using funds derived from a source other than the Legal Services Corporation to comment on public rulemaking or to respond to a written request for information or testimony from a Federal, State or local agency, legislative body or committee, or a member of such an agency, body, or committee, so long as the response is made only to the parties that make the request and the recipient does not arrange for the request to be made.

(f) As used in this section:

(1) The term ‘controlled substance’ has the meaning given the term in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(2) The term ‘covered individual’ means any person who —

(A) except as provided in subparagraph (B), meets the requirements of this Act and the Legal Services Corporation Act relating to eligibility for legal assistance; and

(B) may or may not be financially unable to afford legal assistance.

(3) The term ‘public housing project’ has the meaning as used within, and the term ‘public housing agency’ has the meaning given the term, in section 3 of the United States Housing Act of 1937 (42 U.S.C. 1437a).

Sec. 505. None of the funds appropriated in this Act to the Legal Services Corporation or provided by the Corporation to any entity or person may be used to pay membership dues to any private or nonprofit organization.

Sec. 506. None of the funds appropriated in this Act to the Legal Services Corporation may be used by any person or entity receiving financial assistance from the Corporation to file or pursue a lawsuit against the Corporation.

Sec. 507. None of the funds appropriated in this Act to the Legal Services Corporation may be used for any purpose prohibited or contrary to any of the provisions of authorization legislation for fiscal year 1996 for the Legal Services Corporation that is enacted into law. Upon the enactment of such Legal Services Corporation reauthorization legislation, funding provided in this Act shall from that date be subject to the provisions of that legislation and any provisions in this Act that are inconsistent with that legislation shall no longer have effect.

Sec. 508. (a) The requirements of section 504 shall apply to the activities of a recipient described in section 504, or an employee of such a recipient, during the provision of legal assistance for a case or matter, if the recipient or employee begins to provide the legal assistance on or after the date of enactment of this Act.

(b) If the recipient or employee began to provide legal assistance for the case or matter prior to the date of enactment of this Act—

(1) each of the requirements of section 504 (other than paragraphs (7), (11), (13), and (15) of subsection (a) of such section) shall, beginning on the date of enactment of this Act, apply to the activities of the recipient or employee during the provision of legal assistance for the case or matter;

(2) the requirements of paragraphs (7), (11), and (15) of section 504(a) shall apply—

(A) beginning on the date of enactment of this Act, to the activities of the recipient or employee during the provision of legal assistance for any additional related claim for which the recipient or employee begins to provide legal assistance on or after such date; and

(B) beginning August 1, 1996, to all other activities of the recipient or employee during the provision of legal assistance for the case or matter; and

(3) the requirements of paragraph (13) of section 504(a)—

(A) shall apply beginning on the date of enactment of this Act to the activities of the recipient or employee during the provision of legal assistance for any additional related claim

[*1321-58]

for which the recipient or employee begins to provide legal assistance on or after such date; and

(B) shall not apply to all other activities of the recipient or employee during the provision of legal assistance for the case or matter.

(c) The Legal Services Corporation shall, every 60 days, submit to the Committees on Appropriations of the Senate and House of Representatives a report setting forth the status of cases and matters referred to in subsection (b)(2).

Sec. 509. (a) An audit of each person or entity receiving financial assistance from the Legal Services Corporation under this Act (referred to in this section as a 'recipient') shall be conducted in accordance with generally accepted government auditing standards and guidance established by the Office of the Inspector General and shall report whether—

(1) the financial statements of the recipient present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) the recipient has internal control systems to provide reasonable assurance that it is managing funds, regardless of source, in compliance with Federal laws and regulations; and

(3) the recipient has complied with Federal laws and regulations applicable to funds received, regardless of source.

(b) In carrying out the requirements of subsection (a)(3), the auditor shall select and test a representative number of transactions and report all instances of noncompliance to the recipient. The recipient shall report in writing any noncompliance found by the auditor during the audit under this section within 5 business days to the Office of the Inspector General and shall provide a copy of the report simultaneously to the auditor. If the recipient fails to report the noncompliance, the auditor shall report the noncompliance directly to the Office of the Inspector General within 5 business days of the recipient's failure to report. The auditor shall not be liable in a private action for any finding, conclusion, or statement expressed in a report made pursuant to this section.

(c) The audits required under this section shall be provided for by the recipients and performed by independent public accountants. The cost of such audits shall be shared on a pro rata basis among all of the recipient's funding providers and the appropriate share shall be an allowable charge to the Federal funds provided by the Legal Services Corporation. No audit costs may be charged to the Federal funds when the audit required by this section has not been made in accordance with the guidance promulgated by the Office of the Inspector General. If the recipient fails to have an acceptable audit in accordance with the guidance promulgated by the Office of the Inspector General,

[*1321-59]

the following sanctions shall be available to the Corporation as recommended by the Office of the Inspector General:

(1) the withholding of a percentage of the recipient's funding until the audit is completed satisfactorily.

(2) the suspension of recipient's funding until an acceptable audit is completed.

(d) The Office of the Inspector General may remove, suspend, or bar an independent public accountant, upon a showing of good cause, from performing audit services required by this section. Any such action to remove, suspend, or bar an auditor shall be only after notice to the auditor and an opportunity for hearing. The Office of the Inspector General shall develop and issue rules of practice to implement this paragraph.

(e) Any independent public accountant performing an audit under this section who subsequently ceases to be the accountant for the recipient shall promptly notify the Office of the Inspector General pursuant to such rules as the Office of the Inspector General shall prescribe.

(f) Audits conducted in accordance with this section shall be in lieu of the financial audits otherwise required by section 1009(c) of the Legal Services Corporation Act (42 U.S.C. 2996h(c)).

(g) The Office of the Inspector General is authorized to conduct on-site monitoring, audits, and inspections in accordance with Federal standards.

(h) Notwithstanding section 1006(b)(3) of the Legal Services Corporation Act (42 U.S.C. 2996e(b)(3)), financial records, time records, retainer agreements, client trust fund and eligibility records, and client names, for each recipient shall be made available to any auditor or monitor of the recipient, including any Federal department or agency that is auditing or monitoring the activities of the Corporation or of the recipient, and any independent auditor or monitor receiving Federal funds to conduct such auditing or monitoring, including any auditor or monitor of the Corporation, except for reports or records subject to the attorney-client privilege.

(i) The Legal Services Corporation shall not disclose any name or document referred to in subsection (h), except to—

(1) a Federal, State, or local law enforcement official; or

(2) an official of an appropriate bar association for the purpose of enabling the official to conduct an investigation of a rule of professional conduct.

(j) The recipient management shall be responsible for expeditiously resolving all reported audit reportable conditions, findings, and recommendations, including those of sub-recipients.

(k) The Legal Services Corporation shall—

(1) Follow up on significant reportable conditions, findings, and recommendations found by the independent public accountants and reported to Corporation management by the Office of the Inspector General to ensure that instances of deficiencies and noncompliance are resolved in a timely manner, and

(2) Develop procedures to ensure effective follow-up that meet at a minimum the requirements of Office of Management and Budget Circular Number A-50.

(l) The requirements of this section shall apply to a recipient for its first fiscal year beginning on or after January 1, 1996.

*House Rpt. 104—537
(As corrected at H4187-H4287)*

*Making Appropriations For Fiscal Year 1996 To Make A
Further Downpayment Toward A Balanced Budget, And For Other Purposes*

Conference Report Comments

Legal Services Corporation

Payment To The Legal Services Corporation

The conference agreement provides \$278,000,000 for the Legal Services Corporation, as proposed by the House, instead of \$300,000,000 as proposed by the Senate. In addition, the conference agreement does not include \$9,000,000 in additional contingent appropriations, as proposed by the Senate under title IV of the Senate bill.

Within the total amounts provided, the conferees agree that the funds should be distributed as follows: (1) \$269,400,000 for basic field programs and required independent audits carried out in accordance with section 509; (2) \$1,500,000 for the Office of Inspector General; and (3) \$7,100,000 for management and administration. The conferees are aware that the Legal Services Corporation has recently identified \$400,000 in prior year carryover funds. The conferees expect the Committees on Appropriations of the House and Senate to be notified prior to any further expenditure of these funds in accordance with section 605 of this Act. The conference agreement does not include language, proposed by the Senate, for payment of attorneys fees for a specific civil action.

The Legal Services Corporation historically has distributed funding for basic field programs (for all eligible clients) on an equal figure per poor person based on the 1990 census, with an exception that adjusts the formula for certain isolated states and territories. The conferees are encouraged that the Corporation has worked expeditiously to distribute funding on a competitive award basis, and urge the Corporation to continue implementation of the system that has been developed to continue providing grants to all eligible populations.

ADMINISTRATIVE PROVISIONS—LEGAL SERVICES CORPORATION

The conference agreement includes language proposed by the Senate under section 504 to provide an exception to the prohibition contained therein that would permit recipients of LSC grants to use funds derived from non-Federal sources to comment on public rulemakings or to respond to a written request for information or testimony from a governmental body, so long as the response is made only to the parties that make the request and the recipient does not arrange for the request to be made. The House bill contained no similar exception to the prohibition contained in the bill.

The conference agreement corrects a code citation in section 504(a)(10)(c), as proposed in the Senate bill. The House bill contained the code citation provided in the conference report on H.R. 2076.

The conference agreement includes language under section 508 to allow for the collection of attorneys fees for cases or matters pending prior to enactment of this Act. This provision does not allow the collection of attorneys fees for any new or additional claim or matter not initiated prior to enactment of this Act. Neither the House nor Senate bill contained a provision on this matter.

The conference agreement makes a modification to language included in section 508 in both the House and Senate bills to provide for a limited transition time for LSC grantees to dispose of pending cases and matters initiated prior to enactment of this Act, which would now be prohibited under this Act. The agreement provides LSC grantees until August 1, 1996 to dispose of all such cases.

The conference agreement contains modifications to language in section 509 proposed by the Senate related to the procedures by which LSC grantees are audited and the manner in which recipients contract with licensed independent certified public accountants for financial and compliance audits. Also included are modifications to language proposed by the Senate to clarify that only the Office of the Inspector General shall have oversight responsibility to ensure the quality and integrity of the financial and compliance audit process. Language is also included, as proposed by the Senate, to clarify the Corporation management's duties and responsibilities to resolve deficiencies and non-compliance reported by the Office of the Inspector General. Further, language is included, as proposed by the Senate, authorizing the Office of the Inspector General to conduct additional on-site monitoring, audits, and inspections necessary for programmatic, financial and compliance oversight. The House bill contained the provisions included in the conference report on H.R. 2076.

Legal Services Corporation FY 1997 Appropriation

[Public Law 104-208 incorporates most of the LSC provisions of Public Law 104-134 with specific modifications and additional provisions.]

**Public Law No: 104-208
110 Stat. 3009
September 30, 1996**

OMNIBUS CONSOLIDATED APPROPRIATIONS ACT, 1997

[*3009-59]

LEGAL SERVICES CORPORATION

PAYMENT TO THE LEGAL SERVICES CORPORATION

For payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974, as amended, \$283,000,000, of which \$274,400,000 is for basic field programs and required independent audits; \$1,500,000 is for the Office of Inspector General, of which such amounts as may be necessary may be used to conduct additional audits of recipients; and \$7,100,000 is for management and administration.

ADMINISTRATIVE PROVISION—LEGAL SERVICES CORPORATION

SEC. 501. (a) Continuation of Competitive Selection Process.—None of the funds appropriated in this Act to the Legal Services Corporation may be used to provide financial assistance to any person or entity except through a competitive selection process conducted in accordance with regulations promulgated by the Corporation in accordance with the criteria set forth in subsections (c), (d), and (e) of section 503 of Public Law 104—134 (110 Stat. 1321-52 et seq.).

(b) Inapplicability of Noncompetitive Procedures.—For purposes of the funding provided in this Act, rights under sections 1007(a)(9) and 1011 of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(9) and 42 U.S.C. 2996j) shall not apply.

SEC. 502. (a) Continuation of Requirements and Restrictions.—None of the funds appropriated in this Act to the Legal Services Corporation shall be expended for any purpose prohibited or limited by, or contrary to any of the provisions of—

(1) sections 501, 502, 505, 506, and 507 of Public Law 104—134 (110 Stat. 1321-51 et seq.), and all funds appropriated in this Act to the Legal Services Corporation shall be subject to the same terms and conditions as set forth in such sections, except that all references in such sections to 1995 and 1996 shall be deemed to refer instead to 1996 and 1997, respectively; and

(2) section 504 of Public Law 104—134 (110 Stat. 1321-53 et seq.), and all funds appropriated in this Act to the Legal Services Corporation shall be subject to the same terms and conditions set forth in such section, except that—

(A) subsection (c) of such section 504 shall not apply;

(B) paragraph (3) of section 508(b) of Public Law 104—134 (110 Stat. 1321-58) shall apply with respect to the requirements of subsection (a)(13) of such section 504, except that all references in such section 508(b) to the

[*3009-60]

date of enactment shall be deemed to refer to April 26, 1996; and

(C) subsection (a)(11) of such section 504, shall not be construed to prohibit a recipient from using funds derived from a source other than the Corporation to provide related legal assistance to—

(i) an alien who has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty; or

(ii) an alien whose child has been battered or subjected to extreme cruelty in the United States by a spouse or parent of the alien (without the active participation of the alien in the battery or extreme cruelty) or by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parents consented or acquiesced to such battery or cruelty, and the alien did not actively participate in such battery or cruelty.

(b) Definitions.—For purposes of subsection (a)(2)(C):

(1) The term 'battered or subjected to extreme cruelty' has the meaning given such term under regulations issued pursuant to subtitle G of the Violence Against Women Act of 1994 ;(Pub. L. 103—322; 108 Stat. 1953).

(2) The term 'related legal assistance' means legal assistance directly related to the prevention of, or obtaining of relief from, the battery or cruelty described in such subsection.

SEC. 503. (a) Continuation of Audit Requirements.—The requirements of section 509 of Public Law 104—134 (110 Stat. 1321-58 et seq.), other than subsection (1) of such section, shall apply during fiscal year 1997.

(b) Requirement of Annual Audit.—An annual audit of each person or entity receiving financial assistance from the Legal Services Corporation under this Act shall be conducted during fiscal year 1997 in accordance with the requirements referred to in subsection (a).

House Rpt. 104—863

*Making Omnibus Consolidated
Appropriations For Fiscal Year 1997*

Conference Report

Legal Services Corporation

Payment to the Legal Services Corporation

The conference agreement includes \$283,000,000 for payment to the Legal Services Corporation instead of \$250,000,000 as proposed in the House bill and \$288,000,000 as proposed in the Senate-reported bill.

The conference agreement provides \$274,400,000 for grants to basic field programs and independent audits, \$7,100,000 for management and administration, and \$1,500,000 for the Office of the Inspector General.

Administrative Provisions—Legal Services Corporation

The conference agreement contains language, identical in both the House bill and Senate-reported bill, continuing all statutory requirements and restrictions included in the fiscal year 1996 appropriations act, with one modification. Section 502 of both bills contains an exception to the restrictions to allow non-Federal funds to be used to provide legal assistance in domestic violence and related matters.

The conference agreement makes several technical changes to correct statutory citations that were incorrectly cited in the House and Senate-reported bills.

Legal Services Corporation FY 1998 Appropriation

[Public Law 105-119 incorporates most of the LSC provisions of Public Law 104-134 with specific modifications and additional provisions.]

**Public Law No: 105-119
111 Stat. 2440
November 26, 1997**

**DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY,
AND RELATED AGENCIES APPROPRIATIONS ACT, 1998**

TITLE V—RELATED AGENCIES

[*2510]

LEGAL SERVICES CORPORATION

PAYMENT TO THE LEGAL SERVICES CORPORATION

For payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974, as amended, \$283,000,000, of which \$274,400,000 is for basic field programs and required independent audits; \$1,500,000 is for the Office of Inspector General, of which such amounts as may be necessary may be used to conduct additional audits of recipients; and \$7,100,000 is for management and administration.

ADMINISTRATIVE PROVISIONS—LEGAL SERVICES CORPORATION

SEC. 501. (a) CONTINUATION OF COMPETITIVE SELECTION PROCESS— None of the funds appropriated in this Act to the Legal Services Corporation may be used to provide financial assistance to any person or entity except through a competitive selection process conducted in accordance with regulations promulgated by the Corporation in accordance with the criteria set forth in subsections (c), (d), and (e) of section 503 of Public Law 104—134 (110 Stat. 1321-52 et seq.).

(b) INAPPLICABILITY OF CERTAIN PROCEDURES— Sections 1007(a)(9) and 1011 of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(9) and 2996j) shall not apply to the provision, denial, suspension, or termination of any financial assistance using funds appropriated in this Act.

(c) ADDITIONAL PROCEDURES— If, during any term of a grant or contract awarded to a recipient by the Legal Services Corporation under the competitive selection process referred to in subsection (a) and applicable Corporation regulations, the Corporation finds, after notice and opportunity for the recipient to be heard, that the recipient has failed to comply with any requirement of the Legal Services Corporation Act (42 U.S.C. 2996 et seq.), this Act, or any other applicable law relating to funding for the Corporation, the Corporation may terminate the

grant or contract and institute a new competitive selection process for the area served by the recipient, notwithstanding the terms of the recipient’s grant or contract.

SEC. 502. (a) CONTINUATION OF REQUIREMENTS AND RESTRICTIONS— None of the funds appropriated in this Act to the Legal Services Corporation shall be expended for any purpose prohibited or limited by, or contrary to any of the provisions of—

(1) sections 501, 502, 505, 506, and 507 of Public Law 104—134 (110 Stat. 1321-51 et seq.), and all funds appropriated in this Act to the Legal Services Corporation shall be subject to the same terms and conditions as set forth in such sections, except that all references in such sections to 1995 and 1996 shall be deemed to refer instead to 1997 and 1998, respectively; and

(2) section 504 of Public Law 104—134 (110 Stat. 1321-53 et seq.), and all funds appropriated in this Act to the Legal Services Corporation shall be subject to the same terms and conditions set forth in such section, except that—

(A) subsection (c) of such section 504 shall not apply;

(B) paragraph (3) of section 508(b) of Public Law 104—134 (110 Stat. 1321-58) shall apply with respect to the requirements of subsection (a)(13) of such section 504,

[*2511]

except that all references in such section 508(b) to the date of enactment shall be deemed to refer to April 26, 1996; and

(C) subsection (a)(11) of such section 504 shall not be construed to prohibit a recipient from ~~using funds derived from a source other than the Corporation to provide~~ providing related legal assistance to—

(i) ~~an alien who has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse’s or parent’s family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty; or~~ or a victim of sexual assault or trafficking in the United States, or qualifies for immigration relief under section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)); or

(ii) ~~an alien whose child, has been battered or subjected to extreme cruelty in the United States by a spouse or parent of the alien (without the active participation of the alien in the battery or extreme cruelty), or by a member of the spouse’s or parent’s family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, and the alien did not actively participate in such battery~~

Text amended by Violence Against Women Act of 2005, Pub. L. 109-162, 119 Stat. 2960, 2978 (2006). For additional permissible alien representation under other statutes, please see 45 C.F.R. Part 1626, as revised in 2014.



~~or cruelty.~~ without the active participation of the alien, has been battered or subjected to extreme cruelty or a victim of sexual assault or trafficking in the United States, or qualifies for immigration relief under section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)).

(b) DEFINITIONS— For purposes of subsection (a)(2)(C):

(1) The term ‘battered or subjected to extreme cruelty’ has the meaning given such term under regulations issued pursuant to subtitle G of the Violence Against Women Act of 1994 (Public Law 103—322; 108 Stat. 1953).

(2) The term ‘related legal assistance’ means legal assistance directly related to the prevention of, or obtaining of relief from, the battery or cruelty, sexual assault or trafficking, or the crimes listed in section 101(a)(15)(U)(iii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)(iii)). ~~described in such subsection.~~

SEC. 503. (a) CONTINUATION OF AUDIT REQUIREMENTS— The requirements of section 509 of Public Law 104—134 (110 Stat. 1321-58 et seq.), other than subsection (l) of such section, shall apply during fiscal year 1998.

(b) REQUIREMENT OF ANNUAL AUDIT—An annual audit of each person or entity receiving financial assistance from the Legal Services Corporation under this Act shall be conducted during fiscal year 1998 in accordance with the requirements referred to in subsection (a).

SEC. 504. (a) DEBARMENT— The Legal Services Corporation may debar a recipient, on a showing of good cause, from receiving an additional award of financial assistance from the Corporation. Any such action to debar a recipient shall be instituted after the Corporation provides notice and an opportunity for a hearing to the recipient.

(b) REGULATIONS— The Legal Services Corporation shall promulgate regulations to implement this section.

(c) GOOD CAUSE— In this section, the term ‘good cause’, used with respect to debarment, includes—

(1) prior termination of the financial assistance of the recipient, under part 1640 of title 45, Code of Federal Regulations (or any similar corresponding regulation or ruling);

(2) prior termination in whole, under part 1606 of title 45, Code of Federal Regulations (or any similar corresponding regulation or ruling), of the most recent financial assistance received by the recipient, prior to date of the debarment decision;

[*2512]

(3) substantial violation by the recipient of the statutory or regulatory restrictions that prohibit recipients from using financial assistance made available by the Legal Services Corporation or other financial assistance for purposes prohibited under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.) or for involvement in any activity prohibited by, or inconsistent with, section 504 of Public Law 104—134 (110 Stat. 1321-53 et seq.), section 502(a)(2) of Public Law 104—208 (110 Stat. 3009-59 et seq.), or section 502(a)(2) of this Act;

(4) knowing entry by the recipient into a subgrant, subcontract, or other agreement with an entity that had been debarred by the Corporation; or

(5) the filing of a lawsuit by the recipient, on behalf of the recipient, as part of any program receiving any Federal funds, naming the Corporation, or any agency or employee of a Federal, State, or local government, as a defendant.

SEC. 505. (a) Not later than January 1, 1998, the Legal Services Corporation shall implement a system of case information disclosure which shall apply to all basic field programs which receive funds from the Legal Services Corporation from funds appropriated in this Act.

(b) Any basic field program which receives Federal funds from the Legal Services Corporation from funds appropriated in this Act must disclose to the public in written form, upon request, and to the Legal Services Corporation in semiannual reports, the following information about each case filed by its attorneys in any court:

(1) The name and full address of each party to the legal action unless such information is protected by an order or rule of a court or by State or Federal law or revealing such information would put the client of the recipient of such Federal funds at risk of physical harm.

(2) The cause of action in the case.

(3) The name and address of the court in which the case was filed and the case number assigned to the legal action.

(c) The case information disclosed in semi-annual reports to the Legal Services Corporation shall be subject to disclosure under section 552 of title 5, United States Code.

SEC. 506. In establishing the income or assets of an individual who is a victim of domestic violence, under section 1007(a)(2) of the Legal Services Corporation Act (42 U.S.C. 2996f (a) (2)), to determine if the individual is eligible for legal assistance, a recipient described in such section shall consider only the assets and income of the individual, and shall not include any jointly held assets.

H. RPT. 105—405

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 1998

Conference Report Comments

LEGAL SERVICES CORPORATION

PAYMENT TO THE LEGAL SERVICES CORPORATION

The conference agreement includes \$283,000,000 for payment to the Legal Services Corporation, instead of \$250,000,000 as proposed in the House bill, and \$300,000,000 as proposed in the Senate bill.

The conference agreement provides \$274,400,000 for grants to basic field programs and independent audits, \$7,100,000 for management and administration, and \$1,500,000 for the Office of the Inspector General.

ADMINISTRATIVE PROVISIONS—LEGAL SERVICES CORPORATION

The conference agreement contains language, included in both the House and Senate bills, continuing all statutory requirements and restrictions included in the fiscal year 1997 appropriations Act.

In addition, the conference agreement includes new provisions in section 501, as contained in the House bill, providing additional authority to the Corporation to terminate a grant award and institute a new grant competition if the existing grantee has been found to be in violation of statutory and regulatory requirements and restrictions. The Senate bill contained similar provisions. In addition, provisions are included in section 504, as contained in the House bill, to allow the Corporation to debar grantees from the competitive bid process in certain circumstances. The Senate bill contained similar provisions.

The conference agreement includes a provision, section 505, proposed in the House bill but not addressed in the Senate bill, requiring certain public disclosure reporting requirements related to litigation initiated by grantees of the Legal Services Corporation.

The conference agreement also includes a provision, section 506, proposed in the Senate bill but not addressed in the House bill, to ensure that income eligibility determinations in cases of domestic violence are made only on the basis of the assets and income of the individual. The conferees are aware that the current statute and regulations of the Legal Services Corporation already provide for such determinations to be made in all cases, including domestic violence. However, given concerns regarding access to the legal system for victims of domestic violence, the conferees have included this provision to provide greater clarity regarding this matter. However, the conferees do not intend to in any way preclude such eligibility determinations in other cases made in accordance with current regulations and statute.

The conference agreement makes several technical changes to correct statutory citations and other technical differences included in the House and Senate bills.

Legal Services Corporation FY 1999 Appropriation

**Public Law No: 105-277, 112 Stat. 2681
October 21, 1998**

**OMNIBUS CONSOLIDATED AND EMERGENCY APPROPRIATIONS ACT, 1999
TITLE V—RELATED AGENCIES**

[*2681-107]

LEGAL SERVICES CORPORATION

PAYMENT TO THE LEGAL SERVICES CORPORATION

For payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974, as amended, \$300,000,000, of which \$289,000,000 is for basic field programs and required independent audits; \$2,015,000 is for the Office of Inspector General, of which such amounts as may be necessary may be used to conduct additional audits of recipients; and \$8,985,000 is for management and administration.

ADMINISTRATIVE PROVISION—LEGAL SERVICES CORPORATION

None of the funds appropriated in this Act to the Legal Services Corporation shall be expended for any purpose prohibited or limited by, or contrary to any of the provisions of, sections 501, 502, 503, 504, 505, and 506 of Public Law 105—119, and all funds appropriated in this Act to the Legal Services Corporation shall be subject to the same terms and conditions set forth in such sections, except that all references in sections 502 and 503 to 1997 and 1998 shall be deemed to refer instead to 1998 and 1999, respectively.

House Rpt. 105—825

*MAKING OMNIBUS CONSOLIDATED AND EMERGENCY SUPPLEMENTAL
APPROPRIATIONS FOR FISCAL YEAR 1999*

Conference Report Comments

LEGAL SERVICES CORPORATION

PAYMENT TO THE LEGAL SERVICES CORPORATION

The conference agreement includes \$300,000,000 for payment to the Legal Services Corporation, as proposed in the Senate bill, instead of \$250,000,000 as proposed in the House bill.

The conference agreement provides \$289,000,000 for grants to basic field programs and independent audits, \$8,985,000 for management and administration, and \$2,015,000 for the Office of the Inspector General. The conference agreement does not include language proposed in the Senate bill to designate \$300,000 of funds provided under this account for litigation associated with Aguilar v. United States. The House bill did not address this matter.

ADMINISTRATIVE PROVISION—LEGAL SERVICES CORPORATION

The conference agreement contains language to continue the terms and conditions included under this section in the fiscal year 1998 Act, as proposed in the House bill. The Senate bill contained similar language, but did not propose to continue provisions regarding public disclosure of certain information and treatment of assets and income for certain clients.

Legal Services Corporation FY 2000 Appropriation

Public Law No: 106-113

113 Stat. 1501

November 29, 1999

CONSOLIDATED APPROPRIATIONS ACT, 2000

[*1501A-49]

LEGAL SERVICES CORPORATION

PAYMENT TO THE LEGAL SERVICES CORPORATION

For payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974, as amended, \$305,000,000, of which \$289,000,000 is for basic field programs and required independent audits; \$2,100,000 is for the Office of Inspector General, of which such amounts as may be necessary may be used to conduct additional audits of recipients; \$8,900,000 is for management and administration; and \$5,000,000 is for client self help and information technology.

ADMINISTRATIVE PROVISION—LEGAL SERVICES CORPORATION

None of the funds appropriated in this Act to the Legal Services Corporation shall be expended for any purpose prohibited or limited by, or contrary to any of the provisions of, sections 501, 502, 503, 504, 505, and 506 of Public Law 105—119, and all funds appropriated in this Act to the Legal Services Corporation shall be subject to the same terms and conditions set forth in such sections, except that all references in sections 502 and 503 to 1997 and 1998 shall be deemed to refer instead to 1999 and 2000, respectively.

House Rpt. 106—479

*MAKING APPROPRIATIONS FOR THE GOVERNMENT OF THE
DISTRICT OF COLUMBIA AND OTHER ACTIVITIES CHARGEABLE IN WHOLE OR IN PART AGAINST
REVENUES OF SAID DISTRICT FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2000, AND FOR OTHER
PURPOSES*

CONFERENCE REPORT COMMENTS

LEGAL SERVICES CORPORATION

PAYMENT TO THE LEGAL SERVICES CORPORATION

The conference agreement includes \$305,000,000 for payment to the Legal Services Corporation, instead of \$300,000,000 as proposed in the Senate bill, and \$250,000,000 as proposed in the House bill.

The conference agreement provides \$289,000,000 for grants to basic field programs and independent audits, \$8,900,000 for management and administration, and \$2,100,000 for the Office of the Inspector General, as proposed by the Senate. The agreement also includes \$5,000,000 to provide technology grants to Legal Services Corporation grantees to be used to improve pro se clinic methods and acquire computerized systems that make basic legal information and court forms accessible to pro se litigants. These grants are made with the understanding, as stated in the Legal Services Corporation budget request, that the grantees make a commitment to include in their budgets for future years amounts sufficient to maintain and upgrade their equipment. The conferees note that \$28,000,000 is provided for civil legal assistance under the Violence Against Women Act program funded under title I of this bill.

The conferees expect that any unobligated balances remaining available at the end of the fiscal year may be reallocated among participating programs for technology enhancements and demonstration projects in succeeding fiscal years, subject to the reprogramming procedures in Section 605 of this Act.

The conferees have concerns about the case service reporting and associated data reports submitted annually by the Corporation's grantees and the case statistical reports submitted by the Corporation to the Congress, and the conferees direct the Corporation to make improvement of the accuracy of these submissions a top priority, per directions in the House report. The conferees also direct the Corporation to submit its 1999 annual case service reports and associated data reports to Congress no later than April 30, 2000. The Office of the Inspector General will assess the case service information provided by the grantees, and will report to the Committees no later than July 30, 2000, as to its accuracy, as described in the House report. The conference agreement also includes the two feasibility reports described in the House report, due no later than June 1, 2000. The conferees urge the Corporation to provide its annual case service reports by May 1 of each following fiscal year, as described in the House report. The conferees direct the Corporation to keep the Committees fully informed on its study of the issue of the statutory requirement that aliens be 'present in the United States', as described in the House report.

ADMINISTRATIVE PROVISION—LEGAL SERVICES CORPORATION

The Conference recommendation includes bill language to continue the terms and conditions included under this section in the fiscal year 1999 bill, as proposed in the House. The Senate bill contained similar language, but did not propose to continue provisions regarding public disclosure of certain information and treatment of assets and income for certain clients.

Legal Services Corporation FY 2002 Appropriation

Public Law No: 107-77

115 Stat. 748

November 28, 2001

**DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND
RELATED AGENCIES APPROPRIATIONS ACT, 2002**

[[Page 115 STAT. 794]]

TITLE V—RELATED AGENCIES

LEGAL SERVICES CORPORATION

PAYMENT TO THE LEGAL SERVICES CORPORATION

For payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974, as amended, \$329,300,000, of which \$310,000,000 is for basic field programs and required independent audits; \$2,500,000 is for the Office of Inspector General, of which such amounts as may be necessary may be used to conduct additional audits of recipients; [[Page 115 STAT. 795]] \$12,400,000 is for management and administration; and \$4,400,000 is for client self-help and information technology.

ADMINISTRATIVE PROVISIONS—LEGAL SERVICES CORPORATION

None of the funds appropriated in this Act to the Legal Services Corporation shall be expended for any purpose prohibited or limited by, or contrary to any of the provisions of, sections 501, 502, 503, 504, 505, and 506 of Public Law 105—119, and all funds appropriated in this Act to the Legal Services Corporation shall be subject to the same terms and conditions set forth in such sections, except that all references in sections 502 and 503 to 1997 and 1998 shall be deemed to refer instead to 2001 and 2002, respectively.

Section 504(a)(16) of Public Law 104—134 is hereafter amended by striking “if such relief does not involve” and all that follows through “representation”.

HOUSE REPORT 107—139

*DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES
APPROPRIATIONS BILL, FISCAL YEAR 2002*

[page 127]

LEGAL SERVICES CORPORATION

SALARIES AND EXPENSES

The Committee recommendation includes \$329,300,000 for the Legal Services Corporation for fiscal year 2002. This amount is the same as the request and \$26,000 above the current year appropriation. This amount includes: (1) \$310,000,000 for grants to basic field programs; (2) \$2,500,000 for the Office of Inspector General; (3) \$12,400,000 for Corporation management and administration; and (4) \$4,400,000 for client self-help and information technology. The Committee notes that \$40,000,000 is provided for civil legal assistance under the Violence Against Women Act program funded under Title I of this bill.

The Legal Services Corporation is a private, nonprofit corporation that provides low-income individuals with access to legal assistance and information concerning civil legal problems. Created in 1974, the Legal Services Corporation is charged by Congress to provide assistance to those who would otherwise be unable to afford adequate legal counsel.

The Committee supports LSC's efforts to streamline its service area configurations through the State planning process. However, the Committee has been made aware of concerns that LSC has attempted to impose its own reconfiguration plans on certain States without clearly articulating standards for such decisions. In several instances the Corporation rejected reconfiguration plans developed and approved by all relevant stakeholders within a State, and provided no opportunity for the State to appeal that decision. The Committee expects LSC to review the State planning process and the concerns raised, and report back to the Committee by no later than September 4, 2001, with a proposal that articulates the reconfiguration standards and process for States to appeal LSC's decisions. The Committee intends that LSC consult with appropriate stakeholders in developing this proposal.

The Committee reminds the Legal Services Corporation that its grantees are prohibited by section 504(a)(7) of Public Law 105 119 from participating in class action lawsuits and directs the Corporation to ensure its grantees comply.

ADMINISTRATIVE PROVISION—LEGAL SERVICES CORPORATION

The Committee recommendation includes bill language to continue statutory requirements and restrictions contained in previous Appropriations Acts, as requested. A legal correction is [page 128] recommended to reflect the recent Supreme Court ruling in the Legal Services Corporation v. Velazquez case.

Legal Services Corporation FY 2008 Appropriation**Public Law No: 110–161****121 Stat. 1844****December 26, 2007****CONSOLIDATED APPROPRIATIONS ACT, 2008****SEC. 4. EXPLANATORY STATEMENT.**

The explanatory statement regarding the consolidated appropriations amendment of the House of Representatives to the amendment of the Senate to H.R. 2764, printed in the House section of the Congressional Record on or about December 17, 2007 by the Chairman of the Committee on Appropriations of the House, shall have the same effect with respect to the allocation of funds and implementation of divisions A through K of this Act as if it were a joint explanatory statement of a committee of conference.

**DIVISION B—COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES
APPROPRIATIONS ACT, 2008****TITLE IV – RELATED AGENCIES**

[*1923]

LEGAL SERVICES CORPORATION**PAYMENT TO THE LEGAL SERVICES CORPORATION**

For payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974, \$350,490,000, of which \$332,390,000 is for basic field programs and required independent audits; \$3,000,000 is for the Office of Inspector General, of which such amounts as may be necessary may be used to conduct additional audits of recipients; \$12,500,000 is for management and administration; \$2,100,000 is for client self-help and information technology; and \$500,000 is for loan repayment assistance: Provided, That the Legal Services Corporation may continue to provide locality pay to officers and employees at a rate no greater than that provided by the Federal Government to Washington, DC-based employees as authorized by 5 U.S.C. 5304, notwithstanding section 1005(d) of the Legal Services Corporation Act, 42 U.S.C. 2996(d).

ADMINISTRATIVE PROVISION—LEGAL SERVICES CORPORATION

None of the funds appropriated in this Act to the Legal Services Corporation shall be expended for any purpose prohibited or limited by, or contrary to any of the provisions of, sections 501, 502, 503, 504, 505, and 506 of Public Law 105–119, and all funds appropriated in this Act to the Legal Services Corporation shall be subject to the same terms and conditions set forth in such sections, except that all references in sections 502 and 503 to 1997 and 1998 shall be deemed to refer instead to 2007 and 2008, respectively.

[*1924]

TITLE V – GENERAL PROVISIONS

SEC. 540. Section 504(a)(11)(E) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104-134; 110 Stat. 1321-55) is amended by inserting before ‘an alien’ the following: ‘a nonimmigrant worker admitted to, or permitted to remain in, the United States under section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) for forestry labor or’.

[The amended text now reads:

A non-immigrant worker admitted do, or permitted to remain in, the United States under section 101(a)(15)(H)(ii)(b) of the Immigration and nationality Act (8 U.S.C. 1109(a)(15)(H)(ii)(b)) for forestry labor or an alien to whom section 305 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1101 note) applies, but only to the extent that the legal assistance provided is the legal assistance described in such section.]

*193 Cong. Rec. H15741 (daily ed.)
December 17, 2007, Book II*

*EXPLANATORY STATEMENT SUBMITTED BY MR. OBEY, CHAIRMAN OF THE HOUSE
COMMITTEE ON APPROPRIATIONS, REGARDING THE CONSOLIDATED
APPROPRIATIONS AMENDMENT OF THE HOUSE OF REPRESENTATIVES TO THE
SENATE AMENDMENT TO H.R. 2764*

[Page H15826]

*LEGAL SERVICES CORPORATION
PAYMENT TO THE LEGAL SERVICES CORPORATION*

The amended bill includes \$350,490,000 for payment to the Legal Services Corporation (LSC), instead of \$377,000,000 as proposed by the House, and \$390,000,000 as proposed by the Senate. Within the funds provided, \$332,390,000 is for basic field programs, to be used for competitively awarded grants and contracts; \$3,000,000 is for the Inspector General; \$12,500,000 is for management and administration; \$2,100,000 is for client self-help and information technology; and \$500,000 is for loan repayment assistance.

Current LSC locality pay represents reasonable compensation for LSC officers and employees, and language is included to authorize the continuation of locality pay.

ADMINISTRATIVE PROVISION - LEGAL SERVICES CORPORATION

The amended bill includes bill language to continue the terms and conditions included under this section in previous appropriations Acts.

TITLE V—GENERAL PROVISIONS

Section 540--The amended bill includes section 540 related to services of the Legal Services Corporation.

Legal Services Corporation FY 2010 Appropriation**Public Law No: 111-117****123 Stat. 3034****December 16, 2009****CONSOLIDATED APPROPRIATIONS ACT, 2010****DIVISION B—COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES
APPROPRIATIONS ACT, 2010***[General Provision 533 eliminates the 1996 attorneys' fees restriction]*

[[Page 123 STAT. 3139]]

Sec. 205.

Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Department of Justice in this Act may be transferred between such appropriations, but no such appropriation, except as otherwise specifically provided, shall be increased by more than 10 percent by any such transfers: *Provided*, That any transfer pursuant to this section shall be treated as a reprogramming of funds under section 505 of this Act and shall not be available for obligation except in compliance with the procedures set forth in that section.

TITLE IV – RELATED AGENCIES

[[Page 123 STAT. 3148]]

**LEGAL SERVICES CORPORATION
PAYMENT TO THE LEGAL SERVICES CORPORATION**

For payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974, \$420,000,000, of which \$394,400,000 is for basic field programs and required independent audits; \$4, 200,000 is for the Office of Inspector General, of which such amounts as may be necessary may be used to conduct additional audits of recipients; \$17,000,000 is for management and grants oversight; \$3,400,000 is for client self-help and information technology; and \$1,000,000 is for loan repayment assistance: *Provided*, That the Legal Services Corporation may continue to provide locality pay to officers and employees at a rate no greater than that provided by the Federal Government to Washington, DC-based employees as authorized by 5 U.S.C. 5304, notwithstanding section 1005(d) of the Legal Services Corporation Act, 42 U.S.C. 2996(d): *Provided further*, That the authorities provided in section 205 of this Act shall be applicable to the Legal Services Corporation.

ADMINISTRATIVE PROVISION—LEGAL SERVICES CORPORATION

None of the funds appropriated in this Act to the Legal Services Corporation shall be expended for any purpose prohibited or limited by, or contrary to any of the provisions of, sections 501, 502, 503, 504, 505, and 506 of Public Law 105-119, and all funds appropriated in the Act to the Legal Services Corporation shall be subject to the same terms and conditions set forth in such sections, except that all references in sections 502 and 503 to 1997 and 1998 shall be deemed to refer instead to 2009 and 2010, respectively.

TITLE V – GENERAL PROVISIONS

[[Page 123 STAT. 3157]]

Sec. 533. Section 504(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1996 (as contained in Public Law 104-134) is amended by striking paragraph (13). [*Striking the FY 1996 attorneys’ fees restriction.*]

[[Page 123 STAT. 3158]]

This division may be cited as the “Commerce, Justice, Science, and Related Agencies Appropriations Act, 2010”.

*111TH CONGRESS 1ST SESSION
Conference Report 111-366
HOUSE OF REPRESENTATIVES
December 8, 2009*

*DEPARTMENTS OF TRANSPORTATION AND HOUSING AND URBAN DEVELOPMENT, AND
RELATED AGENCIES APPROPRIATIONS ACT, 2010
To accompany H.R. 3288*

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3288), making appropriations for the Departments of Transportation and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

*LEGAL SERVICES CORPORATION
PAYMENT TO THE LEGAL SERVICES CORPORATION*

The conference agreement provides \$420,000,000 for the Legal Services Corporation (LSC).

Accountability and oversight.—Over the past three years, GAO, the LSC Inspector General and the Audit Committee of the LSC Board of Directors have issued multiple findings of management and oversight weaknesses at the Corporation. LSC has made a public commitment to address each of these findings, and, as evidenced by recent GAO testimony, has made progress by implementing necessary corrective actions in a number of areas. However, as also evidenced by GAO's testimony, additional work remains to complete the full list of recommended actions.

The conferees have been, and remain, concerned about these gaps in LSC's management and accountability controls, which leave the Corporation vulnerable to improper expenditures or instances of waste by grantees. The timely resolution of these remaining issues must be a Corporation priority. Consequently, the conferees direct the Corporation's President and Chairman of the Board of Directors to report jointly to the House and Senate Committees on Appropriations no later than February 1, 2010, to certify that the Corporation has met the requirements for management practices and policies, as well as governance standards and guidelines.

ADMINISTRATIVE PROVISION—LEGAL SERVICES CORPORATION

A general provision in Title V of the bill revises the administrative provision in order to permit grantees to pursue the recovery of attorney's fees when recovery is permitted or required under Federal or State law. The conferees believe that this action will level the playing field between legal aid attorneys and their counterparts in the private sector and provide a potentially crucial source of additional revenue to legal aid providers in a year in which State and private funding sources are decreasing.

111TH CONGRESS 1ST SESSION
HOUSE REPORT 111-149

June 12, 2009

[Recommending \$440,000,000 and lifting the attorneys' fees restriction.]

COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS BILL, 2010

[To accompany H.R. 2847]

The Committee on Appropriations submits the following report in explanation of the accompanying bill making appropriations for Commerce, Justice, Science, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

LEGAL SERVICES CORPORATION
PAYMENT TO THE LEGAL SERVICES CORPORATION

<i>Fiscal Year 2009 enacted</i>	<i>\$390,000,000</i>
<i>Fiscal Year 2010 request</i>	<i>435,000,000</i>
<i>Recommended in the bill</i>	<i>440,000,000</i>
<i>Bill compared with:</i>	
<i>Fiscal Year 2009 enacted</i>	<i>+50,000,000</i>
<i>Fiscal Year 2010 request</i>	<i>+5,000,000</i>

The Legal Services Corporation (LSC) is a private, non-profit corporation that provides free civil legal assistance, according to locally-determined priorities, to people living in poverty. For fiscal year 2010, the Committee recommends \$440,000,000, which is \$5,000,000 above the budget request.

Increasing financial impact.—Given the increasing demand for legal aid services and the contraction of non-federal legal aid funding sources, it is critical for LSC to identify every possible means to increase the impact of its Federally appropriated dollars. Obtaining more services at no or low cost through private attorney involvement would provide one such means, and the Committee encourages LSC to increase its efforts to do so. The Committee also encourages LSC to reevaluate its prioritization between basic field grants and Technology Initiative Grants (TIG). LSC has provided examples of how effective TIG implementation has increased efficiency, allowed grantees to serve a greater total number of clients and freed up attorney resources for use on the most complex cases. With these benefits in mind, the Committee hopes that LSC will consider more significant increases to the TIG program when making future funding requests.

ADMINISTRATIVE PROVISION—LEGAL SERVICES CORPORATION

A general provision in Title V of the bill revises the administrative provision in order to permit grantees to pursue the recovery of attorney's fees when recovery is permitted or required under Federal or State law. The Committee believes that this action will level the playing field between legal aid attorneys and their counterparts in the private sector and provide a potentially crucial source of additional revenue to legal aid providers in a year in which state and private funding sources are decreasing.

[Title V, Sec. 533. Section 504(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1996 (as contained in Public Law 104-134) is amended by striking paragraph (13) [regarding attorneys' fees].]

111TH CONGRESS 1ST SESSION
 SENATE REPORT 111-34
 June 25, 2009

DEPARTMENTS OF COMMERCE AND JUSTICE, AND SCIENCE, AND RELATED
 AGENCIES APPROPRIATIONS BILL, 2010
 [To accompany H.R. 2847]

[Recommending \$400,000,000 and lifting the 1996 restrictions on non-federal funds except for restrictions on abortion-related litigation and prisoner litigation.]

LEGAL SERVICES CORPORATION
 PAYMENT TO THE LEGAL SERVICES CORPORATION

Appropriations, 2009	\$390,000,000
Budget estimate, 2010	435,000,000
House allowance	440,000,000
Committee recommendation	400,000,000

The Committee recommendation provides \$400,000,000 for payment to the Legal Services Corporation [LSC]. The recommendation is \$10,000,000 above the fiscal year 2009 enacted level and \$35,000,000 below the budget request.

The Committee recommendation provides \$374,600,000 for basic field programs, to be used for competitively awarded grants and contracts, \$17,000,000, for management and administration, \$3,400,000 for client self-help and information technology, \$4,000,000 for the Office of the Inspector General and \$1,000,000 is for loan repayment assistance.

ADMINISTRATIVE PROVISIONS

The Committee recommendation continues the administrative provisions contained in the fiscal year 1998 appropriations act (Public Law 105-119) regarding operation of this program to provide basic legal services to disadvantaged individuals and the restrictions on the use of LSC funds.

LSC funds cannot be used to engage in litigation and related activities with respect to a variety of matters including: (1) redistricting; (2) class action suits; (3) representation of illegal aliens; (4) political activities; (5) collection of attorney fees; (6) abortion; (7) prisoner litigation; (8) welfare reform; (9) representation of charged drug dealers during eviction proceedings; and (10) solicitation of clients. The exception to the restrictions occurs in a case where there is imminent threat of physical harm to the client or prospective client remains in place.

The manner in which the LSC grantees are audited through contracts with certified public accountants for financial and compliance audits are continued, along with the provisions on recompetition and debarment.

The Committee recognizes that the LSC current percentage locality pay represents reasonable compensation for LSC officers and employees. The Committee expects that any locality pay will continue to be paid at that percentage.

Section 532 lifts certain restrictions on private and State funding to LSC grantees.

[Title V, Sec. 532. Section 504(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1996 (as contained in Public Law 104-134) is amended:

- (1) in subsection (a), in the matter preceding paragraph (1), by inserting after `)' the following: `that uses Federal funds (or funds from any source with regard to paragraphs (14) and (15)) in a manner';*
- (2) by striking subsection (d); and*
- (3) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.]*

FY 2013 Supplemental Funding for Hurricane Sandy Relief
*[Congress appropriated \$1,000,000 but only \$950,000 was provided to LSC after sequestration.
For provisions within this Act, LSC is considered an agency.]*

Public Law No: 113-2
127 Stat. 4
January 29, 2013

DISASTER RELIEF APPROPRIATIONS

An Act

Making supplemental appropriations for the fiscal year ending September 30, 2013, to improve and streamline disaster assistance for Hurricane Sandy, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2013, and for other purposes, namely:

DIVISION A—DISASTER RELIEF APPROPRIATIONS ACT, 2013

TITLE X

CHAPTER 2

[[Page 127 STAT. 21]]

RELATED AGENCIES

LEGAL SERVICES CORPORATION

PAYMENT TO THE LEGAL SERVICES CORPORATION

For an additional amount for “Payment to the Legal Services Corporation” to carry out the purposes of the Legal Services Corporation Act by providing for necessary expenses related to the consequences of Hurricane Sandy, \$1,000,000: *Provided*, That the amount made available under this heading shall be used only to provide the mobile resources, technology, and disaster coordinators necessary to provide storm-related services to the Legal Services Corporation client population and only in the areas significantly affected by Hurricane Sandy: *Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985: *Provided further*, That none of the funds appropriated in this division to the Legal Services Corporation shall be expended for any purpose prohibited or limited by, or contrary to any of the provisions of, sections 501, 502, 503, 504, 505, and 506 of Public Law 105–119, and all funds appropriated in this division to the Legal Services Corporation shall be subject to the same terms and conditions set forth in such sections, except that all references in sections 502 and 503 to 1997 and 1998 shall be deemed to refer instead to 2012 and 2013, respectively, and except that sections 501 and 503 of Public Law 104–134 (referenced by Public Law 105–119) shall not apply to the amount made available under this heading: *Provided further*, That, for the purposes of this division, the Legal Services Corporation shall be considered an agency of the United States Government.

[[Page 127 STAT. 17]] [Note—the General Provisions appear before the LSC provision in the statute but are reproduced here after the LSC provision.]

TITLE IX

GENERAL PROVISIONS—THIS DIVISION

SEC. 901. Each amount appropriated or made available in this division is in addition to amounts otherwise appropriated for the fiscal year involved.

SEC. 902. Each amount designated in this division by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be available only if the President subsequently so designates all such amounts and transmits such designations to the Congress.

SEC. 903. No part of any appropriation contained in this division shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 904. (a)(1) Not later than March 31, 2013, in accordance with criteria to be established by the Director of the Office of Management and Budget (referred to in this section as “OMB”), each Federal agency shall submit to OMB, the Government Accountability Office, the respective Inspector General of each agency, and the Committees on Appropriations of the House of Representatives and the Senate internal control plans for funds provided by this division.

(2) Not later than June 30, 2013, the Government Accountability Office shall review for the Committees on Appropriations of the House of Representatives and the Senate the design of the internal control plans required by paragraph (1).

(b) All programs and activities receiving funds under this division shall be deemed to be “susceptible to significant improper payments” for purposes of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note), notwithstanding section 2(a) of such Act.

(c) Funds for grants provided by this division shall be expended by the grantees within the 24-month period following the agency's obligation of funds for the grant, unless, in accordance with guidance to be issued by the Director of OMB, the Director waives this requirement for a particular grant program and submits a written justification for such waiver to the Committees on Appropriations of the House of Representatives and the Senate. In the case of such grants, the agency shall include a term in the grant that requires the grantee to return to the agency any funds not expended within the 24-month period.

(d) Through September 30, 2015, the Recovery Accountability and Transparency Board shall develop and use information technology resources and oversight mechanisms to detect and remediate waste, fraud, and abuse in the obligation and expenditure of funds appropriated in this or any other Act for any fiscal year of such period for purposes related to the impact of Hurricane Sandy: *Provided*, That the Board shall coordinate its oversight efforts with the Director of OMB, the head of each Federal agency receiving appropriations related to the impact of Hurricane Sandy, and the respective Inspector General of each such agency: *Provided further*, That the Board shall submit quarterly reports to the Committees on Appropriations of the House of Representatives and the Senate on its activities related to funds appropriated for the impact of Hurricane Sandy.

**Legal Services Corporation FY 2014 Appropriation
With Selected General Provisions**

**Public Law No: 113-76
128 Stat. 5
January 18, 2014**

CONSOLIDATED APPROPRIATIONS ACT, 2014

[[Page 128 STAT. 7]]

SEC. 4. EXPLANATORY STATEMENT

The explanatory statement regarding this Act, printed in the House of Representatives section of the Congressional Record on or about January 15, 2014 by the Chairman of the Committee on Appropriations of the House, shall have the same effect with respect to the allocation of funds and implementation of divisions A through L of this Act as if it were a joint explanatory statement of a committee of conference.

**DIVISION B--COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES
APPROPRIATIONS ACT, 2014**

TITLE IV – RELATED AGENCIES

[[Page 128 STAT. 76]]

**LEGAL SERVICES CORPORATION
PAYMENT TO THE LEGAL SERVICES CORPORATION**

For payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974, \$365,000,000, of which \$335,700,000 is for basic field programs and required independent audits; \$4,350,000 is for the Office of Inspector General, of which such amounts as may be necessary may be used to conduct additional audits of recipients; \$18,000,000 is for management and grants oversight; \$3,450,000 is for client self-help and information technology; \$2,500,000 is for a Pro Bono Innovation Fund; and \$1,000,000 is for loan repayment assistance: Provided, That the Legal Services Corporation may continue to provide locality pay to officers and employees at a rate no greater than that provided by the Federal Government to Washington, DC-based employees as authorized by section 5304 of title 5, United States Code, notwithstanding section 1005(d) of the Legal Services Corporation Act (42 U.S.C. 2996(d)): Provided further, That the authorities provided in section 205 of this Act shall be applicable to the Legal Services Corporation: Provided further, That, for the purposes of section 505 of this Act, the Legal Services Corporation shall be considered an agency of the United States Government.

ADMINISTRATIVE PROVISIONS—LEGAL SERVICES CORPORATION

None of the funds appropriated in this Act to the Legal Services Corporation shall be expended for any purpose prohibited or limited by, or contrary to any of the provisions of, sections 501, 502, 503, 504, 505, and 506 of Public Law 105-119, and all funds appropriated in this Act to the Legal Services Corporation shall be subject to the same terms and conditions set forth in such sections, except that all references in sections 502 and 503 to 1997 and 1998 shall be deemed to refer instead to 2013 and 2014, respectively.

**TITLE II—DEPARTMENT OF JUSTICE
GENERAL PROVISIONS**

[[Page 128 STAT. 67]]

Sec. 205. Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Department of Justice in this Act may be transferred between such appropriations, but no such appropriation, except as otherwise specifically provided, shall be increased by more than 10 percent by any such transfers: *Provided*, That any transfer pursuant to this section shall be treated as a reprogramming of funds under section 505 of this Act and shall not be available for obligation except in compliance with the procedures set forth in that section.

**TITLE V—GENERAL PROVISIONS
(including rescissions)**

[[Page 128 STAT. 77]]

Sec. 501. No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress.

[[Page 128 STAT. 78]]

Sec. 505. None of the funds provided under this Act, or provided under previous appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in fiscal year 2014, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds that:

- (1) creates or initiates a new program, project or activity;
- (2) eliminates a program, project or activity;
- (3) increases funds or personnel by any means for any project or activity for which funds have been denied or restricted;
- (4) relocates an office or employees;
- (5) reorganizes or renames offices, programs or activities;

(6) contracts out or privatizes any functions or activities presently performed by Federal employees;

(7) augments existing programs, projects or activities in excess of \$500,000 or 10 percent, whichever is less, or reduces by 10 percent funding for any program, project or activity, or numbers of personnel by 10 percent; or

(8) results from any general savings, including savings from a reduction in personnel, which would result in a change in existing programs, projects or activities as approved by Congress; unless the House and Senate Committees on Appropriations are notified 15 days in advance of such reprogramming of funds by agencies (excluding agencies of the Department of Justice) funded by this Act and 45 days in advance of such reprogramming of funds by agencies of the Department of Justice funded by this Act.

[[Page 128 STAT. 79]]

Sec. 512. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriations Act.

