

**LEGAL SERVICES CORPORATION
OFFICE OF INSPECTOR GENERAL**



APPENDIX A:

**COMPLIANCE SUPPLEMENT
FOR AUDITS OF LSC RECIPIENTS**

DRAFT

Month 2022

Effective for fiscal years ending on or after month, 20XX

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COMPLIANCE SUPPLEMENT FOR AUDITS OF LSC RECIPIENTS

The Compliance Supplement for Audits of LSC Recipients ("Compliance Supplement" or "Appendix A") describes regulatory compliance requirements that apply to all recipients of Legal Services Corporation ("Corporation" or "LSC") funds. A recipient's failure to comply with the regulatory requirements could have a direct or indirect material effect on its financial statements. In addition, these regulatory requirements are considered to have a material impact on the LSC program. Assessing compliance with these regulations is part of the annual audit of LSC Recipients conducted under the general guidance of the Office of Management and Budget (OMB) for audits of non-profit institutions. Beginning with the 1996 appropriation of Federal Funds to LSC, LSC Recipients are required to comply with additional prohibitions, restrictions, and requirements See Section 504(b) of Pub. L. 104-134, 110 Stat. 1321 (1996), (the "1996 Act"). Although recipients must comply with all LSC regulations, LSC's regulations implementing restrictions and requirements carry special reporting requirements. These regulations are identified as follows:

- PART 1604 – OUTSIDE PRACTICE OF LAW
- PART 1608 – PROHIBITED POLITICAL ACTIVITIES
- PART 1610 – USE OF NON-LSC FUNDS; PROGRAM INTEGRITY
- PART 1611 – FINANCIAL ELIGIBILITY
- PART 1612 – RESTRICTIONS ON LOBBYING AND CERTAIN OTHER ACTIVITIES
- PART 1617 – CLASS ACTIONS
- PART 1620 – PRIORITIES IN USE OF RESOURCES
- PART 1626 – RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS
- PART 1627 – SUBGRANTS
- PART 1632 – REDISTRICTING
- PART 1633 – RESTRICTION ON REPRESENTATION IN CERTAIN EVICTION PROCEEDINGS
- PART 1635 – TIMEKEEPING REQUIREMENT
- PART 1636 – CLIENT IDENTITY AND STATEMENT OF FACTS
- PART 1637 – REPRESENTATION OF PRISONERS
- PART 1638 – RESTRICTION ON SOLICITATION
- PART 1639 – WELFARE REFORM
- PART 1643 – RESTRICTION ON ASSISTED SUICIDE, EUTHANASIA, AND MERCY KILLING
- PART 1644 – DISCLOSURE OF CASE INFORMATION

Noncompliance with these regulations carry special reporting requirements and, in accordance with Section 509(b) of the 1996 Act, are reported in the "Special Report on Noncompliance with Laws and Regulations." During their annual audit, the Independent Public Accountant (IPA) must select and test a representative number of transactions. If the IPA finds instances of noncompliance with the above listed regulations, these must be immediately reported to the recipient. For purposes of the special reporting requirements only, the reported instances of noncompliance are those for substantive

practice issues and not for procedural or administrative items.¹ The recipient must report, in writing, to the Office of Inspector General (OIG) within five business days any instances of noncompliance the auditor has found. If the recipient fails to notify the OIG within the specified time, the auditor must report the noncompliance directly to the OIG. (See Section II.1.H of the *Audit Guide*.) This process of referring the instances noted in Appendix D, "Special Report on Noncompliance with Laws and Regulations" to the OIG is referred to as the "5-Day Letter."

Overview

The Legal Services Corporation Act of 1974, 42 U.S.C. §§ 2996-2996l, established the Legal Services Corporation. 42 U.S.C. § 2996b(a) (LSC Act). The LSC Act required an annual financial audit of each entity receiving LSC funds. 42 U.S.C. § 2996h. In lieu of these audits, section 509(a) of the 1996 Act requires expanded annual audits to be performed in accordance with Government Auditing Standards (GAS). Because all funds must be audited each year, LSC programs are considered Major Programs, established in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. § 200.518 (2013) (Uniform Guidance). The auditor should use the criteria for Federal program risk in § 200.519 of the Uniform Guidance and the criteria for a low-risk auditee in § 200.519 of the Uniform Guidance to determine and document whether the recipient under audit is high risk or low risk.

This Compliance Supplement is divided into three parts, A, B and C. Part A identifies items IPAs should consider during the audit planning process. Part B provides a brief overview of the applicable recordkeeping and regulatory requirements. Part C identifies compliance requirements that are specific to the LSC's grant programs, with reference to the specific Code of Federal Regulations (C.F.R.) or statutory citations, where applicable.

Part C also presents statements of compliance requirements, related audit objectives, and suggested audit procedures. The IPA should consider these suggested audit procedures in planning and performing tests of the recipient's compliance. The IPA should exercise professional judgment to determine whether the audit procedures are sufficient and whether additional or alternative audit procedures are needed. Moreover, determining the nature, timing, and extent of the audit procedures necessary to meet the audit objectives is the IPA's responsibility. If an audit procedure is not performed, the alternative procedures used to accomplish the objective must be documented in the workpapers. The OIG will examine the alternative procedures during OIG Quality Control Reviews, defined in Part A of the Compliance Supplement.

¹ The regulations marked for inclusion in the 5-day reporting requirement are the practice restrictions, prohibitions, and requirements contained in the 1996 Act as well as others where special reporting is warranted. For 5-day reporting, the OIG is interested if an IPA finds actual instances of cases or matters that violate those restrictions or prohibitions, or as to which the recipient failed to comply with the requirements. The types of findings that should not be reported in a 5-day letter include issues such as absence of policies and procedures required under the regulations, lack of signatures on forms, and similar procedural problems (unless, due to the weakness cited, a recipient participated in an actual case or matter that violated the restrictions and prohibitions or failed to comply with associated requirements).

Compliance Supplement for Audits of LSC Recipients

The OIG has established certain minimum requirements for testing recipients' compliance with applicable laws and LSC regulations. The minimum requirements are included in this Compliance Supplement.

The OIG provides suggested audit procedures as guidance to IPAs. The procedures do not preclude the IPAs' use of professional judgment to develop additional or alternative procedures based on the conditions found during the audit. In deciding not to test a compliance requirement, the IPA must conclude and document that the requirement either does not apply to the recipient's LSC program or that noncompliance with the requirement could not have a direct and material effect on the LSC program.

The compliance requirements in part C are a summary of the C.F.R. requirements. The IPA must refer to the referenced laws and regulations for the complete compliance requirements. To understand all compliance requirements, IPAs must review the LSC Act, the 1996 Act and relevant regulations (including the regulations' supplementary information).

Laws and regulations change periodically and there may be delays between these changes and updates to this Compliance Supplement. Furthermore, IPAs must be aware that there may be provisions of contracts and grant agreements that are unique to a particular LSC Recipient. The specific requirements of unique grant provisions are not identified in this Supplement. IPAs must review recipient's grant terms and conditions to identify unique requirements and incorporate compliance testing of those requirements into the audit.

Notwithstanding §§ 200.518-200.520 of the Uniform Guidance, which allow for reduced audit coverage, section 1009(c)(1) of the LSC Act requires an annual financial audit of each entity receiving financial assistance from LSC. See 42 U.S.C. § 2996h(c)(1). Section 509(a) of the 1996 Act requires such audits to be carried out in accordance with Generally Accepted Government Auditing Standards (GAS).

All LSC programs are considered Major Programs, as established in § 200.518 of the Uniform Guidance. The auditor should use the criteria for Federal program risk in § 200.519 of the Uniform Guidance and the criteria for a low-risk auditee in § 200.519 of the Uniform Guidance to determine and document whether the recipient under audit is high risk or low risk.

This Compliance Supplement is effective for audits of fiscal years ending on or after Month, 20XX, and supersedes the previous edition of the Compliance Supplement issued in April 2016, including all previously issued Audit Bulletins relating to the Compliance Supplement.

Use of Terminology in the Compliance Supplement (Appendix A)

Appendix A presents statements of compliance requirements, related audit objectives, and suggested audit procedures. When restating compliance requirements, Appendix A uses the conventions employed in Part 200 of the Uniform Guidance. For example, when the word "must" is used, it indicates a requirement, whereas use of the word "should" indicates a best practice or recommended approach that should be strongly considered rather than a requirement. The IPA must judge whether the suggested audit procedures are sufficient to achieve the stated audit objectives or whether alternative audit procedures are needed.

Internal Control

Appendix A includes audit objectives and suggested audit procedures to test internal controls, consistent with §§ 200.500-200.521 of the Uniform Guidance. However, the IPA must determine the specific procedures for testing internal control on a case-by-case basis considering factors such as the recipient's internal controls, the compliance requirements, the audit objectives for compliance, the IPA's assessment of control risk, and the audit requirements to test internal controls as prescribed in §§ 200.500-200.521 of the Uniform Guidance.

PART A. AUDIT PLANNING CONSIDERATIONS

IPAs should approach an audit of a recipient like an audit performed according to the requirements of 2 C.F.R. Part 200, Uniform Guidance, with the significant exceptions that *all LSC funds are considered major programs* and that this Compliance Supplement should be followed in its entirety. The Compliance Supplement identifies the laws and regulations that apply to LSC funds. IPAs are expected to cite the Compliance Supplement for Audits of LSC Recipients in their reports on Compliance with Requirements applicable to Major Programs and Internal Controls over Compliance, according to § 200.515(c) of the Uniform Guidance. IPAs should be aware that if a recipient's non-LSC funds (Federal or state) are subject to consideration under a Uniform Guidance audit, the OMB Compliance Supplement may apply to those funds.

To successfully complete the audit of the recipient, the IPA must review the following documents and publications:

- Legal Services Corporation Regulations (45 C.F.R. Parts 1600-1644)
- Legal Services Corporation Office of Inspector General *Audit Guide for Recipients and Auditors* (Month Year)
- Legal Services Corporation Office of Inspector General Audit Guidance: FAQs on Reporting Requirements, "What is the Assistance Listing number for LSC funds?", [Reporting Requirements \(lsc.gov\)](https://www.lsc.gov/Reporting-Requirements). Assistance Listing numbers were formerly referred to as CFDA numbers.
- *Legal Services Corporation Financial Guide*
- LSC Program Letters²

These documents can be accessed on the OIG website, <https://www.oig.lsc.gov> or the LSC website <https://www.lsc.gov/>. If you have any questions or need help, please contact the OIG via e-mail at audits@oig.lsc.gov.

LSC has issued specific guidance on many of the regulations covered in this Compliance Supplement including guidance clarifying certain sections of select regulations. The guidance has been issued by LSC Management as Program Letters and by the LSC Office of Legal Affairs as Advisory Opinions. This LSC-issued guidance can be accessed on the LSC website.

The OIG routinely evaluates audits conducted by IPAs (Quality Control Reviews). The OIG may reject a compliance audit report and require corrective action if the Quality Control Reviews conclude that the audit procedures the IPA performed were inadequate. Major deficiencies in the audit may result in removal and/or debarment of the IPA, see 45

² See LSC website for comprehensive list of Program Letters (<https://www.lsc.gov/about-lsc/laws-regulations-and-guidance/program-letters>)

Part A. Audit Planning Considerations

C.F.R. Part 1641, and/or referrals to the AICPA (and/or the appropriate state board of accountancy). OIG Quality Control Reviews have identified deficiencies where IPAs have not adequately documented the audit work performed and conclusions reached in accordance with GAS. The IPA's assessment of the requirements in the Compliance Supplement shall be adequately documented in the work papers evidencing the audit work performed and conclusions reached.

PART B. ADDITIONAL REQUIREMENTS

RECORDKEEPING REQUIREMENTS

In a memorandum from the Director of the Office of Program Performance (known at the time as the Office of Program Operations), to all LSC Program Directors about "Recordkeeping Requirements" (Dec. 8, 1997) (LSC Recordkeeping Requirements Memorandum),³ LSC prescribed certain mandatory recordkeeping requirements. The LSC Recordkeeping Requirements Memorandum also included reporting forms and procedures. As appropriate, recipients must use the LSC sample forms, templates provided in GrantEase, or other forms approved by their auditor that include the same information. The regulations affected by these recordkeeping requirements are:

- 45 C.F.R. § 1609.6 (detail of recordkeeping requirement on fee-generating cases and sample form),
- 45 C.F.R. § 1612.10 (detail of recordkeeping requirement),
- Semiannual Report on Legislative and Rulemaking Activities Conducted Pursuant to 45 C.F.R. § 1612.10,
- 45 C.F.R. § 1620.7 (detail of recordkeeping requirement relating to priorities) Annual Report of Non-Priority Cases pursuant to 45 C.F.R. § 1620.7(b) (sample form),
- 45 C.F.R. § 1626.12 (detail of recordkeeping requirement on citizenship or eligible alien status),
- 45 C.F.R. § 1627.7 (detail of recordkeeping requirement),
- 45 C.F.R. § 1633.4 (detail of recordkeeping requirement relating to evictions and sample form),
- 45 C.F.R. § 1636.5 (detail of recordkeeping requirement for client identity and Statement of Facts), and
- 45 C.F.R. § 1637.5 (detail of recordkeeping requirement for representation of prisoners).

Program Letter 98-5⁴ provides guidance for the timing and format of the semiannual case disclosure report required by 45 C.F.R. Part 1644. Recipients must submit these reports to LSC via GrantEase using the template provided by LSC or on other forms containing the same information as the LSC template.

³ Program Letter 97-2: <https://lsc-live.app.box.com/s/sgbw8pi3xf9hryp3ru9n48m7d4eoavh4>

⁴ Program Letter 98-5: <https://lsc-live.box.com/s/qu8aogmwz507yf11418yx8oq8bnxjqpr>

Part B. Additional Requirements

The IPA must ensure that the recipient met all recordkeeping requirements. The IPA's review of these requirements shall be adequately documented in the workpapers evidencing the audit work performed and conclusions reached.

CERTIFICATION REQUIREMENT ON PROGRAM INTEGRITY

By December 31 of each year, each LSC Recipient's governing body is required under 45 C.F.R. Part 1610 to certify that the program is in compliance with the program integrity requirements of 45 C.F.R. § 1610.8. Certification must take place in GrantEase, using the template provided in that system.⁵

⁵ <https://lsc.gov/45-cfr-1610-program-integrity-compliance-guidance-and-governing-body-certification>

PART C. COMPLIANCE REQUIREMENTS

The specific requirements for allowable or unallowable activities are in the relevant regulations and applicable statutory provisions. The specific compliance requirements are provided in summary form in this Compliance Supplement, together with the suggested audit procedures for the specific compliance requirement. The compliance requirement explanations included in this Compliance Supplement do not include the full text of each applicable regulatory or statutory provision. IPAs must review the complete text of the relevant statutes and regulations, which are available on LSC's web site, at <https://www.lsc.gov/i-am-grantee/grantee-guidance>. The primary objective of the audit procedures in the Compliance Supplement is to ensure that the audit results provide reasonable assurance that the LSC Recipient complied with the LSC Act, relevant regulations, and other applicable laws. For purposes of assessing compliance, these procedures represent a minimum level of inquiry and testing the IPA should perform.

SAMPLE SELECTION OF CASE FILES

The IPA shall select a representative sample of case files to include all LSC funding, (including, but not limited to, Basic Field grants; Technology Initiative grants; Pro Bono Innovation Fund grants; Loan Repayment grants; Veterans Appeals Pro Bono grants; and special purpose grants such as Disaster grants and Emergency Stimulus Fund grants). IPAs should sample a minimum of 60 case files and interview at least 5% of the recipient's staff, and in no case fewer than five individuals, to assess recipient's compliance with applicable laws and regulations. The IPA is to document the case sampling methodology in the work papers, including the total universe of cases from which the sample was selected and how the sample size was determined. The case sample shall be selected from a universe that includes:

- cases from the recipient's main office and other sites,
- cases representing different subject areas from different units/project groups, and
- cases with different levels of legal representation.

During case file reviews, IPAs shall assess compliance with the applicable requirements of 45 C.F.R. Parts 1609, 1611, 1613, 1615, 1617, 1620, 1626, 1632, 1633, 1636, 1637, 1639, 1643, 1644 and the other applicable statutory mandates identified in this Compliance Supplement.

TESTING CONSIDERATIONS

The IPA should obtain an understanding of the recipient's internal controls to ensure compliance with the requirements in each applicable regulation. The IPA should also review the recipient's policies and procedures to ensure they conform to the tested regulation's requirements.

Part C. Compliance Requirements

Several LSC regulations cannot be tested through the review of case files. Compliance with these regulations must be determined through procedures in this Compliance Supplement or through alternative, adequately documented procedures. Audit work performed and conclusions reached must be documented. Please note that the regulations tested as part of the review of case files are identified above in the SAMPLE SELECTION OF CASE FILES sub-section.

When a regulation requires the IPA to interview a sample of recipient staff, the interviews are to include managerial, professional, and support staff. Any interviews conducted with staff must be documented and evidence sufficient inquiry for the IPA to render a conclusion. This conclusion must be documented in the work papers. The OIG strongly recommends that the staff interviews be conducted face to face, whenever possible, or by virtual meetings.

When testing compliance with 45 C.F.R. Part 1630, the IPA should test a sample of transactions for compliance with the cost allowability standards of §1630.5(a)-(j). This procedure should be separate from any payroll testing done as part of the financial statement audit. Although the IPA may rely on some aspects of its payroll testing, the IPA is expected to test other transactions to assess compliance with the cost allowability standards.

