

## PART 1627—SUBGRANTS

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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 provision 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 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

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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.

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(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-

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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.

(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.

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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.

- 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.

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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