Sec. 514. (a) The Inspectors General of the Department of Commerce, the Department of Justice, the National Aeronautics and Space Administration, the National Science Foundation, and the Legal Services Corporation shall conduct audits, pursuant to the Inspector General Act (5 U.S.C. App.), of grants or contracts for which funds are appropriated by this Act, and shall submit reports to Congress on the progress of such audits, which may include preliminary findings and a description of areas of particular interest, within 180 days after initiating such an audit and every 180 days thereafter until any such audit is completed.

(b) Within 60 days after the date on which an audit described in subsection (a) by an Inspector General is completed, the Secretary, Attorney General, Administrator, Director, or President, as appropriate, shall make the results of the audit available to the public on the Internet website maintained by the Department,

[[Page 128 STAT. 80]]

Administration, Foundation, or Corporation, respectively. The results shall be made available in redacted form to exclude--

(1) any matter described in section 552(b) of title 5, United States Code; and

(2) sensitive personal information for any individual, the public access to which could be used to commit identity theft or for other inappropriate or unlawful purposes.

(c) A grant or contract funded by amounts appropriated by this Act may not be used for the purpose of defraying the costs of a banquet or conference that is not directly and programmatically related to the purpose for which the grant or contract was awarded, such as a banquet or conference held in connection with planning, training, assessment, review, or other routine purposes related to a project funded by the grant or contract.

(d) Any person awarded a grant or contract funded by amounts appropriated by this Act shall submit a statement to the Secretary of Commerce, the Attorney General, the Administrator, Director, or President, as appropriate, certifying that no funds derived from the grant or contract will be made available through a subcontract or in any other manner to another person who has a financial interest in the person awarded the grant or contract.

(e) The provisions of the preceding subsections of this section shall take effect 30 days after the date on which the Director of the Office of Management and Budget, in consultation with the Director of the Office of Government Ethics, determines that a uniform set of rules and requirements, substantially similar to the requirements in such subsections, consistently apply under the executive branch ethics program to all Federal departments, agencies, and entities.

[[Page 128 STAT. 82]]

Sec. 523. None of the funds appropriated or otherwise made available by this Act may be used to enter into a contract in an amount greater than \$5,000,000 or to award a grant in excess of such amount unless the prospective contractor or grantee certifies in writing to the agency awarding the contract or grant that, to the best of its knowledge and belief, the contractor or grantee has filed all Federal tax returns required during the three years preceding the certification, has not been convicted of a criminal offense under the Internal Revenue Code of 1986, and has not, more than 90 days prior to certification, been notified of any unpaid Federal tax assessment for which the liability remains unsatisfied, unless the assessment is the subject of an installment agreement or offer in compromise that has been approved by the Internal Revenue Service and is not in default, or the assessment is the subject of a non-frivolous administrative or judicial proceeding

[[Page 128 STAT. 83]]

Sec. 525. None of the funds made available in this Act may be used to purchase first class or premium airline travel in contravention of sections 301-10.122 through 301-10.124 of title 41 of the Code of Federal Regulations.

[[Page 128 STAT. 84]]

Sec. 530. To the extent practicable, funds made available in this Act should be used to purchase light bulbs that are `Energy Star' qualified or have the `Federal Energy Management Program' designation.

[[Page 128 STAT. 85]]

Sec. 534. (a) None of the funds made available in this Act may be used to maintain or establish a computer network unless such network blocks the viewing, downloading, and exchanging of pornography.

[[Page 128 STAT. 86]]

Sec. 536. None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

Sec. 537. None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

This division may be cited as the “Commerce, Justice, Science, and Related Agencies Appropriations Act, 2014”.

**DIVISION E—FINANCIAL SERVICES AND GENERAL GOVERNMENT
APPROPRIATIONS ACT, 2014**

**TITLE VII--GENERAL PROVISIONS—GOVERNMENT WIDE
DEPARTMENTS, AGENCIES, and CORPORATIONS
(including transfer of funds)**

[[Page 128 STAT 234]]

Sec. 718. No part of any appropriation contained in this or any other Act shall be used directly or indirectly, including by private contractor, for publicity or propaganda purposes within the United States not heretofore authorized by the Congress.

[[Page 128 STAT 236]]

Sec. 726. (a) None of the funds appropriated by this Act may be used to enter into or renew a contract which includes a provision providing prescription drug coverage, except where the contract also includes a provision for contraceptive coverage.

(b) Nothing in this section shall apply to a contract with--

(1) any of the following religious plans:

(A) Personal Care's HMO; and

(B) OSF HealthPlans, Inc.; and

(2) any existing or future plan, if the carrier for the plan objects to such coverage on the basis of religious beliefs.

(c) In implementing this section, any plan that enters into or renews a contract under this section may not subject any individual to discrimination on the basis that the individual refuses to prescribe or otherwise provide for contraceptives because such activities would be contrary to the individual's religious beliefs or moral convictions.

(d) Nothing in this section shall be construed to require coverage of abortion or abortion-related services.

[[Page 128 STAT 242]]

Sec. 743. None of the funds made available in this or any other appropriations Act may be used to eliminate or reduce funding for a program, project, or activity as proposed in the President's budget request for a fiscal year until such proposed change is subsequently enacted in an appropriation Act, or unless such change is made pursuant to the reprogramming or transfer provisions of this or any other appropriations Act.

EXPLANATORY STATEMENT

**DIVISION B—COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES
APPROPRIATIONS ACT, 2013**

Report language included in House Report 113-171 ("the House report") or Senate Report 113-78 ("the Senate report") that is not changed by this explanatory statement or this Act is approved. The explanatory statement, while repeating some language for emphasis, is not intended to negate the language referred to above unless expressly provided herein. In cases where both the House report and the Senate report address a particular issue not specifically addressed in the explanatory statement, the House report and the Senate report should be read as consistent and are to be interpreted accordingly. In cases where the House report or the Senate report directs the submission of a report, such report is to be submitted to both the House and Senate Committees on Appropriations ("the Committees").

[The reprogramming provisions apply to LSC.]

Each department and agency funded in this Act shall follow the directions set forth in this Act and the accompanying statement and shall not reallocate resources or reorganize activities except as provided herein. Reprogramming procedures shall apply to: funds provided in this Act; unobligated balances from previous appropriations Acts that are available for obligation or expenditure in fiscal year 2014; and non-appropriated resources such as fee collections that are used to meet program requirements in fiscal year 2014. These procedures are specified in section 505 of this Act.

Any reprogramming request shall include any out-year budgetary impacts and a separate accounting of program or mission impacts on estimated carryover funds. Any program, project or activity cited in this statement, or in the House report or the Senate report and not changed by this Act or statement, shall be construed as the position of the Congress and shall not be subject to reductions or reprogramming without prior approval of the Committees. Further, any department or agency funded in this Act which plans a reduction-in-force shall notify the Appropriations Committees of the House and Senate by letter no later than 30 days in advance of the date of any such planned personnel action.

When a department or agency submits a reprogramming or transfer request to the Appropriations Committees of the House and Senate and does not receive identical responses by the House and Senate, it shall be the responsibility of the department or agency seeking the reprogramming to reconcile the differences between the two bodies before proceeding. If reconciliation is not possible, the items in disagreement in the reprogramming or transfer request shall be considered unapproved.

**LEGAL SERVICES CORPORATION
PAYMENT TO THE LEGAL SERVICES CORPORATION**

This Act includes \$365,000,000 for the Legal Services Corporation (LSC).

ADMINISTRATIVE PROVISION-LEGAL SERVICES CORPORATION

Unauthorized uses of funds.-The Inspector General of the LSC is encouraged to conduct annual audits of LSC grantees to ensure that funds are not being used in contravention of the restrictions on engaging in political activities or any of the other restrictions by which LSC grantees are required to abide. The removal of funds from any LSC grantee determined by the Inspector General to have engaged in unauthorized political activity is recommended.

Section 205 establishes requirements and procedures for transfer proposals.

Section 505 prohibits a reprogramming of funds that: (1) creates or initiates a new program, project or activity; (2) eliminates a program, project, or activity; (3) increases funds or personnel by any means for any project or activity for which funds have been denied or restricted; (4) relocates an office or employee; (5) reorganizes or renames offices, programs or activities; (6) contracts out or privatizes any function or activity presently performed by Federal employees; (7) augments funds for existing programs, projects or activities in excess of \$500,000 or 10 percent, whichever is less, or reduces by 10 percent funding for any existing program, project, or activity, or numbers of personnel by 10 percent; or (8) results from any general savings, including savings from a reduction in personnel, which would result in a change in existing programs, activities, or projects as approved by Congress; unless the House and Senate Committees on Appropriations are notified 15 days in advance of such reprogramming of funds. Language is included requiring the Department of Justice to notify the Committees 45 days in advance of any such reprogramming.

Senate Committee on Appropriations FY 2014 LSC Appropriation

[S. 1329 was reported by the Senate Committee on Appropriations, but not voted on by the Senate or the House.]

[S. 1329 would have provided \$430,000,000 to LSC and lifted the 1996 restriction on non-Federal funds except for class actions, abortion-related litigation, and prisoner litigation.]

113th Congress, 1st Session

S. 1329

Making appropriations for Departments of Commerce and Justice, and Science, and Related Agencies for the fiscal year ending September 30, 2014, and for other purposes.

**Legal Services Corporation
Payment to the Legal Services Corporation**

For payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974, \$430,000,000, of which \$400,000,000 is for basic field programs and required independent audits; \$4,500,000 is for the Office of Inspector General, of which such amounts as may be necessary may be used to conduct additional audits of recipients; \$19,500,000 is for management and grants oversight; \$3,500,000 is for client self-help and information technology; \$1,500,000 is for a Pro Bono Innovation Fund; and \$1,000,000 is for loan repayment assistance: Provided, That the Legal Services Corporation may continue to provide locality pay to officers and employees at a rate no greater than that provided by the Federal Government to Washington, DC-based employees as authorized by section 5304 of title 5, United States Code, notwithstanding section 1005(d) of the Legal Services Corporation Act (42 U.S.C. 2996(d)): Provided further, That the authorities provided in section 205 of this Act shall be applicable to the Legal Services Corporation: Provided further, That, for the purposes of section 505 and section 540 of this Act, the Legal Services Corporation shall be considered an agency of the United States Government.

Administrative Provision—Legal Services Corporation

None of the funds appropriated in this Act to the Legal Services Corporation shall be expended for any purpose prohibited or limited by, or contrary to any of the provisions of, sections 501, 502, 503, 504, 505, and 506 of Public Law 105-119, and all funds appropriated in this Act to the Legal Services Corporation shall be subject to the same terms and conditions set forth in such sections, except that all references in sections 502 and 503 to 1997 and 1998 shall be deemed to refer instead to 2013 and 2014, respectively.

Section 504 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1996 (as contained in Public Law 104-134) is amended:

- (1) in subsection (a), in the matter preceding paragraph (1), by inserting after `)' the following: `that uses Federal funds (or funds from any source with regard to paragraphs (7), (14) and (15)) in a manner';*
- (2) by striking subsection (d) ; and*
- (3) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.*

Senate Report 113-78 to accompany S. 1329

[S. 1329 was reported by the Senate Committee on Appropriations, but not voted on by the Senate or the House.]

[The report is incorporated by the explanatory statement.]

**Senate Report 113-78
DEPARTMENTS OF COMMERCE AND JUSTICE, AND SCIENCE, AND
RELATED AGENCIES APPROPRIATIONS BILL, 2014**

**LEGAL SERVICES CORPORATION
PAYMENT TO THE LEGAL SERVICES CORPORATION**

<i>Appropriations, 2013 (1, 2)</i>	<i>\$358,433,000</i>
<i>Budget estimate, 2014</i>	<i>430,000,000</i>
<i>Committee Recommendation</i>	<i>430,000,000</i>
<i>(1) Does not reflect the March 1, 2013, sequester of funds under Public Law 112-25.</i>	
<i>(2) Includes emergency funding of \$1,000,000 in the Disaster Relief Appropriations Act, 2013 (division A of Public Law 113-2).</i>	

The Committee's recommendation provides \$430,000,000 for payment to the Legal Services Corporation [LSC]. The recommendation is \$71,567,000 above the fiscal year 2013 enacted level, and equal to the budget request.

The Committee's recommendation provides \$400,000,000 for basic field programs, to be used for competitively awarded grants and contracts; \$19,500,000 for management and administration; \$3,500,000 for client self-help and information technology; \$4,500,000 for the Office of the Inspector General [OIG]; \$1,000,000 for loan repayment assistance, and \$1,500,000 for LSC's new Pro Bono Innovation Fund.

Governance and Management- The LSC must continue its governance and management improvement efforts in order to further restore the credibility of the organization and direct additional funds into legal aid, where they are desperately needed. The Committee expects the Inspector General of the LSC to continue conducting annual audits of LSC grantees to ensure that funds are not being used in contravention of the restrictions by which LSC grantees are required to abide.

Pro Bono Task Force- The Committee applauds the LSC for launching a pro bono task force, which released its report in the fall of 2012. The Committee urges LSC to implement the recommendations as it continues to work with grantees to adopt measures aimed at increasing the involvement of private attorneys in the delivery of legal services to their clients.

Pro Bono Innovation Fund- The Committee's recommendation provides full funding of \$1,500,000 to establish a new Pro Bono Innovation Fund. This fund will support innovative projects that promote and enhance pro bono initiatives throughout the Nation, as well as leverage Federal dollars to increase free legal aid for low-income Americans by engaging private attorneys.

ADMINISTRATIVE PROVISION—LEGAL SERVICES CORPORATION

The Committee's recommendation continues the administrative provisions contained in the fiscal year 1998 appropriations act (Public Law 105-119) regarding operation of this program to provide basic legal services to disadvantaged individuals and the restrictions on the use of LSC funds.

LSC funds cannot be used to engage in litigation and related activities with respect to a variety of matters including: (1) redistricting; (2) class action suits; (3) representation of illegal aliens; (4) political activities; (5) abortion; (6) prisoner litigation; (7) welfare reform; (8) representation of charged drug dealers during eviction proceedings; and (9) solicitation of clients. The exception to the restrictions occurs in a case where there is imminent threat of physical harm to the client or prospective client.

The bill makes no changes to the permanent restrictions established under the Legal Services Corporation Act (42 U.S.C. Sec. 2996 et seq.). The Committee provides language that affects only the 1996 appropriations rider in the following manner: (1) keeps the restriction on use of funds from all private and public sources for abortion-related litigation, representation of prisoners, and class action suits; and (2) lifts the restriction on use of funds from all private sources--but keeps the restriction on use of all public sources--for all other activities currently restricted by the rider. This provision was included to level the playing field between legal aid attorneys and their counterparts in the private sector and open potentially crucial sources of additional revenue to legal aid providers given that State and private funding sources have declined in recent years.

House Committee on Appropriations FY 2014 LSC Appropriation

[H.R. 2787 was reported by the House Committee on Appropriations, but not voted on by House or Senate. H.R. 2787 would have provided \$300,000,000 to LSC.]

*113th Congress
1st Session
H. R. 2787*

Making appropriations for the Departments of Commerce and Justice, Science, and Related Agencies for the fiscal year ending September 30, 2014, and for other purposes.

**Legal Services Corporation
Payment to the Legal Services Corporation**

For payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974, \$300,000,000, of which \$271,900,000 is for basic field programs and required independent audits; \$4,200,000 is for the Office of Inspector General, of which such amounts as may be necessary may be used to conduct additional audits of recipients; \$17,000,000 is for management and grants oversight; \$3,400,000 is for client self-help and information technology; \$2,500,000 is for a Pro Bono Innovation Fund; and \$1,000,000 is for loan repayment assistance: Provided, That the Legal Services Corporation may continue to provide locality pay to officers and employees at a rate no greater than that provided by the Federal Government to Washington, DC-based employees as authorized by section 5304 of title 5, United States Code, notwithstanding section 1005(d) of the Legal Services Corporation Act (42 U.S.C. 2996(d)): Provided further, That the authorities provided in section 205 of this Act shall be applicable to the Legal Services Corporation: Provided further, That, for the purposes of sections 505 and 531 of this Act, the Legal Services Corporation shall be considered an agency of the United States Government.

Administrative Provision—Legal Services Corporation

None of the funds appropriated in this Act to the Legal Services Corporation shall be expended for any purpose prohibited or limited by, or contrary to any of the provisions of, sections 501, 502, 503, 504, 505, and 506 of Public Law 105-119, and all funds appropriated in this Act to the Legal Services Corporation shall be subject to the same terms and conditions set forth in such sections, except that all references in sections 502 and 503 to 1997 and 1998 shall be deemed to refer instead to 2013 and 2014, respectively.

House Report 113-171 to accompany H.R. 2787

[H.R. 5787 was not voted on by the House or Senate.]
[The report is incorporated by the explanatory statement.]

House Report 113-171
COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES
APROPRIATIONS BILL, 2014

LEGAL SERVICES CORPORATION
PAYMENT TO THE LEGAL SERVICES CORPORATION

The Committee recommends \$300,000,000 for the Legal Services Corporation (LSC), which is \$58,149,000 below fiscal year 2013 and \$130,000,000 below the request.

Pro bono legal services.--Obtaining more services at no or low cost through private attorney involvement is one means for LSC to increase legal aid services. The Committee is pleased that LSC launched a pro bono task force in 2011, which released its findings and recommendations in October, 2012. The Committee directs LSC to implement the recommendations of this task force and continue to work with LSC-funded programs to adopt measures aimed at increasing the involvement of private attorneys in the delivery of legal services to its clients. LSC shall report to the Committee annually on its progress in this area, including a summary of the number of Americans served by pro bono services as part of LSC's efforts.

Pro bono innovation fund.--The recommendation includes \$2,500,000 to create a pro bono innovation fund, as recommended by the pro bono task force and as proposed in LSC's fiscal year 2014 budget request.

ADMINISTRATIVE PROVISIONS—LEGAL SERVICES CORPORATION

The bill continues restrictions on the uses of LSC funding. None of the funds appropriated in this Act to the LSC shall be expended for any purpose prohibited or limited by, or contrary to any of the provisions of, sections 501, 502, 503, 504, 505, and 506 of Public Law 105-119, and all funds appropriated in this Act to the LSC shall be subject to the same terms and conditions set forth in such sections, except that all references in sections 502 and 503 to 1997 and 1998 shall be deemed to refer instead to 2013 and 2014, respectively.

Unauthorized uses of funds.--The IG of the LSC is encouraged to conduct annual audits of LSC grantees to ensure that funds are not used in contravention of the restrictions on engaging in political activities or any of the other restrictions by which LSC grantees are required to abide. The removal of funds from any LSC grantee determined by the IG to have engaged in unauthorized political activity is recommended.

**Legal Services Corporation FY 2015 Appropriation
With Selected General Provisions**

**Public Law No: 113-235
128 Stat. 2130
December 16, 2014**

CONSOLIDATED AND FURTHER CONTINUING APPROPRIATIONS ACT, 2015

[Page 128 Stat. 2132]

SEC. 4 EXPLANATORY STATEMENT.

The explanatory statement regarding this Act, printed in the House of Representatives section of the Congressional Record on or about December 11, 2014 by the Chairman of the Committee on Appropriations of the House, shall have the same effect with respect to the allocation of funds and implementation of divisions A through K of this Act as if it were a joint explanatory statement of a committee of conference.

**DIVISION B—COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES
APPROPRIATIONS ACT, 2015**

TITLE VI – RELATED AGENCIES

[Page 128 Stat. 2207]

**LEGAL SERVICES CORPORATION
PAYMENT TO THE LEGAL SERVICES CORPORATION**

For payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974, \$375,000,000, of which \$343,150,000 is for basic field programs and required independent audits; \$4,350,000 is for the Office of Inspector General, of which such amounts as may be necessary may be used to conduct additional audits of recipients; \$18,500,000 is for management and grants oversight; \$4,000,000 is for client self-help and information technology; \$4,000,000 is for a Pro Bono Innovation Fund; and \$1,000,000 is for loan repayment assistance: *Provided*, That the Legal Services Corporation may continue to provide locality pay to officers and employees at a rate no greater than that provided by the Federal Government to Washington, DC-based employees as authorized by section 5304 of title 5, United States Code, notwithstanding section 1005(d) of the Legal Services Corporation Act (42 U.S.C. 2996(d)): *Provided further*, That the authorities provided in section 205 of this Act shall be applicable to the Legal Services Corporation: *Provided further*, That, for the purposes of section 505 of this Act, the Legal Services Corporation shall be considered an agency of the United States Government.

ADMINISTRATIVE PROVISION—LEGAL SERVICES CORPORATION

None of the funds appropriated in this Act to the Legal Services Corporation shall be expended for any purpose prohibited or limited by, or contrary to any of the provisions of, sections 501, 502, 503, 504, 505, and 506 of Public Law 105–119, and all funds appropriated in this Act to the Legal Services Corporation shall be subject to the same terms and conditions set forth in such sections, except that all references in sections 502 and 503 to 1997 and 1998 shall be deemed to refer instead to 2014 and 2015, respectively.

**TITLE II – DEPARTMENT OF JUSTICE
GENERAL PROVISIONS**

[Page 128 Stat. 2197]

SEC. 205. Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Department of Justice in this Act may be transferred between such appropriations, but no such appropriation, except as otherwise specifically provided, shall be increased by more than 10 percent by any such transfers: *Provided*, That any transfer pursuant to this section shall be treated as a reprogramming of funds under section 505 of this Act and shall not be available for obligation except in compliance with the procedures set forth in that section.

**TITLE V – GENERAL PROVISIONS
(including rescissions)**

[Page 128 Stat. 2208]

SEC. 501. No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress.

SEC. 505. None of the funds provided under this Act, or provided under previous appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in fiscal year 2015, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds that:

- (1) creates or initiates a new program, project or activity;
- (2) eliminates a program, project or activity;
- (3) increases funds or personnel by any means for any project or activity for which funds have been denied or restricted;
- (4) relocates an office or employees;

- (5) reorganizes or renames offices, programs or activities;
- (6) contracts out or privatizes any functions or activities presently performed by Federal employees;
- (7) augments existing programs, projects or activities in excess of \$500,000 or 10 percent, whichever is less, or reduces by 10 percent funding for any program, project or activity, or numbers of personnel by 10 percent; or
- (8) results from any general savings, including savings from a reduction in personnel, which would result in a change in existing programs, projects or activities as approved by Congress; unless the House and Senate Committees on Appropriations are notified 15 days

[Page 128 Stat. 2209]

in advance of such reprogramming of funds by agencies (excluding agencies of the Department of Justice) funded by this Act and 45 days in advance of such reprogramming of funds by agencies of the Department of Justice funded by this Act.

[Page 128 Stat. 2210]

SEC. 512. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriations Act.

SEC. 514. (a) The Inspectors General of the Department of Commerce, the Department of Justice, the National Aeronautics and Space Administration, the National Science Foundation, and the Legal Services Corporation shall conduct audits, pursuant to the Inspector General Act (5 U.S.C. App.), of grants or contracts for which funds are appropriated by this Act, and shall submit reports to Congress on the progress of such audits, which may include preliminary findings and a description of areas of particular interest, within 180 days after initiating such an audit and every 180 days thereafter until any such audit is completed.

(b) Within 60 days after the date on which an audit described in subsection (a) by an Inspector General is completed, the Secretary, Attorney General, Administrator, Director, or President, as appropriate, shall make the results of the audit available to the public on the Internet website maintained by the Department, Administration, Foundation, or Corporation, respectively. The results shall be made available in redacted form to exclude—

- (1) any matter described in section 552(b) of title 5, United States Code; and
- (2) sensitive personal information for any individual, the public access to which could be used to commit identity theft or for other inappropriate or unlawful purposes.

(c) Any person awarded a grant or contract funded by amounts appropriated by this Act shall submit a statement to the Secretary of Commerce, the Attorney General, the Administrator, Director, or President, as appropriate, certifying that no funds derived from the grant or contract

will be made available through a subcontract or in any other manner to another person who has a financial interest in the person awarded the grant or contract.

(d) The provisions of the preceding subsections of this section shall take effect 30 days after the date on which the Director of the Office of Management and Budget, in consultation with the Director of the Office of Government Ethics, determines that

[Page 128 Stat. 2211]

a uniform set of rules and requirements, substantially similar to the requirements in such subsections, consistently apply under the executive branch ethics program to all Federal departments, agencies, and entities.

[Page 128 Stat. 2213]

SEC. 523. None of the funds appropriated or otherwise made available by this Act may be used to enter into a contract in an amount greater than \$5,000,000 or to award a grant in excess of such amount unless the prospective contractor or grantee certifies in writing to the agency awarding the contract or grant that, to the best of its knowledge and belief, the contractor or grantee has filed all Federal tax returns required during the three years preceding the certification, has not been convicted of a criminal offense under the Internal Revenue Code of 1986, and has not, more than 90 days prior to certification, been notified of any unpaid Federal tax assessment for which the liability remains unsatisfied, unless the assessment is the subject of an installment agreement or offer in compromise that has been approved by the Internal Revenue Service and is not in default, or the assessment is the subject of a non-frivolous administrative or judicial proceeding.

[Page 128 Stat. 2214]

SEC. 525. None of the funds made available in this Act may be used to purchase first class or premium airline travel in contravention of sections 301–10.122 through 301–10.124 of title 41 of the Code of Federal Regulations.

[Page 128 Stat. 2215]

SEC. 530. To the extent practicable, funds made available in this Act should be used to purchase light bulbs that are “Energy Star” qualified or have the “Federal Energy Management Program” designation.

[Page 128 Stat. 2216]

SEC. 534. (a) None of the funds made available in this Act may be used to maintain or establish a computer network unless such network blocks the viewing, downloading, and exchanging of pornography.

[Page 128 Stat. 2234]

This division may be cited as the “Commerce, Justice, Science, and Related Agencies Appropriations Act, 2015”.

**DIVISION E – FINANCIAL SERVICES AND GENERAL GOVERNMENT
APPROPRIATIONS ACT, 2015**

**TITLE VII—GENERAL PROVISIONS—GOVERNMENT-WIDE
DEPARTMENTS, AGENCIES, AND CORPORATIONS
(including transfer of funds)**

[Page 128 Stat. 2383]

SEC. 718 No part of any appropriation contained in this or any other Act shall be used directly or indirectly, including by private contractor, for publicity or propaganda purposes within the United States not heretofore authorized by Congress.

[Page 128 Stat. 2385]

SEC. 726. (a) None of the funds appropriated by this Act may be used to enter into or renew a contract which includes a provision providing prescription drug coverage, except where the contract also includes a provision for contraceptive coverage.

(b) Nothing in this section shall apply to a contract with—

(1) any of the following religious plans:

(A) Personal Care's HMO; and

(B) OSF HealthPlans, Inc.; and

(2) any existing or future plan, if the carrier for the plan objects to such coverage on the basis of religious beliefs.

(c) In implementing this section, any plan that enters into or renews a contract under this section may not subject any individual to discrimination on the basis that the individual refuses to prescribe or otherwise provide for contraceptives because such activities would be contrary to the individual's religious beliefs or moral convictions.

(d) Nothing in this section shall be construed to require coverage of abortion or abortion-related services.

[Page 128 Stat. 2390]

SEC. 740 None of the funds made available in this or any other appropriations Act may be used to increase, eliminate, or reduce funding for a program, project, or activity as proposed in the President's budget request for a fiscal year until such proposed change is subsequently enacted in an appropriation Act, or unless such change is made pursuant to the reprogramming or transfer provisions of this or any other appropriations Act.

[Page 128 Stat. 2391]

SEC. 743. (a) None of the funds appropriated or otherwise made available by this or any other Act may be available for a contract, grant, or cooperative agreement with an entity that requires employees or contractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

SEC. 744 None of the funds made available by this or any other Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

SEC. 745 None of the funds made available by this or any other Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

EXPLANATORY STATEMENT

**DIVISION B—COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES
APPROPRIATIONS ACT, 2015**

Report language included in House Report 113-448 ("the House report") or Senate Report 113-181 ("the Senate report") that is not changed by this explanatory statement or this Act is approved. The explanatory statement, while repeating some language for emphasis, is not intended to negate the language referred to above unless expressly provided herein. In cases where both the House report and the Senate report address a particular issue not specifically addressed in the explanatory statement, the House report and the Senate report should be read as consistent and are to be interpreted accordingly. In cases where the House report or the Senate report directs the submission of a report, such report is to be submitted to both the House and Senate Committees on Appropriations ("the Committees").

[The reprogramming provisions apply to LSC.]

Each department and agency funded in this Act shall follow the directions set forth in this Act and the accompanying statement, and shall not reallocate resources or reorganize activities except as provided herein. Reprogramming procedures shall apply to: funds provided in this Act; unobligated balances from previous appropriations Acts that are available for obligation or expenditure in fiscal year 2015; and non-appropriated resources such as fee collections that are used to meet program requirements in fiscal year 2015. These procedures are specified in section 505 of this Act.

Any reprogramming request shall include any out-year budgetary impacts and a separate accounting of program or mission impacts on estimated carryover funds. Any program, project or activity cited in this statement, or in the House report or the Senate report and not changed by this Act or statement, shall be construed as the position of the Congress and shall not be subject to reductions or reprogramming without prior approval of the Committees. Further, any department or agency funded in this Act that plans a reduction-in-force shall notify the Committees by letter no later than 30 days in advance of the date of any such planned personnel action.

When a department or agency submits a reprogramming or transfer request to the Committees and does not receive identical responses, it shall be the responsibility of the department or agency seeking the reprogramming to reconcile the differences between the two bodies before proceeding. If reconciliation is not possible, the items in disagreement in the reprogramming or transfer request shall be considered unapproved. Departments and agencies shall not submit reprogramming notifications after July 1, 2015, except in extraordinary circumstances. Any such notification shall include a description of the extraordinary circumstances.

**LEGAL SERVICES CORPORATION
PAYMENT TO THE LEGAL SERVICES CORPORATION**

This Act includes \$375,000,000 for the Legal Services Corporation (LSC).

ADMINISTRATIVE PROVISION--LEGAL SERVICES CORPORATION

Unauthorized uses of funds.--The Inspector General of the LSC is encouraged to conduct annual audits of LSC grantees to ensure that funds are not being used in contravention of the restrictions on engaging in political activities or any of the other restrictions by which LSC grantees are required to abide. The removal of funds from any LSC grantee determined by the Inspector General to have engaged in unauthorized political activity is recommended.

Section 205 establishes requirements and procedures for transfer proposals.

Section 505 prohibits a reprogramming of funds that: (1) creates or initiates a new program, project or activity; (2) eliminates a program, project, or activity; (3) increases funds or personnel by any means for any project or activity for which funds have been denied or restricted; (4) relocates an office or employee; (5) reorganizes or renames offices, programs or activities; (6) contracts out or privatizes any function or activity presently performed by Federal employees; (7) augments funds for existing programs, projects or activities in excess of \$500,000 or 10 percent, whichever is less, or reduces by 10 percent funding for any existing program, project, or activity, or numbers of personnel by 10 percent; or (8) results from any general savings, including savings from a reduction in personnel, which would result in a change in existing programs, projects, or activities as approved by Congress; unless the House and Senate Committees on Appropriations are notified 15 days in advance of such reprogramming of funds. Language is included requiring the Department of Justice to notify the Committees 45 days in advance of any such reprogramming.

Senate Committee on Appropriations FY 2015 LSC Appropriation

*[S. 2437 was reported by the Senate Committee on Appropriations,
but not voted on by the Senate or the House.]*

*[S. 2437 would have provided \$430,000,000 to LSC and lifted the 1996 restriction on non-Federal funds
except for class actions, abortion-related litigation, and prisoner litigation.]*

113th Congress, 2nd Session

S. 2437

*Making appropriations for Departments of Commerce and Justice, and Science, and Related Agencies for
the fiscal year ending September 30, 2015, and for other purposes.*

**Legal Services Corporation
Payment to the Legal Services Corporation**

For payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974, \$400,000,000, of which \$367,000,000 is for basic field programs and required independent audits; \$4,000,000 is for the Office of Inspector General, of which such amounts as may be necessary may be used to conduct additional audits of recipients; \$19,000,000 is for management and grants oversight; \$4,000,000 is for client self-help and information technology; \$5,000,000 is for a Pro Bono Innovation Fund; and \$1,000,000 is for loan repayment assistance: Provided, That the Legal Services Corporation may continue to provide locality pay to officers and employees at a rate no greater than that provided by the Federal Government to Washington, DC-based employees as authorized by section 5304 of title 5, United States Code, notwithstanding section 1005(d) of the Legal Services Corporation Act (42 U.S.C. 2996(d)): Provided further, That the authorities provided in section 205 of this Act shall be applicable to the Legal Services Corporation: Provided further, That, for the purposes of section 505 of this Act, the Legal Services Corporation shall be considered an agency of the United States Government.

Administrative Provision--Legal Services Corporation

None of the funds appropriated in this Act to the Legal Services Corporation shall be expended for any purpose prohibited or limited by, or contrary to any of the provisions of, sections 501, 502, 503, 504, 505, and 506 of Public Law 105-119, and all funds appropriated in this Act to the Legal Services Corporation shall be subject to the same terms and conditions set forth in such sections, except that all references in sections 502 and 503 to 1997 and 1998 shall be deemed to refer instead to 2014 and 2015, respectively.

Section 504 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1996 (as contained in Public Law 104-134) is amended:

- (1) in subsection (a), in the matter preceding paragraph (1), by inserting after ``)" the following:
``that uses Federal funds (or funds from any source with regard to paragraphs (7), (14) and (15)) in a manner";*
- (2) by striking subsection (d); and*
- (3) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.*

Senate Report 113-181 to accompany S 2437

[S. 2437 was reported by the Senate Committee on Appropriations, but not voted on by the Senate or the House.]

[S. 2437 would have provided \$430,000,000 to LSC and lifted the 1996 restriction on non-Federal funds except for class actions, abortion-related litigation, and prisoner litigation.]

*Senate Report 113-181
DEPARTMENTS OF COMMERCE AND JUSTICE, AND SCIENCE,
AND RELATED AGENCIES APPROPRIATIONS BILL, 2015*

***Legal Services Corporation
Payment to the Legal Services Corporation***

<i>Appropriations, 2014.....</i>	<i>\$365,000,000</i>
<i>Budget estimate, 2015.....</i>	<i>430,000,000</i>
<i>Committee recommendation.....</i>	<i>400,000,000</i>

The Committee's recommendation provides \$400,000,000 for payment to the Legal Services Corporation [LSC]. The recommendation is \$35,000,000 above the fiscal year 2014 enacted level, and \$30,000,000 below the budget request.

The Committee's recommendation provides \$367,000,000 for basic field programs, to be used for competitively awarded grants and contracts; \$19,000,000 for management and administration; \$4,000,000 for client self-help and information technology; \$4,000,000 for the Office of the Inspector General [OIG]; \$1,000,000 for loan repayment assistance, and \$5,000,000 for the LSC's Pro Bono Innovation Fund.

Governance and Management.--The LSC must continue its governance and management improvement efforts in order to further restore the credibility of the organization and direct additional funds into legal aid, where they are desperately needed. The Committee expects the Inspector General of the LSC to continue conducting annual audits of LSC grantees to ensure that funds are not being used in contravention of the restrictions by which LSC grantees are required to abide.

Pro Bono Innovation Fund.--The Committee's recommendation provides full funding of \$5,000,000 to continue the Pro Bono Innovation Fund. This fund will support innovative projects that promote and enhance pro bono initiatives throughout the Nation, as well as leverage Federal dollars to increase free legal aid for low-income Americans by engaging private attorneys.

Consideration of Catastrophic Events.--The Committee recognizes that catastrophic natural disasters can have disparate impacts on the funding allocations provided to States. The LSC is encouraged to consider the circumstances resulting in widespread displacement of residents which might drastically alter the poverty level when making state allocations.

Administrative Provision—Legal Services Corporation

The Committee's recommendation continues the administrative provisions contained in the fiscal year 1998 appropriations act (Public Law 105-119) regarding operation of this program to provide basic legal services to disadvantaged individuals and the restrictions on the use of LSC funds.

LSC funds cannot be used to engage in litigation and related activities with respect to a variety of matters including: (1) redistricting; (2) class action suits; (3) representation of illegal aliens; (4) political activities; (5) abortion; (6) prisoner litigation; (7) welfare reform; (8) representation of charged drug dealers during eviction proceedings; and (9) solicitation of clients. The exception to the restrictions occurs in a case where there is imminent threat of physical harm to the client or prospective client.

The bill makes no changes to the permanent restrictions established under the Legal Services Corporation Act (42 U.S.C. Sec. 2996 et seq.). The Committee provides language that affects only the 1996 appropriations rider in the following manner: (1) keeps the restriction on use of funds from all private and public sources for abortion-related litigation, representation of prisoners, and class action suits; and (2) lifts the restriction on use of funds from all private sources--but keeps the restriction on use of all public sources--for all other activities currently restricted by the rider. This provision was included to level the playing field between legal aid attorneys and their counterparts in the private sector and open potentially crucial sources of additional revenue to legal aid providers given that State and private funding sources have declined in recent years.

RULES COMMITTEE PRINT 113-59
TEXT OF HOUSE AMENDMENT TO THE SENATE AMENDMENT TO H.R. 83
December 9, 2014

[Showing the text of the Consolidated and Further Continuing Appropriations Act, 2015]

113th Congress
2nd Session
H. R. 83

Making consolidated appropriations for the fiscal year ending September 30, 2015, and for other purposes.

Legal Services Corporation
Payment to the Legal Services Corporation

For payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974, \$375,000,000, of which \$343,150,000 is for basic field programs and required independent audits; \$4,350,000 is for the Office of Inspector General, of which 16 such amounts as may be necessary may be used to conduct additional audits of recipients; \$18,500,000 is for management and grants oversight; \$4,000,000 is for client self-help and information technology; \$4,000,000 is for a Pro Bono Innovation Fund; and \$1,000,000 is for loan repayment assistance: Provided, That the Legal Services Corporation may continue to provide locality pay to officers and employees at a rate no greater than that provided by 24 the Federal Government to Washington, DC-based employees as authorized by section 5304 of title 5, United States Code, notwithstanding section 1005(d) of the Legal Services Corporation Act (42 U.S.C. 2996(d)): Provided further, That the authorities provided in section 205 of this Act shall be applicable to the Legal Services Corporation: Provided further, That, for the purposes of section 505 of this Act, the Legal Services Corporation shall be 7 considered an agency of the United States Government.

Administrative Provision—Legal Services Corporation

None of the funds appropriated in this Act to the Legal Services Corporation shall be expended for any purpose prohibited or limited by, or contrary to any of the provisions of, sections 501, 502, 503, 504, 505, and 506 of Public Law 105–119, and all funds appropriated in this Act to the Legal Services Corporation shall be subject to the same terms and conditions set forth in such sections, except that all references in sections 502 and 503 to 1997 and 1998 shall be deemed to refer instead to 2014 and 2015, respectively.

House Report 113-448 to accompany H.R. 4660

[H.R. 4660 was passed in the House, but not voted on by the Senate.]

[H.R. 4660 would have provided \$350,000,000 to LSC.]

House Report 113-448
COMMERCE, JUSTICE, SCIENCE, AND
RELATED AGENCIES APPROPRIATIONS BILL, 2015

Legal Services Corporation
Payment to the Legal Services Corporation

The Committee recommends \$350,000,000 for the Legal Services Corporation (LSC), which is \$15,000,000 below fiscal year 2014 and \$80,000,000 below the request.

Pro bono legal services.--The recommendation includes \$3,000,000 for the pro bono innovation fund, an increase of \$500,000 above fiscal year 2014 and \$1,900,000 below the request.

Obtaining more services at no or low cost through private attorney involvement is one means for LSC to increase legal aid services. The Committee is pleased that LSC launched a pro bono task force in 2011, which released its findings and recommendations in October 2012. The Committee directs LSC to implement the recommendations of this task force and continue to work with LSC-funded programs to increase the involvement of private attorneys in the delivery of legal services to its clients. LSC shall continue to report to the Committee annually on its progress in this area, including the number of Americans served by pro bono services as part of LSC's efforts.

Administrative Provision—Legal Services Corporation

The bill continues restrictions on the uses of LSC funding. None of the funds appropriated in this Act to the LSC shall be expended for any purpose prohibited or limited by, or contrary to any of the provisions of, sections 501, 502, 503, 504, 505, and 506 of Public Law 105-119, and all funds appropriated in this Act to the LSC shall be subject to the same terms and conditions set forth in such sections, except that all references in sections 502 and 503 to 1997 and 1998 shall be deemed to refer instead to 2014 and 2015, respectively.

Unauthorized uses of funds.--The Inspector General (IG) of the LSC is encouraged to conduct annual audits of LSC grantees to ensure that funds are not used in contravention of the restrictions on engaging in political activities or any of the other restrictions by which LSC grantees are required to abide. The Committee recommends the removal of funds from any LSC grantee determined by the IG to have engaged in unauthorized political activity.



CODE OF FEDERAL REGULATIONS

Title 45

Public Welfare

Part 1600 to 1644

Revised as of March 30, 2015

Containing a codification of documents
of general applicability and future effect

As of October 1, 2014

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CHAPTER XVI—LEGAL SERVICES CORPORATION

<i>Part</i>		<i>Page</i>
1600	Definitions	395
1601	[Reserved]	
1602	Procedures for disclosure of information under the Freedom of Information Act	395
1603	State advisory councils	406
1604	Outside practice of law	408
1605	Appeals on behalf of clients	410
1606	Termination, limited reduction of funding, and de- barment procedures; recompetition	410
1607	Governing bodies	418
1608	Prohibited political activities	420
1609	Fee-generating cases	421
1610	Use of non-LSC funds, transfers of LSC funds, pro- gram integrity	423
1611	Financial eligibility	425
1612	Restrictions on lobbying and certain other activi- ties	431
1613	Restrictions on legal assistance with respect to criminal proceedings	434
1614	Private attorney involvement	435
1615	Restrictions on actions collaterally attacking criminal convictions	440
1616	Attorney hiring	440
1617	Class actions	441
1618	Enforcement procedures	442
1619	Disclosure of information	443
1620	Priorities in use of resources	443
1621	Client grievance procedures	445
1622	Public access to meetings under the Government in the Sunshine Act	446
1623	Suspension procedures	450
1624	Prohibition against discrimination on the basis of disability	452
1625	[Reserved]	
1626	Restrictions on legal assistance to aliens	456
1627	Subgrants and membership fees or dues	461

45 CFR Ch. XVI (10–1–14 Edition)

<i>Part</i>		<i>Page</i>
1628	Recipient fund balances	463
1629	Bonding of recipients	466
1630	Cost standards and procedures	467
1631	[Reserved]	
1632	Redistricting	473
1633	Restriction on representation in certain eviction proceedings	473
1634	Competitive bidding for grants and contracts	474
1635	Timekeeping requirement	479
1636	Client identity and statement of facts	480
1637	Representation of prisoners	481
1638	Restriction on solicitation	481
1639	Welfare reform	482
1640	Application of Federal law to LSC recipients	483
1641	Debarment, suspension and removal of recipient auditors	484
1642	[Reserved]	
1643	Restriction on assisted suicide, euthanasia, and mercy killing	492
1644	Disclosure of case information	493
1645–1699	[Reserved]	

PART 1600—DEFINITIONS

AUTHORITY: 42 U.S.C. 2996.

§ 1600.1 Definitions.

As used in these regulations, chapter XVI, unless otherwise indicated, the term—

Act means the Legal Services Corporation Act, Pub. L. 93-355 (1974), as amended, Pub. L. 95-222 (1977), 42 U.S.C. 2996-29961.

Appeal means any appellate proceeding in a civil action as defined by law or usage in the jurisdiction in which the action is filed.

Attorney means a person who provides legal assistance to eligible clients and who is authorized to practice law in the jurisdiction where assistance is rendered.

Control means the direct or indirect ability to determine the direction of management and policies or to influence the management or operating policies of another organization to the extent that an arm's-length transaction may not be achieved.

Corporation means the Legal Services Corporation established under the Act.

Director of a recipient means a person directly employed by a recipient in an executive capacity who has overall day-to-day responsibility for management of operations by a recipient.

Eligible client means any person determined to be eligible for legal assistance under the Act, these regulations or other applicable law.

Employee means a person employed by the Corporation or by a recipient, or a person employed by a subrecipient whose salary is paid in whole or in major part with funds provided by the Corporation.

Fee generating case means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client from public funds or from an opposing party.

Financial assistance means annualized funding from the Corporation granted under section 1006(a)(1)(A) for the direct delivery of legal assistance to eligible clients.

Legal assistance means the provisions of any legal services consistent with

the purposes and provisions of the Act or other applicable law.

Outside practice of law means the provisions of legal assistance to a client who is not eligible to receive legal assistance from the employer of the attorney rendering assistance, but does not include, among other activities, teaching, consulting, or performing evaluations.

Political means that which relates to engendering public support for or opposition to candidates for public office, ballot measures, or political parties, and would include publicity or propaganda used for that purpose.

President means the President of the Corporation.

Public funds means the funds received directly or indirectly from the Corporation or a Federal, State, or local government or instrumentality of a government.

Recipient means any grantee or contractor receiving financial assistance from the Corporation under section 1006(a)(1)(A) of the Act.

Staff attorney means an attorney more than one half of whose annual professional income is derived from the proceeds of a grant from the Legal Services Corporation or is received from a recipient, subrecipient, grantee, or contractor that limits its activities to providing legal assistance to clients eligible for assistance under the Act.

Tribal funds means funds received from an Indian tribe or from a private foundation for the benefit of an Indian tribe.

[49 FR 21327, May 21, 1984, as amended at 51 FR 24827, July 9, 1986]

PART 1601 [RESERVED]

PART 1602—PROCEDURES FOR DISCLOSURE OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

- Sec.
1602.1 Purpose.
1602.2 Definitions.
1602.3 Policy.
1602.4 Records published in the Federal Register.
1602.5 Public reading room.
1602.6 Procedures for use of public reading room.

§ 1602.1

- 1602.7 Index of records.
- 1602.8 Requests for records.
- 1602.9 Exemptions for withholding records.
- 1602.10 Officials authorized to grant or deny requests for records.
- 1602.11 Denials.
- 1602.12 Appeals of denials.
- 1602.13 Fees.
- 1602.14 Submitter's rights process.

AUTHORITY: 42 U.S.C. 2996d(g); 5 U.S.C. 552.

SOURCE: 63 FR 41196, Aug. 3, 1998, unless otherwise noted.

§ 1602.1 Purpose.

This part contains the rules and procedures the Legal Services Corporation follows in making records available to the public under the Freedom of Information Act.

§ 1602.2 Definitions.

As used in this part—

(a) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Corporation will look to the use to which a requester will put the documents requested. When the Corporation has reasonable cause to doubt the requester's stated use of the records sought, or where the use is not clear from the request itself, it will seek additional clarification before assigning the request to a category.

(b) *Duplication* means the process of making a copy of a requested record pursuant to this part. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable electronic documents, among others.

(c) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, or an institution of professional or vocational education which operates a program or programs of scholarly research.

(d) *FOIA* means the Freedom of Information Act, 5 U.S.C. 552.

(e) *Non-commercial scientific institution* means an institution that is not operated on a "commercial" basis and which is operated solely for the pur-

45 CFR Ch. XVI (10–1–14 Edition)

pose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(f) *Office of Inspector General records* means those records as defined generally in this section which are exclusively in the possession and control of the Office of Inspector General of the Legal Services Corporation.

(g) *Records* means books, papers, maps, photographs, or other documentary materials, regardless of whether the format is physical or electronic, made or received by the Corporation in connection with the transaction of the Corporation's business and preserved by the Corporation (either directly or maintained by a third party under contract to the Corporation for records management purposes), as evidence of the organization, functions, policies, decisions procedures, operations, or other activities of the Corporation, or because of the informational value of data in them. The term does not include, inter alia, books, magazines, or other materials acquired solely for library purposes.

(h) *Representative of the news media* means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of "news") who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news media entities. A freelance journalist shall be regarded as working for a news media entity if the journalist

Legal Services Corporation

§ 1602.5

can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Corporation may also consider the past publication record of the requester in making such a determination.

(i) *Review* means the process of examining documents located in response to a request to determine whether any portion of any such document is exempt from disclosure. It also includes processing any such documents for disclosure. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(j) *Search* means the process of looking for and retrieving records that are responsive to a request for records. It includes page-by-page or line-by-line identification of material within documents and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Searches may be conducted manually or by automated means and will be conducted in the most efficient and least expensive manner.

(k) *Submitter* means any person or entity from whom the Corporation receives grant application records.

[63 FR 41196, Aug. 3, 1998, as amended at 68 FR 7437, Feb. 14, 2003; 73 FR 67793, Nov. 17, 2008]

§ 1602.3 Policy.

The Corporation will make records concerning its operations, activities, and business available to the public to the maximum extent reasonably possible. Records will be withheld from the public only in accordance with the FOIA and this part. Records exempt from disclosure under the FOIA may be made available as a matter of discretion when disclosure is not prohibited by law, and disclosure would not foreseeably harm a legitimate interest of the public, the Corporation, a recipient, or any individual.

§ 1602.4 Records published in the Federal Register.

The Corporation routinely publishes in the FEDERAL REGISTER information

on its basic structure and operations necessary to inform the public how to deal effectively with the Corporation. The Corporation will make reasonable efforts to currently update such information, which will include basic information on the Corporation's location, functions, rules of procedure, substantive rules, statements of general policy, and information regarding how the public may obtain information, make submittals or requests, or obtain decisions.

§ 1602.5 Public reading room.

(a) The Corporation will maintain a public reading room its office at 3333 K St. NW., Washington, DC, 20007. This room will be supervised and will be open to the public during the regular business hours of the Corporation for inspecting and copying records described in paragraph (b) of this section.

(b) Subject to the limitation stated in paragraph (c) of this section, the following records will be made available in the public reading room:

(1) All final opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases;

(2) Statements of policy and interpretations adopted by the Corporation that are not published in the FEDERAL REGISTER;

(3) Administrative staff manuals and instructions to the staff that affect the public or recipients;

(4) Copies of records, regardless of form or format, released to any person in response to a public request for records pursuant to §1602.8 which the Corporation has determined are likely to become subject to subsequent requests for substantially the same records, and a general index of such records;

(5) The current index required by §1602.7;

(6) To the extent feasible, other records considered to be of general interest to recipients or members of the public in understanding activities of the Corporation or in dealing with the Corporation in connection with those activities.

(c) Certain records otherwise required by FOIA to be available in the public reading room may be exempt

§ 1602.6

from mandatory disclosure pursuant to section 552(b) of the FOIA and §1602.9. Such records will not be made available in the public reading room. Other records maintained in the public reading room may be edited by the deletion of identifying details concerning individuals to prevent a clearly unwarranted invasion of personal privacy. In such cases, the record shall have attached to it a full explanation of the deletion. The extent of the deletion shall be indicated, unless doing so would harm an interest protected by the exemption under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made.

(d) Records required by the FOIA to be maintained and made available in the public reading room that are created by the Corporation on or after November 1, 1996, shall be made available electronically. This includes the index of published and reading room records, which shall indicate which records are available electronically.

(e) Most electronic public reading room records will also be made available to the public on the Corporation's websites at <http://www.lsc.gov> and <http://oig.lsc.gov>.

[63 FR 41196, Aug. 3, 1998, as amended at 68 FR 7437, Feb. 14, 2003; 73 FR 67793, Nov. 17, 2008]

§ 1602.6 Procedures for use of public reading room.

Any member of the public may inspect or copy records described in §1602.5(b) in the public reading room during regular business hours. Because it will sometimes be impossible to produce records or copies of records on short notice, a person who wishes to inspect or copy records is advised to arrange a time in advance, by telephone or letter request made to the Office of Legal Affairs. Persons submitting requests by telephone will be notified whether a written request would be advisable to aid in the identification and expeditious processing of the records sought. Written requests should identify the records sought in the manner provided in §1602.8(b) and should request a specific date for inspecting the records. The requester will be advised

45 CFR Ch. XVI (10–1–14 Edition)

as promptly as possible if, for any reason, it may not be possible to make the records sought available on the date requested.

[63 FR 41196, Aug. 3, 1998, as amended at 68 FR 7437, Feb. 14, 2003]

§ 1602.7 Index of records.

The Corporation will maintain a current index identifying any matter within the scope of §1602.4 and §1602.5(b) (1) through (5). The index will be maintained and made available for public inspection and copying at the Corporation's office in Washington, DC. The cost of a copy of the index will not exceed the standard charge for duplication set out in §1602.13(e). The Corporation will also make the index available on its websites.

§ 1602.8 Requests for records.

(a) Except for records required by the FOIA to be published in the FEDERAL REGISTER (§1602.4) or to be made available in the public reading room (§1602.5), Corporation records will be made promptly available, upon request, to any person in accordance with this section, unless it is determined that such records should be withheld and are exempt from mandatory disclosure under the FOIA and §1602.9.

(b) Requests. Requests for records under this section shall be made in writing, with the envelope and the letter or e-mail request clearly marked Freedom of Information Act Request. All such requests shall be addressed to the Corporation's Office of Legal Affairs or, in the case of requests for records maintained by the Office of Inspector General, to the Office of Inspector General. Requests by letter shall use the address given in §1602.5(a). E-mail requests shall be addressed to FOIA@lsc.gov or, in the case of requests for records maintained by the Office of Inspector General, FOIA@oig.lsc.gov. Any request not marked and addressed as specified in this paragraph will be so marked by Corporation personnel as soon as it is properly identified, and will be forwarded immediately to the Office of Legal Affairs, or as appropriate, the Office of Inspector General. A request improperly addressed will only be deemed to have been received as in accordance

Legal Services Corporation

§ 1602.8

with paragraph (i) of this section. Upon receipt of an improperly addressed request, the General Counsel or designee (or Counsel to the Inspector General or designee) shall notify the requester of the date on which the time period began.

(c) A request must reasonably describe the records requested so that employees of the Corporation who are familiar with the subject area of the request are able, with a reasonable amount of effort, to determine which particular records are within the scope of the request. If it is determined that a request does not reasonably describe the records sought, the requester shall be so informed and provided an opportunity to confer with Corporation personnel in order to attempt to reformulate the request in a manner that will meet the needs of the requester and the requirements of this paragraph.

(d) To facilitate the location of records by the Corporation, a requester should try to provide the following kinds of information, if known:

- (1) The specific event or action to which the record refers;
- (2) The unit or program of the Corporation which may be responsible for or may have produced the record;
- (3) The date of the record or the date or period to which it refers or relates;
- (4) The type of record, such as an application, a grant, a contract, or a report;
- (5) Personnel of the Corporation who may have prepared or have knowledge of the record;
- (6) Citations to newspapers or publications which have referred to the record.

(e) The Corporation is not required to create a record or to perform research to satisfy a request.

(f) Estimated fees. The Corporation shall advise the requester of any estimated fees as promptly as possible. The Corporation may require that fees be paid in advance, in accordance with §1602.13(i), and the Corporation will advise a requester as promptly as possible if the fees are estimated to exceed \$25 or any limit indicated by the requester.

(g) Any request for a waiver or reduction of fees should be included in the FOIA request, and any such request should indicate the grounds for a waiver

or reduction of fees, as set out in §1602.13(f). The Corporation shall respond to such request as promptly as possible.

(h) Format. The Corporation will provide records in the form or format indicated by the requester to the extent such records are readily reproducible in the requested form or format.

(i)(1)(i) The General Counsel or designee, upon request for any records made in accordance with this section, except in the case of a request for Office of Inspector General records, shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requester within 20 days (excepting Saturdays, Sundays and legal public holidays) after receipt of such request, except for unusual circumstances, in which case the time limit may be extended for up to 10 working days by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched.

(ii) In the case of a request for any Office of Inspector General records made in accordance with this section, the Counsel to the Inspector General or designee shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requester within 20 days (excepting Saturdays, Sundays and legal public holidays) after receipt of such request, except for unusual circumstances, in which case the time limit may be extended for up to 10 working days by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched.

