

**SUBCHAPTER I—THE ADMINISTRATION ON INTELLECTUAL
AND DEVELOPMENTAL DISABILITIES, DEVELOPMENTAL DIS-
ABILITIES PROGRAM**

PARTS 1385–1399 [RESERVED]

SUBCHAPTERS J–K [RESERVED]

CHAPTER XVI—LEGAL SERVICES CORPORATION

| <i>Part</i> | | <i>Page</i> |
|-------------|---|-------------|
| 1600 | Definitions | 391 |
| 1601 | [Reserved] | |
| 1602 | Procedures for disclosure of information under the Freedom of Information Act | 392 |
| 1603 | Testimony by employees and production of documents in proceedings where the United States is not a party | 403 |
| 1604 | Outside practice of law | 405 |
| 1605 | Appeals on behalf of clients | 406 |
| 1606 | Termination, limited reduction of funding, and debarment procedures; recompetition | 407 |
| 1607 | Governing bodies | 414 |
| 1608 | Prohibited political activities | 417 |
| 1609 | Fee-generating cases | 418 |
| 1610 | Use of non-LSC funds; program integrity | 419 |
| 1611 | Financial eligibility | 423 |
| 1612 | Restrictions on lobbying and certain other activities | 428 |
| 1613 | Restrictions on legal assistance with respect to criminal proceedings | 431 |
| 1614 | Private attorney involvement | 432 |
| 1615 | Restrictions on actions collaterally attacking criminal convictions | 440 |
| 1616 | Attorney hiring | 440 |
| 1617 | Class actions | 441 |
| 1618 | Enforcement procedures | 441 |
| 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 |

45 CFR Ch. XVI (10–1–23 Edition)

| <i>Part</i> | | <i>Page</i> |
|-------------|---|-------------|
| 1627 | Subgrants | 461 |
| 1628 | Recipient fund balances | 465 |
| 1629 | Bonding requirements for recipients | 467 |
| 1630 | Cost standards and procedures | 468 |
| 1631 | Purchasing and property management | 474 |
| 1632 | Redistricting | 482 |
| 1633 | Restriction on representation in certain eviction proceedings | 482 |
| 1634 | Competitive bidding for grants and contracts | 483 |
| 1635 | Timekeeping requirement | 487 |
| 1636 | Client identity and statement of facts | 489 |
| 1637 | Representation of prisoners | 490 |
| 1638 | Restriction on solicitation | 491 |
| 1639 | Welfare reform | 491 |
| 1640 | Application of Federal law to LSC recipients | 492 |
| 1641 | Debarment, suspension and removal of recipient auditors | 493 |
| 1642 | [Reserved] | |
| 1643 | Restriction on assisted suicide, euthanasia, and mercy killing | 501 |
| 1644 | Disclosure of case information | 502 |
| 1645–1699 | [Reserved] | |

PART 1600—DEFINITIONS

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

§ 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.

Corporation funds or *LSC funds* means any funds appropriated to LSC by Congress to carry out the purposes of the Legal Services Corporation Act of 1974, 42 U.S.C. 2996 *et seq.*, as amended.

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.

Non-LSC funds means any funds that are not Corporation funds or LSC funds.

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; 82 FR 37337, Aug. 10, 2017]

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.
- 1602.7 Index of records.
- 1602.8 Requests for records.
- 1602.9 Timing and responses to requests for records.
- 1602.10 Exemptions for withholding records.
- 1602.11 Officials authorized to grant or deny requests for records.
- 1602.12 Denials.
- 1602.13 Appeals of denials.
- 1602.14 Fees.
- 1602.15 Submitter's rights process.

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

SOURCE: 81 FR 91039, Dec. 16, 2016, unless otherwise noted.

§ 1602.1 Purpose.

This part contains the rules and procedures the Legal Services Corporation (LSC) follows in making records available to the public under the Freedom of Information Act.

§ 1602.2 Definitions.

(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, LSC will look to the use to which a requester will put the documents requested. When LSC 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) *Confidential commercial information* means records provided to LSC by a submitter that arguably contain material exempt from release under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(c) *Duplication* means the process of making a copy of a requested record pursuant to this part in a form appropriate for release in response to a FOIA request.

(d) *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.

(e) *FOIA* means the Freedom of Information Act, 5 U.S.C. 552.

(f) *LSC* means the Legal Services Corporation. Unless explicitly stated otherwise, LSC includes the Office of Inspector General.

(g) *Non-commercial scientific institution* means an institution that is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(h) *Office* refers to the Office of Legal Affairs and/or the Office of Inspector General (OIG).

(i) *Person* includes an individual, partnership, corporation, association, or public or private organization other than LSC or a Federal agency.

(j) *Records* are any type of information made or received by LSC or the OIG for purposes of transacting LSC or OIG business and preserved by LSC or the OIG (either directly or maintained by a third party under contract to LSC or the OIG for records management purposes) regardless of form (e.g., paper or electronic, formal or informal, copies or original) as evidence of LSC's or OIG's organization, functions, policies, decisions, procedures, operations, or other activities of LSC or the OIG or because the record has informational value.

(k) *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

Legal Services Corporation

§ 1602.5

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 or subscription or by 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 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. LSC may also consider the past publication record of the requester in making such a determination.

(l) *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.

(m) *Rule* means the whole or a part of an LSC statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of LSC.

(n) *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.

(o) *Submitter* means any person or applicant for funds who provides con-

fidential commercial information to LSC.

§ 1602.3 Policy.

LSC will make records concerning its operations, activities, and business available to the public to the maximum extent reasonably possible. LSC will withhold records from the public only in accordance with the FOIA and this part. LSC will disclose records otherwise exempt from disclosure under the FOIA when LSC does not reasonably foresee that disclosure would harm an interest protected by an exemption and disclosure is not prohibited by law or protected under Exemption 3.

§ 1602.4 Records published in the Federal Register.

LSC routinely publishes in the FEDERAL REGISTER information on its basic structure and operations necessary to inform the public how to deal effectively with LSC. LSC will make reasonable efforts to currently update such information, which will include basic information on LSC’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) LSC will maintain a public reading room at its offices at 3333 K St. NW., Washington, DC 20007. This room will be supervised and will be open to the public during LSC’s regular business hours. Procedures for use of the public reading room are described in §1602.6. LSC also maintains an electronic public reading room that may be accessed at <http://www.lsc.gov/about-lsc/foia/foia-electronic-public-reading-room>.

(b) Subject to the limitation stated in paragraph (c) of this section, LSC will make available for public inspection in its electronic public reading room the records described in 5 U.S.C. 552(a)(2).

(c) Records required by FOIA to be available in the public reading room may be exempt from mandatory disclosure pursuant to 5 U.S.C. 552(b). LSC will not make such records available in

§ 1602.6

the public reading room. LSC may edit other records maintained in the reading room by redacting details about individuals to prevent clearly unwarranted invasions of personal privacy. In such cases, LSC will attach a full explanation of the redactions to the record. LSC will indicate the extent of the redactions unless doing so would harm an interest protected by the exemption under which the redactions are made. If technically feasible, LSC will indicate the extent of the redactions at the place in the record where the redactions were made.

§ 1602.6 Procedures for use of public reading room.

(a) A person who wishes to inspect or copy records in the public reading room should arrange a time in advance, by telephone or letter request made to the Office of Legal Affairs, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007 or by email to FOIA@lsc.gov.

(1) In appropriate circumstances, LSC will advise persons making telephonic requests to use the public reading room that a written request would aid in the identification and expeditious processing of the records sought.

(2) 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.

(b) LSC will advise the requester as promptly as possible if, for any reason, it is not feasible to make the records sought available on the date requested.

(c) A computer terminal and printer are available upon request in the public reading room for accessing Electronic Reading Room records.

§ 1602.7 Index of records.

LSC will maintain and make available for public inspection in an electronic format a current index identifying any matter within the scope of § 1602.4 and § 1602.5(b).

§ 1602.8 Requests for records.

(a) LSC will make its records promptly available, upon request, to any person in accordance with this section, unless:

(1) the FOIA requires the records to be published in the FEDERAL REGISTER

45 CFR Ch. XVI (10–1–23 Edition)

(§ 1602.4) or to be made available in the public reading room (§ 1602.5); or

(2) LSC determines that such records should be withheld and are exempt from mandatory disclosure under the FOIA and § 1602.10.

(b)(1) *Requests for LSC records.* All requests for LSC records must be clearly marked Freedom of Information Act Request and shall be addressed to the FOIA Analyst, Office of Legal Affairs, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007. Email requests shall be sent to FOIA@lsc.gov. Requests for LSC Records may also be made online using the FOIA Request Electronic Submission Form located at <http://www.lsc.gov/about-lsc/foia>.

(2) *Requests for Office of Inspector General records.* All requests for records maintained by the OIG must be clearly marked Freedom of Information Act Request and shall be addressed to the FOIA Officer, Office of Inspector General, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007. Email requests shall be sent to FOIA@oig.lsc.gov.

(3) Any request not marked and addressed as specified in this section will be so marked by LSC personnel as soon as it is properly identified, and will be forwarded immediately to the appropriate Office. A request improperly addressed will be deemed to have been received as in accordance with § 1602.9 only when it has been received by the appropriate Office. Upon receipt of an improperly addressed request, the Chief FOIA Officer, Office of Inspector General Legal Counsel or their designees 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 LSC 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. Before submitting their requests, requesters may contact LSC's or OIG's FOIA Analyst or FOIA Public Liaison to discuss the records they seek and to receive assistance in describing the records. If LSC determines

Legal Services Corporation

§ 1602.9

that a request does not reasonably describe the records sought, LSC will inform the requester what additional information is needed or why the request is otherwise insufficient. Requesters who are attempting to reformulate or modify their request may discuss their request with LSC's or OIG's FOIA Analyst or FOIA Public Liaison. If a request does not reasonably describe the records sought, LSC's response to the request may be delayed.

(d) To facilitate the location of records by LSC, 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 LSC that 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 LSC who may have prepared or have knowledge of the record;

(6) Citations to newspapers or publications which have referred to the record.

(e) Requests may specify the preferred form or format (including electronic formats) for the records sought. LSC 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. LSC reserves the right to limit the number of copies of any document that will be provided 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.

(f) Requesters must provide contact information, such as their phone number, email address, and/or mailing address, to assist LSC in communicating with them and providing released records.

(g) LSC is not required to create a record or to perform research to satisfy a request.

(h) 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 §1602.14(g).

§ 1602.9 Timing and responses to requests for records.

(a)(1) Upon receiving a request for LSC or Inspector General records under §1602.8, the Chief FOIA Officer, Office of Inspector General Legal Counsel or their designees shall make an initial determination of whether to comply with or deny such request. The Chief FOIA Officer, Office of Inspector General Legal Counsel or their designees will send the determination to the requester within 20 business days after receipt of the request and will notify the requester of their right to seek assistance from an LSC FOIA Public Liaison.

(2) The 20-day period under paragraph (a)(1) of this section shall commence on the date on which the request is first received by the appropriate Office, 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 (b) of this section and toll the 20-day period while

(i) It is awaiting such information that it has reasonably requested from the requester under this section; or

(ii) It communicates with the requester to clarify 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.

(b) *Consultation.* When records originated with the Office processing the request, but contain within them information of interest to another Office or Federal agency, the Office processing the request should typically consult with that other entity prior to making a release determination.

(c) *Referral.* (1) If the processing Office determines that the other Office or Federal agency is best able to determine whether to disclose the record, the processing Office will typically refer the responsibility for responding

to the request for that record to the other Office or Federal agency. Ordinarily, the Office that originated the record is presumed to be the best Office to make the disclosure determination. However, if the Offices or Federal agency jointly agree that the processing Office is in the best position to respond regarding the record, then the record may be released by the processing Office after consultation with the other Office or Federal agency.

(2) Whenever a referral occurs, the processing Office must document the referral, maintain a copy of the record that it refers, and notify the requester of the referral, informing the requester of the name(s) of the Office or Federal agency to which the record was referred, including that Office's or Federal agency's FOIA contact information.

(d)(1) In unusual circumstances, as specified in paragraph (d)(3) of this section, LSC may extend the time limit for up to 10 working days by written notice to the requester setting forth the reasons for such extension and the date on which LSC expects to send its determination.

(2) LSC may also provide an opportunity to the requester to narrow the request. In addition, to aid the requester, LSC shall make available a FOIA Public Liaison, who shall assist in the resolution of any disputes between the requester and LSC, and shall notify the requester of his right to seek dispute resolution services from the U.S. National Archives and Records Administration's Office of Government Information Services.

