

COMPLIANCE SUPPLEMENT
FOR AUDITS OF LSC RECIPIENTS
(DRAFT)

October 4, 1996

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COMPLIANCE SUPPLEMENT FOR AUDITS OF LSC RECIPIENTS

The "**Compliance Supplement for Audits of LSC Recipients**" (Compliance Supplement) describes specific regulatory compliance requirements that apply to all recipients of LSC funds. Compliance requirements are the responsibility of LSC management and have been provided by management for inclusion in this supplement. The requirements, if not observed, could have a direct or indirect material effect on the financial statements. Regulatory requirements relating to practice **prohibitions, restrictions and requirements** are considered to have a material impact on the LSC program (110 Stat. 1321 (1996)). Assessing compliance with these particular regulations is part of the annual audit of LSC recipients conducted

under the general guidance of Office of Management and Budget (OMB) Circular A-133 for audits of non-profit institutions.

Beginning with the 1996 appropriation of Federal funds to the Legal Services Corporation (LSC), the recipients are required to adhere to new **prohibitions, restrictions and requirements** (Section 504(b) of 110 Stat. 1321 (1996)). Although recipient adherence to all LSC regulations is required, the regulations covering practice **prohibitions, restrictions and requirements** carry special reporting requirements. These regulations are identified in the text of the Compliance Supplement with an "*" and are as follows:

- *PART 1608 - POLITICAL PROHIBITED ACTIVITIES
- *PART 1609 - FEE-GENERATING CASES
- *PART 1610 - USE OF FUNDS FROM SOURCES OTHER THAN THE CORPORATIONS
- *PART 1611 - ELIGIBILITY
- *PART 1612 - RESTRICTIONS ON LOBBYING AND CERTAIN OTHER ACTIVITIES
- *PART 1613 - RESTRICTIONS ON LEGAL ASSISTANCE WITH RESPECT TO CRIMINAL PROCEEDINGS
- *PART 1615 - RESTRICTIONS OF ACTIONS COLLATERALLY ATTACKING CRIMINAL CONVICTIONS
- *PART 1617 - CLASS ACTIONS
- *PART 1620 - PRIORITIES IN USE OF RESOURCES
- *PART 1626 - RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS
- *PART 1627 - SUBGRANTS AND DUES
- *PART 1632 - REDISTRICTING
- *PART 1633 - RESTRICTION ON REPRESENTATION IN CERTAIN EVICTION PROCEEDINGS
- *PART 1635 - TIMEKEEPING

*PART 1636 -	CLIENT IDENTITY AND STATEMENT OF FACTS
*PART 1637 -	RESTRICTIONS ON LITIGATION ON BEHALF OF PRISONER
*PART 1638 -	RESTRICTION ON SOLICITATION
*PART 1639 -	WELFARE REFORM
*PART 1642 -	ATTORNEYS' FEES

The **special reporting requirements** (Section 509(b) of 110 Stat. 1321 (1996)) are carried out through the "**Special Report on Noncompliance with Laws and Regulations**". The auditor is to select and test a representative number of transactions and report to the recipient during the course of the audit all instances of noncompliance relating to the "*" regulations. The recipient is to then report in writing to the Office of Inspector General (OIG) within five business days the instances of noncompliance found by the auditor. If the recipient fails to notify the OIG within the specified time, the auditor must report the noncompliance directly to the OIG. This process of referring the instances noted in the "**Special Report on Noncompliance with Laws and Regulations**" is referred to as the "**Five-Day Letter**."

This Compliance Supplement is divided into three parts. Part A describes costs standards and principles applicable to recipients of LSC funds. Part B briefly summarizes the new prohibitions, restrictions and requirements on LSC recipients imposed by 110 Stat. 1321 (1996) which became effective on April 26, 1996. Part C identifies

compliance requirements that are specific to the Corporation's grant programs, with reference to the specific Code of Federal Regulations (CFR) or statutory citations, where applicable.

Auditors performing an audit using this Compliance Supplement are required to review the LSC Act and regulations (including the regulations' supplementary information) to obtain an understanding of the compliance requirements. The compliance requirements detailed in this Compliance Supplement are to be assessed for the period April 26, 1996 through the end of the year.

Suggested audit procedures are the responsibility of the OIG. These procedures are not mandatory and do not preclude the use of the auditor's professional judgment in developing additional or alternative procedures based on the conditions noted by the auditor during the audit. The suggested procedures provide sufficient flexibility to permit the auditor to perform dual tests to accomplish the overall compliance objectives.

PART A. ALLOWABLE COSTS/COST PRINCIPLES

The Corporation's cost principles provide that LSC funds may not be charged for any costs which do not serve LSC cost objectives. The LSC Act, the annual appropriations acts and the Corporation's rules, regulations and guidelines, including the accounting provisions of the Corporation's Audit and Accounting Guide for Recipients and Auditors (either the 1981 or 1986 version) establish the relevant cost principles for testing compliance under this Compliance Supplement. OMB Circular A-122, "Cost Principles for Nonprofit Organizations," provides guidance for all allowable cost questions when relevant policies or criteria in the circulars are not inconsistent with the aforementioned laws, rules, regulations, and guidelines. (45 CFR § 1630.4(g)).

ALLOWABLE COSTS

The auditor should determine whether costs meet the criteria governing allowability as defined in 45 CFR § 1630.4, i.e., that the cost is:

- 1) actually incurred during the effective term of the grant;
- 2) reasonable and necessary for the provision of legal services for eligible clients or for the accomplishment of another function specified in the grant or contract;
- 3) allocable to such functions;
- 4) in compliance with the Act, applicable appropriation acts, Corporation rules, regulations, guidelines and

- instructions, the accounting provisions of the Corporation Audit and Accounting Guide for Recipients and Auditors, and the terms and conditions of the grant or contract;
- 5) consistent with policies and procedures that apply uniformly to Corporation-financed and other activities of the recipient;
- 6) accorded consistent treatment;
- 7) determined in accordance with generally accepted accounting principles;
- 8) not used to meet cost sharing or matching requirements of any other federally financed program, unless the agency whose funds are being matched determines in writing that Corporation funds may be used for federal matching purposes; and
- 9) adequately and contemporaneously documented.

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 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 for 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 individuals concerned acted with prudence under the circumstances, considering their responsibilities to the recipient, its clients and employees, the public at large, the Corporation, and the federal government; and (4) significant deviations from the established practices of the recipient which may unjustifiably increase the grant or contract costs (45 CFR § 1630.4(b)).

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. A cost is allocable to a Corporation grant or contract if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it: (1) is incurred specifically for the grant or contract; (2) benefits both the grant or contract and other work and can be distributed in reasonable proportion to the benefits received; or (3) is necessary to the overall operation of the recipient, although a direct relationship to any particular cost objective cannot be shown (45 CFR § 1630.4(c)).

PART B. NEW RESTRICTIONS ON LSC GRANTEES

LSC's FY 1996 appropriations act, 110 Stat. 1321 (1996), signed into law on April 26, 1996, has established new restrictions on the work that LSC recipients are allowed to do. These new restrictions and requirements, with the few exceptions discussed below, were effective on the date of enactment. Interim guidance regarding compliance requirements was provided by LSC to recipients through program letters issued during May and June. That interim guidance was superseded by the publication on August 13, 1996 of 4 interim regulations (45 CFR Parts 1610, 1617, 1632 and 1633) and on August 29, 1996 of 10 interim regulations (45 CFR Parts 1612, 1620, 1626, 1627, 1636, 1637, 1638, 1639, 1640 and 1642) and 1 proposed regulation (45 CFR Part 1609) which were effective immediately on the date of publication. Any substantive variations in the interim regulations from the interpretations contained in the program letters and from the interpretations in the final regulations are explained in the discussion of the compliance requirements under the respective regulation.¹

The new restrictions generally apply to all the work that a recipient or a subrecipient does regardless of the source of funds. The only generally applicable exception is that recipients receiving Indian tribal funds as defined in 45 CFR § 1610.2(g) may expend these funds for the specific purposes for which the tribal funds are provided. In addition, there are some limited exceptions detailed in the text that pertain to legislative and administrative advocacy. Finally, the section defining LSC funds as Federal funds for certain purposes and the prohibition on the

payment of dues apply only to the use of LSC funds.

