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(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; 82 FR 20447, May 2, 2017]

§ 1609.4 Requesting and receiving attorneys' fees.

(a) Any petition seeking attorneys' fees for representation supported in whole or in part with funds provided by LSC, shall, to the extent permitted by law and rules in the jurisdiction, be filed in the name of the recipient.

(b) Attorneys' fees received by a recipient or an employee of a recipient for representation supported in whole or in part with funds provided by LSC shall be allocated to the fund in which the recipient's LSC grant is recorded in the same proportion that the amount of LSC funds expended bears to the total amount expended by the recipient to support the representation.

(c) 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.

[82 FR 20447, May 2, 2017]

§ 1609.5 Receiving 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, as amended at 82 FR 20447, May 2, 2017]

§ 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; PROGRAM INTEGRITY

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

SOURCE: 85 FR 63214, Oct. 7, 2020, unless otherwise noted.

Subpart A—General Provisions

§ 1610.1 Purpose.

This part is designed to implement restrictions and requirements on the use of non-LSC funds by LSC recipients and to set requirements for each LSC recipient to maintain program integrity with respect to any organization that engages in LSC-restricted activities.

§ 1610.2 Definitions.

(a) *Use of funds* means the expenditure of funds by an LSC recipient.

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(1) *Authorized use of funds* means any use of funds within the purpose for which the funds were provided. The following non-exhaustive list provides examples of some of the types of purposes that a grantor, donor, or other might identify.

(i) A grant stating that the funds provided are available to support legal services for victims of domestic violence regardless of income or financial resources are authorized for those purposes;

(ii) A grant stating that the funds provided are available to support any civil legal services to people with household incomes below 200% of the Federal Poverty Guidelines are authorized for those purposes;

(iii) A private donation stating that the funds are for eviction work are authorized for that purpose; or

(iv) A private donation without any instructions from the donor or grantor regarding the use of the funds are available for any purposes.

(2) *Unauthorized use of funds* means any use of funds that is not an authorized use as defined above.

(b) *Derived from* means the recipient obtained the funds either directly from the source or as the result of a series of grants and subgrants (or similar arrangements) originating from the source. For example, a state provides public funds to a private, non-LSC-funded statewide legal aid entity. The statewide legal aid entity subgrants some of those public funds to an LSC recipient to provide services in six counties. The subgranted funds remain public funds under this rule because they are derived from public funds.

(c) *Non-LSC funds* means funds derived from any source other than LSC.

(1) *Private funds* means funds that are derived from any source other than LSC or the other categories of non-LSC funds in this section. Examples of private funds are donations from individuals or grants that do not qualify as public funds or tribal funds in this section.

(2) *Public funds* means funds that are:

(i) Derived from a Federal, State, or local government or instrumentality of a government; or

(ii) Derived from Interest on Lawyers' Trust Account (IOLTA or IOLA)

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programs established by State court rules or legislation that collect and distribute interest on lawyers' trust accounts.

(3) *Tribal funds* means funds that are derived from an Indian tribe or from a private nonprofit foundation or organization for the benefit of Indians or Indian tribes.

(d) *Restrictions* means the prohibitions or limitations on the use of LSC funds by a recipient and on the use of non-LSC funds as described in this part. LSC has four categories of restrictions: Extended, standard, limited, and other. The restrictions appear in 45 CFR parts 1600 through 1644, in the LSC Act at 42 U.S.C. 2996–2996l and in the sections of LSC's annual appropriation (Appropriations Restrictions) that incorporate the restrictions enacted in section 504 of Title V in Public Law 104–134, 122 Stat. 1321–50 (1996), as incorporated through Public Law 105–119, tit. V, §502(a)(2), 111 Stat. 2440, 2510 (1998) and subject to modifications in other statutes.

(1) *Extended restrictions* are the restrictions on:

(i) Abortion litigation (other abortion activities are subject to a standard restriction)—Section 504(a)(14) of the Appropriations Restrictions;

(ii) Aliens (representation of non-U.S. citizens)—45 CFR part 1626;

(iii) Class actions—45 CFR part 1617;

(iv) Evictions from public housing involving illegal drug activities—45 CFR part 1633;

(v) Lobbying in general—45 CFR 1612.3, subject to the limitations and exceptions in 45 CFR 1612.5 (activities that are not lobbying) and 45 CFR 1612.6 (exceptions for non-LSC funds that are a limited restriction);

(vi) Prisoner litigation—45 CFR part 1637;

(vii) Redistricting or census—45 CFR part 1632;

(viii) Solicitation of clients—45 CFR part 1638;

(ix) Training on prohibited topics—45 CFR 1612.8; and

(x) Welfare reform—45 CFR part 1639.

(2) *Standard restrictions* are the restrictions on:

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(i) Abortion activities (other than abortion litigation subject to an extended restriction)—42 U.S.C. 2996f(b)(8);

(ii) Criminal proceedings—45 CFR part 1613;

(iii) Draft registration violations (violations of Military Selective Service Act) or military desertion—42 U.S.C. 2996f(b)(10);

(iv) Desegregation of schools—42 U.S.C. 2996f(b)(9);

(v) Fee-generating cases—45 CFR part 1609;

(vi) Habeas corpus (collaterally attacking criminal convictions)—45 CFR part 1615;

(vii) Organizing—45 CFR 1612.9;

(viii) Persistent incitement of litigation and other activities prohibited by rules of professional responsibility for attorneys—Section 42 U.S.C. 2996f(a)(10); and

(ix) Political activities—the provisions of 45 CFR part 1608 that are stated as restrictions on the use of LSC funds (*e.g.*, the clause of §1608.4(b) regarding “the use of any Corporation funds”) but not the other provisions of part 1608, which are included in the category for other restrictions (*e.g.*, §1608.3(a) prohibiting the use of “any political test or qualification”).).