(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 Office, Federal agency, or organization having a substantial interest in the determination of the request.

(c)(1) When the processing Office cannot send a determination to the requester within the applicable time limit, the Chief FOIA Officer, Office of the Inspector General Legal Counsel, or their designees shall inform the requester of the reason for the delay, the date on which the processing Office expects to send its determination, and the requester's right to treat the delay as a denial and to appeal to LSC's President or Inspector General, in accordance with §1602.13, or to seek dispute resolution services from a FOIA Public Liaison or the Office of Government Information Services.

(2) If the processing Office has not sent its determination 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 §1602.13, or seek dispute resolution services from LSC's or OIG's FOIA Public Liaison or the National Archives and Records Administration's Office of Government Information Services. The Chief FOIA Officer, Office of Inspector General Legal Counsel, or their designees may ask the requester to forego appeal until a determination is made.

(d) After the processing Office determines that a request will be granted, LSC or the OIG will act with due diligence in providing a substantive response.

(e)(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 LSC 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 raising questions about LSC's integrity which may affect public confidence in LSC.

(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 received by LSC pursuant to §1602.8.

(3) A requester who seeks expedited processing must submit a statement demonstrating a compelling need and explaining in detail the basis for requesting expedited processing. The requester must certify that the statement is true and correct to the best of the requester's knowledge and belief.

(4) Within 10 calendar days of receiving a request for expedited processing, the Chief FOIA Officer, Office of Inspector General Legal Counsel or their designees 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, the requester may appeal in writing to LSC's President or Inspector General in the format described in §1602.13(a). Any appeal of a denial for expedited treatment shall be acted on expeditiously by LSC.

§ 1602.10 Exemptions for withholding records.

(a) LSC shall—

(1) Withhold information under this section only if—

(i) LSC reasonably foresees that disclosure would harm an interest protected by an exemption described in paragraph (b); or

(ii) Disclosure is prohibited by law; and

(2)(i) Consider whether partial disclosure of information is possible whenever LSC determines that a full disclosure of a requested record is not possible; and

(ii) Take reasonable steps necessary to segregate and release nonexempt information;

(b) LSC may withhold a requested record from public disclosure only if

one or more of the following exemptions authorized by the FOIA apply:

(1)(i) Matter that is specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy; and

(ii) Is in fact properly classified pursuant to such Executive Order;

(2) Matter that is related solely to the internal personnel rules and practices of LSC;

(3) Matter that 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 issue, or establishes particular criteria for withholding, or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with LSC, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested;

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) 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 that furnished information on a confidential basis, and in

§ 1602.11

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;

(8) Matter that is contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(c) In the event that one or more of the exemptions in paragraph (b) of this section applies, any reasonably segregable portion of a record shall be provided to the requester after redaction of the exempt portions. The amount of information redacted and the exemption under which the redaction 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 redaction is made. If technically feasible, the amount of information redacted and the exemption under which the redaction is being made shall be indicated at the place in the record where the redaction occurs.

(d) No requester shall have a right to insist that any or all of the techniques in paragraph (c) of this section should be employed in order to satisfy a request.

(e) Records that may be exempt from disclosure pursuant to paragraph (b) of this section may be made available at the discretion of the LSC official authorized to grant or deny the request for records, after appropriate consultation as provided in §1602.11. LSC will disclose records otherwise exempt from disclosure under the FOIA when LSC does not reasonably foresee that disclosure would harm an interest protected

45 CFR Ch. XVI (10–1–23 Edition)

by an exemption and disclosure is not prohibited by law or protected under Exemption 3.

§ 1602.11 Officials authorized to grant or deny requests for records.

(a) The Chief FOIA Officer, Office of Inspector General Legal Counsel or their designees are authorized to grant or deny requests under this part. In the absence of an Office of Inspector General Legal Counsel, 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 Office of Inspector General Legal Counsel under this part.

(b)(1) The Chief FOIA Officer or designee shall consult with the Office of Inspector General Legal Counsel or designee prior to granting or denying any request for records or portions of records which originated with the OIG, or which contain information which originated with the OIG, but which are maintained by other components of LSC.

(2) The Office of Inspector General Legal Counsel or designee shall consult with the Chief FOIA Officer or designee prior to granting or denying any request for records or portions of records which originated with any component of LSC other than the OIG, or which contain information which originated with a component of LSC other than the OIG, but which are maintained by the OIG.

§ 1602.12 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 §1602.10(b) 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;

(6) An explanation of the right to appeal the denial and of the procedures for submitting an appeal, as described in § 1602.13, including the address of the official to whom appeals should be submitted; and

(7) An explanation of the right of the requester to seek dispute resolution services from a FOIA Public Liaison or the Office of Government Information Services.

(b) Whenever LSC 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).

§ 1602.13 Appeals of denials.

(a) Any person whose written request has been denied is entitled to appeal the denial within 90 days of the date of the response by writing to the President of LSC or, in the case of a denial of a request for OIG records, the Inspector General, at the mailing or email addresses given in § 1602.8(b)(1) and (2). The envelope and letter or email 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, Inspector General or their designees for this purpose.

(c)(1) 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 § 1602.12(a)(1) through (4), and the provisions for judicial review of such deci-

sion under 5 U.S.C. 552(a)(4). The decision must also notify the requester of the dispute resolution services offered by the National Archives and Records Administration's Office of Government Information Systems as a non-exclusive alternative to litigation. A requester may contact the Office of Government Information Services in any of the following ways:

(i) Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road—OGIS, College Park, MD 20740.

(ii) *ogis.archives.gov*.

(iii) *Email: ogis@nara.gov*.

(iv) *Telephone: 202-741-5770*.

(v) *Facsimile: 202-741-5769*.

(vi) *Toll-free: 1-877-684-6448*.

(2) Dispute resolution through the Office of Government Information Services is a voluntary process. If LSC agrees to participate in the dispute resolution services provided by the Office of Government Information Services, it will actively engage in the process in an attempt to resolve the dispute.

(d) LSC will send its decision to the requester within 20 business days after receipt of the appeal, unless an additional period is justified due to unusual circumstances, as described in § 1602.9, in which case LSC may extend the time limit for up to 10 working days by written notice to the requester setting forth the reasons for such extension and the date on which LSC expects to send its determination. The decision of the President or the Inspector General shall constitute the final action of LSC. All such decisions shall be treated as final opinions under § 1602.5(b)(1).

(e) On an appeal, the President or designee shall consult with the OIG prior to reversing in whole or in part the denial of any request for records or portions of records which originated with the OIG, or which contain information which originated with the OIG, but which are maintained by LSC. The Inspector General or designee shall consult with the President prior to reversing in whole or in part the denial of any request for records or portions of records which originated with LSC, or which contain information which originated with LSC, but which are maintained by the OIG.

§ 1602.14

45 CFR Ch. XVI (10–1–23 Edition)

§ 1602.14 Fees.

(a) LSC will not charge fees for information routinely provided in the normal course of doing business.

(b)(1) When records are requested for commercial use, LSC shall limit fees to reasonable standard charges for document search, review, and duplication.

(2) LSC shall not assess any search fees (or if the requester is a representative of the news media, duplication fees) if LSC has failed to comply with the time limits set forth in § 1602.9 and no unusual circumstances, as defined in that section apply.

(3)(i) If LSC has determined that unusual circumstances as defined in § 1602.9 apply and LSC has provided timely written notice to the requester in accordance with § 1602.9, a failure described in paragraph (2) is excused for an additional 10 days. If LSC fails to comply with the extended time limit, LSC may not assess any search fees (or, if the requester is a representative of the news media, duplication fees) except as provided in paragraphs (a)(3)(ii)–(iii) of this section.

(ii) If LSC has determined that unusual circumstances as defined in § 1602.9 apply and more than 5,000 pages are necessary to respond to the request, LSC may charge search fees or duplication fees if LSC has provided a timely written notice to the requester in accordance with § 1602.9 and LSC has discussed with the requester via written mail, electronic mail, or telephone (or made not less than three good faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with § 1602.9.

(iii) If a court has determined that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(c) When records are sought by a representative of the news media or by an educational or non-commercial scientific institution, LSC shall limit fees to reasonable standard charges for document duplication after the first 100 pages; and

(d) For all other requests, LSC shall limit fees to reasonable standard charges for search time after the first 2

hours and duplication after the first 100 pages.

(e) The schedule of charges and fees 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) *Administrative fee*: \$22.35/hour;

(ii) *Professional fee*: \$66.26/hour;

(iii) Charges for search and review time less than a full hour will be billed by quarter-hour segments;

(2) *Duplication by paper copy*: 35 cents per page;

(3) *Duplication by other methods*: actual charges as incurred;

(4) *Packing and mailing records*: no charge for regular mail;

(5) *Express mail*: actual charges as incurred.

(f) LSC may charge for time spent searching even if it does not locate any responsive records or it withholds the records located as exempt from disclosure.

(g) *Fee waivers*. A requester may seek a waiver or reduction of 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 LSC 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 LSC, LSC 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 LSC.” The subject of the requested records must concern identifiable operations or activities of LSC, 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 LSC operations or activities. The requested records must be

meaningfully informative about LSC 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. LSC shall presume 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 LSC operations or activities. The disclosure must enhance the public's understanding of the subject in question to a significant extent.

(2) In order to determine whether disclosure of the information is not primarily in the commercial interest of the requester, LSC 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 of greater magnitude than is 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.

(h) Requesters must agree to pay all fees charged for services associated with their requests. LSC 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, LSC will consult with the requester prior to processing the request, and such requests will not be deemed to have been received by LSC until the requester agrees in writing to pay all fees charged for services. LSC will also make available its FOIA Public Liaison or other FOIA professional to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(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 (and the request will not be deemed to have been received by LSC until such payment is made); or

(2) LSC 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 five working days of receipt by LSC, giving the best estimate then available. The notification shall offer the requester the opportunity to confer with appropriate representatives of LSC 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 LSC for purposes of the initial 20-day response period until the requester makes a deposit on the fee in an amount determined by LSC.

(j) 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.

(k) If LSC 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, LSC shall aggregate such requests and charge accordingly. Likewise, LSC will aggregate multiple requests for documents received from the same requester within 45 days.

§ 1602.15 Submitter's rights process.

(a) When LSC receives a FOIA request seeking the release of confidential commercial information, LSC shall provide prompt written notice of the request to the submitter in order to afford the submitter an opportunity to object to the disclosure of the requested confidential commercial information. The notice shall reasonably describe the confidential commercial information requested, inform the submitter of the process required by paragraph (b) of this section, and provide a reasonable time period for the submitter to respond.

(b) If a submitter who has received notice of a request for the submitter's confidential commercial information wishes to object to the disclosure of the confidential commercial information, the submitter must provide LSC within the time period set forth in the notice, a detailed written statement identifying the information which it objects. The submitter must send its objections to the Office of Legal Affairs

or, if it pertains to Office of Inspector General records, to the Office of Inspector General, 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. If the submitter fails to respond to the notice from LSC within the time period specified in the notice, 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) A specified disclosure date, which must be a reasonable time after the notice.

(d) The requirements of this section shall not apply if:

(1) LSC determines upon initial review of the requested confidential commercial information that 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's 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. Likewise, whenever a submitter files a lawsuit seeking to prevent the disclosure of the submitter's information, LSC shall notify the requester.

PART 1603—TESTIMONY BY EMPLOYEES AND PRODUCTION OF DOCUMENTS IN PROCEEDINGS WHERE THE UNITED STATES IS NOT A PARTY

Sec.

1603.1 Scope, purpose, and applicability.

1603.2 Definitions.

1603.3 What is LSC's policy on presentation of testimony and production of documents?

1603.4 How does a person request voluntary testimony from an employee?

1603.5 How will LSC respond to a request for expert testimony from an employee?

1603.6 How will LSC respond to a subpoena for documents?

1603.7 When will LSC certify the authenticity of records?

1603.8 Does this part give individuals any rights?

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

SOURCE: 83 FR 17087, April 18, 2018, unless otherwise noted.

§ 1603.1 Scope, purpose, and applicability.

(a) This part sets forth rules to be followed when a litigant requests an employee of the Legal Services Corporation (LSC), including LSC's Office of the Inspector General (OIG), to provide testimony in a deposition, trial, or other similar proceeding concerning information acquired in the course of performing official duties or because of such person's official capacity with LSC. This part also sets forth procedures for the handling of subpoenas for documents and other requests for documents in the possession of LSC or the OIG, and for the processing of requests for certification of copies of documents.

