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§ 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.

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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.

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(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 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

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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:

(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) 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.