(i)(2)(i) If the General Counsel or designee determines that a request or portion thereof is for the Office of Inspector General records, the General Counsel or designee shall promptly refer the request or portion thereof to the Office of Inspector General and send notice of such referral to the requester. If the Counsel to the Inspector General or designee determines that a request or portion thereof is for Corporation records not maintained by the Office of Inspector General, the Counsel to the

§ 1602.8

Inspector General or designee shall promptly refer the request or portion thereof to the Office of Legal Affairs and send notice of such referral to the requester.

(ii) The 20-day period under paragraph (i)(1) of this section shall commence on the date on which the request is first received by the appropriate Office (the Office of Legal Affairs or the Office of Inspector General), but in no event later than 10 working days after the request has been received by either the Office of Legal Affairs or the Office of Inspector General. The 20-day period shall not be tolled by the Office processing the request except that the processing Office may make one request to the requester for information pursuant to paragraph (c) of this section and toll the 20-day period while it is awaiting such information that it has reasonably requested from the requester under this section; or, if necessary to clarify with the requester issues regarding fee assessment. In either case, the processing Office's receipt of the requester's response to such a request for information or clarification ends the tolling period.

(3) Unusual circumstances. As used in this part, "unusual circumstances" are limited to the following, but only to the extent reasonably necessary for the proper processing of the particular request:

(i) The need to search for and collect the requested records from establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency or organization, such as a recipient, having a substantial interest in the determination of the request or among two or more components of the Corporation having substantial subject matter interest therein.

(j) If a request is particularly broad or complex so that it cannot be completed within the time periods stated in paragraph (i) of this section, the

45 CFR Ch. XVI (10–1–14 Edition)

Corporation may ask the requester to narrow the request or agree to an additional delay.

(k) When no determination can be dispatched within the applicable time limit, the General Counsel or designee or the Counsel to the Inspector General or designee shall inform the requester of the reason for the delay, the date on which a determination may be expected to be dispatched, and the requester's right to treat the delay as a denial and to appeal to the Corporation's President or Inspector General, in accordance with §1602.12. If no determination has been dispatched by the end of the 20-day period, or the last extension thereof, the requester may deem the request denied, and exercise a right of appeal in accordance with §1602.12. The General Counsel or designee or the Counsel to the Inspector General or designee may ask the requester to forego appeal until a determination is made.

(1) After it has been determined that a request will be granted, the Corporation will act with due diligence in providing a substantive response.

(m)(1) Expedited treatment. Requests and appeals will be taken out of order and given expedited treatment whenever the requester demonstrates a compelling need. A compelling need means:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Corporation or Federal government activity and the request is made by a person primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the Corporation's or the Federal government's integrity which affect public confidence.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, a request for expedited processing must be properly addressed and marked and

Legal Services Corporation

§ 1602.9

received by the Corporation pursuant to paragraphs (b) of this section.

(3) A requester who seeks expedited processing must submit a statement demonstrating a compelling need that is certified by the requester to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing.

(4) Within ten calendar days of its receipt of a request for expedited processing, the General Counsel or designee or the Inspector General or designee shall decide whether to grant the request and shall notify the requester of the decision. If a request for expedited treatment is granted, the request shall be given priority and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously by the Corporation.

[63 FR 41196, Aug. 3, 1998, as amended at 68 FR 7437, Feb. 14, 2003; 73 FR 67793, Nov. 17, 2008]

§ 1602.9 Exemptions for withholding records.

(a) A requested record of the Corporation may be withheld from public disclosure only if one or more of the following categories exempted by the FOIA apply:

(1) Matter which is related solely to the internal personnel rules and practices of the Corporation;

(2) Matter which is specifically exempted from disclosure by statute (other than the exemptions under FOIA at 5 U.S.C. 552(b)), provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issues, or establishes particular criteria for withholding, or refers to particular types of matters to be withheld;

(3) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(4) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Corporation;

(5) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(6) Records or information compiled for law enforcement purposes including enforcing the Legal Services Corporation Act or any other law, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person or a recipient of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(b) In the event that one or more of the exemptions in paragraph (a) of this section apply, any reasonably segregable portion of a record shall be provided to the requester after deletion of the portions that are exempt. The amount of information deleted and the exemption under which the deletion is being made shall be indicated on the released portion of the record, unless doing so would harm the interest protected by the exemption under which the deletion is made. If technically feasible, the amount of information deleted and the exemption under which the deletion is being made shall be indicated at the place in the record where the deletion occurs.

(1) A summary of information in the exempt portion of a record; or

§ 1602.10

(2) An oral description of the exempt portion of a record.

(c) No requester shall have a right to insist that any or all of the techniques in paragraph (b) of this section should be employed in order to satisfy a request.

(d) Records that may be exempt from disclosure pursuant to paragraph (a) of this section may be made available at the discretion of the Corporation official authorized to grant or deny the request for records, after appropriate consultation as provided in §1602.10. Records may be made available pursuant to this paragraph when disclosure is not prohibited by law, and it does not appear adverse to legitimate interests of the Corporation, the public, a recipient, or any person.

[63 FR 41196, Aug. 3, 1998, as amended at 73 FR 67794, Nov. 17, 2008]

§ 1602.10 Officials authorized to grant or deny requests for records.

(a) The General Counsel shall furnish necessary advice to Corporation officials and staff as to their obligations under this part and shall take such other actions as may be necessary or appropriate to assure a consistent and equitable application of the provisions of this part by and within the Corporation.

(b) The General Counsel or designee and the Counsel to the Inspector General or designee are authorized to grant or deny requests under this part. In the absence of a Counsel to the Inspector General, the Inspector General shall name a designee who will be authorized to grant or deny requests under this part and who will perform all other functions of the Counsel to the Inspector General under this part. The General Counsel or designee shall consult with the Office of the Counsel to the Inspector General or designee prior to granting or denying any request for records or portions of records which originated with the Office of Inspector General, or which contain information which originated with the Office of Inspector General, but which are maintained by other components of the Corporation. The Counsel to the Inspector General or designee shall consult with the Office of the General Counsel prior to granting or denying any request for

45 CFR Ch. XVI (10–1–14 Edition)

records or portions of records which originated with any component of the Corporation other than the Office of Inspector General, or which contain information which originated with a component of the Corporation other than the Office of Inspector General, but which are maintained by the Office of Inspector General.

[63 FR 41196, Aug. 3, 1998, as amended at 73 FR 67794, Nov. 17, 2008]

§ 1602.11 Denials.

(a) A denial of a written request for a record that complies with the requirements of §1602.8 shall be in writing and shall include the following:

(1) A reference to the applicable exemption or exemptions in §1602.9 (a) upon which the denial is based;

(2) An explanation of how the exemption applies to the requested records;

(3) A statement explaining why it is deemed unreasonable to provide segregable portions of the record after deleting the exempt portions;

(4) An estimate of the volume of requested matter denied unless providing such estimate would harm the interest protected by the exemption under which the denial is made;

(5) The name and title of the person or persons responsible for denying the request; and

(6) An explanation of the right to appeal the denial and of the procedures for submitting an appeal, including the address of the official to whom appeals should be submitted.

(b) Whenever the Corporation makes a record available subject to the deletion of a portion of the record, such action shall be deemed a denial of a record for purposes of paragraph (a) of this section.

(c) All denials shall be treated as final opinions under §1602.5(b).

§ 1602.12 Appeals of denials.

(a) Any person whose written request has been denied is entitled to appeal the denial within 90 days by writing to the President of the Corporation or, in the case of a denial of a request for Office of Inspector General records, the Inspector General, at the addresses given in §1602.5(a) and §1602.8(b). The envelope and letter or e-mail appeal should be clearly marked: "Freedom of

Information Appeal.” An appeal need not be in any particular form, but should adequately identify the denial, if possible, by describing the requested record, identifying the official who issued the denial, and providing the date on which the denial was issued.

(b) No personal appearance, oral argument, or hearing will ordinarily be permitted on appeal of a denial. Upon request and a showing of special circumstances, however, this limitation may be waived and an informal conference may be arranged with the President or designee, or Inspector General or designee, for this purpose.

(c) The decision of the President or the Inspector General on an appeal shall be in writing and, in the event the denial is in whole or in part upheld, shall contain an explanation responsive to the arguments advanced by the requester, the matters described in §1602.11(a) (1) through (4), and the provisions for judicial review of such decision under section 552(a)(4) of the FOIA. The decision shall be dispatched to the requester within 20 working days after receipt of the appeal, unless an additional period is justified pursuant to §1602.8(i) and such period taken together with any earlier extension does not exceed 10 days. The decision of the President or the Inspector General shall constitute the final action of the Corporation. All such decisions shall be treated as final opinions under §1602.5(b).

(d) On an appeal, the President or designee shall consult with the Office of Inspector General prior to reversing in whole or in part the denial of any request for records or portions of records which originated with the Office of Inspector General, or which contain information which originated with the Office of Inspector General, but which are maintained by other components of the Corporation. The Inspector General or designee shall consult with the President prior to reversing in whole or in part the denial.

§ 1602.13 Fees.

(a) No fees will be charged for information routinely provided in the normal course of doing business.

(b)(1) Fees shall be limited to reasonable standard charges for document

search, review, and duplication, when records are requested for commercial use;

(2) If no unusual circumstances, as set forth in §1602.8 apply, for requests received on or after December 31, 2008, if LSC has failed to comply with the time limits set forth in that section, otherwise applicable search fees will not be charged to a requester. In such cases, if the requester is a representative of the news media, otherwise applicable duplication fees will not be charged.

(c) Fees shall be limited to reasonable standard charges for document duplication after the first 100 pages, when records are sought by a representative of the news media or by an educational or non-commercial scientific institution; and

(d) For all other requests, fees shall be limited to reasonable standard charges for search time after the first 2 hours and duplication after the first 100 pages.

(e) The schedule for charges for services regarding the production or disclosure of the Corporation’s records is as follows:

(1) Manual search for and review of records will be charged as follows:

- (i) Band 1: \$16.15
- (ii) Band 2: \$26.66
- (iii) Band 3: \$39.15
- (iv) Band 4: \$51.41
- (v) Band 5: \$54.59

(vi) Charges for search and review time less than a full hour will be billed by quarter-hour segments;

(2) Computer time: actual charges as incurred;

(3) Duplication by paper copy: 13 cents per page;

(4) Duplication by other methods: actual charges as incurred;

(5) Certification of true copies: \$1.00 each;

(6) Packing and mailing records: no charge for regular mail;

(7) Express mail: actual charges as incurred.

(f) Fee waivers. A requester may seek a waiver or reduction of fees below the fees established under paragraph (e) of this section. A fee waiver or reduction request will be granted where LSC has

determined that the requester has demonstrated that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations of the Corporation or Federal government and is not primarily in the commercial interest of the requester.

(1) In order to determine whether disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Corporation or Federal government, the Corporation shall consider the following four factors:

(i) The subject of the request: Whether the subject of the requested records concerns “the operations or activities of the Corporation or Federal government.” The subject of the requested records must concern identifiable operations or activities of the Corporation or Federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) The informative value of the information to be disclosed: Whether the disclosure is “likely to contribute” to an understanding of Corporation or Federal government operations or activities. The requested records must be meaningfully informative about government operations or activities in order to be likely to contribute to an increased public understanding of those operations or activities. The disclosure of information that is already in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding where nothing new would be added to the public’s understanding.

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested records will contribute to “public understanding.” The disclosure must contribute to a reasonably broad audience of persons interested in the subject, as opposed to the personal interest of the requester. A requester’s expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative

of the news media will satisfy this consideration.

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute “significantly” to public understanding of Corporation or Federal government operations or activities. The public’s understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent.

(2) In order to determine whether disclosure of the information is not primarily in the commercial interest of the requester, the Corporation will consider the following two factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. LSC shall consider any commercial interest of the requester (with reference to the definition of “commercial use” in this part) or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure.

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest is sufficiently large, in comparison with the public interest in disclosure, that disclosure is “primarily” in the commercial interest of the requester. A fee waiver or reduction is justified where the public interest is greater in magnitude than that of any identified commercial interest in disclosure. LSC ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed primarily to serve a public interest.

(3) Where LSC has determined that a fee waiver or reduction request is justified for only some of the records to be released, LSC shall grant the fee waiver or reduction for those records.

(4) Requests for fee waivers and reductions shall be made in writing and must address the factors listed in this paragraph as they apply to the request.

Legal Services Corporation

§ 1602.14

(g) No fee will be charged under this section unless the cost of routine collection and processing of the fee payment is likely to exceed \$6.50.

(h) Requesters must agree to pay all fees charged for services associated with their requests. The Corporation will assume that requesters agree to pay all charges for services associated with their requests up to \$25 unless otherwise indicated by the requester. For requests estimated to exceed \$25, the Corporation will first consult with the requester prior to processing the request, and such requests will not be deemed to have been received by the Corporation until the requester agrees in writing to pay all fees charged for services.

(i) No requester will be required to make an advance payment of any fee unless:

(1) The requester has previously failed to pay a required fee within 30 days of the date of billing, in which case an advance deposit of the full amount of the anticipated fee together with the fee then due plus interest accrued may be required. (The request will not be deemed to have been received by the Corporation until such payment is made.); or

(2) The Corporation determines that an estimated fee will exceed \$250, in which case the requester shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. Such notification shall be transmitted as soon as possible, but in any event within 5 working days of receipt by the Corporation, giving the best estimate then available. The notification shall offer the requester the opportunity to confer with appropriate representatives of the Corporation for the purpose of reformulating the request so as to meet the needs of the requester at a reduced cost. The request will not be deemed to have been received by the Corporation for purposes of the initial 20-day response period until the requester makes a deposit on the fee in an amount determined by the Corporation.

(j) When a requester has previously failed to pay a properly charged FOIA fee within 30 days of the date of billing, the Corporation may require the re-

quester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee before the Corporation begins to process a new request or continues to process a pending request (including appeals) from that requester.

(k) Interest may be charged to those requesters who fail to pay the fees charged. Interest will be assessed on the amount billed, starting on the 31st day following the day on which the billing was sent. The rate charged will be as prescribed in 31 U.S.C. 3717.

(l) If the Corporation reasonably believes that a requester or group of requesters is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the Corporation shall aggregate such requests and charge accordingly. Likewise, the Corporation will aggregate multiple requests for documents received from the same requester within 45 days.

(m) The Corporation reserves the right to limit the number of copies that will be provided of any document to any one requester or to require that special arrangements for duplication be made in the case of bound volumes or other records representing unusual problems of handling or reproduction.

[63 FR 41196, Aug. 3, 1998, as amended at 68 FR 7437, Feb. 14, 2003; 73 FR 67794, Nov. 17, 2008]

§ 1602.14 Submitter's rights process.

(a) When the Corporation receives a FOIA request seeking the release of a submitter's grant application(s), or portions thereof, the Corporation shall provide prompt written notice of the request to the submitter in order to afford the submitter with an opportunity to object to the disclosure of the requested grant application(s) (or any portion thereof). The notice shall reasonably describe the grant application(s), or portions thereof, requested and inform the submitter of the process required by paragraph (b) of this section.

(b) If a submitter who has received notice of a request for the submitter's grant application(s) desires to object to the disclosure of the grant application(s) (or any portion thereof), the

submitter must identify the information for which disclosure is objected and provide LSC with a written detailed statement to that effect. The statement must be submitted to the FOIA Officer in the Office of Legal Affairs and must specify the grounds for withholding the information under FOIA or this Part. In particular, the submitter must demonstrate why the information is commercial or financial information that is privileged or confidential. The submitter's statement must be provided to LSC within seven business days of the date of the notice from the Corporation. If the submitter fails to respond to the notice from LSC within that time, LSC will deem the submitter to have no objection to the disclosure of the information.

(c) Upon receipt of written objection to disclosure by a submitter, LSC shall consider the submitter's objections and specific grounds for withholding in deciding whether to release the disputed information. Whenever LSC decides to disclose information over the objection of the submitter, LSC shall give the submitter written notice which shall include:

(1) A description of the information to be released and a notice that LSC intends to release the information;

(2) A statement of the reason(s) why the submitter's request for withholding is being rejected; and

(3) Notice that the submitter shall have 5 business days from the date of the notice of proposed release to appeal that decision to the LSC President, whose decision shall be final.

(d) The requirements of this section shall not apply if:

(1) LSC determines upon initial review of the requested grant application(s), or portions thereof, the requested information should not be disclosed;

(2) The information has been previously published or officially made available to the public; or

(3) Disclosure of the information is required by statute (other than FOIA) or LSC regulations.

(e) Whenever a requester files a lawsuit seeking to compel disclosure of a submitter's information, LSC shall promptly notify the submitter.

(f) Whenever LSC provides a submitter with notice and opportunity to oppose disclosure under this section, LSC shall notify the requester that the submitter's rights process under this section has been triggered. Whenever a submitter files a lawsuit seeking to prevent the disclosure of the submitter's information, LSC shall notify the requester.

[68 FR 7438, Feb. 14, 2003]

PART 1603—STATE ADVISORY COUNCILS

Sec.

1603.1 Purpose.

1603.2 Definitions.

1603.3 Composition and term of office of council membership.

1603.4 Procedure for appointment of council.

1603.5 Council purpose and duties.

1603.6 Duties of Corporation upon receipt of notification of violation.

1603.7 Organization and procedural functioning of council.

1603.8 Corporation support of council.

1603.9 Annual report of council.

1603.10 Multi-state recipients.

AUTHORITY: Sec. 1004(f), 88 Stat. 379–380 (42 U.S.C. 2996c(f)).

SOURCE: 40 FR 59351, Dec. 23, 1975, unless otherwise noted.

§ 1603.1 Purpose.

The purpose of this part is to implement section 1004(f) of the Legal Services Corporation Act of 1974, 42 U.S.C. 2996c(f), which provides authority for the appointment of state advisory councils.

§ 1603.2 Definitions.

As used in this part, the term—

(a) *Act* means the Legal Services Corporation Act of 1974, Pub. L. 93–355, 88 Stat. 378, 42 U.S.C. 2996–2996l;

(b) *Apparent violation* means a complaint or other written communication alleging facts which, if established, constitute a violation of the Act, or any applicable rules, regulations or guidelines promulgated pursuant to the Act;

(c) *Board* means the Board of Directors of the Legal Services Corporation;

(d) *Corporation* means the Legal Services Corporation established under the Act;

Legal Services Corporation

§ 1603.6

(e) *Council* means a state advisory council established pursuant to Section 1004(f) of the Act;

(f) *Eligible client* means any person financially unable to afford legal assistance;

(g) *Governor* means the chief executive officer of a State;

(h) *Recipient* means any grantee, contractee, or recipient of financial assistance described in clause (A) of section 1006(a)(1) of the Act;

(i) *State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

§ 1603.3 Composition and term of office of council membership.

A council shall be composed of nine members. A majority of the members of a council shall be attorneys admitted to practice in the State. It is recommended that the remainder of the council, to the maximum extent possible, be broadly representative of persons concerned with the effective functioning of legal services programs. Membership of a council shall be subject to annual reappointment, but it is recommended that no member of a council be appointed to serve for more than three consecutive years.

§ 1603.4 Procedure for appointment of council.

At the formal request of the Board, to be made before January 14, 1976, the Governor may appoint a council for the State. Those council members who are attorneys admitted to practice in the State shall be appointed by the Governor after recommendations have been received from the State bar association. In making such appointments, it is recommended the Governor consult with other bar associations in the State, representatives of groups concerned with the interests of recipients, eligible clients and other interested groups. It is recommended that the Governor appoint attorneys who have interest in and knowledge of the delivery of quality legal services to the poor, and that the remaining members of the council, who are not attorneys,

be selected after the Governor has consulted with representatives of groups concerned with the interests of eligible clients. It is recommended that the Governor seek recommendations from recipients in the State before appointing any members to the council. Sixty days prior to the expiration of a member's term, the Governor shall notify those groups mentioned in this Section so that their recommendations may be solicited for purposes of appointment of a new member or reappointment of an incumbent member of the council.

§ 1603.5 Council purpose and duties.

(a) The purpose of the council shall be to notify the Corporation of any apparent violation as defined in § 1603.2(b) of this chapter.

(b) In fulfilling the purpose set forth in paragraph (a) of this section, the council shall forward any apparent violation to the Corporation. The Chairperson of the council shall inform the complainant, the Corporation and the recipient of any action taken on the complaint. Notification of an apparent violation forwarded by the council to the Corporation shall not necessarily constitute a position of the council concerning the apparent violation.

(c) These procedures are not exclusive. Complaints may be submitted to the Corporation, and complaints submitted to a council may be submitted to the Corporation without regard to council action. The Corporation shall inform the complainant, the council and the recipient of all action taken on the complaint.

§ 1603.6 Duties of Corporation upon receipt of notification of violation.

(a) Upon receipt of a notification of an apparent violation, the matters contained therein shall be investigated and resolved by the Corporation in accordance with the Act and rules and regulations issued thereunder.

(b) Upon receipt from a council of a notification of an apparent violation, the Corporation shall allow any recipient affected thereby a reasonable time (but in no case less than thirty days) to reply to any allegation contained in the notification.

(c) The Corporation shall inform the Chairperson of a council of the action,

§ 1603.7

if any, the Corporation has taken with regard to any notification received from such council.

§ 1603.7 Organization and procedural functioning of council.

(a) Within 30 days after the appointment of the council, and annually thereafter, the Governor shall send to the Secretary of the Corporation in Washington, DC, a list of the members of the council for the State that shall include the name, address and telephone number of each council member, and indicate which members are attorneys.

(b) It is recommended that the Governor appoint from among those named to the council a Chairperson of the council.

(c) It is recommended that each council establish at its first meeting such fair and reasonable procedures for its operation as it may deem necessary to carry out the purpose set forth in § 1603.5(a) of this chapter. The procedures for operation of the council shall include provisions for notifying the appropriate regional director of the Corporation of the time and place of any meeting of the council.

(d) It is recommended that a council meet at the call of the Chairperson thereof, or at the request of the Chairperson of at least four members thereof, at such times as may be necessary to carry out its duties, but at least annually.

§ 1603.8 Corporation support of council.

(a) The Corporation shall inform the Chairperson of each council of the funds available to the council from the Corporation for actual and reasonable expenses incurred by members of the council to pursue council business.

(b) It shall be the duty of the President of the Corporation to keep the Chairperson of each council informed of the work of the Corporation.

(c) The Secretary of the Corporation shall mail annually to each recipient the name and address of the Chairperson of the appropriate council and a form of notice indicating where complaints may be sent. The recipient shall post said name and address of the Chairperson and said notice in plain

45 CFR Ch. XVI (10–1–14 Edition)

public view in each office of the recipient.

§ 1603.9 Annual report of council.

On or before March 31, 1977, and on or before March 31 of each succeeding year, a council shall submit to the Corporation a report of the activities of the council during the previous calendar year. The report may contain comments or suggestions regarding how best to provide high quality legal assistance to the poor, and regarding such other matters having to do with provision of legal services to eligible clients in the State as the council may deem advisable.

§ 1603.10 Multi-state recipients.

Where a recipient has offices in more than one State, the council of the State in which the apparent violation occurred has the responsibility for notifying the Corporation and the recipient at its local and administrative offices.

PART 1604—OUTSIDE PRACTICE OF LAW

Sec.	
1604.1	Purpose.
1604.2	Definitions.
1604.3	General policy.
1604.4	Permissible outside practice.
1604.5	Compensation.
1604.6	Use of recipient resources.
1604.7	Court appointments.

AUTHORITY: 42 U.S.C. 2996e(b)(3), 2996e(d)(6), 2996f(a)(4), 2996g(e).

SOURCE: 68 FR 67377, Dec. 2, 2003, unless otherwise noted.

§ 1604.1 Purpose.

This part is intended to provide guidance to recipients in adopting written policies relating to the outside practice of law by recipients' full-time attorneys. Under the standards set forth in this part, recipients are authorized, but not required, to permit attorneys, to the extent that such activities do not hinder fulfillment of their overriding responsibility to serve those eligible for assistance under the Act, to engage in pro bono legal assistance and comply with the reasonable demands made upon them as members of the Bar and as officers of the Court.

Legal Services Corporation

§ 1604.6

§ 1604.2 Definitions.

As used in this part—

(a) *Full-time attorney* means an attorney who is employed full-time by a recipient in legal assistance activities supported in major part by the Corporation, and who is authorized to practice law in the jurisdiction where assistance is provided.

(b) *Outside practice of law* means the provision of legal assistance to a client who is not receiving that legal assistance from the employer of the full-time attorney rendering assistance, but does not include court appointments except where specifically stated or the performance of duties as a Judge Advocate General Corps attorney in the United States armed forces reserves.

(c) *Court appointment* means an appointment in a criminal or civil case made by a court or administrative agency under a statute, rule or practice applied generally to attorneys practicing in the court or before the administrative agency where the appointment is made.

§ 1604.3 General policy.

(a) A recipient shall adopt written policies governing the outside practice of law by full-time attorneys that are consistent with the LSC Act, this part and applicable rules of professional responsibility.

(b) A recipient's policies may permit the outside practice of law by full-time attorneys only to the extent allowed by the LSC Act and this part, but may impose additional restrictions as necessary to meet the recipient's responsibilities to clients.

§ 1604.4 Permissible outside practice.

A recipient's written policies may permit a full-time attorney to engage in a specific case or matter that constitutes the outside practice of law if:

(a) The director of the recipient or the director's designee determines that representation in such case or matter is consistent with the attorney's responsibilities to the recipient's clients;

(b) Except as provided in §1604.7, the attorney does not intentionally identify the case or matter with the Corporation or the recipient; and

(c) The attorney is—

(1) Newly employed and has a professional responsibility to close cases from a previous law practice, and does so on the attorney's own time as expeditiously as possible; or

(2) Acting on behalf of him or herself, a close friend, family member or another member of the recipient's staff; or

(3) Acting on behalf of a religious, community, or charitable group; or

(4) Participating in a voluntary pro bono or legal referral program affiliated with or sponsored by a bar association, other legal organization or religious, community or charitable group.

§ 1604.5 Compensation.

(a) Except as provided in paragraph (b) of this section and §1604.7(a), a recipient's written policies shall not permit a full-time attorney to receive any compensation for the outside practice of law.

(b) A recipient's written policies which permit a full-time attorney who meets the criteria set forth in §1604.4(c)(1) to engage in the outside practice of law shall permit full-time attorneys to seek and receive personal compensation for work performed pursuant to that section.

§ 1604.6 Use of recipient resources.

(a) For cases undertaken pursuant to §1604.4(c)(1), a recipient's written policies may permit a full-time attorney to use *de minimis* amounts of the recipient's resources for permissible outside practice if necessary to carry out the attorney's professional responsibilities, as long as the recipient's resources, whether funded with Corporation or private funds, are not used for any activities for which the use of such funds is prohibited.

(b) For cases undertaken pursuant to §1604.4(c) (2) through (4), a recipient's written policies may permit a full-time attorney to use limited amounts of the recipient's resources for permissible outside practice if necessary to carry out the attorney's professional responsibilities, as long as the recipient's resources, whether funded with Corporation or private funds are not used for any activities for which the use of such funds is prohibited.

§ 1604.7

§ 1604.7 Court appointments.

(a) A recipient's written policies may permit a full-time attorney to accept a court appointment if the director of the recipient or the director's designee determines that:

(1) Such an appointment is consistent with the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters;

(2) The appointment is made and the attorney will receive compensation for the court appointment under the same terms and conditions as are applied generally to attorneys practicing in the court where the appointment is made; and

(3) Subject to the applicable law and rules of professional responsibility, the attorney agrees to remit to the recipient any compensation received.

(b) A recipient's written policies may permit a full-time attorney to use program resources to undertake representation pursuant to a court appointment.

(c) A recipient's written policies may permit a full-time attorney to identify the recipient as his or her employer when engaged in representation pursuant to a court appointment.

(d) If, under the applicable State or local court rules or practices or rules of professional responsibility, legal services attorneys are mandated to provide pro bono legal assistance in addition to the attorneys' work on behalf of the recipient's clients, the recipient's written policies shall treat such legal assistance in the same manner as court appointments under paragraphs (a)(1), (a)(3), (b) and (c) of this section, provided that the policies may only permit mandatory pro bono activities that are not otherwise prohibited by the LSC Act, applicable appropriations laws, or LSC regulation.

PART 1605—APPEALS ON BEHALF OF CLIENTS

Sec.

1605.1 Purpose.

1605.2 Definition.

1605.3 Review of Appeals.

AUTHORITY: Secs. 1007(a)(7), 1008(e), 42 U.S.C. 2996f(a)(7), 2996g(e).

45 CFR Ch. XVI (10–1–14 Edition)

SOURCE: 41 FR 18513, May 5, 1976, unless otherwise noted.

§ 1605.1 Purpose.

This part is intended to promote efficient and effective use of Corporation funds. It does not apply to any case or matter in which assistance is not being rendered with funds provided under the Act.

§ 1605.2 Definition.

Appeal means any appellate proceeding in a civil action as defined by law or usage in the jurisdiction in which the action is filed.

§ 1605.3 Review of Appeals.

The governing body of a recipient shall adopt a policy and procedure for review of every appeal to an appellate court taken from a decision of any court or tribunal. The policy adopted shall

(a) Discourage frivolous appeals, and

(b) Give appropriate consideration to priorities in resource allocation adopted by the governing body, or required by the Act, or Regulations of the Corporation; but

(c) Shall not interfere with the professional responsibilities of an attorney to a client.

PART 1606—TERMINATION, LIMITED REDUCTION OF FUNDING, AND DEBARMENT PROCEDURES; RE-COMPETITION

Sec.

1606.1 Purpose.

1606.2 Definitions.

1606.3 Grounds for a termination or a limited reduction of funding.

1606.4 Grounds for debarment.

1606.5 Procedures.

1606.6 Preliminary determination and final decision.

1606.7 Corrective action, informal conference, review of written materials, and final decision.

1606.8 Hearing for a termination or debarment.

1606.9 Recommended decision for a termination or debarment.

1606.10 Final decision for a termination, debarment, or limited reduction of funding.

1606.11 Qualifications on hearing procedures.

1606.12 Time and waiver.

Legal Services Corporation

§ 1606.2

1606.13 Interim and termination funding; re-programming, implementation.

1606.14 Recompensation.

AUTHORITY: 42 U.S.C. 2996e(b)(1), 2996f(a)(3), and 2996f(d); Pub. L. 105-119, Title V, Secs. 501(b) and (c), 502, 503, and 504, 111 Stat. 2440, 2510-12; Pub. L. 104-134, Title V, Sec. 503(f), 110 Stat. 1321, 1321-53.

SOURCE: 78 FR 10093, Feb. 13, 2013, unless otherwise noted.

§ 1606.1 Purpose.

The purpose of this rule is to:

(a) Ensure that the Corporation is able to take timely action to deal with incidents of substantial noncompliance by recipients with a provision of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, a Corporation rule, regulation, guideline or instruction, or the terms and conditions of the recipient's grant or contract with the Corporation;

(b) Provide timely and fair due process procedures, proportional to the proposed action, when the Corporation has made a preliminary decision to terminate a recipient's LSC grant or contract, to debar a recipient from receiving future LSC awards of financial assistance, or to impose a limited reduction in funding; and

(c) Ensure that scarce funds are provided to recipients who can provide the most effective and economical legal assistance to eligible clients.

(d) None of the following actions are subject to the procedures or requirements of this part:

(1) A reduction of funding required by law, including but not limited to a reduction in, or rescission of, the Corporation's appropriation that is apportioned among all recipients of the same class in proportion to their current level of funding;

(2) A reduction or deduction of LSC support for a recipient under the Corporation's fund balance regulation at 45 CFR part 1628;

(3) A recovery of disallowed costs under the Corporation's regulation on costs standards and procedures at 45 CFR part 1630;

(4) A withholding of funds pursuant to the Corporation's Private Attorney Involvement rule at 45 CFR part 1614.

§ 1606.2 Definitions.

For the purposes of this part:

Corporation, when used to refer to decisions by the Legal Services Corporation, means that those decisions are made by an individual acting with a seniority level at, or equivalent to, the level of an office director or higher.

Days shall mean the number of calendar days as determined by the rules for computing time in the Federal Rules of Civil Procedure, Rule 6, except that computation of *business days* shall exclude Saturdays, Sundays, and legal holidays (as defined in those rules).

Debarment means an action taken by the Corporation to exclude a recipient from receiving an additional award of financial assistance from the Corporation or from receiving additional LSC funds from another recipient of the Corporation pursuant to any other means, including a subgrant, sub-contract or similar agreement, for the period of time stated in the final debarment decision.

Funding term means the maximum time period for an award or awards of financial assistance under section 1006(a)(1)(A) of the LSC Act provided by the Corporation to a recipient selected pursuant to the competition requirements at 45 CFR part 1634. LSC may award grants or contracts for a period of the entire funding term or for shorter periods that may be renewed or extended up to the funding term.

Knowing and willful means that the recipient had actual knowledge that its action or lack thereof constituted a violation and despite such knowledge, undertook or failed to undertake the action, as the case may be.

Limited reduction of funding means a reduction of funding of less than five percent of a recipient's current level of financial assistance imposed by the Corporation in accordance with the procedures and requirements of this part. A limited reduction of funding will affect only the recipient's current year's funding.

LSC requirements means the same as that term is defined in 45 CFR Part 1618.

Receipt of materials shall mean that the materials were sent to the normal address for physical mail, email, or fax

§ 1606.3

transmission, and there is reliable secondary confirmation of delivery. For physical delivery, confirmation may be provided through tracking information from the delivery service. For other forms of delivery, confirmation may be provided through a document such as a confirmation email or a fax sent from an authorized person at the recipient. Receipt of materials by the LSC recipient or the Corporation is sufficient for the running of applicable time periods. Proof of receipt by the Chair of the governing body is not necessary unless delivery to the recipient itself cannot be reasonably accomplished.

Recipient means the same as the term is defined in 45 CFR Part 1600.

Substantial noncompliance means either a substantial violation, as defined in this part, or a substantial failure, as indicated at § 1606.3(a) of this part.

Substantial violation means a violation that merits action under this part based on consideration of the following criteria by the Corporation:

(1) The number of restrictions or requirements violated;

(2) Whether the violation represents an instance of noncompliance with a substantive statutory or regulatory restriction or requirement, rather than an instance of noncompliance with a non-substantive technical or procedural requirement;

(3) The extent to which the violation is part of a pattern of noncompliance with LSC requirements or restrictions;

(4) The extent to which the recipient failed to take action to cure the violation when it became aware of the violation; and

(5) Whether the violation was knowing and willful.

Termination means that a recipient's level of financial assistance under its grant or contract with the Corporation will be reduced in whole or in part in the amount of five percent or greater prior to the expiration of the funding term of a recipient's current grant or contract. A partial termination will affect only the level of funding for the current grant year, unless the Corporation provides otherwise in the final decision.

Violation means a violation by the recipient of the LSC requirements.

45 CFR Ch. XVI (10–1–14 Edition)

§ 1606.3 Grounds for a termination or a limited reduction of funding.

(a) A grant or contract may be terminated in whole or in part when:

(1) There has been a substantial violation by the recipient, and the violation occurred less than 5 years prior to the date the recipient receives a preliminary determination pursuant to § 1606.6(a) of this part; or

(2) There has been a substantial failure by the recipient to provide high quality, economical, and effective legal assistance, as measured by generally accepted professional standards, the provisions of the LSC Act or LSC appropriations, or a rule, regulation, including 45 CFR 1634.9(a)(2), or guidelines or instructions issued by the Corporation.

(b) The Corporation may impose a limited reduction of funding when the Corporation determines that there has been a substantial violation by the recipient but that termination of the recipient's grant, in whole or in part, is not warranted, and the violation occurred less than 5 years prior to the date the recipient receives a preliminary determination pursuant to § 1606.6(a) of this part.

(c) A determination of whether there has been a substantial violation for the purposes of this part, and the magnitude of any termination, in whole or in part, or any limited reduction in funding, shall be based on consideration of the criteria set forth in the definition of "substantial violation" in § 1606.2 of this part.

§ 1606.4 Grounds for debarment.

(a) The Corporation may debar a recipient, on a showing of good cause, from receiving an additional award of financial assistance from the Corporation.

(b) As used in paragraph (a) of this section, "good cause" means:

(1) A termination of financial assistance to the recipient pursuant to part 1640 of this chapter;

(2) A termination of financial assistance in whole of the most recent grant or contract of financial assistance;

(3) The substantial violation by the recipient of the restrictions delineated in § 1610.2(a) and (b) of this chapter, provided that the violation occurred

Legal Services Corporation

§ 1606.7

within 5 years prior to the receipt of the debarment notice by the recipient;

(4) Knowing entry by the recipient into:

(i) Any agreement or arrangement, including, but not limited to, a subgrant, subcontract, or other similar agreement, with an entity debarred by the Corporation during the period of debarment if so precluded by the terms of the debarment; or

(ii) An agreement for professional services with an independent public accountant or other auditor debarred by the Corporation during the period of debarment if so precluded by the terms of the debarment; or

(5) The filing of a lawsuit by a recipient, provided that the lawsuit:

(i) Was filed on behalf of the recipient as plaintiff, rather than on behalf of a client of the recipient;

(ii) Named the Corporation, or any agency or employee of a Federal, State, or local government as a defendant;

(iii) Seeks judicial review of an action by the Corporation or such government agency that affects the recipient's status as a recipient of Federal funding, except for a lawsuit that seeks review of whether the Corporation or agency acted outside of its statutory authority or violated the recipient's constitutional rights; and

(iv) Was initiated after December 23, 1998.

§ 1606.5 Procedures.

(a) Before any final action is taken under this part, the recipient will be provided notice and an opportunity to be heard as set out in this part.

(b) Prior to a preliminary determination involving a limited reduction of funding, the Corporation shall designate either the President or another senior Corporation employee to conduct any final review that is requested pursuant to §1606.10 of this part. The Corporation shall ensure that the person so designated has had no prior involvement in the proceedings under this part so as to meet the criterion set out in §1606.10(d) of this part.

§ 1606.6 Preliminary determination and final decision.

(a) When the Corporation has made a preliminary determination of one or more of the following, the Corporation shall issue a written notice to the recipient and the Chair of the recipient's governing body: that a recipient's grant or contract should be terminated, that a limited reduction of funding shall be imposed, or that a recipient should be debarred. The notice shall:

(1) State the substantial noncompliance that constitutes the grounds for the proposed action;

(2) Identify, with reasonable specificity, any facts or documents relied upon as justification for the proposed action;

(3) Inform the recipient of the proposed amount and proposed effective date for the proposed action;

(4) Advise the recipient of its procedural rights for review of the proposed action under this part;

(5) Inform the recipient of its right to receive interim funding pursuant to §1606.13 of this part;

(6) Specify what, if any, corrective action the recipient can take to avoid the proposed action; and

(7) Summarize prior attempts, if any, for resolution of the substantial non-compliance.

(b) If the recipient does not request review, as provided for in this part, before the relevant time limits have expired, then the Corporation may issue a final decision to the recipient. No further appeal or review will be available under this part.

§ 1606.7 Corrective action, informal conference, review of written materials, and final decision.

(a) If the Corporation proposes a corrective action in the preliminary determination pursuant to §1606.6(a)(6) of this part, then the recipient may accept and implement the corrective action, in lieu of an informal conference or submission of written materials under this section, subject to the following requirements:

(1) Within 10 business days of receipt of the preliminary determination, the recipient may submit a draft compliance agreement to accept the terms of

§ 1606.8

45 CFR Ch. XVI (10–1–14 Edition)

the proposed corrective action, which must include an implementation plan and timeline;

(2) If the Corporation approves the draft compliance agreement, including any modifications suggested by the recipient or the Corporation, then it shall be memorialized in a final compliance agreement signed by the Corporation and the recipient, which shall stay these proceedings;

(3) If the recipient completes the terms of the written compliance agreement in a time and manner that is satisfactory to the Corporation, then the Corporation shall withdraw the preliminary determination; and

(4) If the Corporation determines at any time that the recipient has not presented an acceptable draft compliance agreement, or has not fulfilled any terms of the final compliance agreement, then the Corporation shall notify the recipient in writing. Within 15 calendar days of that notice, the Corporation shall modify or affirm the preliminary determination as a draft final decision. The draft final decision shall summarize these attempts at resolution. The draft final decision need not engage in a detailed analysis of the failure to resolve the substantial non-compliance.

(b) A recipient may submit written materials in opposition to the preliminary determination, request an informal conference, or both, as follows:

(1) For terminations or debarments, within 30 calendar days of receipt of the preliminary determination; or

(2) For limited reductions in funding, within 10 business days of receipt of the preliminary determination.

(c) Within 5 business days of receipt of a request for a conference, the Corporation shall notify the recipient of the time and place the conference will be held. Some or all of the participants in the conference may attend via telephone, unless the recipient requests an in-person meeting between the Corporation and at least one representative of the recipient. If the recipient requests an in-person meeting, then other participants may attend via telephone. Alternative means of participation other than the telephone are permissible at the sole discretion of the Corporation.

(d) The informal conference shall be conducted by the Corporation employee who issued the preliminary determination or any other Corporation employee with a seniority level equivalent to the level of an office director or higher.

(e) At the informal conference, the Corporation and the recipient shall both have an opportunity to state their case, seek to narrow the issues, explore the possibilities of settlement or compromise including implementation of corrective actions, and submit written materials.

(f) If an informal conference is conducted or written materials are submitted in opposition to the proposed determination by the recipient, or both, the Corporation shall consider any written materials and any oral presentation or written materials submitted by the recipient at an informal conference. Based on any of these materials or the informal conference, or both, the Corporation shall modify, withdraw, or affirm the preliminary determination through a draft final decision in writing, which shall be provided to the recipient within the later of 15 calendar days after the conclusion of the informal conference or after the recipient of written materials in opposition to the proposed determination (when no informal conference is requested). Except for decisions to withdraw the preliminary determination, the draft final decision shall include a summary of the issues raised in the informal conference and presented in any written materials. The draft final decision need not engage in a detailed analysis of all issues raised.

(g) If the recipient does not request further process, as provided for in this part, then, after the relevant time limits have expired, the Corporation shall notify the recipient that no further appeal or review will be available under this part and may proceed to issue the final decision.

§ 1606.8 Hearing for a termination or debarment.

(a) For terminations or debarments only, the recipient may make a written request for a hearing within the later of: 30 calendar days of its receipt of the

Legal Services Corporation

§ 1606.9

preliminary determination, or 15 calendar days of receipt of the draft final decision issued under §1606.7 of this part, as the case may be.

(b) Within 10 business days after receipt of a request for a hearing, the Corporation shall notify the recipient in writing of the date, time, and place of the hearing and the names of the hearing officer and of the attorney who will represent the Corporation. The time, date, and location of the hearing may be changed upon agreement of the Corporation and the recipient.

(c) A hearing officer shall be appointed by the President or designee and may be an employee of the Corporation. The hearing officer shall not have been involved in the current termination or debarment action, and the President or designee shall determine that the person is qualified to preside over the hearing as an impartial decision maker. An impartial decision maker is a person who has not formed a prejudgment on the case and does not have a pecuniary interest or personal bias in the outcome of the proceeding.

(d) The hearing shall be scheduled to commence at the earliest appropriate date, ordinarily not later than 30 calendar days after the Corporation receives the notice required by paragraph (b) of this section.

(e) The hearing officer shall preside over and conduct a full and fair hearing, avoid delay, maintain order, and insure that a record sufficient for full disclosure of the facts and issues is maintained.

(f) The hearing shall be open to the public unless, for good cause and the interests of justice, the hearing officer determines otherwise.

(g) The Corporation and the recipient shall be entitled to be represented by counsel or by another person.

(h) At the hearing, the Corporation and the recipient each may present its case by oral or documentary evidence, conduct examination and cross-examination of witnesses, examine any documents submitted, and submit rebuttal evidence.

(i) The hearing officer shall not be bound by the technical rules of evidence and may make any procedural or evidentiary ruling that may help to insure full disclosure of the facts, to

maintain order, or to avoid delay. Irrelevant, immaterial, repetitious or unduly prejudicial matter may be excluded.

(j) Official notice may be taken of published policies, rules, regulations, guidelines, and instructions of the Corporation, of any matter of which judicial notice may be taken in a Federal court, or of any other matter whose existence, authenticity, or accuracy is not open to serious question.

(k) A stenographic or electronic record shall be made in a manner determined by the hearing officer, and a copy shall be made available to the recipient at no cost.

(l) The Corporation shall have the initial burden to show grounds for a termination or debarment. The burden of persuasion shall then shift to the recipient to show by a preponderance of evidence on the record that its funds should not be terminated or that it should not be debarred.

§ 1606.9 Recommended decision for a termination or debarment.

(a) For termination or debarment hearings under §1606.8 of this part, within 20 calendar days after the conclusion of the hearing, the hearing officer shall issue a written recommended decision to the recipient and the Corporation, which may:

(1) Terminate financial assistance to the recipient commencing as of a specific date;

(2) Impose a limited reduction of funding commencing as of a specific date;

(3) Continue the recipient's current level of financial assistance under the grant or contract, subject to any modification or condition that may be deemed necessary on the basis of information adduced at the hearing; or

(4) Debar the recipient from receiving an additional award of financial assistance from the Corporation.

(b) The recommended decision shall contain findings of the significant and relevant facts and shall state the reasons for the decision. Findings of fact shall be based solely on the record of, and the evidence adduced at the hearing or on matters of which official notice was taken.

§ 1606.10

45 CFR Ch. XVI (10–1–14 Edition)

§ 1606.10 Final decision for a termination, debarment, or limited reduction of funding.

(a) If neither the Corporation nor the recipient requests review by the President of a draft final decision pursuant to § 1606.7 of this part or a recommended decision pursuant to § 1606.9, as provided for in this part, within 10 business days after receipt by the recipient, then the Corporation shall issue to the recipient a final decision containing either the draft final decision or the recommended decision, as the case may be. No further appeal or review will be available under this part.

(b) The recipient or the Corporation may seek review by the President of a draft final decision or a recommended decision. A request shall be made in writing within 10 business days after receipt of the draft final decision or recommended decision by the party seeking review and shall state in detail the reasons for seeking review.

(c) The President's review shall be based solely on the administrative record of the proceedings, including the appeal to the President, and any additional submissions, either oral or in writing, that the President may request. A recipient shall be given a copy of, and an opportunity to respond to, any additional submissions made to the President. All submissions and responses made to the President shall become part of the administrative record. Upon request, the Corporation shall provide a copy of the administrative record to the recipient.

(d) For an appeal of a draft final decision involving a limited reduction of funding pursuant to § 1606.7 of this part (for which there is no right to a hearing under § 1606.8 of this part) the President may not review the appeal if the President has had prior involvement in the proceedings under this part. If the President cannot review the appeal, or the President chooses not to do so, then the appeal shall be reviewed by either the individual designated to do so pursuant to § 1606.5(b) of this part, or by another senior Corporation employee designated by the President who has not had prior involvement in the proceedings under this part.

(e) As soon as practicable after receipt of the request for review of a draft final decision or a recommended decision, but not later than 30 calendar days thereafter, the President or designee shall adopt, modify, or reverse the draft final decision or the recommended decision, or direct further consideration of the matter. In the event of modification or reversal of a recommended decision pursuant to § 1606.9 of this part, this decision shall conform to the requirements of § 1606.9(b) of this part.

(f) The decision of the President or designee under this section shall become final upon receipt by the recipient.

§ 1606.11 Qualifications on hearing procedures.

(a) Except as modified by paragraph (c) of this section, the hearing rights set out in §§ 1606.6 through 1606.10 of this part shall apply to any action to debar a recipient or to terminate a recipient's funding.

(b) The Corporation may simultaneously take action to debar and terminate a recipient within the same hearing procedure that is set out in §§ 1606.6 through 1606.10 of this part. In such a case, the same hearing officer shall oversee both the termination and debarment actions in the same hearing.

(c) If the Corporation does not simultaneously take action to debar and terminate a recipient under paragraph (b) of this section and initiates a debarment action based on a prior termination under § 1606.4(b)(1) or (2), the hearing procedures set out in § 1606.6 through 1606.10 of this part shall not apply. Instead:

(1) The President shall appoint a hearing officer, as described in § 1606.8(c), to review the matter and make a written recommended decision on debarment.

(2) The hearing officer's recommended decision shall be based solely on the information in the administrative record of the termination proceedings providing grounds for the debarment and any additional submissions, either oral or in writing, that the hearing officer may request. The recipient shall be given a copy of and

Legal Services Corporation

§ 1606.14

an opportunity to respond to any additional submissions made to the hearing officer. All submissions and responses made to the hearing officer shall become part of the administrative record.

(3) If neither party appeals the hearing officer's recommended decision within 10 business days of receipt of the recommended decision, the decision shall become final and the final decision shall be issued by the Corporation to the recipient within 5 business days.

(4) Either party may appeal the recommended decision to the President who shall review the matter and issue a final written decision pursuant to §1606.9(b).

(d) All final debarment decisions shall state the effective date of the debarment and the period of debarment, which shall be commensurate with the seriousness of the cause for debarment but shall not be for longer than 6 years.

(e) The Corporation may reverse a debarment decision upon request for the following reasons:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management of a recipient;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the Corporation deems appropriate.

§ 1606.12 Time and waiver.

(a) Except for the 6-year time limit for debarments in §1606.11(d) of this part, any period of time provided in these rules may, upon good cause shown and determined, be extended in writing:

(1) By the Corporation, unless a hearing officer has been appointed;

(2) By the hearing officer, until the recommended decision has been issued; or

(3) By the President at any time.

(b) Failure by the Corporation to meet a time requirement of this part does not preclude the Corporation from terminating a recipient's grant or contract with the Corporation or imposing a limited reduction of funding.

§ 1606.13 Interim and other funding, reprogramming, implementation.

(a) Pending the completion of termination or limited reduction of funding proceedings under this part, the Corporation shall provide the recipient with the level of financial assistance provided for under its current grant or contract for financial assistance with the Corporation.

(b) After a final decision has been made to terminate a recipient's grant or contract or to impose a limited reduction of funding, the recipient loses all rights to the terminated or reduced funds.

(c) After a final decision has been made to terminate a recipient's grant or contract, the Corporation may authorize closeout or transition funding, or both, if necessary to enable the recipient to close or transfer current matters in a manner consistent with the recipient's professional responsibilities to its present clients.

(d) The Corporation has sole discretion to determine the manner in which the final decision is implemented. The Corporation's discretion includes, but is not limited to the decision to prorate the amount of funds reduced over the remaining disbursements in the funding term or deduct the sum in a single disbursement, or any other method the Corporation deems appropriate.

(e) Funds recovered by the Corporation pursuant to a termination or limited reduction of funding shall be reallocated by the Corporation for basic field purposes at its sole discretion.

§ 1606.14 Recompensation.

After a final decision has been issued by the Corporation terminating financial assistance to a recipient in whole for any service area, the Corporation shall implement a new competitive bidding process for the affected service area. Until a new recipient has been awarded a grant pursuant to such process, the Corporation shall take all practical steps to ensure the continued provision of legal assistance in the service area pursuant to §1634.11 of this part.

PART 1607—GOVERNING BODIES

Sec.	
1607.1	Purpose.
1607.2	Definitions.
1607.3	Composition.
1607.4	Functions of a governing body.
1607.5	Compensation.
1607.6	Waiver.

AUTHORITY: 42 U.S.C. 2996f(c); Pub. L. 103–317.

SOURCE: 59 FR 65254, Dec. 19, 1994, unless otherwise noted.

§ 1607.1 Purpose.

This part is designed to insure that the governing body of a recipient will be well qualified to guide a recipient in its efforts to provide high-quality legal assistance to those who otherwise would be unable to obtain adequate legal counsel and to insure that the recipient is accountable to its clients.

§ 1607.2 Definitions.

As used in this part,

(a) *Attorney member* means a board member who is an attorney admitted to practice in a State within the recipient's service area.

(b) *Board member* means a member of a recipient's governing body or policy body.

(c) *Eligible client member* means a board member who is financially eligible to receive legal assistance under the Act and part 1611 of this chapter at the time of appointment to each term of office to the recipient's governing body, without regard to whether the person actually has received or is receiving legal assistance at that time. Eligibility of client members shall be determined by the recipient or, if the recipient so chooses, by the appointing organization(s) or group(s) in accordance with written policies adopted by the recipient.

(d) *Governing body* means the board of directors or other body with authority to govern the activities of a recipient receiving funds under § 1006(a)(1)(A) of the Act.

(e) *Policy body* means a policy board or other body established by a recipient to formulate and enforce policy with respect to the services provided under a grant or contract made under the Act.

(f) *Recipient* means any grantee or contractor receiving financial assistance from the Corporation under § 1006(a)(1)(A) of the Act.

§ 1607.3 Composition.

(a) A recipient shall be incorporated in a State in which it provides legal assistance and shall have a governing body which reasonably reflects the interests of the eligible clients in the area served and which consists of members, each of whom is supportive of the purposes of the Act and has an interest in, and knowledge of, the delivery of quality legal services to the poor.

(b) At least sixty percent (60%) of a governing body shall be attorney members.

(1) A majority of the members of the governing body shall be attorney members appointed by the governing body(ies) of one or more State, county or municipal bar associations, the membership of which represents a majority of attorneys practicing law in the localities in which the recipient provides legal assistance.

(i) Appointments may be made either by the bar association which represents a majority of attorneys in the recipient's service area or by bar associations which collectively represent a majority of the attorneys practicing law in the recipient's service area.

(ii) Recipients that provide legal assistance in more than one State may provide that appointments of attorney members be made by the appropriate bar association(s) in the State(s) or locality(ies) in which the recipient's principal office is located or in which the recipient provides legal assistance.

(2) Any additional attorney members may be selected by the recipient's governing body or may be appointed by other organizations designated by the recipient which have an interest in the delivery of legal services to the poor.

(3) Appointments shall be made so as to insure that the attorney members reasonably reflect the diversity of the legal community and the population of the areas served by the recipient, including race, ethnicity, gender and other similar factors.

(c) At least one-third of the members of a recipient's governing body shall be eligible clients when appointed. The

Legal Services Corporation

§ 1607.5

members who are eligible clients shall be appointed by a variety of appropriate groups designated by the recipient that may include, but are not limited to, client and neighborhood associations and community-based organizations which advocate for or deliver services or resources to the client community served by the recipient. Recipients shall designate groups in a manner that reflects, to the extent possible, the variety of interests within the client community, and eligible client members should be selected so that they reasonably reflect the diversity of the eligible client population served by the recipient, including race, gender, ethnicity and other similar factors.

(d) The remaining members of a governing body may be appointed by the recipient's governing body or selected in a manner described in the recipient's bylaws or policies, and the appointment or selection shall be made so that the governing body as a whole reasonably reflects the diversity of the areas served by the recipient, including race, ethnicity, gender and other similar factors.

(e) The nonattorney members of a governing body shall not be dominated by persons serving as the representatives of a single association, group or organization, except that eligible client members may be selected from client organizations that are composed of coalitions of numerous smaller or regionally based client groups.

(f) Members of a governing body may be selected by appointment, election, or other means consistent with this part and with the recipient's bylaws and applicable State law.

(g) Recipients shall make reasonable and good faith efforts to insure that governing body vacancies are filled as promptly as possible.

(h) Recipients may recommend candidates for governing body membership to the appropriate bar associations and other appointing groups and should consult with the appointing organizations to insure that:

(1) Appointees meet the criteria for board membership set out in this part, including financial eligibility for persons appointed as eligible clients, bar admittance requirements for attorney board members, and the general re-

quirements that all members be supportive of the purposes of the Act and have an interest in and knowledge of the delivery of legal services to the poor;

(2) The particular categories of board membership and the board as a whole meet the diversity requirements described in §§1607.3(b)(3), 1607.3(c) and 1607.3(d);

(3) Appointees do not have actual and significant individual or institutional conflicts of interest with the recipient or the recipient's client community that could reasonably be expected to influence their ability to exercise independent judgment as members of the recipient's governing body.

§1607.4 Functions of a governing body.