(b) It is LSC's policy to provide information, data, and records to non-federal litigants to the same extent and in the same manner that they are made available to the public. When subject to the jurisdiction of a court or other tribunal presiding over litigation between non-federal parties, LSC will follow all applicable procedural and substantive rules relating to the production of information, data, and records by a non-party. The availability of LSC employees to testify in litigation not involving federal parties is governed by LSC's policy to maintain strict impar-

tiality with respect to private litigants and to minimize the disruption of official duties.

(c) This part applies to state, local, and tribal judicial, administrative, and legislative proceedings, and to federal judicial and administrative proceedings.

(d) This part does not apply to:

(1) Any civil or criminal proceedings to which LSC is a party.

(2) Congressional requests or subpoenas for testimony or documents.

(3) Consultative services and technical assistance provided by LSC in carrying out its normal program activities.

(4) Employees serving as expert witnesses in connection with professional and consultative services as approved outside activities. In cases where employees are providing such outside services, they must state for the record that the testimony represents their own views and does not necessarily represent the official position of LSC.

(5) Employees making appearances in their private capacity in legal or administrative proceedings that do not relate to LSC, such as cases arising out of traffic accidents, crimes, domestic relations, etc., and not involving professional and consultative services.

(6) Any civil or criminal proceedings in State court brought on behalf of LSC.

(7) Any criminal proceeding brought as a result of a referral for prosecution by the OIG or by any other Inspector General in connection with a case worked jointly with the OIG.

§ 1603.2 Definitions.

(a) *Certify* means to authenticate official LSC documents.

(b) *Employee* means current and former LSC employees, including temporary employees, OIG employees, and members of the Board of Directors and its Committees.

(c) *LSC* means the Legal Services Corporation. Unless explicitly stated otherwise, LSC includes the OIG.

(d) *Testify* and *testimony* include in-person, oral statements before a court, legislative or administrative body and statements made pursuant to depositions, interrogatories, declarations, affidavits, or other formal participation.

§ 1603.3

§ 1603.3 What is LSC's policy on presentation of testimony and production of documents?

In any proceedings to which this part applies, no employee may provide testimony or produce documents concerning information acquired in the course of performing official duties or because of the person's official relationship with LSC unless authorized by the General Counsel or the OIG Legal Counsel pursuant to this part based on his or her determination that compliance with the request would promote LSC's objectives.

§ 1603.4 How does a person request voluntary testimony from an employee?

(a) All requests for testimony by an employee in his or her official capacity, except employees of OIG described in paragraph (b) of this section, and not subject to the exceptions set forth in §1603.1(d) of this part must be in writing and addressed to the General Counsel.

(b) All requests for testimony by an employee of the OIG must be in writing and addressed to the OIG Legal Counsel.

(c) Requests must state the nature of the requested testimony, why the information sought is unavailable by any other means, and the reasons why the testimony would be in the interest of LSC.

§ 1603.5 How will LSC respond to a request for expert testimony from an employee?

No employee shall serve as an expert witness in any proceeding described in §1603.1(c) of this part or before a court or agency of the United States unless the General Counsel or the OIG Legal Counsel authorizes the employee's participation.

§ 1603.6 How will LSC respond to a subpoena for documents?

(a) Whenever a subpoena commanding the production of any LSC record has been served upon an employee, the employee shall refer the subpoena to the General Counsel or the OIG Legal Counsel, as appropriate. The General Counsel or the OIG Legal Counsel shall determine whether the

45 CFR Ch. XVI (10–1–23 Edition)

subpoena is legally sufficient, whether the subpoena was properly served, and whether the issuing court or other tribunal has jurisdiction over LSC. If the General Counsel or the OIG Legal Counsel determines that the subpoena satisfies all three factors, LSC shall comply with the terms of the subpoena unless LSC takes affirmative action to modify or quash the subpoena in accordance with Fed. R. Civ. P. 45 (c).

(b) If a subpoena commanding the production of any record served upon an employee is determined by the General Counsel or the OIG Legal Counsel to be legally insufficient, improperly served, or from a tribunal not having jurisdiction, LSC shall deem the subpoena a request for records under the Freedom of Information Act. LSC shall handle the subpoena pursuant to the rules governing public disclosure established in 45 CFR part 1602.

(c) If the General Counsel or the OIG Legal Counsel denies approval to comply with a subpoena for testimony or has not acted by the return date, the employee will be directed to appear at the stated time and place, unless advised by the General Counsel or the OIG Legal Counsel that responding to the subpoena would be inappropriate. The employee will be directed to produce a copy of these regulations and respectfully decline to testify or produce any documents on the basis of these regulations.

§ 1603.7 When will LSC certify the authenticity of records?

Upon request, LSC will certify the authenticity of copies of records that are to be disclosed. The requesting party will be responsible for reasonable fees for copying and certification.

§ 1603.8 Does this part give individuals any rights?

This part is intended only to provide a process for receipt and processing of private litigants' requests for LSC documents and testimony. It does not, and may not be relied upon, to create a right or benefit, substantive or procedural, enforceable at law by a party against LSC.

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.

§ 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.

§ 1604.6

(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 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

45 CFR Ch. XVI (10–1–23 Edition)

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).

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

Legal Services Corporation

§ 1606.2

(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.

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 pro-

posed 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, subcontract or similar agreement, for the period of time stated in the final debarment decision.

§ 1606.3

45 CFR Ch. XVI (10–1–23 Edition)

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 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.

§ 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

Legal Services Corporation

§ 1606.6

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 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;

§ 1606.7

45 CFR Ch. XVI (10–1–23 Edition)

(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 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 res-

olution. 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

Legal Services Corporation

§ 1606.9

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 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,

§ 1606.10

45 CFR Ch. XVI (10–1–23 Edition)

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 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 addi-

tional 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

Legal Services Corporation

§ 1606.13

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 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

§ 1606.14

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 re-allocated by the Corporation for basic field purposes at its sole discretion.

§ 1606.14 Recompetition.

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. 2996g(e).

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.

45 CFR Ch. XVI (10–1–23 Edition)

(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, without regard to whether the person actually has received or is receiving legal assistance at that time. Eligibility of client members must be determined by the recipient or, if the recipient so chooses, by the nominating 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.

[59 FR 65254, Dec. 19, 1994, as amended at 84 FR 1407, Feb. 4, 2019]

§ 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

Legal Services Corporation

§ 1607.4

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 must be eligible client members when initially appointed by the recipient. The recipient must solicit recommendations for eligible client members from 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 that advocate for or deliver services or resources to the client community served by the recipient. Recipients should solicit recommendations from 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 requirements 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.

[59 FR 65254, Dec. 19, 1994, as amended at 84 FR 1407, Feb. 4, 2019]

§ 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

§ 1607.5

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 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

45 CFR Ch. XVI (10–1–23 Edition)

(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 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.

Legal Services Corporation

§ 1608.7

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.

§ 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

§ 1608.8

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 Definitions.

1609.3 Authorized representation in a fee-generating case.

1609.4 Requesting and receiving attorneys' fees.

1609.5 Receiving reimbursement from a client.

1609.6 Recipient policies, procedures and recordkeeping.

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

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 Definitions.

(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.

(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;

(2) A recipient undertakes representation under a contract with a government agency or other entity; or

45 CFR Ch. XVI (10–1–23 Edition)

(3) A recipient provides only advice and counsel or limited services, as those terms are defined in 45 CFR 1611.1(a) and (e), to an eligible client.

[62 FR 19399, Apr. 21, 1997, as amended at 82 FR 20446, May 2, 2017]

§ 1609.3 Authorized representation in a fee-generating case.

(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

Legal Services Corporation

(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]

§ 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; PROGRAM INTEGRITY

Subpart A—General Provisions

Sec.

1610.1 Purpose.

1610.2 Definitions.

1610.3 Other requirements on recipients' funds.

Subpart B—Use of Non-LSC Funds

1610.4 Prohibitions on the use of non-LSC funds.

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

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

1610.7 Notification to non-LSC funders and donors.

Subpart C—Program Integrity

1610.8 Program integrity of recipient.

Subpart D—Accounting and Compliance

1610.9 Accounting.

1610.10 Compliance.

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.

(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)

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:

Legal Services Corporation

§ 1610.4

(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

§ 1610.5

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

45 CFR Ch. XVI (10–1–23 Edition)

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.

Legal Services Corporation

§ 1611.2

(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

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. 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 recipi-

ents' 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.

(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. 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 deter-

mined 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 assets 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

Legal Services Corporation

§ 1611.5

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 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 in-

come 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

§ 1611.6

45 CFR Ch. XVI (10–1–23 Edition)

(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:

(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.

Legal Services Corporation

Pt. 1611, App. A

(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 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

LEGAL SERVICES CORPORATION 2023 INCOME GUIDELINES *

| Size of household | 48 Contiguous states and the District of Columbia | Alaska | Hawaii |
|--|---|----------|----------|
| 1 | \$18,225 | \$22,763 | \$20,963 |
| 2 | 24,650 | 30,800 | 28,350 |
| 3 | 31,075 | 38,838 | 35,738 |
| 4 | 37,500 | 46,875 | 43,125 |
| 5 | 43,925 | 54,913 | 50,513 |
| 6 | 50,350 | 62,950 | 57,900 |
| 7 | 56,775 | 70,988 | 65,288 |
| 8 | 63,200 | 79,025 | 72,675 |
| For each additional member of the household in excess of 8, add: | 6,425 | 8,038 | 7,388 |

*The figures in this table represent 125% of the Federal Poverty Guidelines by household size as determined by HHS.

REFERENCE CHART—200% OF FEDERAL
POVERTY GUIDELINES *

| Size of house- hold | 48 Conti- guous states and the District of Columbia | Alaska | Hawaii |
|--|---|----------|----------|
| 1 | \$29,160 | \$36,420 | \$33,540 |
| 2 | 39,440 | 49,280 | 45,360 |
| 3 | 49,720 | 62,140 | 57,180 |
| 4 | 60,000 | 75,000 | 69,000 |
| 5 | 70,280 | 87,860 | 80,820 |
| 6 | 80,560 | 100,720 | 92,640 |
| 7 | 90,840 | 113,580 | 104,460 |
| 8 | 101,120 | 126,440 | 116,280 |
| For each addi- tional member of the house- hold in excess of 8, add: | 10,280 | 12,860 | 11,820 |

*The figures in this table represent 200% of the Federal Poverty Guidelines by household size as determined by HHS.

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

[88 FR 7010, Feb. 2, 2023]

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 rule-making 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

Legal Services Corporation

§ 1612.5

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 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 rulemaking, 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:

§ 1612.6

(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 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 rule-making under the Negotiated Rule-making 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

45 CFR Ch. XVI (10–1–23 Edition)

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.

Legal Services Corporation

§ 1613.1

(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

(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 conducted 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

§ 1613.2

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.

§ 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 ap-

45 CFR Ch. XVI (10–1–23 Edition)

pointment would not impair the recipient’s primary responsibility to provide legal assistance to eligible clients in civil matters.

[79 FR 21151, Apr. 15, 2014]

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).

SOURCE: 79 FR 61781, Oct. 15, 2014, unless otherwise noted.

§ 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

Legal Services Corporation

§ 1614.3

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 ap-

plying 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.

§ 1614.4

45 CFR Ch. XVI (10–1–23 Edition)

(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

Legal Services Corporation

§ 1614.4

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 re-

cipient 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; black-out 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

Legal Services Corporation

§ 1614.8

(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:

§ 1614.9

45 CFR Ch. XVI (10–1–23 Edition)

(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

Legal Services Corporation

§ 1614.10

(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 Cor-

poration 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

Pt. 1615

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.

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 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

45 CFR Ch. XVI (10–1–23 Edition)

(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.

§ 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

Legal Services Corporation

Pt. 1618

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 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).

§ 1618.1

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:

(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 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.

45 CFR Ch. XVI (10–1–23 Edition)

Legal Services Corporation

§ 1620.2

PART 1619—DISCLOSURE OF INFORMATION

PART 1620—PRIORITIES IN USE OF RESOURCES

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.

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.

(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

45 CFR Ch. XVI (10–1–23 Edition)

§ 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 segments 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:

(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

Legal Services Corporation

§ 1621.4

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, 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

Pt. 1622

45 CFR Ch. XVI (10–1–23 Edition)

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.

(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 “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.

Legal Services Corporation

§ 1622.5

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 no-

tice. 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 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:

§ 1622.6

(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,

(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 arbitra-

45 CFR Ch. XVI (10–1–23 Edition)

tration, 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 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)

Legal Services Corporation

§ 1622.10

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 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.