When testing disbursements, the IPA's workpapers should document testing for compliance with 45 C.F.R. Parts 1608 (Prohibited political activities), 1610 (Use of non-LSC funds, transfers of LSC funds, program integrity), and 1612 (Restrictions on lobbying and certain other activities).

If the IPA discovers a violation of LSC regulatory restrictions and/or prohibitions, the work papers must document the specific details of the violation. If the IPA does not report the violation as a finding, the workpapers must include the rationale for not reporting the violation.

ACCESS TO RECORDS

The IPA should have access to any records that, in the IPA's judgment, are necessary to complete the audit. Although the IPA's access is not limited to the records listed in section 509(h) of the 1996 LSC Act, that section clarifies that LSC auditors and monitors have access to "financial records, time records, retainer agreements, client trust fund and eligibility records, and client names, for each recipient...except for reports or records subject to the attorney-client privilege." If the recipient asserts attorney-client privilege or attempts to deny the IPA access to necessary documents or relevant portions thereof, contact the OIG immediately.

PART D. SPECIFIC REQUIREMENTS

Part D includes specific requirements that IPAs should consider when performing audits. This part is a compilation of suggested audit procedures and is included to help complete the audit. IPAs should complete these audit steps and should provide an explanation for any steps determined not applicable.

As a reminder, this section summarizes LSC regulations. IPAs should read the full text of each regulation. LSC regulations are accessible from the links below:

[LSC Regulations | LSC - Legal Services Corporation: America's Partner for Equal Justice](#)

[Electronic Code of Federal Regulations \(eCFR\): 45 C.F.R. Chapter XVI -- Legal Services Corporation](#)

1604 OUTSIDE PRACTICE OF LAW

LSC Regulations

45 C.F.R. Part 1604

Compliance Requirements

The LSC Act requires LSC to ensure that full-time recipient attorneys do not engage in compensated outside practice. See 42 U.S.C. § 2996f(a)(4)(A). Under 45 C.F.R. Part 1604, recipients are authorized (but not required) to permit full-time attorneys to engage in uncompensated outside practice of law. The LSC Act is silent about the outside practice of law by part-time recipient attorneys.

Under Part 1604, recipients are required to adopt written policies governing the outside practice of law by full-time attorneys. The policies must be consistent with the LSC Act and the applicable rules of professional responsibility. The policies may permit the outside practice of law by full-time attorneys only to the extent allowed by the LSC Act and may impose additional restrictions as necessary to meet the recipient's responsibilities to clients.

A recipient's outside-practice policies may permit full-time attorneys to engage in outside practice of law if:

- a) The recipient's director (or the director's designee) determines that a particular representation would be consistent with the attorney's responsibilities to the recipient's clients,
- b) Except in the case of court appointments, the attorney undertaking outside practice does not intentionally identify the case or matter with LSC or the recipient, and
- c) The attorney is-
 - (1) Newly employed, has a professional responsibility to close cases from a previous law practice, and does so as expeditiously as possible on his or her own time, or
 - (2) Acting on behalf of themselves, a close friend, family member or another member of the recipient's staff, or
 - (3) Acting on behalf of a religious, community, or charitable group, or
 - (4) Participating in a voluntary *pro bono* or legal referral program affiliated with or sponsored by a bar association, other legal organization or religious, community, or charitable group.

A recipient's policies must not permit a full-time staff attorney to receive

compensation for outside practice except for payment for work closing cases from a previous law practice.

A recipient's policies may permit a full-time attorney closing cases from a previous law practice to make *de minimus* use of recipient resources for outside cases or matters and full-time attorneys engaged in other permissible outside practice to make limited use of recipient funds for such cases or matters, so long as the use is necessary for the attorney to fulfill professional responsibilities. However, these resources must not be used for activities for which the use of those funds would otherwise be prohibited.

A recipient's written policies may also allow full-time attorneys to accept court appointments under the circumstances and limitations included in § 1604.7.

Audit Objectives

- a. Determine whether the recipient has implemented written policies and procedures to monitor outside legal activities of their attorneys for compliance with Part 1604.
- b. Obtain evidence that the recipient monitors the outside practice of law provided by their full-time attorneys for compliance with the standards set forth in Part 1604.

Suggested Audit Procedures - Internal Control

- a. Obtain an understanding of the policies, practices, and internal controls in place to ensure compliance with 45 C.F.R. Part 1604.
- b. Determine whether written policies and procedures are in place to ensure that a recipient employee does not undertake activity in violation of 45 C.F.R. Part 1604. Review the recipient's written policies and procedures to ensure they conform to 45 C.F.R. Part 1604.
- c. Determine how the recipient ensures that the policies and procedures to comply with 45 C.F.R. Part 1604 are effectively communicated to staff and that these procedures are followed by staff. Interview recipient staff about their knowledge of the possible existence of any activity that may fall under the requirements of this regulation. Follow up on all such possible occurrences.

1608 PROHIBITED POLITICAL ACTIVITIES

LSC Regulations

45 C.F.R. §§ 1608.3, 1608.4, 1608.5 and 1608.6

Compliance Requirements

While employed under the LSC Act, no staff attorney (as defined at 45 C.F.R. § 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 C.F.R. § 1608.5).

No employee shall intentionally identify the recipient with any partisan or nonpartisan political activity, or with the campaign of any candidate for public or party office. (45 C.F.R. § 1608.4(a)). For purposes of LSC regulations, the term "political" refers to "that which relates to engendering public support for or opposition to candidates for public office, ballot measures, or political parties, and would include publicity or propaganda used for that purpose." (45 C.F.R. § 1600.1).

LSC funds, personnel or equipment may not 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 C.F.R. § 1608.3(b)).

LSC funds may not be used or made available for prohibited political activities. While engaged in legal assistance activities supported under the LSC Act, no attorney shall 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 C.F.R. §§ 1608.4(b), 1608.6). Employees shall not intentionally identify or encourage others to identify a recipient with such activities. (45 C.F.R. § 1608.4(b)).

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 C.F.R. § 1608.7).

Additional LSC Guidance can be found at <https://www.lsc.gov/about-lsc/laws-regulations-and-guidance/lsc-regulations/lobbying-and-political-activities>.

1. Audit Objectives

- a. Determine whether the recipient effectively communicates the prohibitions on political activities to all employees, as set forth in Part 1608.
- b. Determine whether that LSC funds were expended only for allowable activities.

2. Suggested Audit Procedures - Internal Control

- a. Review recipient policies and practices to ensure that no recipient and/or employee or attorney of the recipient undertakes an activity in violation of 45 C.F.R. §§ 1608.3(b), 1608.4, 1608.5, and 1608.6.
- b. 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 about the possible existence of any activity prohibited by 45 C.F.R. Part 1608. Follow up on any such alleged prohibited activity.

3. Suggested Audit Procedures – Substantive

- a. Determine whether the recipient expended grant funds or contributed personnel or equipment in violation of 45 C.F.R. § 1608.3(b).
- b. Examine expenditures for payments or contributions:
 - i. To any political party or association,
 - ii. To the campaign of any candidate for public or party office, and
 - iii. For use in advocating or opposing any ballot measure, initiative, or referendum.

1609 FEE-GENERATING CASES

LSC Regulations

45 C.F.R. §§ 1609.2, 1609.3 and 1609.4

Compliance Requirements

Definition of a fee-generating case: any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client. (45 C.F.R. § 1609.2(a)).

A fee-generating case does not include any case where:

- (1) A court appoints a recipient or an employee of a recipient to provide representation in a case pursuant to a statute or a court rule or practice equally applicable to all attorneys in the jurisdiction,
- (2) A recipient undertakes representation under a contract with a government agency or other entity, or
- (3) A recipient provides only advice and counsel or limited services, as those terms are defined in 45 C.F.R. § 1611.2(a) and (e), to an eligible client. (45 C.F.R. § 1609.2(b)).

Recipients may not use LSC or private funds to provide legal assistance in a fee-generating case unless:

- (1) The case was rejected by a local lawyer referral service or by two private attorneys, or
- (2) Neither the referral service nor two private attorneys will consider the case without payment of a consultation fee. (45 C.F.R. § 1609.3(a)).

Recipients may provide legal assistance in a fee-generating case without first attempting referral only when:

- (1) An eligible client is seeking benefits under Subchapter II of the Social Security Act, 42 U.S.C. § 401 *et seq.*, as amended, Federal Old Age, Survivors, and Disability Insurance Benefits; or Subchapter XVI of the Social Security Act, 42 U.S.C. § 1381 *et seq.*, as amended; or Supplemental Security Income for Aged, Blind, and Disabled, 45 C.F.R. § 1609.3(b)(1),
- (2) The recipient, after consultation with appropriate representatives of the private bar, has determined that the type of case is one that private attorneys in the area served by the recipient ordinarily do not accept, or do not accept without

prepayment of a fee 45 C.F.R. § 1609.3(b)(2), or

- (3) The director of the recipient, or the director's designee, has determined that referral of the case to the private bar is not possible because:
- i. Documented attempts to refer similar cases in the past generally have been futile,
 - ii. Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate and consistent with professional responsibility, referral will be attempted at a later time, or
 - iii. Recovery of damages is not the principal object of the recipient's client's case and substantial statutory attorneys' fees are not likely to be available. (45 C.F.R. § 1609.3(b)(3)).

Any petition seeking attorneys' fees for representation supported in whole or in part with funds provided by LSC, shall, to the extent permitted by law and rules in the jurisdiction, be filed in the name of the recipient. (45 C.F.R. § 1609.4(a)).

Attorneys' fees received by a recipient for representation supported in whole or in part with funds provided by LSC shall be allocated to the fund in which the recipient's LSC grant is recorded in the same proportion that the amount of LSC funds expended bears to the total amount expended by the recipient to support the representation. (45 C.F.R. § 1609.4(b)).

Attorneys' fees received are to be recorded during the accounting period in which the money from the fee award is 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 C.F.R. § 1609.4(c)).

When a case results in recovery of damages or statutory benefits, a recipient may accept reimbursement from the client for out-of-pocket costs and expenses incurred in connection with the case, if the client has agreed in writing to reimburse the recipient for such costs and expenses out of any such recovery. (45 C.F.R. § 1609.5(a)).

A recipient may require a client to pay court costs when the client does not qualify to proceed in *forma pauperis* under the rules of the jurisdiction. (45 C.F.R. § 1609.5(b)).

Each recipient must have written policies and procedures to guide its staff in complying with this rule and shall maintain records sufficient to document the recipient's compliance with this rule. (45 C.F.R. § 1609.6).

1. Audit Objectives:

- a. Determine whether the recipient has implemented written policies and procedures to prevent the use of LSC funds to provide legal assistance in a fee-generating case unless the exceptions in Part 1609 are met.
- b. Obtain evidence that the recipient's management monitors legal assistance in any fee-generating case for compliance with Part 1609.

2. Suggested Audit Procedures - Internal Control

- a. Obtain an understanding of the internal controls to ensure compliance with 45 C.F.R. Part 1609. Review the recipient's policies and procedures to ensure that fee-generating cases are accepted by the recipient in accordance with 45 C.F.R. Part 1609.
- b. Review whether appropriate procedures have been established for referral of fee-generating cases and evaluate whether the procedures conform to 45 C.F.R. § 1609.3.
- c. Determine how these policies and procedures are effectively communicated to staff and whether such policies and procedures are followed by staff. Interview recipient staff, including intake workers, if they know of any fee-generating case that was improperly undertaken. Follow up on all such possible occurrences to determine if the case was a fee-generating case and if representation was authorized according to the regulation.
- d. Interview the Executive Director and a sample of recipient attorney staff about 45 C.F.R. Part 1609 and inquire if they know of any instances in which fees were received by the recipient but not recorded in the accounting records. Follow up on all such possible occurrences.
- e. Determine whether the recipient has complied with the recordkeeping requirements of 45 C.F.R. § 1609.6. Document this assessment in the workpapers.

3. Suggested Audit Procedures - Substantive

- a. Review fee generating cases to confirm that the cases are authorized, and the recipient has complied with the allocation and recordation requirements in 45 C.F.R. § 1609.4 (a)(b) and (c). Document this assessment in the workpapers.
 - i. Verify that revenue from attorney fees reported or disclosed in the recipient's financials are supported by case files that document fee-generating cases during the period.
 - ii. Review and test the method used to allocate fees and related expenses from

Part D, Section 1609 Fee Generating Cases

fee-generating cases to the various funds. Verify that the fees were recorded in the same fund as the related expenditures were charged, per 45 C.F.R. § 1609.4(b).

- iii. Verify that fees awarded to a recipient were not recorded as revenue until received, per 45 C.F.R. § 1609.4(c).
- b. As part of its recordkeeping system, the recipient must maintain a separate file identifying and summarizing each instance in which a fee-generating case, other than cases accepted under § 1609.3(b)(2), was accepted. (LSC's sample form, provided with the LSC Recordkeeping Requirements Memorandum, and available on LSC's website at https://www.lsc.gov/sites/default/files/Grants/pdfs/form1609_4.htm should be used for the summary.) Inspect this file for completeness. If the recipient accepted fee-generating cases, select a sample of these cases to ensure that they comply with the regulation.
 - i. Note that recipients are required to establish a recordkeeping system which includes appropriate documentation (in individual case files or elsewhere) indicating the basis for taking each fee-generating case, other than cases accepted under § 1609.3(b)(2), including records that:
 - (a) Indicate the date when a referral was rejected by the lawyer's referral service, or
 - (b) Indicate the names of two private attorneys who rejected the referral, or
 - (c) Indicate that neither the lawyer referral service nor two named private attorneys would consider the referral without prepayment of a consultation fee, or
 - (d) Indicate that the recipient's Executive Director (or the Executive Director's designee) has determined that the case cannot be referred to the private bar because:
 - (1) Documented past attempts to refer similar cases have generally been futile; or
 - (2) Emergency circumstance compelled the recipient to take immediate action before referral could be made of a fee-generating case; or
 - (3) Recovery of damages was not the principal object of the recipient's client's case and substantial statutory attorneys' fees are not likely to be available.
 - ii. Also note that for court-appointed cases that would otherwise be considered

as fee-generating, recipients should include in the client's file or in a central file, a copy of the court order directing that the recipient or employee of the recipient provide representation in the case and a copy of the statute or court rule that permits such appointment. If the appointment was made orally or was subject to an unwritten practice, the recipient should include an appropriate written description of the appointment or practice.

- c. If the recipient relies on § 1609.3(b)(2), consultation with the private bar, to accept a fee-generating case without first attempting referral, the recipient must maintain:
 - (a) a memorandum containing the names of appropriate representatives of the private bar with whom the recipient has discussed fee-generating cases and the bases on which the recipient has concluded that private attorneys in its service area do not accept, or do not accept without prepayment of a fee, particular types of fee-generating cases; and
 - (b) a list of the types of such fee-generating cases that private attorneys do not accept. Inspect this documentation for compliance with the LSC Recordkeeping Requirements Memorandum.
- d. In conjunction with the review of the sampled case files and discussions with the appropriate case handler, assess compliance with this regulation. Document this assessment in the workpapers.

1610 USE OF NON-LSC FUNDS; PROGRAM INTEGRITY

LSC Regulations

45 C.F.R. Part 1610

Compliance Requirements

Specific Restrictions

Use of Funds for Restricted Activities

The LSC Act restrictions are categorized as extended restrictions, standard restrictions, limited restrictions, and other restrictions at 45 C.F.R. § 1610.2(d). Extended restrictions are the restrictions on:

- (1) Abortion litigation,
- (2) Aliens,
- (3) Class actions,
- (4) Evictions from public housing involving illegal drug activities,
- (5) Lobbying,
- (6) Prisoner litigation,
- (7) Redistricting or census,
- (8) Solicitation of clients,
- (9) Training on prohibited topics, and
- (10) Welfare reform.

Extended restrictions apply to the following non-LSC funds: private funds, public funds, and any unauthorized use of tribal funds.

Standard restrictions are the restrictions on:

- (1) Abortion activities (other than abortion litigation subject to extended restrictions),
- (2) Criminal proceedings,

- (3) Draft registration violations,
- (4) Desegregation of schools,
- (5) Fee-generating cases,
- (6) Habeas corpus,
- (7) Organizing,
- (8) Persistent incitement of litigation and other activities prohibited by rules of professional responsibility for attorneys, and
- (9) Political activities, other than those included as other restrictions.

Standard restrictions apply to non-LSC private funds as well as any unauthorized use of public funds and tribal funds.

Limited restrictions are the restrictions on:

- (1) Lobbying permitted with non-LSC funds (45 C.F.R. § 1612.6),
- (2) Assisted suicide, euthanasia, and mercy killing, and
- (3) Use of appropriated LSC funds to file or pursue a lawsuit against LSC.

Limited restrictions do not apply to the use of non-LSC funds.

Other restrictions are the restrictions on:

- (1) Demonstrations, picketing, boycotts, or strikes,
- (2) Political activities, other than those stated as restrictions on the use of LSC funds, and
- (3) Rioting, civil disturbances, or violations of injunctions.

Other restrictions apply to non-LSC funds as provided in the referenced regulations. (45 C.F.R. §§ 1610.4(b), 1610.4(c), 1610.4(d), 1610.4(e)).

Subgrants in which a recipient provides LSC funds or LSC-funded resources as some or all of a subgrant to a subrecipient are governed by 45 C.F.R. Part 1627. That rule (Part 1627) states how the restrictions apply to the subgrant and to the non-LSC funds of the subrecipient, which can vary with different types of subgrants. Grants, subgrants, donations, or gifts provided by a recipient and funded entirely with non-LSC funds are not subject to this part. (45 C.F.R. § 1610.5).

