



7050-01

LEGAL SERVICES CORPORATION

45 CFR Part 1603

State Advisory Councils

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule removes the Legal Services Corporation (LSC) regulation on state advisory councils. LSC believes this action is appropriate because the state advisory councils are no longer active and their oversight functions have been replaced adequately by other offices and processes established since the regulation was promulgated. Executive Orders 13563, “Improving Regulation and Regulatory Review,” and 13771, “Reducing Regulation and Controlling Regulatory Costs,” direct agencies to review their existing regulations and repeal or revise any that are obsolete or unnecessarily burdensome. Although LSC is not an agency of the Federal government subject to either Executive order, LSC regularly reviews its regulations and has determined that this regulation can be eliminated.

DATE: This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. Background

Section 1004(f) of the Legal Services Corporation Act of 1974 required that “within six

months after the first meeting of the Board, the Board request the Governor of each State to appoint a nine-member advisory council for each state.” 42 U.S.C. 2996c(f). If ninety days elapsed without the Governor’s appointing the advisory council, then “the Board [was] authorized to appoint such a council.” Id. LSC implemented this statutory requirement in 1975 at 45 CFR part 1603.

The state advisory councils’ primary duty was to notify LSC of any “apparent violation” by a recipient. 45 CFR 1603.5. LSC defined “apparent violation” as “a complaint or other written communication alleging facts which, if established, constitute a violation of the [LSC] Act, or any applicable rules, regulations or guidelines promulgated pursuant to the Act.” Id. § 1603.2(b).

LSC met the requirements of § 1004(f) of the LSC Act by requesting state governors to appoint state advisory councils within the period established by the Act and part 1603. In 1976, 46 state advisory councils were in existence, but later reports reflect that many of these councils rarely, if ever, met. Letter from Suzanne B. Glasow, Senior Counsel for Operations and Regulations, Office of General Counsel, to Mike Sims, Office of Rep. Pete Laney at 1 (Sept. 19, 1989). By 1983, only six state advisory councils appeared to be operational and by 1989, only Colorado and Indiana had functioning state advisory councils. Id. After a diligent search of its records, LSC concluded that there currently are no active state advisory councils and that LSC has no records of complaints forwarded from the state advisory councils.

II. History of This Rulemaking

In 2014, LSC’s Office of the Inspector General (OIG) recommended that LSC either ensure that the state advisory councils have been established and are operational or rescind part 1603. LSC is rescinding part 1603 for four reasons: (1) LSC complied with the requirements of section 1004(f) of the LSC Act by requesting state governors to appoint state advisory councils

within the period established by the Act and part 1603; (2) section 1004(f) of the LSC Act and part 1603 provide LSC with discretion to exercise or not exercise the option to appoint state councils; (3) to LSC's knowledge, there are no functioning state advisory councils; and (4) there are now numerous oversight mechanisms that fulfill the function of the state advisory councils.

At its January 2015 meeting, the Operations and Regulations Committee (Committee) of LSC's Board of Directors (Board) recommended including the repeal of part 1603 on LSC's regulatory agenda, but made the initiative a low priority.

On January 30, 2017, the President signed Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs." Through this Executive order, the President directed the heads of executive departments and agencies to identify at least two prior regulations to be repealed for each new regulation issued. By operation of the LSC Act, LSC is not an executive department or agency subject to the Executive order. 42 U.S.C 2996d(e). Consistent with the intent of the Executive order to reduce unnecessary regulations, however, LSC prioritized the repeal of part 1603.

Prior to initiating rulemaking, LSC conducted an analysis of the oversight mechanisms that have developed since the LSC Act was passed in 1974. LSC determined that the state advisory councils' oversight functions have been replaced adequately by other offices and processes established since 1974. Complainants not only have more audiences — including LSC's OIG, LSC's Office of Compliance and Enforcement (OCE), and state bodies — for their complaints, but they also have more vehicles for filing complaints, including by phone, postal mail, email, online, and through grantee grievance procedures. The OIG and OCE go beyond the state advisory committees' narrow role of collecting alleged violations by also investigating the allegations and using various tools to ensure grantee compliance. Furthermore, state and local

funding, state access to justice commissions, and the role of state and local bars in appointing grantee board members all ensure that there is continued local involvement in legal aid funded by LSC. LSC's analysis of these mechanisms is covered in greater detail in the Justification Memorandum for Rulemaking to Rescind 45 C.F.R. Part 1603 — State Advisory Councils (Justification Memo), available at www.lsc.gov/rulemaking.

On April 23, 2017, the Committee approved Management's proposed 2017-2018 rulemaking agenda, which included rescinding 45 CFR part 1603 as a priority rulemaking item. On October 15, 2017, the Committee voted to recommend that the Board authorize LSC to begin rulemaking on part 1603. On October 17, 2017, the Board authorized LSC to begin rulemaking. On January 21, 2018, the Committee voted to recommend that the Board authorize publication of a Notice of Proposed Rulemaking (NPRM) proposing to repeal part 1603. On January 23, 2018, the Board authorized publication of the NPRM with a 30-day comment period. On February 1, 2018, LSC published the NPRM in the Federal Register, 83 FR 4826.

On April 8, 2018, the Committee voted to recommend that the Board adopt this final rule and approve its publication in the Federal Register. On April 10, 2018, the Board voted to adopt and publish this final rule.

III. Discussion of the Comment

During the 30-day public comment period, LSC received one comment from a current law student. The commenter generally supported LSC's proposal to remove part 1603, citing reasons similar to those presented by LSC in the Justification Memo and NPRM. The commenter suggested that the councils could be re-established to ensure continued local involvement. LSC's Justification Memo addressed this concern directly by describing the variety of mechanisms —

for example, state Access to Justice Commissions and recipients' own grievance procedures — that ensure local involvement in the operations of LSC funding recipients.

The comment also stated that the “[t]he decision [whether to repeal] should be based on what affect[s] the United States taxpayers.” LSC agrees. LSC does not think it would be a good use of LSC resources, which include taxpayer money, to rejuvenate the state advisory councils when their functions are being performed well by a variety of other mechanisms, as highlighted in the Justification Memo and the NPRM.

IV. Discussion of the Final Rule

LSC is removing part 1603. In a final rule published elsewhere in this issue of the Federal Register, LSC is adding to part 1603 a regulation governing requests for testimony and subpoenas for documents in cases to which LSC is not a party.

Materials regarding this rulemaking are available in the open rulemaking section of LSC's Web site at <http://www.lsc.gov/about-lsc/laws-regulations-guidance/rulemaking>. After the effective date of the rule, those materials will appear in the closed rulemaking section at <http://www.lsc.gov/about-lsc/laws-regulations-guidance/rulemaking/closed-rulemaking>.

List of Subjects in 45 CFR part 1603

Advisory committees; Legal services.

PART 1603—[REMOVED]

For the reasons discussed in the preamble and under the authority of 42 U.S.C. 2996g(e), LSC is removing 45 CFR part 1603.

Dated: April 11, 2018

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Assistant General Counsel.

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