§ 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 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

Legal Services Corporation

§ 1623.4

(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 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.

§ 1623.5

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.

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

45 CFR Ch. XVI (10–1–23 Edition)

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 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,

Legal Services Corporation

§ 1624.4

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.

(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

§ 1624.5

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

45 CFR Ch. XVI (10–1–23 Edition)

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;

Legal Services Corporation

§ 1624.7

(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 providing 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 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.

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 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

Legal Services Corporation

§ 1626.4

(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* (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).

(l) *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 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 so-

cial 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 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

Legal Services Corporation

§ 1626.7

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 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

§ 1626.8

45 CFR Ch. XVI (10–1–23 Edition)

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 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 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

Legal Services Corporation

§ 1627.3

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

Sec.

1627.1 Purpose.

1627.2 Definitions.

1627.3 Characteristics of subgrants.

1627.4 Requirements for all subgrants.

1627.5 Applicability of restrictions, recordkeeping, and recipient priorities; private attorney involvement subgrants.

1627.6 Transfers to other recipients.

1627.7 Recipient policies, procedures and recordkeeping.

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

SOURCE: 82 FR 10283, Feb. 10, 2017, unless otherwise noted.

§ 1627.1 Purpose.

The purpose of this part is to establish the requirements for subgrants of LSC funds from recipients to third parties to assist in the recipient's provi-

sion of legal assistance to eligible clients.

§ 1627.2 Definitions.

(a) *Private attorney* has the meaning given that term in 45 CFR 1614.3(i).

(b) *Procurement contract* means an agreement between a recipient and a third party under which the recipient purchases property or services that does not qualify as a subgrant as defined in paragraph (e)(1) of this section.

(c) *Property* means real estate or personal property.

(d) *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 LSC under section 1006(a)(1)(B) of the Act.

(e) *Subgrant*. (1) Subgrant means an award of LSC funds or property or services purchased in whole or in part with LSC funds from a recipient to a subrecipient for the subrecipient to carry out part of the recipient's legal assistance activities. A subgrant has the characteristics set forth in § 1627.3(b).

(2) *Subgrant* includes fee-for-service arrangements, such as those provided by a private law firm or attorney representing a recipient's clients on a contract or judicare basis, only when the cost of such arrangements exceed \$60,000.

(f) *Subrecipient* means any entity receiving a subgrant. A single entity may 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.

§ 1627.3 Characteristics of subgrants.

(a) In determining whether an agreement between a recipient and another entity should be considered a subgrant or a procurement contract, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed in paragraph (b) of this section may not be present in all cases, and the recipient must use judgment in classifying each agreement as a subgrant or a procurement contract. The recipient must make case-by-case

§ 1627.4

45 CFR Ch. XVI (10–1–23 Edition)

determinations whether each agreement that it makes with another entity constitutes a subgrant or a procurement contract.

(b) Characteristics that support the classification of the agreement as a subgrant include when the other entity:

(1) Determines who is eligible to receive legal assistance under the recipient's LSC grant;

(2) Has its performance measured in relation to whether objectives of the LSC grant were met;

(3) Has responsibility for programmatic decision-making regarding the delivery of legal assistance under the recipient's LSC grant;

(4) Is responsible for adherence to applicable LSC program requirements specified in the LSC grant award; and

(5) In accordance with its agreement, uses the LSC funds or property or services acquired in whole or in part with LSC funds, to carry out a program for a public purpose specified in LSC's governing statutes and regulations, as opposed to providing goods or services for the benefit of the recipient.

§ 1627.4 Requirements for all subgrants.

(a) *Threshold.* (1) A recipient must obtain LSC's written approval prior to making a subgrant when the cost of the subgrant is \$20,000 of LSC funds or greater.

(2) *Valuation of in-kind subgrants.* (i) If either the actual cost to the recipient of the subgranted property or service or the fair market value of the subgranted property or service exceeds \$20,000 of LSC funds, the recipient must seek written approval from LSC prior to making a subgrant.

(ii) The valuation of the subgrant, either by fair market value or actual cost to the recipient of property or services, must be documented and to the extent feasible supported by the same methods used internally by the recipient.

(b) *Corporation approval of subgrants.* Recipients must submit all applications for subgrants exceeding the \$20,000 threshold to LSC in writing for prior written approval. LSC will publish notice of the requirements concerning the format and contents of the

application annually in the FEDERAL REGISTER and on LSC's Web site.

(1) *Basic Field Grants.* (i) Recipients should submit applications for subgrants of Basic Field Grant funds along with the recipient's proposal for funding, including applications for renewal of funding.

(ii) LSC will notify a recipient of its decision to approve, disapprove, or suggest modifications to an application for subgrant approval prior to, or at the same time as LSC provides notice of its decision with respect to the applicant's proposal for Basic Field Grant funding.

(2) *Special grants.* (i) Recipients of special grants (*e.g.*, Technology Initiative Grants, Pro Bono Innovation Fund grants, emergency relief grants), should submit their subgrant applications following notification of approval of special grant funds.

(ii) A subgrant application must be submitted at least 45 days in advance of its proposed effective date. Within 45 days of the date of receipt, LSC will notify the recipient in writing of its decision to approve, disapprove, or suggest modifications to the subgrant; or, if LSC has not made a decision, the date by which LSC expects to make a decision. A subgrant that is disapproved or to which LSC has suggested modifications may be resubmitted for approval.

(3) *Mid-year subgrant requests.* A recipient may apply for prior approval of a subgrant outside of the periods prescribed in paragraphs (a)(1) and (2) of this section as needed. LSC will follow the time periods prescribed in paragraph (a)(2)(ii) of this section to consider and notify a recipient of its decision to approve, disapprove, or suggest modifications to the subgrant.

(4) *Failure to comply.* Any subgrant not approved according to paragraphs (a)(1) through (3) of this section will be subject to disallowance and recovery of all funds expended under the subgrant.

(5) *Changes to subgrants requiring prior approval.* (i) If a recipient needs to make substantial changes to the scope or objectives, or increase or decrease the amount of funding of more than 10%, of a subgrant approved under

paragraph (b) of this section, the recipient must obtain LSC's prior written approval. Minor changes in the scope or objectives or changes in support of less than 10% do not require prior approval, but the recipient must notify LSC of such changes in writing.

(ii) If a subgrant did not require prior approval, and the recipient proposes a change that will cause the total value of the subgrant to exceed the threshold for prior approval, the recipient must obtain LSC's prior written approval before making the change.

(c) *Duration of subgrant.* (1) For Basic Field grants, a subgrant may not be for a period longer than one year. All funds unexpended at the end of the subgrant period will be considered part of the recipient's available LSC funds.

(2) For special grants (*e.g.*, Pro Bono Innovation Fund grants, Technology Initiative Grants, emergency relief grants), a subgrant may not be for a period longer than the term of the grant. Absent written approval from LSC, all unexpended funds must be returned to LSC at the end of the subgrant period.

(d) *Provisions for termination and suspension of subgrants.* All subgrants must contain provisions for their orderly termination in the event that the recipient is no longer an LSC recipient, and for suspension of activities if the recipient's funding is suspended.

(e) *Recipient responsibilities.* (1) Recipients must ensure that subrecipients comply with LSC's financial and audit provisions to the extent required by this part.

(2) The recipient must ensure that the subrecipient properly spends, accounts for, and audits funds or property or services acquired in whole or in part with LSC funds received through the subgrant.

(3) The recipient must repay LSC for any disallowed expenditures by a subrecipient. Repayment is required regardless of whether the recipient is able to recover such expenditures from the subrecipient.

(f) *Accounting and auditing requirements—(1) Subgrants of funds.* (i) Any LSC funds paid by a recipient to a subrecipient through a subgrant are subject to the audit and financial requirements of the Audit Guide for Recipients and Auditors and the Accounting

Guide for LSC Recipients. The relationship between the recipient and subrecipient will determine the proper method of financial reporting following generally accepted accounting principles.

(ii) Subgranted 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. A subgrant agreement may provide for alternative means of assuring the propriety of subrecipient expenditures, especially in instances where an organization receives a small subgrant. Any request to use an alternative means of assuring propriety of subrecipient funds must be submitted to LSC for consideration as part of the subgrant approval process. If LSC approves a request to use an alternative means, the information provided thereby shall satisfy the recipient's annual audit requirement with regard to the subgrant funds.

(2) *In-kind subgrants.* (i) The value of property or services funded in whole or in part with LSC funds provided by a recipient to a subrecipient through a subgrant is subject to the audit and financial requirements of the Audit Guide for Recipients and Auditors and the Accounting Guide for LSC Recipients. The relationship between the recipient and subrecipient will determine the proper method of financial reporting following generally accepted accounting principles.

(ii) Subgrants involving in-kind exchanges of property or services may be separately disclosed and accounted for, and reported upon in the audited financial statements of a recipient. A subgrant agreement may provide for alternative means of assuring the propriety of subrecipient expenditures and use of property or services acquired in whole or in part with LSC funds, especially in instances where an organization receives a small subgrant. Any request to use an alternative means of assuring propriety of subrecipient funds must be submitted to LSC for consideration as part of the subgrant approval process. If LSC approves a request to use an alternative means, the

information provided thereby shall satisfy the recipient's annual audit requirement with regard to the subgrant funds.

(iii) If accounting for in-kind subgrants is not practicable, a recipient may convert the subgrant to a cash payment and follow the accounting procedures in paragraph (f)(1) of this section.

(iv) Subrecipients described in § 1627.5(d)(2) are not subject to the audit and financial requirements of the Audit Guide for Recipients and Auditors and the Accounting Guide for LSC Recipients. Such subrecipients must have financial management systems in place that would allow the recipient and LSC to determine that any resources the subrecipient receives or uses under the subgrant are used consistent with 45 CFR part 1610.

(g) *Oversight.* To ensure subrecipient compliance with the LSC Act, LSC's appropriations statutes, Congressional restrictions having the force of law, and LSC's regulations, guidelines, and instructions, agreements between a recipient and a subrecipient must provide the same oversight rights for LSC with respect to subgrants as apply to recipients.

§ 1627.5 Applicability of restrictions, recordkeeping, and recipient priorities; private attorney involvement subgrants.

(a) *Applicability of restrictions.* The prohibitions and requirements set forth in 45 CFR part 1610 apply both to the subgrant and to the subrecipient's non-LSC funds, except as modified by paragraphs (b), (c), and (d) of this section.

(b) *Priorities.* Subrecipients must either:

(1) Use the subgrant consistent with the recipient's priorities; or

(2) Establish their own priorities for the use of the subgrant consistent with 45 CFR part 1620.

(c) *Recordkeeping.* A recipient must be able to account for how its subrecipients spend LSC funds or use property or services funded in whole or in part with LSC funds. A subrecipient must provide to the recipient records as described in paragraphs (c)(1) and (2) of this section.

(1) A subrecipient that handles matters as defined at 45 CFR 1635.2(b) must maintain adequate records to demonstrate that its attorneys and paralegals used the LSC funds or property or services funded in whole or in part with LSC funds:

(i) To carry out the activities described in the subgrant agreement; and

(ii) Consistent with the restrictions set forth at 45 CFR part 1610.

(2) A subrecipient that handles cases as defined at 45 CFR 1635.2(a):

(i) Must require its attorneys and paralegals to maintain records for each case that show the amount of time spent on the case and the activity conducted by date, and a unique client name or case number; and

(ii) Either the subrecipient or the recipient must maintain records for each case that show the problem type and the closing code for the case.

(iii) This requirement does not apply to subrecipients described in paragraph (d)(2)(ii) of this section.

(3) A subrecipient who handles both cases and matters must maintain the types of records described in paragraphs (c)(1) and (2).

(d) *Subgrants for engaging private attorneys*—(1) *Subgrants of funds.* The prohibitions and requirements set forth in 45 CFR part 1610 apply *only* to the subgranted funds when the subrecipient is a bar association, *pro bono* program, private attorney or law firm, or other entity that receives a subgrant for the sole purpose of funding private attorney involvement activities (PAI) pursuant to 45 CFR part 1614.

(2) *In-kind subgrants.* The prohibitions and requirements set forth in 45 CFR part 1610 apply *only* to the subgranted property or services acquired in whole or in part with LSC funds when the subrecipient is a bar association, *pro bono* program, private attorney or law firm, or other entity that receives a subgrant for the sole purpose of:

(i) Conducting private attorney involvement activities (PAI) pursuant to 45 CFR part 1614; or

(ii) Providing legal information or legal assistance on a *pro bono* or reduced fee basis to individuals who have been screened and found eligible to receive legal assistance from an LSC recipient.