Part D, Section 1610 Use of Non-LSC Funds; Program Integrity

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

- (1) Criminal proceedings (45 C.F.R. Part 1613),
- (2) Actions challenging criminal convictions (45 C.F.R. Part 1615),
- (3) Aliens (45 C.F.R. Part 1626), and
- (4) Prisoner litigation (45 C.F.R. Part 1637) do not apply to a recipient's or subrecipient's separately funded public defender program or criminal cases accepted by a recipient or subrecipient pursuant to a court appointment. (45 C.F.R. § 1610.6).

Income Ineligible Client

This part does not expand, limit, or otherwise apply to the financial eligibility rules of 45 C.F.R. Part 1611. (45 C.F.R. § 1610.4 (f)).

Contributions Received from Non-LSC Sources

Except for contributions of less than \$250, no recipient may accept funds from any source other than LSC, unless it provides to the donor written notification of the prohibitions and conditions which apply to the funds. (45 C.F.R. § 1610.7).

Program Integrity

A recipient must have objective integrity and independence from any organization that engages in restricted activities. A relationship with another organization will meet this standard if:

- (1) The other organization is a legally separate entity,
- (2) The other organization receives no subgrant of LSC funds from the recipient, and LSC funds do not subsidize restricted activities, and
- (3) The recipient is physically and financially separate from the other organization.

Bookkeeping separation of LSC funds from other funds is not sufficient. Whether sufficient physical and financial separation exists will be determined on a case-by-case basis and will be based on the totality of the facts. The presence or absence of any one or more factors will not be determinative. Factors relevant to this determination include but are not limited to:

- (i) The existence of separate personnel,

- (ii) The existence of separate accounting and timekeeping records,
- (iii) The degree of separation from facilities in which restricted activities occur, along with the extent of such restricted activities, and
- (iv) The extent to which signs and other forms of identification which distinguish the recipient from the organization are present.
(45 C.F.R. § 1610.8(a)).

The governing body of each recipient must certify to LSC on an annual basis that the recipient complies with the program integrity requirements described in 45 C.F.R. § 1610. (45 C.F.R. § 1610.8(b)). Important guidance on 45 C.F.R. 1610 Compliance and Governing Body Certification can be found in LSC's Program Letter 22-3: 45 C.F.R. 1610 Program Integrity Compliance Guidance and Governing Body Certification (Program Letter 22-3).⁶ Program Letter 22-3 must be reviewed in conjunction with the regulation to gain a full understanding of the compliance requirement as how to assess compliance.

Funds received by a recipient from a source other than LSC must be accounted for as separate and distinct receipts and disbursements in a manner directed by LSC. (45 C.F.R. § 1610.9(a)).

1. Audit Objectives

- a. Determine whether the recipient has implemented written policies and procedures to restrict the use of non-LSC funds in accordance with Part 1610.
- b. Obtain evidence to support the recipient's Certification of Program Integrity.

2. Suggested Audit Procedures - Internal Control

- a. Determine how the recipient ensures compliance with this regulation. Obtain an understanding of the internal controls to ensure compliance with 45 C.F.R. Part 1610. Review related policies and procedures.
- b. Obtain an understanding about how the restrictions are communicated to staff and whether these are adhered to by staff. Interview recipient staff about their knowledge of the possible existence of any matter that may fall under the restrictions of this regulation. Follow up on all such possible occurrences.
- c. Inspect the recipient's Certification of Program Integrity for the current audit period to ensure that the program follows the program integrity requirements of 45 C.F.R. § 1610.8. In conjunction with the inspection of the annual Certification of Program Integrity, review the Executive Director's contemporaneous written report required

⁶ Program Letter 22-3

by LSC's Program Letter 22-3 to be submitted to the recipient's Board of Directors. Confirm that the written report was provided to the recipient's Board of Directors and that it contains the elements required by LSC's Program Letter 22-3.

3. Suggested Audit Procedures - Substantive

- a. Review any leases, contracts, agreements, arrangements, understandings, or relationships that the recipient, its staff, or its board has entered into with entities (organizations or individuals) engaged in restricted activities to assess compliance with 45 C.F.R. § 1610.8 and LSC's Program Letter 22-3. These entities may include individual private practitioners, law firms, not-for-profit organizations, public interest groups, etc. The factors to consider in assessing compliance are set out in Program Letter 22-3.
- b. Sample transactions (payments/transfers) with entities (organizations or individuals) that are known to be involved in restricted/prohibited activities to determine that any such transactions comply with 45 C.F.R. Part 1610.
- c. Review the recipient's accounting system (chart of accounts, general ledger, etc.) to determine whether it provides for a separation of receipts and disbursements of LSC and non-LSC funds in accordance with 45 C.F.R. § 1610.9.
- d. Review the recipient's method of allocating expenses between LSC and non-LSC funds to determine whether it ensures that non-LSC funds, except as permitted by 45 C.F.R. Part 1610, are not used for prohibited activities as defined by 45 C.F.R. § 1610.4.
- e. Obtain the recipient's records of expenditures for non-LSC funds for restricted activities (as required in 45 C.F.R. § 1610.9(c)). Cross-reference records of expenditures of LSC funds for allowable activities to identify entities (organizations or individuals) that are known to be involved in restricted/prohibited activities.
- f. Interview appropriate personnel and review grant and contract agreements for non-LSC funds to determine whether activities that LSC restrictions permit to be undertaken with non-LSC funds (e.g., responding to requests of legislators or agency officials under Part 1612, payment of dues under Part 1630, etc.) may be undertaken with the non-LSC funds under review.

1611 FINANCIAL ELIGIBILITY

LSC Regulations

45 C.F.R. §§ 1611.3, 1611.4, 1611.5, 1611.6, 1611.8 and 1611.9

Compliance Requirements

The governing body of a recipient shall adopt policies for determining the financial eligibility of persons seeking legal assistance under the LSC Act. The governing body is to review these policies at least once every three years and make any necessary adjustments (45 C.F.R. § 1611.3(a)). Only individuals and groups determined to be financially eligible may receive legal assistance supported with LSC funds. (45 C.F.R. § 1611.3(b)).

Terminology

Definitions of key terms, such as assets, income, advice and counsel, brief services, and extended service, among other, are found at 45 C.F.R. § 1611.2.

Income Ceilings

Each recipient is required to establish a maximum annual income level for persons to be eligible to receive legal assistance under the LSC Act, which is not to exceed one hundred and 125% of the amounts specified in the current official Federal Poverty Income Guidelines (www.hrsa.gov), (45 C.F.R. § 1611.3(c)(1)). See the Appendix to 45 C.F.R. Part 1611 for LSC's current applicable income levels.

Consistent with the recipient's financial eligibility policies and Part 1611, the recipient may determine an applicant to be financially eligible for legal assistance if the applicant's assets do not exceed the recipient's applicable asset ceiling established consistent with § 1611.3(d)(1), or the applicable asset ceiling has been waived consistent with § 1611.3(d)(2), and the applicant's income is at or below the recipient's applicable annual income ceiling; or, the applicant's income exceeds the recipient's applicable annual income ceiling but one or more of the authorized exceptions to the annual income ceilings, as provided in § 1611.5, applies. Note: Asset ceilings are discussed below.

Moreover, consistent with the recipient's policies, a recipient may determine an applicant to be financially eligible without making an independent determination of income or assets, if the applicant's income is derived solely from a governmental program for low-income individuals or families, provided that the recipient's governing body has determined that the income standards of the governmental program are at or below 125% of the Federal Poverty Guidelines amounts and that the governmental program has eligibility standards which include an assets test.

Part D, Section 1611 Financial Eligibility

Consistent with the recipient's policies and Part 1611, a recipient may determine an applicant whose income exceeds the recipient's applicable annual income ceiling to be financially eligible if the applicant's assets do not exceed the recipient's applicable asset ceiling established consistent with § 1611.3(d), or the asset ceiling has been waived consistent with § 1611.3(d)(2), and:

- (1) The applicant is seeking legal assistance to maintain benefits provided by a governmental program for low-income individuals or families (45 C.F.R. § 1611.5(a)(1)), or
- (2) The recipient's Executive Director or his/her designee, has determined on the basis of documentation received by the recipient, that the applicant's income is primarily committed to medical or nursing home expenses and that, excluding such portion of the applicant's income which is committed to medical or nursing home expenses, the applicant would otherwise be financially eligible for service (45 C.F.R. § 1611.5(a)(2)), or
- (3) The applicant's income does not exceed 200% of the applicable Federal Poverty Guidelines amount and:
 - i. The applicant is seeking legal assistance to obtain governmental benefits for low-income individuals and families (45 C.F.R. § 1611.5(a)(3)(i)), or
 - ii. The applicant is seeking legal assistance to obtain or maintain governmental benefits for persons with disabilities (45 C.F.R. § 1611.5(a)(3)(ii)), or
- (4) The applicant's income does not exceed 200% of the applicable Federal Poverty Guidelines amount and the recipient has determined that the applicant should be considered financially eligible based on consideration of one or more of the following factors as applicable to the applicant or members of the applicant's household:
 - i. Current income prospects, taking into account seasonal variations in income,
 - ii. Unreimbursed medical expenses and medical insurance premiums,
 - iii. Fixed debts and obligations,
 - iv. Expenses such as dependent care, transportation, clothing and equipment expenses necessary for employment, job training, or educational activities in preparation for employment,
 - v. Non-medical expenses associated with age or disability,
 - vi. Current taxes, or

- vii. Other significant factors that the recipient has determined affect the applicant's ability to afford legal assistance. (45 C.F.R. § 1611.5(a)(4)).

The recipient must keep records of the number of over-income clients served and the factual basis for each such client when LSC funds are used. (45 C.F.R. § 1611.5(b)).

Asset Ceilings

A recipient's governing body must establish reasonable asset ceilings for individuals and households. These ceilings must take into account the assets of all persons who are resident members of an applicant's household but may exclude from consideration a household's principal residence; vehicles; assets used in producing income; and other assets that are exempt from attachment under State or Federal law. (45 CFR § 1611.3(d)(1)).

A recipient's asset ceilings must consider the cost of living in the service area and other relevant factors, including but not limited to:

- (1) The number of clients who can be served by the recipient,
 - (2) The population that would be eligible at or below alternative income and asset ceilings, and
 - (3) The availability and cost of legal services provided by the private bar and other free or low-cost legal services providers in the area.
- (45 C.F.R. § 1611.3(g)).

Recipient policies may allow the Executive Director or his/her designee to waive the asset ceiling for specific applicants under unusual circumstances. Recipients are required to record the reasons for waivers and maintain records as are necessary to inform LSC the reasons the waivers were made. (45 C.F.R. § 1611.3(d)(2)).

Group Eligibility

LSC funds may be used to provide legal assistance to a group, corporation, association or other entity if it provides information showing that it lacks and has no practical means of obtaining funds to retain private counsel, and either: (a) the group, or for a non-membership group the organizing or operating body, is primarily composed of individuals who would be financially eligible for LSC-funded legal assistance; or (b) the group has as a principal activity the delivery of services to individuals who would be financially eligible for LSC-funded legal assistance and the legal assistance sought relates to such activity. (45 C.F.R. § 1611.6(a)(1)(2)).

To make the requisite determination under § 1611.6(a)(1) a recipient must consider the resources available to the group, such as its income and income prospects, and assets and obligations. For a group primarily composed of individuals who would be

eligible for LSC- funded legal assistance, a recipient must consider whether the financial or other socioeconomic characteristics of the persons comprising the group are consistent with those of eligible persons (45 C.F.R. § 1611.6(b)(1)(i)).

For groups deemed eligible because they have as a principal activity the delivery of services to persons who would be financially eligible for LSC-funded legal services, recipients must determine whether the financial or other socioeconomic characteristics of those the group serves are consistent with those of eligible persons, and whether the assistance the group seeks relates to that principal activity. (45 C.F.R. § 1611.6(b)(1)(ii)).

Recipients must collect information that reasonably demonstrates that represented groups meet the foregoing eligibility criteria. (45 C.F.R. § 1611(b)(2)).

Other Requirements

The recipient must execute a retainer agreement with each client when extended service representation commences or as soon thereafter as is practicable. The agreement must include a statement identifying the legal problem for which representation was sought and the nature of the legal services to be provided. (45 C.F.R. § 1611.9(a)). The recipient must maintain copies of all retainer agreements executed in accordance with this section (45 C.F.R. § 1611.9(c)). No written retainer agreement is required when the recipient is only providing advice and counsel or brief service, or when legal services are being provided by a private attorney per the private attorney involvement provisions of 45 C.F.R. § 1614. (45 C.F.R. § 1611.9(b)).

Each recipient's financial eligibility policy must specify that in assessing the income or assets of an applicant who is a victim of domestic violence, the recipient will consider only the income and assets of the applicant and members of the applicant's household. Do not consider the income and assets of the alleged perpetrator of the domestic violence held solely by the alleged perpetrator or jointly held by the alleged perpetrator and the victim or by the alleged perpetrator and other members of the household. (45 C.F.R. § 1611.3(e)).

A recipient may adopt policies permitting financial eligibility to be established by reference to applicants' receipt of benefits from a government program for low-income individuals or families. Financial eligibility established in this manner does not require an independent determination of applicants' income or assets if the income standards of the applicable government program are at or below 125% of the Federal Poverty Guidelines and the program's eligibility standards include an asset test. (45 C.F.R. §§ 1611.3(f), 1611.4(c)).

Manner of Determining Financial Eligibility

Recipients are to make a reasonable inquiry about the sources of applicants' income, income prospects and assets. Recipients should have simple intake forms and procedures to determine financial eligibility to promote developing trust between the client and attorney. (45 C.F.R. § 1611.7(a),(b)).

If there is substantial reason to doubt the accuracy of an applicant's financial eligibility information, recipients shall make appropriate inquiry to verify the information, in a manner consistent with the attorney-client relationship. (45 C.F.R. § 1611.7(c)).

Once a recipient has determined that a client is financially eligible for service, it may request another recipient to extend legal assistance to the client in the same case or matter relying on the first recipient's eligibility determination. So long as the second recipient is provided with (and retains) a copy of the original recipient's intake documentation, the second recipient is not required to make an independent eligibility determination unless there has been a change in the client's status (as described in the next paragraph), or there is substantial reason to doubt the validity of the original eligibility determination. (45 C.F.R. § 1611.7(d)).

Change in Financial Eligibility Status

If, after determining a client is eligible to receive services, a recipient becomes aware that the client is ineligible, either because of later discovered or disclosed information about the client's financial circumstances or a lasting, substantive change in the client's financial position which would enable the client to afford private legal assistance, the recipient must discontinue representation of the client using LSC funds so long as doing so is not inconsistent with applicable rules of professional responsibility. (45 C.F.R. § 1611.8(a),(b)).

1. Audit Objectives

- a. Determine whether the recipient has implemented an intake system to ensure the financial eligibility of individual applicants in accordance with 45 C.F.R. Part 1611.
- b. Obtain evidence that recipients operate the intake system in accordance with 45 C.F.R. Part 1611.

2. Suggested Audit Procedures - Internal Control

- a. Obtain an understanding of the internal controls to ensure compliance with 45 C.F.R. § 1611. Review the recipient's policies and procedures, specifically those relating to compliance with 45 C.F.R. §§ 1611.3, 1611.4, 1611.5 and 1611.6, to ensure they conform to 45 C.F.R. Part 1611.

- b. Obtain an understanding of the recipient's electronic or paper-based client intake system and processes to determine how it ensures compliance with this regulation and that only financially eligible individuals are provided legal services. Document this assessment in the workpapers.
- c. Determine how the recipient ensures that the requirements of 45 CFR Part 1611 have been effectively communicated to staff and whether these requirements are followed by staff. Interview recipient staff about their knowledge of the possible existence of any activity prohibited by 45 CFR Part 1611. Follow up on any such alleged prohibited activity.
- d. Determine if the recipient has established a maximum annual income level, not more than 125% of the amount specified in the current Federal Poverty Income Guidelines, for persons to be eligible for legal assistance under the LSC Act.
- e. Review the recipient's eligibility guidelines to determine whether they incorporate the asset ceilings in 45 C.F.R. § 1611.3(d)(1).
- f. Review the recipient's policies and procedures for determination of group eligibility to determine whether they are consistent with 45 C.F.R. § 1611.6.
- g. Review board minutes and resolutions to determine whether the recipient's Board of Directors has adopted guidelines to determine the eligibility of persons seeking legal assistance under the LSC Act; whether these guidelines are consistent with 45 C.F.R. § 1611.3; and whether the Board has reviewed the eligibility guidelines on a triannual basis per 45 C.F.R. § 1611.3(a).

3. Suggested Audit Procedures - Substantive

- a. Determine whether intake and case acceptance policies and procedures ensure that the clients served with LSC funds are eligible in accordance with the requirements of 45 C.F.R. Part 1611.
 - i. Interview appropriate recipient staff responsible for the client intake process and eligibility determination,
 - ii. Perform tests to determine if the recipient's records/database include all clients receiving services during the audit period, and
 - iii. Select a sample of clients (intake records) receiving services and perform tests to determine whether the specific individuals were eligible in accordance with the eligibility requirements. (This step can be performed in conjunction with the review of the sampled case files.)
- b. Review recipient records for the number of clients whose income exceeded 125% of the poverty line and were authorized to be served with LSC funds, and the

factual basis for each such authorization per 45 C.F.R. § 1611.5(b). 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 regulation's authorized exceptions.