TRANSITION

Section 504 of 110 Stat. 1321 (1996) required recipients to withdraw immediately from certain restricted activities. These included: redistricting activity; proscribed administrative and legislative advocacy activity; proscribed public policy training; abortion cases; welfare reform advocacy; and drug-related public housing eviction cases. Section 508(b) permitted recipients to continue to provide legal assistance in cases or matters begun prior to April 26, 1996 in three areas proscribed by Section 504: class actions (Sec. 504(a)(7)); legal assistance for certain categories of aliens (Sec. 504(a)(11)); and litigation on behalf of prisoners (Sec. 504(a)(15)). Such legal assistance in pre-existing matters was permissible until August 1, 1996.

The Corporation implemented a process for reporting cases and matters pursuant to Sections 508(b) and (c). The use of LSC forms for such reporting was required, including the submission of a certification form. Copies of these forms should be available for inspection by the auditor.

Section 504(a)(13) also prohibits recipients from claiming or collecting and retaining attorneys' fees. Recipients, however, are not prohibited from claiming, etc., such fees in cases pending on April 26, 1996 (except that recipients are prohibited from claiming fees on any additional related claim

for which legal assistance was provided on or after April 26, 1996).

REQUIREMENTS

All recipients of LSC funds are required to account for the time spent on all cases, matters, and supporting activities by their attorneys and paralegals, whether funded by LSC or by other sources (45 CFR § 1635). The auditor should familiarize himself/herself with 45 CFR § 1635.3, which details the specific requirements of a recipient's timekeeping system.

The auditor is expected to obtain an understanding of the policies, procedures and recordkeeping in place to ensure compliance with the LSC Act and regulations and LSC's FY 1996 appropriations act, Public Law 104-134, 110 Stat. 1321 (1996). The recipient's procedures shall have been sufficiently operational during the period of review in

order to adequately demonstrate compliance with the new restrictions from their date of enactment, i.e., April 26, 1996.

Written policies, procedures and recordkeeping must have been adopted by the recipient in accordance with the new and/or revised regulations as detailed below: (a) **Policies, procedures and recordkeeping** - Parts 1612 (Lobbying), 1620 (Priorities), 1626 (Alien representation), 1627 (Subgrants and dues), 1633 (Eviction proceedings), 1636 (Client identity), 1637 (Prisoner representation), and 1642 (Attorneys' fees); (b) **Policies and procedures** - Parts 1609 (Fee-generating cases), 1617 (Class actions); and 1639 (Welfare reform), (c) **Policies** - Parts 1632 (Redistricting) and 1638 (Solicitation); and (d) **Records** - Part 1610 (Use of non-LSC funds).

PART C.

COMPLIANCE REQUIREMENTS

***1608 PROHIBITED POLITICAL ACTIVITY**

LSC Regulations

45 CFR §§ 1608.3, 1608.4, 1608.5 and 1608.6

Compliance Requirement

While employed under the LSC Act, no staff attorney (as defined at 45 CFR § 1600.1) 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, command or advise an employee 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 office (45 CFR § 1608.5).

LSC funds, personnel or equipment cannot be used or made available to any political party or association, to the campaign of any candidate for public or party office, or for use in advocating or opposing any ballot

measure, initiative or referendum (45 CFR § 1608.3(b)).

LSC funds may not be used or made available for, and while engaged in legal assistance activities supported under the LSC Act, no attorney may engage in, any activity to provide voters with transportation to the polls or any similar assistance in connection with an election, or any voter registration activity (45 CFR §§ 1608.4(b), 1608.6).

However, these requirements do not prohibit an attorney from providing any form of legal assistance to an eligible client, and may not interfere with the fulfillment of any attorney's professional responsibilities to a client (45 CFR § 1608.7).

Suggested Audit Procedures

- Review policies or recipient practices in place to ensure that no recipient and/or employee or attorney of the recipient undertakes an activity in violation of 45 CFR §§ 1608.3(b), 1608.4, 1608.5, 1608.6, and 1608.7.
- Determine how the recipient ensures that the policies/practices are effectively communicated to staff and whether these policies/practices are followed by staff. Interview recipient staff

as to their knowledge concerning the possible existence of any political activity.

- Determine that the recipient did not expend grant funds or contribute personnel or equipment in violation of the requirements of 45 CFR § 1608.3(b).
- Examine expenditures for payments or contributions :
 - a) to any political party or association;
 - b) to the campaign of any candidate for public or party office; and
 - c) for use in advocating or opposing any ballot measure, initiative , or referendum.

***1609 FEE-GENERATING CASES**

LSC Regulations

45 CFR §§ 1609.3 and 1609.4

Compliance Requirement

Recipients may not use LSC or private funds to provide legal assistance in a fee-generating case (any case which, if undertaken prior to August 13, 1996, on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee from an award to a client, from public funds or from the opposing party (45 CFR § 1609.2)) unless other adequate representation is unavailable because (a) the case was rejected by a local lawyer referral service or by two private attorneys; (b) neither the referral service nor any lawyer would consider the case without payment of a consultation fee; (c) emergency circumstances compelled representation; (d) recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other non-pecuniary relief, or inclusion of a counterclaim requesting

damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims; (e) a court made an appointment pursuant to a statute or court rule of equal applicability to all attorneys in the jurisdiction; or (f) an eligible client sought 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) (45 CFR § 1609.4).

In a properly undertaken fee-generating case, recipients may accept attorneys' fees (if the case was initiated before April 26, 1996, as provided in Part 1642), and may accept reimbursement for out-of-pocket

costs and expenses from a damage award to the client other than an award of statutory benefits, so long as the LSC portion of the fees recovered and reimbursement accepted are recorded in the LSC fund to which the resources expended in litigating the case were charged. Any fees recovered and

reimbursements accepted may only be used consistent with the restrictions on the LSC or non-LSC fund to which the fees were recorded. 45 CFR Part 1642 addresses restrictions on claiming or collecting and retaining attorneys' fees.

Suggested Audit Procedures

- Review whether policies and procedures have been established to ensure that fee-generating cases are accepted by the recipient in accordance with the requirements of 45 CFR § 1609.
- Review the recipient's recordkeeping to determine its sufficiency to document the recipient's compliance with this part and test for accuracy.
- Determine how these restrictions are communicated to staff and whether existing procedures/practices are followed by staff. Interview a sample of recipient staff as to their knowledge concerning the possible existence of any matter falling under the requirements of this section. Follow-up on all such possible occurrences. If such matters have been handled by the recipient, determine whether each instance had been appropriately handled in accordance with the recipient's procedures.

***1610 USE OF FUNDS FROM SOURCES OTHER THAN THE CORPORATION**

LSC Regulations

45 CFR § 1610

Compliance Requirement

The applicability of restrictions to LSC, private and non-LSC public funds is noted in each specific compliance requirement. Generally, the rules for uses of recipients' funds differ for expenditures made before April 26, 1996, and expenditures made after April 26, 1996, although a few specific compliance requirements have other relevant dates. Regardless of when funds were expended, recipients' funds obtained from an Indian tribe,

or from a private nonprofit foundation or organization for the benefit of Indians or Indian tribes, may be used in accordance with the specific purposes for which the funds were provided, even if those purposes would otherwise be prohibited.

A recipient may not use non-LSC funds for any purpose prohibited by the LSC Act or for any activity prohibited by or

inconsistent with Section 504 of LSC's FY 1996 appropriations act, Public Law 104-134, 110 Stat. 1321 (1996) unless such use is authorized by Sections 1610.4 or 1610.6 of this part (45 CFR § 1610.3).