Legal Services Corporation

§ 1628.3

(3) *Treatment of non-LSC funds.* Any funds or property or services acquired in whole or in part with LSC funds and used by a recipient as payment for a PAI subgrant are deemed LSC funds for purposes of this paragraph (d).

(4) *Recordkeeping exception.* The recordkeeping requirement in paragraph (c) of this section does not apply to private attorneys providing legal assistance on a pro bono or reduced fee basis.

§ 1627.6 Transfers to other recipients.

(a) The requirements of this part apply to all subgrants from one recipient to another recipient.

(b) The subrecipient must audit any funds or property or services acquired in whole or in part with LSC funds provided by the recipient under a subgrant in its annual audit and supply a copy of this audit to the recipient. The recipient must 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 § 1627.4(c)(3), LSC may hold the recipient responsible for any disallowed expenditures of subgrant funds. Thus, LSC may recover all of the disallowed costs from either the recipient or the subrecipient or may divide the recovery between the two. LSC's total recovery may not exceed the amount of expenditures disallowed.

§ 1627.7 Recipient policies, procedures and recordkeeping.

Each recipient must adopt written policies and procedures to guide its staff in complying with this part and must maintain records sufficient to document the recipient's compliance with this part.

PART 1628—RECIPIENT FUND BALANCES

Sec.

1628.1 Purpose.

1628.2 Definitions.

1628.3 Policy.

1628.4 Procedures.

1628.5 Fund balance deficits.

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

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.

(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

§ 1628.4

for extraordinary and compelling circumstances, such as when a natural disaster or other catastrophic event prevents the timely expenditure of LSC funds, or when the recipient receives an insurance reimbursement, the proceeds from the sale of real property, a payment from a lawsuit in which the recipient was a party, or a payment from an LSC-funded lawsuit, regardless of whether the recipient was a party to the lawsuit.

(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(e).

(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.

[65 FR 66642, Nov. 7, 2000, as amended at 80 FR 43968, July 24, 2015]

§ 1628.4 Procedures.

(a) A recipient may request a waiver of the 10% ceiling on LSC fund balances within 30 days after the submission to LSC of its annual audited financial statements. The request shall specify:

45 CFR Ch. XVI (10–1–23 Edition)

(1) The LSC fund balance as reported in the recipient's annual audited financial statements;

(2) The reason(s) for the excess fund balance;

(3) The recipient's plan for disposing 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) A recipient may submit a waiver request to retain a fund balance in excess of 25% of its LSC support prior to the submission of its audited financial statements. The Corporation may, at its discretion, provide approval in writing. The request shall specify the extraordinary and compelling circumstances justifying the fund balance in excess of 25%; the estimated fund balance that the recipient anticipates it will accrue by the time of the submission of its audited financial statements; and the recipient's plan for disposing of the excess fund balance. Upon the submission of its annual audited financial statements, the recipient must submit updated information consistent with the requirements of paragraph (a)

Legal Services Corporation

§ 1629.2

of this section to confirm the actual fund balance to be retained.

(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.

[65 FR 66642, Nov. 7, 2000, as amended at 80 FR 43968, July 24, 2015]

§ 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 REQUIREMENTS FOR RECIPIENTS

Sec.

1629.1 Purpose.

1629.2 Definitions.

1629.3 Who must be bonded?

1629.4 What forms of bonds can recipients use?

1629.5 What losses must the bond cover?

1629.6 What is the required minimum level of coverage?

1629.7 Can LSC funds be used to cover bonding costs?

AUTHORITY: 42 U.S.C. 2996e(1)(A) and 2996f(3).

SOURCE: 82 FR 37180, Aug. 9, 2017, unless otherwise noted.

§ 1629.1 Purpose.

This part is intended to protect LSC funds by requiring that recipients be bonded or have similar insurance coverage to indemnify recipients against losses resulting from fraudulent or dishonest acts committed by one or more employees, officers, directors, agents, volunteers, and third-party contractors who handle LSC funds.

§ 1629.2 Definitions.

Annualized funding level means the amount of:

(1) Basic Field Grant funds (including Agricultural Worker and Native American) and (2) Special grants of LSC funds, including Technology Initiative Grants, Pro Bono Innovation Fund grants, and emergency relief grants, awarded by LSC to the recipient for the fiscal year included in the recipient's annual audited financial statements.

§ 1629.3

§ 1629.3 Who must be bonded?

(a) A recipient must supply fidelity bond coverage for all employees, officers, directors, agents, and volunteers.

(b) If a recipient uses a third party for payroll, billing, or collection services, the recipient must either supply coverage covering the third party or ensure that the third party has a fidelity bond or similar insurance coverage.

(c) For recipients with subgrants:

(1) The recipient must extend its fidelity bond coverage to supply identical coverage to the subrecipient and the subrecipient's directors, officers, employees, agents, and volunteers to the extent required to comply with this Part; or

(2) The subrecipient must supply proof of its own fidelity bond coverage that meets the requirements of this Part for the subrecipient's directors, officers, employees, agents, and volunteers.

§ 1629.4 What forms of bonds can recipients use?

(a) A recipient may use any form of bond, such as individual, name schedule, position schedule, blanket, or any combination of such forms of bonds, as long as the type or combination of bonds secured adequately protects LSC funds.

(b) A recipient may use similar forms of insurance that essentially fulfill the same purpose as a fidelity bond.

§ 1629.5 What losses must the bond cover?

The bond must provide recovery for loss caused by such acts as fraud, dishonesty, larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wrongful conversion, willful misapplication, or any other fraudulent or dishonest act committed by an employee, officer, director, agent, or volunteer.

§ 1629.6 What is the required minimum level of coverage?

(a) A recipient must carry fidelity bond coverage or similar coverage at a minimum level of at least ten percent of its annualized funding level for the previous fiscal year.

(b) If a recipient is a new recipient, the coverage must be at a minimum

45 CFR Ch. XVI (10–1–23 Edition)

level of at least ten percent of the initial grant.

(c) Notwithstanding paragraphs (a) and (b) of this section, recipients must not carry coverage under this part at a level less than \$100,000.

§ 1629.7 Can LSC funds be used to cover bonding costs?

Costs of bonding required by this part are allowable if expended consistent with 45 CFR part 1630. Costs of bonding such as rates, deductibles, single loss retention, and premiums, are allowable as an indirect cost if such bonding is in accordance with sound business practice and is reasonable.

PART 1630—COST STANDARDS AND PROCEDURES

Subpart A—General Provisions

Sec.

1630.1 Purpose.

1630.2 Definitions.

1630.3 Time.

1630.4 Burden of proof.

Subpart B—Cost Standards and Prior Approval

1630.5 Standards governing allowability of costs under LSC grants or contracts.

1630.6 Prior approval.

1630.7 Membership fees or dues.

1630.8 Contributions.

1630.9 Tax-sheltered annuities, retirement accounts, and penalties.

1630.10 Recipient policies, procedures, and recordkeeping.

Subpart C—Questioned Cost Proceedings

1630.11 Review of questioned costs.

1630.12 Appeals to the president.

1630.13 Recovery of disallowed costs and other corrective action.

1630.14 Other remedies; effect on other parts.

1630.15 Applicability to subgrants.

1630.16 Applicability to non-LSC funds.

1630.17 Applicability to derivative income.

Subpart D—Closeout Procedures

1630.18 Applicability.

1630.19 Closeout plan; timing.

1630.20 Closeout costs.

1630.21 Returning funds to LSC.

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

SOURCE: 82 FR 37337, Aug. 10, 2017, unless otherwise noted.

Subpart A—General Provisions**§ 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.

As used in this part:

(a) *Corrective action* means action taken by a recipient that:

- (1) Corrects identified deficiencies;
- (2) Produces recommended improvements; or
- (3) Demonstrates that audit or other findings are either invalid or do not warrant recipient action.

(b) *Derivative income* means income earned by a recipient from LSC-supported activities during the term of an LSC 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 LSC grant or contract advances.

(c) *Disallowed cost* means those charges to an LSC award that LSC determines to be unallowable, in accordance with the applicable statutes, regulations, or terms and conditions of the grant award.

(d) *Final written decision* means either:

- (1) The decision issued by the Vice President for Grants Management after reviewing all information provided by a recipient in response to a notice of questioned costs; or

(2) The notice of questioned costs if a recipient does not respond to the notice within 30 days of receipt.

(e) *Membership fees or dues* 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. *Membership fees or dues* include, but are not limited to, fees or dues paid to a state supreme court or to a bar organization acting as an administrative arm of the court or in some other governmental capacity if such fees or dues are re-

quired for an attorney to practice law in that jurisdiction.

(f) *Questioned cost* means a cost that LSC 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 LSC funds;

(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.

(g) *Real estate* means land and buildings (including capital improvements), excluding moveable personal property.

(h) *Single purchase, single lease, and single contract* mean a single order or lease of goods or a single contract for services from a single vendor.

§ 1630.3 Time.

(a) *Computation.* In computing any period of time under this part, the time period begins the day following the event and includes the last day of the period, unless the last day is a Saturday, Sunday, or legal holiday observed by the Federal government. In those cases, the time period includes the next business day. When the prescribed time period is seven days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

(b) *Extensions.* A recipient may, within the applicable timeframe for a particular response under this part, submit a written request for an extension of time for good cause to LSC. LSC will respond to the request for extension within seven calendar days from the date of receiving the request. LSC may grant the request for extension and shall notify the recipient of its decision in writing.

§ 1630.4 Burden of proof.

The recipient shall have the burden of proof under this part.

Subpart B—Cost Standards and Prior Approval

§ 1630.5 Standards governing allowability of costs under LSC grants or contracts.

(a) *General criteria.* Expenditures are allowable under an LSC 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 LSC;

(3) Allocable to the grant or contract;

(4) In compliance with the Act, applicable appropriations law, LSC 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 LSC-funded and non-LSC-funded activities;

(6) Accorded consistent treatment over time;

(7) Determined in accordance with generally accepted accounting principles; and

(8) Adequately and contemporaneously documented in business records accessible during normal business hours to LSC management, the Office of Inspector General, the General Accounting Office, and 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. 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 recipient's established practices, which may unjustifiably increase the grant or contract costs.

(c) *Allocable costs.* (1) 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 LSC funds either as direct or indirect costs according to the provisions of this section.

(2) A cost is allocable to an LSC grant or contract if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:

(i) Is incurred specifically for the grant or contract;

(ii) Benefits both the grant or contract and other work and can be distributed in reasonable proportion to the benefits received; or

(iii) Is necessary to the recipient's overall operation, although a direct relationship to any particular cost objective cannot be shown.

(3) Recipients must maintain accounting systems sufficient to demonstrate the proper allocation of costs to each of their funding sources.

(d) *Direct costs.* Direct costs are those that can be identified specifically with 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 LSC 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

Legal Services Corporation

§ 1630.6

readily identified with a particular final cost objective. A recipient may treat any direct cost of a minor amount 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 recipient may allocate a proportional share of another funding source's share of an indirect cost to LSC funds, provided that the activity associated with the indirect cost is permissible under the LSC Act, LSC appropriations statutes, 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 reduc-

tion or cash refund in the same fund to which the related costs are charged.

(i) *Fundraising.* Costs associated with fundraising for the purpose of increasing recipient funds available to carry out the purposes of the LSC grant are allowable and allocable to the LSC grant if they meet the requirements of this section.

(j) *Guidance.* The regulations 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, LSC rules, regulations, guidelines, instructions, and other applicable law.

§ 1630.6 Prior approval.

(a) *Advance understandings.* Under any given grant award, the reasonableness and allocability of certain cost items may be difficult to determine. To avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, a recipient may seek a written understanding from LSC in advance of incurring special or unusual costs. If a recipient elects not to seek an advance understanding from LSC, the absence of an advance understanding on any element of a cost will not affect the reasonableness or allocability of the cost.

(b) *Costs requiring prior approval.* (1) Without LSC's prior written approval, a recipient may not expend \$25,000 or more of LSC funds on any of the following:

(i) A single purchase or single lease of personal property;

(ii) A single contract for services;

(iii) A single combined purchase or lease of personal property and contract for services; and

(iv) Capital improvements.

(2) Without LSC's prior written approval, a recipient may not expend LSC funds on a purchase of real estate.

(3) For costs apportioned between LSC funds and one or more other funding sources, this requirement applies when the cost allocable to LSC funds is \$25,000 or greater.

§ 1630.7

45 CFR Ch. XVI (10–1–23 Edition)

(4) The process and substantive requirements for requests for prior approval are in 45 CFR part 1631—Purchasing and Property Management.