- c. Review recipient records to determine the number of clients whose assets exceeded the applicable ceiling and who were authorized to be served by the recipient with LSC funds, as well as the factual basis for each such authorization per 45 C.F.R. § 1611.3(d)(2). Review a sample of files of these clients to determine whether the factual basis for each authorization was documented and is consistent with the regulation's authorized exceptions.
- d. Determine whether the recipient routinely executes a retainer agreement for each client when extended service representation commences.
- e. In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with this regulation. This review shall determine adherence to the prescribed system. This review shall include the following components:
 - i. Examine case files for eligibility forms and signed retainer agreements,
 - ii. Review eligibility determinations to assess whether the client's reported income level was within the maximum income levels established by the recipient,
 - iii. If the client's reported income exceeds the recipient's income ceiling, determine whether the assistance provided the client was supported by non-LSC funds (45 C.F.R. § 1611.5(a)),
 - iv. If LSC funds were used and the client's gross income exceeded the maximum income level, but did not exceed 200% of the poverty line, establish that the recipient decided to waive the eligibility requirements on the basis of one or more factors set forth in 45 C.F.R. § 1611.5(a); *or* the client was seeking legal assistance to obtain or maintain benefits provided by a governmental program for the poor; *or* the Executive Director determined, on the basis of documentation provided by the client, that the client's income was primarily committed to medical or nursing home expenses and the client would be financially eligible if only the portion of the client's income not devoted to such expenses were considered (45 C.F.R. § 1611.5(a)(1),(2)); *or* the recipient determined the client was eligible based on the factors set forth in 45 CFR § 1611.5(a)(3) or (4).

Recipients must document the basis for its financial eligibility determinations under § 1611.5 and maintain sufficient records to inform the Corporation of the specific facts and factors relied upon in making the determinations. (45 C.F.R. § 1611.5(b)).

1612 RESTRICTIONS ON LOBBYING AND CERTAIN OTHER ACTIVITIES

LSC Regulations

45 C.F.R. §§ 1612.2, 1612.3, 1612.4, 1612.5, 1612.6, 1612.7, 1612.8, 1612.9, 1612.10, 1612.11

Compliance Requirements

With certain exceptions noted below, recipients are not to attempt to influence:

- (1) the passage or defeat of any legislation or constitutional amendment,
- (2) any initiative, referendum or similar measure 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, and
- (5) the issuance, amendment, or revocation of any executive order.

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)-(5) above. (45 C.F.R. § 1612.3).

Recipients may not engage in any grassroots lobbying activity as defined in 45 C.F.R. § 1612.2(a)(1). (45 C.F.R. § 1612.4).

Recipients and their employees may use non-LSC funds to respond to a written request from a governmental agency or official, elected official, legislative body, committee, or member thereof made to the employee, or to a recipient to:

- (1) testify orally or in writing,
- (2) provide information which may include analysis of, or comments upon existing or proposed rules, regulations or legislation, or drafts of proposed rules, regulations or legislation, or
- (3) participate in negotiated rulemaking under the Negotiated Rulemaking Act of 1990, 5 U.S.C. § 561, *et seq.*, or comparable State or local laws. (45 C.F.R. § 1612.6(a)).

Communications made in response to such requests may be distributed only to a party who made the request or to other persons or entities only to the extent that such distribution is required to comply with the request. (45 C.F.R. § 1612.6(b)). Recipient employees are prohibited from soliciting or arranging requests for testimony or for the provision of information in connection with legislation or rulemaking. (45 C.F.R. § 1612.6(c)).

Recipients may use non-LSC funds to: (1) provide oral or written comment to an agency and its staff in a public rulemaking proceeding; or (2) 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 the recipient. (45 C.F.R. §§ 1612.6(e), 1612.6(f)).

No person shall, during working hours, while providing legal assistance or representation to the recipient's clients or while using recipient resources provided by the Corporation or by private entities, 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 C.F.R. § 1612.7).

A recipient may not support or conduct training programs that:

- (1) advocate particular public policies,
- (2) encourage or facilitate political activities, labor or anti-labor activities, boycotts, picketing, strikes or demonstrations, or the development of strategies to influence legislation or rulemaking,
- (3) disseminate information about such policies or activities, or
- (4) train participants to engage in activities prohibited by the LSC Act, other applicable law, or Corporation regulations, guidelines, or instructions.

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 client's legal rights. (45 C.F.R. § 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 C.F.R. § 1612.9(a)). This provision does not apply to organizations composed exclusively of eligible clients formed for the purpose of advising a legal services program about the delivery of legal services. (45 C.F.R. § 1612.9(b)). Recipients may provide legal assistance to eligible clients who desire to set up organizations, such as by preparing articles of incorporation and bylaws. (45 C.F.R. § 1612.9(c)).

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 C.F.R. § 1612.5(b)).

The following requirements apply to legislative and rulemaking activities under 45 C.F.R. 1612.6:

- (1) Recipients must maintain copies of all written requests received by the recipient and written responses made in response thereto and make such requests and written responses available to monitors and other representatives of the Corporation upon request,
- (2) No funds made available by the Corporation shall be used to pay for administrative overhead or related costs associated with any activity listed in § 1612.6,
- (3) Recipients must maintain separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities permitted by § 1612.6, and
- (4) Recipients must submit semi-annual reports describing their legislative activities with non-LSC funds conducted pursuant to § 1612.6, together with supporting documentation as specified by the Corporation.
(45 C.F.R. §§ 1612.6(d), 1612.10(a), 1612.10(b), 1612.10(c)).

Recipients must have written policies and procedures to guide their staff in complying with Part 1612. (45 C.F.R. § 1612.11). LSC has collected guidance about both lobbying and political activities. The guidance can be found at <https://www.lsc.gov/about-lsc/laws-regulations-and-guidance/lsc-regulations/lobbying-and-political-activities>.

1. Audit Objectives

- a. Determine whether the recipient has implemented written policies and procedures to prevent and detect employees from engaging in prohibited activities, described in 45 C.F.R. Part 1612.
- b. Determine that the recipient effectively monitors for prohibited activities, in accordance with 45 C.F.R. Part 1612.

2. Suggested Audit Procedures - Internal Control

- a. Obtain an understanding of the internal controls to ensure compliance with the requirements of 45 C.F.R. Part 1612. Review the recipient's policies and procedures to ensure they conform to the requirements of 45 C.F.R. Part 1612. Determine that recipient's policies and procedures ensure that the recipient does not undertake an activity in violation of 45 C.F.R. Part 1612.
- b. Determine how the recipient ensures that the policies and procedures for the requirements of 45 C.F.R. Part 1612 are effectively communicated to staff and that these procedures are followed by the staff. Interview recipient staff about their knowledge of the possible existence of any activity that may fall under the requirements of this regulation. Follow up on all such possible occurrences.
- c. Determine whether the mandatory recordkeeping requirements in this regulation are in place in accordance with the LSC Recordkeeping Requirements Memorandum. Document this assessment in the workpapers.

3. Suggested Audit Procedures - Substantive

- a. Inspect written requests from a governmental agency or official, elected official, legislative body, committee, or member thereof made to an employee, or to a recipient, along with any written responses. Determine compliance with 45 C.F.R. § 1612.6.
- b. Inspect the list maintained by the recipient of any registered lobbyists employed by the recipient. Discuss with these individuals all lobbying activities undertaken by them to ensure compliance with 45 C.F.R. Part 1612.
- c. Verify whether the recipient maintains separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities permitted by 45 C.F.R. § 1612.6.
- d. Test expenditures for allowability under Part 1612. Evaluate supporting documentation and cost allocation methods for adequate recordkeeping and accuracy of the amounts reported.

- e. Review the recipient's semi-annual reports together with supporting documentation and determine whether the reported activities comply with the regulation. (LSC provided a sample report form with the LSC Recordkeeping Requirements Memorandum.)
- f. Review a sample of permissible activities conducted by the recipient using any LSC funds (45 C.F.R. § 1612.5) and those using non-LSC funds (45 C.F.R. § 1612.6), including the recordkeeping system in place, to determine compliance with these provisions. Auditors should review the documentation required by 45 C.F.R. § 1612.10(b) for permitted activities with non-LSC funds. Note that in accordance with § 1612.10(b), recipients shall maintain separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities permitted by § 1612.6.
- g. In assessing compliance with 45 C.F.R. § 1612.4, interview appropriate staff about whether the recipient engaged in any grassroots lobbying. Follow up on any such activities identified by staff.
- h. Interview appropriate staff to determine whether:
 - i. 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 activities described in 45 C.F.R. § 1612.7. Follow up on any such activities identified by staff.
 - ii. The recipient conducted or supported training for staff attorneys and paralegals that is prohibited by 45 C.F.R. § 1612.8. Follow up on any prohibited training activities identified by staff.
 - iii. The recipient undertook organizing activities in violation of 45 C.F.R. § 1612.9. Follow up on any such activities identified by staff.

1613 RESTRICTIONS ON LEGAL ASSISTANCE WITH RESPECT TO CRIMINAL PROCEEDINGS

LSC Regulations

45 C.F.R. §§ 1613.3, 1613.4, 1613.5

Compliance Requirements

LSC funds shall not be used to provide legal assistance with respect to a criminal proceeding unless authorized by Part 1613. (45 C.F.R. § 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 of equal applicability to all attorneys in the jurisdiction, if authorized by the recipient after a determination that acceptance of the appointment would not impair the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters; 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 C.F.R. § 1613.4).

Recipients are permitted to use LSC funds to provide legal assistance to a person charged with a criminal offense in an Indian tribal court who is otherwise eligible. Legal assistance may be provided in a criminal proceeding in an Indian tribal court pursuant to a court appointment only if the appointment is made under a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction and is authorized by the recipient after a determination that acceptance of the appointment would not impair the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters. (45 C.F.R. § 1613.5).

Recipients are permitted to use public funds when authorized by the grantor for criminal representation and are permitted to use funds for criminal representation provided under a separately funded public defender program or project. They are also permitted to undertake court appointments in criminal cases and to use non-LSC funds for such representation. (45 C.F.R. § 1610.6).

1. Audit Objectives

- a. Determine whether the recipient has implemented written policies and procedures to prevent and detect the expenditure of LSC funds to provide legal assistance with respect to criminal proceedings.
- b. Obtain evidence that the recipient effectively monitors the expenditures of LSC funds, in accordance with Part 1613.

2. Suggested Audit Procedures - Internal Control

- a. Obtain an understanding of the internal controls to ensure compliance with 45 C.F.R. Part 1613. Review the recipient's policies and practices to determine if they conform to 45 C.F.R. Part 1613.
- b. 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 about their knowledge of the possible existence of any representation of a client that may be prohibited by this regulation. Follow up on all such possible occurrences.

3. Suggested Audit Procedures - Substantive

- a. In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with this regulation. Document this assessment in the workpapers.

1614 PRIVATE ATTORNEY INVOLVEMENT (PAI)

LSC Regulations

45 C.F.R. §§ 1614.1, 1614.3, 1614.4, 1614.5 and 1614.6

Compliance Requirements

Recipients of LSC funding are required to devote an amount of LSC and/or non-LSC funds equal to at least 12.5% of their annualized LSC basic field award to promoting the involvement of private attorneys, law students, law graduates, or other professionals to provide legal information and legal assistance to eligible clients. The 12.5% calculation may include non-LSC fund expenditures but cannot include donated services. The recipient is to demonstrate compliance with Part 1614 by using financial systems and procedures and maintaining supporting documentation to identify and account separately for PAI costs.

Activities undertaken by the recipient to meet the requirements of Part 1614 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, modified pro bono plans which provide for the payment of nominal fees by eligible clients and/or organized referral systems. Payment of attorneys' fees through revolving litigation fund systems (defined in 45 C.F.R. § 1614.8) are prohibited. (45 C.F.R. § 1614.4(a)(1)).

Activities undertaken by the recipient to meet the requirements of Part 1614 may also include, but are not limited to:

- (1) Support provided by private attorneys to the recipient or a subrecipient as part of its delivery of legal assistance or legal information to eligible clients on either a reduced fee or pro bono basis,
- (2) Support provided by other professionals in the areas of their professional expertise to the recipient as part of its delivery of legal information or legal assistance on either a reduced fee or pro bono basis,
- (3) Support provided by the recipient in furtherance of activities undertaken pursuant to Part 1614, such as training, technical assistance, research, advice and counsel, or the use of the recipient's facilities, libraries, computer assisted legal research systems or other resources,
- (4) Support provided to bar associations or courts establishing legal clinics at which private attorneys will provide legal information and/or legal assistance,
- (5) PAI clinics – support for legal information clinics, regardless of whether the clinic screens for eligibility, if the clinic provides only legal information, and for legal assistance clinics if the clinic screens for eligibility,

- (6) Screening and referral systems if the recipient can report the number of eligible persons referred by the recipient to each program and the number of eligible persons placed with a private attorney through the program receiving the referral, and
- (7) Law student activities supporting the recipient's provision of legal information or delivery of legal assistance to eligible clients but may not include compensation paid by the recipient to the law student. (45 C.F.R. § 1614.4(b) – this section also includes specific examples of the types of activities that fall within the range of permissible activities.) Section 1614.4(b)(5) includes specific information on the permissible allocation of cost associated with PAI clinics to the PAI requirement.

The specific methods to be undertaken by a recipient to involve private attorneys in the provision of legal assistance to eligible clients are to be determined by the recipients considering the following factors:

- (1) The priorities established pursuant to Part 1620,
- (2) The effective and economic delivery of legal assistance and legal information to eligible clients,
- (3) Linguistic and cultural barriers to effective advocacy,
- (4) Actual or potential conflicts of interest between specific participating attorneys, law students, law graduates, or other professionals and individual eligible clients, and
- (5) The substantive and practical expertise, skills, and willingness to undertake new or unique areas of the law of participating attorneys and other professionals. (45 C.F.R. § 1614.4(c)(5)).

Systems designed to provide direct services to eligible clients by private attorneys on either a pro bono or reduced fee basis must 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 that provide back-up on substantive and procedural issues of the law. (45 C.F.R. § 1614.4(a)(3)).

A recipient may allocate to its PAI requirement costs associated with compensation paid to its employees only for facilitating the involvement of private attorneys, law students, law graduates, or other professionals in activities under this part. A recipient may not allocate to its PAI requirement costs associated with compensation paid to a private attorney, law student, law graduate or other professional for any hours above 800 hours per calendar year. No costs may be allocated to the PAI requirement for direct payment to any individual who for any portion of the current year or previous year was employed more than 1,000 hours per calendar year by an LSC Recipient or subrecipient. (45 C.F.R. § 1614.5).

The recipient shall develop a plan and budget to meet the requirements of this regulation which shall be included in the refunding application or initial grant application. (45 C.F.R. § 1614.6(a)). The recipient must:

- (1) Consult with significant segments of the client community, private attorneys, and bar associations in the recipient's service area when developing its annual PAI plan,
- (2) Document that each year its proposed annual plan has been presented to all local bar associations within the recipient's service area, and
- (3) Summarize the local bar associations' responses to the plan. (45 C.F.R. § 1614.6(b)).

1. Audit Objectives

- a. Determine whether the recipient has implemented written policies and procedures to budget and track PAI spending to meet the requirements of Part 1614.
- b. Obtain evidence that the recipient's financial system effectively and accurately tracks each applicable category of PAI spending as defined in Part 1614.

2. Suggested Audit Procedures – Internal Control

- a. Obtain an understanding of the internal controls to ensure compliance with 45 C.F.R. Part 1614. Review the recipient's policies and procedures to determine if they conform to 45 C.F.R. Part 1614. Obtain an understanding of the policies and procedures to determine whether costs allocated to PAI meet the requirements of 45 C.F.R. § 1614.7, fiscal recordkeeping.

3. Suggested Audit Procedures – Substantive

- a. Review the accounting systems and procedures used to identify and account separately for PAI costs to determine their consistency with 45 C.F.R. § 1614.7. Verify that any applicable supplementary schedules to the audited financial statements reflect proper separate PAI expense reporting.
- b. Review PAI expense records. Assess whether the recipient has satisfied the 12.5% requirement for PAI expenditures and determine that donated services are not included in the calculation.
- c. Review and test support for PAI allocations to determine whether the recipient has met all applicable recordkeeping requirements.
- d. Determine compliance with 45 C.F.R. § 1614.4 by reviewing the recipient's PAI activities and interviewing intake staff (or other appropriate staff, such as the PAI coordinator) about the referral process to private attorneys.
- e. Obtain the recipient's list of private attorneys, law students, law graduates and other professionals who have received compensation for cases during the review period. Contact a sample of these individuals to confirm that the compensated cases were allowable under the LSC Act, regulations, and other applicable law.

1615 RESTRICTIONS ON ACTIONS COLLATERALLY ATTACKING CRIMINAL CONVICTIONS

LSC Regulations

45 C.F.R. §§ 1615.2 and 1615.3

Compliance Requirements

LSC funds may 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 the 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 C.F.R. § 1615.2).

This regulation does not prohibit legal assistance: (a) to challenge a conviction resulting from a criminal proceeding in which the defendant received representation from a recipient pursuant to LSC regulations; or (b) pursuant to a court appointment made under a statute, court rule, or practice of equal applicability to all attorneys in the jurisdiction, so long as it is 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 C.F.R. § 1615.3).

Also see the discussion of 45 C.F.R. Part 1610 regarding the permissible uses of non-LSC funds.

1. Audit Objectives

- a. Determine whether the recipient has implemented written policies and procedures to communicate to its staff when LSC funds cannot be used to provide legal assistance in cases attacking a criminal conviction.
- b. Obtain evidence that the recipient's case files support compliance with the requirements of Part 1615.