(a) A governing body shall have at least four meetings a year. A recipient shall give timely and reasonable prior public notice of all meetings, and all meetings shall be public except for those concerned with matters properly discussed in executive session in accordance with written policies adopted by the recipient's governing body.

(b) In addition to other powers and responsibilities that may be provided for by State law, a governing body shall establish and enforce broad policies governing the operation of a recipient, but neither the governing body nor any member thereof shall interfere with any attorney's professional responsibilities to a client or obligations as a member of the profession or interfere with the conduct of any ongoing representation.

(c) A governing body shall adopt bylaws which are consistent with State law and the requirements of this part. Recipients shall submit a copy of such bylaws to the Corporation and shall give the Corporation notice of any changes in such bylaws within a reasonable time after the change is made.

§1607.5 Compensation.

(a) While serving on the governing body of a recipient, no attorney member shall receive compensation from that recipient, but any member may receive a reasonable per diem expense payment or reimbursement for actual expenses for normal travel and other

§ 1607.6

reasonable out-of-pocket expenses in accordance with written policies adopted by the recipient.

(b) Pursuant to a waiver granted under §1607.6(b)(1), a recipient may adopt policies that would permit partners or associates of attorney members to participate in any compensated private attorney involvement activities supported by the recipient.

(c) A recipient may adopt policies that permit attorney members, subject to terms and conditions applicable to other attorneys in the service area:

(1) To accept referrals of fee-generating cases under part 1609 of these regulations;

(2) To participate in any uncompensated private attorney involvement activities supported by the recipient;

(3) To seek and accept attorneys' fees awarded by a court or administrative body or included in a settlement in cases undertaken pursuant to §§1607.5 (c) (1) and (2); and

(4) To receive reimbursement from the recipient for out-of-pocket expenses incurred by the attorney member as part of the activities undertaken pursuant to §1607.5(c)(2).

[59 FR 65254, Dec. 19, 1994, as amended at 60 FR 2330, Jan. 9, 1995]

§ 1607.6 Waiver.

(a) Upon application, the president shall waive the requirements of this part to permit a recipient that was funded under §222(a)(3) of the Economic Opportunity Act of 1964 and, on July 25, 1974, had a majority of persons who were not attorneys on its governing body, to continue such nonattorney majority.

(b) Upon application, the president may waive any of the requirements of this part which are not mandated by applicable law if a recipient demonstrates that it cannot comply with them because of: (1) The nature of the population, legal community or area served; or (2) Special circumstances, including but not limited to, conflicting requirements of the recipient's other major funding source(s) or State law.

(c) A recipient seeking a waiver under §1607.6(b)(1) shall demonstrate that it has made diligent efforts to

45 CFR Ch. XVI (10–1–14 Edition)

comply with the requirements of this part.

(d) As a condition of granting a waiver under §1607.6(b)(2) of any of the requirements imposed upon governing bodies by §1607.3, the president shall require that a recipient have a policy body with a membership composed and appointed in the manner prescribed by §1607.3. Such policy body shall be subject to the meeting requirements of §1607.4(a) and its attorney members shall be subject to the restrictions on compensation contained in §1607.5. The policy body shall have such specific powers and responsibilities as the President determines are necessary to enable it to formulate and enforce policy with respect to the services provided under the recipient's LSC grant or contract.

PART 1608—PROHIBITED POLITICAL ACTIVITIES

Sec.

1608.1 Purpose.

1608.2 Definition.

1608.3 Prohibitions applicable to the Corporation and to recipients.

1608.4 Prohibitions applicable to all employees.

1608.5 Prohibitions applicable to Corporation employees and staff attorneys.

1608.6 Prohibitions applicable to attorneys and to staff attorneys.

1608.7 Attorney-client relationship.

1608.8 Enforcement.

AUTHORITY: Secs. 1001(5), 1005(b)(2), 1006(b)(3), 1006(b)(5)(B), 1006(d)(3), 1006 (d)(4), 1006(e)(1), 1006(e)(2), 1007(a)(6), 1007(b)(2); 42 U.S.C. 2996(5), 2996d(b)(2), 2996e(b)(3), 2996e(b)(5)(B), 2996e(d)(3), 2996e(d)(4), 2996e(e)(1), 2996e(e)(2), 2996f(a)(6), 2996(b)(2).

SOURCE: 43 FR 32773, July 28, 1978, unless otherwise noted.

§ 1608.1 Purpose.

This part is designed to insure that the Corporation's resources will be used to provide high quality legal assistance and not to support or promote political activities or interests. The part should be construed and applied so as to further this purpose without infringing upon the constitutional rights of employees or the professional responsibilities of attorneys to their clients.

Legal Services Corporation

§ 1609.1

§ 1608.2 Definition.

Legal assistance activities, as used in this part, means any activity.

(a) Carried out during an employee's working hours;

(b) Using resources provided by the Corporation or by a recipient; or

(c) That, in fact, provides legal advice, or representation to an eligible client.

§ 1608.3 Prohibitions applicable to the Corporation and to recipients.

(a) Neither the Corporation nor any recipient shall use any political test or qualification in making any decision, taking any action, or performing any function under the act.

(b) Neither the Corporation nor any recipient shall contribute or make available Corporation funds, or any personnel or equipment

(1) To any political party or association;

(2) To the campaign of any candidate for public or party office; or

(3) For use in advocating or opposing any ballot measure, initiative, or referendum.

§ 1608.4 Prohibitions applicable to all employees.

(a) No employee shall intentionally identify the Corporation or a recipient with any partisan or nonpartisan political activity, or with the campaign of any candidate for public or party office.

(b) No employee shall use any Corporation funds for activities prohibited to attorneys under § 1608.6; nor shall an employee intentionally identify or encourage others to identify the Corporation or a recipient with such activities.

§ 1608.5 Prohibitions applicable to Corporation employees and to staff attorneys.

While employed under the act, no Corporation employee and no staff attorney shall, at any time,

(a) Use official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office, whether partisan or nonpartisan;

(b) Directly or indirectly coerce, attempt to coerce, command or advise an employee of the Corporation or of any

recipient to pay, lend, or contribute anything of value to a political party, or committee, organization, agency or person for political purposes; or

(c) Be a candidate for partisan elective public office.

§ 1608.6 Prohibitions applicable to attorneys and to staff attorneys.

While engaged in legal assistance activities supported under the act, no attorney shall engage in

(a) Any political activity,

(b) Any activity to provide voters with transportation to the polls, or to provide similar assistance in connection with an election, or

(c) Any voter registration activity.

§ 1608.7 Attorney-client relationship.

Nothing in this part is intended to prohibit an attorney or staff attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

§ 1608.8 Enforcement.

This part shall be enforced according to the procedures set forth in § 1612.5.

PART 1609—FEE-GENERATING CASES

Sec.

1609.1 Purpose.

1609.2 Definition.

1609.3 General requirements.

1609.4 Accounting for and use of attorneys' fees.

1609.5 Acceptance of reimbursement from a client.

1609.6 Recipient policies, procedures and recordkeeping.

AUTHORITY: 42 U.S.C. 2996f(b)(1) and 2996e(c)(6).

SOURCE: 62 FR 19399, Apr. 21, 1997, unless otherwise noted.

§ 1609.1 Purpose.

This part is designed:

(a) To ensure that recipients do not use scarce legal services resources when private attorneys are available to provide effective representation and

(b) To assist eligible clients to obtain appropriate and effective legal assistance.

§ 1609.2

45 CFR Ch. XVI (10–1–14 Edition)

§ 1609.2 Definition.

(a) *Fee-generating case* means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds or from the opposing party.

(b) *Fee-generating case* does not include a case where:

(1) A court appoints a recipient or an employee of a recipient to provide representation in a case pursuant to a statute or a court rule or practice equally applicable to all attorneys in the jurisdiction, or

(2) A recipient undertakes representation under a contract with a government agency or other entity.

§ 1609.3 General requirements.

(a) Except as provided in paragraph (b) of this section, a recipient may not use Corporation funds to provide legal assistance in a fee-generating case unless:

(1) The case has been rejected by the local lawyer referral service, or by two private attorneys; or

(2) Neither the referral service nor two private attorneys will consider the case without payment of a consultation fee.

(b) A recipient may provide legal assistance in a fee-generating case without first attempting to refer the case pursuant to paragraph (a) of this section only when:

(1) An eligible client is seeking benefits under Subchapter II of the Social Security Act, 42 U.S.C. 401 *et seq.*, as amended, Federal Old Age, Survivors, and Disability Insurance Benefits; or Subchapter XVI of the Social Security Act, 42 U.S.C. 1381 *et seq.*, as amended, Supplemental Security Income for Aged, Blind, and Disabled;

(2) The recipient, after consultation with appropriate representatives of the private bar, has determined that the type of case is one that private attorneys in the area served by the recipient ordinarily do not accept, or do not accept without prepayment of a fee; or

(3) The director of the recipient, or the director's designee, has determined that referral of the case to the private bar is not possible because:

(i) Documented attempts to refer similar cases in the past generally have been futile;

(ii) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate, and consistent with professional responsibility, referral will be attempted at a later time; or

(iii) Recovery of damages is not the principal object of the recipient's client's case and substantial statutory attorneys' fees are not likely to be available.

[62 FR 19399, Apr. 21, 1997, as amended at 75 FR 6818, Feb. 11, 2010; 76 FR 23504, Apr. 27, 2011]

§ 1609.4 Accounting for and use of attorneys' fees.

(a) Attorneys' fees received by a recipient for representation supported in whole or in part with funds provided by the Corporation shall be allocated to the fund in which the recipient's LSC grant is recorded in the same proportion that the amount of Corporation funds expended bears to the total amount expended by the recipient to support the representation.

(b) Attorneys' fees received shall be recorded during the accounting period in which the money from the fee award is actually received by the recipient and may be expended for any purpose permitted by the LSC Act, regulations and other law applicable at the time the money is received.

[75 FR 6818, Feb. 11, 2010]

§ 1609.5 Acceptance of reimbursement from a client.

(a) When a case results in recovery of damages or statutory benefits, a recipient may accept reimbursement from the client for out-of-pocket costs and expenses incurred in connection with the case, if the client has agreed in writing to reimburse the recipient for such costs and expenses out of any such recovery.

(b) A recipient may require a client to pay court costs when the client does not qualify to proceed *in forma pauperis* under the rules of the jurisdiction.

[75 FR 6818, Feb. 11, 2010]

Legal Services Corporation

§ 1610.2

§ 1609.6 Recipient policies, procedures and recordkeeping.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

[62 FR 19399, Apr. 21, 1997. Redesignated at 75 FR 6818, Feb. 11, 2010]

PART 1610—USE OF NON-LSC FUNDS, TRANSFERS OF LSC FUNDS, PROGRAM INTEGRITY

Sec.

- 1610.1 Purpose.
- 1610.2 Definitions.
- 1610.3 Prohibition.
- 1610.4 Authorized use of non-LSC funds.
- 1610.5 Notification.
- 1610.6 Applicability.
- 1610.7 Transfers of LSC funds.
- 1610.8 Program integrity of recipient.
- 1610.9 Accounting.

AUTHORITY: 42 U.S.C. 2996i; Pub. L. 104-208, 110 Stat. 3009; Pub. L. 104-134, 110 Stat. 1321; Pub. L. 111-117; 123 Stat. 3034.

SOURCE: 62 FR 27698, May 21, 1997, unless otherwise noted.

§ 1610.1 Purpose.

This part is designed to implement statutory restrictions on the use of non-LSC funds by LSC recipients and to ensure that no LSC-funded entity shall engage in any restricted activities and that recipients maintain objective integrity and independence from organizations that engage in restricted activities.

§ 1610.2 Definitions.

(a) *Purpose prohibited by the LSC Act* means any activity prohibited by the following sections of the LSC Act and those provisions of the Corporation's regulations that implement such sections of the Act:

(1) Sections 1006(d)(3), 1006(d)(4), 1007(a)(6), and 1007(b)(4) of the LSC Act and 45 CFR part 1608 of the LSC Regulations (Political activities);

(2) Section 1007(a)(10) of the LSC Act (Activities inconsistent with professional responsibilities);

(3) Section 1007(b)(1) of the LSC Act and 45 CFR part 1609 of the LSC regulations (Fee-generating cases);

(4) Section 1007(b)(2) of the LSC Act and 45 CFR part 1613 of the LSC Regulations (Criminal proceedings);

(5) Section 1007(b)(3) of the LSC Act and 45 CFR part 1615 of the LSC Regulations (Actions challenging criminal convictions);

(6) Section 1007(b)(7) of the LSC Act and 45 CFR part 1612 of the LSC Regulations (Organizing activities);

(7) Section 1007(b)(8) of the LSC Act (Abortions);

(8) Section 1007(b)(9) of the LSC Act (School desegregation); and

(9) Section 1007(b)(10) of the LSC Act (Violations of Military Selective Service Act or military desertion).

(b) *Activity prohibited by or inconsistent with Section 504* means any activity prohibited by, or inconsistent with the requirements of, the following sections of 110 Stat. 1321 (1996) and those provisions of the Corporation's regulations that implement those sections:

(1) Section 504(a)(1) and 45 CFR part 1632 of the LSC Regulations (Restricting);

(2) Sections 504(a)(2) through (6), as modified by Sections 504 (b) and (e), and 45 CFR part 1612 of the LSC Regulations (Legislative and administrative advocacy);

(3) Section 504(a)(7) and 45 CFR part 1617 of the LSC Regulations (Class actions);

(4) Section 504(a)(8) and 45 CFR part 1636 of the LSC Regulations (Client identification and statement of facts);

(5) Section 504(a)(9) and 45 CFR part 1620 of the LSC Regulations (Priorities);

(6) Section 504(a)(10) and 45 CFR part 1635 of the LSC Regulations (Timekeeping);

(7) Section 504(a)(11) and 45 CFR part 1626 of the LSC Regulations (Aliens);

(8) Section 504(a)(12) and 45 CFR part 1612 of the LSC Regulations (Public policy training);

(9) Section 504(a)(14) (Abortion litigation);

(10) Section 504(a)(15) and 45 CFR part 1637 of the LSC Regulations (Prisoner litigation);

(11) Section 504(a)(16), as modified by Section 504(e), and 45 CFR part 1639 of the LSC Regulations (Welfare reform);

§ 1610.3

(12) Section 504(a)(17) and 45 CFR part 1633 of the LSC Regulations (Drug-related evictions); and

(13) Section 504(a)(18) and 45 CFR part 1638 of the LSC Regulations (In-person solicitation).

(c) *IOLTA funds* means funds derived from programs established by State court rules or legislation that collect and distribute interest on lawyers' trust accounts.

(d) *Non-LSC funds* means funds derived from a source other than the Corporation.

(e) *Private funds* means funds derived from an individual or entity other than a governmental source or LSC.

(f) *Public funds* means non-LSC funds derived from a Federal, State, or local government or instrumentality of a government. For purposes of this part, IOLTA funds shall be treated in the same manner as public funds.

(g) *Transfer* means a payment of LSC funds by a recipient to a person or entity for the purpose of conducting programmatic activities that are normally conducted by the recipient, such as the representation of eligible clients, or that provide direct support to the recipient's legal assistance activities. *Transfer* does not include any payment of LSC funds to vendors, accountants or other providers of goods and services made by the recipient in the normal course of business.

(h) *Tribal funds* means funds received from an Indian tribe or from a private nonprofit foundation or organization for the benefit of Indians or Indian tribes.

[62 FR 27698, May 21, 1997, as amended at 75 FR 6818, Feb. 11, 2010]

§ 1610.3 Prohibition.

A recipient may not use non-LSC funds for any purpose prohibited by the LSC Act or for any activity prohibited by or inconsistent with Section 504, unless such use is authorized by §§ 1610.4, 1610.6 or 1610.7 of this part.

§ 1610.4 Authorized use of non-LSC funds.

(a) A recipient may receive tribal funds and expend them in accordance with the specific purposes for which the tribal funds were provided.

45 CFR Ch. XVI (10–1–14 Edition)

(b) A recipient may receive public or IOLTA funds and use them in accordance with the specific purposes for which they were provided, if the funds are not used for any activity prohibited by or inconsistent with Section 504.

(c) A recipient may receive private funds and use them in accordance with the purposes for which they were provided, provided that the funds are not used for any activity prohibited by the LSC Act or prohibited or inconsistent with Section 504.

(d) A recipient may use non-LSC funds to provide legal assistance to an individual who is not financially eligible for services under part 1611 of this chapter, provided that the funds are used for the specific purposes for which those funds were provided and are not used for any activity prohibited by the LSC Act or prohibited by or inconsistent with Section 504.

§ 1610.5 Notification.

(a) Except as provided in paragraph (b) of this section, no recipient may accept funds from any source other than the Corporation, unless the recipient provides to the source of the funds written notification of the prohibitions and conditions which apply to the funds.

(b) A recipient is not required to provide such notification for receipt of contributions of less than \$250.

§ 1610.6 Applicability.

Notwithstanding § 1610.7(a), the prohibitions referred to in §§ 1610.2(a)(4) (Criminal proceedings), (a)(5) (Actions challenging criminal convictions), (b)(7) (Aliens) or (b)(11) (Prisoner litigation) of this part will not apply to:

(a) A recipient's or subrecipient's separately funded public defender program or project; or

(b) Criminal or related cases accepted by a recipient or subrecipient pursuant to a court appointment.

§ 1610.7 Transfers of LSC funds.

(a) If a recipient transfers LSC funds to another person or entity, the prohibitions and requirements referred to in this part, except as modified by paragraphs (b) and (c) of this section, will apply both to the LSC funds transferred and to the non-LSC funds of the

Legal Services Corporation

§ 1611.1

person or entity to whom those funds are transferred.

(b)(1) In regard to the requirement in § 1610.2(b)(5) on priorities, persons or entities receiving a transfer of LSC funds shall either:

(i) Use the funds transferred consistent with the recipient's priorities; or

(ii) Establish their own priorities for the use of the funds transferred consistent with 45 CFR part 1620;

(2) In regard to the requirement in § 1610.2(b)(6) on timekeeping, persons or entities receiving a transfer of LSC funds are required to maintain records of time spent on each case or matter undertaken with the funds transferred.

(c) For a transfer of LSC funds to bar associations, *pro bono* programs, private attorneys or law firms, or other entities for the sole purpose of funding private attorney involvement activities (PAI) pursuant to 45 CFR part 1614, the prohibitions or requirements of this part shall apply only to the funds transferred.

§ 1610.8 Program integrity of recipient.

(a) A recipient must have objective integrity and independence from any organization that engages in restricted activities. A recipient will be found to have objective integrity and independence from such an organization if:

(1) The other organization is a legally separate entity;

(2) The other organization receives no transfer of LSC funds, and LSC funds do not subsidize restricted activities; and

(3) The recipient is physically and financially separate from the other organization. Mere bookkeeping separation of LSC funds from other funds is not sufficient. Whether sufficient physical and financial separation exists will be determined on a case-by-case basis and will be based on the totality of the facts. The presence or absence of any one or more factors will not be determinative. Factors relevant to this determination shall include but will not be limited to:

(i) The existence of separate personnel;

(ii) The existence of separate accounting and timekeeping records;

(iii) The degree of separation from facilities in which restricted activities occur, and the extent of such restricted activities; and

(iv) The extent to which signs and other forms of identification which distinguish the recipient from the organization are present.

(b) Each recipient's governing body must certify to the Corporation within 180 days of the effective date of this part that the recipient is in compliance with the requirements of this section. Thereafter, the recipient's governing body must certify such compliance to the Corporation on an annual basis.

§ 1610.9 Accounting.

Funds received by a recipient from a source other than the Corporation shall be accounted for as separate and distinct receipts and disbursements in a manner directed by the Corporation.

PART 1611—FINANCIAL ELIGIBILITY

Sec.

1611.1 Purpose.

1611.2 Definitions.

1611.3 Financial eligibility policies.

1611.4 Financial eligibility for legal assistance.

1611.5 Authorized exceptions to the recipient's annual income ceiling.

1611.6 Representation of groups.

1611.7 Manner of determining financial eligibility.

1611.8 Changes in financial eligibility status.

1611.9 Retainer agreements.

APPENDIX A TO PART 1611—INCOME LEVEL FOR INDIVIDUALS ELIGIBLE FOR ASSISTANCE

AUTHORITY: 42 U.S.C. 2996e(b)(1), 2996e(b)(3), 2996f(a)(1), 2996f(a)(2), 2996g(e); Section 509(h) of Pub. L. 104-134, 110 Stat. 1321 (1996); Pub. L. 105-119, 11 Stat. 2512 (1998).

SOURCE: 70 FR 45562, Aug. 8, 2005, unless otherwise noted.

§ 1611.1 Purpose.

This part sets forth requirements relating to the financial eligibility of individual applicants for legal assistance supported with LSC funds and recipients' responsibilities in making financial eligibility determinations. This part is not intended to and does not create any entitlement to service for persons deemed financially eligible.

§ 1611.2

45 CFR Ch. XVI (10–1–14 Edition)

This part also seeks to ensure that financial eligibility is determined in a manner conducive to development of an effective attorney-client relationship. In addition, this part sets forth standards relating to the eligibility of groups for legal assistance supported with LSC funds. Finally, this part sets forth requirements relating to recipients' responsibilities in executing retainer agreements with clients.

§ 1611.2 Definitions.

(a) "Advice and counsel" means legal assistance that is limited to the review of information relevant to the client's legal problem(s) and counseling the client on the relevant law and/or suggested course of action. Advice and counsel does not encompass drafting of documents or making third-party contacts on behalf of the client.

(b) "Applicable rules of professional responsibility" means the rules of ethics and professional responsibility generally applicable to attorneys in the jurisdiction where the recipient provides legal services.

(c) "Applicant" means an individual who is seeking legal assistance supported with LSC funds from a recipient. The term does not include a group, corporation or association.

(d) "Assets" means cash or other resources of the applicant or members of the applicant's household that are readily convertible to cash, which are currently and actually available to the applicant.

(e) "Brief services" means legal assistance in which the recipient undertakes to provide a discrete and time-limited service to a client beyond advice and consultation, including but not limited to activities, such as the drafting of documents or making limited third party contacts on behalf of a client.

(f) "Extended service" means legal assistance characterized by the performance of multiple tasks incident to continuous representation. Examples of extended service would include representation of a client in litigation, an administrative adjudicative proceeding, alternative dispute resolution proceeding, extended negotiations with a third party, or other legal representation in which the recipient under-

takes responsibility for protecting or advancing a client's interest beyond advice and counsel or brief services.

(g) "Governmental program for low income individuals or families" means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of financial need.

(h) "Governmental program for persons with disabilities" means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of mental and/or physical disability.

(i) "Income" means actual current annual total cash receipts before taxes of all persons who are resident members and contribute to the support of an applicant's household, as that term is defined by the recipient. Total cash receipts include, but are not limited to, wages and salaries before any deduction; income from self-employment after deductions for business or farm expenses; regular payments from governmental programs for low income persons or persons with disabilities; social security payments; unemployment and worker's compensation payments; strike benefits from union funds; veterans benefits; training stipends; alimony; child support payments; military family allotments; public or private employee pension benefits; regular insurance or annuity payments; income from dividends, interest, rents, royalties or from estates and trusts; and other regular or recurring sources of financial support that are currently and actually available to the applicant. Total cash receipts do not include the value of food or rent received by the applicant in lieu of wages; money withdrawn from a bank; tax refunds; gifts; compensation and/or one-time insurance payments for injuries sustained; non-cash benefits; and up to \$2,000 per year of funds received by individual Native Americans that is derived from Indian trust income or other distributions exempt by statute.

§ 1611.3 Financial eligibility policies.

(a) The governing body of a recipient shall adopt policies consistent with this part for determining the financial eligibility of applicants and groups.

Legal Services Corporation

§ 1611.4

The governing body shall review its financial eligibility policies at least once every three years and make adjustments as necessary. The recipient shall implement procedures consistent with its policies.

(b) As part of its financial eligibility policies, every recipient shall specify that only individuals and groups determined to be financially eligible under the recipient's financial eligibility policies and LSC regulations may receive legal assistance supported with LSC funds.

(c)(1) As part of its financial eligibility policies, every recipient shall establish annual income ceilings for individuals and households, which may not exceed one hundred and twenty five percent (125%) of the current official Federal Poverty Guidelines amounts. The Corporation shall annually calculate 125% of the Federal Poverty Guidelines amounts and publish such calculations in the FEDERAL REGISTER as a revision to Appendix A to this part.

(2) As part of its financial eligibility policies, a recipient may adopt authorized exceptions to its annual income ceilings consistent with §1611.5.

(d)(1) As part of its financial eligibility policies, every recipient shall establish reasonable asset ceilings for individuals and households. In establishing asset ceilings, the recipient may exclude consideration of a household's principal residence, vehicles used for transportation, assets used in producing income, and other assets which are exempt from attachment under State or Federal law.

(2) The recipient's policies may provide authority for waiver of its asset ceilings for specific applicants under unusual circumstances and when approved by the recipient's Executive Director, or his/her designee. When the asset ceiling is waived, the recipient shall record the reasons for such waiver and shall keep such records as are necessary to inform the Corporation of the reasons for such waiver.

(e) Notwithstanding any other provision of this part, or other provision of the recipient's financial eligibility policies, every recipient shall specify as part of its financial eligibility policies that in assessing the income or as-

sets of an applicant who is a victim of domestic violence, the recipient shall consider only the assets and income of the applicant and members of the applicant's household other than those of the alleged perpetrator of the domestic violence and shall not include any assets held by the alleged perpetrator of the domestic violence, jointly held by the applicant with the alleged perpetrator of the domestic violence, or assets jointly held by any member of the applicant's household with the alleged perpetrator of the domestic violence.

(f) As part of its financial eligibility policies, a recipient may adopt policies that permit financial eligibility to be established by reference to an applicant's receipt of benefits from a governmental program for low-income individuals or families consistent with §1611.4(c).

(g) Before establishing its financial eligibility policies, a recipient shall consider the cost of living in the service area or locality and other relevant factors, including but not limited to:

(1) The number of clients who can be served by the resources of the recipient;

(2) The population that would be eligible at and below alternative income and asset ceilings; and

(3) The availability and cost of legal services provided by the private bar and other free or low cost legal services providers in the area.

§ 1611.4 Financial eligibility for legal assistance.

(a) A recipient may provide legal assistance supported with LSC funds only to individuals whom the recipient has determined to be financially eligible for such assistance. Nothing in this part, however, prohibits a recipient from providing legal assistance to an individual without regard to that individual's income and assets if the legal assistance is wholly supported by funds from a source other than LSC, and is otherwise permissible under applicable law and regulation.

(b) Consistent with the recipient's financial eligibility policies and this part, the recipient may determine an applicant to be financially eligible for

§ 1611.5

45 CFR Ch. XVI (10–1–14 Edition)

legal assistance if the applicant's assets do not exceed the recipient's applicable asset ceiling established pursuant to §1611.3(d)(1), or the applicable asset ceiling has been waived pursuant to §1611.3(d)(2), and:

(1) The applicant's income is at or below the recipient's applicable annual income ceiling; or

(2) The applicant's income exceeds the recipient's applicable annual income ceiling but one or more of the authorized exceptions to the annual income ceilings, as provided in §1611.5, applies.

(c) Consistent with the recipient's policies, a recipient may determine an applicant to be financially eligible without making an independent determination of income or assets, if the applicant's income is derived solely from a governmental program for low-income individuals or families, provided that the recipient's governing body has determined that the income standards of the governmental program are at or below 125% of the Federal Poverty Guidelines amounts and that the governmental program has eligibility standards which include an assets test.

§ 1611.5 Authorized exceptions to the annual income ceiling.

(a) Consistent with the recipient's policies and this part, a recipient may determine an applicant whose income exceeds the recipient's applicable annual income ceiling to be financially eligible if the applicant's assets do not exceed the recipient's applicable asset ceiling established pursuant to §1611.3(d), or the asset ceiling has been waived pursuant to §1611.3(d)(2), and:

(1) The applicant is seeking legal assistance to maintain benefits provided by a governmental program for low income individuals or families; or

(2) The Executive Director of the recipient, or his/her designee, has determined on the basis of documentation received by the recipient, that the applicant's income is primarily committed to medical or nursing home expenses and that, excluding such portion of the applicant's income which is committed to medical or nursing home expenses, the applicant would otherwise be financially eligible for service; or

(3) The applicant's income does not exceed 200% of the applicable Federal Poverty Guidelines amount and:

(i) The applicant is seeking legal assistance to obtain governmental benefits for low income individuals and families; or

(ii) The applicant is seeking legal assistance to obtain or maintain governmental benefits for persons with disabilities; or

(4) The applicant's income does not exceed 200% of the applicable Federal Poverty Guidelines amount and the recipient has determined that the applicant should be considered financially eligible based on consideration of one or more of the following factors as applicable to the applicant or members of the applicant's household:

(i) Current income prospects, taking into account seasonal variations in income;

(ii) Unreimbursed medical expenses and medical insurance premiums;

(iii) Fixed debts and obligations;

(iv) Expenses such as dependent care, transportation, clothing and equipment expenses necessary for employment, job training, or educational activities in preparation for employment;

(v) Non-medical expenses associated with age or disability;

(vi) Current taxes; or

(vii) Other significant factors that the recipient has determined affect the applicant's ability to afford legal assistance.

(b) In the event that a recipient determines that an applicant is financially eligible pursuant to this section and is provided legal assistance, the recipient shall document the basis for the financial eligibility determination. The recipient shall keep such records as may be necessary to inform the Corporation of the specific facts and factors relied on to make such determination.

§ 1611.6 Representation of groups.

(a) A recipient may provide legal assistance to a group, corporation, association or other entity if it provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel and either:

Legal Services Corporation

§ 1611.8

(1) The group, or for a non-membership group the organizing or operating body of the group, is primarily composed of individuals who would be financially eligible for LSC-funded legal assistance; or

(2) The group has as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance and the legal assistance sought relates to such activity.

(b)(1) In order to make a determination that a group, corporation, association or other entity is eligible for legal services as required by paragraph (a) of this section, a recipient shall consider the resources available to the group, such as the group's income and income prospects, assets and obligations and either:

(i) For a group primarily composed of individuals who would be financially eligible for LSC-funded legal assistance, whether the financial or other socioeconomic characteristics of the persons comprising the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance; or

(ii) For a group having as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance, whether the financial or other socioeconomic characteristics of the persons served by the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance and the assistance sought relates to such activity of the group.

(2) A recipient shall collect information that reasonably demonstrates that the group, corporation, association or other entity meets the eligibility criteria set forth herein.

(c) The eligibility requirements set forth herein apply only to legal assistance supported by funds from LSC, provided that any legal assistance provided by a recipient, regardless of the source of funds supporting the assistance, must be otherwise permissible under applicable law and regulation.

§ 1611.7 Manner of determining financial eligibility.

(a)(1) In making financial eligibility determinations regarding individual applicants, a recipient shall make reasonable inquiry regarding sources of the applicant's income, income prospects and assets. The recipient shall record income and asset information in the manner specified in this section.

(2) In making financial eligibility determinations regarding groups seeking LSC-supported legal assistance, a recipient shall follow the requirements set forth in § 1611.6(b) of this part.

(b) A recipient shall adopt simple intake forms and procedures to obtain information from applicants and groups to determine financial eligibility in a manner that promotes the development of trust between attorney and client. The forms shall be preserved by the recipient.

(c) If there is substantial reason to doubt the accuracy of the financial eligibility information provided by an applicant or group, a recipient shall make appropriate inquiry to verify the information, in a manner consistent with the attorney-client relationship.

(d) When one recipient has determined that a client is financially eligible for service in a particular case or matter, that recipient may request another recipient to extend legal assistance or undertake representation on behalf of that client in the same case or matter in reliance upon the initial financial eligibility determination. In such cases, the receiving recipient is not required to review or redetermine the client's financial eligibility unless there is a change in financial eligibility status as described in § 1611.8 or there is substantial reason to doubt the validity of the original determination, provided that the referring recipient provides and the receiving recipient retains a copy of the intake form documenting the financial eligibility of the client.

§ 1611.8 Change in financial eligibility status.

(a) If, after making a determination of financial eligibility and accepting a client for service, the recipient becomes aware that a client has become financially ineligible through a change

§ 1611.9

45 CFR Ch. XVI (10–1–14 Edition)

in circumstances, a recipient shall discontinue representation supported with LSC funds if the change in circumstances is sufficient, and is likely to continue, to enable the client to afford private legal assistance, and discontinuation is not inconsistent with applicable rules of professional responsibility.

(b) If, after making a determination of financial eligibility and accepting a client for service, the recipient later determines that the client is financially ineligible on the basis of later discovered or disclosed information, a recipient shall discontinue representation supported with LSC funds if the discontinuation is not inconsistent with applicable rules of professional responsibility.

§ 1611.9 Retainer agreements.

(a) When a recipient provides extended service to a client, the recipient

shall execute a written retainer agreement with the client. The retainer agreement shall be executed when representation commences or as soon thereafter as is practicable. Such retainer agreement must be in a form consistent with the applicable rules of professional responsibility and prevailing practices in the recipient's service area and shall include, at a minimum, a statement identifying the legal problem for which representation is sought, and the nature of the legal services to be provided.

(b) No written retainer agreement is required for advice and counsel or brief service provided by the recipient to the client or for legal services provided to the client by a private attorney pursuant to 45 CFR part 1614.

(c) The recipient shall maintain copies of all retainer agreements generated in accordance with this section.

Appendix A to Part 1611—Income Level for Individuals Eligible for Assistance

Size of household	48 Contiguous states and the District of Columbia	Alaska	Hawaii
* The figures in this table represent 125% of the poverty guidelines by household size as determined by HHS.			
1	\$14,713	\$18,400	\$16,938
2	19,913	24,900	22,913
3	25,113	31,400	28,888
4	30,313	37,900	34,863
5	35,513	44,400	40,838
6	40,713	50,900	46,813
7	45,913	57,400	52,788
8	51,113	63,900	58,763
For each additional member of the household in excess of 8, add:	5,200	6,500	5,975

Legal Services Corporation 2015 Income Guidelines *

Size of household	48 Contiguous states and the District of Columbia	Alaska	Hawaii
1	\$23,540	\$29,440	\$27,100
2	31,860	39,840	36,660
3	40,180	50,240	46,220
4	48,500	60,640	55,780
5	56,820	71,040	65,340
6	65,140	81,440	74,900
7	73,460	91,840	84,460
8	81,780	102,240	94,020
For each additional member of the household in excess of 8, add:	8,320	10,400	9,560

Reference Chart—200% of Federal Poverty Guidelines

PART 1612—RESTRICTIONS ON LOBBYING AND CERTAIN OTHER ACTIVITIES

Sec.

1612.1 Purpose.

1612.2 Definitions.

1612.3 Prohibited legislative and administrative activities.

1612.4 Grassroots lobbying.

1612.5 Permissible activities using any funds.

1612.6 Permissible activities using non-LSC funds.

1612.7 Public demonstrations and activities.

1612.8 Training.

1612.9 Organizing.

1612.10 Recordkeeping and accounting for activities funded with non-LSC funds.

1612.11 Recipient policies and procedures.

AUTHORITY: Pub. L. 104-208, 110 Stat. 3009; Pub. L. 104-134, 110 Stat. 1321, secs. 504(a) (2), (3), (4), (5), (6), and (12), 504 (b) and (e); 42 U.S.C. 2996e(b)(5), 2996f(a) (5) and (6), 2996f(b) (4), (6) and (7), and 2996g(e).

SOURCE: 62 FR 19404, Apr. 21, 1997, unless otherwise noted.

§ 1612.1 Purpose.

The purpose of this part is to ensure that LSC recipients and their employees do not engage in certain prohibited activities, including representation before legislative bodies or other direct lobbying activity, grassroots lobbying, participation in rulemaking, public demonstrations, advocacy training, and certain organizing activities. The part also provides guidance on when recipients may participate in public rulemaking or in efforts to encourage State or local governments to make funds available to support recipient activities, and when they may respond to requests of legislative and administrative officials.

§ 1612.2 Definitions.

(a)(1) *Grassroots lobbying* means any oral, written or electronically transmitted communication or any advertisement, telegram, letter, article, newsletter, or other printed or written matter or device which contains a direct suggestion to the public to contact public officials in support of or in opposition to pending or proposed legislation, regulations, executive decisions, or any decision by the electorate on a measure submitted to it for a vote. It

also includes the provision of financial contributions by recipients to, or participation by recipients in, any demonstration, march, rally, fundraising drive, lobbying campaign, letter writing or telephone campaign for the purpose of influencing the course of such legislation, regulations, decisions by administrative bodies, or any decision by the electorate on a measure submitted to it for a vote.

(2) *Grassroots lobbying* does not include communications which are limited solely to reporting on the content or status of, or explaining, pending or proposed legislation or regulations.

(b)(1) *Legislation* means any action or proposal for action by Congress or by a State or local legislative body which is intended to prescribe law or public policy. The term includes, but is not limited to, action on bills, constitutional amendments, ratification of treaties and intergovernmental agreements, approval of appointments and budgets, and approval or disapproval of actions of the executive.

(2) *Legislation* does not include those actions of a legislative body which adjudicate the rights of individuals under existing laws; nor does it include legislation adopted by an Indian Tribal Council.

(c) *Public policy* means an overall plan embracing the general goals and procedures of any governmental body and pending or proposed statutes, rules, and regulations.

(d)(1) *Rulemaking* means any agency process for formulating, amending, or repealing rules, regulations or guidelines of general applicability and future effect issued by the agency pursuant to Federal, State or local rulemaking procedures, including:

(i) The customary procedures that are used by an agency to formulate and adopt proposals for the issuance, amendment or revocation of regulations or other statements of general applicability and future effect, such as negotiated rulemaking and "notice and comment" rulemaking procedures under the Federal Administrative Procedure Act or similar procedures used by State or local government agencies; and

(ii) Adjudicatory proceedings that are formal adversarial proceedings to

§ 1612.3

formulate or modify an agency policy of general applicability and future effect.

(2) *Rulemaking* does not include:

(i) Administrative proceedings that produce determinations that are of particular, rather than general, applicability and affect only the private rights, benefits or interests of individuals, such as Social Security hearings, welfare fair hearings, or granting or withholding of licenses;

(ii) Communication with agency personnel for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, guidelines, policies or practices.

(e) *Public rulemaking* means any rulemaking proceeding or portion of such proceeding or procedure that is open to the public through notices of proposed rulemaking published in the FEDERAL REGISTER or similar State or local journals, announcements of public hearings on proposed rules or notices of proposed rulemaking including those that are routinely sent to interested members of the public, or other similar notifications to members of the public;

(f) *Similar procedure* refers to a legislative process by which matters must be determined by a vote of the electorate.

[62 FR 19404, Apr. 21, 1997; 62 FR 22895, Apr. 28, 1997]

§ 1612.3 Prohibited legislative and administrative activities.

(a) Except as provided in §§ 1612.5 and 1612.6, recipients shall not attempt to influence:

(1) The passage or defeat of any legislation or constitutional amendment;

(2) Any initiative, or any referendum or any similar procedure of the Congress, any State legislature, any local council, or any similar governing body acting in any legislative capacity;

(3) Any provision in a legislative measure appropriating funds to, or defining or limiting the functions or authority of, the recipient or the Corporation; or,

(4) The conduct of oversight proceedings concerning the recipient or the Corporation.

(b) Except as provided in §§ 1612.5 and 1612.6, recipients shall not participate in or attempt to influence any rule-

45 CFR Ch. XVI (10–1–14 Edition)

making, or attempt to influence the issuance, amendment or revocation of any executive order.

(c) Recipients shall not use any funds to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, administrative expense, or related expense associated with an activity prohibited in paragraphs (a) and (b) in this section.

§ 1612.4 Grassroots lobbying.

A recipient shall not engage in any grassroots lobbying.

§ 1612.5 Permissible activities using any funds.

(a) A recipient may provide administrative representation for an eligible client in a proceeding that adjudicates the particular rights or interests of such eligible client or in negotiations directly involving that client's legal rights or responsibilities, including pre-litigation negotiation and negotiation in the course of litigation.

(b) A recipient may initiate or participate in litigation challenging agency rules, regulations, guidelines or policies, unless such litigation is otherwise prohibited by law or Corporation regulations.

(c) Nothing in this part is intended to prohibit a recipient from:

(1) Applying for a governmental grant or contract;

(2) Communicating with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies;

(3) Informing clients, other recipients, or attorneys representing eligible clients about new or proposed statutes, executive orders, or administrative regulations;

(4) Communicating directly or indirectly with the Corporation for any purpose including commenting upon existing or proposed Corporation rules, regulations, guidelines, instructions and policies;

(5) Permitting its employees to participate in bar association activities, provided that recipient resources are not used to support and the recipient is

Legal Services Corporation

§ 1612.8

not identified with activities of bar associations that are devoted to activities prohibited by this part.

(6) Advising a client of the client's right to communicate directly with an elected official; or

(7) Participating in activity related to the judiciary, such as the promulgation of court rules, rules of professional responsibility and disciplinary rules.

§ 1612.6 Permissible activities using non-LSC funds.

(a) If the conditions of paragraphs (b) and (c) of this section are met, recipients and their employees may use non-LSC funds to respond to a written request from a governmental agency or official thereof, elected official, legislative body, committee, or member thereof made to the employee, or to a recipient to:

(1) Testify orally or in writing;

(2) Provide information which may include analysis of or comments upon existing or proposed rules, regulations or legislation, or drafts of proposed rules, regulations or legislation; or

(3) Participate in negotiated rulemaking under the Negotiated Rulemaking Act of 1990, 5 U.S.C. 561, *et seq.*, or comparable State or local laws.

(b) Communications made in response to requests under paragraph (a) may be distributed only to the party or parties that made the request and to other persons or entities only to the extent that such distribution is required to comply with the request.

(c) No employee of the recipient shall solicit or arrange for a request from any official to testify or otherwise provide information in connection with legislation or rulemaking.

(d) Recipients shall maintain copies of all written requests received by the recipient and written responses made in response thereto and make such requests and written responses available to monitors and other representatives of the Corporation upon request.

(e) Recipients may use non-LSC funds to provide oral or written comment to an agency and its staff in a public rulemaking proceeding.

(f) Recipients may use non-LSC funds to contact or communicate with, or respond to a request from, a State or local government agency, a State or

local legislative body or committee, or a member thereof, regarding funding for the recipient, including a pending or proposed legislative or agency proposal to fund such recipient.

§ 1612.7 Public demonstrations and activities.

(a) During working hours, while providing legal assistance or representation to the recipient's clients or while using recipient resources provided by the Corporation or by private entities, no person shall:

(1) Participate in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation; or

(2) Encourage, direct, or coerce others to engage in such activities.

(b) No employee of a recipient shall at any time engage in or encourage others to engage in any:

(1) Rioting or civil disturbance;

(2) Activity determined by a court to be in violation of an outstanding injunction of any court of competent jurisdiction; or

(3) Other illegal activity that is inconsistent with an employee's responsibilities under applicable law, Corporation regulations, or the rules of professional responsibility of the jurisdiction where the recipient is located or the employee practices law.

(c) Nothing in this section shall prohibit an attorney from:

(1) Informing and advising a client about legal alternatives to litigation or the lawful conduct thereof; or

(2) Taking such action on behalf of a client as may be required by professional responsibilities or applicable law of any State or other jurisdiction.

§ 1612.8 Training.

(a) A recipient may not support or conduct training programs that:

(1) Advocate particular public policies;

(2) Encourage or facilitate political activities, labor or anti-labor activities, boycotts, picketing, strikes or demonstrations, or the development of strategies to influence legislation or rulemaking;

(3) Disseminate information about such policies or activities; or

§ 1612.9

(4) Train participants to engage in activities prohibited by the Act, other applicable law, or Corporation regulations, guidelines or instructions.

(b) Nothing in this section shall be construed to prohibit training of any attorneys or paralegals, clients, lay advocates, or others involved in the representation of eligible clients necessary for preparing them:

(1) To provide adequate legal assistance to eligible clients; or

(2) To provide advice to any eligible client as to the legal rights of the client.

§ 1612.9 Organizing.

(a) Recipients may not use funds provided by the Corporation or by private entities to initiate the formation, or to act as an organizer, of any association, federation, labor union, coalition, network, alliance, or any similar entity.

(b) This section shall not be construed to apply to:

(1) Informational meetings attended by persons engaged in the delivery of legal services at which information about new developments in law and pending cases or matters are discussed; or

(2) Organizations composed exclusively of eligible clients formed for the purpose of advising a legal services program about the delivery of legal services.

(c) Recipients and their employees may provide legal advice or assistance to eligible clients who desire to plan, establish or operate organizations, such as by preparing articles of incorporation and bylaws.

§ 1612.10 Recordkeeping and accounting for activities funded with non-LSC funds.

(a) No funds made available by the Corporation shall be used to pay for administrative overhead or related costs associated with any activity listed in § 1612.6.

(b) Recipients shall maintain separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities permitted by § 1612.6.

(c) Recipients shall submit semi-annual reports describing their legislative activities with non-LSC funds con-

45 CFR Ch. XVI (10–1–14 Edition)

ducted pursuant to § 1612.6, together with such supporting documentation as specified by the Corporation.

[62 FR 19404, Apr. 21, 1997; 62 FR 22895, Apr. 28, 1997]

§ 1612.11 Recipient policies and procedures.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part.

PART 1613—RESTRICTIONS ON LEGAL ASSISTANCE WITH RESPECT TO CRIMINAL PROCEEDINGS

Sec.

1613.1 Purpose.

1613.2 Definition.

1613.3 Prohibition.

1613.4 Authorized representation.

1613.5 Criminal representation in Indian tribal courts.

AUTHORITY: Sec. 234(d), Public Law 111–211, 124 Stat. 2282; 42 U.S.C. 2996f(b)(2); 42 U.S.C. 2996g(e).

SOURCE: 43 FR 32775, July 28, 1978, unless otherwise noted.

§ 1613.1 Purpose.

This part is designed to ensure that Corporation funds will not be used to provide legal assistance with respect to criminal proceedings unless such assistance is authorized by this part.

[79 FR 21150, Apr. 15, 2014]

§ 1613.2 Definition.

Criminal proceeding means the adversary judicial process prosecuted by a public officer and initiated by a formal complaint, information, or indictment charging a person with an offense denominated “criminal” by applicable law and punishable by death, imprisonment, or a jail sentence.

[79 FR 21150, Apr. 15, 2014]

§ 1613.3 Prohibition.

Corporation funds shall not be used to provide legal assistance with respect to a criminal proceeding, unless authorized by this part.

Legal Services Corporation

§ 1613.4 Authorized representation.

Legal assistance may be provided with respect to a criminal proceeding.

(a) Pursuant to a court appointment made under a statute or a court rule of equal applicability to all attorneys in the jurisdiction, if authorized by the recipient after a determination that acceptance of the appointment would not impair the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters.

(b) When professional responsibility requires representation in a criminal proceeding arising out of a transaction with respect to which the client is being, or has been, represented by a recipient.

[43 FR 32775, July 28, 1978, as amended at 79 FR 21150, Apr. 15, 2014]

§ 1613.5 Criminal representation in Indian tribal courts.

(a) Legal assistance may be provided with Corporation funds to a person charged with a criminal offense in an Indian tribal court who is otherwise eligible.

(b) Legal assistance may be provided in a criminal proceeding in an Indian tribal court pursuant to a court appointment only if the appointment is made under a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction, and is authorized by the recipient after a determination that acceptance of the appointment would not impair the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters.

[79 FR 21151, Apr. 15, 2014]

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 Northeast 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 of 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. 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.

- 1614.1 Purpose.
- 1614.2 General policy.
- 1614.3 Definitions.
- 1614.4 Range of activities.
- 1614.5 Compensation of recipient staff and private attorneys; blackout period.
- 1614.6 Procedure.
- 1614.7 Fiscal recordkeeping.
- 1614.8 Prohibition of revolving litigation funds.
- 1614.9 Waivers.
- 1614.10 Failure to comply.

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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45 CFR Ch. XVI (10–1–14 Edition)

nature of habeas corpus collaterally attacking a criminal conviction if the action

(a) Is brought against an officer of a court, a law enforcement official, or a custodian of an institution for persons convicted of crimes; and

(b) Alleges that the conviction is invalid because of any alleged acts or failures to act by an officer of a court or a law enforcement official.

§ 1615.3 Application of this part.

This part does not prohibit legal assistance—

(a) To challenge a conviction resulting from a criminal proceeding in which the defendant received representation from a recipient pursuant to Corporation regulations; or

(b) Pursuant to a court appointment made under a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction, if authorized by the recipient after a determination that it is consistent with the primary responsibility of the recipient to provide legal assistance to eligible clients in civil matters.

PART 1616—ATTORNEY HIRING

Sec.

1616.1 Purpose.

1616.2 Definition.

1616.3 Qualifications.

1616.4 Recommendations.

1616.5 Preference to local applicants.

1616.6 Equal employment opportunity.

1616.7 Language ability.

AUTHORITY: Secs. 1007(a)(8); 1006(b)(6); 1006(b)(4); (42 U.S.C. 2996f(a)(8); 2996e(b)(6); 2996e(b)(4)).

SOURCE: 41 FR 38509, Sept. 10, 1976, unless otherwise noted.

§ 1616.1 Purpose.

This part is designed to promote a mutually beneficial relationship between a recipient and the local Bar and community, and to insure that a recipient will choose highly qualified attorneys for its staff.

§ 1616.2 Definition.

Community, as used in this part, means the geographical area most closely corresponding to the area served by a recipient.

PART 1615—RESTRICTIONS ON ACTIONS COLLATERALLY ATTACKING CRIMINAL CONVICTIONS

Sec.

1615.1 Purpose.

1615.2 Prohibition.

1615.3 Application of this part.

AUTHORITY: Sec. 1007(b)(1); (42 U.S.C. 2996f(b)(1)).

SOURCE: 41 FR 38508, Sept. 10, 1976, unless otherwise noted.

§ 1615.1 Purpose.

This part prohibits the provision of legal assistance in an action in the nature of habeas corpus seeking to collaterally attack a criminal conviction.

§ 1615.2 Prohibition.

Except as authorized by this part, no Corporation funds shall be used to provide legal assistance in an action in the

Legal Services Corporation

§ 1617.3

§ 1616.3 Qualifications.

A recipient shall establish qualifications for individual positions for attorneys providing legal assistance under the Act, that may include, among other relevant factors:

(a) Academic training and performance;

(b) The nature and extent of prior legal experience;

(c) Knowledge and understanding of the legal problems and needs of the poor;

(d) Prior working experience in the client community, or in other programs to aid the poor;

(e) Ability to communicate with persons in the client community, including, in areas where significant numbers of eligible clients speak a language other than English as their principal language, ability to speak that language; and

(f) Cultural similarity with the client community.

§ 1616.4 Recommendations.

(a) Before filling an attorney position, a recipient shall notify the organized Bar in the community of the existence of a vacancy, and of the qualifications established for it, and seek recommendations for attorneys who meet the qualifications established for the position.

(b) A recipient shall similarly notify and seek recommendations from other organizations, deemed appropriate by the recipient, that have knowledge of the legal needs of persons in the community unable to afford legal assistance.

§ 1616.5 Preference to local applicants.

When equally qualified applicants are under consideration for an attorney position, a recipient shall give preference to an applicant residing in the community to be served.

§ 1616.6 Equal employment opportunity.

A recipient shall adopt employment qualifications, procedures, and policies that meet the requirements of applicable laws prohibiting discrimination in employment, and shall take affirmative action to insure equal employment opportunity.

§ 1616.7 Language ability.

In areas where a significant number of clients speak a language other than English as their principal language, a recipient shall adopt employment policies that insure that legal assistance will be provided in the language spoken by such clients.

PART 1617—CLASS ACTIONS

Sec.

1617.1 Purpose.

1617.2 Definitions.

1617.3 Prohibition.

1617.4 Recipient policies and procedures.

AUTHORITY: 29 U.S.C. 2996e(d)(5); 110 Stat. 3009 (1996); 110 Stat. 1321 (1996).

SOURCE: 61 FR 63755, Dec. 2, 1996, unless otherwise noted.

§ 1617.1 Purpose.

This rule is intended to ensure that LSC recipients do not initiate or participate in class actions.

§ 1617.2 Definitions.

(a) *Class action* means a lawsuit filed as, or otherwise declared by the court having jurisdiction over the case to be, a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure or the comparable State statute or rule of civil procedure applicable in the court in which the action is filed.

(b)(1) *Initiating or participating in any class action* means any involvement at any stage of a class action prior to or after an order granting relief. "Involvement" includes acting as amicus curiae, co-counsel or otherwise providing representation relating to a class action.

(2) *Initiating or participating in any class action* does not include representation of an individual client seeking to withdraw from or opt out of a class or obtain the benefit of relief ordered by the court, or non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate or advise others about the terms of an order granting relief.

§ 1617.3 Prohibition.

Recipients are prohibited from initiating or participating in any class action.

§ 1617.4

§ 1617.4 Recipient policies and procedures.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part.

PART 1618—ENFORCEMENT PROCEDURES

Sec.

1618.1 Purpose.

1618.2 Definition.

1618.3 Complaints.

1618.4 Duties of recipients.

1618.5 Duties of the Corporation.

AUTHORITY: 42 U.S.C. 2996e(b)(1), 2996e(b)(2), 2996e(b)(5), 2996f(a)(3), 2996f(d), and 2996g(e).

SOURCE: 78 FR 10097, Feb. 13, 2013, unless otherwise noted.

§ 1618.1 Purpose.

In order to ensure uniform and consistent interpretation and application of the provisions of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, a Corporation rule, regulation, guideline or instruction, or the terms and conditions of the recipient's grant or contract with the Corporation, and to prevent a question of whether these requirements have been violated from becoming an ancillary issue in any case undertaken by a recipient, this part establishes a systematic procedure for enforcing compliance with them.

§ 1618.2 Definitions.

LSC requirements means the provisions of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, a Corporation rule, regulation, guideline or instruction, or the terms or conditions of the recipient's grant or contract with the Corporation.

Violation means a violation by the recipient of the LSC requirements.

§ 1618.3 Complaints.

A complaint of a violation by a recipient or an employee of a recipient may be made to the recipient, the State Advisory Council, or the Corporation.

§ 1618.4 Duties of recipients.

(a) A recipient shall:

45 CFR Ch. XVI (10–1–14 Edition)

(1) Advise its employees of their responsibilities under the LSC requirements;

(2) Establish procedures, consistent with the notice and hearing requirements of section 1011 of the LSC Act, for determining whether an employee has committed a violation and whether the violation merits a sanction based on consideration of the totality of the circumstances; and

(3) 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 enforcement of the LSC requirements.

(b) Before suspending or terminating the employment of any person for a violation, a recipient shall consult the Corporation to ensure that its interpretation of these requirements is consistent with Corporation policy.

(c) This section provides procedural requirements between the Corporation and recipients. It does not create rights for recipient employees.

§ 1618.5 Duties of the Corporation.

(a) Whenever the Corporation learns that there is reason to believe that a recipient or a recipient's employee may have committed a violation, the Corporation shall investigate the matter promptly and attempt to resolve it through informal consultation with the recipient. Such actions may be limited to determining if the recipient is sufficiently investigating and resolving the matter itself.

(b) Whenever there is substantial reason to believe that a recipient has persistently or intentionally violated the LSC requirements, or, after notice, has failed to take appropriate remedial or disciplinary action to ensure compliance by its employees with the LSC requirements, and attempts at informal resolution have been unsuccessful, the Corporation may proceed to suspend or terminate financial support of the recipient, or impose a limited reduction in funding, pursuant to the procedures set forth in parts 1623 and 1606, or may

Legal Services Corporation

§ 1620.2

take other action to enforce compliance with the LSC requirements.

(c) Whenever the Corporation determines that a recipient has committed a violation, that corrective actions by the recipient are required to remedy the violation and/or prevent recurrence of the violation, and that imposition of special grant conditions are needed prior to the next grant renewal or competition for the service area, the Corporation may immediately impose Special Grant Conditions on the recipient to require completion of those corrective actions.