(c) *Duration.* LSC's advance understanding or approval shall be valid for one year, or for a greater period of time which LSC may specify in its approval or advance understanding.

[82 FR 37337, Aug. 10, 2017; 82 FR 55053, Nov. 20, 2017]

§ 1630.7 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 the 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.

§ 1630.8 Contributions.

Any contributions or gifts of LSC funds to another organization or to an individual are prohibited.

§ 1630.9 Tax-sheltered annuities, retirement accounts, and penalties.

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.

§ 1630.10 Recipient policies, procedures, and recordkeeping.

Each recipient must adopt written policies and procedures to guide its staff in complying with this subpart and must maintain records sufficient to document the recipient's compliance with this subpart.

Subpart C—Questioned Cost Proceedings

§ 1630.11 Review of questioned costs.

(a) LSC may identify questioned costs:

(1) 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 LSC;

(2) In the course of its oversight of recipients; or

(3) As a result of complaints filed with LSC.

(b) If LSC determines that there is a basis for disallowing a questioned cost, LSC must provide the recipient with written notice of its intent to disallow the cost. The notice of questioned costs must state the amount of the cost and the factual and legal basis for disallowing it.

(c) If a questioned cost is disallowed solely because it is excessive, only the amount that is larger than reasonable shall be disallowed.

(d)(1) Within 30 days of receiving the notice of questioned costs, the recipient may respond with written evidence and argument to show that the cost was allowable, or that LSC, for equitable, practical, or other reasons, should not recover all or part of the amount, or that the recovery should be made in installments.

(2) The written notice shall become LSC's final written decision unless:

(i) The recipient responds to LSC's written notice within 30 days;

(ii) The recipient requests an extension of time pursuant to § 1630.3(b) within 30 days; or

(iii) LSC grants an extension of time pursuant to § 1630.3(b) within 30 days.

(e) Within 60 days of receiving the recipient's written response to the notice of questioned costs, LSC management must issue a final written decision stating whether the cost has been disallowed and the reasons for the decision.

(f) If LSC has determined that the questioned cost should be disallowed, the final written decision must:

(1) State that the recipient may appeal the decision as provided in § 1630.12 and describe the process for seeking an appeal;

(2) Describe how it expects the recipient to repay the cost, including the method and schedule for collection of the amount of the cost;

(3) State whether LSC is requiring the recipient to make financial adjustments or take other corrective action

Legal Services Corporation

§ 1630.16

to prevent a recurrence of the circumstances giving rise to the disallowed cost.

§ 1630.12 Appeals to the president.

(a)(1) If the amount of a disallowed cost exceeds \$2,500, the recipient may appeal in writing to LSC's President within 30 days of receiving LSC's final written decision to disallow the cost. The recipient should state in detail the reasons why LSC should not disallow part or all of the questioned cost.

(2) If the recipient did not respond to LSC's notice of questioned costs and the notice became LSC's final written decision pursuant to §1630.11(d)(2), the recipient may not appeal the final written decision.

(b) If the President has had prior involvement in the consideration of the disallowed cost, the President shall designate another senior LSC employee who has not had prior involvement to review the recipient's appeal. In circumstances where the President has not had prior involvement in the disallowed cost proceeding, the President has discretion to designate another senior LSC employee who also has not had prior involvement in the proceeding to review the appeal.

(c) Within 30 days of receiving the recipient's written appeal, the President or designee will adopt, modify, or reverse LSC's final written decision.

(d) The decision of the President or designee shall be final and shall be based on the written record, consisting of LSC's notice of questioned costs, the recipient's response, LSC's final written decision, the recipient's written appeal, any additional response or analysis provided to the President or designee by LSC 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, LSC shall provide the recipient with a copy of the written record.

§ 1630.13 Recovery of disallowed costs and other corrective action.

(a) LSC will recover any disallowed costs from the recipient within the time limits and conditions set forth in either LSC's final written decision or the President's decision on an appeal.

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 you to LSC.

(b) LSC shall ensure that a recipient who has incurred a disallowed cost takes any additional necessary corrective action within the time limits and conditions set forth in LSC's final written decision or the President's decision.

§ 1630.14 Other remedies; effect on other parts.

(a) In cases of serious financial mismanagement, fraud, or defalcation of funds, LSC shall refer the matter to the Office of Inspector General and may take appropriate action pursuant to parts 1606, 1623, and 1640 of this chapter.

(b) The recovery of a disallowed cost according to the procedures of this part does not constitute a permanent reduction in a recipient's annualized funding level, nor does it constitute a limited reduction of funding or termination of financial assistance under part 1606, or a suspension of funding under part 1623 of this chapter.

§ 1630.15 Applicability to subgrants.

When disallowed costs arise from expenditures incurred under a subgrant of LSC 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.

§ 1630.16 Applicability to non-LSC funds.

(a) No cost may be charged to non-LSC funds in violation of 45 CFR 1610.3 or 1610.4.

(b) LSC may recover from a recipient's LSC funds an amount not to exceed the amount improperly charged to non-LSC funds. The review and appeal procedures of §§1630.11 and 1630.12 govern any decision by LSC to recover funds under this paragraph.

[85 FR 63216, Oct. 7, 2020]

§ 1630.17

§ 1630.17 Applicability to derivative income.

(a) Derivative income resulting from an activity supported in whole or in part with LSC funds 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 activity.

(b) Derivative income allocated to the LSC fund in accordance with paragraph (a) of this section is subject to the requirements of this part.

Subpart D—Closeout Procedures

§ 1630.18 Applicability.

This subpart applies when a recipient of LSC funds:

(a) Ceases to exist as a legal entity, including merging or consolidating functions with another LSC recipient when the other recipient becomes the LSC recipient for the service area; or

(b) Otherwise ceases to receive funds directly from LSC. This may include voluntary termination by the recipient or involuntary termination by LSC of the recipient's LSC grant, and may occur at the end of a grant term or during the grant term.

§ 1630.19 Closeout plan; timing.

(a) A recipient must provide LSC with a plan for the orderly conclusion of the recipient's role and responsibilities. LSC will maintain a list of the required elements for the closeout plan on its Web site. LSC will provide recipients with a link to the list in the grant award documents.

(b)(1) A recipient must notify LSC no less than 60 days prior to any of the above events, except for an involuntary termination of its LSC grant by LSC. The recipient must submit the closeout plan described in paragraph (a) of this section at the same time.

(2) If LSC terminates a recipient's grant, the recipient must submit the closeout plan described in paragraph (a) of this section within 15 days of being notified by LSC that it is terminating the recipient's grant.

45 CFR Ch. XVI (10–1–23 Edition)

§ 1630.20 Closeout costs.

(a) The recipient must submit to LSC a detailed budget and timeline for all closeout procedures described in the closeout plan. LSC must approve the budget, either as presented or after negotiations with the recipient, before the recipient may proceed with implementing the budget, timeline, and plan.

(b) LSC will withhold funds for all closeout expenditures, including costs for the closing audit, all staff and consultant services needed to perform closeout activities, and file storage and retention.

(c) LSC will release any funding installments that the recipient has not received as of the date it notified LSC of a merger, change in status, or voluntary termination or that LSC notified the recipient of an involuntary termination of funding only upon the recipient's satisfactory completion of all closeout obligations.

§ 1630.21 Returning funds to LSC.

(a) *Excess fund balance.* If the recipient has an LSC fund balance after the termination of funding and closeout, the recipient must return the full amount of the fund balance to LSC at the time it submits the closing audit to LSC.

(b) *Derivative income.* Any attorneys' fees claimed or collected and retained by the recipient after funding ceases that result from LSC-funded work performed during the grant term are derivative income attributable to the LSC grant. Such derivative income must be returned to LSC within 15 days of the date on which the recipient receives the income.

PART 1631—PURCHASING AND PROPERTY MANAGEMENT

Subpart A—General Provisions

Sec.

1631.1 Purpose.

1631.2 Definitions.

1631.3 Prior approval process.

1631.4 Use of funds.

1631.5 Recipient policies, procedures, and recordkeeping.

Legal Services Corporation

§ 1631.2

Subpart B—Procurement Policies and Procedures

- 1631.6 Characteristics of procurements.
- 1631.7 Procurement policies and procedures.
- 1631.8 Requests for prior approval.
- 1631.9 Applicability of part 1630 of this chapter.

Subpart C—Personal Property Management

- 1631.10 Use of property in compliance with LSC's statutes and regulations.
- 1631.11 Intellectual property.
- 1631.12 Disposing of personal property purchased with LSC funds.
- 1631.13 Use of derivative income from sale of personal property purchased with LSC funds.

Subpart D—Real Estate Acquisition and Capital Improvements

- 1631.14 Purchasing real estate with LSC funds.
- 1631.15 Capital improvements.

Subpart E—Real Estate Management

- 1631.16 Using real estate purchased with LSC funds.
- 1631.17 Maintenance.
- 1631.18 Insurance.
- 1631.19 Accounting and reporting to LSC.
- 1631.20 Disposing of real estate purchased with LSC funds.
- 1631.21 Retaining income from sale of real estate purchased with LSC funds.

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

SOURCE: 82 FR 37341, Aug. 10, 2017, unless otherwise noted.

Subpart A—General Provisions

§ 1631.1 Purpose.

The purpose of this part is to set standards for purchasing, leasing, using, and disposing of LSC-funded personal property and real estate and using LSC funds to contract for services.

§ 1631.2 Definitions.

As used in this part:

- (a) *Capital improvement* means spending more than \$25,000 of LSC funds to improve real estate through construction or the addition of fixtures that become an integral part of real estate.
- (b) *LSC property interest agreement* means a formal written agreement between the recipient and LSC estab-

lishing the terms of LSC's legal interest in real estate purchased with LSC funds.

(c) *Personal property* means property other than real estate.

(d) *Purchase* means buying personal property or real estate or contracting for services with LSC funds.

(e) *Quote* means a quotation or bid from a potential source interested in selling or leasing property or providing services to a recipient.

(f) *Real estate* means land and buildings (including capital improvements), excluding moveable personal property.

(g)(1) *Services* means professional and consultant services rendered by persons who are members of a particular profession or possess a special skill and who are not officers or employees of an LSC recipient. *Services* includes, but is not limited to intangible products such as accounting, banking, cleaning, consultants, training, expert services, maintenance of equipment, and transportation.

(2) *Services* does not include:

(i) Services provided by recipients to their employees as compensation in addition to regular salaries and wages, including but not limited to employee insurance, pensions, and unemployment benefit plans;

(ii) Insurance, including malpractice insurance provided to staff attorneys and organizational insurance (e.g., directors and officers liability insurance, employment practices liability insurance, and commercial liability insurance);

(iii) Annual audits required by section 509(a) of Public Law 104-134;

(iv) Services necessary to conduct litigation on behalf of clients (e.g., expert witnesses, discovery);

(v) Contracts for services necessary to address a recipient's internal personnel issues, such as labor counsel, investigators, and mediators; and

(vi) Contracts for employees, whether with the employee directly or with a placement agency.

(h) *Source* means a seller, supplier, vendor, or contractor who has agreed:

(1) To sell or lease property to the recipient through a purchase or lease agreement; or

(2) To provide services to the recipient through a contract.

§ 1631.3

45 CFR Ch. XVI (10–1–23 Edition)

§ 1631.3 Prior approval process.

(a) LSC shall grant prior approval of a cost listed in §1630.6(b) of this chapter if the recipient has provided sufficient written information to demonstrate that the cost would be consistent with the standards and policies of this part. LSC may request additional information if necessary to make a decision on the recipient's request.

(b)(1) For purchases or leases of personal property, contracts for services, and capital improvements, LSC will make a decision to approve or deny a request for prior approval within 30 days of receiving materials LSC deems sufficient to decide. LSC will inform a recipient within 20 days of receiving the initial prior approval request whether LSC needs additional information to make a decision.

(2) For purchases of real estate, LSC will make a decision within 60 days of receiving materials LSC deems sufficient to decide. LSC will inform a recipient within 20 days of receiving the initial prior approval request whether LSC needs additional information to make a decision.

(3) If LSC cannot make a decision whether to approve the request within the allotted time, it will provide the requester with a date by which it expects to make a decision.

(c) If LSC denies a request for prior approval, LSC shall provide the recipient with a written explanation of the grounds for denying the request.