2. Suggested Audit Procedures - Internal Control

- a. Obtain an understanding of the internal controls to ensure compliance with 45 C.F.R. Part 1615. Review the recipient's policies and practices to ensure they conform to 45 C.F.R. Part 1615.
- b. Determine how the recipient ensures that the restrictions are effectively communicated to staff and whether these procedures are followed in practice by staff. Interview recipient staff about their knowledge of the possible existence of any representation of a client that may be prohibited by this regulation. Follow up

on all such possible occurrences.

3. Suggested Audit Procedures - Substantive

- a. In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with this regulation. Document this assessment in the workpapers.

1617 CLASS ACTIONS

LSC Regulations

45 C.F.R. §§ 1617.2, 1617.3, 1617.4

Compliance Requirements

Recipients are prohibited from using any funds to initiate or participate in any class action at any stage, other than:

- (1) individual representation of a client seeking to obtain the benefit of relief ordered by the court,
- (2) representation of individual clients seeking to opt out from a class, or
- (3) non-adversarial activities including efforts to remain informed about, to explain, clarify, educate, or advise others about the terms of an order granting relief.

A class action is any lawsuit filed pursuant to Rule 23 of the Federal Rules of Civil Procedure or comparable State statute or rule of civil procedure applicable in the court in which the action is filed. (45 C.F.R. §§ 1617.2, 1617.3).

Recipients must have written policies and procedures to guide their staff in ensuring compliance with this rule. (45 C.F.R. § 1617.4).

1. Audit Objectives

- a. Determine that the recipient has implemented written policies and procedures to communicate to its staff that it is not appropriate to use LSC funds to initiate or support class actions.
- b. Obtain evidence that recipient's case files support compliance with the requirements of Part 1617.

2. Suggested Audit Procedures - Internal Control

- a. Obtain an understanding of the internal controls for compliance with 45 C.F.R. Part 1617. Obtain an understanding of the recipient's written policies and procedures for compliance with 45 C.F.R. Part 1617 and determine whether such policies and procedures are consistent with the provisions of the regulation.
- b. Determine how the recipient ensures that the policies and procedures for 45 C.F.R. Part 1617 are effectively communicated to staff and whether these requirements are followed in practice by staff. Interview recipient staff about their knowledge of the possible existence of any activity falling under the prohibition. Follow up on all

such possible occurrences.

- c. Confirm that the mandatory recordkeeping requirements impacting this regulation are in place in accordance with the LSC Recordkeeping Requirements Memorandum. Document this assessment in the workpapers.

3. Suggested Audit Procedures - Substantive

- a. Obtain the list of class action cases (required to be maintained by the LSC Recordkeeping Requirements Memorandum) in which the recipient or recipient's attorney is attorney of record and is involved in non-adversarial activities. This list should contain the case name; the court; and the status of the case, including a description of the non-adversarial activities. Verify, by physical inspection of the respective case file, that each case contained on the list complies with Part 1617.
- b. Review time-keeping records for any time spent during the audit period on cases identified as class actions. Follow up to determine compliance with the regulation.
- c. In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with this regulation. Document this assessment in the workpapers.

1620 PRIORITIES IN USE OF RESOURCES

LSC Regulations

45 C.F.R. §§ 1620.3, 1620.4, 1620.5, 1620.6, 1620.7

Compliance Requirements

The recipient's governing body must adopt procedures for establishing priorities for the use of its LSC and non-LSC resources and must adopt a written statement of priorities that determines the cases and matters which may be undertaken by the recipient (45 C.F.R. § 1620.3(a)). The terms "cases" and "matters" are defined in 45 C.F.R. § 1620.2. The recipient's governing body must have adopted written policies and procedures for undertaking emergency cases or matters (as defined in § 1620.4) that are not within the recipient's priorities. (45 C.F.R. § 1620.4).

All staff who handle cases or matters, or make decisions about case acceptance, must have signed 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 that falls outside of the recipient's priorities; and (c) will not undertake any case or matter for the recipient that is not a priority or an emergency. (45 C.F.R. § 1620.6).

The recipient must periodically set priorities and its governing body must review the priorities annually or more frequently if the recipient has accepted a significant number of emergency cases. (45 C.F.R. § 1620.5(a)). Pursuant to the 1996 Act, the LSC Board of Directors promulgated a list of suggested priorities that recipient boards may use in setting priorities. The list of priorities can be found at <https://lsc-live.app.box.com/s/n2ttf6irr1cic00u1urmyj0qgv3o7xz>. 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 C.F.R. §§ 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 used to ensure effective client participation in priority-setting; and any changes in priorities. (45 C.F.R. § 1620.7(c)).

1. Audit Objectives

- a. Determine whether the recipient has implemented written policies and procedures to prioritize resources, in accordance with Part 1620.
- b. Obtain evidence that the recipient's case files support the recipient's priorities as

outlined in the written plan, and evidence compliance with Part 1620.

2. Suggested Audit Procedures - Internal Control

- a. Review activity of the recipient's governing body to determine if it has adopted written procedures for establishing priorities in the use of recipient LSC and non-LSC resources and whether it has adopted a written statement of priorities that determines the cases and matters to be undertaken by the recipient.
- b. Review activity of the recipient's governing body to determine if it has adopted written policies and procedures for undertaking emergency cases or matters not within the recipient's established priorities pursuant to 45 C.F.R. § 1620.4.
- c. Review the minutes of board meetings to 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 its service area.)
- d. 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 recipient staff responsible for the client intake process about 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 C.F.R. § 1620.6. This agreement must indicate that the signatory:
 - i. Has read and is familiar with the priorities of the recipient,
 - ii. Has read and is familiar with the definition of an emergency situation and the procedures for dealing with an emergency that have been adopted by the recipient, and
 - iii. Will not undertake any case or matter for the recipient that is not a priority or an emergency.
- e. Confirm that the mandatory recordkeeping requirements impacting this regulation are in place in accordance with the LSC Recordkeeping Requirements Memorandum. Document this assessment in the workpapers.
- f. Assess compliance with Sections 1620.7(a) and (b).
 - i. Review board minutes or written documents indicating that quarterly reports were sent or presented to the recipient's governing body on all emergency cases or matters undertaken that were not within the recipient's priorities.

- ii. Review board minutes or written documents indicating the quarterly reports included a rationale for undertaking each such case or matter and copies of any written documents accompanying the reports.
- iii. Review the Annual Report of Non- Priority Cases that includes information on all emergency cases or matters undertaken that were not within the recipient's priorities.
- iv. Obtain an understanding of how the recipient gathers and processes this information for purposes of completing this annual report. Document this understanding in the work papers.

3. Suggested Audit Procedures - Substantive

- a. In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with this regulation. Determine whether the subject matter of the case files falls within the written priorities of the recipient. Document this assessment in the workpapers.
- b. Review a sample of program activities falling within the category of "matters" to determine whether the activity falls within the recipient's written priorities.
- c. Review the annual report to determine if it contains the provisions required by 45 C.F.R. § 1620.7(c).

1626 RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS

LSC Regulations

45 C.F.R. §§ 1626.2, 1626.3, 1626.4, 1626.5, 1626.7, 1626.8, 1626.9, 1626.10, 1626.11, and 1626.12

Compliance Requirements

Subject to certain exceptions discussed below, recipients may not provide legal assistance for or on behalf of an ineligible alien. For purposes of this part, legal assistance does not include normal intake and referral services. (45 C.F.R. § 1626.3). Alien status and eligibility are defined at 45 C.F.R. § 1626.5. Aliens eligible for assistance under anti-abuse laws are set out at 45 C.F.R. § 1626.4. For more information on the categories of aliens who may be eligible to receive representation from recipients, and examples of the documents acceptable as evidence of eligibility, IPAs should consult the LSC Program Letter 99-3⁷ and Program Letter 14-2⁸ and its accompanying chart⁹.

Except when the only service provided is brief advice and consultation by telephone or other non-in-person means, a citizen seeking representation must attest in writing in an LSC-approved form to the fact of their United States citizenship. (45 C.F.R. § 1626.6(a)). Verification of citizenship shall not be required unless a recipient has reason to doubt that a person is a United States citizen. Factors such as accent, limited English-speaking ability, appearance, race, or national origin may not be considered as a reason to doubt citizenship. (45 C.F.R. § 1626.6(b)).

When a recipient has reason to doubt that an applicant is a citizen it must obtain verification of citizenship by obtaining originals, certified copies, or photocopies of the applicant's United States passport; birth certificate; naturalization certificate; United States Citizenship Identification Card (Form I-197); a baptismal certificate showing a place of birth within the United States and date of baptism within two months of birth; or any other "authoritative document" such as a document issued by the Department of Homeland Security, a court, or another governmental agency that provides evidence of citizenship. (45 C.F.R. § 1626.6(b)(1),(2)).

An applicant who is unable to produce such documents may verify his or her citizenship by submitting a notarized statement by a third party who can produce proof of that party's own United States citizenship, that the person seeking legal assistance is a United States citizen. The third party shall not be an employee of the recipient. (45 C.F.R. § 1626.6(b)(3)).

Except when the only service provided is brief advice and consultation by telephone or other non-in-person means, an alien seeking representation must submit

⁷ Program Letter 99-3: <https://lsc-live.box.com/s/pzn39ku1wk0gxn2aheaa6thep5gow0a6>

⁸ Program Letter 14-2: <https://lsc-live.box.com/s/o9c83ubl47nco7sfygfuzk0s9od9r8tk>

⁹ Program Letter 14-2 (chart): <https://lsc-live.box.com/s/t7fojzqusmglhveth0wz4uio096j76f>

appropriate documents to verify eligibility. In an emergency, legal services may be provided prior to compliance with all the requirements of § 1614.4, § 1626.6 and § 1626.7 if the requirements of § 1626.8 are met.

If an eligible alien client becomes ineligible due to changed circumstances, continued representation is prohibited, and the recipient must discontinue representation consistent with applicable rules of professional responsibility. (45 C.F.R. § 1626.9).

Exceptions to Citizenship Requirement

The prohibitions contained in Part 1626 are not applicable to recipients providing services in the Commonwealth of the Northern Mariana Islands; the Republic of Palau; the Federated States of Micronesia; or the Republic of the Marshall Islands (45 C.F.R. § 1626.10(a)(1)). Also, citizens of the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands residing in the United States are not considered aliens for purposes of Part 1626 (45 C.F.R. § 1626.10(a)(2)). Nor are Canadian-born American Indians "at least 50% Indian by blood" and members of the Texas Band of Kickapoo Indians if they are otherwise eligible under the Act. (45 C.F.R. § 1626.10(b), (c)).

Aliens who qualify as special agricultural workers and whose status is adjusted to that of a temporary resident alien under the Immigration Reform and Control Act (IRCA) may be provided legal assistance after their application for adjustment of status has been filed (so long as the application has not been rejected) but they are ineligible for assistance in obtaining adjustment of status to that of temporary resident under IRCA. (45 C.F.R. § 1626.10(d)).

A recipient may provide legal assistance to otherwise eligible foreign nationals who seek assistance pursuant to the Hague Convention on the Civil Aspects of International Child Abduction and its implementing statute, the International Child Abduction Remedies Act, 42 U.S.C. §§ 11601 - 11610. (45 C.F.R. § 1626.10(e)).

Nonimmigrant agricultural workers admitted to, or permitted to remain in, the United States under the provisions of 8 U.S.C. § 1101(a)(15)(h)(ii)(a), commonly called H-2A agricultural workers, and nonimmigrant forestry workers admitted to, or permitted to remain in, the U.S. under the provisions of 8 U.S.C. § 1101(a)(15)(h)(ii)(b), commonly called H-2B forestry workers, may be provided legal assistance regarding wages; housing; transportation; and other employment rights as provided in the specific contracts under which such workers have been admitted. (45 C.F.R. § 1626.11).

Recipients must adopt written policies and procedures to guide their staff in complying with Part 1626 and maintain records sufficient to document their compliance. (45 C.F.R. § 1626.12).

1. Audit Objectives

- a. Determine whether the recipient has implemented policies and procedures to accurately determine citizenship and immigration status eligibility, in accordance with Part 1626.
- b. Obtain evidence that recipient case files comply with Part 1626.

2. Suggested Audit Procedures - Internal Control

- a. Obtain an understanding of the internal controls to comply with the requirements of 45 C.F.R. Part 1626. Obtain an understanding of the written policies, procedures, and recordkeeping for compliance with the requirements of 45 C.F.R. Part 1626 and determine whether the recipient's written policies and procedures are consistent with the regulation's provisions.
- b. Determine how the recipient ensures that the policies and procedures for the requirements of 45 C.F.R. Part 1626 are effectively communicated to staff and whether these procedures are followed in practice by staff. Interview recipient staff about their knowledge of the possible existence of any activity falling under the restrictions. Follow up on all such possible occurrences.
- c. Confirm that the mandatory recordkeeping requirements of this regulation are in place in accordance with the LSC Recordkeeping Requirements Memorandum. Document this assessment in the workpapers.

3. Suggested Audit Procedures - Substantive

- a. In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, inspect the citizenship attestation statement signed by the client (or, if applicable, the recipient's documentation supporting a determination of eligible alien status) contained in the case file to determine compliance with 45 C.F.R. § 1626.6. Document this assessment in the workpapers.
- b. Where compliance with §§ 1626.6 or 1626.7 is delayed because of emergency circumstances under § 1626.8, the recordkeeping requirements of the LSC Recordkeeping Requirements Memorandum mandate that the recipient include in the client's file written documentation detailing the nature of the emergency.

1627 SUBGRANTS

LSC Regulations

45 C.F.R. §§ 1627.2, 1627.3, 1627.4, 1627.5, 1627.6

Compliance Requirements

The recipient must make case-by-case determinations whether each agreement that it makes with another entity constitutes a subgrant or procurement contract. The terms “subgrant” and “procurement contract” are defined in 45 C.F.R. § 1627.2. In determining whether an agreement between a recipient and another entity should be considered a subgrant or procurement contract, the substance of the relationship is more important than the form of the agreement. 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 LSC requirements specified in the LSC grant award, and
 - (5) Uses LSC funds, or property or services acquired in whole in part with LSC funds to carry out a program for a public purpose specified in LSC's governing statues and regulations as opposed to providing goods or services for the benefit of the recipient.
- (45 C.F.R. § 1627.3).

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 or when the actual cost to the recipient of the subgranted property or service or the fair market value of the subgranted property exceeds \$20,000 of LSC funds. If a recipient needs to make substantial changes to the scope or objectives of a subgrant or increase or decrease the amount of funding of more than 10% of an approved subgrant, the recipient must obtain LSC's prior written approval. The recipient also must obtain LSC's prior written approval if the recipient proposes a change that would cause a subgrant not originally requiring prior approval to exceed the prior approval threshold. Minor changes in scope or objectives or changes of less than 10% require only that LSC be notified in writing. (45 C.F.R. § 1627.4).

For Basic Field grants, a subgrant may not be for a period longer than one year. Unexpended funds at the end of the subgrant period will be considered part of the recipient's available LSC funds. For special purpose 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 special grant funds must be returned to LSC at the end of the subgrant period. (45 C.F.R. § 1627.4(c)).

Recipients must ensure that subrecipients comply with LSC's financial and audit requirements, including those for the proper expenditure of, accounting for, and audit of funds, property, or services acquired in whole or in part with LSC funds received through the subgrant. (45 C.F.R. § 1627.4(e)). The requirements of this part apply to all subgrants by one recipient to another recipient. (45 C.F.R. § 1627.6(a)).

The prohibitions and requirements of 45 C.F.R. Part 1610 apply both to the subgrant and the subrecipient's non-LSC funds, except as modified by 45 C.F.R. § 1627.5(b) (priorities), (c) (recordkeeping), and (d) (PAI subgrants). 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. The subrecipient must maintain records for each case that show the amount of time spent on any case handled by the subrecipient and the activity conducted by date and unique client name or identifier, and either the recipient or the subrecipient must maintain records for each case that show the problem type and the closing code for the case. (45 C.F.R. § 1627.5(c)).

Recipients must have written policies and procedures to guide their staff in complying with this Part and shall maintain records sufficient to document the recipient's compliance with Part 1627. (45 C.F.R. § 1627.7).

1. Audit Objectives

- a. Determine whether the recipient has implemented policies and procedures to establish requirements for subgrantee(s) are compliant with Part 1627.
- b. Determine whether the recipient's relationship(s) or arrangements with subrecipient(s) comply with 45 C.F.R. Part 1627.

2. Suggested Audit Procedures - Internal Control

- a. Obtain an understanding of the internal controls for compliance with the requirements of 45 C.F.R. Part 1627. Obtain an understanding of the written policies, procedures, and recordkeeping for ensuring compliance with this regulation and to determine that subrecipients comply with the LSC Act, regulations, grant agreements and subgrant agreements.
- b. Obtain the recipient's agreements, communications, and records of financial transactions with subrecipients to evidence compliance with Part 1627.

3. Suggested Audit Procedures - Substantive

- a. Identify all subgrants using LSC funds of \$20,000 or greater and determine if the subrecipient requested and LSC gave prior written approval for the subgrant(s). (45 C.F.R. § 1627.4 (a)(1)). This requirement also applies to in-kind subgrants. If either the actual cost to the recipient of the subgranted property or service or the fair market value of the subgranted property or service exceeds \$20,000 of LSC funds, the recipient must seek written approval from LSC prior to making a subgrant.
- b. Discuss subrecipient oversight, whether cash or in-kind, with the recipient's staff to gain an understanding of the scope of these activities, including the number, size, and complexity of awards to subrecipients.
- c. Review the recipient's documentation of subrecipient oversight to determine if the recipient ensured that subrecipients used LSC funds or property/equipment for authorized purposes and in accordance with subgrant agreements.
- d. Determine whether LSC funds transferred to organizations or private attorneys comply with the requirements of 45 C.F.R. Part 1627.
- e. Verify whether LSC funds received by the recipient from another recipient were properly accounted for in accordance with 45 C.F.R. § 1627.6.