45 CFR § 1610.4 provides for the following authorized uses of other funds: (a) a recipient may receive tribal funds and expend them in accordance with the specific purposes for which the tribal funds were provided; (b) a recipient may receive public or IOLTA funds and use them in accordance with the specific purposes for which they were provided, if the funds are not used for any activity prohibited by or inconsistent with Section 504; (c) a recipient may receive private funds and use them in accordance with the purposes for

which they were provided, provided that the funds are not used for any activity prohibited by the LSC Act or prohibited or inconsistent with Section 504; (d) a recipient may use non-LSC funds to provide legal assistance to an individual who is not financially eligible for services under Part 1611, provided that the funds are used for the specific purposes for which those funds were provided and are not used for any activity prohibited by the LSC Act or prohibited by or inconsistent with Section 504.

All recipient funds from sources other than LSC must be accounted for as separate and distinct receipts and disbursements (45 CFR § 1610.7).

Suggested Audit Procedures

- Determine whether policies, procedures and recordkeeping have been established by the recipient to ensure compliance with this regulation.
- Determine whether the accounting system (chart of accounts, general ledger etc.) provides for a separation of receipts and disbursements of LSC and non-LSC funds.
- Determine whether the method of allocating expenses between LSC and non-LSC funds ensures that non-LSC funds, except as permitted by 45 CFR § 1610, are not used for the prohibited activities as defined by 45 CFR § 1610.3.
- Inquire of appropriate personnel and review grant agreements for non-LSC funds to determine whether LSC prohibited activities as defined by 45 CFR § 1610.3 are otherwise permitted.
 - a) If permitted, determine whether the use of the funds for the prohibited activities was authorized pursuant to 45 CFR § 1610.4.
 - b) If yes, assess through inquiry and a review of a sample of cases to determine whether these funds were used for the purposes for which the funds were provided.

***1611 ELIGIBILITY**

LSC Regulations

45 CFR §§ 1611.3, 1611.4, 1611.5, 1611.6 and 1611.8

Compliance Requirement

Income level

Every recipient shall establish a maximum annual income level for persons to be eligible to receive legal assistance under the LSC Act (45 CFR § 1611.3(a)). Unless specifically authorized by LSC, a recipient shall not establish a maximum annual income level that exceeds one hundred and twenty-five percent (125 percent) of the current official Federal Poverty Income Guidelines (45 CFR § 1611.3(b)).

Recipients establish maximum annual income levels and asset ceilings for client eligibility and may not use LSC funds to represent individuals whose income exceeds the maximums unless (a) the client's gross income is under 187% of poverty line, (b) the asset ceiling, if exceeded, has been waived pursuant to a policy established by the recipient's governing body, and (c) the client file includes the recipient's documentation pursuant to authorized exceptions under 45 CFR § 1611.5(b)(1), or the client is seeking legal assistance to secure benefits provided by a governmental program for the poor. The recipient must keep records as to the number of over income clients served and the factual basis for each such *exception* (45 CFR §§ 1611.3, 1611.4, 1611.6) when LSC funds are used.

The governing body of a recipient shall adopt guidelines, consistent with these regulations, for determining the eligibility of persons seeking legal assistance under the LSC Act (45 CFR § 1611.5(a)). These guidelines shall be reviewed annually.

Asset ceilings

Annually, the governing body of the recipient shall establish guidelines incorporating specific and reasonable asset ceilings, including both liquid and non-liquid assets, to be utilized in determining eligibility for services (45 CFR § 1611.6(a)). The guidelines shall consider the economy of the service area and the relative cost-of-living of low-income persons so as to ensure the availability of services to those in the greatest economic and legal need. The guidelines shall be consistent with the recipient's priorities established in accordance with 45 CFR 1620 and special consideration shall be given to the legal needs of the elderly, institutionalized, and handicapped (45 CFR § 1611.6(b)). Assets considered shall include all liquid and non-liquid assets of all persons who are resident members of a family unit, except that a recipient may exclude the principal residence of a client (45 CFR § 1611.6(c)).

Group eligibility

LSC funds can only be used to provide legal assistance to a group that is primarily composed of persons eligible for legal assistance under the Act and that has no practical means of obtaining funds to retain private counsel (45 CFR § 1611.5(c)).

Retainer Agreement

The recipient must routinely execute a retainer agreement with each client when representation commences, unless only brief advice and consultation was provided, or the situation appeared to be an emergency, and a retainer agreement was executed "as soon thereafter as is practicable" (45 CFR § 1611.8).

Suggested Audit Procedures

- Obtain an understanding of the recipient's policies and procedures for ensuring compliance with 45 CFR §§ 1611.3, 1611.4, 1611.5 and 1611.6.
- Determine if the recipient has established a maximum annual income level not in excess of 125% of the current official Federal Poverty Income Guidelines for persons to be eligible to receive legal assistance under the LSC Act.
- Determine whether the recipient's eligibility guidelines incorporate asset ceilings pursuant to 45 CFR § 1611.6(a).
- Determine whether the recipient's policies or procedures relating to determination of group eligibility are consistent with 45 CFR § 1611.5(c).
- Determine if the recipient's board of directors has adopted eligibility guidelines for determining the eligibility of persons seeking legal assistance under the LSC Act and whether these guidelines are consistent with provisions of the regulation in accordance with 45 CFR § 1611.5(a).
- Determine whether intake and case acceptance policies and procedures are in place to ensure that the clients served are eligible in accordance with the requirements of 45 CFR § 1611. Interview all appropriate recipient staff responsible for the client intake process and eligibility determination.
- Determine if the recipient maintained records as to the number of over income clients served and the factual basis for each such authorization in compliance with 45 CFR § 1611.4(b) when LSC funds were used. Review a sample of files of over income clients served to determine whether the factual basis for each authorization is documented and is consistent with the authorized exceptions identified in the regulation.

- Interview appropriate recipient staff (responsible for the client intake process) regarding the acceptance/denial of restricted and/or prohibited cases and matters detailed in this Compliance Supplement in order to assess compliance with the respective regulation.
- Determine that the recipient routinely executes a retainer agreement for each client when representation commences, except when the only service to be provided is brief advice and consultation.
- Review a sample of case files and determine adherence to the prescribed system. This review shall include the following components:
 - a) Assess the type of case/matter for allowability under the LSC Act and regulations and LSC's FY 1996 appropriations act, Public Law 104-134, 110 Stat. 1321 (1996).
 - b) Examine case files for existence of eligibility forms and signed retainer agreements.
 - c) Review eligibility determinations and assess whether the client's reported income level was within the maximum income levels established by the recipient.
 - d) If the client's reported income level exceeded the maximum income level, determine whether the assistance provided the client was supported by non-LSC funds (45 CFR § 1611.3(e)). If LSC funds were used and the client's gross income exceeded the maximum income level, but did not exceed 187% of the poverty line, establish that the recipient made the determination that eligibility should be allowed on the basis of one or more factors set forth in 45 CFR § 1611.5(b)(1); **or** the client was seeking assistance to secure benefits provided by a governmental program for the poor (45 CFR § 1611.4(a)(1) and (2)); **and** the program maintained documentation supporting the decision and the factual bases for the decision made (45 CFR § 1611.4(b)).

***1612 RESTRICTIONS ON LOBBYING AND CERTAIN OTHER ACTIVITIES**

LSC Regulations

45 CFR §§ 1612.3, 1612.4, 1612.5, 1612.6, 1612.7, 1612.8, 1612.9, 1612.11

Compliance Requirement

Except as noted below, after April 26, 1996, recipients, may not use any funds to 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 LSC; (4) the conduct of oversight proceedings concerning the recipient or LSC; (5) the issuance, amendment or revocation of any executive order; (6) or participate in any rulemaking as defined in § 1612.2(d)(1). 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 (1)--(6) (45 CFR § 1612.3).