(d) *Exigent circumstances.* (1) A recipient may use more than \$25,000 of LSC funds to purchase personal property or award a contract for services without seeking LSC's prior approval if the purchase or contract is necessary;

(i) To avoid imminent harm to the recipient's personnel, physical facilities, or systems;

(ii) To remediate or mitigate damage to the recipient's personnel, physical facilities or systems;

(iii) To avoid disruption to the recipient's client-service delivery system (e.g., an event that causes a recipient's telecommunications system to cease functioning); or

(iv) To respond to a natural disaster (e.g., a flood washes out roads leading to the recipient's offices such that the

recipient must contract for services that will enable it to contact its clients).

(2) The recipient must provide LSC with a description of the exigent circumstances and the information described in §1631.8(b) within 30 days after the circumstances necessitating the purchase or contract have ended.

[82 FR 37341, Aug. 10, 2017; 82 FR 55053, Nov. 20, 2017]

§ 1631.4 Use of funds.

When LSC receives funds from a disposition of property under this section, LSC will use those funds to make emergency and other special grants to recipients. LSC generally will make such grants to the same service area as the returned funds originally supported.

§ 1631.5 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.

Subpart B—Procurement Policies and Procedures

§ 1631.6 Characteristics of procurements.

(a) Characteristics indicative of a procurement relationship between a recipient and another entity are when the other entity:

(1) Provides the goods and services within its normal business operations;

(2) Provides similar goods or services to many different purchasers;

(3) Normally operates in a competitive environment;

(4) Provides goods or services that are ancillary to the operation of the LSC grant; and

(5) Is not subject to LSC's compliance requirements as a result of the agreement, though similar requirements may apply for other reasons.

(b) In determining whether an agreement between a recipient and another entity constitutes a contract under this part or a subgrant under part 1627

Legal Services Corporation

§ 1631.11

of this chapter, the substance of the relationship is more important than the form of the agreement. All the characteristics above may not be present in all cases, and a recipient must use judgment in classifying each agreement as a subgrant or a contract.

§ 1631.7 Procurement policies and procedures.

Recipients must have written procurement policies and procedures. These policies must:

(a) Identify competition thresholds that establish the basis (for example, price, risk level, or type of purchase) for the level of competition required at each threshold (for example, certification that a purchase reflects the best value to the recipient; a price comparison for alternatives that the recipient considered; or requests for information, quotes, or proposals);

(b) Establish the grounds for non-competitive purchases;

(c) Establish the level of documentation necessary to justify procurements. The level of documentation needed may be proportional to the nature of the purchase or tied to competition thresholds;

(d) Establish internal controls that, at a minimum, provide for segregation of duties in the procurement process, identify which employees, officers, or directors who have authority to make purchases for the recipient, and identify procedures for approving purchases;

(e) Establish procedures to ensure quality and cost control in purchasing, including procedures for selecting sources, fair and objective criteria for selecting sources; and

(f) Establish procedures for identifying and preventing conflicts of interest in the purchasing process.

§ 1631.8 Requests for prior approval.

(a) As required by 45 CFR 1630.6 and 1631.3, a recipient using more than \$25,000 of LSC funds to purchase or lease personal property or contract for services must request and receive LSC's prior approval.

(b) A request for prior approval must include:

(1) A statement of need;

(2) A copy of the recipient's procurement policy; and

(3) Documentation showing that the recipient followed its procurement policies and procedures in soliciting, reviewing, and approving the purchase, lease, or contract for services.

§ 1631.9 Applicability of part 1630 of this chapter.

All purchases and leases of personal property and contracts for services made with LSC funds must comply with the provisions of 45 CFR part 1630 (Cost Standards and Procedures).

Subpart C—Personal Property Management

§ 1631.10 Use of property in compliance with LSC's statutes and regulations.

(a) A recipient may use personal property purchased or leased, in whole or in part, with LSC funds primarily to deliver legal services to eligible clients under the requirements of the LSC Act, applicable appropriations acts, and LSC regulations.

(b) A recipient may use personal property purchased or leased, in whole or in part, with LSC funds for the performance of an LSC grant or contract for other activities, if such other activities do not interfere with the performance of the LSC grant or contract.

(c) If a recipient uses personal property purchased or leased, in whole or in part, with LSC funds to provide services to an organization that engages in activity restricted by the LSC Act, LSC regulations, or other applicable law, the recipient must charge the organization a fee no less than that which private nonprofit organizations in the same area charge for the same services under similar conditions.

§ 1631.11 Intellectual property.

(a) A recipient owns all products, technologies, and software developed or improved using LSC funds, subject to any agreement the recipient may have with a third-party vendor. LSC retains a royalty-free, nonexclusive, and irrevocable license to use, reproduce, distribute, publish, and prepare derivative works of any LSC-funded products, technologies, and software,

§ 1631.12

including making them available to other LSC grantees or the broader access to justice community and partners.

(b) A recipient must have a written contract with vendors who develop or improve LSC-funded products, technologies, and software. The contract must include a provision disclosing LSC's royalty-free, nonexclusive, and irrevocable license and prohibiting third-party vendors from denying its existence, challenging its legality, or interfering with LSC's full exercise of it.

§ 1631.12 Disposing of personal property purchased with LSC funds.

(a) *Disposal by LSC recipients.* During the term of an LSC grant or contract, a recipient may dispose of personal property purchased with LSC funds by:

(1) Trading in the personal property when it acquires replacement property;

(2) Selling or otherwise disposing of the personal property with no further obligation to LSC when the fair market value of the personal property is negligible;

(3) Where the current fair market value of the personal property is \$15,000 or less, selling the property at a reasonable negotiated price, without advertising;

(4) Where the current fair market value of the personal property exceeds \$15,000, advertising the property for 14 days and selling the property after receiving reasonable offers. If the recipient receives no reasonable offers after advertising the property for 14 days, it may sell the property at a reasonable negotiated price;

(5) Transferring the property to another recipient of LSC funds; or

(6) With the approval of LSC, transferring the personal property to another nonprofit organization serving the poor in the same service area.

(b) *Disposal when no longer a recipient.* When a recipient stops receiving LSC funds, it must obtain LSC's approval to dispose of personal property purchased with LSC funds in one of the following ways:

(1) Transferring the property to another recipient of LSC funds, in which case the former recipient will be entitled to compensation in the amount of

45 CFR Ch. XVI (10–1–23 Edition)

the percentage of the property's current fair market value that is equal to the percentage of the property's purchase cost borne by non-LSC funds;

(2) Transferring the property to another nonprofit organization serving the poor in the same service area, in which case LSC will be entitled to compensation from the recipient for the percentage of the property's current fair market value that is equal to the percentage of the property's purchase cost borne by LSC funds;

(3) Selling the property and retaining the proceeds from the sale after compensating LSC for the percentage of the property's current fair market value that is equal to the percentage of the property's purchase cost borne by LSC funds; or

(4) Retaining the property, in which case LSC will be entitled to compensation from the recipient for the percentage of the property's current fair market value that is equal to that percentage of the property's purchase cost borne by LSC funds.

(c) *Disposal upon merger with or succession by another LSC recipient.* When a recipient stops receiving LSC funds because it merged with or is succeeded by another grantee, the recipient may transfer the property to the new recipient, if the two entities execute an LSC-approved successor in interest agreement that requires the new recipient to use the property primarily to provide legal services to eligible clients under the requirements of the LSC Act, applicable appropriations acts, and LSC regulations.

(d) *Prohibition.* A recipient may not dispose of personal property by sale, donation, or other transfer of the property to its board members or employees.

§ 1631.13 Use of derivative income from sale of personal property purchased with LSC funds.

(a) During the term of an LSC grant or contract, a recipient may retain and use income from any sale of personal property purchased with LSC funds according to 45 CFR 1630.17 (Cost Standards and Procedures: Applicability to derivative income) and 45 CFR 1628.3 (Recipient Fund Balances: Policy).

(b) The recipient must account for income earned from the sale, rent, or lease of personal property purchased with LSC funds according to the requirements of 45 CFR 1630.17.

Subpart D—Real Estate Acquisition and Capital Improvements

§ 1631.14 Purchasing real estate with LSC funds.

(a) *Pre-purchase planning requirements.* (1) Before purchasing real estate with LSC funds, a recipient must conduct an informal market survey and evaluate at least three potential equivalent properties.

(2) When a recipient evaluates potential properties, it must consider:

(i) The average annual cost of the purchase, including the costs of a down payment, interest and principal payments on a mortgage financing the purchase; closing costs; renovation costs; and the costs of utilities, maintenance, and taxes, if any;

(ii) The estimated total costs of buying and using the property throughout the mortgage term compared to the estimated total costs of leasing and using a similar property over the same period of time;

(iii) The property's quality; and

(iv) Whether the property is conducive to delivering legal services (e.g. property is accessible to the client population (ADA compliant) and near public transportation, courts, and other government or social services agencies).

(3) If a recipient cannot evaluate three potential properties, it must be able to explain why such evaluation was not possible.

(b) *Prior approval.* Before a recipient may purchase real estate with LSC funds, LSC must approve the purchase as required by 45 CFR 1630.6 and 1631.3. The request for approval must be in writing and include:

(1) A statement of need, including:

(i) The information obtained and considered in paragraph (a) of this section;

(ii) Trends in funding and program staffing levels in relation to space needs;

(iii) Why the recipient needs to purchase real estate; and

(iv) Why purchasing real estate is reasonable and necessary to performing the LSC grant.

(2) A brief analysis comparing:

(i) The estimated average annual cost of the purchase including the costs of a down payment, interest and principal payments on a mortgage financing the purchase; closing costs; renovation costs; and the costs of utilities, maintenance, and taxes, if any; and

(ii) The estimated average annual cost of leasing or purchasing similar property over the same period of time;

(3) Anticipated financing of the purchase, including:

(i) The estimated total acquisition costs, including capital improvements, taxes, recordation fees, maintenance costs, insurance costs, and closing costs;

(ii) The anticipated breakdown of LSC funds and non-LSC funds to be applied toward the total costs of the purchase;

(iii) The monthly amount of principal and interest payments on debt secured to finance the purchase, if any;

(4) A current, independent appraisal sufficient to secure a mortgage;

(5) A comparison of available loan terms considered by the recipient before selecting the chosen financing method;

(6) Board approval of the purchase in either a board resolution or board minutes, including Board approvals that are contingent on LSC's approval;

(7) Whether the property will replace or supplement existing program offices;

(8) A statement that the property

(i) Currently complies with the Americans with Disabilities Act (ADA) or applicable state law, whichever is stricter, and 45 CFR 1624.5; or

(ii) Will comply with the ADA, any applicable state law, and 45 CFR 1624.5 upon completion of any necessary capital improvements. Such improvements must be completed within 60 days of the date of purchase; and

(9) A copy of a purchase agreement, contract, or other document containing a description of the property and the terms of the purchase.

§ 1631.15

(c) *Property interest agreement.* Once LSC approves the purchase, the recipient must enter a written property interest agreement with LSC. The agreement must include:

(1) The recipient's agreement to use the property consistent with §1631.15;

(2) The recipient's agreement to record, under appropriate state law, LSC's interest in the property;

(3) The recipient's agreement not to encumber the property without prior LSC approval; and

(4) The recipient's agreement not to dispose of the property without prior LSC approval.

§ 1631.15 Capital improvements.

(a) As required by 45 CFR 1630.6 and 1631.3, a recipient must obtain LSC's prior written approval before using more than \$25,000 LSC funds to make capital improvements to real estate.

(b) The written request must include:

(1) A statement of need;

(2) A brief description of the nature of the work to be done, the name of the sources performing the work, and the total expected cost of the improvement; and

(3) Documentation showing that the recipient followed its procurement policies and procedures in competing, selecting, and awarding contracts to perform the work.

(c) A recipient must maintain supporting documentation to accurately identify and account for any use of LSC funds to make capital improvements to real estate owned by the recipient.

Subpart E—Real Estate Management

§ 1631.16 Using real estate purchased with LSC funds.

(a) Recipients must use real estate purchased or leased in whole or in part with LSC funds to deliver legal assistance to eligible clients consistent with the requirements of the LSC Act, applicable appropriations acts, other applicable Federal law, and LSC's regulations. If a recipient does not need to use some or all such real estate to deliver legal assistance to eligible clients, it may use the space for other ac-

45 CFR Ch. XVI (10–1–23 Edition)

tivities as described in paragraphs (b) and (c) of this section.

(b) A recipient may use real estate purchased or leased, in whole or part, with LSC funds for the performance of an LSC grant or contract for other activities, if they do not interfere with the performance of the LSC grant or contract.

(c) If a recipient uses real estate purchased or leased, in whole or part, with LSC funds to provide space to an organization that engages in activity restricted by the LSC Act, applicable appropriations acts, LSC regulations, or other applicable law, the recipient must charge the organization rent no less than that which private nonprofit organizations in the same area charge for the same amount of space under similar conditions.