1628 RECIPIENT FUND BALANCES

LSC Regulations

45 C.F.R. §§ 1628.1, 1628.2, 1628.3, 1628.4, and 1628.5

Compliance Requirements

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

Without prior LSC approval, a recipient may not retain a fund balance in excess of 10% of "LSC support". For these purposes, LSC support is the amount of Basic Field Grant funding awarded by LSC for a fiscal year. It also includes any LSC derivative income, as defined in § 1630.2(b), 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. (45 C.F.R. § 1628.2(b)).

Recipients may request a waiver to retain a fund balance in excess of 10% of LSC support pursuant to 45 C.F.R. § 1628.3. Absent a waiver, recipients must repay a fund balance in excess of 10% of LSC support. If a waiver of the 10% ceiling is granted, recipients must repay any fund balance in excess of the amount permitted to be retained. (45 C.F.R. § 1628.3).

One-time and special purpose grants awarded by LSC are not subject to the fund balance policy set forth in this part. Revenue and expenses relating to such grants shall be reported separately in the audit report submitted to the LSC. This may be done by establishing a separate fund or by providing a separate supplemental schedule of revenue and expenses for such grants as a part of the audit report. No funds provided under a one-time or special purpose grant may be expended after the expiration date of the grant without the prior written approval of the LSC. Absent approval from the LSC, all unexpended funds under such grants shall be returned to the LSC. (45 C.F.R. § 1628.3(g)).

Program Letter 20-4¹⁰ directs recipients to report in their financial statements the unexpended LSC Basic Field Grant award amount(s) per Basic Field Grant award type (i.e., General, Agricultural Worker, Native American) and grant year. This may be done in the Supplemental Statement of LSC Grant Activity or a note to the financial statements. Recipients must disclose the balance(s) of deferred revenue, even if the balance of the fund is zero.

1. Audit Objectives

- a. Determine whether the recipient has implemented policies and procedures to

¹⁰ Program Letter 20-4: <https://www.lsc.gov/node/3338>

accurately account for the balances in LSC funds, in accordance with Part 1628.

- b. Determine whether fund balances are within the requirements of Part 1628 and all derivative income has been appropriately allocated.

2. Suggested Audit Procedures – Internal Control

- a. Obtain an understanding of the internal controls in place to determine if the recipient's fund balance and excess fund balance complies with 45 C.F.R. Part 1628.

3. Suggested Audit Procedures - Substantive

- a. Calculate the recipient's **prior year-end LSC fund balance** (Recipients have 30 days after submitting their audited financial statements to request a fund balance waiver. LSC will not process fund balance waiver requests without the audited financial statements). Determine whether the amount exceeded 10% of its LSC support. If so, determine whether the recipient requested and received a waiver for the 10% ceiling or, if no waiver was received, repaid LSC the fund balance amount in excess of 10%. (45 C.F.R. § 1628.3).
- b. Determine whether excess fund balance amounts approved by LSC for carryover were expended in accordance with the waiver granted.
- c. Determine whether the prior year excess fund balance amount approved for expenditure is separately reported in the current year audited financial statements.
- d. Determine that LSC one-time and special purpose grants have been accounted for separately as required by 45 C.F.R. § 1628.3(g). Test expenditures associated with LSC one-time grants and evaluate whether the expenditures were consistent with the purpose for which the funds were granted.
- e. Determine that no funds provided under a one-time or special purpose grant were expended after the expiration date of the grant without the prior written approval of LSC. If approval was not obtained, determine if all unexpended funds under such grants were returned to LSC.
- f. Verify that derivative income has been properly allocated to the LSC fund as support. (Derivative income is income earned by a recipient from LSC-supported activities during the term of an LSC grant or contract, and includes, but is not limited to, income from fees or services (including attorney fee awards and reimbursed costs), sales and rentals of real or personal property, and interest earned on LSC grant or contract advances (as defined in 45 C.F.R. § 1630.2 (b)).

Part D, Section 1628 Recipient Fund Balances

- g. Verify that the recipient's excess fund balance for the period under audit is calculated in accordance with 45 C.F.R. Part 1628 and includes LSC derivative income defined in § 1630.2(b).

1629 BONDING REQUIREMENTS FOR RECIPIENTS

LSC Regulations

45 C.F.R. §§ 1629.1, 1629.2, 1629.3, 1629.4, 1629.5, 1629.6, and 1629.7

Compliance Requirements

A recipient must supply fidelity bond coverage for all employees, officers, directors, agents, and volunteers. If a recipient uses a third party for payroll, billing, or collection services, the recipient must either supply coverage covering the third party or ensure that the third party has a fidelity bond or similar insurance coverage. A recipient with subgrants must (1) extend its fidelity bond coverage to supply identical coverage to the subrecipient and the subrecipient's directors, officers, employees, agents, and volunteers to the extent required to comply with Part 1628; or (2) The subrecipient must supply proof of its own fidelity bond coverage that meets the requirements of Part 1628 for the subrecipient's directors, officers, employees, agents, and volunteers. (45 C.F.R. § 1629.3).

A recipient may use any form of bond, such as individual, name schedule, position schedule, blanket, or any combination of such forms of bonds, if the type or combination of bonds secured adequately protects LSC funds. A recipient may use similar forms of insurance that essentially fulfill the same purpose as a fidelity bond. (45 C.F.R. § 1629.4).

The bond must provide recovery for loss caused by such acts as fraud, dishonesty, larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wrongful conversion, willful misapplication, or any other fraudulent or dishonest act committed by an employee, officer, director, agent, or volunteer. (45 C.F.R. § 1629.5).

A recipient must carry fidelity bond coverage or similar coverage at a minimum level of at least 10% of its annualized funding level for the previous fiscal year. If a recipient is a new recipient, the coverage must be at a minimum level of at least 10% of the initial grant. Recipients must not carry coverage under this part at a level less than \$100,000. (45 C.F.R. § 1629.6).

Part 1629 provides the following definition of annualized funding level: the amount of (1) Basic Field Grant funds (including Agricultural Worker and Native American) and (2) Special grants of LSC funds, including Technology Initiative Grants, Pro Bono Innovation Fund grants, and emergency relief grants, awarded by LSC to the recipient for the fiscal year included in the recipient's annual audited financial statements. (45 C.F.R. § 1629.2).

Costs of bonding required by this part are allowable if expended consistent with 45 C.F.R. Part 1630. Costs of bonding such as rates, deductibles, single loss retention, and premiums, are allowable as an indirect cost if such bonding is in accordance with sound business practice and is reasonable. (45 C.F.R. § 1629.7).

1. Audit Objectives

- a. Obtain evidence that recipients are bonded or have similar insurance coverage "to indemnify them against losses resulting from fraudulent or dishonest acts committed by one or more employees, officers, directors, agents, volunteers, and third-party contractors who handle LSC funds." (45 C.F.R. § 1629.1).

2. Audit Procedures - Internal Control

- a. Obtain an understanding of the internal controls for compliance with the requirements of 45 C.F.R. Part 1629. Obtain an understanding of the policies, procedures, and practices in place to ensure that fidelity bond coverage (or similar insurance) is current for all employees, officers, directors, agents, volunteers, and if applicable for third party providers, at the minimum amounts.

3. Suggested Audit Procedures - Substantive

- a. Confirm that the recipient supplied evidence of fidelity bond coverage (or similar insurance) for all employees, officers, directors, agents, and volunteers at the minimum amounts in effect for the period under audit.
- b. Confirm that the recipient supplied evidence of fidelity bond coverage for third-party service providers and subrecipients at the minimum amounts in effect for the period under audit, if applicable.
- c. Recalculate the rate of fidelity bond coverage to the annualized funding level, as defined in 45 C.F.R. § 1629.2 to determine whether the 10% and \$100,000 minimum is met.
- d. Test a sample of bonding cost transactions for conformance with the standards governing allowability of costs under 45 C.F.R. § 1629.7 by determining whether the costs are allowable as an indirect cost as such bonding is in accordance with sound business practice and is reasonable.

1630 COST STANDARDS AND PROCEDURES

LSC Regulations

45 C.F.R. 1630

Compliance Requirements

The LSC Act, the annual appropriations acts, and the Corporation's rules, regulations, and guidelines, including the *LSC Financial Guide* (effective January 1, 2023), establish the relevant cost principles for testing compliance under this Compliance Supplement. This regulation is intended to provide uniform standards for allowability of costs.

The standards governing allowability of costs under LSC grants or contracts are in 45 C.F.R. § 1630.5. Expenditures by a recipient are allowable under the recipient's grant or contract only if the recipient can demonstrate that the cost was:

- (1) Actually incurred in the performance of the grant or contract and the recipient was liable for payment,
- (2) Reasonable and necessary for the performance of the grant or contract as approved by LSC (refer to 45 C.F.R. § 1630.5 (b) for more information on determining whether a cost is reasonable),
- (3) Allocable to the grant or contract,
- (4) In compliance with the Act, applicable appropriations law, Corporation rules, regulations, guidelines, and instructions, the *LSC Financial Guide* (effective January 1, 2023), the terms and conditions of the grant or contract, and other applicable law,
- (5) Consistent with accounting policies and procedures that apply uniformly to both LSC funded and non-LSC funded activities,
- (6) Accorded consistent treatment over time,
- (7) Determined in accordance with generally accepted accounting principles, and
- (8) Adequately and contemporaneously documented in business records accessible to organizations authorized to conduct audits of recipients.

(45 C.F.R. § 1630.5(a)).

A cost is allocable to a particular cost objective, such as a grant, project, service, or other activity, in accordance with the relative benefits received. Costs may be allocated

to LSC funds either as direct or indirect costs in accordance with § 1630.5(c). A cost is allocable to an LSC grant or contract if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:

- (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 C.F.R. § 1630.5(c)).

Without LSC's prior written approval, a recipient may not spend more than \$25,000 of LSC funds on any of the following:

- (1) A single purchase or single lease of personal property,
- (2) A single contract for services,
- (3) A single combined purchase or lease of personal property and contract for services, and
- (4) Capital improvements.

Without LSC's prior written approval, a recipient may not spend LSC funds on a purchase of real estate.
(45 C.F.R. § 1630.6).

LSC funds may not be used to pay membership fees or dues to any private or nonprofit organization, whether on behalf of the recipient or an individual. A recipient may use LSC funds to pay membership fees or dues mandated by a governmental organization to engage in a profession. Payment of other membership fees or dues may be paid with non-LSC funds. (45 C.F.R. § 1630.7).

Any contributions or gifts of LSC funds to another organization or to an individual are prohibited. (45 C.F.R. § 1630.8).

Derivative income¹¹ resulting from an activity supported in whole or in part with LSC funds must be allocated to the fund in which the recipient's LSC grant is recorded in the same proportion that the amount of LSC funds expended bears to the total amount expended by the recipient to support the activity. (45 C.F.R. § 1630.17(a)). Derivative

¹¹ For the purposes of this supplement, derivative income means income earned by a recipient from LSC-supported activities during the term of an LSC grant or contract, and includes, but is not limited to, income from fees for services (including attorney fee awards and reimbursed costs), sales and rentals of real or personal property, and interest earned on LSC grant or contract advances (45 CFR § 1630.2).

income which is allocated to the LSC fund in accordance with § 1630.17(a) is subject to the requirements of this Part 1630. (45 C.F.R. § 1630.17(b)).

No costs may be charged to non-LSC funds in violation of 45 C.F.R. § 1610.3 or § 1610.4. (45 C.F.R. § 1630.16(a)).

1. Audit Objectives

- a. Determine whether the recipient has implemented policies and procedures to prevent and detect costs which do not meet the criteria established in Part 1630.
- b. Test recipient transactions to determine that costs are allowable under Part 1630.
- c. Test recipient transactions to determine whether the recipient is properly allocating costs and income in compliance with Part 1630.

2. Suggested Audit Procedures - Internal Control

- a. Obtain an understanding of the internal controls to ensure compliance with the requirements of 45 C.F.R. Part 1630. Obtain an understanding of the policies, procedures, and practices to ensure that costs charged to the LSC grant, and activities undertaken with non-LSC funds, are allowable per the LSC Act and regulations. Review the recipient's policies and procedures to ensure they conform to the requirements of 45 C.F.R. Part 1630 as follows:
 - i. Standards governing allowability of costs under LSC grants or contracts. (45 C.F.R. § 1630.5),
 - ii. Prior approval. (45 C.F.R. § 1630.6),
 - iii. Membership fees or dues. (45 C.F.R. § 1630.7),
 - iv. Contributions. (45 C.F.R. § 1630.8),
 - v. Recipient policies, procedures, and recordkeeping. (45 C.F.R. § 1630.10),
 - vi. Applicability to non-LSC funds. (45 C.F.R. § 1630.16), and
 - vii. Applicability to derivative income. (45 C.F.R. § 1630.17)

Determine how the recipient ensures that the requirements of 45 C.F.R. Part 1630 have been effectively communicated to staff and whether these requirements are followed by staff.

3. Suggested Audit Procedures - Substantive

- a. Test a sample of transactions for compliance with the allowability of costs

standards under §§ 1630.5 and 1630.6 by determining whether the costs:

- i. Were approved by LSC (if prior approval was required),
 - ii. Conform to the allowability of costs provisions under the applicable cost principles or limitations in the LSC grant award, LSC regulations or LSC statutory provisions,
 - iii. Represent charges for actual costs, not budgeted or projected amounts,
 - iv. Have been given consistent accounting treatment within and between accounting periods,
 - v. Have been calculated in conformity with generally accepted accounting principles, and
 - vi. Are supported by appropriate documentation (such as approved purchase orders, receiving reports, vendor invoices, canceled checks, and time records) and correctly charged as to account, amount, and period.
- b. Determine whether LSC funds were used to pay dues or contributions in violation of 45 C.F.R. § 1630.7 by testing expenditures made with LSC funds.
 - c. Confirm that a documented cost allocation system is in place in accordance with this regulation. Make sure the cost allocation system accurately accounts for the expenditure of funds and document your assessment.
 - d. Confirm the recipient obtained LSC prior approval for the use of \$25,000 or more of LSC funds for: (1) single purchases or single leases of personal property; (2) a single contract for services; (3) a single combined purchase or lease of personal property and contract for services; and (4) capital improvements as well as any expenditure of LSC funds on a purchase of real estate. (45 C.F.R. § 1630.6(b)).
 - e. Verify that derivative income resulting from an activity supported with LSC funds is allocated to the fund in which the recipient's LSC grant is recorded in the same proportion as the amount of LSC funds expended bears to the total amount expended by the recipient to support the activity. (45 C.F.R. § 1630.17(a)).

1631 PURCHASING AND PROPERTY MANAGEMENT

LSC Regulations

45 C.F.R. § 1631; *LSC Financial Guide* (effective January 1, 2023).

Compliance Requirements

This regulation sets standards for purchasing, leasing, using, and disposing of LSC-funded personal property and real estate and using LSC funds to contract for services. (45 C.F.R. § 1631.1).

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

- (1) A statement of need,
- (2) A copy of the recipient's procurement policy, and
- (3) Documentation showing that the recipient followed its procurement policies and procedures in soliciting, reviewing, and approving the expenditure.
(45 C.F.R. § 1631.8).

A recipient may use more than \$25,000 of LSC funds to purchase personal property or award a contract for services without seeking LSC's prior approval if the purchase or contract is necessary to:

- (1) Avoid imminent harm to the recipient's personnel, physical facilities, or systems,
- (2) Remediate or mitigate damage to the recipient's personnel, physical facilities or systems,
- (3) Avoid disruption to the recipient's client-service delivery system, or
- (4) Respond to a natural disaster.

The recipient must provide LSC with a description of the exigent circumstances within 30 days after the circumstances necessitating the purchase or contract have ended.
(45 C.F.R. § 1631.3).

Recipients must have written policies and procedures to guide their staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part. (45 C.F.R. § 1631.5).

Recipients must have written procurement policies and procedures that:

- (1) Identify competition thresholds that establish the basis for the level of competition required at each threshold,
 - (2) Establish the grounds for non-competitive purchases,
 - (3) Establish the level of documentation necessary to justify procurements.
 - (4) Establish internal controls that provided for segregation of duties in the procurement process and identify which employees have the authority to make purchases for the recipient and identify procedures for approving purchases,
 - (5) Establish procedures to ensure quality and cost control in purchasing, and
 - (6) Establish procedures for identifying and preventing conflicts of interest in the purchasing process.
- (45 C.F.R. § 1631.7).

Before a recipient may purchase real estate with LSC funds, LSC must approve the purchase as required by 45 C.F.R. §§ 1630.6 and 1631.3. The request for approval must be in writing and contain elements outlined in 45 C.F.R. § 1631.14 (b).

A recipient must obtain LSC's prior written approval before using more than \$25,000 LSC funds to make capital improvements to real estate. (45 C.F.R. § 1631.15).

A recipient must maintain an accounting of the amount of LSC funds for the purchase or maintenance of real estate purchased with LSC funds. The accounting must include the amount of LSC funds used to pay for acquisition costs, financing, and capital improvements. The recipient must provide the accounting for each year to LSC no later than April 30 of the following year or in its annual audited financial statements submitted to LSC. (45 C.F.R. § 1631.19).

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

- (1) The proposed method of disposition,
- (2) Documentation showing the fair market value of the property at the time of transfer or sale,
- (3) A description of the recipient's process for advertising the property for sale and receiving offers, and

- (4) An accounting of all LSC funds used in the acquisition and any capital improvements of the property.