Recipients shall not engage in grassroots lobbying activity as defined in 45 CFR § 1612.2 (45 CFR § 1612.4).

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; (3) testify before or make information available to commissions, committees or advisory bodies; or (4) participate in negotiated rulemaking under the Negotiated Rulemaking Act of 1990, 5 U.S.C. §561, *et seq.*, or comparable State or local laws (45 CFR § 1612.6(a)). Communications made in response to these requests may be distributed only to the party or parties that make the request or to other persons or entities only to the extent that such distribution is required to comply with the request (45

CFR § 1612.6(b)). The request from any official to testify or otherwise provide information in connection with legislation or rulemaking may not be solicited or arranged by an employee of the recipient (45 CFR § 1612.6(c)).

Recipients may provide oral or written comment to an agency and its staff in a public rulemaking proceeding using non-LSC funds (45 CFR § 1612.6(e)). 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 (45 CFR § 1612.6(f)).

During working hours, while providing legal assistance or representation to the recipient's clients or while using resources provided by LSC or by private entities, no employee of a recipient shall participate in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation or encourage, direct, or coerce others to engage in such activities. 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, LSC regulations, or the rules of professional responsibility of the jurisdiction where the recipient is located or the employee practices law (45 CFR § 1612.7).

A recipient may not support or conduct training programs that: (1) advocate particular public policies; or (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; or (3) disseminate information about such policies or activities. A recipient is not prohibited from training 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. No funds of a recipient shall be used to train participants to engage in activities prohibited by the Act, other applicable Federal law, or LSC regulations, guidelines or instructions(45 CFR § 1612.8).

No funds made available by LSC or by private entities may be used to initiate the formation, or to act as an organizer, of any association, federation, labor union, coalition, network, alliance, or any similar entity (45 CFR § 1612.9(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 (45 CFR § 1612.5(a)). A recipient may initiate or participate in litigation challenging agency rules, regulations, guidelines or policies, unless such litigation is otherwise prohibited by law or LSC regulations (45 CFR § 1612.5(b)).

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 LSC upon request (45 CFR § 1612.6(d)).

No LSC funds shall be used to pay for administrative overhead or related costs associated with any activity listed in § 1612.6 (45 CFR § 1612.10(a)). Recipients must maintain separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities permitted by § 1612.6 (45 CFR § 1612.10(b)).

Recipients must have written policies and procedures to guide its staff in complying with this part (45 CFR § 1612.11).

Suggested Audit Procedures

- Determine that written policies and procedures are in place to ensure that the recipient does not undertake an activity in violation of 45 CFR § 1612.
- Determine how the recipient ensures that the policy/procedures are effectively communicated to staff and that these procedures are followed in practice by staff. Interview recipient staff as to their knowledge concerning the possible existence of any matter that may fall under the requirements of this regulation. Follow-up on all such possible occurrences.
- Determine whether the recipient maintains separate records documenting the expenditure of

non-LSC funds for legislative and rulemaking activities permitted by 45 CFR § 1612.6.

- Test expenditures for allowability pursuant to this part. Evaluate supporting documentation and cost allocation methods for adequacy of recordkeeping and accuracy of the amounts reported.
- Review the recipient's semi-annual reports together with supporting documentation and determine whether the reported activities comply with the regulation. (*At this time, the form to report these matters has not yet been adopted by LSC.*)
- Review permissible activities conducted by the recipient using any funds (45 CFR § 1612.5) and those using non-LSC funds (45 CFR § 1612.6), including the recordkeeping system in place, in order to determine compliance with the respective provisions.
- In assessing compliance with 45 CFR § 1612.4, determine if the recipient engaged in any grassroots lobbying.
- Determine if any person while employed under the Act and while using resources provided by LSC or private entities (either directly or through a subrecipient) participated in public demonstrations or engaged in specific activities detailed under 45 CFR § 1612.7.
- Determine whether the recipient conducted or supported training for staff attorneys and paralegals in accordance with 45 CFR § 1612.8.

***1613 RESTRICTIONS ON LEGAL ASSISTANCE WITH RESPECT TO CRIMINAL PROCEEDINGS**

LSC Regulations

45 CFR §§ 1613.3 and 1613.4

Compliance Requirement

LSC funds shall not be used to provide legal assistance with respect to a criminal proceeding unless authorized by this regulation (45 CFR § 1613.3).

Legal assistance may be provided with respect to a criminal proceeding under the following circumstances: (a) 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 recipient's primary responsibility to provide legal assistance to eligible clients in civil matters; or (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 (45 CFR § 1613.4).

Suggested Audit Procedures

- Obtain an understanding of the policies and procedures/recipient practices in place to ensure compliance with the requirements of 45 CFR § 1613.
- Determine how the recipient ensures that the restrictions are effectively communicated to staff and that these procedures are followed in practice by staff. Interview recipient staff as to their knowledge concerning the possible existence of any attorney representation of a client that may fall under the prohibition of this regulation. Follow-up on all such possible occurrences.

614 PRIVATE ATTORNEY INVOLVEMENT (PAI)

LSC Regulations

45 CFR §§ 1614.1, 1614.3 and 1614.5

Compliance Requirement

A recipient of LSC funding is required to devote an amount of LSC and/or non-LSC funds equal to at least 12.5% of the recipient's LSC annualized basic field award for the involvement of private attorneys in the delivery of legal assistance to eligible clients. The recipient is to demonstrate compliance with this Part by using financial systems and procedures and maintaining supporting documentation to identify and account separately for costs related to the PAI effort.

Activities undertaken by the recipient to meet the requirements of this part must include the direct delivery of legal assistance to eligible clients through programs such as organized pro bono plans, reduced fee plans, judicare panels, private attorney contracts, or modified pro bono plans which provide for the payment of nominal fees by eligible clients

and/or organized referral systems (45 CFR § 1614.3(a)).

The specific methods to be undertaken by a recipient to involve private attorneys in the provision of legal assistance to eligible clients is to be determined by the recipients taking into account the following factors: (1) the priorities established pursuant to Part 1620; (2) the effective and economic delivery of legal assistance to eligible clients; (3) the linguistic and cultural barriers to effective advocacy; (4) the actual or potential conflicts of interest between specific participating attorneys 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 (45 CFR § 1614.3(c)).

Systems designed to provide direct services to eligible clients by private attorneys on either a pro bono or reduced fee basis, shall include at a minimum, the following components: (1) intake and case acceptance procedures consistent with the recipient's established priorities in meeting the legal needs of eligible clients; (2) 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; (3) 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 (4) access by private attorneys to LSC recipient resources (45 CFR § 1614.3(d)).

The recipient shall develop a plan and budget to meet the requirements of this regulation which shall be incorporated as part of the refunding application or initial grant application (45 CFR § 1614.4(a)). The recipient shall consult with significant segments of the client community, private attorneys, and bar associations, in the recipient's service area in the development of its annual plan to provide for the involvement of private attorneys in the provision of 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 (45 CFR § 1614.4(b)).

Suggested Audit Procedures

- Obtain an understanding of the policies and procedures in place to ensure that cost allocated to PAI meet the requirements of 45 CFR § 1614.3(e).
- Review the accounting systems and procedures used to identify and account separately for costs related to the PAI effort in order to determine their consistency with 45 CFR § 1614.3(e).
- Review records of PAI expenses.
- Review and test support for PAI allocations to ensure that recordkeeping requirements are met.
- Determine compliance with 45 CFR § 1614.3 by reviewing the recipient's PAI activities and interviewing the intake staff (or other appropriate staff, such as the PAI coordinator) regarding the referral process to private attorneys.
- Obtain from the recipient the referral list of private attorneys who have accepted cases during the review period and interview a sample of private attorneys to confirm that referred cases were allowable under 110 Stat. 1321 (1996).

