



7050-01

## LEGAL SERVICES CORPORATION

### 45 CFR Parts 1610 and 1630

#### Use of Non-LSC Funds, Transfers of LSC Funds, Program Integrity; Cost Standards and Procedures

**AGENCY:** Legal Services Corporation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rulemaking would revise the Legal Services Corporation's (LSC or Corporation) regulations addressing the use of non-LSC funds by LSC recipients and the requirement that recipients maintain program integrity with respect to other entities that engage in LSC-restricted activities, and also providing cost standards for LSC grants and permits LSC to question costs when a recipient uses non-LSC funds in violation of LSC rules. LSC proposes technical and stylistic updates to both rules without any substantive changes.

**DATES:** Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments by any of the following methods:

- Federal Rulemaking Portal: Follow the instructions for submitting comments.
- Email: [lscrulemaking@lsc.gov](mailto:lscrulemaking@lsc.gov). Include "Part 1610 Rulemaking" in the subject line of the message.
- Fax: (202) 337-6519.

- Mail: Mark Freedman, Senior Associate General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007, ATTN: Part 1610 Rulemaking.
- Hand Delivery/Courier: Mark Freedman, Senior Associate General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007, ATTN: Part 1610 Rulemaking.

Instructions: LSC prefers electronic submissions via email with attachments in Acrobat PDF format. LSC will not consider written comments sent to any other address or received after the end of the comment period.

**FOR FURTHER INFORMATION CONTACT**: Mark Freedman, Senior Associate General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007; (202) 295-1623 (phone), (202) 337-6519 (fax), or mfreedman@lsc.gov.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction:**

The Legal Services Corporation Act (LSC Act or Act), 42 U.S.C. 2996–2996l, and LSC’s annual appropriation, Pub. L. 116-6 (2019), impose restrictions and requirements on the use of LSC and non-LSC funds by recipients of grants from LSC for the delivery of civil legal aid. LSC implemented those restrictions and requirements on non-LSC funds through part 1610 of title 45 of the Code of Federal Regulations. Part 1610 also contains the program integrity rule, which requires objective integrity and independence between a recipient and any entity that engages in LSC-restricted activities.

LSC's last major substantive revisions of part 1610 occurred in 1996 and 1997 when Congress passed major new statutory restrictions on LSC recipients. 61 FR 63749, Dec. 2, 1996; 62 FR 27695, May 21, 1997. Since then, LSC has made two technical updates to part 1610 as part of rescinding or substantively revising other rules—parts 1627 (Subgrants) and 1642 (Attorneys' Fees). 82 FR 10273, Feb. 10, 2017; 75 FR 21506, Apr. 26, 2010. LSC has identified several technical changes to update the rule and improve clarity. LSC does not propose any substantive changes to the rule because LSC has not encountered compliance or oversight problems with the operation of the rule.

LSC's cost standards rule appears at 45 CFR part 1630. Section 1630.16 authorizes LSC to question costs when a recipient uses non-LSC funds in violation of part 1610. LSC proposes to update that provision to better reference part 1610. LSC does not propose any substantive changes to the rule.

## **II. Regulatory Background**

In 1974, the LSC Act established requirements and restrictions on LSC recipients and on their use of LSC funds. Pub. L. 93-355, 88 Stat. 378. As amended, section 1010(c) of the Act extends many of the restrictions to recipients' use of non-LSC funds, with specific exceptions. *See* 42 U.S.C. 2996i(c). Generally, the restrictions apply to LSC funds and private funds but not to most uses of public or tribal funds or to separately funded public defender programs. In the 1970s, LSC adopted regulations implementing most of the restrictions (*e.g.*, part 1613 regarding criminal proceedings). Other restrictions apply directly from the Act without implementing regulations (*e.g.*, the restriction on abortion proceedings at 42 U.S.C. 2996f(b)(8)). In 1976, as

part of the initial set of regulations, LSC created part 1610 to govern when LSC restrictions apply to the use of non-LSC funds by recipients. 41 FR 25899, June 23, 1976.