The accounting must include the amount of LSC funds used to pay for acquisition costs, financing, and capital improvements; and information on the proposed transferee or buyer of the property and a document evidencing the terms of transfer or sale. (45 C.F.R. § 1631.20 (c)).

During the term of an LSC grant or contract, a recipient may retain and use income from any sale of real estate purchased with LSC funds according to 45 C.F.R. § 1630.17 and 45 C.F.R. § 1628.3. The recipient must account for income earned from the sale, rent, or lease of real or personal property purchased with LSC funds according to the requirements of 45 C.F.R. 1630.17. (45 C.F.R. § 1631.21).

The recipient must maintain a property management system for its LSC-funded activities that is adequate to meet the standards the *LSC Financial Guide* (effective January 1, 2023).

1. Audit Objectives

- a. Determine whether the recipient has implemented policies and procedures addressing the purchase, lease, use and disposal of LSC-funded personal and real property, in accordance with Part 1631.
- b. Determine whether the recipient has implemented policies and procedures addressing contracting for services with LSC funds, in accordance with Part 1631.
- c. Test acquisitions of assets, leases, new contracts for services, and disposals of personal and real property for compliance with Part 1631.

2. Suggested Audit Procedures - Internal Control

- a. Obtain an understanding of the internal controls to ensure compliance with 45 C.F.R. Part 1631. Obtain an understanding of the written policies, procedures, and recordkeeping to ensure compliance with the requirements of 45 C.F.R. Part 1631 and verify that the recipient's written policies and procedures are consistent with the provisions of the regulation.
- b. Review the recipient's written procurement policies and procedures to ensure they contain policies and procedures that:
 - i. identify competition thresholds that establish the basis for the level of competition required at each threshold,
 - ii. establish the grounds for non-competitive purchases,

- iii. establish the level of documentation necessary to justify procurements,
- iv. establish internal controls that provided for segregation of duties in the procurement process and identify which employees have the authority to make purchases for the recipient and identify procedures for approving purchases,
- v. establish procedures to ensure quality and cost control in purchasing; and
- vi. establish procedures for identifying and preventing conflicts of interest in the purchasing process as outlined in 45 C.F.R. § 1631.7.

3. Suggested Audit Procedures - Substantive

- a. Determine the amount of property dispositions for the audit period and verify that dispositions were properly classified between property acquired with LSC funds and property otherwise acquired.
- b. Review whether any capital improvements, purchases or leases of personal property, and contracts for services using more than \$25,000 of LSC funds have documented requests for LSC approval and that approval has been granted as required by 45 C.F.R. §§ 1630.6 and 1631.3.
- c. Review for any purchases of real estate. Determine whether LSC approval was sought and obtained per 45 C.F.R. § 1631.14 (b).
- d. Determine whether the recipient maintains an accounting of the amount of LSC funds relating to the purchase or maintenance of real estate (if any) purchased with LSC funds. Determine whether the accounting includes the amount of LSC funds used to pay for acquisition costs, financing, and capital improvements. Also determine whether the recipient provided the accounting to LSC no later than April 30 of the following year or in its audited financial statements.
- e. Determine whether there have been disposals of real estate purchased with LSC funds. If so, determine whether LSC approval was sought and granted.
- f. Determine whether the recipient accounts for income earned from the sale, rent, or lease of real or personal property purchased with LSC funds according to the requirements of 45 C.F.R. § 1630.17.
- g. Determine whether the recipient maintains proper records for and adequately safeguards property:
 - i. Obtain an understanding of the recipient's policies and procedures for property management and determine if they are in accordance with the requirements of 45 C.F.R. Part 1631 and the *LSC Financial Guide* (effective

January 1, 2023),

- ii. Select a sample of property transactions and test for compliance with 45 C.F.R. Part 1631 and the *LSC Financial Guide* (effective January 1, 2023),
- iii. Inquire whether a physical inventory of property purchased with LSC funds has been taken within the past two (2) years and, if applicable, test whether any differences between the physical inventory and property records were resolved (*LSC Financial Guide* (effective January 1, 2023)). An inventory is required at least every two years even if the assets purchased with LSC funds are fully depreciated,
- iv. Identify property acquired with LSC funds during the audit period and trace selected purchases to the property records. Verify that the property records contain the following information about the property: description, including model and serial number or other identification number; source of funds used for acquisition; inventory control number; acquisition date and cost; location; useful life; and, if applicable, date of disposal and sales price,
- v. Select a sample of property acquired with LSC funds and physically inspect the property. Determine whether it is appropriately safeguarded, and
- vi. Verify that the financial statements include the value of LSC-funded vs. non-LSC funded property and equipment, including accumulated depreciation. (*LSC Financial Guide* (effective January 1, 2023)).

1632 REDISTRICTING

LSC Regulations

45 C.F.R. §§ 1632.2, 1632.3, 1632.4

Compliance Requirements

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. This does not prohibit any litigation brought by a recipient under the Voting Rights Act of 1965, as amended, 52 U.S.C. § 10101 et seq., provided such litigation does not involve redistricting. (45 C.F.R. §§ 1632.2, 1632.3).

Recipients must have written policies to implement the requirements of Part 1632 (45 C.F.R. § 1632.4).

1. Audit Objectives

- a. Determine whether the recipient has implemented policies and procedures to communicate to its employees and monitor case files for the prohibition on redistricting activities, in accordance with Part 1632.
- b. Obtain evidence from the recipient's case files and employees to determine whether any recipient activities violated the prohibition on redistricting activities, as defined in Part 1632.

2. Suggested Audit Procedures - Internal Control

- a. Obtain an understanding of the internal controls for compliance with the requirements of 45 C.F.R. Part 1632. Obtain an understanding of the written policies to comply with the requirements of 45 C.F.R. Part 1632 and determine whether the recipient's policies are consistent with the provisions of the regulation.
- b. Determine how the recipient ensures that the policies for the requirements of 45 C.F.R. Part 1632 have been effectively communicated to staff. Interview recipient staff about their knowledge of the possible existence of any activity falling under this regulation's restrictions. Follow up on all such possible occurrences.

3. Suggested Audit Procedures - Substantive

- a. In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with this regulation. Document this assessment in the workpapers.

1633 RESTRICTION ON REPRESENTATION IN CERTAIN EVICTION PROCEEDINGS

LSC Regulations

45 C.F.R. §§ 1633.2, 1633.3, 1633.4

Compliance Requirements

Recipients may not defend any person in a proceeding to evict that person from a public housing project if: (a) the person has been charged with or convicted of the illegal sale, distribution, or manufacture of a controlled substance, or possession of a controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. § 802)) with the intent to sell or distribute; and (b) the eviction proceeding is brought by a public housing agency on the basis that the illegal drug activity for which the person has been charged or for which the person has been convicted threatens the health or safety of other tenants residing in the public housing project or employees of the public housing agency. (45 C.F.R. §§ 1633.2, 1633.3).

Recipients must have written policies and procedures to guide their staff in complying with this Part and shall maintain records sufficient to document the recipient's compliance with Part 1633. (45 C.F.R. § 1633.4).

Audit Objectives

- a. Determine whether the recipient has implemented policies and procedures to accurately screen applicants for charges or convictions related to drug sales, distribution or manufacture, or possession with intent to sell or distribute illegal drugs, in accordance with Part 1633.
- b. Obtain recipient eviction proceeding case files to determine whether the recipient screened the applicant for drug charges or convictions and documented the determination, in accordance with Part 1633.

2. Suggested Audit Procedures – Internal Control

- a. Obtain an understanding of the internal controls in place for compliance with the requirements of 45 C.F.R. Part 1633. Obtain an understanding of the written policies, procedures, and recordkeeping for this regulation and verify that the recipient's written policies and procedures are consistent with the provisions of this regulation.
- b. Determine how the recipient ensures that the written policies and procedures are effectively communicated to staff and whether staff follows them in practice. Interview recipient staff about their knowledge of the possible existence of any activity falling under the prohibition of this regulation. Follow up on all such possible

occurrences.

- c. Confirm that the mandatory recordkeeping requirements for this regulation are in place in accordance with the LSC Recordkeeping Requirements Memorandum. Adequately document this assessment in the workpapers.

3. Suggested Audit Procedures – Substantive

- a. Obtain the list maintained by the recipient of all cases which involve an eviction from public housing where there is an allegation of drug sale, distribution or manufacture, or possession with intent to sell or distribute. Verify, by physical inspection of the respective case file, that each case contained on the list complies with Part 1633. Note that in each client's case file, the recipient shall maintain documentation which demonstrates why the representation is permissible. LSC provided a sample form to be included in each case file involving these issues. The sample form is attached to the LSC Recordkeeping Requirements Memorandum.
- b. In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with this regulation. Document this assessment in the workpapers.

1635 TIMEKEEPING REQUIREMENT

LSC Regulations

45 C.F.R. §§ 1635.1, 1635.2, 1635.3, 1635.4, and 1635.5

Compliance Requirements

All recipients of LSC funds are required to account for the time spent on all cases, matters, and supporting activities by their attorneys, paralegals, and other recipient employees who perform work as a direct cost, whether funded by LSC or by other sources.

The terms *case*, *matter*, and *supporting activity* are defined in 45 C.F.R. § 1635.2.

Any attorney, paralegal, or other recipient employee who performs work that is charged to one or more awards as a direct cost (as defined in 45 C.F.R. § 1630.5(d)) must keep time according to the standards set forth in § 1635.4. (45 C.F.R. § 1635.3).

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

- (1) Be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated,
- (2) Be incorporated into the recipient's official records by no later than the end of the employee's pay period, generally every two weeks,
- (3) Reflect the total activity for which the recipient compensates the employee,
- (4) Encompass within the recipient's case management system both LSC-funded, and all other direct cost activities compensated by the recipient, but may include the use of subsidiary records as defined in the recipient's written policies,
- (5) Comply with the recipient's established accounting policies and practices,
- (6) Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one award or an indirect cost activity and a direct cost activity,
- (7) Contain (i) For cases, a unique client name or case number, the amount of time spent on the case, a description of the activities performed, and the dates on which a recipient employee worked on the case; (ii) For matters or supporting activities, the amount of time and type of activity on which a recipient employee spent time and sufficient information to link the activity to a specific award or indirect cost amount. (For example, if a recipient employee conducts a legal

information session on filing a pro se divorce petition, the employee could record "pro se divorce group information session, 1.5 hours."). (45 C.F.R. § 1635.4(a)).

In accordance with Department of Labor regulations implementing the Fair Labor Standards Act (29 C.F.R. Part 516), charges for the salaries and wages of nonexempt employees, in addition to the supporting documentation described in this section, must also be supported by records indicating the total number of hours worked each day. (45 C.F.R. § 1635.4(b)).

Salaries and wages of employees used in meeting cost sharing or matching requirements of Federal awards must be supported in the same manner as salaries and wages claimed for reimbursement from Federal awards. (45 C.F.R. § 1635.4(c)).

Recipients may establish the increments of time for which employees must record their activities (e.g., 0.25 hours, one-sixth of an hour). LSC recommends that recipients require employees to record their time in increments no greater than one quarter of an hour. (45 C.F.R. § 1635.4(d)).

Any recipient employee subject to this part who works part-time for the recipient and part-time for an organization that engages in restricted activities shall certify in writing that the employee has not engaged in restricted activity during any time for which the employee was compensated by the recipient or has not used recipient resources to carry out restricted activities. (45 C.F.R. § 1635.4(e)(1)). LSC developed a certification form for this purpose¹².

The certification requirement does not apply to a *de minimis* action related to a restricted activity. Actions consistent with the *de minimis* standard are those that meet all or most of the following criteria: Actions that are of little substance; require little time; are not initiated by the part-time employee; and, for the most part, are unavoidable. Employees shall make the required certification on a quarterly basis using a form determined by LSC. (45 C.F.R. § 1635.4(e)(2)).

The required timekeeping records are to be made available for examination by auditors and representatives of LSC, and by any other person statutorily entitled access to them. (45 C.F.R. § 1635.5)).

1. Audit Objectives

- a. Determine whether allocations of direct costs to a recipient's LSC grant pursuant to 45 C.F.R. Part 1630 are supported by accurate records of the cases, matters, and supporting activities for which the funds have been expended. (45 C.F.R. § 1635.1).

¹² <https://lsc-live.app.box.com/s/xs961oc7i71rsv3nij9z5r5fy6u7vhgk>

2. Audit Procedures - Internal Control

- a. Obtain an understanding of the recipient's timekeeping process for compliance with the timekeeping requirements of this regulation. Interview both the Executive Director and the individual responsible for maintaining and tracking the timekeeping system.
- b. Obtain an understanding of how the recipient has revised its timekeeping policies to comply with the revisions to Part 1635, including:
 - i. Recording of time by all recipient employees who charge time as a direct cost to one or more awards,
 - ii. Recording time to reflect the total activity for which the recipient compensates the employee,
 - iii. Supporting the distribution of the employee's salary or wages among activities or cost objectives if the employee works on more than one award or an indirect cost activity and a direct cost activity,
 - iv. Incorporating the reporting of time into the recipient's official records by no later than the end of the recipient's established pay period,
 - v. Determine that the recipient's case management system encompasses both LSC-funded and all other direct cost activities compensated by the recipient. The system may include the use of subsidiary records as defined in the recipient's written policies,
 - vi. Complying with the recipient's established policies and procedures,
 - vii. Complying with the recipient's minimum increment for reporting time,
 - viii. Appropriate recording of case oversight time to awards, and
 - ix. Supporting salaries and wages of employees used in meeting cost sharing or matching requirements of Federal awards in the same manner as salaries and wages claimed for reimbursement from Federal awards.
- c. Confirm that the recipient has made any certifications required by § 1635.4(e) and review the certifications to determine whether the requirements of § 1635.4(e) have been met.
- d. Determine how the recipient ensures that the timekeeping and certification requirements are effectively communicated to staff and whether these requirements are followed in practice by staff. Review the recipient's policies and procedures to ensure they conform to the requirements of 45 C.F.R. Part 1635.

Interview recipient staff concerning the possible existence of any activity inconsistent with 45 C.F.R. Part 1635 and follow up on any such possible activity.

3. Audit Procedures - Substantive

- a. Review a sample of management's and staff's timesheets to assess compliance with the program's policy and this regulation. Select a minimum sample size of 20 timesheets.

1636 CLIENT IDENTITY AND STATEMENT OF FACTS

LSC Regulations

45 C.F.R. §§ 1636.2, 1636.3, 1636.5

Compliance Requirements

When an LSC recipient files a complaint in a court of law or otherwise initiates or participates in litigation against a defendant or engages in pre-complaint settlement negotiations, the recipient must identify the plaintiff it represents to the defendant. A recipient must prepare a dated written statement (in English and, if necessary, in another language which the plaintiff understands) signed by each plaintiff, enumerating the particular facts known to the plaintiff supporting the complaint. The recipient must identify each plaintiff by name in any complaint filed (or in a separate notice provided to the defendant against whom the complaint is filed where disclosure in the complaint would be contrary to law or court rules or practice) and identify each plaintiff it represents to prospective defendants in pre-litigation settlement negotiations, unless a court of competent jurisdiction has entered an order protecting the client from such disclosure based on a finding, after notice and an opportunity for a hearing on the matter, of probable, serious harm to the plaintiff if the disclosure is not prevented. (45 C.F.R. § 1636.2).

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 C.F.R. § 1636.2(c)).

Written statements of fact prepared in accordance with Part 1636 are to be kept on file by the recipient. (45 C.F.R. § 1636.3(a)). These may be kept in each client's file or in a central file, in accordance with the recipient's own system of recordkeeping.

These requirements apply to cases for which the recipient compensates private attorneys as well as those cases initiated by recipient staff. (45 C.F.R. § 1636.4).

Recipients must have written policies and procedures to guide their staff in complying with this Part and shall maintain records sufficient to document the recipient's compliance with Part 1636. (45 C.F.R. § 1636.5).

1. Audit Objectives

- a. Determine whether the recipient has implemented policies and procedures to document the identity of clients and statements of fact, in accordance with Part 1636.

- b. Obtain recipient case files to obtain evidence of documented client identity and statements of fact, in accordance with Part 1636.

2. Suggested Audit Procedures - Internal Control

- a. Obtain an understanding of the internal controls for compliance with the requirements of 45 C.F.R. Part 1636. Obtain an understanding of the written policies, procedures, and recordkeeping to ensure compliance with the requirements of this regulation. Determine whether the recipient's written policies, procedures and recordkeeping are consistent with the provisions of this regulation.
- b. Determine how the recipient ensures that the written policies and procedures for the requirements of 45 C.F.R. Part 1636 are effectively communicated to staff and whether these procedures are followed in practice by staff. Interview recipient staff about their knowledge of the possible existence of any cases where the recipient failed to follow the requirements of this regulation. Follow up on all such possible occurrences.
- c. Confirm that the record-keeping requirements required by this regulation are in place in accordance with the LSC Recordkeeping Requirements Memorandum. Document this assessment in the workpapers.

3. Suggested Audit Procedures - Substantive

- a. In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, inspect cases filed in court to determine whether a written statement of fact (prepared in accordance with this Part) was obtained by the recipient prior to filing the lawsuit. Document this assessment in the workpapers. Note that in each case where the recipient:
 - i. Files a complaint in a court of law or otherwise initiates or participates in litigation against a defendant, but does not identify the plaintiff(s) by name in the complaint or in a separate notice to the defendant against whom the complaint is filed, or
 - ii. Participates in pre-litigation settlement negotiations, but such identification was not made in accordance with the requirements of 45 C.F.R. § 1636.2(a)(1). If preparation and/or signing of the statement of facts is delayed because of an emergency, the recipient also shall maintain in the case file a statement of the nature of the emergency, as required by Program Letter 97-2¹³, Recordkeeping Requirements.