***1615 RESTRICTIONS ON ACTIONS COLLATERALLY ATTACKING CRIMINAL CONVICTIONS**

LSC Regulations

45 CFR §§ 1615.2 and 1615.3

Compliance Requirement

LSC funds shall not 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 (45 CFR § 1615.2).

assistance: (a) to challenge a conviction resulting from a criminal proceeding in which the defendant received representation from a recipient pursuant to LSC regulations; or (b) pursuant to a court appointment made under a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction, if authorized by the recipient after a determination that it is consistent with the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters (45 CFR § 1615.3).

This regulation does not prohibit legal

Suggested Audit Procedures

- Obtain an understanding of the policies and procedures/recipient practices in place to ensure compliance with the requirements of 45 CFR § 1615.
- Determine how the recipient ensures that the restrictions are effectively communicated to staff and whether these procedures are followed in practice by staff. Interview a sample of recipient staff as to their knowledge concerning the possible existence of any attorney representation of a client that may fall under the prohibition of this regulation. Follow-up on all such possible occurrences. If such matters have been handled by the recipient, determine whether LSC funds were used to support these activities.

***1617 CLASS ACTIONS**

LSC Regulations

45 CFR §§ 1617.2, 1617.3, 1617.4

Compliance Requirement

After April 26, 1996, recipients may not use any funds to initiate or participate in any class action at any stage, other than (a) non-adversarial monitoring of an order granting relief or (b) individual representation of a client seeking to obtain the benefit of relief ordered by the court.² A class action is any lawsuit filed pursuant to Rule 23 of the Federal Rules of Civil Procedure or

comparable State statute applicable in the court in which the action is filed (45 CFR § § 1617.2, 1617.3).

Recipients must have written policies and procedures to guide its staff in ensuring compliance with this rule (45 CFR § 1617.4).

Suggested Audit Procedures

- Obtain an understanding of the recipient's written policies and procedures for ensuring compliance with 45 CFR § 1617.
- Determine if the recipient's policies and procedures are consistent with the provisions of the regulation.
- Determine how the recipient ensures that the policies and procedures are communicated to staff and whether these procedures are followed in practice by staff. Interview a sample of recipient staff as to their knowledge concerning the possible existence of any matter falling under the prohibition . Follow-up on all such possible occurrences.
- Review recipient documentation, including the mandatory LSC submissions (i.e., reporting forms CO-1 Class actions or CO-4 Certification form), evidencing case divestiture pursuant to Section 508(b) of 110 Stat. 1321 (1996). Test a sample of the representations contained in the reporting forms to verify accuracy.

***1620 PRIORITIES IN USE OF RESOURCES**

LSC Regulations

45 CFR §§ 1620.3, 1620.4, 1620.5, 1620.6, 1620.7

Compliance Requirement

The recipient's governing body must adopt procedures for establishing priorities for the use of all its LSC and non-LSC resources and must adopt a written statement of priorities, pursuant to those procedures, that determines the cases and matters which are to be undertaken by the recipient (45 CFR § 1620.3(a)). By September 18, 1996, the recipient's governing body must have adopted procedures for undertaking emergency cases or matters that are not within the recipient's established priorities (45 CFR § 1620.4).

All staff who handle cases or matters, or make decisions about case acceptance, must sign a simple agreement, developed by the recipient, indicating that the signatory: (a) has read and understands the priorities established by the recipient's governing body; (b) has read and understands the definition of an emergency situation and the recipient's procedures for dealing with an emergency; and (c) will not undertake any case or matter for the recipient that is not a priority or an emergency (45 CFR

§ 1620.6).

The recipient must periodically set priorities and its governing body must annually review the priorities or more frequently if the recipient has accepted a significant number of emergency cases (45 CFR § 1620.5(a)). The recipient must report to its governing body quarterly and to LSC annually information on all emergency cases or matters undertaken by the recipient that were not within the recipient's priorities (45 CFR §§ 1620.7(a) and (b)).

The recipient must submit to LSC 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 (45 CFR § 1620.7(c)).

Suggested Audit Procedures

- Review activity of the recipient's governing body to determine if it has adopted procedures for establishing priorities in the use of recipient resources and whether it has adopted a written statement of priorities that determines the cases and matters to be undertaken by the recipient.
- Review activity of the recipient's governing body to determine if it has adopted procedures for undertaking emergency cases or matters not within the recipient's established priorities

pursuant to 45 CFR § 1620.4.

- Determine whether priorities are set periodically and reviewed by the governing body of the recipient at least annually. (Note that a recipient may maintain separate priorities for each office or for a particular segment of the service area.)
- Determine how the recipient ensures that the policy and procedures are effectively communicated to staff and whether these procedures are followed in practice by staff. Interview appropriate recipient staff responsible for the client intake process as to their knowledge of recipient priorities. Identify all staff who handle cases or matters or make decisions about case acceptance and review their signed written agreements not to undertake non-priority cases or matters except for those that are emergencies, in accordance with 45 CFR § 1620.6.
- In conjunction with the review of case files conducted during eligibility testing, determine whether the subject matter of these cases falls within the written priorities of the recipient. Compare the recipient's Case Service Report (CSR) data and other program sponsored activities (such as community education, self-help brochures, etc.) to its priorities to determine whether the recipient is primarily providing assistance and closing cases within its priority areas.
- Review the annual report to determine if it contains the provisions required by 45 CFR § 1620.7(c).

***1626 RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS**

LSC Regulations

45 CFR §§ 1626.3, 1626.4, 1626.5, and 1626.10

Compliance Requirement

After April 26, 1996, a recipient may not use any funds to provide legal services for or on behalf of an ineligible alien beyond normal intake and referral services (45 CFR §§ 1626.3, 1626.5(f)). Alien status and eligibility are defined at 45 CFR § 1626.4.³ Prior to April 26, 1996, recipients could use non-LSC funds for alien representation.

A citizen seeking representation must attest in writing in an LSC approved form to the fact of his or her United States citizenship (45 CFR § 1626.5 (a)). Verification of citizenship shall not be required unless a recipient has reason to doubt that a person is a United States citizen (45 CFR § 1626.5(a)).

An alien seeking representation must submit appropriate documents detailed in 45

CFR § 1626.5(b) to verify eligibility. In an emergency, legal services may be provided prior to compliance with all the requirements of § 1626.5(a) through (d) if the conditions of 45 CFR § 1626.5(e) are satisfied.

No written verification is required when the only service provided for an eligible alien or citizen is brief advice and consultation by telephone. The term “brief advice” is

limited to advice provided by telephone and does not include continuous representation of a client (45 CFR § 1626.5(f)).

Recipients must have 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 (45 CFR § 1626.10).

Suggested Audit Procedures

- Obtain an understanding of the written policies, procedures and recordkeeping in place to ensure compliance with the requirements of 45 CFR § 1626.
- Determine if the recipient's written policies and procedures are consistent with the provisions of the regulation.
- Determine how the recipient ensures that the policies and procedures are communicated to staff and whether these procedures are followed in practice by staff. Interview a sample of recipient staff as to their knowledge concerning the possible existence of any matter falling under the restrictions. Follow-up on all such possible occurrences.
- Review recipient documentation, including the mandatory LSC submissions (i.e., reporting forms CO-2 Aliens or CO-4 Certification form), evidencing case divestiture pursuant to Section 508(b) of 110 Stat. 1321 (1996). Test a sample of the representations contained in the reporting forms to verify accuracy.
- In conjunction with the review of case files conducted during eligibility testing, inspect the citizenship attestation statement signed by the client (or, if applicable, the recipient’s documentation of eligible alien status) contained in the case file to determine compliance with 45 CFR § 1626.5.

***1627 SUBGRANTS AND DUES**

LSC Regulations

45 CFR §§ 1627.2, 1627.3, 1627.4, 1627.6, 1627.8

Compliance Requirement

LSC funds may not be transferred to another entity for the purpose of conducting any of the recipient's programmatic activities without prior LSC approval of a subgrant, unless the transfer is an amount less than \$25,000 paid to a private attorney or law firm for the provision of legal assistance to eligible clients, or is an amount paid for the provision of goods and services by vendors, consultants, or professionals in the normal course of business (45 CFR § 1627.2).