§ 1631.17 Maintenance.

A recipient must maintain real estate acquired with LSC funds:

(a) In an efficient operating condition; and

(b) In compliance with state and local government property standards and building codes.

§ 1631.18 Insurance.

At the time of purchase, a recipient must obtain insurance coverage for real estate purchased with LSC funds which is not lower in value than coverage it has obtained for other real estate it owns and which provides at least the following coverage:

(a) Title insurance that:

(1) Insures the fee interest in the property for an amount not less than the full appraised value as approved by LSC, or the amount of the purchase price, whichever is greater; and

(2) Contains an endorsement identifying LSC as a loss payee to be reimbursed if the title fails.

(3) If no endorsement naming LSC as loss payee is made, the recipient must pay LSC the title insurance proceeds it receives in the event of a failure.

(b) A physical destruction insurance policy, including flood insurance where appropriate, which insures the full replacement value of the facility from

Legal Services Corporation

§ 1631.21

risk of partial and total physical destructions. The recipient must maintain this policy for the period of time that the recipient owns the real estate.

§ 1631.19 Accounting and reporting to LSC.

A recipient must maintain an accounting of the amount of LSC funds relating to the purchase or maintenance of real estate purchased with LSC funds. The accounting must include the amount of LSC funds used to pay for acquisition costs, financing, and capital improvements. The recipient must provide the accounting for each year to LSC no later than April 30 of the following year or in its annual audited financial statements submitted to LSC.

§ 1631.20 Disposing of real estate purchased with LSC funds.

(a) *Disposal by LSC recipients.* During the term of an LSC grant or contract, a recipient must seek LSC's prior written approval to dispose of real estate purchased with LSC funds by:

(1) Selling the property after having advertised for and received offers; or

(2) Transferring the property to another recipient of LSC funds, in which case the recipient may be compensated by the recipient receiving the property for the percentage of the property's current fair market value that is equal to the percentage of the costs of the original acquisition and costs of any capital improvements borne by non-LSC funds.

(b) *Disposal after a recipient no longer receives LSC funding.* When a recipient who owns real estate purchased with LSC funds stops receiving LSC funds, it must seek LSC's prior written approval to dispose of the property in one of the following ways:

(1) Transfer the property title to another grantee of LSC funds, in which case the recipient may be compensated the percentage of the property's current fair market value that is equal to the percentage of the costs of the original acquisition and costs of any capital improvements by non-LSC funds;

(2) Buyout LSC's interest in the property (*i.e.*, pay LSC the percentage of the property's current fair market

value proportional to its percent interest in the property); or

(3) Sell the property to a third party and pay LSC a share of the sale proceeds proportional to its interest in the property, after deducting actual and reasonable closing costs, if any.

(4) When a recipient stops receiving LSC funds because it merged with or is succeeded by another recipient, it may transfer the property to the new recipient. The two entities must execute an LSC-approved successor in interest agreement that requires the transferee to use the property primarily to provide legal services to eligible clients under the requirements of the LSC Act, applicable appropriations acts, and LSC regulations.

(c) *Prior approval process.* No later than 60 days before a recipient or former recipient proposes to dispose of real estate purchased with LSC funds, the recipient or former recipients must submit a written request for prior approval to dispose of the property to LSC. The request must include:

(1) The proposed method of disposition and an explanation of why the proposed method is in the best interests of LSC and the recipient;

(2) Documentation showing the fair market value of the property at the time of transfer or sale, including, but not limited to, an independent appraisal of the property and competing bona fide offers to purchase the property;

(3) A description of the recipient's process for advertising the property for sale and receiving offers;

(4) An accounting of all LSC funds used in the acquisition and any capital improvements of the property. The accounting must include the amount of LSC funds used to pay for acquisition costs, financing, and capital improvements; and

(5) Information on the proposed transferee or buyer of the property and a document evidencing the terms of transfer or sale.

§ 1631.21 Retaining income from sale of real estate purchased with LSC funds.

(a) During the term of an LSC grant or contract, a recipient may retain and use income from any sale of real estate

purchased with LSC funds according to 45 CFR 1630.17 (Cost Standards and Procedures: Applicability to derivative income.) and 45 CFR 1628.3 (Recipient Fund Balances: Policy.).

(b) The recipient must account for income earned from the sale, rent, or lease of real or personal property purchased with LSC funds according to the requirements of 45 CFR 1630.17.

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 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:

Legal Services Corporation

§ 1634.2

(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).

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 Per-

formance 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 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

§ 1634.3

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 financial 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

45 CFR Ch. XVI (10–1–23 Edition)

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 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.

Legal Services Corporation

§ 1634.8

(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 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.

(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

§ 1634.9

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, includ-

45 CFR Ch. XVI (10–1–23 Edition)

ing, 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 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 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 dis-

position 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.

§ 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 What is the purpose of this part?

1635.2 Definitions.

1635.3 Who is covered by the timekeeping requirement?

1635.4 What are LSC's timekeeping standards?

1635.5 Who outside the recipient has access to these records?

§ 1635.1

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

SOURCE: 86 FR 27041, May 19, 2021, unless otherwise noted.

§ 1635.1 What is the purpose of this part?

This part is intended to improve recipient accountability for the use of all funds by:

(a) Assuring that allocations of direct costs to a recipient's LSC grant pursuant to 45 CFR part 1630 are supported by accurate records of the cases, matters, and supporting activities for which the funds have been expended;

(b) Enhancing the recipient's ability 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) *Case* means a form of program service in which a recipient employee provides legal assistance to one or more specific clients, including but not limited to providing representation in litigation, administrative proceedings, and negotiations, and such actions as advice, providing brief services, and transactional assistance.

(b)(1) *Case oversight* means a supervisor's review of a case for regulatory compliance, consistency with Case Service Report reporting rules, and quality control purposes. Case oversight activities include, but are not limited to, review of file for retainer, citizenship attestation or documentation of eligible non-citizen status, and documentation of financial eligibility determination; review of closing codes; and review of advice provided or pleadings filed.

(2) *Case oversight* activities may be counted as case activity when the supervisor conducts extended review of the substantive legal advice provided in the case. *Case oversight* activities may be reported as a supporting activity when it represents the aggregate of a supervisor's time spent doing brief review of a large number of cases.

(c) *Matter* means an action that contributes to the overall delivery of program services but does not involve di-

45 CFR Ch. XVI (10–1–23 Edition)

rect 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, supervision of program services, preparing and disseminating desk manuals, PAI recruitment, referral, intake when no case is undertaken, and tracking substantive law developments.

(d) *Restricted activities* means those activities that recipients may not engage in pursuant to 45 CFR part 1610.

(e) *Supporting activity* means any action that is not a case or matter.

§ 1635.3 Who is covered by the timekeeping requirement?

Any attorney, paralegal, or other recipient employee who performs work that is charged to one or more awards as a direct cost (as defined in 45 CFR 1630.5(d)) must keep time according to the standards set forth in § 1635.4.

§ 1635.4 What are LSC's timekeeping standards?

(a) Recipients must base allocations of salaries and wages on records that accurately reflect the work performed. These records must:

(1) Be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated;

(2) Be incorporated into the recipient's official records by no later than the end of the employee's pay period, generally every two weeks;

(3) Reflect the total activity for which the recipient compensates the employee;

(4) Encompass within the grantee's case management system both LSC-funded and all other direct cost activities compensated by the recipient, but may include the use of subsidiary records as defined in the recipient's written policies;

(5) Comply with the recipient's established accounting policies and practices;

Legal Services Corporation

§ 1636.2

(6) Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one award or an indirect cost activity and a direct cost activity;

(7) Contain

(i) For cases, a unique client name or case number, the amount of time spent on the case, a description of the activities performed, and the dates on which a recipient employee worked on the case;

(ii) For matters or supporting activities, the amount of time and type of activity on which a recipient employee spent time and sufficient information to link the activity to a specific award or indirect cost amount. For example, if a recipient employee conducts a legal information session on filing a pro se divorce petition, the employee could record "pro se divorce group information session, 1.5 hours."

(b) In accordance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR part 516), charges for the salaries and wages of nonexempt employees, in addition to the supporting documentation described in this section, must also be supported by records indicating the total number of hours worked each day.

(c) Salaries and wages of employees used in meeting cost sharing or matching requirements of Federal awards must be supported in the same manner as salaries and wages claimed for reimbursement from Federal awards.

(d) Recipients may establish the increments of time for which employees must record their activities (*e.g.*, .25 hours, one-sixth of an hour). LSC recommends that recipients require employees to record their time in increments no greater than one quarter of an hour.

(e)(1) Any recipient employee subject to this part who works part-time for the recipient and part-time for an organization that engages in restricted activities shall certify in writing that the employee has not engaged in restricted activity during any time for which the employee was compensated by the recipient or has not used recipient resources to carry out restricted activities.

(2) 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. Employees shall make the required certification on a quarterly basis using a form determined by LSC.

§ 1635.5 Who outside the recipient has access to these records?

Recipients must make time records required by this section 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 to enable such bar association official to investigate 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.

§ 1636.2 Requirements.

(a) When a recipient files a complaint in a court of law or otherwise initiates

§ 1636.3

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 monitor on behalf of a Federal department or agency or on behalf of the Corporation.

45 CFR Ch. XVI (10–1–23 Edition)

(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.

(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.

PART 1639—WELFARE REFORM

Sec.

- 1639.1 Purpose.
- 1639.2 Definitions.

§ 1639.1

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]

§ 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 sys-

45 CFR Ch. XVI (10-1-23 Edition)

tem. 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 Applicable Federal laws.

1640.3 Contractual agreement.

1640.4 Violation of agreement.

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

SOURCE: 80 FR 21656, Apr. 20, 2015, 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 provides notice to recipients of the consequences of a violation of such Federal laws by a recipient, its employees or board members.

§ 1640.2 Applicable federal laws.

(a) LSC will maintain an exhaustive list of applicable Federal laws relating to the proper use of Federal funds on its Web site and provide recipients with a link to the list in the contractual agreement. The list may be modified with the approval of the Corporation's Board of Directors at a public meeting. LSC will provide recipients with notice when the list is modified.

(b) For the purposes of this part and the laws referenced in paragraph (a) of this section, LSC is considered a Federal agency and a recipient's LSC funds are considered Federal funds provided by grant or contract.

§ 1640.3 Contractual agreement.

As a condition of receiving LSC funds, a recipient must enter into a written agreement with the Corporation that, with respect to its LSC funds, will subject the recipient to the applicable Federal laws relating to the proper use of Federal funds. The agreement must 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) LSC will determine that a recipient has violated the agreement described in §1640.3 when the recipient has been convicted of, or judgment has been entered against the recipient for, a violation of an applicable Federal law relating to the proper use of Federal funds 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 appeal has expired.

(b) A violation of the agreement by a recipient based on recipient conduct will result in the Corporation terminating the recipient's LSC grant or contract without need for a termination hearing. While an appeal of a conviction or judgment is pending, the Corporation may take any necessary steps to safeguard its funds.

(c) LSC will determine that the recipient has violated the agreement described in §1640.3 when 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 an applicable Federal law relating to the proper use of Federal funds with respect to the 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.

(d) A violation of the agreement by the recipient based on employee or board member conduct will result in the Corporation terminating the recipient's LSC grant or contract. Prior to termination, the Corporation will 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 leading to the conviction or judgment. While an appeal of a conviction or judgment or a hearing is pending, the Corporation may take any necessary steps 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.

§ 1641.1

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 debarring official.
- 1641.23 Exceptions to debarment, suspension and removal.
- 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 per-

formed 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.

Legal Services Corporation

§ 1641.4

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 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 exceed 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.

§ 1641.5

45 CFR Ch. XVI (10–1–23 Edition)

(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

Legal Services Corporation

§ 1641.11

(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 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 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

§ 1641.12

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.

§ 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 debarring 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:

45 CFR Ch. XVI (10–1–23 Edition)

(1) Include a directive to show cause, signed by the debarring 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 debarring 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 debarring official determines that the suspension is based on the same facts as

Legal Services Corporation

§ 1641.20

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 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 Com-

troller 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.

§ 1641.19 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.

§ 1641.21

(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

45 CFR Ch. XVI (10–1–23 Edition)

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 removal, 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 debars, 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 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.

(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).

§ 1643.1

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.

§ 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

45 CFR Ch. XVI (10–1–23 Edition)

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.

Legal Services Corporation

§ 1644.5

§ 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.

(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.

(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 subrecipients 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]