Starting in the 1980s, Congress imposed additional restrictions on recipients through riders on LSC's annual appropriation (Appropriations Restrictions). In 1996, Congress enacted a major new set of restrictions and requirements on recipients in LSC's FY 1996 appropriation. Pub. L. No. 104-134, 110 Stat. 1321 (1996). Unlike the Act restrictions, most of the Appropriations Restrictions applied to the use of public funds. *Id.* at Section 504(d). Congress incorporated those restrictions in LSC's FY 1997 and FY 1998 appropriations with some modifications. Pub. L. 104-208, 110 Stat. 3009 (1996); Pub. L. 105-119, 111 Stat. 2440 (1997). Thereafter, Congress has incorporated those restrictions in each annual appropriation for LSC through reference to LSC's FY 1998 appropriation. *E.g.*, Pub. L. 116-6 (2019). Congress has also made some modifications to those restrictions in other LSC appropriations acts or in other statutes. *E.g.*, Section 533, Pub. L. 111-117, 123 Stat. 3034 (2009) (removing the restriction on attorneys' fees). In 1996 and 1997 LSC implemented the new restrictions through rulemaking. LSC also updated part 1610 to specify which restrictions apply to which categories of non-LSC funds and under what circumstances. 61 FR 63749, Dec. 2, 1996. LSC has continued to update the regulations regarding the restrictions as Congress has modified them.

In 1997, LSC revised part 1610 in response to litigation challenging the application of the Appropriations Restrictions to non-LSC funds. The United States District Court for the District of Hawaii had issued a preliminary injunction against specific applications of part 1610 to the use of non-LSC funds by recipients. *Legal Aid Soc'y of Haw. v. Legal Services Corp.*, 961 F. Supp. 1402, 1422 (D. Haw. 1997). The Court found that part 1610 failed to provide recipients with

alternative avenues to use non-LSC funds for protected First Amendment activities. In response, LSC adopted a revised part 1610 in 1997 to address the District Court's concerns. 62 FR 27695, May 21, 1997. The revised rule permitted LSC grantees to provide non-LSC funds to other organizations for restricted activities and required LSC grantees to maintain program integrity with respect to any entities engaged in LSC-restricted activities. The revised rule also included a section on how the restrictions applied to transfers of LSC funds, which were functionally equivalent to subgrants subject to other requirements in 45 CFR part 1627. The District Court lifted the injunction and the regulation was upheld as facially valid by the U.S. Courts of Appeals for the Second Circuit and the Ninth Circuit. *Velazquez v. Legal Services Corp.*, 164 F.3d 757 (2d Cir. 1999), *aff'd on other grounds*, 531 U.S. 533 (2001); *Legal Aid Soc'y of Haw. v. Legal Services Corp.*, 145 F.3d 1017 (9th Cir. 1998); *Legal Aid Soc'y of Haw. v. Legal Services Corp.*, 981 F. Supp. 1288, 1291-92 (D. Haw. 1997).

In 2010, Congress removed the restriction on attorneys' fees that it had imposed in 1996. Section 533, Pub. L. 111-117, 123 Stat. 3034 (2009). LSC rescinded the regulation on attorneys' fees, 45 CFR 1642, and removed references to that restriction in part 1610. 75 FR 21506, Apr. 26, 2010.

In 2017, LSC adopted significant revisions to the subgrants rule at 45 CFR 1627. 82 FR 10273, Feb. 10, 2017. As part of that rulemaking, LSC updated and moved the transfer provisions from then-§ 1610.7 into the revised subgrants rule and renumbered provisions within part 1610 as needed.

On April 8, 2018, the Committee approved Management's proposed 2018-2019 rulemaking agenda, which included revising part 1610 as a Tier 2 rulemaking item. LSC intends

to improve understanding of the rule through the revisions in this Notice of Proposed Rulemaking and through other references, such as the Table of LSC Restrictions and Other Funding Sources that LSC publishes at <<https://www.lsc.gov/lsc-restrictions-and-funding-sources>>.

On January 17, 2019, LSC Management presented the Operations and Regulations Committee with a Justification Memo requesting authority to initiate rulemaking on part 1610. On January 17, 2019, the Committee voted to recommend that the Board authorize rulemaking. On January 18, 2019, the Board authorized LSC to begin rulemaking. On [ ], the Committee voted to recommend that the Board authorize publication of this NPRM in the Federal Register for notice and comment. On [ ], the Board accepted the Committee's recommendation and vote to approve publication of this NPRM.

### **III. Discussion of Proposed Changes**

#### **A. PART 1610—USE OF NON-LSC FUNDS AND PROGRAM INTEGRITY**

*Overall note.* None of the changes in the rule will change the substance, application, or scope of the rule.