With regard to subgrants, recipients must ensure that subrecipient(s) comply with the financial and audit requirements of LSC, specifically including those regarding the proper expenditure of, accounting for, and audit of, delegated funds (45 CFR § 1627.3(c)). Funds of a subrecipient remaining at the end of the grant period must be included in the recipient's fund balance (45 CFR §

1627.3(b)(1)). The requirements of § 1627.3 also apply to all subgrants by one recipient to another recipient (45 CFR § 1627.6(a)).

After April 26, 1996, recipients may not use LSC funds to pay dues to any private or nonprofit organization other than dues mandated as a requirement of practice by a governmental organization (45 CFR § 1627.4).

Recipients may not make any contributions or gifts of LSC funds to another organization or to an individual (45 CFR § 1627.5).

Recipients must have 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 (45 CFR § 1627.8).

Suggested Audit Procedures

- Obtain an understanding of the written policies, procedures and recordkeeping in place for ensuring compliance with this regulation and for ensuring that subrecipients comply with the LSC Act, regulations, grant agreements and subgrant agreements.
- Identify all subgrants using LSC funds and determine if prior written approval for the subgrants was obtained from LSC.
- Determine whether LSC funds transferred to organizations or private attorneys comply with the requirements of 45 CFR § 1627.

- Determine whether LSC funds were used to pay dues or contributions in violation of 45 CFR §§ 1627.4 and 1627.5 by testing expenditures for payments made with LSC funds.
- Determine whether LSC funds received by the recipient from another recipient were properly accounted for in accordance with the requirements of 45 CFR § 1627.6.

1628 RECIPIENT FUND BALANCES

LSC Regulations

45 CFR §§ 1628.1, 1628.2(a), 1628.3, 1628.4(c) and (e), and 1628.5(a) and (c)

Compliance Requirement

Without prior Corporation approval, a recipient may not use LSC funds to liquidate a deficit in the LSC fund from a prior year (45 CFR § 1628.5).

Without prior Corporation approval, a recipient may not expend LSC funds carried over from one year to the next in excess of 10% of LSC "support." For these purposes, Corporation "support" includes annualized

Corporation grant awards plus additional income (a) derived from a Corporation grant, such as interest and rents, and (b) the proportion attributable to any LSC grant of any reimbursement or recovery of direct payments to attorneys, proceeds from the sale of assets or other compensation or income (45 CFR § 1628.2(a)).

Suggested Audit Procedures

- Calculate the recipient's prior year-end LSC fund balance and determine if the amount exceeded 10% of its annualized support (as defined in 45 CFR §1628.2(a)). If so, determine if the recipient requested and received a waiver for the 10% ceiling or repaid LSC the fund balance amount in excess of 10%.
- Determine whether income derived from an LSC grant (including interest and rents), and the proportion attributable to any LSC grant of any reimbursement or recovery of direct payments to attorneys, proceeds from the sale of assets or other compensation or income has been properly allocated to the LSC fund as support.
- Determine whether excess fund balance amounts approved by LSC for carryover were expended in accordance with the waiver granted.
- Ensure that the excess fund balance amount approved for expenditure is separately reported

in the current year audited financial statements.

- Determine that LSC one-time grants have been accounted for separately as required by 45 CFR §1628.3(e). Test expenditures associated with LSC one-time grants and evaluate whether the expenditures were consistent with the purpose for which the funds were granted.

1630 COST STANDARDS AND PROCEDURES

LSC Regulations

45 CFR 1630

Compliance Requirement

The Corporation's cost principles provide that LSC funds may not be charged for any costs which do not serve LSC cost objectives. The LSC Act, the annual appropriations acts and the Corporation's rules, regulations and guidelines, including the accounting provisions of the Corporation's Audit and Accounting Guide for Recipients and Auditors (either the 1981 or 1986 version) establish the relevant cost principles for testing compliance under this Compliance Supplement.

Unless prior approval has been obtained from the Corporation, no LSC funds may be used for: (1) payment of more than

\$10,000 to purchase, or any payments to lease equipment, furniture, books or similar personal property if the single item or combined purchase price or value of the items purchased or leased is in excess of \$10,000; (2) purchase of real property; (3) consultant contracts in excess of \$5,000 or consultant fees in excess of \$261 per eight hour day or \$35 per hour. For this purpose, consultant services do not include the retention of expert witnesses or attorneys or other consultants secured on behalf of eligible clients, or audit services (but the preparation of interim financial reports or tax reports are considered consultant services).

Suggested Audit Procedures

- Obtain an understanding of the policies and procedures in place to ensure that costs charged to the LSC grant, and activities undertaken with non-LSC funds are allowable pursuant to the LSC Act and regulations.
- Confirm that prior approval by LSC had been obtained for the use of LSC funds for the lease or purchase of equipment, furniture, books or similar personal property in excess of \$10,000. (45 CFR § 1630.5).
- Confirm that prior approval by LSC had been obtained for the use of LSC funds for the

purchase of real property. (45 CFR § 1630.5).

- Confirm that prior approval by LSC had been obtained for the use of LSC funds for consultant contracts in excess of \$5,000. (45 CFR § 1630.5).
 - Confirm that prior approval by LSC had been obtained for the use of LSC funds for consultant fees in excess of \$261 per day or \$35 per hour except for retention of expert witnesses and other consultants or attorneys secured on behalf of eligible clients or audit services. (45 CFR § 1630.5).
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***1632 REDISTRICTING**

LSC Regulations

45 CFR §§ 1632.2, 1632.3, 1632.4

Compliance Requirement

After April 26, 1996, recipients shall not make available any funds, personnel, or equipment for use in advocating or opposing any plan or proposal, or represent any party or participate in any other way in litigation related to redistricting.⁴ This 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 (45 CFR §§ 1632.2, 1632.3).

Recipients must have written policies to implement the requirements of this part (45 CFR § 1632.4).

Suggested Audit Procedures

- Obtain an understanding of the written policies in place to ensure compliance with the requirements of 45 CFR § 1632.
- Determine if the recipient's policies are consistent with the provisions of the regulation.
- Determine how the recipient ensures that the policies are effectively communicated to staff. Interview recipient staff as to their knowledge concerning the possible existence of any matter falling under the restrictions of this regulation. Follow-up on all such possible occurrences.

***1633 RESTRICTION ON REPRESENTATION IN CERTAIN EVICTION PROCEEDINGS**

LSC Regulations

45 CFR §§ 1633.2, 1633.3, 1633.4

Compliance Requirement

After April 26, 1996, recipients are prohibited from defending any person in a proceeding to evict that person from a public housing project if: (1) the person has been charged with or, within one year prior to the date when services are requested from a recipient, has been convicted of the illegal sale or distribution of a controlled substance (as defined in §102 of the Controlled Substances Act (21 U.S.C. §802)); and (2) the eviction proceeding is brought by a public housing agency on the basis that the illegal drug

activity did or does now threaten the health or safety of other tenants residing in the public housing project or employees of the public housing agency (45 CFR §§ 1633.2, 1633.3).

Recipients must have 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 (45 CFR § 1633.4).

Suggested Audit Procedures

- Obtain an understanding of the written policies, procedures and recordkeeping in place to ensure compliance with this regulation.
- Determine if the recipient's written policies and procedures are consistent with the provisions of this regulation.
- Determine how the recipient ensures that the written policies and procedures are effectively communicated to staff and whether these procedures are followed in practice by staff. Interview a sample of recipient staff as to their knowledge concerning the possible existence of any matter falling under the prohibition of this section. Follow-up on all such possible occurrences.

[Note: A timekeeping guide (April, 1996) has been prepared for LSC recipients.]