PART 1619—DISCLOSURE OF INFORMATION

Sec.

1619.1 Purpose.

1619.2 Policy.

1619.3 Referral to the Corporation.

1619.4 Exemptions.

AUTHORITY: Sec. 1006(b)(1), (42 U.S.C. 2996e(b)(1)); sec. 1008(e), (42 U.S.C. 2996g(e)).

SOURCE: 42 FR 4848, Jan. 26, 1977, unless otherwise noted.

§ 1619.1 Purpose.

This part is designed to insure disclosure of information that is a valid subject of public interest in the activities of a recipient.

§ 1619.2 Policy.

A recipient shall adopt a procedure for affording the public appropriate access to the Act, Corporation rules, regulations and guidelines, the recipient's written policies, procedures, and guidelines, the names and addresses of the members of its governing body, and other materials that the recipient determines should be disclosed. The procedure adopted shall be subject to approval by the Corporation.

§ 1619.3 Referral to the Corporation.

If a person requests information, not required to be disclosed by this part, that the Corporation may be required to disclose pursuant to part 1602 of this chapter implementing the Freedom of Information Act, the recipient shall either provide the information or inform the person seeking it how to request it from the Corporation.

§ 1619.4 Exemptions.

Nothing in this part shall require disclosure of:

(a) Any information furnished to a recipient by a client;

(b) The work product of an attorney or paralegal;

(c) Any material used by a recipient in providing representation to clients;

(d) Any matter that is related solely to the internal personnel rules and practices of the recipient; or

(e) Personnel, medical, or similar files.

PART 1620—PRIORITIES IN USE OF RESOURCES

Sec.

1620.1 Purpose.

1620.2 Definitions.

1620.3 Establishing priorities.

1620.4 Establishing policies and procedures for emergencies.

1620.5 Annual review.

1620.6 Signed written agreement.

1620.7 Reporting.

AUTHORITY: 42 U.S.C. 2996f(a)(2); Pub. L. 104-208, 110 Stat. 3009; Pub. L. 104-134, 110 Stat. 1321.

SOURCE: 62 FR 19408, Apr. 21, 1997, unless otherwise noted.

§ 1620.1 Purpose.

This part is designed to provide guidance to recipients for setting priorities and to ensure that a recipient's governing body adopts written priorities for the types of cases and matters, including emergencies, to which the recipient's staff will limit its commitment of time and resources.

§ 1620.2 Definitions.

(a) A *case* is a form of program service in which an attorney or paralegal of a recipient provides legal services to one or more specific clients, including, without limitation, providing representation in litigation, administrative proceedings, and negotiations, and such actions as advice, providing brief services and transactional assistance, and assistance with individual Private Attorney Involvement (PAI) cases.

§ 1620.3

(b) A *matter* is an action which contributes to the overall delivery of program services but does not involve direct legal advice to or legal representation of one or more specific clients. Examples of matters include both direct services, such as community education presentations, operating pro se clinics, providing information about the availability of legal assistance, and developing written materials explaining legal rights and responsibilities; and indirect services, such as training, continuing legal education, general supervision of program services, preparing and disseminating desk manuals, PAI recruitment, intake when no case is undertaken, and tracking substantive law developments.

§ 1620.3 Establishing priorities.

(a) The governing body of a recipient must adopt procedures for establishing priorities for the use of all of its Corporation and non-Corporation resources and must adopt a written statement of priorities, pursuant to those procedures, that determines the cases and matters which may be undertaken by the recipient.

(b) The procedures adopted must include an effective appraisal of the needs of eligible clients in the geographic area served by the recipient, and their relative importance, based on information received from potential or current eligible clients that is solicited in a manner reasonably calculated to obtain the views of all significant segments of the client population. The appraisal must also include and be based on information from the recipient's employees, governing body members, the private bar, and other interested persons. The appraisal should address the need for outreach, training of the recipient's employees, and support services.

(c) The following factors shall be among those considered by the recipient in establishing priorities:

- (1) The suggested priorities promulgated by the Legal Services Corporation;
- (2) The appraisal described in paragraph (b) of this section;
- (3) The population of eligible clients in the geographic areas served by the recipient, including all significant seg-

45 CFR Ch. XVI (10–1–14 Edition)

ments of that population with special legal problems or special difficulties of access to legal services;

- (4) The resources of the recipient;
- (5) The availability of another source of free or low-cost legal assistance in a particular category of cases or matters;
- (6) The availability of other sources of training, support, and outreach services;
- (7) The relative importance of particular legal problems to the individual clients of the recipient;
- (8) The susceptibility of particular problems to solution through legal processes;
- (9) Whether legal efforts by the recipient will complement other efforts to solve particular problems in the area served;
- (10) Whether legal efforts will result in efficient and economic delivery of legal services; and
- (11) Whether there is a need to establish different priorities in different parts of the recipient's service area.

§ 1620.4 Establishing policies and procedures for emergencies.

The governing body of a recipient shall adopt written policies and procedures to guide the recipient in undertaking emergency cases or matters not within the recipient's established priorities. Emergencies include those non-priority cases or matters that require immediate legal action to:

- (a) Secure or preserve the necessities of life,
- (b) Protect against or eliminate a significant risk to the health or safety of the client or immediate family members, or
- (c) Address other significant legal issues that arise because of new and unforeseen circumstances.

§ 1620.5 Annual review.

- (a) Priorities shall be set periodically and shall be reviewed by the governing body of the recipient annually or more frequently if the recipient has accepted a significant number of emergency cases outside of its priorities.
- (b) The following factors should be among those considered in determining whether the recipient's priorities should be changed:

Legal Services Corporation

§ 1621.3

(1) The extent to which the objectives of the recipient's priorities have been accomplished;

(2) Changes in the resources of the recipient;

(3) Changes in the size, distribution, or needs of the eligible client population; and

(4) The volume of non-priority emergency cases or matters in a particular legal area since priorities were last reviewed.

§ 1620.6 Signed written agreement.

All staff who handle cases or matters, or are authorized to make decisions about case acceptance, must sign a simple agreement developed by the recipient which indicates that the signatory:

(a) Has read and is familiar with the priorities of the recipient;

(b) Has read and is familiar with the definition of an emergency situation and the procedures for dealing with an emergency that have been adopted by the recipient; and

(c) Will not undertake any case or matter for the recipient that is not a priority or an emergency.

§ 1620.7 Reporting.

(a) The recipient shall report to the recipient's governing body on a quarterly basis information on all emergency cases or matters undertaken that were not within the recipient's priorities, and shall include a rationale for undertaking each such case or matter.

(b) The recipient shall report annually to the Corporation, on a form provided by the Corporation, information on all emergency cases or matters undertaken that were not within the recipient's priorities.

(c) The recipient shall submit to the Corporation and make available to the public an annual report summarizing the review of priorities; the date of the most recent appraisal; the timetable for the future appraisal of needs and evaluation of priorities; mechanisms which will be utilized to ensure effective client participation in priority-setting; and any changes in priorities.

PART 1621—CLIENT GRIEVANCE PROCEDURES

Sec.

1621.1 Purpose.

1621.2 Grievance committee.

1621.3 Complaints by applicants about denial legal assistance.

1621.4 Complaints by clients about manner or quality of legal assistance.

AUTHORITY: Sec. 1006(b)(1), 42 U.S.C. 2996e(b)(1); sec. 1006(b)(3), 42 U.S.C. 2996e(b)(3); sec. 1007(a)(1), 42 U.S.C. 2996f(a)(1).

SOURCE: 72 FR 3954, Jan. 29, 2007, unless otherwise noted.

§ 1621.1 Purpose.

This Part is intended to help ensure that recipients provide the highest quality legal assistance to clients as required by the LSC Act and are accountable to clients and applicants for legal assistance by requiring recipients to establish grievance procedures to process complaints by applicants about the denial of legal assistance and clients about the manner or quality of legal assistance provided. This Part is further intended to help ensure that the grievance procedures adopted by recipients will result, to the extent possible, in the provision of an effective remedy in the resolution of complaints.

§ 1621.2 Grievance Committee.

The governing body of a recipient shall establish a grievance committee or committees, composed of lawyer and client members of the governing body, in approximately the same proportion in which they are on the governing body.

§ 1621.3 Complaints by applicants about denial of legal assistance.

A recipient shall establish a simple procedure for review of complaints by applicants about decisions to deny legal assistance to the applicant. The procedure shall, at a minimum, provide: A practical method for the recipient to provide applicants with adequate notice of the complaint procedures and how to make a complaint; and an opportunity for applicants to confer with the Executive Director or the Executive Director's designee, and,

§ 1621.4

to the extent practical, with a representative of the governing body. The procedure shall be designed to foster effective communications between the recipient and complaining applicants.

§ 1621.4 Complaints by clients about manner or quality of legal assistance.

(a) A recipient shall establish procedures for the review of complaints by clients about the manner or quality of legal assistance that has been rendered by the recipient to the client.

(b) The procedures shall be designed to foster effective communications between the recipient and the complaining client and, at a minimum, provide:

(1) A method for providing a client, at the time the person is accepted as a client or as soon thereafter as is practical, with adequate notice of the complaint procedures and how to make a complaint;

(2) For prompt consideration of each complaint by the Executive Director or the Executive Director's designee,

(3) An opportunity for the complainant, if the Executive Director or the Executive Director's designee is unable to resolve the matter, to submit an oral or written statement to a grievance committee established by the governing body as required by § 1621.2 of this Part. The procedures shall also: provide that the opportunity to submit an oral statement may be accomplished in person, by teleconference, or through some other reasonable alternative; permit a complainant to be accompanied by another person who may speak on that complainant's behalf; and provide that, upon request of the complainant, the recipient shall transcribe a brief written statement, dictated by the complainant for inclusion in the recipient's complaint file.

(c) Complaints received from clients about the manner or quality of legal assistance that has been rendered by a private attorney pursuant to the recipient's private attorney involvement program under 45 CFR Part 1614 shall be processed in a manner consistent with its responsibilities under 45 CFR § 1614.3(d)(3) and with applicable state or local rules of professional responsibility.

45 CFR Ch. XVI (10–1–14 Edition)

(d) A file containing every complaint and a statement of its disposition shall be preserved for examination by LSC. The file shall include any written statement submitted by the complainant or transcribed by the recipient from a complainant's oral statement.

PART 1622—PUBLIC ACCESS TO MEETINGS UNDER THE GOVERNMENT IN THE SUNSHINE ACT

Sec.

1622.1 Purpose and scope.

1622.2 Definitions.

1622.3 Open meetings.

1622.4 Public announcement of meetings.

1622.5 Grounds on which meetings may be closed or information withheld.

1622.6 Procedures for closing discussion or withholding information.

1622.7 Certification by the General Counsel.

1622.8 Records of closed meetings.

1622.9 Emergency procedures.

1622.10 Report to Congress.

AUTHORITY: Sec. 1004(g), Pub. L. 95–222, 91 Stat. 1619, (42 U.S.C. 2996c(g)).

SOURCE: 49 FR 30940, Aug. 2, 1984, unless otherwise noted.

§ 1622.1 Purpose and scope.

This part is designed to provide the public with full access to the deliberations and decisions of the Board of Directors of the Legal Services Corporation, committees of the Board, and state Advisory Councils, while maintaining the ability of those bodies to carry out their responsibilities and protecting the rights of individuals.

§ 1622.2 Definitions.

Board means the Board of Directors of the Legal Services Corporation.

Committee means any formally designated subdivision of the Board established pursuant to § 1601.27 of the By-Laws of the Corporation.

Council means a state Advisory Council appointed by a state Governor or the Board pursuant to section 1004(f) of the Legal Services Corporation Act of 1974, 42 U.S.C. 2996c(f).

Director means a voting member of the Board or a Council. Reference to actions by or communications to a

Legal Services Corporation

§ 1622.4

“Director” means action by or communications to Board members with respect to proceedings of the Board, committee members with respect to proceedings of their committees, and council members with respect to proceedings of their councils.

General Counsel means the General Counsel of the Corporation, or, in the absence of the General Counsel of the Corporation, a person designated by the President to fulfill the duties of the General Counsel or a member designated by a council to act as its chief legal officer.

Meetings means the deliberations of a quorum of the Board, or of any committee, or of a council, when such deliberations determine or result in the joint conduct or disposition of Corporation business, but does not include deliberations about a decision to open or close a meeting, a decision to withhold information about a meeting, or the time, place, or subject of a meeting.

Public observation means the right of any member of the public to attend and observe a meeting within the limits of reasonable accommodations made available for such purposes by the Corporation, but does not include any right to participate unless expressly invited by the Chairman of the Board of Directors, and does not include any right to disrupt or interfere with the disposition of Corporation business.

Publicly available for the purposes of § 1622.6(e) means to be procurable either from the Secretary of the Corporation at the site of the meeting or from the Office of Government Relations at Corporation Headquarters upon reasonable request made during business hours.

Quorum means the number of Board or committee members authorized to conduct Corporation business pursuant to the Corporation’s By-laws, or the number of council members authorized to conduct its business.

Secretary means the Secretary of the Corporation, or, in the absence of the Secretary of the Corporation, a person appointed by the Chairman of the meeting to fulfill the duties of the Secretary, or a member designated by a council to act as its secretary.

§ 1622.3 Open meetings.

Every meeting of the Board, a committee or a council shall be open in its entirety to public observation except as otherwise provided in § 1622.5.

§ 1622.4 Public announcement of meetings.

(a) Public announcement shall be posted of every meeting. The announcement shall include: (1) The time, place, and subject matter to be discussed;

(2) Whether the meeting or a portion thereof is to be open or closed to public observation; and

(3) The name and telephone number of the official designated by the Board, committee, or council to respond to requests for information about the meeting.

(b) The announcement shall be posted at least seven calendar days before the meeting, unless a majority of the Directors determines by a recorded vote that Corporation business requires a meeting on fewer than seven days notice. In the event that such a determination is made, public announcement shall be posted at the earliest practicable time.

(c) Each public announcement shall be posted at the offices of the Corporation in an area to which the public has access, and promptly submitted to the FEDERAL REGISTER for publication. Reasonable effort shall be made to communicate the announcement of a Board or committee meeting to the chairman of each council and the governing body and the program director of each recipient of funds from the Corporation, and of a council meeting to the governing body and program director of each recipient within the same State.

(d) An amended announcement shall be issued of any change in the information provided by a public announcement. Such changes shall be made in the following manner:

(1) The time or place of a meeting may be changed without a recorded vote.

(2) The subject matter of a meeting, or a decision to open or close a meeting or a portion thereof, may be changed by recorded vote of a majority of the Directors that Corporation business so

§ 1622.5

requires and that no earlier announcement of the change was possible.

An amended public announcement shall be made at the earliest practicable time and in the manner specified by §1622.4 (a) and (c). In the event that changes are made pursuant to §1622.4(d)(2), the amended public announcement shall also include the vote of each Director upon such change.

[49 FR 30940, Aug. 2, 1984, as amended at 50 FR 30714, July 29, 1985]

§ 1622.5 Grounds on which meetings may be closed or information withheld.

Except when the Board or council finds that the public interest requires otherwise, a meeting or a portion thereof may be closed to public observation, and information pertaining to such meeting or portion thereof may be withheld, if the Board or council determines that such meeting or portion thereof, or disclosure of such information, will more probably than not:

(a) Relate solely to the internal personnel rules and practices of the Corporation;

(b) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, 5 U.S.C. 552): Provided, That such statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(2) Establishes particular types of matters to be withheld;

(c) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(d) Involve accusing any person of a crime or formally censuring any person;

(e) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(f) Disclose investigatory records compiled for the purpose of enforcing the Act or any other law, or information which if written would be contained in such records, but only to the extent that production of such records or information would: (1) Interfere with enforcement proceedings,

45 CFR Ch. XVI (10–1–14 Edition)

(2) Deprive a person of a right to a fair trial or an impartial adjudication,

(3) Constitute an unwarranted invasion of personal privacy,

(4) Disclose the identity of a confidential source,

(5) Disclose investigative techniques and procedures, or

(6) Endanger the life or physical safety of law enforcement personnel;

(g) Disclose information the premature disclosure of which would be likely to frustrate significantly implementation of a proposed Corporation action, except that this paragraph shall not apply in any instance where the Corporation has already disclosed to the public the content or nature of its proposed action, or where the Corporation is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(h) Specifically concern the Corporation's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Corporation of a particular case involving a determination on the record after opportunity for a hearing.

§ 1622.6 Procedures for closing discussion or withholding information.

(a) No meeting or portion of a meeting shall be closed to public observation, and no information about a meeting shall be withheld from the public, except by a recorded vote of a majority of the Directors with respect to each meeting or portion thereof proposed to be closed to the public, or with respect to any information that is proposed to be withheld.

(b) A separate vote of the Directors shall be taken with respect to each meeting or portion thereof proposed to be closed to the public, or with respect to any information which is proposed to be withheld; except, a single vote may be taken with respect to a series of meetings or portions thereof which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is

Legal Services Corporation

§ 1622.9

scheduled to be held no more than thirty days after the initial meeting in such series.

(c) Whenever any person's interest may be directly affected by a matter to be discussed at a meeting, the person may request that a portion of the meeting be closed to public observation by filing a written statement with the Secretary. The statement shall set forth the person's interest, the manner in which that interest will be affected at the meeting, and the grounds upon which closure is claimed to be proper under §1622.5. The Secretary shall promptly communicate the request to the Directors, and a recorded vote as required by paragraph (a) of this section shall be taken if any Director so requests.

(d) With respect to each vote taken pursuant to paragraphs (a) through (c) of this section, the vote of each Director participating in the vote shall be recorded and no proxies shall be allowed.

(e) With respect to each vote taken pursuant to paragraphs (a) through (c) of this section, the Corporation shall, within one business day, make publicly available:

(1) A written record of the vote of each Director on the question;

(2) A full written explanation of the action closing the meeting, portion(s) thereof, or series of meetings, with reference to the specific exemptions listed in §1622.5, including a statement of reasons as to why the specific discussion comes within the cited exemption and a list of all persons expected to attend the meeting(s) or portion(s) thereof and their affiliation.

[49 FR 30940, Aug. 2, 1984, as amended at 50 FR 30714, July 29, 1985]

§1622.7 Certification by the General Counsel.

Before a meeting or portion thereof is closed, the General Counsel shall publicly certify that, in his opinion, the meeting may be so closed to the public and shall state each relevant exemption. A copy of the certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting and the persons present, shall be retained by the Corporation.

§ 1622.8 Records of closed meetings.

(a) The Secretary shall make a complete transcript or electronic recording adequate to record fully the proceedings of each meeting or portion thereof closed to the public, except that in the case of meeting or any portion thereof closed to the public pursuant to paragraph (h) of §1622.5, a transcript, a recording, or a set of minutes shall be made.

Any such minutes shall describe all matters discussed and shall provide a summary of any actions taken and the reasons therefor, including a description of each Director's views expressed on any item and the record of each Director's vote on the question. All documents considered in connection with any action shall be identified in the minutes.

(b) A complete copy of the transcript, recording, or minutes required by paragraph (a) of this section shall be maintained at the Corporation for a Board or committee meeting, and at the appropriate Regional Office for a council meeting, for a period of two years after the meeting, or until one year after the conclusion of any Corporation proceeding with respect to which the meeting was held, whichever occurs later.

(c) The Corporation shall make available to the public all portions of the transcript, recording, or minutes required by paragraph (a) of this section that do not contain information that may be withheld under §1622.5. A copy of those portions of the transcript, recording, or minutes that are available to the public shall be furnished to any person upon request at the actual cost of duplication or transcription.

(d) Copies of Corporation records other than notices or records prepared under this part may be pursued in accordance with part 1602 of these regulations.

§ 1622.9 Emergency procedures.

If, in the opinion of the Chairman, the Directors are rendered incapable of conducting a meeting by the acts or conduct of any members of the public present at the meeting, the Directors may thereupon determine by a recorded vote of the majority of the number of Directors present at the meeting

§ 1622.10

that the Chairman or presiding officer of the Board shall have the authority to have such members of the public who are responsible for such acts or conduct removed from the meeting.

[50 FR 30714, July 29, 1985]

§ 1622.10 Report to Congress.

The Corporation shall report to the Congress annually regarding its compliance with the requirements of the Government in the Sunshine Act, 5 U.S.C. 552(b), including a tabulation of the number of meetings open to the public, the number of meetings or portions of meetings closed to the public, the reasons for closing such meetings or portions thereof, and a description of any litigation brought against the Corporation under 5 U.S.C. 552b, including any costs assessed against the Corporation in such litigation.

PART 1623—SUSPENSION PROCEDURES

Sec.

- 1623.1 Purpose.
- 1623.2 Definitions.
- 1623.3 Grounds for suspension.
- 1623.4 Suspension procedures.
- 1623.5 Time extensions and waiver.
- 1623.6 Interim funding.

AUTHORITY: 42 U.S.C. 2996e(b)(1), 2996f(a)(3), and 2996f(d); Pub. L. 105-119, Title V, Secs. 501(b), 502, and 503, 111 Stat. 2440, 2510-11; Pub. L. 104-134, Title V, Secs. 503(f) and 509(c), 110 Stat. 1321, 1321-53, 1321-58, and 1321-59.

SOURCE: 78 FR 10098, Feb. 13, 2013, unless otherwise noted.

§ 1623.1 Purpose.

The purpose of this rule is to:

(a) Ensure that the Corporation is able to take prompt action when necessary to safeguard LSC funds or to ensure the compliance of a recipient with applicable provisions of law, or a rule, regulation, guideline or instruction issued by the Corporation, or the terms and conditions of a recipient's grant or contract with the Corporation; and

(b) Provide procedures for prompt review that will ensure informed deliberation by the Corporation when it has made a proposed determination that financial assistance to a recipient should be suspended.

45 CFR Ch. XVI (10-1-14 Edition)

§ 1623.2 Definitions.

For the purposes of this part the definitions in 45 CFR part 1606 shall apply and also:

Suspension means an action taken during the term of the recipient's current year's grant or contract with the Corporation that withholds financial assistance to a recipient, in whole or in part, until the end of the suspension period pending prompt corrective action by the recipient or a decision by the Corporation to initiate termination proceedings.

§ 1623.3 Grounds for suspension.

(a) Financial assistance provided to a recipient may be suspended when the Corporation determines that there has been a substantial violation by the recipient of the LSC requirements, and the Corporation has reason to believe that prompt action is necessary to:

(1) Safeguard LSC funds; or

(2) Ensure immediate corrective action necessary to bring a recipient into compliance with an applicable provision of law, or a rule, regulation, guideline or instruction issued by the Corporation, or the terms and conditions of the recipient's grant or contract with the Corporation.

(b) Financial assistance provided to a recipient may also be suspended by the Corporation pursuant to a recommendation by the Office of Inspector General when the recipient has failed to have an acceptable audit in accordance with the guidance promulgated by the Corporation's Office of Inspector General.

§ 1623.4 Suspension procedures.

(a) Prior to a preliminary determination involving a suspension of funding, the Corporation shall designate either the President or another senior Corporation employee to conduct any final review that is requested pursuant this part. The Corporation shall ensure that the person so designated has had no prior involvement in the proceedings under this part so as to meet the criterion of impartiality described in this section.

(b) When the Corporation has made a proposed determination, based on the grounds set out in §1623.3 of this part, that financial assistance to a recipient

Legal Services Corporation

§ 1623.4

should be suspended, the Corporation shall serve a written proposed determination on the recipient. The proposed determination shall:

(1) State the grounds and effective date for the proposed suspension;

(2) Identify, with reasonable specificity, any facts or documents relied upon as justification for the suspension;

(3) Specify what, if any, prompt corrective action the recipient can take to avoid or end the suspension;

(4) Advise the recipient that it may request, within 5 business days of receipt of the proposed determination, an informal meeting with the Corporation at which it may attempt to show that the proposed suspension should not be imposed; and

(5) Advise the recipient that, within 10 business days of its receipt of the proposed determination and without regard to whether it requests an informal meeting, it may submit written materials in opposition to the proposed suspension.

(c) If the recipient requests an informal meeting with the Corporation, the Corporation shall designate the time and place for the meeting. The meeting shall occur within 5 business days after the recipient's request is received.

(d) The informal meeting shall be conducted by the Corporation employee who issued the preliminary determination or any other Corporation employee with a seniority level at, or equivalent to, the level of an office director or higher.

(e) At the informal meeting, the Corporation and the recipient shall both have an opportunity to state their case, seek to narrow the issues, explore the possibilities of settlement or compromise including implementation of corrective actions, and submit written materials.

(f) The Corporation shall consider any written materials submitted by the recipient in opposition to the proposed suspension and any oral presentation or written materials submitted by the recipient at an informal meeting. If, after considering such materials, the Corporation determines that the recipient has failed to show that the suspension should not become effective, the Corporation may issue a

written final determination to suspend financial assistance to the recipient in whole or in part and under such terms and conditions the Corporation deems appropriate and necessary. The final determination shall include a summary of the issues raised in the informal conference and presented in any written materials. The final determination need not engage in a detailed analysis of all issues raised.

(g) The final determination shall be promptly transmitted to the recipient in a manner that verifies receipt of the determination by the recipient, and the suspension shall become effective when the final determination is received by the recipient or on such later date as is specified therein.

(h) If a suspension lasts for more than 30 days, then the recipient may seek review of the suspension by the President. A request may be made in writing on the thirty-first day or any day thereafter, and shall state, in detail, the reasons for seeking review.

(1) The President may not review the suspension appeal if the President has had prior involvement in the suspension proceedings. If the President cannot review, or the President chooses not to do so, then the appeal shall be reviewed by either the individual designated to do so pursuant to §1623.4(a) of this part, or by another senior Corporation employee designated by the President who has not had prior involvement in the suspension proceedings.

(2) The President's review shall be based on the administrative record of the proceedings, including the appeal to the President, and any additional submissions, either oral or in writing that the President may request. A recipient shall be given a copy of, and an opportunity to respond to, any additional submissions made to the President. All submissions and responses made to the President shall become part of the administrative record. Upon request, the Corporation shall provide a copy of the administrative record to the recipient.

(3) The President shall affirm, modify, or terminate the suspension through a suspension appeal decision within 15 calendar days of receipt of the appeal by the Corporation, unless

§ 1623.5

the Corporation and the recipient agree to a later date.

(i) The Corporation may at any time rescind or modify the terms of the final determination to suspend and, on written notice to the recipient, may reinstate the suspension without further proceedings under this part.

(j) Except as provided in §1623.4(k) of this part, the total time of a suspension shall not exceed 90 calendar days, unless the Corporation and the recipient agree to a continuation of the suspension without further proceedings under this part.

(k) When the suspension is based on the grounds in §1623.3(b) of this part, a recipient's funds may be suspended until an acceptable audit is completed. No appeal to the President will be available for audit-based suspensions pursuant to §1623.3(b).

§ 1623.5 Time extensions and waiver.

(a) Except for the time limits in §1623.4(i) and (j), any period of time provided in this part may be extended by the Corporation for good cause. Requests for extensions of time shall be considered in light of the overall objective that the procedures prescribed by this part ordinarily shall be concluded within 30 calendar days of the service of the proposed determination.

(b) Any other provision of this part may be waived or modified by agreement of the recipient and the Corporation for good cause.

(c) Failure by the Corporation to meet a time requirement of this part shall not preclude the Corporation from suspending a recipient's grant or contract with the Corporation.

§ 1623.6 Interim funding.

(a) Pending the completion of suspension proceedings under this part, the Corporation shall provide the recipient with the level of financial assistance provided for under its current grant or contract with the Corporation.

(b) Funds withheld pursuant to a suspension shall be released to the recipient at the end of the suspension period.

45 CFR Ch. XVI (10–1–14 Edition)

PART 1624—PROHIBITION AGAINST DISCRIMINATION ON THE BASIS OF DISABILITY

Sec.

- 1624.1 Purpose.
- 1624.2 Application.
- 1624.3 Definitions.
- 1624.4 Discrimination prohibited.
- 1624.5 Accessibility of legal services.
- 1624.6 Employment.
- 1624.7 Enforcement.

AUTHORITY: 49 U.S.C. 794; 42 U.S.C. 2996f(a) (1) and (3).

SOURCE: 71 FR 65059, Nov. 7, 2006, unless otherwise noted.

§ 1624.1 Purpose.

The purpose of this part is to assist and provide guidance to legal services programs supported in whole or in part by Legal Services Corporation funds in removing any impediments that may exist to the provision of legal assistance to persons with disabilities eligible for such assistance in accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 and with sections 1007(a) (1) and (3) of the Legal Services Corporation Act, as amended, 42 U.S.C. 2996f(a) (1) and (3), with respect to the provision of services to and employment of persons with disabilities. The requirements of this Part apply in addition to any responsibilities legal services programs may have under applicable requirements of the Americans with Disabilities Act and applicable implementing regulations of the Department of Justice and the Equal Employment Opportunity Commission.

§ 1624.2 Application.

This part applies to each legal services program receiving financial assistance from the Legal Services Corporation.

§ 1624.3 Definitions.

As used in this part, the term:

(a) *Legal services program* means any recipient, as defined by §1600.1 of this chapter, or any other public or private agency, institution, organization, or other entity, or any person to which or

Legal Services Corporation

§ 1624.4

to whom financial assistance is extended by the Legal Services Corporation directly or through another agency, institution, organization, entity or person, including any successor, assignee, or transferee of a legal services program, but does not include the ultimate beneficiary of legal assistance;

(b) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property;

(c)(1) *Person with a disability* means any person who:

(i) Has a physical or mental impairment which substantially limits one or more major life activities,

(ii) has a record of such an impairment, or (iii) is regarded as having such an impairment;

(2) As used in paragraph (c)(1) of this section the phrase:

(i) *Physical or mental impairment* means: (A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities; The phrase includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism;

(ii) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(iii) *Has a record of such impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities;

(iv) *Is regarded as having an impairment* means: (A) Has a physical or mental impairment that does not substantially limit major life activities but is

treated by a legal services program as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairments; or (C) has none of the impairments defined in paragraph (c)(2)(i) of this section but is treated by a legal services program as having such an impairment;

(d) *Qualified person with a disability* means:

(1) With respect to employment, a person with a disability who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) with respect to other services, a person with a disability who meets the eligibility requirements for the receipt of such services from the legal services program.

(e) *Auxiliary aids and/or other assistive technologies* means any item, piece of equipment, or product system whether acquired commercially off the shelf, modified or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities. Auxiliary aids and/or other assistive technologies include, but are not limited to, brailled and taped material, interpreters, telecommunications equipment for the deaf, voice recognition software, computer screen magnifiers, screen reader software, wireless amplification systems, and other aids.

§ 1624.4 Discrimination prohibited.

(a) No qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination by any legal services program, directly or through any contractual or other arrangement.

(b) A legal services program may not deny a qualified person with a disability the opportunity to participate in any of its programs or activities or to receive any of its services provided at a facility on the ground that the program operates a separate or different program, activity or facility that is specifically designed to serve persons with disabilities.

§ 1624.5

45 CFR Ch. XVI (10–1–14 Edition)

(c) In determining the geographic site or location of a facility, a legal services program may not make selections that have the purpose or effect of excluding persons with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity of the legal services program.

(d)(1) A legal services program that employs a total of fifteen or more persons, regardless of whether such persons are employed at one or more locations, shall provide, when necessary, appropriate auxiliary aids and/or other assistive technologies to persons with impaired sensory, manual or speaking skills, in order to afford such persons an equal opportunity to benefit from the legal services program's services. A legal services program is not required to maintain such aids at all times, provided they can be obtained on reasonable notice.

(2) The Corporation may require legal services programs with fewer than fifteen employees to provide auxiliary aids and/or other assistive technologies where the provision of such aids would not significantly impair the ability of the legal services program to provide its services.

(e) A legal services program shall take reasonable steps to ensure that communications with its applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

(f) A legal services program may not deny persons with disabilities the opportunity to participate as members of or in the meetings or activities of any planning or advisory board or process established by or conducted by the legal services program, including but not limited to meetings and activities conducted in response to the requirements of 45 CFR part 1620.

§ 1624.5 Accessibility of legal services.

(a) No qualified person with a disability shall, because a legal services program's facilities are inaccessible to or unusable by persons with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination by any legal services program.

(b) A legal services program shall conduct its programs and activities so that, when viewed in their entirety, they are readily accessible to and usable by persons with disabilities. This paragraph does not necessarily require a legal services program to make each of its existing facilities or every part of an existing facility accessible to and usable by persons with disabilities, or require a legal services program to make structural changes in existing facilities when other methods are effective in achieving compliance. In choosing among available methods for meeting the requirements of this paragraph, a legal services program shall give priority to those methods that offer legal services to persons with disabilities in the most integrated setting appropriate.

(c) A legal services program shall, to the maximum extent feasible, ensure that new facilities that it rents or purchases are accessible to persons with disabilities. Prior to entering into any lease or contract for the purchase of a building, a legal services program shall submit a statement to LSC certifying that the facilities covered by the lease or contract will be accessible to persons with disabilities, or if the facilities will not be accessible, a detailed description of the efforts the program made to obtain accessible space, the reasons why the inaccessible facility was nevertheless selected, and the specific steps that will be taken by the legal services program to ensure that its services are accessible to persons with disabilities who would otherwise use that facility. After a statement certifying facility accessibility has been submitted, additional statements need not be resubmitted with respect to the same facility, unless substantial changes have been made in the facility that affect its accessibility.

(d) A legal services program shall ensure that new facilities designed or constructed for it are readily accessible to and usable by persons with disabilities. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to make the altered facilities readily accessible to and usable by persons with disabilities.

§ 1624.6 Employment.

(a) No qualified person with a disability shall, on the basis of disability, be subjected to discrimination in employment by any legal services program.

(b) A legal services program shall make all decisions concerning employment under any program or activity to which this part applies in a manner that ensures that discrimination on the basis of disability does not occur, and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of disability.

(c) The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the legal services program;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(d) A legal services program may not participate in any contractual or other relationship with persons, agencies, organizations or other entities such as, but not limited to, employment and referral agencies, labor unions, organizations providing or administering fringe benefits to employees of the legal services program, and organizations pro-

viding training and apprenticeship programs, if the practices of such person, agency, organization, or other entity have the effect of subjecting qualified applicants or employees with disabilities to discrimination prohibited by this paragraph.

(e) A legal services program shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability unless the accommodation would impose an undue hardship on the operation of the program.

(1) For purposes of this paragraph (e), reasonable accommodation may include:

(i) Making facilities used by employees readily accessible to and usable by persons with disabilities; and

(ii) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of auxiliary aids and/or other assistive technologies, and other similar actions.

(2) In determining whether an accommodation would impose an undue hardship on the operation of a legal services program, factors to be considered include, but are not limited to, the overall size of the legal services program with respect to number of employees, number and type of facilities, and size of budget, and the nature and costs of the accommodation needed.

(3) A legal services program may not deny any employment opportunity to a qualified employee or applicant with a disability if the basis for the denial is a need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

(f) A legal services program may not use employment tests or criteria that discriminate against persons with disabilities, and shall ensure that employment tests are adapted for use by persons who have disabilities that impair sensory, manual, or speaking skills.

(g) A legal services program may not conduct a pre-employment medical examination or make a pre-employment inquiry as to whether an applicant is a person with a disability or as to the nature or severity of a disability except under the circumstances described in 45

§ 1624.7

CFR 84.14(a) through (d)(2). The Corporation shall have access to relevant information obtained in accordance with this section to permit investigations of alleged violations of this part.

(h) A legal services program shall post in prominent places in each of its offices a notice stating that the legal services program does not discriminate on the basis of disability.

(i) Any recruitment materials published or used by a legal services program shall include a statement that the legal services program does not discriminate on the basis of disability.

§ 1624.7 Enforcement.

(a) The procedures described in part 1618 of these regulations shall apply to any alleged violation of this Part by a legal services program.

(b) When LSC receives a complaint of a violation of this part, LSC policy is generally to refer such complainants promptly to the appropriate Federal, state or local agencies, although LSC retains the discretion to investigate all complaints and/or to maintain an open complaint file during the pendency of an investigation being conducted by such other Federal, state or local agency. LSC may use, at its discretion, information obtained by such other agency as may be available to LSC, including findings of such other agency of whether discrimination on the basis of disability occurred.

PART 1625 [RESERVED]

PART 1626—RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS

Sec.	
1626.1	Purpose.
1626.2	Definitions.
1626.3	Prohibition.
1626.4	Aliens eligible for assistance under anti-abuse laws.
1626.5	Aliens eligible for assistance based on immigration status.
1626.6	Verification of citizenship.
1626.7	Verification of eligible alien status.
1626.8	Emergencies.
1626.9	Change in circumstances.
1626.10	Special eligibility questions.
1626.11	H-2 agricultural and forestry workers.
1626.12	Recipient policies, procedures, and recordkeeping.

45 CFR Ch. XVI (10–1–14 Edition)

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

SOURCE: 79 FR 21871, Apr. 18, 2014, unless otherwise noted.

§ 1626.1 Purpose.

This part is designed to ensure that recipients provide legal assistance only to citizens of the United States and eligible aliens. It is also designed to assist recipients in determining the eligibility and immigration status of persons who seek legal assistance.

§ 1626.2 Definitions.

(a) *Anti-abuse statutes* means the Violence Against Women Act of 1994, Pub. L. 103–322, 108 Stat. 1941, as amended, and the Violence Against Women and Department of Justice Reauthorization Act of 2005, Public Law 109–162, 119 Stat. 2960 (collectively referred to as “VAWA”); Section 101(a)(15)(U) of the INA, 8 U.S.C. 1101(a)(15)(U); and the incorporation of these statutory provisions in section 502(a)(2)(C) of LSC’s FY 1998 appropriation, Public Law 105–119, Title V, 111 Stat. 2440, 2510 as incorporated by reference thereafter; the Victims of Trafficking and Violence Protection Act of 2000, Public Law 106–386, 114 Stat. 1464 (“TVPA”), as amended; and Section 101(a)(15)(T) of the Immigration and Nationality Act (“INA”), 8 U.S.C. 1101(a)(15)(T).

(b) *Battered or subjected to extreme cruelty* includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution may be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence.

(c) *Certification* means the certification prescribed in 22 U.S.C. 7105(b)(1)(E).

(d) *Citizen* means a person described or defined as a citizen or national of the United States in 8 U.S.C. 1101(a)(22) and Title III of the Immigration and Nationality Act (INA), Chapter 1 (8

Legal Services Corporation

§ 1626.4

U.S.C. 1401 *et seq.*) (citizens by birth) and Chapter 2 (8 U.S.C. 1421 *et seq.*) (citizens by naturalization) or antecedent citizen statutes.

(e) *Eligible alien* means a person who is not a citizen but who meets the requirements of § 1626.4 or § 1626.5.

(f) *Ineligible alien* means a person who is not a citizen and who does not meet the requirements of § 1626.4 or § 1626.5.

(g) *On behalf of an ineligible alien* means to render legal assistance to an eligible client that benefits an ineligible alien and does not affect a specific legal right or interest of the eligible client.

(h)(1) *Qualifies for immigration relief under section 101(a)(15)(U) of the INA* means:

(i) A person who has been granted relief under that section;

(ii) A person who has applied for relief under that section and who the recipient determines has evidentiary support for such application; or

(iii) A person who has not filed for relief under that section, but who the recipient determines has evidentiary support for filing for such relief.

(2) A person who *qualifies for immigration relief under section 101(a)(15)(U) of the INA* includes any person who may apply for primary U visa relief under subsection (i) of section 101(a)(15)(U) of the INA (8 U.S.C. 1101(a)(15)(U)(i)) or for derivative U visa relief for family members under subsection (ii) of section 101(a)(15)(U) of the INA (8 U.S.C. 1101(a)(15)(U)(ii)). Recipients may provide assistance for any person who qualifies for derivative U visa relief regardless of whether such a person has been subjected to abuse.

(i) *Rejected* refers to an application for adjustment of status that has been denied by the Department of Homeland Security (DHS) and is not subject to further administrative appeal.

(j) *Victim of severe forms of trafficking* means any person described at 22 U.S.C. 7105(b)(1)(C).

(k) *Victim of sexual assault or trafficking* means:

(1) A *victim of sexual assault* subjected to any conduct included in the definition of sexual assault in VAWA, 42 U.S.C. 13925(a)(29); or

(2) A *victim of trafficking* subjected to any conduct included in the definition

of “trafficking” under law, including, but not limited to, local, state, and federal law, and T visa holders regardless of certification from the U.S. Department of Health and Human Services (HHS).

(1) *United States*, for purposes of this part, has the same meaning given that term in section 101(a)(38) of the INA (8 U.S.C. 1101(a)(38)).

[79 FR 30052, May 27, 2014]

§ 1626.3 Prohibition.

Recipients may not provide legal assistance for or on behalf of an ineligible alien. For purposes of this part, legal assistance does not include normal intake and referral services.

§ 1626.4 Aliens eligible for assistance under anti-abuse laws.

(a) Subject to all other eligibility requirements and restrictions of the LSC Act and regulations and other applicable law:

(1) A recipient may provide related legal assistance to an alien who is within one of the following categories:

(i) An alien who has been battered or subjected to extreme cruelty, or is a victim of sexual assault or trafficking in the United States, or qualifies for immigration relief under section 101(a)(15)(U) of the INA (8 U.S.C. 1101(a)(15)(U)); or

(ii) An alien whose child, without the active participation of the alien, has been battered or subjected to extreme cruelty, or has been a victim of sexual assault or trafficking in the United States, or qualifies for immigration relief under section 101(a)(15)(U) of the INA (8 U.S.C. 1101(a)(15)(U)).

(2)(i) A recipient may provide legal assistance, including but not limited to related legal assistance, to:

(A) An alien who is a victim of severe forms of trafficking of persons in the United States; or

(B) An alien classified as a non-immigrant under section 101(a)(15)(T)(ii) of the INA (8 U.S.C. 1101(a)(15)(T)(ii), regarding others related to the victim).

(ii) For purposes of this part, aliens described in paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) of this section include individuals seeking certification as victims

§ 1626.4

45 CFR Ch. XVI (10–1–14 Edition)

of severe forms of trafficking and certain family members applying for immigration relief under section 101(a)(15)(T)(ii) of the INA (8 U.S.C. 1101(a)(15)(T)(ii)).

(b) (1) *Related legal assistance* means legal assistance directly related:

(i) To the prevention of, or obtaining relief from, the battery, cruelty, sexual assault, or trafficking;

(ii) To the prevention of, or obtaining relief from, crimes listed in section 101(a)(15)(U)(iii) of the INA (8 U.S.C. 1101(a)(15)(U)(iii)); or

(iii) To an application for relief:

(A) Under section 101(a)(15)(U) of the INA (8 U.S.C. 1101(a)(15)(U)); or

(B) Under section 101(a)(15)(T) of the INA (8 U.S.C. 1101(a)(15)(T)).

(2) Such assistance includes representation in matters that will assist a person eligible for assistance under this part to escape from the abusive situation, ameliorate the current effects of the abuse, or protect against future abuse, so long as the recipient can show the necessary connection of the representation to the abuse. Such representation may include immigration law matters and domestic or poverty law matters (such as obtaining civil protective orders, divorce, paternity, child custody, child and spousal support, housing, public benefits, employment, abuse and neglect, juvenile proceedings and contempt actions).

(c) *Relationship to the United States.* An alien must satisfy both paragraph (c)(1) and either paragraph (c)(2)(i) or (ii) of this section to be eligible for legal assistance under this part.

(1) *Relation of activity to the United States.* An alien is eligible under this section if the activity giving rise to eligibility violated a law of the United States, regardless of where the activity occurred, or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States.

(2) *Relationship of alien to the United States.* (i) An alien defined in §1626.2(b), (h), or (k)(1) need not be present in the United States to be eligible for assistance under this section.

(ii) An alien defined in §1626.2(j) or (k)(2) must be present in the United

States to be eligible for assistance under this section.

(d) *Evidentiary support*—(1) *Intake and subsequent evaluation.* A recipient may determine that an alien is qualified for assistance under this section if there is evidentiary support that the alien falls into any of the eligibility categories or if the recipient determines there will likely be evidentiary support after a reasonable opportunity for further investigation. If the recipient determines that an alien is eligible because there will likely be evidentiary support, the recipient must obtain evidence of support as soon as possible and may not delay in order to provide continued assistance.

(2) *Documentary evidence.* Evidentiary support may include, but is not limited to, affidavits or unsworn written statements made by the alien; written summaries of statements or interviews of the alien taken by others, including the recipient; reports and affidavits from police, judges, and other court officials, medical personnel, school officials, clergy, social workers, other social service agency personnel; orders of protection or other legal evidence of steps taken to end abuse; evidence that a person sought safe haven in a shelter or similar refuge; photographs; documents; or other evidence of a series of acts that establish a pattern of qualifying abuse.

(3) *Victims of severe forms of trafficking.* Victims of severe forms of trafficking may present any of the forms of evidence listed in paragraph (d)(2) of this section or any of the following:

(i) A certification letter issued by the Department of Health and Human Services (HHS).

(ii) Verification that the alien has been certified by calling the HHS trafficking verification line, (202) 401-5510 or (866) 401-5510.

(iii) An interim eligibility letter issued by HHS, if the alien was subjected to severe forms of trafficking while under the age of 18.

(iv) An eligibility letter issued by HHS, if the alien was subjected to severe forms of trafficking while under the age of 18.

(e) *Recordkeeping.* Recipients are not required by §1626.12 to maintain

Legal Services Corporation

§ 1626.6

records regarding the immigration status of clients represented pursuant to this section. If a recipient relies on an immigration document for the eligibility determination, the recipient shall document that the client presented an immigration document by making a note in the client's file stating that a staff member has seen the document, the type of document, the client's alien registration number ("A number"), the date of the document, and the date of the review, and containing the signature of the staff member that reviewed the document.

(f) *Changes in basis for eligibility.* If, during the course of representing an alien eligible pursuant to §1626.4(a)(1), a recipient determines that the alien is also eligible under §1626.4(a)(2) or §1626.5, the recipient should treat the alien as eligible under that section and may provide all the assistance available pursuant to that section.

§ 1626.5 Aliens eligible for assistance based on immigration status.

Subject to all other eligibility requirements and restrictions of the LSC Act and regulations and other applicable law, a recipient may provide legal assistance to an alien who is present in the United States and who is within one of the following categories:

(a) An alien lawfully admitted for permanent residence as an immigrant as defined by section 101(a)(20) of the INA (8 U.S.C. 1101(a)(20));

(b) An alien who is either married to a United States citizen or is a parent or an unmarried child under the age of 21 of such a citizen and who has filed an application for adjustment of status to permanent resident under the INA, and such application has not been rejected;

(c) An alien who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) (relating to refugee admissions) or who has been granted asylum by the Attorney General or the Secretary of DHS under section 208 of the INA (8 U.S.C. 1158);

(d) An alien who is lawfully present in the United States as a result of being granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)), as in effect on March

31, 1980) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic natural calamity;

(e) An alien who is lawfully present in the United States as a result of the Attorney General's withholding of deportation or exclusion under section 243(h) of the INA (8 U.S.C. 1253(h)), as in effect on April 16, 1996) or withholding of removal pursuant to section 241(b)(3) of the INA (8 U.S.C. 1231(b)(3)); or

(f) An alien who meets the requirements of §1626.10 or §1626.11.

§ 1626.6 Verification of citizenship.

(a) A recipient shall require all applicants for legal assistance who claim to be citizens to attest in writing in a standard form provided by the Corporation that they are citizens, unless the only service provided for a citizen is brief advice and consultation by telephone, or by other non-in-person means, which does not include continuous representation.

(b) When a recipient has reason to doubt that an applicant is a citizen, the recipient shall require verification of citizenship. A recipient shall not consider factors such as a person's accent, limited English-speaking ability, appearance, race, or national origin as a reason to doubt that the person is a citizen.

(1) If verification is required, a recipient may accept originals, certified copies, or photocopies that appear to be complete, correct, and authentic of any of the following documents as evidence of citizenship:

(i) United States passport;

(ii) Birth certificate;

(iii) Naturalization certificate;

(iv) United States Citizenship Identification Card (INS Form I-197 or I-197); or

(v) Baptismal certificate showing place of birth within the United States and date of baptism within two months after birth.

(2) A recipient may also accept any other authoritative document, such as a document issued by DHS, by a court, or by another governmental agency, that provides evidence of citizenship.

(3) If a person is unable to produce any of the above documents, the person

§ 1626.7

may submit a notarized statement signed by a third party, who shall not be an employee of the recipient and who can produce proof of that party's own United States citizenship, that the person seeking legal assistance is a United States citizen.

§ 1626.7 Verification of eligible alien status.

(a) An alien seeking representation shall submit appropriate documents to verify eligibility, unless the only service provided for an eligible alien is brief advice and consultation by telephone, or by other non-in-person means, which does not include continuous representation of a client.

(1) As proof of eligibility, a recipient may accept originals, certified copies, or photocopies that appear to be complete, correct, and authentic, of any documents establishing eligibility. LSC will publish a list of examples of such documents from time to time in the form of a program letter or equivalent.

(2) A recipient may also accept any other authoritative document issued by DHS, by a court, or by another governmental agency, that provides evidence of alien status.

(b) A recipient shall upon request furnish each person seeking legal assistance with a current list of documents establishing eligibility under this part as is published by LSC.

§ 1626.8 Emergencies.

In an emergency, legal services may be provided prior to compliance with §§ 1626.4, 1626.6, and 1626.7 if:

(a) An applicant cannot feasibly come to the recipient's office or otherwise transmit written documentation to the recipient before commencement of the representation required by the emergency, and the applicant provides oral information to establish eligibility which the recipient records, and the applicant submits the necessary documentation as soon as possible; or

(b) An applicant is able to come to the recipient's office but cannot produce the required documentation before commencement of the representation, and the applicant signs a statement of eligibility and submits the

45 CFR Ch. XVI (10–1–14 Edition)

necessary documentation as soon as possible; and

(c) The recipient informs clients accepted under paragraph (a) or (b) of this section that only limited emergency legal assistance may be provided without satisfactory documentation and that, if the client fails to produce timely and satisfactory written documentation, the recipient will be required to discontinue representation consistent with the recipient's professional responsibilities.

§ 1626.9 Change in circumstances.

If, to the knowledge of the recipient, a client who was an eligible alien becomes ineligible through a change in circumstances, continued representation is prohibited by this part and a recipient must discontinue representation consistent with applicable rules of professional responsibility.

§ 1626.10 Special eligibility questions.

(a)(1) This part is not applicable to recipients providing services in the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, or the Republic of the Marshall Islands.

(2) All citizens of the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands residing in the United States are eligible to receive legal assistance provided that they are otherwise eligible under the Act.

(b) All Canadian-born American Indians at least 50% Indian by blood are eligible to receive legal assistance provided they are otherwise eligible under the Act.

(c) Members of the Texas Band of Kickapoo are eligible to receive legal assistance provided they are otherwise eligible under the Act.

(d) An alien who qualified as a special agricultural worker and whose status is adjusted to that of temporary resident alien under the provisions of the Immigration Reform and Control Act ("IRCA") is considered a permanent resident alien for all purposes except immigration under the provisions of section 302 of 100 Stat. 3422, 8 U.S.C. 1160(g). Since the status of these aliens is that of permanent resident alien under section 101(a)(20) of the INA (8

Legal Services Corporation

§ 1627.2

U.S.C. 1101(a)(20)), these workers may be provided legal assistance. These workers are ineligible for legal assistance in order to obtain the adjustment of status of temporary resident under IRCA, but are eligible for legal assistance after the application for adjustment of status to that of temporary resident has been filed, and the application has not been rejected.

(e) A recipient may provide legal assistance to indigent foreign nationals who seek assistance pursuant to the Hague Convention on the Civil Aspects of International Child Abduction and the Federal implementing statute, the International Child Abduction Remedies Act, 42 U.S.C. 11607(b), provided that they are otherwise financially eligible.

§ 1626.11 H-2 agricultural and forestry workers.

(a) Nonimmigrant agricultural workers admitted to, or permitted to remain in, the United States under the provisions of section 101(a)(15)(h)(ii)(a) of the INA (8 U.S.C. 1101(a)(15)(h)(ii)(a)), commonly called H-2A agricultural workers, may be provided legal assistance regarding the matters specified in paragraph (c) of this section.

(b) Nonimmigrant forestry workers admitted to, or permitted to remain in, the United States under the provisions of section 101(a)(15)(h)(ii)(b) of the INA (8 U.S.C. 1101(a)(15)(h)(ii)(b)), commonly called H-2B forestry workers, may be provided legal assistance regarding the matters specified in paragraph (c) of this section.

(c) The following matters which arise under the provisions of the worker's specific employment contract may be the subject of legal assistance by an LSC-funded program:

- (1) Wages;
- (2) Housing;
- (3) Transportation; and
- (4) Other employment rights as provided in the worker's specific contract under which the nonimmigrant worker was admitted.

§ 1626.12 Recipient policies, procedures, and recordkeeping.

Each recipient shall adopt written policies and procedures to guide its

staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

[79 FR 21871, Apr. 18, 2014]

PART 1627—SUBGRANTS AND MEMBERSHIP FEES OR DUES

Sec.

- 1627.1 Purpose.
- 1627.2 Definitions.
- 1627.3 Requirements for all subgrants.
- 1627.4 Membership fees or dues.
- 1627.5 Contributions.
- 1627.6 Transfers to other recipients.
- 1627.7 Tax sheltered annuities, retirement accounts and pensions.
- 1627.8 Recipient policies, procedures and recordkeeping.

AUTHORITY: 42 U.S.C. 2996e(b)(1), 2996f(a), and 2996g(e); Pub. L. 104-208, 110 Stat 3009; Pub. L. 104-134, 110 Stat 1321.

SOURCE: 48 FR 54209, Nov. 30, 1983, unless otherwise noted.

§ 1627.1 Purpose.

In order to promote accountability for Corporation funds and the observance of the provisions of the Legal Services Corporation Act and the Corporation's regulations adopted pursuant thereto, it is necessary to set out the rules under which Corporation funds may be transferred by recipients to other organizations (including other recipients).

§ 1627.2 Definitions.

(a) *Recipient* as used in this part means any recipient as defined in section 1002(6) of the Act and any grantee or contractor receiving funds from the Corporation under section 1006(a)(1)(B) or 1006(a)(3) of the Act.

(b)(1) *Subrecipient* shall mean any entity that accepts Corporation funds from a recipient under a grant contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient's programmatic activities. Such activities would normally include those that might otherwise be expected to be conducted directly by the recipient itself, such as representation of eligible clients, or which provide direct support to a recipient's legal assistance activities

§ 1627.3

45 CFR Ch. XVI (10–1–14 Edition)

or such activities as client involvement, training or state support activities. Such activities would not normally include those 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, except that any such arrangement involving more than \$25,000 shall be included. Subrecipient activities would normally also not include the provision of goods or services by vendors or consultants in the normal course of business if such goods or services would not be expected to be provided directly by the recipient itself, such as auditing or business machine purchase and/or maintenance. A single entity could be a subrecipient with respect to some activities it conducts for a recipient while not being a subrecipient with respect to other activities it conducts for a recipient.

(2) *Subgrant* shall mean any transfer of Corporation funds from a recipient which qualifies the organization receiving such funds as a subrecipient under the definition set forth in paragraph (b)(1) of this section.

(c) *Membership fees or dues* as used in this part means payments to an organization on behalf of a program or individual to be a member thereof, or to acquire voting or participatory rights therein.

[48 FR 54209, Nov. 30, 1983, as amended at 61 FR 45754, Aug. 29, 1996; 62 FR 19418, Apr. 21, 1997]

§ 1627.3 Requirements for all subgrants.

(a)(1) All subgrants must be submitted in writing to the Corporation for prior, written approval. The submission shall include the terms and conditions of the subgrant and the amount of funds intended to be transferred.

(2) The Corporation shall have 45 days to approve, disapprove, or suggest modifications to the subgrant. A subgrant which is disapproved or to which modifications are suggested may be resubmitted for approval. Should the Corporation fail to take action within 45 days, the recipient shall notify the Corporation of this failure and, unless the Corporation responds within

7 days of the receipt of such notification, the subgrant shall be deemed to have been approved.