(3) *Limited restrictions* are the restrictions on:

(i) Lobbying permitted with non-LSC funds (upon government request, in public rulemaking, or regarding state or local funding of the recipient)—45 CFR 1612.6;

(ii) Assisted suicide, euthanasia, and mercy killing—45 CFR part 1643; and

(iii) Use of appropriated LSC funds to file or pursue a lawsuit against LSC—Section 506 of the Appropriations Restrictions.

(4) *Other restrictions* are the restrictions on:

(i) Demonstrations, picketing, boycotts, or strikes—45 CFR 1612.7(a).

(ii) Political activities—the provisions of 45 CFR part 1608 other than those stated as restrictions on the use of LSC funds (which are standard restrictions) (*e.g.*, §1608.3(a) prohibiting the use of “any political test or qualification” is an other restriction).

(iii) Rioting, civil disturbances, or violations of injunctions—45 CFR 1612.7(b).

(e) *Restricted activity* means an activity prohibited or limited by the restrictions.

(f) *Program integrity* means that a recipient is maintaining objective integrity and independence from any organization that engages in restricted activities, as required by subpart C of this part.

§ 1610.3 Other requirements on recipients’ funds.

The following requirements apply to non-LSC funds as provided in the referenced regulations. This part neither expands nor limits those requirements.

(a) Client identity and statement of facts—45 CFR part 1636.

(b) Disclosure of case information—45 CFR part 1644.

(c) Priorities for the provision of services—45 CFR part 1620.

(d) Timekeeping—45 CFR part 1635.

Subpart B—Use of Non-LSC Funds

§ 1610.4 Prohibitions on the use of non-LSC funds.

(a) *Non-LSC funds.* Non-LSC funds may not be used by recipients for restricted activities as described in this section, subject to the exceptions in §§1610.5 and 1610.6 of this part.

(b) *Extended restrictions.* The extended restrictions apply to the following uses of non-LSC funds:

(1) Private funds—any use of private funds;

(2) Public funds—any use of public funds; and

(3) Tribal funds—any unauthorized use of tribal funds.

(c) *Standard restrictions.* The standard restrictions apply to the following uses of non-LSC funds:

(1) Private funds—any use of private funds;

(2) Public funds—any unauthorized use of public funds; and

(3) Tribal funds—any unauthorized use of tribal funds.

(d) *Limited restrictions.* The limited restrictions do not apply to the use of non-LSC funds.

(e) *Other restrictions.* The other restrictions apply to non-LSC funds as

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provided in the referenced regulations. This part neither expands nor limits those requirements.

(f) *Inapplicability to part 1611—financial eligibility.* This part does not expand, limit, or otherwise apply to the financial eligibility rules of 45 CFR part 1611.

§ 1610.5 Grants, subgrants, donations, and gifts made by recipients.

(a) Subgrants in which a recipient provides LSC funds or LSC-funded resources as some or all of a subgrant to a subrecipient are governed by 45 CFR part 1627. That rule states how the restrictions apply to the subgrant and to the non-LSC funds of the subrecipient, which can vary with different types of subgrants.

(b) Donations and gifts using LSC funds are prohibited by 45 CFR part 1630.

(c) Use of non-LSC funds. Grants, subgrants, donations, or gifts provided by a recipient and funded entirely with non-LSC funds are not subject to this part.

§ 1610.6 Exceptions for public defender programs and criminal or related cases.

The following restrictions do not apply to: (1) A recipient's or subrecipient's separately funded public defender program or project; or (2) Criminal or related cases accepted by a recipient or subrecipient pursuant to a court appointment.

(a) Criminal proceedings—45 CFR part 1613;

(b) Actions challenging criminal convictions—45 CFR part 1615;

(c) Aliens—45 CFR part 1626;

(d) Prisoner litigation—45 CFR part 1637;

§ 1610.7 Notification to non-LSC funders and donors.

(a) No recipient may accept funds from any source other than LSC unless the recipient provides the source of the funds with written notification of LSC prohibitions and conditions that apply to the funds, except as provided in paragraph (b) of this section.

(b) LSC does not require recipients to provide written notification for receipt

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of any single contribution of less than \$250.

Subpart C—Program Integrity

§ 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 subgrant of LSC funds from the recipient, as defined in 45 CFR part 1627, 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. LSC will determine whether sufficient physical and financial separation exists on a case-by-case basis and will base its determination 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 that distinguish the recipient from the organization are present.

(b) Each recipient's governing body must certify to LSC on an annual basis that the recipient is in compliance with the requirements of this section.

Subpart D—Accounting and Compliance

§ 1610.9 Accounting.

(a) Recipients shall account for funds received from a source other than LSC as separate and distinct receipts and disbursements in a manner directed by LSC.

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(b) Recipients shall adopt written policies and procedures to implement the requirements of this part.

(c) Recipients shall maintain records sufficient to document the expenditure of non-LSC funds for any restricted activities as defined in Subpart A and to otherwise demonstrate compliance with the requirements of this part.

§ 1610.10 Compliance.

In addition to all other compliance and enforcement options, LSC may recover from a recipient's LSC funds an amount not to exceed the amount improperly charged to non-LSC funds, as provided in § 1630.16 of this chapter.

PART 1611—FINANCIAL ELIGIBILITY

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APPENDIX A TO PART 1611—INCOME LEVEL FOR INDIVIDUALS ELIGIBLE FOR ASSISTANCE

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

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. 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 undertakes 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.