***1635 TIMEKEEPING REQUIREMENT**

LSC Regulations

45 CFR §§ 1635.1, 1635.2 and 1635.3

Compliance Requirement

All recipients of LSC funds are required to account for the time spent on all cases, matters, and supporting activities by their attorneys and paralegals, whether funded by LSC or by other sources.

As used in this part, 45 CFR § 1635.2 provides the following 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 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. (c) A

"supporting activity" is any action that is not a case or matter, including management and general, and fundraising.

All expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities. The allocation of all expenditures must be carried out in accordance with 45 CFR Part 1630 (45 CFR § 1635.3(a)).

Time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter, or supporting activity (45 CFR § 1635.3(b)). Time records must be created contemporaneously and account for time in increments not greater than one-quarter of an hour which comprise all of the efforts of the attorneys and paralegals for which compensation is paid (45 CFR § 1635.3(b)(1)). Each record of time spent must contain: for a case, a unique client name or case number; for matters or supporting activities, an identification of the category of action on which the time was spent (45 CFR § 1635.3(b)(2)).

The timekeeping system must have been implemented by May 31, 1996 or within 30 days of the effective date of a grant or contract, whichever is later (45 CFR §

1635.3(c)).

The timekeeping system must be able to aggregate time record information from the

time of implementation on both closed and pending cases by legal problem type (45 CFR § 1635.3(d)).

Suggested Audit Procedures

- Obtain an understanding of the policies and procedures in place to ensure compliance with the timekeeping requirements of this regulation. Interview both the executive director and the individual responsible for maintaining and tracking the timekeeping system.
- Determine if the recipient's timekeeping system is consistent with the provisions of this regulation.
- Determine how the recipient ensures that the timekeeping requirements are effectively communicated to staff and whether these requirements are followed in practice by staff. Interview a sample of recipient staff and review a sample of management's and staff's timesheets to assess compliance with the program's policy and this regulation.

***1636 CLIENT IDENTITY AND STATEMENT OF FACTS**

LSC Regulations

45 CFR §§ 1636.2, 1636.3, 1636.5

Compliance Requirement

For cases undertaken after April 26, 1996, the recipient must prepare for each case in which it files a complaint in a court of law or initiates or participates in litigation against a defendant, or before it engages in pre-complaint settlement negotiations where the filing of a suit has been authorized by the client if negotiations fail, a dated written statement signed by each plaintiff, enumerating the particular facts known to the plaintiff supporting the complaint (45 CFR § 1636.2(a)(2)). The recipient must identify each plaintiff by name in any complaint filed 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 (45 CFR § 1636.2(a)(1)).

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 fact,

provided that the statement is signed as soon as possible thereafter (45 CFR § 1636.2(c)).

Written statements of fact prepared in accordance with this part are to be kept on file by the recipient (45 CFR § 1636.3(a)).

Recipients must have 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 (45 CFR § 1636.5).

Suggested Audit Procedures

- Obtain an understanding of the written policies, procedures and recordkeeping in place to ensure compliance with the requirements and restrictions of this regulation.
- Determine if the recipient's written policies, procedures and recordkeeping are consistent with the provisions of this regulation.
- Determine how the recipient ensures that the written policies and procedures are communicated to staff and whether these procedures are followed in practice by staff. Interview a sample of recipient staff as to their knowledge concerning the possible existence of any matter falling under the requirements of this section. Follow-up on all such possible occurrences. If such matters have been handled by the recipient, determine whether each instance had been appropriately handled in accordance with the recipient's procedures.
- Inspect the written statements of fact (prepared in accordance with this part) that are to be kept on file by the recipient, in order to assess compliance with 45 CFR § 1636.3(a).

***1637 RESTRICTION ON LITIGATION ON BEHALF OF A PRISONER**

LSC Regulations

45 CFR §§ 1637.2, 1637.3, 1637.4, 1637.5

Compliance Requirement

After April 26, 1996, recipients may not participate in any civil litigation on behalf of a person incarcerated in a Federal, State or local prison⁵ (45 CFR § 1637.3). After August 29, 1996, recipients may not participate on behalf of such an incarcerated person in any administrative proceeding

challenging the conditions of incarceration (45 CFR § 1637.3). The definitions of "incarceration" and "Federal, State or local Prison" are found at 45 CFR 1637.2.

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 client's period of incarceration is anticipated to be brief and the litigation is likely to continue beyond the period of incarceration (45 CFR § 1637.4).

Recipients must have 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 (45 CFR § 1637.5).

Suggested Audit Procedures

- Obtain an understanding of the written policies, procedures and recordkeeping in place to ensure compliance with the restrictions detailed in the regulation.
- Determine if the recipient's written policies, procedures and recordkeeping are consistent with the provisions of the regulation.
- Determine how the recipient ensures that the written policies and procedures are communicated to staff and whether these procedures are followed in practice by staff. Interview a sample of recipient staff as to their knowledge concerning the possible existence of any matter falling under the restrictions of this section. Follow-up on all such possible occurrences. If such matters have been handled by the recipient, determine whether each instance had been appropriately handled in accordance with the recipient's procedures.
- Review recipient documentation, including the mandatory LSC submissions (i.e., reporting forms CO-3 Prisoner litigation or CO-4 Certification form), evidencing case divestiture pursuant to Section 508(b) of 110 Stat. 1321 (1996). Test a sample of the representations contained in the reporting forms to verify accuracy.

***1638 RESTRICTION ON SOLICITATION**

LSC Regulations

45 CFR §§ 1638.2, 1638.3, 1638.4, 1638.5

Compliance Requirement

Recipients are prohibited from representing clients and referring individuals to other recipients as a result of unsolicited in-person advice. In-person unsolicited advice is a face-to-face encounter or a personal encounter via other means of communication

such as a personal letter or telephone call advising the individual or client, who did not seek that advice or have an attorney-client relationship with the recipient, to obtain counsel or take legal action (45 CFR §§ 1638.2, 1638.3).

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 it (45 CFR § 1638.4(a)).

Recipients must have written policies to implement the requirements of this part (45 CFR § 1638.5).

Suggested Audit Procedures

- Obtain an understanding of the written policies in place to ensure compliance with the requirements and restrictions.
- Determine if the recipient's written policies are consistent with the provisions of this regulation.
- Determine how the recipient ensures that the policies are communicated to staff. Interview recipient staff as to their knowledge concerning the possible existence of any matter falling under the restrictions of this section. Follow-up on all such possible occurrences.

***1639 WELFARE REFORM**

LSC Regulations

45 CFR §§ 1639.2, 1639.3, 1639.4, 1639.5, 1639.6

Compliance Requirement

After April 26, 1996, a recipient may not use any funds to initiate legal representation, challenge or participate in efforts to reform a Federal or State welfare system, including: (a) litigation challenging laws or regulations enacted as part of a reform of a Federal or State welfare system; (b) rulemaking involving proposals that are being considered to implement a reform of a Federal or State welfare system; (c) lobbying or other advocacy before legislative or administrative bodies undertaken directly or through

grassroots efforts involving pending or proposed legislation that is part of a reform of a Federal or State welfare system; or (d) litigation or other advocacy undertaken with regard to the granting or denying of State requests for Federal waivers of Federal requirements for AFDC (45 CFR § 1639.3).

Federal or State welfare system means: (1) the Federal and State AFDC program under Title IV-A of the Social Security Act and new programs or provisions enacted by

Congress or the States to replace or modify these programs, including State AFDC programs conducted under Federal waiver authority; (2) General Assistance or similar state means-tested programs conducted by States or by counties with State funding or under State mandates, and new programs or provisions enacted by States to replace or modify these programs (45 CFR § 1639.2(a)(1)).

Federal or State welfare system does not include other public benefit programs unless changes to such programs are part of a reform of the AFDC or General Assistance programs (45 CFR § 1639.2(a)(2)).