(3) Any subgrant not approved according to the procedures of paragraph (a)(2) of this section shall be subject to audit disallowance and recovery of all the funds expended pursuant thereto.

(4) Any subgrant which is a continuation of a previous subgrant and which expires before March 1, 1984 may be extended until March 1, 1984, if a new subgrant agreement is submitted for approval to the Corporation by January 15, 1984. In the event the Corporation refuses to allow the renewal of any such submitted agreement, the recipient shall be permitted to allow the subrecipient 60 days' funding to close out the subgrant activities.

(b)(1) A subgrant may not be for a period longer than one year, and all funds remaining at the end of the grant period shall be considered part of the recipient's fund balance.

(2) All subgrants shall contain a provision providing for their orderly termination in the event that the recipient's funding is terminated or the recipient is not refunded and for suspension of activities if the recipient's funding is suspended.

(3) A substantial change in the work program of a subgrant or an increase or decrease in funding of more than 10% shall require Corporation approval pursuant to the provisions of section 1627.3(a). Minor changes of work program or changes in funding of less than 10% shall not require prior Corporation approval, but the Corporation shall be informed in writing thereof.

(c) Recipients shall be responsible for ensuring that subrecipients comply with the financial and audit provisions of the Corporation. The recipient is responsible for ensuring the proper expenditure, accounting for, and audit of delegated funds. Any funds delegated by a recipient to a subrecipient shall be subject to the audit and financial requirements of the Audit and Accounting Guide for Recipients and Auditors. The delegated funds may be separately disclosed and accounted for, and reported upon in the audited financial statements of a recipient; or such funds

may be included in a separate audit report of the subrecipient. The relationship between the recipient and subrecipient will determine the proper method of financial reporting in accordance with generally accepted accounting principles. A subgrant agreement may provide for alternative means of assuring the propriety of subrecipient expenditures, especially in instances where a large organization receives a small subgrant. If such an alternate means is approved by the Audit Division of the Corporation, the information provided thereby shall satisfy the recipient's annual audit requirement with regard to the subgrant funds.

(d) The recipient shall be responsible for repaying the Corporation for any disallowed expenditures by a subrecipient, irrespective of whether the recipient is able to recover such expenditures from the subrecipient.

(e) To assure subrecipient compliance with the Act, Congressional restrictions having the force of law, Corporation Regulations (45 CFR chapter XVI), and Corporation Guidelines or Instructions, contracts between a recipient and a subrecipient shall provide for the same oversight rights for the Corporation with respect to subrecipients as apply to recipients.

[48 FR 54209, Nov. 30, 1983, as amended at 49 FR 1703, Jan. 13, 1984]

§ 1627.4 Membership fees or dues.

(a) LSC funds may not be used to pay membership fees or dues to any private or nonprofit organization, whether on behalf of a recipient or an individual.

(b) Paragraph (a) of this section does not apply to the payment of membership fees or dues mandated by a governmental organization to engage in a profession, or to the payment of membership fees or dues from non-LSC funds.

[62 FR 19418, Apr. 21, 1997]

§ 1627.5 Contributions.

Any contributions or gifts of Corporation funds to another organization or to an individual are prohibited.

§ 1627.6 Transfers to other recipients.

(a) The requirements of § 1627.3 shall apply to all subgrants by one recipient to another recipient.

(b) The subrecipient shall audit any funds subgranted to it in its annual audit and supply a copy of this audit to the recipient. The recipient shall either submit the relevant part of this audit with its next annual audit or, if an audit has been recently submitted, submit it as an addendum to that recently submitted audit.

(c) In addition to the provisions of § 1627.3(d), the Corporation may hold the subrecipient directly responsible for any disallowed expenditures of subgrant funds. Thus, the Corporation may recover all of the disallowed costs from either recipient or subrecipient or may divide the recovery between the two; the Corporation's total recovery may not exceed the amount of expenditures disallowed.

(d) Funds received by a recipient from other recipients in the form of fees and dues shall be accounted for and included in the annual audit of the recipient receiving these funds as Corporation funds.

§ 1627.7 Tax sheltered annuities, retirement accounts and pensions.

No provision contained in this part shall be construed to affect any payment by a recipient on behalf of its employees for the purpose of contributing to or funding a tax sheltered annuity, retirement account, or pension fund.

[62 FR 19418, Apr. 21, 1997]

§ 1627.8 Recipient policies, procedures and recordkeeping.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

[62 FR 19418, Apr. 21, 1997]

PART 1628—RECIPIENT FUND BALANCES

- Sec.
- 1628.1 Purpose.
- 1628.2 Definitions.
- 1628.3 Policy.

§ 1628.1

1628.4 Procedures.

1628.5 Fund balance deficits.

AUTHORITY: 42 U.S.C. 2996e(b)(1)(A), 2996f (a)(3).

SOURCE: 65 FR 66642, Nov. 7, 2000, unless otherwise noted.

§ 1628.1 Purpose

The purpose of this part is to set out the Corporation's policies and procedures applicable to recipient fund balances. The Corporation's fund balance policies are intended to ensure the timely expenditure of LSC funds for the effective and economical provision of high quality legal assistance to eligible clients.

§ 1628.2 Definitions.

(a) *Excess fund balance* means a recipient's LSC fund balance that exceeds the amount a recipient is permitted to retain under this part.

(b) *LSC support* means the sum of:

(1) The amount of financial assistance awarded by the Corporation to the recipient for the fiscal year included in the recipient's annual audited financial statement, not including one-time and special purpose grants; and

(2) Any LSC derivative income, as defined in § 1630.2(c), earned by the recipient for the fiscal year included in the recipient's annual audited financial statement, not including derivative income from one-time and special purpose grants.

(c) The *LSC fund balance* is the excess of LSC support plus the prior year carryover amount over expenditures of LSC funds (including capital acquisitions), as each is reported in the recipient's annual financial statements.

(d) The *fund balance percentage* is the amount of the LSC fund balance expressed as a percentage of the recipient's LSC support.

(e) *Recipient*, as used in this part, means any grantee or contractor receiving financial assistance from the Corporation under section 1006(a)(1)(A) of the LSC Act.

§ 1628.3 Policy.

(a) Recipients are permitted to retain from one fiscal year to the next LSC fund balances up to 10% of their LSC support.

45 CFR Ch. XVI (10–1–14 Edition)

(b) Recipients may request a waiver to retain a fund balance up to a maximum of 25% of their LSC support for special circumstances.

(c) Recipients may request a waiver to retain a fund balance in excess of 25% of a recipient's LSC support only for the following extraordinary and compelling circumstances when the recipient receives an insurance reimbursement, the proceeds from the sale of real property, or a payment from a lawsuit in which the recipient was a party.

(d) A waiver pursuant to paragraph (b) or (c) of this section may be granted at the discretion of the Corporation pursuant to the criteria set out in § 1628.4(d).

(e) In the absence of a waiver, a fund balance in excess of 10% of LSC support shall be repaid to the Corporation. If a waiver of the 10% ceiling is granted, any fund balance in excess of the amount permitted to be retained shall be repaid to the Corporation.

(f) A recovery of an excess fund balance pursuant to this part does not constitute a termination under 45 CFR part 1606. *See* § 1606.2(c)(2)(ii).

(g) One-time and special purpose grants awarded by the Corporation are not subject to the fund balance policy set forth in this part. Revenue and expenses relating to such grants shall be reflected separately in the audit report submitted to the Corporation. This may be done by establishing a separate fund or by providing a separate supplemental schedule of revenue and expenses related to such grants as a part of the audit report. No funds provided under a one-time or special purpose grant may be expended subsequent to the expiration date of the grant without the prior written approval of the Corporation. Absent approval from the Corporation, all unexpended funds under such grants shall be returned to the Corporation.

§ 1628.4 Procedures.

(a) Within 30 days of the submission to LSC of its annual audited financial statements, a recipient may request a waiver of the 10% ceiling on LSC fund balances. The request shall specify:

Legal Services Corporation

§ 1628.5

(1) The LSC fund balance as reported in the recipient's annual audited financial statements;

(2) The reason(s) the excess fund balance resulted;

(3) The recipient's plan for disposition of the excess fund balance during the current fiscal year;

(4) The amount of fund balance projected to be carried forward at the close of the recipient's current fiscal year; and

(5) The special circumstances justifying the retention of the excess fund balance up to 25%, or the extraordinary and compelling circumstances set out in §1628.3(c) justifying a fund balance in excess of 25%.

(b) Within 45 days of receipt of the recipient's waiver request submitted pursuant to paragraph (a) of this section, the Corporation shall provide a written response to the request and a written notice to the recipient of any fund balance due and payable to the Corporation as well as the method for repayment.

(c) In the event that repayment is required, the Corporation shall give written notice 30 days prior to the effective date for repayment. Repayment shall be in a lump sum or by pro rata deductions from the recipient's grant checks for a specific number of months. The Corporation shall determine which of the specified methods of repayment is reasonable and appropriate in each case after consultation with the recipient.

(d) The decision of the Corporation regarding the granting of a waiver shall be guided by the statutory mandate requiring the recipient to provide high quality legal services in an effective and economical manner. In addition, the Corporation shall consider the following factors:

(1) Emergencies, unusual or unexpected occurrences, or the circumstances giving rise to the existence of a fund balance in excess of 10% of LSC support set out in §1628.3(b) or (c);

(2) the special needs of clients;

(3) The need to retain a cash reserve for payments to private attorneys participating in the recipient's private attorney involvement (PAI) program; for acquisition of equipment or property; or for other expenditures which are

reasonable and necessary for the performance of the LSC grant; and

(4) The recipient's financial management record.

(e) The Corporation's written approval of a request for a waiver shall require that the recipient use the funds it is permitted to retain within the time period set out in the approval and for the purposes approved by the Corporation.

(f) Excess fund balances approved by the Corporation for expenditure by a recipient shall be separately reported by natural line item in the current fiscal year's audited financial statements. This may be done by establishing a separate fund or by providing a separate supplemental schedule as part of the audit report.

(g) The recipient shall promptly inform and seek guidance from the Corporation when it determines a need for any changes to the conditions on timing or purposes set out in the Corporation's written approval of a recipient's request for a waiver.

§ 1628.5 Fund balance deficits.

(a) Sound financial management practices such as those set out in Chapter 3 of the Corporation's Accounting Guide for LSC Recipients should preclude deficit spending. Use of current year LSC grant funds to liquidate deficit balances in the LSC fund from a preceding period requires the prior written approval of the Corporation.

(b) Within 30 days of the submission of the recipient's annual audit, the recipient may apply to the Corporation for approval of the expenses associated with the liquidation of the deficit balance in the LSC fund.

(c) In the absence of approval by the Corporation, expenditures of current year LSC grant funds to liquidate a deficit from a prior year shall be identified as questioned costs under 45 CFR part 1630.

(d) The recipient's request must specify the same information relative to the deficit LSC fund balance as that set forth in §1628.4(a)(1) and (2). Additionally, the recipient must develop and submit a plan approved by its governing body describing the measures which will be implemented to prevent a recurrence of a deficit balance in the

LSC fund. The Corporation reserves the right to require changes in the submitted plan.

(e) The decision of the Corporation regarding acceptance of these deficit-related costs shall be guided by the statutory mandate requiring the recipient to provide high quality legal services performed in an effective and economical manner. Special consideration will be given for emergencies, unusual occurrences, or other special circumstances giving rise to a deficit balance.

PART 1629—BONDING OF RECIPIENTS

Sec.

1629.1 General.

1629.2 Persons required to be bonded.

1629.3 Criteria for determining handling.

1629.4 Meaning of fraud or dishonesty.

1629.5 Form of bonds.

1629.6 Effective date.

AUTHORITY: Secs. 1006(b)(1)(A) and 1007(a)(3), Pub. L. 93–355, as amended, Pub. L. 95–222 (42 U.S.C. 2996e(1)(A) and 2996f(3)).

SOURCE: 49 FR 28717, July 16, 1984, unless otherwise noted.

§ 1629.1 General.

(a) If any program which receives Corporation funds is not a government, or an agency or instrumentality thereof, such program shall carry fidelity bond coverage at a minimum level of at least ten (10) percent of the program's annualized LSC funding level for the previous fiscal year, or of the initial grant or contract, if the program is a new grantee or contractor. No coverage carried pursuant to this part shall be at a level less than \$50,000.

(b) A fidelity bond is a bond indemnifying such program against losses resulting from the fraud or lack of integrity, honesty or fidelity of one or more employees, officers, agents, directors or other persons holding a position of trust with the program.

§ 1629.2 Persons required to be bonded.

(a) Every director, officer, employee and agent of a program who handles funds or property of the program shall be bonded as provided in this part.

(b) Such bond shall provide protection to the program against loss by reason of acts of fraud or dishonesty on the part of such director, officer, employee or agent directly or through connivance with others.

§ 1629.3 Criteria for determining handling.

(a) The term “handles” shall be deemed to encompass any relationship of a director, officer, employee or agent with respect to funds or other property which can give rise to a risk of loss through fraud or dishonesty. This shall include relationships such as those which involve access to funds or other property or decision-making powers with respect to funds or property which can give rise to such risk of loss.

(b) Subject to the application of the basic standard of risk of loss to each situation, the criteria for determining whether there is “handling” so as to require bonding are:

(1) Physical contact with cash, checks or similar property;

(2) The power to secure physical possession of cash, checks or similar property such as through access to a safe deposit box or similar depository, access to cash or negotiable instruments and assets, power of custody or safekeeping, or the power to borrow or withdraw funds from a bank or other account whether or not physical contact actually takes place;

(3) The power to transfer or cause to be transferred property such as mortgages, title to land and buildings, or securities, through actual or apparent authority, to oneself or to a third party, or to be negotiated for value.

(c) Persons who actually disburse funds or other property, such as officers authorized to sign checks or other negotiable instruments, or persons who make cash disbursements, shall be considered to be “handling” such funds or property.

(d) In connection with disbursements, any persons with the power to sign or endorse checks or similar instruments or otherwise render them transferable, whether individually or as cosigners with one or more persons, shall each be considered to be “handling” such funds or other property.

Legal Services Corporation

§ 1630.2

(e) To the extent a person's supervisory or decision-making responsibility involves factors in relationship to funds discussed in paragraphs (b) (1), (2), (3), or paragraphs (c) and (d) of this section, such persons shall be considered to be "handling" in the same manner as any person to whom the criteria of those subparagraphs apply.

§ 1629.4 Meaning of fraud or dishonesty.

The term "fraud or dishonesty" shall be deemed to encompass all those risks of loss that might arise through dishonest or fraudulent acts in the handling of funds as delineated in §1629.3. As such, the bond must provide recovery for loss occasioned by such acts even though no personal gain accrues to the person committing the act and the act is not subject to punishment as a crime or misdemeanor, provided that within the law of the state in which the act is committed, a court could afford recovery under a bond providing protection against fraud or dishonesty. As applied under state laws, the term "fraud or dishonesty" encompasses such matters as larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wrongful conversion, willful misapplication or any other fraudulent or dishonest acts.

§ 1629.5 Form of bonds.

Any form of bond which may be described as individual, schedule or blanket, or any combination of such forms of bonds, shall be acceptable to meet the requirements of this part. The basic types of bonds in general usage are:

- (a) An individual bond which covers a named individual in a stated penalty;
- (b) A name schedule bond which covers a number of named individuals in the respective amounts set opposite their names;
- (c) A position schedule bond which covers all of the occupants of positions listed in the schedule in the respective amounts set opposite such positions;
- (d) A blanket bond which covers all the insured's directors, officers, employees and agents with no schedule or list of those covered being necessary and with all new directors, officers,

employees and agents bonded automatically, in a blanket penalty.

§ 1629.6 Effective date.

(a) Each program shall certify in its Application for Refunding, beginning with the application for FY 1985 funds, that it has obtained a bond or bonds which satisfy the requirements of this part.

(b) A copy of such bond or bonds shall be provided to the Corporation at its request.

PART 1630—COST STANDARDS AND PROCEDURES

Sec.

- 1630.1 Purpose.
- 1630.2 Definitions.
- 1630.3 Standards governing allowability of costs under Corporation grants or contracts.
- 1630.4 Burden of proof.
- 1630.5 Costs requiring Corporation prior approval.
- 1630.6 Timetable and basis for granting prior approval.
- 1630.7 Review of questioned costs and appeal of disallowed costs.
- 1630.8 Recovery of disallowed costs and other corrective action.
- 1630.9 Other remedies; effect on other parts.
- 1630.10 Applicability to subgrants.
- 1630.11 Applicability to non-LSC funds.
- 1630.12 Applicability to derivative income.
- 1630.13 Time.

AUTHORITY: 5 U.S.C. App. 3, 42 U.S.C. 2996e, 2996f, 2996g, 2996h(c)(1), and 2996i(c); Pub. L. 105-119, 111 Stat. 2440; Pub. L. 104-134, 110 Stat. 3009.

SOURCE: 62 FR 68224, Dec. 31, 1997, unless otherwise noted.

§ 1630.1 Purpose.

This part is intended to provide uniform standards for allowability of costs and to provide a comprehensive, fair, timely, and flexible process for the resolution of questioned costs.

§ 1630.2 Definitions.

(a) *Allowed costs* means a questioned cost that the Corporation, in a management decision, has determined to be eligible for payment from a recipient's Corporation funds.

(b) *Corrective action* means action taken by a recipient that:

- (1) Corrects identified deficiencies;

§ 1630.3

(2) Produces recommended improvements; or

(3) Demonstrates that audit or other findings are either invalid or do not warrant recipient action.

(c) *Derivative income* means income earned by a recipient from Corporation-supported activities during the term of a Corporation grant or contract, and includes, but is not limited to, income from fees for services (including attorney fee awards and reimbursed costs), sales and rentals of real or personal property, and interest earned on Corporation grant or contract advances.

(d) *Disallowed cost* means a questioned cost that the Corporation, in a management decision, has determined should not be charged to a recipient's Corporation funds.

(e) *Final action* means the completion of all actions that Corporation management, in a management decision, has concluded are necessary with respect to the findings and recommendations in an audit or other report. In the event that Corporation management concludes no corrective action is necessary, final action occurs when a management decision has been made.

(f) *Management decision* means the evaluation by Corporation management of findings and recommendations in an audit or other report and the recipient's response to the report, and the issuance of a final, written decision by management concerning its response to such findings and recommendations, including any corrective actions which Corporation management has concluded are necessary to address the findings and recommendations.

(g) *Questioned cost* means a cost that a recipient has charged to Corporation funds which Corporation management, the Office of Inspector General, the General Accounting Office, or an independent auditor or other audit organization authorized to conduct an audit of a recipient has questioned because of an audit or other finding that:

(1) There may have been a violation of a provision of a law, regulation, contract, grant, or other agreement or document governing the use of Corporation funds;

45 CFR Ch. XVI (10–14 Edition)

(2) The cost is not supported by adequate documentation; or

(3) The cost incurred appears unnecessary or unreasonable and does not reflect the actions a prudent person would take in the circumstances.

(h) *Recipient* as used in this part means any grantee or contractor receiving funds from the Corporation under sections 1006(a)(1) or 1006(a)(3) of the Act.

[62 FR 68225, Dec. 31, 1997; 63 FR 1532, Jan. 9, 1998]

§ 1630.3 Standards governing allowability of costs under Corporation grants or contracts.

(a) *General criteria.* Expenditures by a recipient are allowable under the recipient's grant or contract only if the recipient can demonstrate that the cost was:

(1) Actually incurred in the performance of the grant or contract and the recipient was liable for payment;

(2) Reasonable and necessary for the performance of the grant or contract as approved by the Corporation;

(3) Allocable to the grant or contract;

(4) In compliance with the Act, applicable appropriations law, Corporation rules, regulations, guidelines, and instructions, the Accounting Guide for LSC Recipients, the terms and conditions of the grant or contract, and other applicable law;

(5) Consistent with accounting policies and procedures that apply uniformly to both Corporation-financed and other activities of the recipient;

(6) Accorded consistent treatment over time;

(7) Determined in accordance with generally accepted accounting principles;

(8) Not included as a cost or used to meet cost sharing or matching requirements of any other federally financed program, unless the agency whose funds are being matched determines in writing that Corporation funds may be used for federal matching purposes; and

(9) Adequately and contemporaneously documented in business records accessible during normal business hours to Corporation management, the Office of Inspector General, the General Accounting Office, and

Legal Services Corporation

§ 1630.3

independent auditors or other audit organizations authorized to conduct audits of recipients.

(b) *Reasonable costs.* A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the same or similar circumstances prevailing at the time the decision was made to incur the cost. If a questioned cost is disallowed solely on the ground that it is excessive, only the amount that is larger than reasonable shall be disallowed. In determining the reasonableness of a given cost, consideration shall be given to:

(1) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the recipient or the performance of the grant or contract;

(2) The restraints or requirements imposed by such factors as generally accepted sound business practices, arms-length bargaining, Federal and State laws and regulations, and the terms and conditions of the grant or contract;

(3) Whether the recipient acted with prudence under the circumstances, considering its responsibilities to its clients and employees, the public at large, the Corporation, and the Federal government; and

(4) Significant deviations from the established practices of the recipient which may unjustifiably increase the grant or contract costs.

(c) *Allocable costs.* A cost is allocable to a particular cost objective, such as a grant, project, service, or other activity, in accordance with the relative benefits received. Costs may be allocated to Corporation funds either as direct or indirect costs according to the provisions of this section. A cost is allocable to a Corporation grant or contract if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:

(1) Is incurred specifically for the grant or contract;

(2) Benefits both the grant or contract and other work and can be distributed in reasonable proportion to the benefits received; or

(3) Is necessary to the overall operation of the recipient, although a di-

rect relationship to any particular cost objective cannot be shown.

(d) *Direct costs.* Direct costs are those that can be identified specifically with a particular final cost objective, i.e., a particular grant award, project, service, or other direct activity of an organization. Costs identified specifically with grant awards are direct costs of the awards and are to be assigned directly thereto. Direct costs include, but are not limited to, the salaries and wages of recipient staff who are working on cases or matters that are identified with specific grants or contracts. Salary and wages charged directly to Corporation grants and contracts must be supported by personnel activity reports.

(e) *Indirect costs.* Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where the accounting treatment for such cost is consistently applied to all final cost objectives. Indirect costs include, but are not limited to, the costs of operating and maintaining facilities, and the costs of general program administration, such as the salaries and wages of program staff whose time is not directly attributable to a particular grant or contract. Such staff may include, but are not limited to, executive officers and personnel, accounting, secretarial and clerical staff.

(f) *Allocation of indirect costs.* Where a recipient has only one major function, i.e., the delivery of legal services to low-income clients, allocation of indirect costs may be by a simplified allocation method, whereby total allowable indirect costs (net of applicable credits) are divided by an equitable distribution base and distributed to individual grant awards accordingly. The distribution base may be total direct costs, direct salaries and wages, attorney hours, numbers of cases, numbers of employees, or another base which results in an equitable distribution of indirect costs among funding sources.

(g) *Exception for certain indirect costs.* Some funding sources may refuse to allow the allocation of certain indirect costs to an award. In such instances, a

§ 1630.4

recipient may allocate a proportional share of another funding source's share of an indirect cost to Corporation funds, provided that the activity associated with the indirect cost is permissible under the LSC Act and regulations.

(h) *Applicable credits.* Applicable credits are those receipts or reductions of expenditures which operate to offset or reduce expense items that are allocable to grant awards as direct or indirect costs. Applicable credits include, but are not limited to, purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds, and adjustments of overpayments or erroneous charges. To the extent that such credits relate to allowable costs, they shall be credited as a cost reduction or cash refund in the same fund to which the related costs are charged.

(i) *Guidance.* The Circulars of the Office of Management and Budget shall provide guidance for all allowable cost questions arising under this part when relevant policies or criteria therein are not inconsistent with the provisions of the Act, applicable appropriations law, this part, the Accounting Guide for LSC Recipients, Corporation rules, regulations, guidelines, instructions, and other applicable law.

[62 FR 68225, Dec. 31, 1997; 63 FR 1532, Jan. 9, 1998]

§ 1630.4 Burden of proof.

The recipient shall have the burden of proof under this part.

§ 1630.5 Costs requiring Corporation prior approval.

(a) *Advance understandings.* Under any given grant award, the reasonableness and allocability of certain cost items may be difficult to determine. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, recipients may seek a written understanding from the Corporation in advance of incurring special or unusual costs. If a recipient elects not to seek an advance understanding from the Corporation, the absence of an advance understanding on any element of a cost does not affect the reasonableness or allocability of the cost.

45 CFR Ch. XVI (10–1–14 Edition)

(b) *Prior approvals.* Without prior written approval of the Corporation, no cost attributable to any of the following may be charged to Corporation funds:

(1) Pre-award costs and costs incurred after the cessation of funding;

(2) Purchases and leases of equipment, furniture, or other personal, non-expendable property, if the current purchase price of any individual item of property exceeds \$10,000;

(3) Purchases of real property; and

(4) Capital expenditures exceeding \$10,000 to improve real property.

(c) *Duration.* The Corporation's approval or advance understanding shall be valid for one year, or for a greater period of time which the Corporation may specify in its approval or understanding.

§ 1630.6 Timetable and basis for granting prior approval.

(a) The Corporation shall grant prior approval of a cost if the recipient has provided sufficient written information to demonstrate that the cost would be consistent with the standards and policies of this part. If the Corporation denies a request for approval, it shall provide to the recipient a written explanation of the grounds for denying the request.

(b) Except as provided in paragraphs (c) and (d) of this section, the Corporation may not assert the absence of prior approval as a basis for disallowing a questioned cost, if the Corporation has not responded to a written request for approval within sixty (60) days of receiving the request.

(c) If additional information is necessary to enable the Corporation to respond to a request for prior approval, the Corporation may make a written request for additional information within forty-five (45) days of receiving the request for approval.

(d) If the Corporation has made a written request for additional information about a cost as provided by paragraph (c) of this section, and if the Corporation has not responded within thirty (30) days of receiving in writing all additional, requested information, the Corporation may not assert the absence of prior approval as a basis for disallowing the cost.

§ 1630.7 Review of questioned costs and appeal of disallowed costs.

(a) When the Office of Inspector General, the General Accounting Office, or an independent auditor or other audit organization authorized to conduct an audit of a recipient has identified and referred a questioned cost to the Corporation, Corporation management shall review the findings of the Office of Inspector General, General Accounting Office, or independent auditor or other authorized audit organization, as well as the recipient's written response to the findings, in order to determine accurately the amount of the questioned cost, the factual circumstances giving rise to the cost, and the legal basis for disallowing the cost. Corporation management may also identify questioned costs in the course of its oversight of recipients.

(b) If Corporation management determines that there is a basis for disallowing a questioned cost, and if not more than five years have elapsed since the recipient incurred the cost, Corporation management shall provide to the recipient written notice of its intent to disallow the cost. The written notice shall state the amount of the cost and the factual and legal basis for disallowing it.

(c) Within thirty (30) days of receiving written notice of the Corporation's intent to disallow the questioned cost, the recipient may respond with written evidence and argument to show that the cost was allowable, or that the Corporation, for equitable, practical, or other reasons, should not recover all or part of the amount, or that the recovery should be made in installments. If the recipient does not respond to the Corporation's written notice, Corporation management shall issue a management decision on the basis of information available to it.

(d) Within sixty (60) days of receiving the recipient's written response to the notice of intent to disallow the questioned cost, Corporation management shall issue a management decision stating whether or not the cost has been disallowed, the reasons for the decision, and the method of appeal as provided in this section.

(1) If Corporation management has determined that the questioned cost

should be allowed, and that no corrective action by the recipient is necessary, final action with respect to the questioned cost occurs at the time when the Corporation issues the management decision.

(2) If Corporation management has determined that the questioned cost should be disallowed, the management decision shall also describe the expected recipient action to repay the cost, including the method and schedule for collection of the amount of the cost. The management decision may also require the recipient to make financial adjustments or take other corrective action to prevent a recurrence of the circumstances giving rise to the disallowed cost.

(e) If the amount of a disallowed cost exceeds \$2,500, the recipient may appeal in writing to the Corporation President within thirty (30) days of receiving the Corporation's management decision to disallow the cost. The written appeal should state in detail the reasons why the Corporation should not disallow part or all of the questioned cost. If the amount of a disallowed cost does not exceed \$2,500, or if the recipient elects not to appeal the disallowance of a cost in excess of \$2,500, the Corporation's management decision shall be final.

(f) Within thirty (30) days of receipt of the recipient's appeal of a disallowed cost in excess of \$2,500, the President shall either adopt, modify, or reverse the Corporation's management decision to disallow the cost. If the President has had prior involvement in the consideration of the disallowed cost, the President shall designate another senior Corporation employee who has not had prior involvement to review the recipient's appeal. The President shall also have discretion, in circumstances where the President has not had prior involvement in the disallowed cost, to designate another senior Corporation employee to review the recipient's appeal, provided that the senior Corporation employee has not had prior involvement in the disallowed cost.

(g) The decision of the President or designee shall be final and shall be based on the written record, consisting of the Corporation's notice of intent to

§ 1630.8

disallow the questioned cost, the recipient's response, the management decision, the recipient's written appeal, any additional response or analysis provided to the President or designee by Corporation staff, and the relevant findings, if any, of the Office of Inspector General, General Accounting Office, or other authorized auditor or audit organization. Upon request, the Corporation shall provide a copy of the written record to the recipient.

§ 1630.8 Recovery of disallowed costs and other corrective action.

(a) The Corporation shall recover any disallowed costs from the recipient within the time limits and conditions set forth in the Corporation's management decision. Recovery of the disallowed costs may be in the form of a reduction in the amount of future grant checks or in the form of direct payment from the recipient to the Corporation.

(b) The Corporation shall ensure that a recipient which has incurred a disallowed cost takes any additional, necessary corrective action within the time limits and conditions set forth in the Corporation's management decision. The recipient shall have taken final action when the recipient has repaid all disallowed costs and has taken all corrective action which the Corporation has stated in its management decision is necessary to prevent the recurrence of circumstances giving rise to a questioned cost.

(c) In the event of an appeal of the Corporation's management decision, the decision of the President or designee shall supersede the Corporation's management decision, and the recipient shall repay any disallowed costs and take necessary corrective action according to the terms and conditions of the decision of the President or designee.

§ 1630.9 Other remedies; effect on other parts.

(a) In cases of serious financial mismanagement, fraud, or defalcation of funds, the Corporation shall refer the matter to the Office of Inspector General, and may take appropriate action pursuant to parts 1606, 1623, 1625, and 1640 of this chapter.

45 CFR Ch. XVI (10–1–14 Edition)

(b) The recovery of a disallowed cost according to the procedures of this part does not constitute a permanent reduction in the annualized funding level of the recipient, nor does it constitute a termination of financial assistance under part 1606, a suspension of funding under part 1623, or a denial of refunding under part 1625.

§ 1630.10 Applicability to subgrants.

When disallowed costs arise from expenditures incurred under a subgrant of Corporation funds, the recipient and the subrecipient will be jointly and severally responsible for the actions of the subrecipient, as provided by 45 CFR part 1627, and will be subject to all remedies available under this part. Both the recipient and the subrecipient shall have access to the review and appeal procedures of this part.

§ 1630.11 Applicability to non-LSC funds.

(a) No costs attributable to a purpose prohibited by the LSC Act, as defined by 45 CFR 1610.2(a), may be charged to private funds, except for tribal funds used for the specific purposes for which they were provided. No cost attributable to an activity prohibited by or inconsistent with section 504, as defined by 45 CFR 1610.2(b), may be charged to non-LSC funds, except for tribal funds used for the specific purposes for which they were provided.

(b) According to the review and appeal procedures of 45 CFR 1630.7, the Corporation may recover from a recipient's Corporation funds an amount not to exceed the amount improperly charged to non-LSC funds.

§ 1630.12 Applicability to derivative income.

(a) Derivative income resulting from an activity supported in whole or in part with funds provided by the Corporation shall be allocated to the fund in which the recipient's LSC grant is recorded in the same proportion that the amount of Corporation funds expended bears to the total amount expended by the recipient to support the activity.

(b) Derivative income which is allocated to the LSC fund in accordance with paragraph (a) of this section is

Legal Services Corporation

§ 1633.2

subject to the requirements of this part, including the requirement of 45 CFR 1630.3(a)(4) that expenditures of such funds be in compliance with the Act, applicable appropriations law, Corporation rules, regulations, guidelines, and instructions, the Accounting Guide for LSC recipients, the terms and conditions of the grant or contract, and other applicable law.

[62 FR 68227, Dec. 31, 1997; 63 FR 1532, Jan. 9, 1998]

§ 1630.13 Time.

(a) *Computation.* Time limits specified in this part shall be computed in accordance with Rules 6(a) and 6(e) of the Federal Rules of Civil Procedure.

(b) *Extensions.* The Corporation may, on a recipient's written request for good cause, grant an extension of time and shall so notify the recipient in writing.

PART 1631 [RESERVED]

PART 1632—REDISTRICTING

Sec.

1632.1 Purpose.

1632.2 Definitions.

1632.3 Prohibition.

1632.4 Recipient policies.

AUTHORITY: 42 U.S.C. 2996e(b)(1)(A); 2996f(a)(2)(C); 2996f(a)(3); 2996(g)(e); 110 Stat. 3009; 110 Stat. 1321(1996).

SOURCE: 61 FR 63756, Dec. 2, 1996, unless otherwise noted.

§ 1632.1 Purpose.

This part is intended to ensure that recipients do not engage in redistricting activities.

§ 1632.2 Definitions.

(a) *Advocating or opposing any plan* means any effort, whether by request or otherwise, even if of a neutral nature, to revise a legislative, judicial, or elective district at any level of government.

(b) *Recipient* means any grantee or contractor receiving funds made available by the Corporation under sections 1006(a)(1) or 1006(a)(3) of the LSC Act. For the purposes of this part, *recipient* includes subrecipient and employees of recipients and subrecipients.

(c) *Redistricting* means any effort, directly or indirectly, that is intended to or would have the effect of altering, revising, or reapportioning a legislative, judicial, or elective district at any level of government, including influencing the timing or manner of the taking of a census.

§ 1632.3 Prohibition.

(a) Neither the Corporation nor any recipient shall make available any funds, personnel, or equipment for use in advocating or opposing any plan or proposal, or representing any party, or participating in any other way in litigation, related to redistricting.

(b) This part does not prohibit any litigation brought by a recipient under the Voting Rights Act of 1965, as amended, 42 U.S.C. 1971 *et seq.*, provided such litigation does not involve redistricting.

§ 1632.4 Recipient policies.

Each recipient shall adopt written policies to implement the requirements of this part.

PART 1633—RESTRICTION ON REPRESENTATION IN CERTAIN EVICTION PROCEEDINGS

Sec.

1633.1 Purpose.

1633.2 Definitions.

1633.3 Prohibition.

1633.4 Recipient policies, procedures and recordkeeping.

AUTHORITY: 42 U.S.C. 2996e(a), 2996e(b)(1)(A), 2996f(a)(2)(C), 2996f(a)(3), 2996g(e); 110 Stat. 3009; 110 Stat. 1321 (1996).

SOURCE: 61 FR 63758, Dec. 2, 1996, unless otherwise noted.

§ 1633.1 Purpose.

This part is designed to ensure that in certain public housing eviction proceedings recipients refrain from defending persons charged with or convicted of illegal drug activities.

§ 1633.2 Definitions.

(a) *Controlled substance* has the meaning given that term in section 102 of the Controlled Substances Act (21 U.S.C. 802);

(b) *Public housing project* and *public housing agency* have the meanings

§ 1633.3

given those terms in section 3 of the United States Housing Act of 1937 (42 U.S.C. 1437a);

(c) *Charged with* means that a person is subject to a pending criminal proceeding instituted by a governmental entity with authority to initiate such proceeding against that person for engaging in illegal drug activity.

§ 1633.3 Prohibition.

Recipients are prohibited from defending any person in a proceeding to evict that person from a public housing project if:

(a) The person has been charged with or has been convicted of the illegal sale, distribution, or manufacture of a controlled substance, or possession of a controlled substance with the intent to sell or distribute; and

(b) The eviction proceeding is brought by a public housing agency on the basis that the illegal drug activity for which the person has been charged or for which the person has been convicted threatens the health or safety of other tenants residing in the public housing project or employees of the public housing agency.

§ 1633.4 Recipient policies, procedures and recordkeeping.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

PART 1634—COMPETITIVE BIDDING FOR GRANTS AND CONTRACTS

Sec.

- 1634.1 Purpose.
- 1634.2 Definitions.
- 1634.3 Competition for grants and contracts.
- 1634.4 Announcement of competition.
- 1634.5 Identification of qualified applicants for grants and contracts.
- 1634.6 Notice of intent to compete.
- 1634.7 Application process.
- 1634.8 Selection process.
- 1634.9 Selection criteria.
- 1634.10 Transition provisions.
- 1634.11 Replacement of recipient that does not complete grant term.
- 1634.12 Emergency procedures and waivers.

AUTHORITY: 42 U.S.C. 2996e(a)(1)(A); 2996f(a)(3).

45 CFR Ch. XVI (10–1–14 Edition)

SOURCE: 61 FR 14258, Apr. 1, 1996, unless otherwise noted.

§ 1634.1 Purpose.

This part is designed to improve the delivery of legal assistance to eligible clients through the use of a competitive system to award grants and contracts for the delivery of legal services. The purposes of such a competitive system are to:

(a) Encourage the effective and economical delivery of high quality legal services to eligible clients that is consistent with the Corporation's Performance Criteria and the American Bar Association's Standards for Providers of Civil Legal Services to the Poor through an integrated system of legal services providers;

(b) Provide opportunities for qualified attorneys and entities to compete for grants and contracts to deliver high quality legal services to eligible clients;

(c) Encourage ongoing improvement of performance by recipients in providing high quality legal services to eligible clients;

(d) Preserve local control over resource allocation and program priorities; and

(e) Minimize disruptions in the delivery of legal services to eligible clients within a service area during a transition to a new provider.

§ 1634.2 Definitions.

(a) *Qualified applicants* are those persons, groups or entities described in section 1634.5(a) of this part who are eligible to submit notices of intent to compete and applications to participate in a competitive bidding process as described in this part.

(b) *Review panel* means a group of individuals who are not Corporation staff but who are engaged by the Corporation to review applications and make recommendations regarding awards of grants or contracts for the delivery of legal assistance to eligible clients. A majority of review panel members shall be lawyers who are supportive of the purposes of the LSC Act and experienced in and knowledgeable about the delivery of legal assistance to low-income persons, and eligible clients or

Legal Services Corporation

§ 1634.4

representatives of low-income community groups. The remaining members of the review panel shall be persons who are supportive of the purposes of the LSC Act and have an interest in and knowledge of the delivery of quality legal services to the poor. No person may serve on a review panel for an applicant with whom the person has a financial interest or ethical conflict; nor may the person have been a board member of or employed by that applicant in the past five years.

(c) *Service area* is the area defined by the Corporation to be served by grants or contracts to be awarded on the basis of a competitive bidding process. A service area is defined geographically and may consist of all or part of the area served by a current recipient, or it may include an area larger than the area served by a current recipient.

(d) *Subpopulation of eligible clients* includes Native Americans and migrant farm workers and may include other groups of eligible clients that, because they have special legal problems or face special difficulties of access to legal services, might better be addressed by a separate delivery system to serve that client group effectively.

§ 1634.3 Competition for grants and contracts.

(a) After the effective date of this part, all grants and contracts for legal assistance awarded by the Corporation under Section 1006(a)(1)(A) of the LSC Act shall be subject to the competitive bidding process described in this part. No grant or contract for the delivery of legal assistance shall be awarded by the Corporation for any period after the effective date of this part, unless the recipient of that grant has been selected on the basis of the competitive bidding process described in this part.

(b) The Corporation shall determine the service areas to be covered by grants or contracts and shall determine whether the population to be served will consist of all eligible clients within the service area or a specific subpopulation of eligible clients within one or more service areas.

(c) The use of the competitive bidding process to award grant(s) or contract(s) shall not constitute a termination or denial of refunding of finan-

cial assistance to a current recipient pursuant to parts 1606 and 1625 of this chapter.

(d) Wherever possible, the Corporation shall award no more than one grant or contract to provide legal assistance to eligible clients or a subpopulation of eligible clients within a service area. The Corporation may award more than one grant or contract to provide legal assistance to eligible clients or a subpopulation of eligible clients within a service area only when the Corporation determines that it is necessary to award more than one such grant or contract in order to ensure that all eligible clients within the service area will have access to a full range of high quality legal services in accordance with the LSC Act or other applicable law.

(e) In no event may the Corporation award a grant or contract for a term longer than five years. The amount of funding provided annually under each such grant or contract is subject to changes in congressional appropriations or restrictions on the use of those funds by the Corporation. A reduction in a recipient's annual funding required as a result of a change in the law or a reduction in funding appropriated to the Corporation shall not be considered a termination or denial of refunding under parts 1606 or 1625 of this chapter.

§ 1634.4 Announcement of competition.

(a) The Corporation shall give public notice that it intends to award a grant or contract for a service area on the basis of a competitive bidding process, shall take appropriate steps to announce the availability of such a grant or contract in the periodicals of State and local bar associations, and shall publish a notice of the Request For Proposals (RFP) in at least one daily newspaper of general circulation in the area to be served under the grant or contract. In addition, the Corporation shall notify current recipients, other bar associations, and other interested groups within the service area of the availability of the grant or contract and shall conduct such other outreach

§ 1634.5

as the Corporation determines to be appropriate to ensure that interested parties are given an opportunity to participate in the competitive bidding process.

(b) The Corporation shall issue an RFP which shall include information regarding: who may apply, application procedures, the selection process, selection criteria, the service areas that will be the subject of the competitive bidding process, the amount of funding available for the service area, if known, applicable timetables and deadlines, and the LSC Act, regulations, guidelines and instructions and any other applicable federal law. The RFP may also include any other information that the Corporation determines to be appropriate.

(c) The Corporation shall make a copy of the RFP available to any person, group or entity that requests a copy in accordance with procedures established by the Corporation.

§ 1634.5 Identification of qualified applicants for grants and contracts.

(a) The following persons, groups and entities are qualified applicants who may submit a notice of intent to compete and an application to participate in the competitive bidding process:

- (1) Current recipients;
- (2) Other non-profit organizations that have as a purpose the furnishing of legal assistance to eligible clients;
- (3) Private attorneys, groups of attorneys or law firms (except that no private law firm that expends 50 percent or more of its resources and time litigating issues in the broad interests of a majority of the public may be awarded a grant or contract under the LSC Act);
- (4) State or local governments;
- (5) Substate regional planning and coordination agencies which are composed of substate areas and whose governing boards are controlled by locally elected officials.

(b) All persons, groups and entities listed in paragraph (a) of this section must have a governing or policy body consistent with the requirements of part 1607 of this chapter or other law that sets out requirements for recipients' governing bodies, unless such

45 CFR Ch. XVI (10-1-14 Edition)

governing body requirements are inconsistent with applicable law.

(c) Applications may be submitted jointly by more than one qualified applicant so long as the application delineates the respective roles and responsibilities of each qualified applicant.

§ 1634.6 Notice of intent to compete.

(a) In order to participate in the competitive bidding process, an applicant must submit a notice of intent to compete on or before the date designated by the Corporation in the RFP. The Corporation may extend the date if necessary to take account of special circumstances or to permit the Corporation to solicit additional notices of intent to compete.

(b) At the time of the filing of the notice of intent to compete, each applicant must provide the Corporation with the following information as well as any additional information that the Corporation determines is appropriate:

- (1) Names and resumes of principals and key staff;
- (2) Names and resumes of current and proposed governing board or policy body members and their appointing organizations;
- (3) Initial description of area proposed to be served by the applicant and the services to be provided.

§ 1634.7 Application process.

(a) The Corporation shall set a date for receipt of applications and shall announce the date in the RFP. The date shall afford applicants adequate opportunity, after filing the notice of intent to compete, to complete the application process. The Corporation may extend the application date if necessary to take account of special circumstances.

(b) The application shall be submitted in a form to be determined by the Corporation.

(c) A completed application shall include all of the information requested by the RFP. It may also include any additional information needed to fully address the selection criteria, and any other information requested by the Corporation. Incomplete applications will not be considered for awards by the Corporation.

Legal Services Corporation

§ 1634.9

(d) The Corporation shall establish a procedure to provide notification to applicants of receipt of the application.

§ 1634.8 Selection process.

(a) After receipt of all applications for a particular service area, Corporation staff shall:

(1) Review each application and any additional information that the Corporation has regarding each applicant, including for any applicant that is or includes a current or former recipient, past monitoring and compliance reports, performance evaluations and other pertinent records for the past six years;

(2) Request from an applicant and review any additional information that the Corporation determines is appropriate to evaluate the application fully;

(3) Conduct one or more on-site visits to an applicant if the Corporation determines that such visits are appropriate to evaluate the application fully;

(4) Summarize in writing information regarding the applicant that is not contained in the application if appropriate for the review process; and

(5) Convene a review panel unless there is only one applicant for a particular service area and the Corporation determines that use of a review panel is not appropriate. The review panel shall:

(i) Review the applications and the summaries prepared by the Corporation staff. The review panel may request other information identified by the Corporation as necessary to evaluate the applications fully; and

(ii) Make a written recommendation to the Corporation regarding the award of grants or contracts from the Corporation for a particular service area.

(6) After considering the recommendation made by the review panel, if a review panel was convened, make a staff recommendation to the President. The staff recommendation shall include the recommendation of the review panel and, if the staff recommendation differs from that of the review panel, an explanation of the basis for the difference in the recommendations.

(b) After reviewing the written recommendations, the President shall select the applicants to be awarded grants or contracts from the Corporation and the Corporation shall notify each applicant in writing of the President's decision regarding each applicant's application.

(c) In the event that there are no applicants for a service area or that the Corporation determines that no applicant meets the criteria and therefore determines not to award a grant or contract for a particular service area, the Corporation shall take all practical steps to ensure the continued provision of legal assistance in that service area. The Corporation shall have discretion to determine how legal assistance is to be provided to the service area, including, but not limited to, enlarging the service area of a neighboring recipient, putting a current recipient on month-to-month funding or entering into a short term, interim grant or contract with another qualified provider for the provision of legal assistance in the service area until the completion of a competitive bidding process within a reasonable period of time.

§ 1634.9 Selection criteria.

(a) The criteria to be used to select among qualified applicants shall include the following:

(1) Whether the applicant has a full understanding of the basic legal needs of the eligible clients in the area to be served;

(2) The quality, feasibility and cost-effectiveness of the applicant's legal services delivery and delivery approach in relation to the Corporation's Performance Criteria and the American Bar Association's Standards for Providers of Civil Legal Services to the Poor, as evidenced by, among other things, the applicant's experience with the delivery of the type of legal assistance contemplated under the proposal;

(3) Whether the applicant's governing or policy body meets or will meet all applicable requirements of the LSC Act, regulations, guidelines, instructions and any other requirements of law in accordance with a time schedule set out by the Corporation;

(4) The applicant's capacity to comply with all other applicable provisions

§ 1634.10

of the LSC Act, rules, regulations, guidelines and instructions, as well as with ethical requirements and any other requirements imposed by law. Evidence of the applicant's capacity to comply with this criterion may include, among other things, the applicant's compliance experience with the Corporation or other funding sources or regulatory agencies, including but not limited to Federal or State agencies, bar associations or foundations, courts, IOLTA programs, and private foundations;

(5) The reputations of the applicant's principals and key staff;

(6) The applicant's knowledge of the various components of the legal services delivery system in the State and its willingness to coordinate with the various components as appropriate to assure the availability of a full range of legal assistance, including:

(i) its capacity to cooperate with State and local bar associations, private attorneys and pro bono programs to increase the involvement of private attorneys in the delivery of legal assistance and the availability of pro bono legal services to eligible clients; and

(ii) its knowledge of and willingness to cooperate with other legal services providers, community groups, public interest organizations and human services providers in the service area;

(7) The applicant's capacity to develop and increase non-Corporation resources;

(8) The applicant's capacity to ensure continuity in client services and representation of eligible clients with pending matters; and

(9) The applicant does not have known or potential conflicts of interest, institutional or otherwise, with the client community and demonstrates a capacity to protect against such conflicts.

(b) In selecting recipients of awards for grants or contracts under this part, the Corporation shall not grant any preference to current or previous recipients of funds from the Corporation.

§ 1634.10 Transition provisions.

(a) When the competitive bidding process results in the award of a grant or contract to an applicant, other than

45 CFR Ch. XVI (10-1-14 Edition)

the current recipient, to serve the area currently served by that recipient, the Corporation—

(1) may provide, if the law permits, continued funding to the current recipient, for a period of time and at a level to be determined by the Corporation after consultation with the recipient, to ensure the prompt and orderly completion of or withdrawal from pending cases or matters or the transfer of such cases or matters to the new recipient or to other appropriate legal service providers in a manner consistent with the rules of ethics or professional responsibility for the jurisdiction in which those services are being provided; and

(2) shall ensure, after consultation with the recipient, the appropriate disposition of real and personal property purchased by the current recipient in whole or in part with Corporation funds consistent with the Corporation's policies.

(b) Awards of grants or contracts for legal assistance to any applicant that is not a current recipient may, in the Corporation's discretion, provide for incremental increases in funding up to the annualized level of the grant or contract award in order to ensure that the applicant has the capacity to utilize Corporation funds in an effective and economical manner.

§ 1634.11 Replacement of recipient that does not complete grant term.

In the event that a recipient is unable or unwilling to continue to perform the duties required under the terms of its grant or contract, the Corporation shall take all practical steps to ensure the continued provision of legal assistance in that service area. The Corporation shall have discretion to determine how legal assistance is to be provided to the service area, including, but not limited to, enlarging the service area of a neighboring recipient, putting a current recipient on month-to-month funding or entering into a short term, interim grant or contract with another qualified provider for the provision of legal assistance in the service area until the completion of a competitive bidding process within a reasonable period of time.

Legal Services Corporation

§ 1635.3

§ 1634.12 Emergency procedures and waivers.

The President of the Corporation may waive the requirements of §§ 1634.6 and 1634.8(a) (3) and (5) when necessary to comply with requirements imposed by law on the awards of grants and contracts for a particular fiscal year.

PART 1635—TIMEKEEPING REQUIREMENT

Sec.

1635.1 Purpose.

1635.2 Definitions.

1635.3 Timekeeping requirement.

1635.4 Administrative provisions.

AUTHORITY: 42 U.S.C. §§ 2996e(b)(1)(A), 2996g(a), 2996g(b), 2996g(e).

SOURCE: 65 FR 41882, July 7, 2000, unless otherwise noted.

§ 1635.1 Purpose.

This part is intended to improve accountability for the use of all funds of a recipient by:

(a) Assuring that allocations of expenditures of LSC funds pursuant to 45 CFR part 1630 are supported by accurate and contemporaneous records of the cases, matters, and supporting activities for which the funds have been expended;

(b) Enhancing the ability of the recipient to determine the cost of specific functions; and

(c) Increasing the information available to LSC for assuring recipient compliance with Federal law and LSC rules and regulations.

§ 1635.2 Definitions.

As used in this part—

(a) A *case* is a form of program service in which an attorney or paralegal of a recipient provides legal services to one or more specific clients, including, without limitation, providing representation in litigation, administrative proceedings, and negotiations, and such actions as advice, providing brief services and transactional assistance, and assistance with individual PAI cases.

(b) A *matter* is an action which contributes to the overall delivery of program services but does not involve direct legal advice to or legal representa-

tion of one or more specific clients. Examples of matters include both direct services, such as but not limited to, community education presentations, operating *pro se* clinics, providing information about the availability of legal assistance, and developing written materials explaining legal rights and responsibilities; and indirect services, such as training, continuing legal education, general supervision of program services, preparing and disseminating desk manuals, PAI recruitment, referral, intake when no case is undertaken, and tracking substantive law developments.

(c) *Restricted activities* means those activities that recipients may not undertake as set out in 45 CFR part 1610.

(d) A *supporting activity* is any action that is not a case or matter, including management in general, and fund-raising.

§ 1635.3 Timekeeping requirement.

(a) All expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities. The allocation of all expenditures must be carried out in accordance with 45 CFR part 1630.

(b) Time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter, or supporting activity.

(1) Time records must be created contemporaneously and account for time by date and in increments not greater than one-quarter of an hour which comprise all of the efforts of the attorneys and paralegals for which compensation is paid by the recipient.

(2) Each record of time spent must contain: for a case, a unique client name or case number; for matters or supporting activities, an identification of the category of action on which the time was spent.

(c) The timekeeping system must be able to aggregate time record information on both closed and pending cases by legal problem type.

(d) Recipients shall require any attorney or paralegal who works part-time for the recipient and part-time for an organization that engages in restricted activities to certify in writing that the attorney or paralegal has not

§ 1635.4

engaged in restricted activity during any time for which the attorney or paralegal was compensated by the recipient or has not used recipient resources for restricted activities. The certification requirement does not apply to a *de minimis* action related to a restricted activity. Actions consistent with the *de minimis* standard are those that meet all or most of the following criteria: actions that are of little substance; require little time; are not initiated by the part-time employee; and, for the most part, are unavoidable. Certifications shall be made on a quarterly basis and shall be made on a form determined by LSC.

§ 1635.4 Administrative provisions.

Time records required by this section shall be available for examination by auditors and representatives of LSC, and by any other person or entity statutorily entitled to access to such records. LSC shall not disclose any time record except to a Federal, State or local law enforcement official or to an official of an appropriate bar association for the purpose of enabling such bar association official to conduct an investigation of an alleged violation of the rules of professional conduct.

PART 1636—CLIENT IDENTITY AND STATEMENT OF FACTS

Sec.

1636.1 Purpose.

1636.2 Requirements.

1636.3 Access to written statements.

1636.4 Applicability.

1636.5 Recipient policies, procedures and recordkeeping.

AUTHORITY: Pub. L. 104-208, 110 Stat. 3009; Pub. L. 104-134, 110 Stat. 1321.

SOURCE: 62 FR 19420, Apr. 21, 1997, unless otherwise noted.

§ 1636.1 Purpose.

The purpose of this rule is to ensure that, when an LSC recipient files a complaint in a court of law or otherwise initiates or participates in litigation against a defendant or engages in pre-complaint settlement negotiations, the recipient identifies the plaintiff it represents to the defendant and ensures that the plaintiff has a colorable claim.

45 CFR Ch. XVI (10-1-14 Edition)

§ 1636.2 Requirements.

(a) When a recipient files a complaint in a court of law or otherwise initiates or participates in litigation against a defendant, or before a recipient engages in pre-complaint settlement negotiations with a prospective defendant on behalf of a client who has authorized it to file suit in the event that the settlement negotiations are unsuccessful, it shall:

(1) Identify each plaintiff it represents by name in any complaint it files, or in a separate notice provided to the defendant against whom the complaint is filed where disclosure in the complaint would be contrary to law or court rules or practice, and identify each plaintiff it represents to prospective defendants in pre-litigation settlement negotiations, unless a court of competent jurisdiction has entered an order protecting the client from such disclosure based on a finding, after notice and an opportunity for a hearing on the matter, of probable, serious harm to the plaintiff if the disclosure is not prevented; and

(2) Prepare a dated written statement signed by each plaintiff it represents, enumerating the particular facts supporting the complaint, insofar as they are known to the plaintiff when the statement is signed.

(b) The statement of facts must be written in English and, if necessary, in a language other than English that the plaintiff understands.

(c) In the event of an emergency, where the recipient reasonably believes that delay is likely to cause harm to a significant safety, property or liberty interest of the client, the recipient may proceed with the litigation or negotiation without a signed statement of facts, provided that the statement is prepared and signed as soon as possible thereafter.

§ 1636.3 Access to written statements.