*Organizational note.* LSC proposes to reorganize part 1610 into four subparts to improve the organization and coherence of the rule.

Subpart A will contain provisions generally applicable to all of part 1610 and will state requirements that apply to all activities of recipients regardless of the source of the funding used.

Subpart B will contain the prohibitions on the use of non-LSC funds by recipients and related provisions.

Subpart C will contain the program integrity requirements.

Subpart D will contain accounting and compliance provisions.

## **1. Subpart A—General Provisions**

### *§ 1610.1 Purpose.*

LSC proposes to change the phrase “implement statutory restrictions on the use of non-LSC funds” to “implement restrictions and requirements on the use of non-LSC funds” to state the purpose of the rule more accurately. LSC proposes to delete the phrase “to ensure that no LSC funded entity shall engage in any restricted activities” because that overstates the purpose of the rule.

LSC also proposes to replace the reference to “objective integrity and independence” with a reference to “program integrity” consistent with the title of the rule. A new definition of program integrity in § 1610.2 will explain that program integrity requires objective integrity and independence as provided in the renumbered § 1610.8 (currently § 1610.7).

### *§1610.2 Definitions.*

LSC proposes to restructure the definitions section to improve clarity, comprehensibility, and readability. LSC proposes to list terms logically rather than alphabetically and to group related terms together.

*1610.2(a) Use of funds.*

LSC proposes replacing the definition of *purpose prohibited by the LSC Act* with new definitions of restrictions in § 1610.2(d) and with the new § 1610.3.

LSC proposes adding a new definition for *use of funds*. The current rule does not define *use of funds*, which appears in the prohibition in § 1610.3. Additionally, the current § 1610.4 discusses using funds “in accordance with the purposes [or specific purposes] for which they were provided.” LSC proposes adding a definition of *use of funds* and two subdefinitions for *authorized use of funds* and *unauthorized use of funds*. The subdefinition of *use of funds* incorporates the purpose for which the funds were provided and includes examples typical of the kind of purposes grantees encounter. These proposed terms would then be used in the revised prohibition in the new § 1610.4, which replaces the current §§ 1610.3 and 1610.4.

*1610.2(b) Derived from.*

LSC proposes replacing the definition of *activity prohibited by or inconsistent with Section 504* with new definitions of *restrictions* in § 1610.2(d) and the new § 1610.3.

LSC proposes adding a new definition for *derived from*. The current rule uses the term *derived from* in the definitions of types of non-LSC funds, but it does not provide a definition of that term. LSC proposes a definition and an example consistent with how LSC applies the current rule.

*1610.2(c) Non-LSC funds.*

LSC proposes to group together in one paragraph the categories of non-LSC funds from the current rule: private, public, IOLTA, and tribal, which currently appear in § 1610.2(c), (e), (f), and

(h). IOLTA refers to funds collected through interest on lawyers' trust account programs, commonly referred to as IOLTA or IOLA programs. The new definitions propose technical adjustments to the text and one new example. The new definitions also include IOLTA funds as a type of public funds to replace the current rule's separate listing of them as a different category of funds that are treated as public funds.

*1610.2(d) Restrictions.*

LSC proposes moving the definition of *non-LSC funds* to § 1610.2(c) with technical updates. LSC proposes adopting a new definition of *restrictions* with three new categories to better organize the restrictions: extended restrictions, standard restrictions, and limited restrictions. These categories group the restrictions based on how they apply to non-LSC funds rather than by statutory source as the current rule does. They replace the definitions in § 1610.2(a) and (b). The proposed approach simplifies the language of the prohibition in the new § 1610.3 and the exceptions in the new § 1610.4. In each category, the individual restrictions are stated more clearly and organized by a descriptive name rather than by citation to a regulation or statute. LSC also proposes to cite the implementing regulation for each restriction without additional citation to statutes, except for restrictions that have no implementing regulation. The proposed rule adds as a limited restriction the prohibition in the Appropriations Restrictions on using appropriated LSC funds to file or pursue a lawsuit against LSC.

Lastly, LSC proposes moving to a new § 1610.3 the references to three regulations that currently appear in § 1610.2(b): 45 CFR parts 1620, 1635, and 1636. Those regulations do not prohibit activities as restrictions. Instead they set additional requirements involving priorities, timekeeping, and reporting.