1637 REPRESENTATION OF PRISONERS

LSC Regulations

¹³ Program Letter 97-2: <https://www.lsc.gov/node/3198>

45 C.F.R. §§ 1637.2, 1637.3, 1637.4, 1637.5

Compliance Requirements

Recipients may not participate in any civil litigation on behalf of a person incarcerated in a Federal, State, or local prison (45 C.F.R. § 1637.3) or participate on behalf of such an incarcerated person in any administrative proceeding challenging the conditions of incarceration. (45 C.F.R. § 1637.3). "Incarcerated" means the involuntary physical restraint of a person who has been arrested for or convicted of a crime; "Federal, State or local prison" means any penal facility maintained under government authority. (45 C.F.R. 1637.2). The specification of penal facility is meant to exclude any non-penal detention facility, such as a juvenile¹⁴ or mental health facility¹⁵, even one housing the criminally insane, from the definition and, consequently, to allow civil litigation on behalf of persons physically restrained in a mental health facility.

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 C.F.R. § 1637.4).

Recipients must have written policies and procedures to guide their staff in complying with Part 1637 and shall maintain records sufficient to document the recipient's compliance with Part 1637. (45 C.F.R. § 1637.5).

Representation that does not include litigation or does not challenge the conditions of incarceration is not prohibited. Examples of permissible activities for incarcerated persons include (Program Letter 15-5¹⁶):

- (1) Expunging criminal records,
- (2) Correcting inaccurate criminal records,
- (3) Reinstating revoked or suspended driver's licenses,
- (4) Modifying child support orders,
- (5) Securing health insurance for individuals soon to be released from prison,
- (6) Administrative proceedings that do not challenge the conditions of that person's incarceration, such as those involving veterans' benefits, Social Security or Supplemental Security Income benefits, or overpayment collections, and

¹⁴ <https://www.govinfo.gov/content/pkg/FR-1997-04-21/pdf/97-10032.pdf>

¹⁵ <https://www.govinfo.gov/content/pkg/FR-1997-04-21/pdf/97-10032.pdf>

¹⁶ Program Letter 15-5: <https://lsc-live.box.com/s/vy5c95msg5e2vxki6c3hdi6n9i3roqss>

(7) Preparing documents such as powers of attorney, medical directives, and wills.

1. Audit Objectives

- a. Determine whether the recipient has implemented policies and procedures to accurately screen applicants for incarceration in Federal, State, or local prisons, in accordance with Part 1637.
- b. Obtain recipient case files to determine whether the recipient screened the applicant for incarceration status and documented the determination, in accordance with Part 1637.

2. Suggested Audit Procedures - Internal Control

- a. Obtain an understanding of the internal controls for compliance with the requirements of 45 C.F.R. Part 1637. Obtain an understanding of the written policies, procedures, and recordkeeping in place to ensure compliance with the restrictions detailed in the regulation. Determine whether the recipient's written policies, procedures and recordkeeping are consistent with the regulation's provisions.
- b. Determine how the recipient ensures that the written policies and procedures for the requirements of 45 C.F.R. Part 1637 are effectively communicated to staff and whether these procedures are followed in practice by staff. Interview recipient staff about their knowledge of the possible existence of any activity falling under the restrictions of this section. Follow up on all such possible occurrences.
- c. Confirm that the mandatory recordkeeping requirements for this regulation are in place according to the LSC Recordkeeping Requirements Memorandum. Document this assessment in the workpapers.

3. Suggested Audit Procedures - Substantive

- a. Obtain the recipient's list of all cases in which the recipient is representing incarcerated clients. Verify that the services comply with the exceptions in Program Letter 15-5. The auditor should be alert for continuing involvement in prohibited case activity previously reported by the recipient to LSC as having been fully divested.
- b. In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with this regulation. Document this assessment in the workpapers. Note that in each case where the recipient has knowledge that a person whom the recipient is representing in civil litigation has become incarcerated after the litigation commenced, the recipient must include in the client's file either: (a) documentation evidencing the date of the recipient's notification of the client's incarceration, and the recipient's efforts to

withdraw from the litigation; or (b) a statement detailing the reason(s) why the recipient anticipates that the period of incarceration is likely to be brief and the litigation is likely to continue beyond the period of incarceration.

1638 RESTRICTION ON SOLICITATION

LSC Regulations

45 C.F.R. §§ 1638.2, 1638.3, 1638.4, 1638.5

Compliance Requirements

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, email, 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 C.F.R. §§ 1638.2, 1638.3).

Part 1638 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 (at the invitation of the court) to provide advice, disseminating community legal education publications, and giving presentations to groups that request them. (45 C.F.R. § 1638.4(a)). Nor does it prohibit representation or referral of clients by recipients pursuant to a statutory or private ombudsman program that provides investigatory and referral services and/or legal assistance on behalf of persons who are unable to seek assistance on their own, including the institutionalized or physically or mentally disabled. (45 C.F.R. § 1638.4).

Recipients must have written policies to implement the requirements of Part 1638. (45 C.F.R. § 1638.5).

1. Audit Objectives

- a. Determine whether the recipient has implemented policies and procedures to prevent employees from soliciting clients, in accordance with Part 1638.
- b. Interview recipient employees to determine how the recipient communicates the prohibition on soliciting clients, in accordance with Part 1638.

2. Suggested Audit Procedures - Internal Control

- a. Obtain an understanding of the internal controls for compliance with 45 C.F.R. Part 1638. Review the recipient's written policies in place to ensure they conform to 45 C.F.R. Part 1638.
- b. Determine how the recipient ensures that the policies for the requirements of 45 C.F.R. Part 1638 are effectively communicated to staff and whether these policies

Part D, Section 1638 Restrictions on Solicitation

are followed in practice by staff. Interview recipient staff about their knowledge of the possible existence of any activity falling under the restrictions of this section. Follow up on all such possible occurrences.

1639 WELFARE REFORM

LSC Regulations

45 C.F.R. §§ 1639.2, 1639.3, 1639.4, 1639.5, 1639.6

Compliance Requirements

Except as provided below, recipients may not initiate legal representation, or participate in litigation, lobbying or rulemaking, involving an effort to reform a Federal or State welfare system. Prohibited activities include participation in:

- (a) Litigation challenging laws or regulations enacted as part of an effort to reform a Federal or State welfare system,
- (b) Rulemaking involving proposals that are being considered to implement an effort to reform a Federal or State welfare system, and
- (c) Lobbying before legislative or administrative bodies undertaken directly or through grassroots efforts involving pending or proposed legislation that is part of an effort to reform a Federal or State welfare system.
(45 C.F.R. § 1639.3).

An effort to reform a Federal or State welfare system includes all of the provisions, except for the Child Support Enforcement provisions of Title III, of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Personal Responsibility Act), 110 Stat. 2105 (1996), and subsequent legislation enacted by Congress or the States to implement, replace or modify key components of the provisions of the Personal Responsibility Act or by States to replace or modify key components of their General Assistance or similar means-tested programs conducted by States or by counties with State funding or under State mandates. (45 C.F.R. § 1639.2).

Recipients may represent an individual eligible client who is seeking specific relief from a welfare agency. (45 C.F.R. § 1639.4).

Consistent with the provisions of § 1612.6(a) through (e), recipients may use non-LSC funds to comment in a public rulemaking proceeding or respond to a written request for information or testimony from a Federal, State, or local agency, legislative body, or committee, or a member thereof, regarding an effort to reform a Federal or State welfare system. (45 C.F.R. § 1639.5).

Recipients must have written policies and procedures to guide their staff in complying with Part 1639. (45 C.F.R. § 1639.6).

1. Audit Objectives

- a. Determine whether the recipient has implemented policies and procedures to prevent employees from initiating or participating in litigation involving or challenging welfare reform, in accordance with Part 1639.
- b. Obtain case files and interview recipient employees to document how the recipient communicates the prohibition on cases involving welfare reform, in accordance with Part 1639.

2. Suggested Audit Procedures - Internal Control

- a. Obtain an understanding of the internal controls to ensure compliance with 45 C.F.R. Part 1639. Review the recipient's written policies and procedures in place to confirm they are consistent with the requirements of 45 C.F.R. Part 1639.
- b. Determine how the recipient ensures that the written policies and procedures for the requirements of 45 C.F.R. Part 1639 are effectively communicated to staff and whether these procedures are followed in practice by staff. Interview recipient staff about their knowledge of the possible existence of any activity falling under the prohibitions of this section. Follow up on all such possible occurrences.

3. Suggested Audit Procedures - Substantive

- a. In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with this regulation. Document this assessment in the workpapers.

1643 RESTRICTION ON ASSISTED SUICIDE, EUTHANASIA, AND MERCY KILLING

LSC Regulations

45 C.F.R. §§ 1643.3, 1643.4, 1643.5

Compliance Requirements

No recipient may use LSC funds to assist in, support, or fund any activity or service which has a purpose of assisting in, or to bring suit or provide any other form of legal assistance for the purpose of:

- (a) Securing or funding any item, benefit, program, or service furnished for the purpose of causing, or the purpose of assisting in causing, the suicide, euthanasia, or mercy killing of any individual,
- (b) Compelling any person, institution, or governmental entity to provide or fund any item, benefit, program, or service for such purpose, or
- (c) Asserting or advocating a legal right to cause, or to assist in causing, the suicide, euthanasia, or mercy killing of any individual. (45 C.F.R. § 1643.3).

Recipients shall adopt written policies to guide their staff in complying with Part 1643 and shall maintain records sufficient to document the recipient's compliance with Part 1643. (45 C.F.R. § 1643.5).

1. Audit Objectives

- a. Determine whether the recipient has implemented policies and procedures to prevent and detect the use of LSC funds or legal assistance for assisted suicide, euthanasia, or mercy killing activities, as prohibited in Part 1643.
- b. Obtain case files and interview employees to document how the recipient communicates the prohibition on the use of LSC funds or legal assistance for assisted suicide, euthanasia, or mercy killing activities, in accordance with Part 1643.

2. Suggested Audit Procedures - Internal Control

- a. Obtain an understanding of the internal controls for compliance with 45 C.F.R. Part 1643. Obtain an understanding of the written policies and recordkeeping in place and determine whether the recipient's written policies and recordkeeping are consistent with the provisions of the regulation.
- b. Determine how the recipient ensures that the written policies for the requirements of 45 C.F.R. Part 1643 are effectively communicated to staff and whether the staff

follows them in practice. Interview recipient staff about their knowledge of the possible existence of any activity falling under the prohibitions of this section. Follow up on all such possible occurrences.

3. Suggested Audit Procedures - Substantive

- a. In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with this regulation. Document this assessment in the workpapers.

1644 DISCLOSURE OF CASE INFORMATION

LSC Regulations

45 C.F.R. §§ 1644.3, 1644.4, 1644.5

Compliance Requirements

For each case filed in court by its attorneys on behalf of a recipient client, a recipient shall disclose, as required by the requirements of Part 1644, the following information:

- (1) The name and full address of each party to a case (except in the circumstances listed in 45 C.F.R. § 1644.4(a)(i) and (ii)),
- (2) The cause of action,
- (3) The name and full address of the court where the case is filed, and
- (4) The case number assigned to the case by the court.
(45 C.F.R. § 1644.4(a)).

Recipients shall provide the information required in § 1644.4(a) to LSC in semiannual reports in the manner specified by LSC. Recipients may file such reports on behalf of their subrecipients for cases that are filed under subgrants. (45 C.F.R. § 1644.4(b)). Upon request, a recipient shall make the information required in § 1644.4(a) available in written form to any person. (45 C.F.R. § 1644.4(c)).

The case disclosure requirements of this Part apply:

- (1) To actions filed on behalf of plaintiffs or petitioners who are clients of a recipient,
- (2) Only to the original filing of a case, except for appeals filed in appellate courts by a recipient if the recipient was not the attorney of record in the case below and the recipient's client is the appellant,
- (3) To a request filed on behalf of a client of the recipient in a court of competent jurisdiction for judicial review of an administrative action, and
- (4) To cases filed pursuant to subgrants under 45 C.F.R. § 1627 for the direct representation of eligible clients, except for subgrants for private attorney involvement (PAI) activities under Part 1614 of the regulations. (Part 1644 does not apply to any cases filed by private attorneys as part of a recipient's PAI activities pursuant to Part 1614 of the regulations.).
(45 C.F.R. §§ 1644.3(a) and (b)).

Each recipient shall adopt written policies and procedures to implement the requirements of this Part (45 C.F.R. § 1644.5).

1. Audit Objectives

- a. Determine whether the recipient has implemented policies and procedures to communicate to its employees the required disclosures of case information, as required by Part 1644.
- b. Obtain case files and semiannual case disclosure reports to determine if required disclosures were made in accordance with Part 1644.

2. Audit Procedures – Internal Control

- a. Obtain an understanding of the internal controls for compliance with the requirements of 45 C.F.R. Part 1644. Obtain an understanding of the policies and procedures for this regulation and determine whether the recipient's written policies and procedures are consistent with the provisions of the regulation.

3. Audit Procedures – Substantive

- a. Program Letter 98-5¹⁷ provides guidance as to the timing and format of the semiannual case disclosure reports required by this regulation. These reports must be submitted by the recipient to LSC on the template provided in GrantEase or on other forms containing the same information requested by LSC. Confirm that these reporting requirements are in place and that the semiannual case disclosure reports have been properly prepared and submitted to LSC on a timely basis in accordance with Program Letter 98-5. Verify, on a test basis, the information contained in the semiannual case disclosure reports. Document this review in the workpapers.
- b. In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, be alert for any cases that may fall under the reporting requirements of this regulation that have not been included in the semiannual case disclosure reports. Follow up on and document all such exceptions in the workpapers.

¹⁷ Program Letter 98-5: <https://lsc-live.box.com/s/qu8aogmwz507yf11418yx8oq8bnxjqpr>

OTHER STATUTORY PROHIBITIONS

Abortion

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. Moreover, Section 504(a)(14) of the 1996 Act provides: "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...."

Section 504(a)(14) of the 1996 Act broadly prohibits any litigation with respect to abortion. This prohibition applies to all recipient activity, regardless of funding source. The narrower prohibition in § 1007(a)(8) applies to the use of any LSC or private funds or the unauthorized use of public or tribal funds. (45 C.F.R. §§ 1610.2 and 1610.4).

LSC Program letter 22-2¹⁸ provides a full discussion of these restrictions.

Desegregation

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, with the provision that nothing in that paragraph prohibits the provision of legal advice to an eligible client with respect to such client's legal rights and responsibilities.

Selective Service

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.

1. Audit Objectives

- a. Determine whether the recipient has implemented policies and procedures to communicate to its employees, prohibitions on using LSC or other funds for abortion litigation or proceedings contained in the LSC Act and the 1996 Act as well as the LSC Act prohibitions on litigation relating to the desegregation of any

¹⁸ Program Letter 22-2: [Program Letter 22-2 on Reproductive Services.pdf](#) | Powered by Box

Part D, Other Statutory Prohibitions

elementary or secondary school or school system, and prohibitions on litigation on selective service violations or desertion. (LSC Act, §§ 1007(b)(8) - (10); 1996 Act, § 504(a)(14)).

- b. Obtain case files and semiannual case disclosure reports to determine how the recipient communicated the prohibitions on using LSC or other funds for abortion litigation, in accordance with § 504(a)(14) of the 1996 Act, and the prohibitions included in Section 1007(b)(8) through (10) of the LSC Act.

2. Suggested Audit Procedures - Internal Control

- a. Obtain an understanding of the policies, practices, and internal controls for compliance with each of the statutory prohibitions identified above. Review the recipient's policies and procedures to determine whether they conform to the relevant statutory requirements.
- b. Determine how the recipient ensures that these statutory requirements have been effectively communicated to staff and whether the staff follows them in practice. Interview recipient staff about their knowledge of the possible existence of any activity prohibited by the statutory requirements. Follow up on any such alleged prohibited activity.

3. Suggested Audit Procedures - Substantive

- a. In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with these statutory prohibitions. Document this assessment in the workpapers.

OTHER COMPLIANCE REQUIREMENTS

Accounting Requirements

Recipients are required to adhere to requirements of the *LSC Financial Guide* (effective January 1, 2023) including Section 2 "Accounting Systems and Governance" and Section 3 "Managing LSC Grants." The *LSC Financial Guide (effective January 1, 2023)* sets forth financial accounting and reporting standards for recipients of LSC funds, and describes the accounting policies, records, and internal control procedures to be maintained by recipients to ensure the integrity of accounting, reporting and financial systems.

The *LSC Financial Guide* (effective January 1, 2023) establishes requirements and recommendations over the recipient's accounting systems; governance; management and external reporting; procurement and contracting; property management; and subgrants.

1. Audit Objectives

- a. Determine whether the recipient has implemented written policies and procedures to adhere to the *LSC Financial Guide* (effective January 1, 2023).

2. Suggested Audit Procedures

- a. Review the relevant sections of the *LSC Financial Guide* (effective January 1, 2023) and assess whether planned financial and compliance procedures are sufficient to test compliance it.
- b. If planned procedures do not assess the requirements in the *LSC Financial Guide* (effective January 1, 2023), design additional audit procedures to test compliance and render a conclusion.

Grant Award Requirements

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

1. Audit Procedures

- a. Review the recipient's grant awards in detail, identifying the significant compliance requirements of the award.
- b. Develop appropriate audit procedures to assess the recipient's compliance with the requirements.
- c. Document the results of these steps and assess the recipient's compliance.