(a) Written statements of facts prepared in accordance with this part are to be kept on file by the recipient and made available to the Corporation or to any Federal department or agency auditing or monitoring the activities of the recipient or to any auditor or monitor receiving Federal funds to audit or

Legal Services Corporation

§ 1638.2

monitor on behalf of a Federal department or agency or on behalf of the Corporation.

(b) This part does not give any person or party other than those listed in paragraph (a) of this section any right of access to the plaintiff's written statement of facts, either in the lawsuit or through any other procedure. Access to the statement of facts by such other persons or parties is governed by applicable law and the discovery rules of the court in which the action is brought.

§ 1636.4 Applicability.

This part applies to cases for which private attorneys are compensated by the recipient as well as to those cases initiated by the recipient's staff.

§ 1636.5 Recipient policies, procedures and recordkeeping.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

PART 1637—REPRESENTATION OF PRISONERS

Sec.

1637.1 Purpose.

1637.2 Definitions.

1637.3 Prohibition.

1637.4 Change in circumstances.

1637.5 Recipient policies, procedures and recordkeeping.

AUTHORITY: 42 U.S.C. 2996g(e); Pub. L. 104-208, 110 Stat. 3009; Pub. L. 104-134, 110 Stat. 1321.

SOURCE: 62 FR 19422, Apr. 21, 1997, unless otherwise noted.

§ 1637.1 Purpose.

This part is intended to ensure that recipients do not participate in any civil litigation on behalf of persons incarcerated in Federal, State or local prisons.

§ 1637.2 Definitions.

(a) *Incarcerated* means the involuntary physical restraint of a person who has been arrested for or convicted of a crime.

(b) *Federal, State or local prison* means any penal facility maintained under governmental authority.

§ 1637.3 Prohibition.

A recipient may not participate in any civil litigation on behalf of a person who is incarcerated in a Federal, State or local prison, whether as a plaintiff or as a defendant, nor may a recipient participate on behalf of such an incarcerated person in any administrative proceeding challenging the conditions of incarceration.

§ 1637.4 Change in circumstances.

If, to the knowledge of the recipient, a client becomes incarcerated after litigation has commenced, the recipient must use its best efforts to withdraw promptly from the litigation, unless the period of incarceration is anticipated to be brief and the litigation is likely to continue beyond the period of incarceration.

§ 1637.5 Recipient policies, procedures and recordkeeping.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

PART 1638—RESTRICTION ON SOLICITATION

Sec.

1638.1 Purpose.

1638.2 Definitions.

1638.3 Prohibition.

1638.4 Permissible activities.

1638.5 Recipient policies.

AUTHORITY: Sec. 504(a)(18), Pub. L. 104-208, 110 Stat. 3009; Pub. L. 104-134, 110 Stat. 1321.

SOURCE: 62 FR 19424, Apr. 21, 1997, unless otherwise noted.

§ 1638.1 Purpose.

This part is designed to ensure that recipients and their employees do not solicit clients.

§ 1638.2 Definitions.

(a) *In-person* means a face-to-face encounter or a personal encounter via other means of communication such as a personal letter or telephone call.

§ 1638.3

(b) *Unsolicited advice* means advice to obtain counsel or take legal action given by a recipient or its employee to an individual who did not seek the advice and with whom the recipient does not have an attorney-client relationship.

§ 1638.3 Prohibition.

(a) Recipients and their employees are prohibited from representing a client as a result of in-person unsolicited advice.

(b) Recipients and their employees are also prohibited from referring to other recipients individuals to whom they have given in-person unsolicited advice.

§ 1638.4 Permissible activities.

(a) This part does not prohibit recipients or their employees from providing information regarding legal rights and responsibilities or providing information regarding the recipient's services and intake procedures through community legal education activities such as outreach, public service announcements, maintaining an ongoing presence in a courthouse to provide advice at the invitation of the court, disseminating community legal education publications, and giving presentations to groups that request them.

(b) A recipient may represent an otherwise eligible individual seeking legal assistance from the recipient as a result of information provided as described in §1638.4(a), provided that the request has not resulted from in-person unsolicited advice.

(c) This part does not prohibit representation or referral of clients by recipients pursuant to a statutory or private ombudsman program that provides investigatory and referral services and/or legal assistance on behalf of persons who are unable to seek assistance on their own, including those who are institutionalized or are physically or mentally disabled.

§ 1638.5 Recipient policies.

Each recipient shall adopt written policies to implement the requirements of this part.

45 CFR Ch. XVI (10–1–14 Edition)

PART 1639—WELFARE REFORM

Sec.

1639.1 Purpose.

1639.2 Definitions.

1639.3 Prohibition.

1639.4 Permissible representation of eligible clients.

1639.5 Exceptions for public rulemaking and responding to requests with non-LSC funds.

1639.6 Recipient policies and procedures.

AUTHORITY: 42 U.S.C. 2996g(e); Pub. L. 104–208, 110 Stat. 3009; Pub. L. 104–134, 110 Stat. 1321.

SOURCE: 62 FR 30766, June 5, 1997, unless otherwise noted.

§ 1639.1 Purpose.

The purpose of this rule is to ensure that LSC recipients do not initiate litigation involving, or challenge or participate in, efforts to reform a Federal or State welfare system. The rule also clarifies when recipients may engage in representation on behalf of an individual client seeking specific relief from a welfare agency and under what circumstances recipients may use funds from sources other than the Corporation to comment on public rulemaking or respond to requests from legislative or administrative officials involving a reform of a Federal or State welfare system.

§ 1639.2 Definitions.

An effort to reform a Federal or State welfare system includes all of the provisions, except for the Child Support Enforcement provisions of Title III, of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Personal Responsibility Act), 110 Stat. 2105 (1996), and subsequent legislation enacted by Congress or the States to implement, replace or modify key components of the provisions of the Personal Responsibility Act or by States to replace or modify key components of their General Assistance or similar means-tested programs conducted by States or by counties with State funding or under State mandates.

[67 FR 19343, Apr. 19, 2002]

Legal Services Corporation

§ 1640.2

§ 1639.3 Prohibition.

Except as provided in §§1639.4 and 1639.5, recipients may not initiate legal representation, or participate in any other way in litigation, lobbying or rulemaking, involving an effort to reform a Federal or State welfare system. Prohibited activities include participation in:

(a) Litigation challenging laws or regulations enacted as part of an effort to reform a Federal or State welfare system.

(b) Rulemaking involving proposals that are being considered to implement an effort to reform a Federal or State welfare system.

(c) Lobbying before legislative or administrative bodies undertaken directly or through grassroots efforts involving pending or proposed legislation that is part of an effort to reform a Federal or State welfare system.

§ 1639.4 Permissible representation of eligible clients.

Recipients may represent an individual eligible client who is seeking specific relief from a welfare agency.

[62 FR 30766, June 5, 1997, as amended at 67 FR 19343, Apr. 19, 2002]

§ 1639.5 Exceptions for public rulemaking and responding to requests with non-LSC funds.

Consistent with the provisions of 45 CFR 1612.6 (a) through (e), recipients may use non-LSC funds to comment in a public rulemaking proceeding or respond to a written request for information or testimony from a Federal, State or local agency, legislative body, or committee, or a member thereof, regarding an effort to reform a Federal or State welfare system.

§ 1639.6 Recipient policies and procedures.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part.

PART 1640—APPLICATION OF FEDERAL LAW TO LSC RECIPIENTS

Sec.
1640.1 Purpose.
1640.2 Definitions.
1640.3 Contractual agreement.

1640.4 Violation of agreement.

AUTHORITY: Sec. 504(a)(19), Pub. L. 104-208, 110 Stat. 3009; Pub. L. 104-134, 110 Stat. 1321.

SOURCE: 62 FR 19426, Apr. 21, 1997, unless otherwise noted.

§ 1640.1 Purpose.

The purpose of this part is to ensure that recipients use their LSC funds in accordance with Federal law related to the proper use of Federal funds. This part also identifies the Federal laws which apply, and it provides notice of the consequences to a recipient of a violation of such Federal laws by a recipient, its employees or board members.

§ 1640.2 Definitions.

(a)(1) *Federal law relating to the proper use of Federal funds* means:

- (i) 18 U.S.C. 201 (Bribery of Public Officials and Witnesses);
- (ii) 18 U.S.C. 286 (Conspiracy to Defraud the Government With Respect to Claims);
- (iii) 18 U.S.C. 287 (False, Fictitious or Fraudulent Claims);
- (iv) 18 U.S.C. 371 (Conspiracy to Commit Offense or Defraud the United States);
- (v) 18 U.S.C. 641 (Public Money, Property or Records);
- (vi) 18 U.S.C. 1001 (Statements or Entries Generally);
- (vii) 18 U.S.C. 1002 (Possession of False Papers to Defraud the United States);
- (viii) 18 U.S.C. 1516 (Obstruction of Federal Audit);
- (ix) 31 U.S.C. 3729 (False Claims);
- (x) 31 U.S.C. 3730 (Civil Actions for False Claims), except that actions that are authorized by 31 U.S.C. 3730(b) to be brought by persons may not be brought against the Corporation, any recipient, subrecipient, grantee, or contractor of the Corporation, or any employee thereof;
- (xi) 31 U.S.C. 3731 (False Claims Procedure);
- (xii) 31 U.S.C. 3732 (False Claims Jurisdiction); and
- (xiii) 31 U.S.C. 3733 (Civil Investigative Demands).

(2) For the purposes of the laws listed in paragraph (a)(1) of this section, LSC shall be considered a Federal agency and a recipient's LSC funds shall be

§ 1640.3

considered to be Federal funds provided by grant or contract.

(b) A *violation of the agreement* means:

(1) That the recipient has been convicted of, or judgment has been entered against the recipient for, a violation of any of the laws listed in paragraph (a)(1) of this section, with respect to its LSC grant or contract, by the court having jurisdiction of the matter, and any appeals of the conviction or judgment have been exhausted or the time for the appeal has expired; or

(2) An employee or board member of the recipient has been convicted of, or judgment has been entered against the employee or board member for, a violation of any of the laws listed in paragraph (a)(1) of this section with respect to a recipient's grant or contract with LSC by the court having jurisdiction of the matter, and any appeals of the conviction or judgment have been exhausted or the time for appeal has expired, and the Corporation finds that the recipient has knowingly or through gross negligence allowed the employee or board member to engage in such activities.

§ 1640.3 Contractual agreement.

As a condition of receiving LSC funds, a recipient must enter into a written contractual agreement with the Corporation that, with respect to its LSC funds, it will be subject to the Federal laws listed in § 1640.2(a)(1). The agreement shall include a statement that all of the recipient's employees and board members have been informed of such Federal law and of the consequences of a violation of such law, both to the recipient and to themselves as individuals.

§ 1640.4 Violation of agreement.

(a) A violation of the agreement under § 1640.2(b)(1) shall result in the recipient's LSC grant or contract being terminated by the Corporation without need for a termination hearing. During the pendency of any appeal of a conviction or judgment, the Corporation may take such steps as it determines necessary to safeguard its funds.

(b) A violation of the agreement under § 1640.2(b)(2) shall result in the recipient's LSC grant or contract being terminated by the Corporation. Prior

45 CFR Ch. XVI (10–1–14 Edition)

to such termination, the Corporation shall provide notice and an opportunity to be heard for the sole purpose of determining whether the recipient knowingly or through gross negligence allowed the employee or board member to engage in the activities which led to the conviction or judgment. During the pendency of any appeal of a conviction or judgment or during the pendency of a hearing, the Corporation may take such steps as it determines necessary to safeguard its funds.

PART 1641—DEBARMENT, SUSPENSION AND REMOVAL OF RECIPIENT AUDITORS

Subpart A—General

Sec.

- 1641.1 Purpose/Applicability.
- 1641.2 Definitions.
- 1641.3 Scope of debarment, suspension and removal.
- 1641.4 Duration of debarment, suspension and removal.

Subpart B—Debarment

- 1641.5 Debarment.
- 1641.6 Procedures for debarment.
- 1641.7 Causes for debarment.
- 1641.8 Notice of proposed debarment.
- 1641.9 Response to notice of proposed debarment.
- 1641.10 Additional proceedings as to disputed material facts.

Subpart C—Suspension

- 1641.11 Suspension.
- 1641.12 Procedures for suspension.
- 1641.13 Causes for suspension.
- 1641.14 Notice of proposed suspension.
- 1641.15 Response to notice of proposed suspension.

Subpart D—Removal

- 1641.16 Removal.
- 1641.17 Procedures for removal.
- 1641.18 Causes for removal.
- 1641.19 Notice of proposed removal.
- 1641.20 Response to notice of proposed removal.
- 1641.21 Additional proceedings as to disputed material facts.

Subpart E—Decisions

- 1641.22 Decisions of debarment official.
- 1641.23 Exceptions to debarment, suspension and removal.

Legal Services Corporation

§ 1641.2

1641.24 Appeal and reconsideration of debarring official decisions.

AUTHORITY: 42 U.S.C. 2996e(g); Pub. L. 105-277.

SOURCE: 64 FR 67507, Dec. 2, 1999, unless otherwise noted.

Subpart A—General

§ 1641.1 Purpose/Applicability.

In order to assist in ensuring that recipients receive acceptable audits, this part sets out the authority of the Legal Services Corporation (“LSC”) Office of Inspector General (“OIG”) to debar, suspend or remove independent public accountants (“IPAs”) from performing audit services for recipients. This rule informs IPAs of their rights to notice and an opportunity to be heard on actions involving debarment, suspension or removal, and the standards upon which such actions will be taken. This part applies to IPAs performing audit services for recipients, subrecipients or other entities which receive LSC funds and are required to have an audit performed in accordance with guidance promulgated by the OIG.

§ 1641.2 Definitions.

Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.

Audit services means the annual financial statement audit of a recipient, including an audit of the recipient’s financial statements, systems of internal control, and compliance with laws and regulations.

Contract means an agreement between a recipient and an IPA for an IPA to provide audit services to the recipient.

Conviction means a judgment or conviction of a criminal offense by any court, whether entered upon a verdict or plea, including but not limited to, pleas of *nolo contendere*.

Debarment means a decision by the debarring official to prohibit an IPA from soliciting or entering into new contracts to perform audit services for recipient(s) based upon a finding by a preponderance of the evidence that any of the causes for debarment set out in §1641.7 exist. Debarment may cover an

IPA’s contracts with all recipients or with one or more specific recipients.

Debarring official is the official responsible for debarment, suspension or removal actions under this part. The OIG legal counsel is the debarring official. In the absence of an OIG legal counsel or in the discretion of the Inspector General, the debarring official shall be the OIG staff person or other individual designated by the Inspector General.

Indictment means a charge by a grand jury that the person named therein has committed a criminal offense. An information, presentment, or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

IPA means an independent public accountant or firm of accountants.

Knowingly means that an act was done voluntarily and intentionally and not because of mistake or accident.

Material fact means one which is necessary to determine the outcome of an issue or case and without which the case could not be supported.

Person means an individual or a firm, partnership, corporation, association, or other legal entity.

Preponderance of the evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Removal means a decision by the debarring official to prohibit an IPA from performing audit services in subsequent years of an existing contract with one or more specific recipients based upon a finding by a preponderance of the evidence that any of the causes set out in §1641.18 exist.

Suspension means a decision by the debarring official, in anticipation of a debarment, to prohibit an IPA from soliciting or entering into new contracts to perform audit services for recipient(s) based upon a finding of adequate evidence that any of the causes referred to in §1641.13 exist. Suspension may preclude an IPA from soliciting or entering into new contracts with all recipients or with one or more specific recipients.

§ 1641.3

45 CFR Ch. XVI (10–1–14 Edition)

§ 1641.3 Scope of debarment, suspension and removal.

An IPA may be debarred, suspended or removed under this part only if the IPA is specifically named and given notice of the proposed action and an opportunity to respond in accordance with this part.

(a) *Actions against individual IPAs.* Debarment, suspension or removal of an individual IPA, debars, suspends or removes that individual from performing audit services as an individual or as an employee, independent contractor, agent or other representative of an IPA firm.

(b) *Actions against IPA firms.* (1) Debarment, suspension or removal shall affect only those divisions or other organizational elements materially involved in the relevant engagement and as to which there is cause to debar, suspend or remove.

(2) The debarment, suspension or removal action contemplated in paragraph (b)(1) of this section may include any firm that is an affiliate, subcontractor, joint venturer, agent or representative of the IPA firm only if such firm was materially involved in the relevant engagement and is specifically named and given notice of the proposed action and an opportunity to respond in accordance with this part.

(3) The debarment, suspension or removal action contemplated in paragraph (b)(1) of this section may include an individual officer, director, or partner responsible for the engagement, or an individual employee, independent contractor, agent, representative or other individual associated with an IPA firm only if such individual is specifically named and given notice of the proposed action and an opportunity to respond in accordance with this part.

§ 1641.4 Duration of debarment, suspension and removal.

A debarment, suspension or removal is effective as set out in the debarring official's decision to debar, suspend or remove, issued pursuant to § 1641.22.

(a) *Debarment.* (1) Debarment generally should not exceed three years, but may be for a shorter period based on a consideration of the evidence presented by the IPA. Debarment may ex-

ceed three years in extraordinary circumstances.

(2) If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(3) The debarring official may extend an existing debarment for an additional period if the debarring official determines, based on additional facts not previously in the record, that an extension is necessary to protect LSC funds. The standards and procedures in this part shall be applied in any proceeding to extend a debarment.

(b) *Suspension.* (1) The debarring official may determine that a cause for suspension exists, but that an investigation or other legal or debarment proceeding should be completed before proceeding to a debarment. Suspension shall be for a temporary period pending the completion of an investigation or other legal or debarment proceedings, including a proceeding conducted by the OIG, a law enforcement or other government agency, an investigative or audit official from another OIG, a court, or a state licensing body or other organization with authority over IPAs.

(2) If debarment proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an official or organization conducting a proceeding referred to in paragraph (b)(1) of this section requests its extension in writing. In such cases, the suspension may be extended up to an additional six months. In no event may a suspension be imposed for more than 18 months, unless debarment proceedings have been initiated within that period.

(3) The OIG shall notify the appropriate official or organization conducting a proceeding referred to in paragraph (b)(1) of this section, if any, of the suspension within 10 days of its implementation, and shall notify such official or organization of an impending termination of a suspension at least 30 days before the 12-month period expires to allow an opportunity to request an extension.

(4) The limit on the duration of a suspension in paragraph (b)(2) of this section may be waived by the affected IPA.

(c) *Removal.* Removal shall be effective for the years remaining on the existing contract(s) between the IPA and the recipient(s).

Subpart B—Debarment

§ 1641.5 Debarment.

(a) IPAs debarred from providing audit services for all recipients are prohibited from soliciting or entering into any new contracts for audit services with recipients for the duration of the specified period of debarment. Recipients shall not knowingly award contracts to, extend or modify existing contracts with, or solicit proposals from, such IPAs. Debarred IPAs also are prohibited from providing audit services to recipients as agents or representatives of other IPAs.

(b) IPAs debarred from providing audit services for one or more specific recipient(s) are prohibited from soliciting or entering into any new contracts for audit services with such recipient(s) for the duration of the period of debarment as determined pursuant to this part. The affected recipient(s) shall not knowingly award contracts to, extend or modify existing contracts with, or solicit proposals from, such IPAs. Debarred IPAs also are prohibited from providing audit services to the affected recipient(s) as agents or representatives of other IPAs, and are required to provide prior written notice to the debarring official before providing such services to other recipients. Debarred IPAs also must provide prior written notice of the debarment to any recipient for which the IPA provides audit services.

§ 1641.6 Procedures for debarment.

Before debarring an IPA, the OIG shall provide the IPA with a hearing in accordance with the procedures set out in §§ 1641.7 through 1641.9. Such hearing shall be held entirely by written submissions, except:

(a) Additional proceedings shall be held under § 1641.10 if the debarring official finds there is a genuine dispute of material fact; and/or

(b) A meeting may be held under § 1641.9(c).

§ 1641.7 Causes for debarment.

The debarring official may debar an IPA from performing audit services in accordance with the procedures set forth in this part upon a finding by a preponderance of the evidence that:

(a) The IPA has failed significantly to comply with government auditing standards established by the Comptroller General of the United States, generally accepted auditing standards and/or OIG audit guidance as stated in the OIG Audit Guide for Recipients and Auditors, including the Compliance Supplement for Audits of LSC Recipients, and in OIG Audit Bulletins;

(b) The IPA is currently debarred from contracting with any Federal agency or entity receiving Federal funds, including when the IPA has stipulated to such debarment;

(c) The IPA's license to practice accounting has been revoked, terminated or suspended by a state licensing body or other organization with authority over IPAs;

(d) The IPA has been convicted of any offense indicating a breach of trust, dishonesty or lack of integrity, or conspiracy to commit such an offense, and the conviction is final; or

(e) The IPA has been found subject to a civil judgment for any action indicating a breach of trust, dishonesty or lack of integrity, or conspiracy to take such action, and the judgment is final.

§ 1641.8 Notice of proposed debarment.

(a) Before debarring an IPA, the OIG shall send the IPA written notice of the proposed debarment. The notice shall be sent in a manner that provides evidence of its receipt and shall:

(1) State that debarment is being considered;

(2) Identify the reasons for the proposed debarment sufficient to put the IPA on notice of the conduct or transaction(s) upon which a debarment proceeding is based;

(3) Identify the regulatory provisions governing the debarment proceeding; and

(4) State that debarment may be for a period of up to three years or longer under extraordinary circumstances. If

§ 1641.9

the OIG has determined that extraordinary circumstances warranting debarment in excess of three years may exist, the notice shall so state.

(b) A copy of the notice also shall be sent to the affected recipient(s), if any, which may comment on the proposed action in the time frame set out in § 1641.9.

§ 1641.9 Response to notice of proposed debarment.

(a) The IPA shall have 30 days from receipt of the notice within which to respond.

(b) The response shall be in writing and may include information and argument in opposition to the proposed debarment, including any additional specific information pertaining to the possible causes for debarment, and information and argument in mitigation of the proposed period of debarment.

(c) The response may request a meeting with the debarring official to permit the IPA to discuss issues of fact or law relating to the proposed debarment, or to otherwise resolve the pending matters. Any such meeting shall take the form that the debarring official deems appropriate and shall be held within 20 days of the response. If the IPA requests an in person meeting, it shall be held at LSC headquarters.

(d) Failure to respond to the notice shall be deemed an admission of the existence of the cause(s) for debarment set forth in the notice and an acceptance of the period of debarment. In such circumstances, without further proceedings, the debarring official may enter a final decision stating the period of debarment.

§ 1641.10 Additional proceedings as to disputed material facts.

(a) In actions not based upon a conviction or civil judgment under § 1641.7 (d) or (e), if the debarring official finds that the IPA's submission raises a genuine dispute of material fact, the IPA shall be afforded an opportunity to appear (with counsel, if desired), submit documentary evidence, present witnesses, and confront any witnesses the OIG presents. If the debarring official finds that the IPA's submission does not raise a genuine issue of material fact, additional proceedings will not be

45 CFR Ch. XVI (10–1–14 Edition)

provided. In such case, the hearing shall be held entirely by written submissions, except that a meeting may be held under § 1641.9(c).

(b) If the debarring official determines additional proceedings to be warranted, OIG shall notify the IPA. Such notice shall include notice of the procedures under which such proceedings shall be conducted.

(c) A transcribed record of any additional proceedings shall be prepared and a copy shall be made available to the IPA without cost.

(d) The debarring official may refer disputed material facts to a fact finder, who need not be a member of the OIG staff, for fact finding, analysis and recommendation.

Subpart C—Suspension

§ 1641.11 Suspension.

(a) IPAs suspended from providing audit services for all recipients are prohibited from soliciting or entering into any new contracts for audit services with recipients for the duration of the suspension. Recipients shall not knowingly award contracts to, extend or modify existing contracts with, or solicit proposals from, such IPAs. Suspended IPAs also are prohibited from providing audit services to recipients as agents or representatives of other IPAs.

(b) IPAs suspended from providing audit services for one or more specific recipient(s) are prohibited from soliciting or entering into any new contracts for audit services with such recipient(s) for the duration of the period of suspension as determined pursuant to this part. The affected recipient(s) shall not knowingly award contracts to, extend or modify existing contracts with, or solicit proposals from, such IPAs. Suspended IPAs also are prohibited from providing audit services to the affected recipient(s) as agents or representatives of other IPAs, and are required to provide prior written notice to the debarring official before providing such services to other recipients. Suspended IPAs also must provide prior written notice of the suspension to any recipient for which the IPA provides audit services.

Legal Services Corporation

§ 1641.16

§ 1641.12 Procedures for suspension.

Before suspending an IPA, the OIG shall provide the IPA with a show cause hearing in accordance with the procedures set out in §§1641.13 through 1641.15. Such hearing shall be held entirely by written submissions, except that a meeting may be held under §1641.15(c).

§ 1641.13 Causes for suspension.

The debaring official may suspend an IPA in accordance with the procedures set forth in this part upon adequate evidence that:

(a) A cause for debarment under §1641.7 may exist;

(b) The IPA has been indicted for or convicted of any offense described in §1641.7;

(c) The IPA has been found subject to a civil judgment described in §1641.7(e), whether the judgment is final or not.

(d) The IPA has been suspended from contracting with a Federal agency or entity receiving Federal funds including when the IPA has stipulated to the suspension.

§ 1641.14 Notice of proposed suspension.

(a) Before suspending an IPA, OIG shall send it written notice of cause to suspend. Such notice shall:

(1) Include a directive to show cause, signed by the debaring official, which shall inform the IPA that unless the IPA responds within 10 days as provided in §1641.15, a suspension will be imposed;

(2) Identify the reasons for the proposed suspension sufficient to put the IPA on notice of the conduct or transaction(s) upon which a suspension proceeding is based;

(3) Identify the regulatory provisions governing the suspension proceeding; and

(4) State that, if imposed, the suspension shall be for a temporary period pending the completion of an investigation or other legal or debarment proceeding.

(b) A copy of the notice also shall be sent to the affected recipient(s), if any, who may comment on the proposed action in the time frame set out in §1641.15.

§ 1641.15 Response to notice of proposed suspension.

(a) The IPA shall have 10 days from receipt of the notice within which to respond.

(b) The response shall be in writing and may include information and argument in opposition to the proposed suspension, including any additional specific information pertaining to the possible causes for suspension, and information and argument in mitigation of the proposed period of suspension.

(c) The response may request a meeting with the OIG official identified in the notice to permit the IPA to discuss issues of fact or law relating to the proposed suspension, or to otherwise resolve the pending matters.

(1) Any such meeting shall take such form as the debaring official deems appropriate and shall be held within 10 days of the response.

(2) No meeting will be held if a law enforcement official, an investigative or audit official from another OIG, a state licensing body or other organization with authority over IPAs, or a governmental agency has advised in writing that the substantial interest of a governmental unit would be prejudiced by such a meeting and the debaring official determines that the suspension is based on the same facts as the pending legal proceedings referenced by the law enforcement official.

(d) Failure to respond to the notice shall be deemed an admission of the existence of the cause(s) for suspension set forth in the notice and an acceptance of the period of suspension. In such circumstances, the OIG may proceed to a final decision without further proceedings.

Subpart D—Removal

§ 1641.16 Removal.

Removed IPAs are prohibited from performing audit services in subsequent years under an existing contract(s) with one or more specific recipients. The affected recipient(s) shall not extend existing contracts with such IPAs. Removed IPAs also are prohibited from providing audit services to the affected recipient(s) as agents or representatives of other IPAs, and are

§ 1641.17

required to provide prior written notice to the debarring official before providing such services to other recipients. Removed IPAs also must provide prior written notice of the removal to any such recipient.

§ 1641.17 Procedures for removal.

(a) Before removing an IPA, the OIG shall provide the IPA with a hearing in accordance with the procedures set out in §§ 1641.18 through 1641.21. Such hearing shall be held entirely by written submissions, except:

(1) Additional proceedings shall be held under § 1641.21 if the debarring official finds there is a genuine dispute of material fact; and/or

(2) A meeting may be held under § 1641.20(c).

(b) A Notice of Proposed Removal normally will be accompanied by a Notice of Proposed Debarment, and the proceedings may be consolidated.

§ 1641.18 Causes for removal.

The debarring official may remove an IPA from performing audit services in accordance with the procedures set forth in this part upon a finding by a preponderance of the evidence that:

(a) The IPA has failed significantly to comply with government auditing standards established by the Comptroller General of the United States, generally accepted auditing standards and/or OIG audit guidance as stated in the OIG Audit Guide for Recipients and Auditors, including the Compliance Supplement for Audits of LSC Recipients, and in OIG Audit Bulletins;

(b) The IPA is currently debarred from contracting with any Federal agency or entity receiving Federal funds, including when the IPA has stipulated to such debarment;

(c) The IPA's license to practice accounting has been revoked, terminated or suspended by a state licensing body or other organization with authority over IPAs;

(d) The IPA has been convicted of any offense indicating a breach of trust, dishonesty or lack of integrity, or conspiracy to commit such an offense, and the conviction is final; or

(e) The IPA has been found subject to a civil judgment for any action indicating a breach of trust, dishonesty or

45 CFR Ch. XVI (10–1–14 Edition)

lack of integrity, or conspiracy to take such action, and the judgment is final.

§ 1641.19 Notice of proposed removal.

(a) Before removing an IPA, the OIG shall send the IPA written notice of the proposed removal. The notice shall be sent in a manner that provides evidence of its receipt and shall:

(1) State that removal is being considered;

(2) Identify the reasons for the proposed removal sufficient to put the IPA on notice of the conduct or transaction(s) upon which a removal proceeding is based;

(3) Identify the regulatory provisions governing the removal proceeding; and

(4) State that removal shall be for the years remaining on the existing contract(s) between the IPA and the recipient(s).

(b) A copy of the notice also shall be sent to the affected recipient(s), if any, which may comment on the proposed action in the time frame set out in § 1641.20.

§ 1641.20 Response to notice of proposed removal.

(a) The IPA shall have 30 days from receipt of the notice within which to respond.

(b) The response shall be in writing and may include information and argument in opposition to the proposed removal, including any additional specific information pertaining to the possible causes for removal.

(c) The response may request a meeting with the debarring official to permit the IPA to discuss issues of fact or law relating to the proposed removal, or to otherwise resolve the pending matters. Any such meeting shall take the form that the debarring official deems appropriate and shall be held within 20 days of the response. If the IPA requests an in person meeting, it shall be held at LSC headquarters.

(d) Failure to respond to the notice shall be deemed an admission of the existence of the cause(s) for removal set forth in the notice and an acceptance of the removal. In such circumstances, without further proceedings, the debarring official may enter a final decision removing the IPA.

§ 1641.21 Additional proceedings as to disputed material facts.

(a) In actions not based upon a conviction or civil judgment under § 1641.18(d) or (e), if the debarring official finds that the IPA's submission raises a genuine dispute of material fact, the IPA shall be afforded an opportunity to appear (with counsel, if desired), submit documentary evidence, present witnesses, and confront any witnesses the OIG presents. If the debarring official finds that the IPA's submission does not raise a genuine issue of material fact, additional proceedings will not be provided. In such case, the hearing shall be held entirely by written submissions, except that a meeting may be held under § 1641.20(c).

(b) If the debarring official determines additional proceedings to be warranted, OIG shall notify the IPA. Such notice shall include notice of the procedures under which such proceedings shall be conducted.

(c) A transcribed record of any additional proceedings shall be prepared and a copy shall be made available to the IPA without cost.

(d) The debarring official may refer disputed material facts to a fact finder, who need not be a member of the OIG staff, for fact finding, analysis and recommendation.

Subpart E—Decisions**§ 1641.22 Decisions of debarring official.**

(a) *Standard of proof.* (1) A debarment or removal must be based on a finding that the cause or causes for debarment or removal are established by a preponderance of the evidence in the administrative record of the case.

(2) A suspension must be based on a finding that the cause or causes are established by adequate evidence in the administrative record of the case.

(b) The administrative record consists of any information, reports, documents or other evidence identified and relied upon in the Notice of Proposed Debarment, the Notice of Proposed Suspension, or the Notice of Proposed Removal, together with any relevant material contained in the IPA's response or submitted by an affected recipient. In the case of debarment or re-

moval, when additional proceedings are necessary to determine disputed material facts, the administrative record also shall consist of any relevant material submitted or presented at such proceedings.

(c) Failure of the OIG to meet a time requirement of this part does not preclude the OIG from debarring, suspending or removing an IPA. In extraordinary circumstances, the OIG may grant an IPA an extension of the time requirements set out in this part.

(d) *Notice of decisions.* IPAs shall be given prompt notice of the debarring official's decision. A copy of the decision also will be sent to the affected recipient. If the debarring official debar, suspends or removes an IPA, the decision shall:

(1) Set forth the finding(s) upon which the decision is based;

(2) Set forth the effect of the debarment, suspension or removal action and the effective dates of the action;

(3) Refer the IPA to its procedural rights of appeal and reconsideration under § 1641.24; and

(4) Inform the IPA that a copy of the debarring official's decision will be a public document and the fact of debarment, suspension or removal will be a matter of public record.

(e) If the debarring official decides that a debarment, suspension, or removal is not warranted, the Notice may be withdrawn or the proceeding may be otherwise terminated.

(f) If the debarring official deems it appropriate, the debarring official may, at any time, settle by agreement with the IPA a debarment, suspension, or removal action. Such a negotiated settlement may include the imposition of appropriate conditions on the IPA.

§ 1641.23 Exceptions to debarment, suspension and removal.

Exceptions to the effects of debarment, suspension or removal may be available in unique circumstances, when there are compelling reasons to use a particular IPA for a specific task. Requests for such exceptions may be submitted only by the recipient requiring audit services. The Inspector General may except a contract from the effects of debarment, suspension or removal upon a written determination

§ 1641.24

that a compelling reason exists for using the IPA in the particular instance.

§ 1641.24 Appeal and reconsideration of debarring official decisions.

(a) *Appeal and reconsideration generally.* A debarred, suspended or removed IPA may submit the debarring official's decision for appeal or reconsideration in accordance with this section. Within 60 days, IPAs shall be given notice of decisions on appeal and reconsideration. The relief, if any, granted upon appeal or reconsideration shall be limited to the relief stated in the decision on the appeal or reconsideration.

(b) *Appeal.* (1) A debarred, suspended or removed IPA may appeal the decision to the Inspector General, who may uphold, reverse or modify the debarring official's decision.

(2) The appeal shall be filed in writing:

(i) By a debarred or removed IPA, within 30 days of receipt of the decision;

(ii) By a suspended IPA, within 15 days of receipt of the decision.

(3) The Inspector General, at his or her discretion and after determining that a compelling reason exists, may stay the effect of the debarment, suspension or removal pending conclusion of his or her review of the matter.

(c) *Reconsideration.* (1) A debarred, suspended or removed IPA may submit a request to the debarring official to reconsider the debarment, suspension or removal decision, reduce the period of debarment or removal, or terminate the suspension.

(2) Such requests shall be in writing and supported by documentation that the requested action is justified by:

(i) In the case of suspension, reversal of the conviction or civil judgment upon which the suspension was based;

(ii) Newly discovered material evidence;

(iii) Bona fide change in ownership or management;

(iv) Elimination of other causes for which the debarment, suspension or removal was imposed; or

(v) Other reasons the debarring official deems appropriate.

45 CFR Ch. XVI (10–1–14 Edition)

(3) A request for reconsideration of a suspension which was based a conviction, civil judgment, or sanction that has been reversed may be filed at any time.

(4) Requests for reconsideration based on other grounds may only be filed during the period commencing 60 days after the debarring official's decision imposing the debarment or suspension. Only one such request may be filed in any twelve month period.

(5) The debarring official's decision on a request for reconsideration is subject to the appeal procedure set forth in paragraph (b) of this section.

PART 1642 [RESERVED]

PART 1643—RESTRICTION ON ASSISTED SUICIDE, EUTHANASIA, AND MERCY KILLING

Sec.

1643.1 Purpose.

1643.2 Definitions.

1643.3 Prohibition.

1643.4 Applicability.

1643.5 Recipient policies and recordkeeping.

AUTHORITY: Pub. L. 105–12; 42 U.S.C. 2996f(b)(11).

SOURCE: 62 FR 67749, Dec. 30, 1997, unless otherwise noted.

§ 1643.1 Purpose.

This part is intended to ensure that recipients do not use any LSC funds for any assisted suicide, euthanasia or mercy killing activities prohibited by this part.

§ 1643.2 Definitions.

(a) *Assisted suicide* means the provision of any means to another person with the intent of enabling or assisting that person to commit suicide.

(b) *Euthanasia (or mercy killing)* is the use of active means by one person to cause the death of another person for reasons assumed to be merciful, regardless of whether the person killed consents to be killed.

(c) *Suicide* means the act or instance of taking one's own life voluntarily and intentionally.

Legal Services Corporation

§ 1644.3

§ 1643.3 Prohibition.

No recipient may use LSC funds to assist in, support, or fund any activity or service which has a purpose of assisting in, or to bring suit or provide any other form of legal assistance for the purpose of:

(a) Securing or funding any item, benefit, program, or service furnished for the purpose of causing, or the purpose of assisting in causing, the suicide, euthanasia, or mercy killing of any individual;

(b) Compelling any person, institution, or governmental entity to provide or fund any item, benefit, program, or service for such purpose; or

(c) Asserting or advocating a legal right to cause, or to assist in causing, the suicide, euthanasia, or mercy killing of any individual.

§ 1643.4 Applicability.

(a) Nothing in §1643.3 shall be interpreted to apply to:

(1) The withholding or withdrawing of medical treatment or medical care;

(2) The withholding or withdrawing of nutrition or hydration;

(3) Abortion;

(4) The use of items, goods, benefits, or services furnished for purposes relating to the alleviation of pain or discomfort even if they may increase the risk of death, unless they are furnished for the purpose of causing or assisting in causing death; or

(5) The provision of factual information regarding applicable law on assisted suicide, euthanasia and mercy killing. Nor shall §1643.3 be interpreted as limiting or interfering with the operation of any other statute or regulation governing the activities listed in this paragraph.

(b) This part does not apply to activities funded with a recipient's non-LSC funds.

§ 1643.5 Recipient policies and record-keeping.

The recipient shall adopt written policies to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

PART 1644—DISCLOSURE OF CASE INFORMATION

Sec.

1644.1 Purpose.

1644.2 Definitions.

1644.3 Applicability.

1644.4 Case disclosure requirement.

1644.5 Recipient policies and procedures.

AUTHORITY: Pub. L. 105-119, 111 Stat. 2440, Sec. 505; Pub. L. 104-134, 110 Stat. 1321; 42 U.S.C. 2996g(a).

SOURCE: 63 FR 33254, June 18, 1994, unless otherwise noted.

§ 1644.1 Purpose.

The purpose of this rule is to ensure that recipients disclose to the public and to the Corporation certain information on cases filed in court by their attorneys.

§ 1644.2 Definitions.

For the purposes of this part:

(a) *To disclose the cause of action* means to provide a sufficient description of the case to indicate the type and principal nature of the case.

(b) *Recipient* means any entity receiving funds from the Corporation pursuant to a grant or contract under section 1006(a)(1)(A) of the Act.

(c) *Attorney* means any full-time or part-time attorney employed by the recipient as a regular or contract employee.

§ 1644.3 Applicability.

(a) The case disclosure requirements of this part apply:

(1) To actions filed on behalf of plaintiffs or petitioners who are clients of a recipient;

(2) Only to the original filing of a case, except for appeals filed in appellate courts by a recipient if the recipient was not the attorney of record in the case below and the recipient's client is the appellant;

(3) To a request filed on behalf of a client of the recipient in a court of competent jurisdiction for judicial review of an administrative action; and

(4) To cases filed pursuant to subgrants under 45 CFR part 1627 for the direct representation of eligible clients, except for subgrants for private attorney involvement activities under part 1614 of this chapter.

§ 1644.4

(b) This part does not apply to any cases filed by private attorneys as part of a recipient's private attorney involvement activities pursuant to part 1614 of this chapter.

§ 1644.4 Case disclosure requirement.

(a) For each case filed in court by its attorneys on behalf of a client of the recipient after January 1, 1998, a recipient shall disclose, in accordance with the requirements of this part, the following information:

(1) The name and full address of each party to a case, unless:

(i) the information is protected by an order or rule of court or by State or Federal law; or

(ii) the recipient's attorney reasonably believes that revealing such information would put the client of the recipient at risk of physical harm;

(2) The cause of action;

(3) The name and full address of the court where the case is filed; and

(4) The case number assigned to the case by the court.

45 CFR Ch. XVI (10-1-14 Edition)

(b) Recipients shall provide the information required in paragraph (a) of this section to the Corporation in semi-annual reports in the manner specified by the Corporation. Recipients may file such reports on behalf of their sub-recipients for cases that are filed under subgrants. Reports filed with the Corporation will be made available by the Corporation to the public upon request pursuant to the Freedom of Information Act, 5 U.S.C. 552.

(c) Upon request, a recipient shall make the information required in paragraph (a) of this section available in written form to any person. Recipients may charge a reasonable fee for mailing and copying documents.

§ 1644.5 Recipient policies and procedures.

Each recipient shall adopt written policies and procedures to implement the requirements of this part.

PARTS 1645-1699 [RESERVED]

acquisition, use and disposal and supercedes guidance currently contained in several LSC documents.

EFFECTIVE DATE: This Property Acquisition and Management Manual is effective on October 15, 2001.

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 750 First Street, NE, Washington, DC 20002-4250; 202/336-8817 (phone); 202/336-8952 (fax); mcondray@lsc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Legal Services Corporation's ("LSC") policies and procedures regarding LSC-funded recipients' property acquisition, use and disposal are incomplete, outdated and disbursed among several different LSC documents. In 1975 and again in 1979, LSC published Instructions in the **Federal Register** setting out procedures for the procurement, inventory control and disposal of nonexpendable personal property by LSC recipients. See 44 FR 22525, April 16, 1979. In 1981, the 1979 Instruction was superseded by the Property Management Manual for LSC Programs ("1981 Property Manual").¹

LSC also addressed property acquisition and management issues in the 1981 version of the Audit and Accounting Guide for Recipients and Auditors ("1981 Audit Guide"). The 1981 Audit Guide included provisions requiring LSC's prior approval of certain purchases and leases of property (real and personal). These provisions were superseded by the LSC rule on cost standards and procedures, 45 CFR part 1630, which was adopted in 1986. See 51 FR 29082, August 13, 1986. Under the current part 1630 rule, adopted in 1997, LSC must approve in advance all purchases of real property, purchases or leases of personal property with a value of over \$10,000 and capital expenditures of more than \$10,000 to improve real property. 45 CFR 1630.5(b).

Notwithstanding the 1981 Audit Guide (or the current part 1630 requirements), the 1981 Property Manual, like its predecessor Instructions, does not address the

acquisition, use or disposal of real property.² LSC has instead established its policies relating to real property in a variety of internal memoranda, Program Letters, regulations, grant assurances and individual agreements with recipients purchasing real property which have either restricted the use or regulated the disposal of the property in the event of cessation of LSC funding. Having policies related to real property in such unconnected and disparate sources has become untenable. For example, grant assurances on property have not been consistent over time and have on occasion been challenged as lacking legal authority.

Accordingly, LSC has decided that all of the relevant policies and requirements related to the acquisition, use and disposal of real and personal property should be consolidated and issued in one document. LSC published a proposed Property Acquisition and Management Manual (PAMM) for comment on September 28, 2000 (65 FR 58288). The comments received and the final version of the PAMM are discussed below.

Proposed Property Acquisition and Management Manual

Generally

The PAMM contains both existing and new or revised standards and procedures. In developing the new or revised standards and procedures, LSC looked to three existing Federal sources of property acquisition and management policy: the Federal Acquisition Regulations (FAR); the Federal Property Management Regulations; and Office of Management and Budget (OMB) Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations" which contains standards governing the use and disposition of personal and real property by non-profit recipients of Federal funding. While many provisions of the PAMM are based on equivalent sections on these sources, LSC has revised these provisions as necessary to be consistent with LSC law and practice. In addition, this final version of the PAMM reflects some additional changes suggested by the comments LSC

LEGAL SERVICES CORPORATION

Property Acquisition and Management Manual

AGENCY: Legal Services Corporation.

ACTION: Issuance of Property Acquisition and Management Manual.

SUMMARY: This Notice sets forth the text of a Property Acquisition and Management Manual that governs the use by recipients of LSC funds to acquire, use and dispose of real and nonexpendable personal property. The Property Acquisition and Management Manual is intended to provide recipients with a single complete and consolidated set of policies and procedures related to property

¹ The Introduction to the 1981 Property Manual states that it was intended to supersede the 1975 Instruction. No mention is made of the 1979 Instruction. However, because the Manual was finalized as a slightly revised version of the 1979 Instruction, longstanding LSC policy has been that the 1981 Property Manual superseded the 1979 Instruction as well. Current LSC grant assurances and the current Accounting Guide for LSC Recipients reference the Property Manual "or its duly adopted successor."

received on the proposed PAMM, as discussed below.

The personal property use standards are intended to give recipients flexibility in using such property acquired with LSC funds, provided that the primary use of the property is for the delivery of legal services to eligible clients in accordance with the requirements of the LSC Act and regulations. The standards governing the disposal of personal property revise existing policy to reflect the heightened need, in this era of reduced funding and competition for grants, for LSC to receive reimbursement to ensure that the scarce funds available are serving their original intended purpose to the maximum extent possible. Accordingly, in the event that a recipient owning personal property purchased with LSC funds ceases to receive LSC funding, these standards require LSC approval prior to dispose of the property. The PAMM also provides for transfer of personal property in the case of a merger with or the succession of another recipient.

The PAMM retains LSC's longstanding policy to permit recipients, with LSC's approval, to use LSC funds to purchase real property for the primary purpose of delivery of legal services to eligible clients. The procedures, which incorporate provisions from Program Letter 98-4, require recipients to demonstrate that purchasing is more economical than leasing. Recipients are also required to agree to reimburse LSC in the event of a discontinuation of funding, unless a transfer of the property is made to a merged or successor entity in the case of a merger with or the succession of another recipient.

Most of the comments LSC received addressed specific sections of the proposed PAMM. These comments are addressed in the section-by-section analysis portions of this notice. There was one suggestion, however, which affects most of the sections of the PAMM, and which, therefore, LSC wishes to address at the outset. Many commenters objected to application of the PAMM to leases of personal property. Among the reasons given for this objection were: (1) Leases and leased property is generally not considered "assets" and, as such, should not be subject to the PAMM; (2) the negotiation of leases may not be "amenable" to the competition requirements of the PAMM; (3) the recipient Board of Directors is already charged with the fiduciary duty to ensure that leases of personal property are appropriate; (4) leases of personal property are often for items which are

shared operating expenses, allocated among the recipient's funding sources and it could become problematic to have differing procedural requirements relating to the same property; and (5) as monthly lease payments may be small, representing a small amount of LSC resources, and since Part 1630 already requires program resources to meet a reasonableness standard, there is no need to include them in the PAMM.

LSC proposed to include leases of personal property under the coverage of the PAMM because recipients are increasingly spending sizable sums of LSC funds on leases of personal property and LSC believes that some measure of accountability to LSC for such expenditures is appropriate. The fact that a leased item may not be considered an "asset" of the recipient for an accounting purpose is not germane; the requirements of the PAMM are not intended to track assets, but rather to ensure that LSC funds are being expended on property in an efficient manner to best meet the legal services needs served by the recipient. LSC disagrees that it not feasible, as a general matter, to seek competitive quotes on large scale leases of equipment and other nonexpendable personal property and none of the commenters provided any factual evidence to back up this claim. Moreover, if the seeking of competitive quotes is not feasible in a particular instance, the PAMM provides a safe harbor for recipients to engage in sole source acquisitions.

LSC appreciates that recipient Boards already exercise fiduciary responsibilities relating to expenditures of LSC funds and that LSC regulations at 45 CFR part 1630 require a rule of reason in relation to expenditures of funds. However, part 1630 applies to all costs and Boards exercise fiduciary responsibility related to all expenditures of funds. If these facts were sufficient to ameliorate the need to apply the PAMM to leases of personal property, they would suffice to ameliorate the need to have the PAMM at all. The commenters, however, do not appear to question the propriety of having acquisition, use and disposal standards for purchased property.

LSC also disagrees that the fact that a lease may be funded from other than just LSC funds is likely to cause practical problems. First, the competition (and for individual items, the prior approval) requirements only apply to leases in which more than \$10,000 of LSC funds are used. It is unlikely that such a lease would be one in which LSC funds are the minority source of funds and that other,

inconsistent, competition requirements would apply and no such examples were specifically identified in any of the comments received. Second, the use requirements are broad enough that it is hard to imagine a inconsistent requirement stemming from another funding source. Finally, the disposition requirements only note that leased property is to be disposed of in accordance with the terms of the lease. Again, none of the comments received provided specific instances in which these requirements would be burdensome or inconsistent in reference to other directives attached to use of other funds.

LSC also notes that in the extensive comment process leading to the development of the proposed PAMM, no objection was raised to including leased personal property under coverage of the PAMM.

Section-by-Section Analysis

Section 1—Purpose and Scope

The section contains a statement indicating that the purpose of this PAMM is to set forth standards governing the acquisition, retention, use and disposal of personal and real property acquired in whole or in part with LSC funds. The section also specifies that LSC intends the standards in this PAMM to apply to both real and nonexpendable personal property, but not to expendable personal property or services, except services for capital improvements which are subject to the requirements of section 4(f). LSC has not previously applied the 1981 Property Manual standards to supplies and LSC does not believe that it is necessary to enlarge the scope of its oversight in such a manner. Finally, this section makes clear that LSC will apply the requirements of the PAMM to acquisitions made on or after the PAMM's effective date as set forth in this notice. For acquisitions of real property prior to the PAMM's effective date, the written agreement between the program and LSC will control. For prior acquisitions of personal property, the 1981 Property Manual will control.

LSC received three comments specifically related to this section. One comment suggested that the parenthetical reference to "equipment" should either be removed or clarified since there is nonexpendable personal property other than what is generally thought of as equipment. LSC agrees. References to "equipment" and "supplies" have been removed from this section. The definitions of nonexpendable personal property and expendable personal property have been

clarified. These issues are discussed further under Section 2—Definitions, below.

The second comment LSC received on this section suggested that the reference to services for capital improvements should specify “contracted” services. This was certainly LSC’s intent and the section has been modified to make this clarification.

LSC also received a request with regard to acquisitions of real property prior to the PAMM’s effective date. The comment requested that LSC clarify its intent with regard to property for which there is no written agreement. LSC is aware of instances in which recipients have acknowledged through documented evidence that LSC funds have been used towards the acquisition of real property, without, however, a real property interest agreement having been executed. In the event of cessation of funding in these instances, disposition of the property will be handled on a case-by-case basis.

Section 2—Definitions

This section sets forth definitions of key terms used throughout the PAMM.

Section 2(a) defines acquisition as a purchase of real property or a purchase or lease of personal property. It can consist of a single item or it can consist of multiple items obtained simultaneously through a single contract. This definition of acquisition is adapted from the definition of acquisition appearing in the FAR. The FAR definition of acquisition includes leases of real property as well, but LSC has chosen to leave real property leases out of the definition of acquisition because LSC is excluding leases of real property from the coverage of the PAMM. The term “acquisition” is used throughout the PAMM, except in those instances in which it is necessary to differentiate between personal property which is leased and personal property which has been purchased. In those cases, the term “lease” or “purchase” is used, as appropriate.

LSC received one comment suggesting that the term “single acquisition” as it is used in the definition is confusing. The commenter suggests replacing it with the term “individual item.” LSC does not agree that this term is confusing. Further, substituting the term “individual item” for “single acquisition” would alter the meaning of the definition. As noted above, the term “single acquisition” includes transactions in which more than one item is procured in a single contract, while “individual item” does not. Since many acquisitions are for multiple items acquired under a single contract,

excluding these acquisitions from the PAMM (which would be the result if LSC were to make the suggested change) would seriously undermine the object of the PAMM of ensuring accountability and the efficient use of LSC funds. Accordingly, the definition is being adopted as proposed.

In addition, as discussed above, several commenters suggested that the PAMM not apply to leases of personal property, and these commenters, accordingly, suggested amending this section. For the reasons discussed above, LSC is retaining the requirement that leases of personal property be subject to the PAMM. Therefore, references to leases in the definition in 2(a) are retained as proposed.

LSC received a comment suggesting the addition of a definition for “acquisition costs for real property.” The commenter stated that LSC currently has no such definition. LSC disagrees. The preamble to the current part 1630 final rule, 62 FR 68219, addresses this matter, stating that the acquisition costs associated with the purchase of real property include principal and interest payments and initial down payments. However, LSC agrees that including that definition in the PAMM would be useful in as much as the PAMM is intended to be a single source for information. Accordingly, a definition of “acquisition costs for real property” is added as section 2(b). This definition reproduces and explicitly references the definition found in the December 31, 1997 preamble to the part 1630 final rule.

Section 2(c), capital improvement, incorporates the \$10,000 capitalization threshold of LSC’s regulation governing cost standards and procedures, 45 CFR 1530.5(b)(2). One commenter suggested that this section be clarified to specify that it applies only to amounts of over \$10,000 of LSC funds. This has been and continues to be LSC’s policy and this clarifying change has been made.

Section 2(d) defines lease as a contract for the use of property during a specified period for a specified price. Under a lease, the lessee does not take ownership of or title to the property. As discussed above, several commenters suggested that the PAMM not apply to leases of personal property, and these commenters, accordingly, suggested deleting this section. For the reasons discussed above, LSC is retaining the requirement that leases of personal property be subject to the PAMM. Therefore, the definition is retained as proposed, although to allow for the insertion of a new definition of “acquisition costs for real property,” as discussed above, the definition has been

redesignated from 2(c) to 2(d) in this final PAMM.

Section 2(e) contains a definition for LSC property interest agreement, a term used in sections 4(e) and 8(d) of this PAMM. The definition is consistent with section 2–2.4 of the Accounting Guide for LSC Recipients, which sets forth the principle that LSC possesses a reversionary interest in real property purchased in whole or in part with LSC funds.

LSC received no comments on this section and the definition is adopted as proposed. LSC notes that it is not using the term “reversionary interest” in the PAMM because LSC believes that the use of “reversionary interest” might be confusing. Although LSC’s recipients who have entered into agreements with LSC pursuant to the purchase of real property understand what reversionary interest means in the context of their agreements, the term is a widely used term of art in the property law context with a somewhat broader and different meaning. To avoid potential confusion, LSC will use the more accurate “LSC property interest agreement.” In addition, to allow for the insertion of a new definition of “acquisition costs for real property,” as discussed above, the definition has been redesignated from 2(d) to 2(e) in this final PAMM.

Section 2(f) contains a definition of personal property adapted from OMB Circular A–110. LSC is, however, omitting supplies, which are considered to be personal property in the OMB Circular, from the definition because LSC does not intend to apply its property acquisition and management standards to the purchase, retention or use of supplies. As noted above, LSC has clarified the definition to provide more detailed examples of the types of things which are considered nonexpendable personal property or expendable personal property. Thus, the definition now notes that nonexpendable personal property includes such things as furniture and books in addition to equipment and that supplies include items such as stationery, paper clips, and pens. The items do not represent an exhaustive list, but rather are intended to signify the most common examples of each type of property. In addition, to allow for the insertion of a new definition of “acquisition costs for real property,” as discussed above, the definition has been redesignated from 2(e) to 2(f) in this final PAMM.

Section 2(g) limits the definition of real or personal property to property with a market value of over \$5000 and a useful life of more than one year. This definition is consistent with OMB

Circular A-110. With this definition, LSC intends that property acquisition and management standards not apply to property excluded from the definition.

LSC originally proposed a definition of property with a \$1000 threshold. LSC received several comments opposing the capitalization threshold of \$1,000. These commenters noted that other Federal grants they receive are subject to the \$5,000 OMB definition and that raising the limit would provide a greater measure of consistency to them in meeting property acquisition standards across grants. These commenters also noted that the \$1,000 threshold seems artificially low in the current economy and that a \$5,000 threshold would more appropriately reflect the point at which additional program oversight is justified. Raising the threshold, it is argued, would increase recipient flexibility. To the extent that LSC desires to maintain consistency with the LSC Accounting Guide, these comments suggest raising the capitalization threshold in the Guide to \$5,000 as well.