Recipients may represent an individual eligible client who is seeking specific relief from a welfare agency if such relief does not

involve an effort to amend or otherwise challenge existing law in effect on the date of the initiation of the representation (45 CFR § 1639.4).

Consistent with the provisions of § 1612.6, 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 (45 CFR § 1639.5).

Recipients must have written policies and procedures to guide its staff in complying with this part (45 CFR § 1639.6).

Suggested Audit Procedures

- Obtain an understanding of the written policies and procedures in place to ensure compliance with the requirements.
- Determine if the recipient's written policies and procedures are consistent with the provisions of the regulation.
- Determine how the recipient ensures that the written policies and procedures are communicated to staff and whether these procedures are followed in practice by staff. Interview a sample of recipient staff as to their knowledge concerning the possible existence of any matter falling under the requirements of this section. Follow-up on all such possible occurrences. If such matters have been handled by the recipient, determine whether each instance had been appropriately handled in accordance with the recipient's procedures.

***1642 ATTORNEYS' FEES**

LSC Regulations

45 CFR §§ 1642.2, 1642.3, 1642.4, 1642.6

Compliance Requirement

No recipient or employee of the recipient may claim, or collect and retain attorneys' fees for any case filed after April 26, 1996 (45 CFR § 1642.3(a)). An attorneys' fee is an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the awarding of such fees in any case undertaken on behalf of a client (45 CFR § 1642.2).

Fees may be collected: (1) in cases filed prior to April 26, 1996, except that the prohibition shall apply to any additional claim for the client made in a case pending on April 26, 1996; (2) in cases to which 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, and in which the recipient or employee receives compensation under the same terms and conditions as are applied generally to attorneys practicing in the court in which the appointment is made; (3) as sanctions imposed by a court for violations of court rules, including Rule 11 or discovery rules of the Federal Rules of Civil Procedure, or similar State court rules; or (4) as reimbursement of costs and expenses from an opposing party (45 CFR § 1642.3).

The prohibition, and the exceptions to that prohibition, on claiming or collecting and

retaining attorneys' fees applies also to private attorneys who receive compensation from the recipient to provide legal assistance to eligible clients under the recipient's private attorney involvement (PAI) program, judicare program, contract or other arrangement (45 CFR § 1642.3(b)). It does not apply to private attorneys who undertake representation on a pro bono basis.

Attorneys' fees received by the recipient pursuant to § 1642.3(c) for work 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 work (45 CFR § 1642.4(a)). Attorneys' fees 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 (45 CFR § 1642.4(b)).

The recipients must have 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 (45 CFR § 1642.6).

Suggested Audit Procedures

- Obtain an understanding of the written policies, procedures and recordkeeping in place to ensure compliance with the regulation.
- Determine if the recipient's written policies, procedures and recordkeeping are consistent with the provisions of the regulation.
- Determine that the fees were recorded in the same fund to which the related expenditures were charged as required by 45 CFR § 1642.4(a). Review and test method of allocating fees and related expenses associated with fee-generating cases to the various funds.
- Review the record of fee-generating cases (or other records documenting the recipient's compliance with this part) maintained by the recipient and test whether there were any fees received that were not recorded. Also, verify that the cases or circumstances in which fees were received were allowable pursuant to 45 CFR § 1642.3.
- Determine that fees awarded to a recipient were not recorded as revenue until received as required by 45 CFR § 1642.4(b).

*OTHER STATUTORY PROHIBITIONS

Section 1007(b)(8) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation which seeks to procure a nontherapeutic abortion or to compel any individual or institution to perform an abortion, or assist in the performance of an abortion, or provide facilities for the performance of an abortion, contrary to the religious beliefs or moral convictions of such individual or institution.

Section 1007(b)(9) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation relating to the desegregation of any elementary or secondary school or school

system, except that nothing in this paragraph shall prohibit the provision of legal advice to an eligible client with respect to such client's legal rights and responsibilities.

Section 1007(b)(10) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation arising out of a violation of the Military Selective Service Act or of desertion from the Armed Forces of the United States, except that legal assistance may be provided to an eligible client in a civil action in which such client alleges that he was improperly classified prior to July 1, 1973, under the Military Selective Service Act or prior law.

Public Law 104-134

Abortion

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

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

Interim Guidance on Compliance Requirement

This provision applies the previously existing statutory prohibition to all funding. The restriction in the Act, Section 1007(a)(8), prohibiting all legal assistance (not just litigation) concerning the procurement of non-therapeutic abortions, continues subject to 45 CFR §§ 1610.2 and 1610.3.

OTHER COMPLIANCE REQUIREMENTS

Accounting Requirements

Recipients are required to adhere to accounting requirements of the LSC Audit and Accounting Guide for Recipients and Auditors, and may follow either the 1981 or 1986 version of the Audit and Accounting Guide. LSC's "Fundamental Criteria of an Accounting and Financial Reporting System" is incorporated in Chapter III of the 1986 version of the Audit and Accounting Guide but must also be adhered to by users of the 1981

version of the Audit and Accounting Guide. The audit provisions of the 1981 and 1986 versions of the Audit and Accounting Guide have been superseded by the LSC Audit Guide, adopted in 1995, to which this Compliance Supplement is an Appendix.

Property Management Requirements

The recipient must maintain a property management system for its LSC-funded activities that is adequate to meet the standards of the Corporation's Property

Management Manual and the Corporation's Audit and Accounting Guide for Recipients and Auditors (1981 or 1986 version).

Grant Award Requirements

The grant award document(s) may have special terms and conditions that should be considered during the audit. Auditors should determine the significant compliance

requirements from the grant document, and develop audit procedures to test compliance with those requirements.

Interrelated Organizations

If a non-LSC organization is so closely related to an LSC funded grantee that the two are deemed to be "interrelated organizations", all LSC restrictions will extend to both organizations. (See Section 1-7, 1986 LSC Audit and Accounting Guide for definitions⁶.) Funds held by an organization which controls, is controlled by, or is subject to common control with, a recipient or subrecipient, are subject to the same restrictions as if the funds

were held by the recipient or subrecipient. Regardless of whether a recipient has chosen to be subject to the 1981 or the 1986 Audit and Accounting Guide, LSC will consider the funds of interrelated organizations to be subject to all the restrictions on the use of non-LSC funds that would apply to the recipient, even if the interrelated organization does not formally receive any LSC funds.

END NOTES

1. Attached to this Compliance Supplement is a copy of Program Letter 96-1 issued to provide interim guidance to recipients prior to the promulgation of the new and revised regulations. This document may be referred to for clarification of requirements during the period May 17, 1996 to the publication date of the respective interim regulation. However, the regulations and related supplementary information control as of their date of issuance.
2. Public Law 104-134 permitted recipients to divest themselves of certain prohibited cases including class action lawsuits between April 26, 1996 through August 1, 1996. Thus, recipients could still participate during this period in class action lawsuits that were pending on April 26, 1996, while attempting to divest themselves of such lawsuits.
3. Public Law 104-134, permitted recipients to divest themselves of certain prohibited cases including cases funded with non-LSC funds involving the representation of certain categories of enumerated aliens between April 26, 1996 through August 1, 1996. Thus, during this period recipients could still use non-LSC funds to represent certain categories of enumerated aliens while attempting to divest themselves of such cases.
4. Prior to April 26, 1996, recipients could use public, IOLTA or tribal funds for redistricting litigation, if the use of funds for such activity was consistent with the purpose for which such funds were provided.
5. Public Law 104-134, permitted recipients to divest themselves of certain prohibited cases including litigation on behalf of incarcerated persons between April 26, 1996 through August 1, 1996. Thus, recipients could still participate during this period in litigation on behalf of incarcerated persons that was pending on April 26, 1996, while attempting to divest themselves of such lawsuits.
6. See also, Memorandum from John A. Tull, Director, Office of Program Evaluation, Analysis and Review, to Program Directors regarding "Applicability of Restrictions to Interrelated Organizations" (Dec.11 1995).