In light of the above, LSC is adopting a \$5000 threshold for the definition of property. To allow for the insertion of a new definition of "acquisition costs for real property," as discussed above, the definition has been redesignated from 2(f) to 2(g) in this final PAMM.

Section 2(h) contains a definition of purchase which uses the term purchase in reference to personal property of which the recipient obtains ownership, as distinguished from leasing. As discussed above, several commenters suggested that the PAMM not apply to leases of personal property, and these commenters, accordingly, suggested amending this section. For the reasons discussed above, LSC is retaining the requirement that leases of personal property be subject to the PAMM. Therefore, the definition is retained as proposed, although to allow for the insertion of a new definition of "acquisition costs for real property," as discussed above, the definition has been redesignated from 2(g) to 2(h) in this final PAMM.

Section 2(i) sets forth a definition for quote which incorporates language from the definition of "offer" in the FAR. For the purposes of the PAMM, a quote is intended to be the basis for informal negotiation which results in an offer by the recipient, typically in the form of a purchase order, which a source may accept or reject.

In response to a suggestion that the word "bid" be substituted for "quote" in section 4(f), LSC has instead chosen to amend section 2(i) to explicitly include competition for capital improvement services contracts in the

definition of "quote." LSC agrees with the commenter that this clarification is appropriate, but LSC thinks it is better accomplished in the definitions section. In addition, to allow for the insertion of a new definition of "acquisition costs for real property," as discussed above, the definition has been redesignated from 2(h) to 2(i) in this final PAMM.

Section 2(j) sets forth a definition of real property taken from the definition of the same term in OMB Circular A-110. LSC received no comments on this definition and it is adopted as proposed, although to allow for the insertion of a new definition of "acquisition costs for real property," as discussed above, the definition has been redesignated from 2(i) to 2(j) in this final PAMM.

Section 2(k) contains a definition of source as a supplier, vendor or contractor who has agreed to provide property to a recipient through a purchase or lease agreement. LSC received no comments on this definition and it is adopted as proposed, although to allow for the insertion of a new definition of "acquisition costs for real property," as discussed above, the definition has been redesignated from 2(j) to 2(k) in this final PAMM.

Section 3—Acquisition Procedures for Personal Property

This section sets forth the procedures governing the acquisition of personal property with LSC funds. The requirements herein are based on both the FAR and OMB Circular A-110. Through the use of these procedures, LSC intends to encourage recipients to conduct their property acquisitions in a manner that provides free and open competition to the maximum extent practical.

LSC received a number of comments on the various aspects of this section, several of which indicated a significant misunderstanding of the proposed requirements. Specifically, several commenters objected to what they took to be LSC's proposal to require prior approval of aggregate acquisitions of over \$10,000. However, LSC did not propose to require prior approval of aggregate acquisitions of over \$10,000, but rather, only to require certain minimum competition standards for such large acquisitions. Under both the proposed and this final PAMM, prior approval is required, as specified in 45 CFR part 1630, for individual item acquisitions of over \$10,000, but not for aggregate acquisitions of over \$10,000.

A variant of this objection was contained in one comment which suggested deleting Section 3(a)-(d) as redundant, given the need for prior approval of large acquisitions referenced

in Section 3(e). However, since section 3(e) refers only to the showing a recipient must make to obtain prior approval and sections 3(a)-(d) apply to acquisitions not requiring prior approval, the competition requirements of 3(a)-(d) are not redundant. Further, to the extent that, for acquisitions requiring prior approval, 3(e) recapitulates the requirements of 3(a)-(d), it does not place any additional substantive burden on recipients.

One commenter suggested that the competition requirements not apply to aggregate acquisitions of over \$10,000, but only to individual item acquisitions of over \$10,000. Acquisitions using over \$10,000 of LSC funds represent a significant investment of funds, whether for a single item or multiple items in a single acquisition. As noted elsewhere herein, one of LSC's responsibilities is to act as a steward, ensuring the public funds it is entrusted to distribute are used for the purpose and in the manner which Congress made them available. Thus, LSC has a responsibility to ensure that recipients are, to the extent possible, "getting a good deal" on large acquisitions. Limiting the competition requirement to individual item purchases does not meet this objective and would undermine LSC's ability to exercise effective oversight over the use of LSC funds.

As proposed, acquisitions of over \$10,000 would have to have been accomplished by written competitive quote. This proposed requirement was based on the FAR and OMB Circular A-110, each of which require that requests for quotes clearly identify the salient characteristics of the property to be acquired, as well as the basis for evaluating quotes and selecting a source. LSC received comments suggesting that the requirement for three written quotes could be relaxed or otherwise redesigned to allow recipients greater flexibility in competing and completing procurements. In this area, a few commenters suggested the language of this section take into account the increasing use of catalogs and internet sites in procurement.

LSC agrees with these commenters that LSC could make changes to provide more options to recipients while still meeting LSC's objective that recipients seek to obtain competitive prices on the items they acquire. As an initial matter, LSC notes that, even as proposed, the use of electronic media would have been permissible to secure written quotes. However, LSC believes that this section was susceptible to improvement beyond simply making this point more explicit. Accordingly, section 3(a) has been significantly revised to require a

recipient to consider competitive quotes from at least three potential sources for the property. Under the revised language, a recipient may make individual requests for quotes and/or may use quotes listed in suppliers' online or printed catalogs, posted on electronic websites or contained in other publicly available materials.

Individual item acquisitions of over \$10,000 will have to be approved in advance by LSC. This includes acquisitions made to replace already-existing property, the original acquisition of which LSC may have approved at a prior point in time. Consistent with previous LSC guidance, requests for prior approvals will have to include a justification stating the need for the acquisition, a brief description of the property to be acquired and a description of the acquisition process used, including the quotes received by the recipient.

LSC has added language to this section to allow a recipient making a grant application to include a prior approval request in the grant application. The provision specifies that any such request must identify the particular item proposed to be acquired and include a justification which complies with the requirements of this section. In such a case, the grant approval will serve as the notice of the approval of the acquisition request. LSC believes that this will save time and effort for recipients, particularly (but not exclusively) those seeking funds under the Technology Grants program, who know that they intend to acquire a large individual item with the grant funds for which they are applying. Thus, by allowing a recipient to include the prior approval request in the grant application instead of having to make a separate request once the grant is awarded, LSC hopes to lessen the burdens on recipients, while still ensuring compliance with the requirements of Part 1630. Any prior approvals granted in this manner would, like all grants, be conditional upon the availability of the grant funds, and like app prior approvals, be subject to the duration requirements of 45 CFR 1630.5(c).

Other comments LSC received on this section noted concerns about situations in which exceptions to the basic policy would be necessary. LSC notes that the procedures permit sole source acquisitions if circumstances prevent requesting competitive quotes. In such cases, recipients would have to document the reason(s) for conducting the acquisition on a sole source basis. LSC believes that this language is sufficient to alleviate concerns in this

area. This is particularly so in light of the fact that the language reflects current LSC policy, which has worked well up to this point.

In addition, as discussed above, several commenters suggested that the PAMM not apply to leases of personal property, and these commenters, accordingly, suggested amending this section. For the reasons discussed above, LSC is retaining the requirement that leases of personal property be subject to the PAMM. Therefore, references to leases in this section are retained as proposed.

Section 4—Acquisition Procedures for Real Property

Section 4 contains the procedures for the acquisition of real property. Under this section, prior to acquiring real property, a recipient is required to identify and evaluate at least three potential sites. This section draws upon a similar requirement in the FAR relating to the selection of sources for the leasing of real property. The types of costs to be considered in an analysis of an acquisition of real property would be those which LSC asks recipients to describe when seeking prior approval of an acquisition of real property pursuant to LSC Program Letter 98-4, dated July 1, 1998. Recipients are encouraged to negotiate with potential sources prior to entering a contract in order to obtain the most favorable contract terms possible.

LSC received a variety of comments on the proposed requirements in this section. One comment suggested that the competition requirements not be applied to purchases of real property, while others suggested that the competition factors be broadened to allow recipients to take into account certain non-monetary factors (i.e., accessibility of facility to public transportation), and that the required cost analysis include occupancy costs.

For many recipients, such a purchase may represent the single largest acquisition they ever make. Hence, LSC does not believe it is unreasonable to expect recipients to consider alternate properties and gain the benefits of competition in making real estate purchases. However, LSC does agree that many factors other than price alone are appropriately considered in making the choice of selecting one property over another. Indeed, past practice in reviewing and granting prior approvals demonstrates that recipients do consider factors other than price and LSC approves of such practices. Accordingly, LSC has revised section 4 to make explicit the ability of recipients to consider a range of qualitative factors when considering real property

acquisition alternatives and that the required cost analysis includes occupancy costs.

One commenter requested that LSC clarify the time period over which the average annual cost analysis should be done. Section 4(c), as proposed, stated that the cost analysis should be for the life of the financing. LSC believes this is sufficiently clear and has made no changes to this language.

This section retains LSC's prior approval requirement for acquisitions of real property.³ Sections 4(d)(1) through (7) reflect provisions from Program Letter 98-4 setting forth the types of information which LSC requires recipients to submit in support of a request for prior approval of an acquisition of real property. LSC received no comments on this section and LSC retains the language as proposed.

Section 4 also retains LSC's longstanding practice of requiring, as a condition of LSC's approval of the acquisition of real property, a formal agreement between LSC and the recipient setting forth the terms of LSC's approval. These agreements have included provisions governing the disposal of property purchased with LSC funds, both during the grant term and upon cessation of funding and requiring the recipient to record LSC's interest in the property. LSC received a few comments on this provision.

One commenter requested that LSC clarify 4(e)(1) relating to property agreements, on the basis that the reference to "delivering legal services to eligible clients" was somewhat confusing because it could be interpreted to require that real property could be used only for the delivery of legal services to eligible clients and not for any other purpose or for services to ineligible clients who are otherwise lawfully served by the recipient (with non-LSC funds). LSC agrees that such an interpretation would be overbroad and unnecessary. However, LSC does not believe that the section 4(e)(1), as proposed, lends itself to such an interpretation. Moreover, LSC notes that other sections of the property manual contemplate use of property for other purposes (see, e.g., section 5(f) on conditions under which property may be used by organizations engaging in LSC-restricted activities). Rather, the language was intended to convey the message that recipients are not to use LSC funds to purchase real estate simply for investment purposes, but that

³LSC's longstanding policy is that leases of real property do not require prior approval and LSC does not propose any change to that policy.

rather, any real estate purchased is to be acquired primarily as office space for the recipient. Although LSC has not made any changes to the language in section 4(e), LSC has clarified the language elsewhere in the PAMM to make explicit that property acquired with LSC funds is to be acquired and used for the primary purpose of delivering legal services to eligible clients in accordance with the requirements of the LSC Act, as amended, applicable appropriations acts and LSC regulations.

Another commenter suggested that the PAMM should more fully explicate LSC's interest in real property. Individual property agreements, which are expressly required by the PAMM, currently do and will continue to serve this functions. Accordingly, LSC has made no changes in section 4 in regard to this matter.

Finally, LSC restates in the PAMM LSC's requirement in 45 CFR 1630.5(b)(4) that recipients obtain prior approval of expenditures for capital improvements. This requirement applies to leasehold improvements as well as improvements to recipient-owned property. LSC retains the existing requirement from Program Letter 98-4 that recipients submit certain information in support of requests for prior approval of capital improvements. LSC did receive one comment on this section, requesting that LSC allow for emergency approval of acquisitions related to capital expenditures. LSC has traditionally permitted recipients to make such arrangements as are necessary in emergency situations, such as in response to natural disasters or other such occurrences which require emergency repairs and there was no intention to change this policy in the proposed PAMM. Accordingly, section 4(f) has been revised to permit a recipient to seek emergency approval of expenditures for capital improvements prior to providing the full written justification. In such cases, recipients will have to provide the required information to LSC in a timely manner.

Another commenter suggested substituting the word "bid" for "quote" in section 4(f). As noted above, while a clarification is appropriate, LSC thinks the clarification is better accomplished in the definitions section. Accordingly section 2(I) is amended to explicitly include competition for capital improvement services contracts.

Section 5—Retention and Use of Property Acquired With LSC Funds

Section 5 sets forth the standards for the management of real and personal

property acquired with LSC funds. These standards build upon the principle contained in OMB Circular A-110, that grant recipients should possess full ownership of personal and real property purchased in whole or in part with grant funds. With regard to leased personal property, the PAMM reflects current LSC policy that leased property may be used according to the lease terms during the term of an LSC grant or contract, and must be disposed of according to the lease terms in the event that there is a cessation of LSC funding.

Under the provisions of this section, recipients are permitted to retain property as long as they continue to receive LSC funding. This represents a change from the prior policy which permitted recipients to retain property as long as it was needed for civil legal assistance. This change reflects the heightened need, in the competitive grant environment, for LSC to ensure that its funds are available to the maximum extent possible for LSC recipients and programs.

Notwithstanding the above, under the PAMM a recipient may use property acquired with LSC funds for permissible non-LSC activities, such as the representation of income-ineligible clients, provided that such other use does not interfere with the performance of the recipient's duties under its LSC grant. This flexibility parallels similar provisions in OMB Circular A-110. Further, a recipient is permitted to lease space to others or otherwise allow the use of its property for restricted activities, provided that the recipient charges a fair market price for such lease or property use. Any such use will also have to be consistent with the program integrity requirements of 45 CFR Part 1610.

LSC received one comment specifically addressing this particular provision. The commenter suggested that LSC replace the phrase "shall not be less than" with "shall be reasonable and comparable to" in 5(e) and (f). The phrase "shall not be less than" was derived from OMB Circular A-110 and chosen to ensure that the provisions would be consistent with IRS rules. As such, LSC does not believe that changing this language is desirable or advisable. Accordingly, the language has not been changed.

Section 5(f) addresses the use of a particular subset of personal property—copyrights. Incorporating language from OMB Circular A-110, this paragraph provides that recipients be permitted to own copyrights to publications, software, and other copyrightable works created in whole or part with LSC funds. However, in conformance with

longstanding LSC policy, recipients creating or otherwise obtaining copyrightable materials with LSC funds will have to provide LSC free access to and use of such materials, including the right to make such materials available to other LSC recipients.

Other than the comments relating to paragraphs (e) and (f) discussed above, the only other comments LSC received on section 5 suggested amendments to this section reflecting the suggestion that the PAMM not apply to leases of personal property. For the reasons discussed above, LSC is retaining the requirement that leases of personal property be subject to the PAMM. Therefore, references to leases in this section are retained as proposed. All other provisions are also retained as proposed.

Section 6—Disposal of Personal Property Acquired With LSC Funds

This section establishes requirements governing the disposal of personal property. Generally, recipients have considerable discretion in selecting methods of disposing of personal property purchased with LSC funds, except at the point which a recipient ceases to receive LSC funds. At the cessation of LSC funding, recipients have an obligation to LSC with respect to items of personal property.

LSC received a comment asking LSC to clarify section 6 with regard to the proper standards for disposing of property having a value of less than the definitional threshold standard in Section 2(g). Property is defined in the PAMM as having a threshold value of \$5,000. Thus, property with a current market value at the time of disposition of less than \$5,000 is not, by its own terms, subject to the PAMM. Recipients are, accordingly, free to dispose of property having a value of less than \$5,000 in any manner in which the recipient sees fit. LSC reminds recipients that the relevant dollar value is the current market value. Thus, property with a current market value of less than \$5,000 at the time of disposal is not subject to the PAMM, regardless of the value of the property at the time of acquisition.

In the notice setting forth the proposed PAMM, LSC requested comment on the proposal to prohibit the sale of excess property to recipient Board members or employees. None of the commenters affirmatively supported this proposal, while one commenter stated that it did "not disagree" with the proposal and several commenters stated that they disagreed with the proposal. It was not altogether clear, however, whether those commenters opposing the

proposal were considering that the prohibition, as proposed, would only apply to property with a value of over \$1,000. Given the definition of property in the PAMM, property with a current market value of less than \$5,000 would, as noted above, be subject to disposal by the recipient without restriction, including by sale to Board members or employees. In light of the above, LSC believes that the proposed restriction should be adopted. As written, the prohibition will only apply items of significant value. LSC believes this is appropriate, yet still allows recipients flexibility in disposing of items of lesser value.

The PAMM, as noted above, permits recipients considerable latitude in disposing of personal property purchased with LSC funds during the term of an LSC grant. Specifically, under this section, recipients may: (1) Trade property to suppliers or vendors in return for reductions in the acquisition price of new or replacement property; (2) sell the property, by the solicitation of formal quotes for property with a value of over \$15,000, or by negotiation where the property has a value \$15,000 or less or where advertising for bids has not resulted in reasonable bid prices;⁴ (3) transfer the property to third parties which are eligible under statute to receive support from LSC; (4) transfer the property to non-LSC programs, subject to LSC approval; or (5) transfer the property to other nonprofit programs serving the poor in the same community. These options are consistent with current Federal practice as reflected in OMB Circular A-110, the Federal Property Management Regulations (41 CFR Chapter 101) and the 1981 Property Manual.

Another comment addressing the disposal procedures suggested that the requirements should apply only in situations in which the recipient had to get prior approval of the acquisition and in which the property had a current market value (at the time of disposition) of greater than \$10,000 and that LSC should limit its interest in such property to a period of one year. If LSC were to adopt this suggestion, almost all personal property dispositions would no longer be subject to any standards. Under such circumstances, LSC would

lose its ability to exercise effective oversight over the use of LSC funds. As noted above, one of LSC's responsibilities is to act as a steward, ensuring the public funds it is entrusted to distribute are used for the purpose and in the manner which Congress made them available and the lack of accountability over most funds cannot be justified.

The PAMM provides for different options for the disposal of personal property at the point that a recipient ceases to receive LSC funding. Recipients are permitted to transfer or retain personal property purchased with LSC funds, provided that LSC would be compensated in an amount equal to the percentage of the property's acquisition cost funded with LSC monies. These provisions are based on disposal options set forth in OMB Circular A-110. It is anticipated that LSC and recipients will identify, on a case by case basis at the time of cessation of funding, the best method for disposing of personal property purchased with LSC funds.

One commenter also suggested that LSC should delete references to LSC being entitled to compensation in the case of disposal of property by sale by the recipient. This commenter suggested that such an action would make it appear that LSC was interested in profit-making. As LSC noted in the notice of the proposed PAMM, funding is limited and available only on a competitive basis. Thus, rather than seeking some undue "windfall" from the disposition of property acquired with LSC funds, LSC is seeking to recoup funds in order to redistribute them to ensure that the scarce funds available are serving their original purpose to the maximum extent possible. If LSC were to permit recipients to retain all the proceeds from a disposition of property once they ceased being funded by LSC, it could be argued that the recipient would be reaping an undue windfall. At the least, the benefits of those dollars would no longer be assured of serving the original intended purpose. Accordingly, these provisions have not been changed. A provision has been, however, to reflect the current LSC policy that reimbursed funds are to be used to make additional grants to the field and that grants will generally be to recipients in the same service area which the funds originally supported.

With respect to leased personal property, the PAMM provides that during the term of an LSC grant or contract, recipients be permitted to dispose of such leased with LSC funds in accordance with the terms of the lease. When a recipient ceases to receive LSC funding, the recipient would be

required to dispose of items of personal property leased with LSC funds in accordance with the terms of the lease.

LSC was asked provide additional clarification regarding it what it intended by requiring disposal of leased property in conformance with the terms of the lease. The other disposal-related requirements all apply to property purchased and owned by recipients. Leased property is, by definition, not owned by the recipient and the recipient is not at liberty to dispose of the property by giving it away or selling it. However, since LSC anticipates that there will occasionally be a need for recipients to divest themselves of leased property, it was appropriate that this circumstance be included in the PAMM. Since, the use and disposal of leased property is generally governed by the terms of the lease itself, LSC thought it was sufficient to note that any such property should be disposed of as required by the terms of the lease under which the property was obtained. This provision is retained as proposed.

A number of commenters noted that the requirements related to disposal in the case where a recipient ceases to receive funding are unclear if the recipient is undergoing a merger or takeover. In such a case, while the recipient may itself become a different (or non-existent) legal entity, the successor organization will be a funded recipient.

LSC agrees that this is a special circumstance which merits specific treatment in the PAMM. Accordingly, LSC has added a new provision to Section 6 to provide that when a recipient ceases to receive LSC funding because the recipient has merged with or is succeeded by another recipient, the recipient may transfer the property to the merged or successor recipient, provided that the recipient and the merged or successor recipient execute a successor in interest agreement, approved by LSC, which requires the merged or successor recipient to use the property for the primary purpose of delivering legal services to eligible clients in accordance with the requirements of the LSC Act, as amended, applicable appropriations acts, and LSC regulations.

Section 7—Disposal of Real Property Acquired With LSC Funds

Section 7 sets forth the proposed standards for the disposal of real property purchased with LSC funds. As with the personal property disposal standards in Section 6, LSC proposes to provide different options for disposals occurring during the grant term and at the cessation of LSC funding.

⁴By reference to 45 CFR 1630.12, section 6(c) would clarify that income from the state of property purchased with LSC funds is LSC derivative income subject to the requirements of the LSC Act, regulations, and other applicable law. As such, LSC derivative income becomes part of the LSC fund balance which may need to be returned to LSC if the fund balance amount exceeds limits established by 45 CFR part 1628.

For recipients seeking to dispose of real property during the grant term, LSC retains the longstanding LSC policy whereby recipients are permitted to sell real property acquired with LSC funds.⁵ Recipients are also permitted to transfer real property to other LSC recipients. This is consistent with most LSC property interest agreements between LSC and recipients using LSC funds to purchase real property.

LSC also received a couple of comments suggesting limiting section 7 to "acquisition costs." The PAMM, as proposed, reflected current policy related to disposition of property and is what LSC is currently requiring in property agreements. LSC sees no reason to change the policy at this time.

At the point of cessation of LSC funding, the PAMM permits recipients to sell, transfer or retain real property acquired with LSC funds, provided that LSC is compensated in an amount equal to the percentage of the property's acquisition cost funded by LSC monies. LSC will have to approve any such disposition in advance.

One commenter suggested that LSC should delete references to LSC being entitled to compensation in the case of disposal of property by sale by the recipient. This commenter suggested that such an action would make it appear that LSC was interested in profit-making. As LSC noted in the notice of the proposed PAMM, funding is limited and available only on a competitive basis. Thus, rather than seeking some undue "windfall" from the disposition of property acquired with LSC funds, LSC is seeking to recoup funds in order to redistribute them to ensure that the scarce funds available are serving their original purpose to the maximum extent possible. If LSC were to permit recipients to retain all the proceeds from a disposition of property once they ceased being funded by LSC, it could be argued that the recipient would be reaping an undue windfall. At the least, the benefits of those dollars would no longer be assured of serving the original intended purpose. Accordingly, these provisions have not been changed. A provision has been, however, to reflect the current LSC policy that reimbursed funds are to be used to make additional grants to the field and that grants will generally be to recipients in the same

service area which the funds originally supported.

A number of commenters noted that the requirements related to disposal in the case where a recipient ceases to receive funding are unclear if the recipient is undergoing a merger or takeover. In such a case, while the recipient may itself become a different (or non-existent) legal entity, the successor organization will be a funded recipient.

LSC agrees that this is a special circumstance which merits specific treatment in the PAMM. Accordingly, LSC has added a new provision to Section 7 to provide that when a recipient ceases to receive LSC funding because the recipient has merged with or is succeeded by another recipient, the recipient may transfer the property to the merged or successor recipient, provided that the recipient and the merged or successor recipient execute a successor in interest agreement, approved by LSC, which requires the merged or successor recipient to use the property for the primary purpose of delivering legal services to eligible clients in accordance with the requirements of the LSC Act, as amended, applicable appropriations acts, and LSC regulations.

Section 8—Documentation and Recordkeeping Requirements

Section 8 contains requirements for the documentation of property acquisitions and disposals. This section is intended to ensure that recipients create and retain the required records in support of property acquisition and disposal decisions and LSC fund expenditures related thereto.

LSC received no comments addressing this section and it is adopted as proposed.

Section 9—Recipient Policies and Procedures

This section requires that recipients adopt written procurement procedures. This requirement stems from OMB Circular A-110 and is intended to ensure that recipients have standardized procurement procedures that are consistent with LSC requirements. LSC will not collect, review or approve such procedures, although a recipient will have to make them available to LSC upon request for LSC oversight and compliance purposes.

LSC received no suggestions for changing this section and it is adopted as proposed. One commenter, however, did pose a question about when LSC expects recipients to have developed and implemented their written procedures as required by Section 9.

LSC expects recipients to comply with this section within 90 days of the effective date of this notice.

Property Acquisition and Management Manual

- Sec. 1 Purpose and Scope.
- Sec. 2 Definitions.
- Sec. 3 Acquisition Procedures for Personal Property.
- Sec. 4 Acquisition Procedures for Real Property.
- Sec. 5 Retention and Use of Property Acquired with LSC Funds.
- Sec. 6 Disposal of Personal Property Acquired with LSC Funds.
- Sec. 7 Disposal of Real Property Acquired with LSC Funds.
- Sec. 8 Documentation and Recordkeeping Requirements.
- Sec. 9 Recipient Policies and Procedures.

Section 1 Purpose and Scope

The purpose of this PAMM is to set forth standards governing the acquisition, retention, use and disposal of personal and real property acquired in whole or in part with LSC funds. The standards set forth herein apply to both real and non-expendable personal property, but not apply to expendable personal property or services, except for contracts for services for capital improvements which are subject to the requirements of Section 4(f) herein.

The requirements set forth herein apply to acquisitions made on or after the PAMM's effective date as published in the **Federal Register**. For purchases of real property prior to the PAMM's effective date, the written agreement between the program and LSC will control. For prior acquisitions of personal property, the 1981 Property Manual will control.

Section 2 Definitions

(a) *Acquisition* means a purchase of real property or a purchase or lease of personal property made in whole or in part with LSC funds. For the purposes of this PAMM, recipients should treat a purchase or lease of related property as a single acquisition when the property can be readily obtained through a single contract with a single source.

(b) *Acquisition costs for real property* means the initial down payment and principle and interest on debt secured to finance the acquisition of the property, as provided in the December 31, 1997 preamble to the final rule on cost accounting, 45 CFR Part 1630.

(c) *Capital improvement* means an expenditure of an amount of LSC funds exceeding \$10,000 to improve real property through construction or the purchase of immovable items which become an integral part of real property.

⁵ By reference to 45 CFR 1630.12, Section 7(b) would clarify that income from the sale of property acquired with LSC funds is LSC derivative income subject to the requirements of the LSC Act, regulations, and other applicable law. As such, LSC derivative income becomes part of the LSC fund balance which may need to be returned to LSC if the fund balance amount exceeds the limits established by 45 CFR part 1628.

(d) *Lease* means a contract for the use of property during a specified period for a specified price.

(e) *LSC property interest agreement* means a formal written agreement between LSC and a recipient setting forth the terms of LSC's approval of the recipient's use of LSC funds to acquire real property.

(f) *Personal Property* means property of any kind, including tangible property (having physical existence), such as equipment, furniture, or books, or intangible (having no physical existence), such as copyrights or patents, but does not include supplies, such as stationery, paper clips, pens, etc., or real property or improvements to real property.

(g) *Property* means any real or personal property having a market value greater than \$5,000 and a useful life of more than one year. For the purposes of Sections 6 and 7 related to the disposal of property, the relevant market value is the value at the time of disposal.

(h) *Purchase* means to obtain and take ownership of property through the payment of money or its equivalent.

(i) *Quote* means a quotation or bid from a potential source interested in selling or leasing property to a recipient, or providing services to a recipient for capital improvements.

(j) *Real property* means land, buildings, and appurtenances, including capital improvements thereto, but not including moveable personal property.

(k) *Source* means a supplier, vendor, or contractor who has agreed to provide property to a recipient through a purchase or lease agreement.

Section 3 Acquisition Procedures for Personal Property

(a) Before using more than \$10,000 of LSC funds to make an acquisition of personal property, including, but not limited to, acquisitions of single items of over \$10,000, a recipient shall consider competitive quotes from at least three potential sources for the property. A recipient may make individual requests for quotes and/or may use quotes listed in suppliers' online or printed catalogs, posted on electronic websites or contained in other publicly available materials.

(b) The selection of a source shall be on the basis of criteria established and documented by the recipient. Such criteria may include price alone or price in combination with other factors.

(c) Notwithstanding paragraph (a) of this section, a recipient may make a sole source acquisition when circumstances prevent the requesting of competitive quotes. When an acquisition is made on a sole source basis, the recipient shall

maintain written documentation of the reason(s) for not obtaining competitive quotes.

(d) A recipient using more than \$10,000 of LSC funds to acquire an individual item of personal property must request and receive LSC's prior approval pursuant to 45 CFR 1630.5(b)(2), whether or not the acquisition is to replace existing property, before making the expenditure.

(1) A request for prior approval shall include:

(i) Three quotes, if obtained; and

(ii) A letter or memorandum containing:

(A) A statement of need explaining how the acquisition will further the delivery of legal services to eligible clients;

(B) A brief description of the property to be acquired, including the make and manufacture of the item, the name of the source supplying the item, the quantity to be acquired, and the total dollar amount of the acquisition; and

(C) A brief description of the acquisition process, including the names of the potential sources who submitted quotes, the amounts of the quotes, the quantity of items offered by the potential sources, and a brief explanation of the reasons for selecting a particular source to supply the item(s). In the absence of quotes, the description should explain what circumstances prevented the recipient from obtaining quotes.

(2) A recipient making a grant application may include a prior approval request in the grant application. Any such request must identify the specific item proposed to be acquired and include a justification which complies with the requirements of paragraph (d)(1) of this section. In such a case, approval of the grant application shall be deemed an approval of the acquisition request, in accordance with 45 CFR 1630.5(b)(2) and 1630.5(c).

Section 4 Acquisition Procedures for Real Property

(a) Prior to acquiring real property with LSC funds, recipients shall conduct an informal market survey in order to identify and evaluate at least three potential sources. Recipients may retain a real estate agent or broker for the purposes of conducting a market survey, provided that the cost is reasonable.

(b) The evaluation of potential acquisitions of real property shall include consideration of:

(1) The total cost of the acquisition;

(2) The quality of the property to be acquired; and

(3) Other factors affecting the appropriateness of the property for the delivery of legal services, such as location, accessibility to the client population and public transportation, and proximity to courts and/or other government or social services agencies.

(c) Recipients shall conduct an analysis of the average annual cost of the acquisition, including the costs of a down payment, interest and principal payments on debt acquired to finance the acquisition, closing costs, renovation costs, and the costs of utilities, maintenance, and taxes, where applicable. The cost analysis shall include a comparison of:

(1) The estimated total costs of acquiring and occupying the property over the life of the financing of the acquisition; with

(2) The estimated total costs of leasing and occupying similar property over the same period of time.

(d) The use of LSC funds to acquire real property requires LSC's prior approval pursuant to 45 CFR 1630.5(b)(3). When requesting LSC prior approval of an acquisition of real property, recipients shall provide to LSC in writing:

(1) a statement of need explaining how the acquisition will further the delivery of legal services to eligible clients in terms of:

(i) The location of the property in terms of accessibility to program clients;

(ii) Trends in funding and program staffing levels in relation to space needs; and

(iii) Whether the property will replace or be in addition to existing program offices;

(2) a brief analysis comparing:

(i) The estimated average annual cost of the planned acquisition over the life of the financing of the acquisition, including the costs of maintenance, utilities, and taxes; with

(ii) The estimated average annual cost of leasing or purchasing other, similar property over the same period of time;

(3) A current, independent appraisal of a type sufficient to secure a mortgage;

(4) Documentation of board approval consisting of either a board resolution or board minutes demonstrating approval of the acquisition;

(5) A statement of handicapped accessibility sufficient to meet the requirements of 45 CFR 1624.5(c);

(6) A copy of an acquisition agreement, contract, or other document containing a description of the property and the terms of the acquisition; and

(7) An explanation of the anticipated financing of the acquisition including:

(i) The estimated total cost of the acquisition, including renovations, moving, and closing costs;

(ii) The source and amount of funds to be applied toward a down payment;

(iii) The source of funds to be applied toward a monthly mortgage payment, if any;

(iv) The monthly amount of principal and interest payments on debt secured to finance the acquisition, if any; and

(v) The source and estimated amounts of funds needed to cover moving, renovations, and closing costs.

(e) At the time of approving a recipient's use of LSC funds to acquire real property, LSC and the recipient shall enter into a written LSC property interest agreement, which shall include, at a minimum:

(1) Provisions consistent with Sections 5(a), 7(a) and 7(b) herein;

(2) An agreement by the recipient not to encumber the property without prior approval of LSC;

(3) An agreement by the recipient to record, in accordance with appropriate and applicable state law, LSC's interest in the property.

(f) Expenditures for capital improvements require LSC's prior approval pursuant to 45 CFR 1630.5(b)(4).

(1) When requesting LSC's prior approval of such expenditures, recipients shall provide to LSC in writing, the following:

(i) A statement of need explaining how the improvement will further the delivery of legal services to eligible clients;

(ii) A brief description of the improvement, including the nature of the work to be done, the name of the contractor performing the work, and the total expected cost of the improvement; and

(iii) A brief description of the contractor selection process, including the names of the contractors who submitted quotes, the amounts of the quotes, and a brief explanation of the reason(s) for selecting a particular contractor to perform the work.

(2) If an expenditure for capital improvements must be made on an emergency basis (i.e., to repair major structural elements of a building after a hurricane or earthquake, flooding, etc.), a recipient may seek an approval to move ahead with the project prior to providing the information provided in paragraph (f)(1) of this section. If such approval has been granted, the recipient must follow up with LSC by providing the required information in a timely manner.

Section 5 Retention and Use of Property Acquired With LSC Funds

(a) Subject to the requirements herein, recipients may use LSC funds to acquire

and use personal and real property for the primary purpose of delivering legal services to eligible clients in accordance with the requirements of the LSC Act, as amended, applicable appropriations acts and LSC regulations. Title to personal and real property purchased in whole or in part with LSC funds vests in the recipient subject to the conditions set out in paragraphs (b) through (f) of this section.

(b) Recipients may retain personal and real property purchased with LSC funds for as long as they continue to receive LSC funding. When a recipient ceases to receive LSC funding, property purchased with LSC funds shall be disposed of in accordance with the requirements of sections 6(d) or (e) and 7(c) or (d) herein, as appropriate.

(c) Recipients may retain personal property obtained through a lease using LSC funds for as long as they continue to receive LSC funds, subject to the terms of the lease. When a recipient ceases to receive LSC funding, property leased with LSC funds shall be disposed of in accordance with Section 6(b) herein.

(d) When using personal or real property acquired in whole or in part with LSC funds for the performance of an LSC grant or contract, recipients may use such property for other activities, provided that such other activities do not interfere with the performance of the LSC grant or contract, and provided that such other uses meet the requirements of paragraphs (e) and (f) of this section.

(e) If a recipient uses personal property acquired in whole or in part with LSC funds to provide services to another organization which engages in activity restricted by the LSC Act, regulations, or other applicable law, the recipient shall charge the other organization a fee which shall not be less than that which private non-profit organizations in the same locality charge for the same services under similar conditions.

(f) If a recipient uses real property acquired in whole or in part with LSC funds to provide space to another organization which engages in activity restricted by the LSC Act, regulations, or other applicable law, the recipient shall charge the other organization an amount of rent which shall not be less than that which private non-profit organizations in the same locality charge for the same amount of space under similar conditions.

(g) Recipients may copyright any work that is subject to copyright and was developed, or for which ownership was obtained, under an LSC grant or contract, provided that LSC reserves a

royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use work copyrighted by recipients, when the work is obtained or developed in whole or in part with LSC funds.

Section 6 Disposal of Personal Property Acquired With LSC Funds

(a) During the term of an LSC grant or contract, recipients may dispose of items of personal property leased with LSC funds in accordance with the terms of the lease.

(b) When a recipient ceases to receive LSC funding, the recipient shall dispose of items of personal property leased with LSC funds in accordance with the terms of the lease.

(c) During the term of an LSC grant or contract, recipients may dispose of items of personal property purchased with LSC funds by:

(1) Trading in the property at the time of acquiring replacement property;

(2) Selling the property at a reasonable negotiated price, without advertising for quotes, where the property item has a current fair market value not exceeding \$15,000;

(3) Selling the property after having advertised for and received quotes, where the current fair market value of the property item exceeds \$15,000;

(4) Transferring the property to another recipient of LSC funds; or

(5) With the approval of LSC, transferring the property to another nonprofit organization serving the poor in the same service area.

(d) Recipients shall not dispose of items of personal property by sale, donation or other transfer of the property to the recipients' board members and employees.

(e) During the term of an LSC grant or contract, recipients selling personal property purchased with LSC funds may retain and use income from the sale according to the requirements of 45 CFR 1630.12 and 45 CFR 1628.3.

(f)(1) Except as provided in paragraph (g) of this section, when a recipient ceases to receive LSC funding, subject to the approval of LSC, recipients shall dispose of individual items of personal property purchased with LSC funds according to one of the following methods:

(i) The recipient may transfer the property to another recipient of LSC funds, in which case the recipient transferring the property shall be entitled to compensation in the amount of that percentage of the property's current fair market value which is equal to that percentage of the property's acquisition cost which was borne by non-LSC funds;

(ii) The recipient may transfer the property to another nonprofit organization serving the poor in the same service area, in which case LSC shall be entitled to compensation for that percentage of the property's current fair market value which is equal to that percentage of the property's acquisition cost which was borne by LSC funds;

(iii) The recipient may sell the property and retain the proceeds from the sale after compensating LSC for that percentage of the property's current fair market value which is equal to that percentage of the property's acquisition cost which was borne by LSC funds;

(iv) The recipient may retain the property, in which case LSC shall be entitled to compensation from the recipient for that percentage of the property's current fair market value which is equal to that percentage of the property's acquisition cost which was borne by LSC funds.

(2) Funds returned to LSC upon a disposition of property under this section shall be used by LSC to make emergency and other special grants to recipients. Such grants will generally be made to the same service area the returned funds originally supported.

(g) When a recipient ceases to receive LSC funding because the recipient has merged with or is succeeded by another recipient, the recipient may transfer the property to the merged or successor recipient, provided that the recipient and the merged or successor recipient execute a successor in interest agreement, approved by LSC, which requires the merged or successor recipient to use the property for the purpose of providing legal services for primary purpose of delivering legal services to eligible clients in accordance with the requirements of the LSC Act, as amended, applicable appropriations acts, and LSC regulations.

Section 7 Disposal of Real Property Acquired With LSC Funds

(a) During the term of an LSC grant or contract, recipients may dispose of real property acquired with LSC funds by:

(1) Selling the property after having advertised for and received offers, in which case the recipient may retain and use the proceeds from the sale of the property for the purpose of delivering legal services to eligible clients; or

(2) Transferring the property to another recipient of LSC funds, in which case the recipient transferring the property shall be entitled to compensation in the amount of that percentage of the property's current fair market value which is equal to that percentage of the property's acquisition

cost which was borne by non-LSC funds.

(b) During the term of an LSC grant or contract, recipients selling real property acquired with LSC funds may retain and use income from the sale of the property according to the requirements of 45 CFR 1630.12 and 45 CFR 1628.3.

(c)(1) When a recipient owning real property acquired with LSC funds ceases to receive funding from LSC, the recipient shall, with the approval of LSC, dispose of the real property according to one of the following methods:

(i) The recipient may transfer title to the property to another recipient of LSC funds, in which case the recipient transferring the property shall be entitled to compensation for that percentage of the property's current fair market value which is equal to that percentage of the property's acquisition cost which was borne by non-LSC funds;

(ii) The recipient may retain title to the property without further obligation to LSC after the recipient compensates LSC for that percentage of the property's current fair market value which is equal to the percentage of the property's acquisition cost which was borne by LSC funds;

(iii) The recipient may sell the property and compensate LSC for that percentage of the property's current fair market value which is equal to the percentage of the property's acquisition cost that was borne by LSC funds, after the deduction of actual and reasonable selling and fix-up expenses, if any.

(2) Funds returned to LSC upon a disposition of property under this section shall be used by LSC to make emergency and other special grants to recipients. Such grants will generally be made to the same service area the returned funds originally supported.

(d) When a recipient ceases to receive LSC funding because the recipient has merged with or is succeeded by another recipient, the recipient may transfer the property to the merged or successor recipient, provided that the recipient and the merged or successor recipient execute a successor in interest agreement, approved by LSC, which requires the merged or successor recipient to use the property for the primary purpose of delivering legal services to eligible clients in accordance with the requirements of the LSC Act, as amended, applicable appropriations acts, and LSC regulations.

Section 8 Documentation and Recordkeeping Requirements

(a) Recipients shall account for personal property acquired with LSC

funds according to the requirements of Sections 2–2.4 and 3–5.4(c) of the Accounting Guide for LSC Recipients.

(b) Recipients acquiring real property with LSC funds shall keep such records as are customary for the retention of real property in the jurisdiction where the property is located.

(c) Recipients shall account for income earned from the sale of real or personal property purchased with LSC funds in accordance with the requirements of 45 CFR 1630.12.

(d) Documentation of real property acquisitions shall consist of the acquisition contract, evidence of a market survey, cost or price analysis, and an explanation of the reason(s) for selecting a particular source, a copy of an independent appraisal of the property's market value, evidence of board approval of the acquisition, a statement of handicapped accessibility sufficient to meet the requirements of 45 CFR 1624.5(c), and a copy of the LSC property interest agreement required by Section 4(e) herein.

Section 9 Recipient Policies and Procedures

Recipients shall develop written policies and procedures which implement, at a minimum, the requirements of Sections 3 and 4 herein.

Victor M. Fortuno

General Counsel and Vice President for Legal Affairs

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BILLING CODE 7050–01–P



**LSC Grant Assurances
Calendar Year 2015 Funding**

If Applicant is successful and receives an LSC grant or contract,

APPLICANT HEREBY ASSURES THAT:

1. It will comply with the requirements of the Legal Services Corporation Act of 1974 as amended (LSC Act), any applicable appropriations acts and any other applicable law, rules, regulations, policies, guidelines, instructions, and other directives of the Legal Services Corporation (LSC), including, but not limited to, LSC Audit Guide for Recipients and Auditors, the Accounting Guide (2010 Edition), the CSR Handbook (2008 Edition, as amended 2011), the 1981 LSC Property Manual (as amended) and the Property Acquisition and Management Manual, and with any amendments of the foregoing adopted before or during the period of this grant. It will comply with both substantive and procedural requirements, including recordkeeping and reporting requirements. It understands that a successful Applicant may be required to agree to special grant conditions as a condition of receiving the grant. Multi-year grants must be renewed each year. Upon renewal, new terms and conditions may apply.
2. It agrees to be subject to all provisions of Federal law relating to the proper use of Federal funds listed in 45 C.F.R. § 1640.2(a)(1). It understands that if Applicant violates any Federal laws identified in 45 C.F.R. Part 1640, it may be subject to civil, criminal and/or administrative penalties. It represents that it has informed employees and board members of the Federal laws and their consequences both to the recipient and to themselves as individuals as required in 45 C.F.R. § 1640.3.
3. It agrees that all derivative income from these grant funds shall also be subject to the terms and conditions of this grant as authorized by 45 C.F.R. Part 1630.
4. It will not discriminate on the basis of race, color, religion, gender, age, disability, national origin, sexual orientation, or any other basis prohibited by law against: (1) any person applying for employment or employed by the Applicant; or (2) any person seeking or provided assistance from the Applicant or other program(s) supported in whole or in part by this grant. The governing body has adopted or will adopt in a timely manner Equal Opportunity and Sexual Harassment Policies, each of which must include an effective mechanism for processing complaints.

5. It will notify the LSC Office of Inspector General (OIG) within thirty (30) calendar days after replacement of the Independent Public Accountant (IPA), termination of the IPA, or any other occurrence resulting in a new IPA performing the grantee's annual financial audit. No audit costs may be charged to the LSC grant when the audit required has not been made in accordance with the guidance promulgated by the OIG. It understands that if it fails to have an audit acceptable to the OIG in accordance with the OIG's audit guidance (including the Audit Guide for Recipients and Auditors), LSC may impose sanctions in addition to those specified by statute, which are: (1) withholding of a percentage of the recipient's funding until the audit is completed satisfactorily; and (2) suspension of the recipient's funding until an acceptable audit is completed. Other possible sanctions that LSC may impose for not having an acceptable audit include special grant conditions and/or corrective actions.
6. It understands that Congress may reduce, rescind or sequester LSC funding or may impose additional requirements or restrictions on the use of LSC funding. An award of a grant under the competitive bidding process does not obligate LSC to disburse any funds that are not authorized or appropriated by Congress, nor preclude the imposition of additional Congressional requirements on any funds that are so disbursed. Such requirements or reductions as implemented by LSC shall not constitute a termination or suspension of funding.
7. It will provide legal services in accordance with the plans set out in its grant application, as modified in further negotiations with LSC, and agrees to provide high quality, economical, and effective legal assistance, as measured by the LSC Performance Criteria, ABA Standards for the Provision of Civil Legal Aid, ABA Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means, and consistent with any applicable code or rules of professional conduct, responsibilities, or ethics.
8. With respect to its office technology:
 - (a) it has an information security system that ensures confidentiality and security of its operations, assets, data, and files.
 - (b) it will conduct program-wide conflicts checking contemporaneously with intake using a case management system with an electronic database, including when intake is conducted outside its offices and contemporaneous access to the case management system is available.
 - (c) it has a plan for backing up case management data, financial data, documents and other critical data. It performs these backups at least weekly and checks their integrity by restoring test files. Further, it stores electronic or physical copies of these backups in a safe, offsite location.
 - (d) it has the capacity to convert paper documents into Portable Document Format (PDF) and the capacity to transmit those documents as electronic files.

- (e) each case handler has a computer at her or his work area that can perform all of the following functions: word processing, access to the case management system, access to time-keeping, access to the Internet, including the ability to download files from the Internet, and e-mail capability with the capacity to send and receive messages and attachments both internally and externally. It understands that the above functions describe the minimum functionality of existing computers only. It further agrees that any new computer, monitor, or printer purchased to perform the above functions will have a capacity to exceed the demands of current operating systems and software so that it can reasonably be expected to perform adequately with few upgrades for at least three (3) years.
9. It will work with other LSC and non-LSC-funded legal services providers in the State to ensure that there is a statewide website that publishes a full range of relevant and up-to-date community legal education/pro se related materials and referral information, at least covering the common topics facing the client communities on the subject matters that are the Applicant's priorities. It will contribute to sustaining said website according to the plan for the development and maintenance of the website adopted by the statewide website Stakeholders Committee of which it will be a member. As a member of the Committee it will work to ensure that: 1) outreach is conducted for members of the client community to inform them of the website and about how to use it, 2) the website is periodically evaluated and updated for ease of use and accessibility to meet the needs of as many consumers as possible, 3) the LSC logo is included on the website, at least on the homepage, and 4) the website indicates that LSC funded programs participate in the website consistent with LSC restrictions. *Sample disclaimer language for the homepage or other prominent location: LSC's support for this website is limited to those activities that are consistent with LSC restrictions* (see Grant Assurance 21 for further instructions and clarification on terms of usage). If a Technology Initiative Grant (TIG) was awarded to start the website using either the LawHelp or Open Source template, it will maintain the scope of functionality of the template it was using, including the capability of having separate sections on the website for clients, legal services advocates, and pro bono attorneys; adhering to the "National Subject Matter Index"; and the ability to use the LawHelp interactive HotDocs server.
10. During normal business hours and upon request, it will give any authorized representative of LSC, including the OIG, or the Comptroller General of the United States (which includes the Government Accountability Office (GAO)) access to and copies of all records that they are entitled to under the provisions of the LSC Act and other applicable laws. This requirement does not apply to any such materials that may be properly withheld due to applicable law or rules. It agrees to provide LSC with the requested materials in a form determined by LSC while, to the extent consistent with this requirement, preserving applicable client secrets and confidences and respecting the privacy interests of the Applicant's staff members. For each record subject to the attorney-client privilege, it will identify in writing the specific record or portion thereof not being provided and the legal justification for not providing the record or portion thereof.

11. Notwithstanding any other Grant Assurance, §1006(b)(3) of the LSC Act, 42 U.S.C. § 2996e(b)(3), or any state rule governing professional responsibility, it shall, upon request, provide access to and copies of financial records, time records, retainer agreements, client trust fund and eligibility records, and client names, except for those reports or records that may be properly withheld due to applicable law governing attorney-client privilege, to LSC, including the OIG, and to any Federal department or agency that is auditing or monitoring the activities of LSC or of the Applicant and any independent auditor or monitor receiving Federal funds to conduct such auditing or monitoring, including any auditor or monitor of LSC. For each record subject to the attorney-client privilege, it will identify in writing the specific record or portion thereof not being provided and the legal justification for not providing the record or portion thereof. Any materials furnished pursuant to this Assurance shall be provided in a timely manner.
12. It will cooperate with all reasonable information collection, including surveys, questionnaires, monitoring, audits, investigations, and compliance or evaluation activities undertaken by LSC, including the OIG, or its agents. Such cooperation shall include making staff available to LSC, including the OIG, or its agents for interview and otherwise allowing staff to cooperate with the same. It understands that nothing in these Grant Assurances in any way restricts or limits the authority of the LSC OIG to access any and all records and information to which it is entitled under the Inspector General Act of 1978, as amended, 5 U.S.C. app. § 3. It will submit, for each year of the grant and for each service area for which a grant is awarded, Grant Activity Reports in a format and at a time determined by LSC.
13. It will not take or threaten to take any disciplinary or other retaliatory action against any person because of any appropriate cooperation with or the appropriate release of information to LSC, including the OIG, or other entity authorized to receive such cooperation or information pursuant to applicable procedures and consistent with any applicable law, code of ethics, or rule of professional responsibility. It will notify its employees and volunteers in writing that it will not take any disciplinary or other retaliatory action against an employee or volunteer (including board members) for any appropriate cooperation with LSC, including the OIG, or other entity authorized to receive such cooperation.
14. It will notify the LSC Office of Information Management within thirty (30) calendar days after any of the following occurrences that involve activities funded by the grant:
 - a. a decision to close and/or relocate any main or staffed branch office;
 - b. change of chairperson of the governing/policy body (including the new chairperson's name, telephone number, and e-mail address);
 - c. change of chief executive officer (including the new chief executive officer's name, telephone number, and e-mail address);
 - d. change in its charter, articles of incorporation, by-laws, or governing body structure;
or
 - e. change in its main e-mail address or its website address (URL).

15. It will notify the LSC OIG Hotline (Telephone: 800-678-8868 or 202-295-1670; E-mail hotline@oig.lsc.gov; Fax 202-337-7155) within two (2) business days of the discovery of any information that gives it reason to believe it has been the victim of a loss of \$200 or more as a result of any: willful misrepresentation or theft of time, crime, fraud, misappropriation, embezzlement, or theft involving property, client funds, LSC funds, and/or non-LSC funds used for the provision of legal assistance; or when the grantee has contacted local, state, or Federal law enforcement officials about a crime. It also will notify the OIG if it has been the victim of a theft of items such as credit cards, check stock, passwords, or electronic access codes that could lead to a loss of \$200 or more. The required notice shall be provided regardless of whether the funds or property are recovered. Once it has determined that a reportable event has occurred, it agrees it will contact the OIG before conducting its own investigation into the occurrence.
16. It will notify the LSC Office of Compliance and Enforcement within twenty (20) calendar days whenever:
 - (a) under the provisions of § 1006(f) of the LSC Act, 42 U.S.C. § 2996e(f), the Applicant receives any notice of a claim for attorneys' fees. The Applicant also will forward, upon receipt, a copy of the pleading requesting these attorneys' fees;
 - (b) any of the following events likely to have a substantial impact on its delivery of services occur:
 - (i) a monetary judgment, sanction or penalty has been entered against it;
 - (ii) it enters into a voluntary settlement of an action or matter which involves the payment of a monetary judgment, sanction or penalty;
 - (iii) it experiences a *force majeure* event.
 - (c) any of a grantee's key officials (executive director, chief financial officer, or other key financial official) is charged with fraud, misappropriation, embezzlement, theft, or any similar offense, or is subjected to suspension, loss of license, or other disciplinary action by a bar or other professional licensing organization.
17. It will maintain all records pertaining to the grant during the grant year and for such period(s) of time as prescribed by the Accounting Guide for LSC Recipients, Appendix II (2010 Edition) after expiration of the grant year. With respect to financial records, it will maintain originals (or digital images thereof unless otherwise required by applicable law) of all financial records and supporting documentation sufficient for LSC to audit and determine whether the costs incurred and billed are reasonable, allowable and necessary under the terms of the grant. LSC retains the right to perform an audit, or engage independent auditors to do so, whether during or subsequent to the grant period.

18. It will, in accordance with internal policies, retain and preserve closed client files for a period of not less than five (5) years from the date the file is closed or for the period set by Federal, state, or local rules on maintenance of records, whichever is longer.
19. In the event that the Applicant merges or consolidates with another LSC grantee, changes its current identity or status as a legal entity, or ceases to be a direct recipient of LSC grant funds at the end of the grant term or during the grant term for whatever reason, it agrees:
 - a. to provide the LSC Office of Program Performance (OPP) with written notice at least sixty (60) calendar days prior to any of the above events (except when the LSC grant relationship changes as a result of LSC action);
 - b. not to transfer its interests in its LSC grant to another entity without prior approval from LSC for such transfer, including submission to LSC and approval by LSC of a Successor in Interest Agreement;
 - c. to ensure that any successor entity maintains the Applicant's records, including financial records, for a period of six (6) years after expiration of the grant year to which they pertain and maintains client files for a period of not less than five (5) years after the closure of the case to which they pertain;
 - d. to submit to the LSC OPP, either at the time that it provides the written notice in (a) above, or within fifteen (15) calendar days from being notified by LSC that it will cease to be a recipient of LSC grant funds, a plan for the orderly conclusion of the role and responsibilities of the Applicant as a recipient of LSC funds. Detailed instructions for preparing this plan are at www.grants.lsc.gov under the title "Planning the Orderly Conclusion of the Role and Responsibilities of a Recipient of LSC Funds." Once at the website, click "RIN," then locate the instructions under "Grantee Guidance."
20. It agrees to cooperate with LSC in its efforts to follow up on audit findings, recommendations, significant deficiencies or material weaknesses, and corrective actions by LSC, including the OIG, or the GAO, and/or with the findings, recommendations or significant deficiencies or material weaknesses found by the Applicant's IPA to ensure that instances of deficiencies and noncompliance are resolved in a timely manner. It agrees to expeditiously resolve all such reported audit findings, significant deficiencies or material weaknesses, and corrective actions, including those of sub-recipients, to the satisfaction of LSC.

21. It will use the LSC logo on any Internet website page that may serve as a “homepage” for the Applicant, and on its Annual Report, press releases, and official letterhead, and may use the logo on other official documents such as business cards, newsletters, telephone directory listings or other advertisements or announcements about services provided by the Applicant and supported with LSC funds. It understands that the LSC logo is a registered service mark of LSC and that permission to use the logo is provided to Applicant under a limited license such that the logo may be used: (1) only while Applicant is receiving LSC funds; (2) only for the purposes described above; and (3) only in accordance with such size, format and color instructions as LSC provides. Other uses of the logo are not permitted unless expressly authorized in writing by LSC. Electronic and camera-ready versions of the logo are available at www.grants.lsc.gov. Once at the website, click “Resources,” then click “Reference Materials” to access the logo.

Name of Executive Director

Name of Governing/Policy Board Chairperson
(or other organization official authorizing this application)

Title

Title

Signature

Signature

Date

Date

The LSC Source Book is compiled by the LSC Office of Legal Affairs and is current as of the date of publication.

Questions can be directed to Mark Freedman, Senior Assistant General Counsel, at mfreedman@lsc.gov or 202-295-1623.

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