*1610.2(e) Restricted activity.*

LSC proposes moving the definition of *private funds* to § 1610.2(c)(1) with technical updates.

LSC proposes adding a new definition of *restricted activity* as a companion term to the definition of *restrictions*.

*1610.2(f) Program integrity.*

LSC proposes to move the definition of *public funds* to § 1610.2(c)(2) with technical updates.

LSC proposes adding a new definition of *program integrity* to link the reference to program integrity in the title of the regulation with the provisions governing program integrity in subpart C.

*1610.2(g) Transfer.*

LSC proposes to remove the definition of *transfer* in § 1610.2(g) because the rule no longer uses that term. In 2017, LSC moved all the provisions of the rule regarding transfers to the revised subgrants rule at 45 CFR part 1627. 82 FR 10273, Feb. 10, 2017.

*1610.2(h) Tribal funds.*

LSC proposes to move the definition of *tribal funds* to § 1610.2(c)(3) with technical updates.

*§1610.3 Requirements that apply to all funds.*

LSC proposes to move most of § 1610.3 to the new § 1610.4. LSC proposes to create a new §1610.3 to address regulations that implement requirements on non-LSC funds differently from the other restrictions covered in the new § 1610.4. Three of these regulations are moved into this section from the current § 1610.2(b): 45 CFR parts 1620, 1635, and 1636. LSC also

proposes to add other regulations that fit into this category but do not appear in the current part 1610: part 1644, § 1612.7(a) and (b), and the provisions of part 1608 that are currently grouped with other provisions of part 1608 in § 1610.2(a). This new section references existing restrictions in other regulations that apply to some uses of non-LSC funds. It does not create new restrictions on non-LSC funds beyond the provisions of those other regulations.

#### **SUBPART B—USE OF NON-LSC FUNDS**

LSC proposes replacing the current §§ 1610.3, 1610.4, and 1610.6 with new §§ 1610.4, 1610.5, and 1610.6.

##### *§ 1610.4 Prohibitions on the use of non-LSC funds.*

The current § 1610.3 prohibits the use of non-LSC funds for any restricted activities unless permitted by §§ 1610.4, 1610.6, or 1610.7. LSC proposes to relocate the substance of § 1610.3 to the introductory paragraph of § 1610.4(a) and consolidate the substance of existing § 1610.4 into paragraph (a). The prohibitions stated in the new § 1610.4 will be subject to exceptions in §§ 1610.5 and 1610.6. Section 1610.6 will remain § 1610.6.

The reference in § 1610.3 to exceptions in § 1610.7 is outdated. It refers to the pre-2017 version of the rule in which § 1610.7 addressed transfers of LSC funds. In 2017, LSC moved those provisions into the subgrants rule at 45 CFR part 1627. 82 FR 10273, Feb. 10, 2017. The new § 1610.4 will reference a new § 1610.5, which cross-references the subgrant provisions in part 1627.

Section 1610.4 will map each type of restriction with each category of non-LSC funds and, when applicable, use the newly defined terms for *authorized* and *unauthorized use of non-LSC funds*.

Additionally, § 1610.4(c) will state that the limited restrictions do not apply to the use of non-LSC funds. Although not a prohibition, this paragraph enables the rule to provide a more complete picture of the relationship of the restrictions to the uses of different types of non-LSC funds.

LSC proposes to delete the current § 1610.4(d) as unnecessary and potentially confusing. LSC adopted this section to make clear that part 1610 did not apply the financial eligibility requirements at 45 CFR part 1611 to non-LSC funds. However, part 1611 does not appear in the current rule or the proposed rule as one of the restrictions addressed by part 1610. Part 1611 states only that it applies to the use of LSC funds, and nothing in part 1610 or any other LSC regulation applies it to any other funds of a recipient.

*§ 1610.5 Grants, subgrants, donations, and gifts made by recipients.*

LSC proposes moving the current § 1610.4 to the new § 1610.7. LSC proposes to add a new § 1610.5 to address three different issues. First, in 2017, LSC moved the transfer of LSC funds provisions of part 1610 to the revised subgrants rule at 45 CFR part 1627. 82 FR 10273, Feb. 10, 2017. The proposed § 1610.5(a) directs the reader to part 1627 for application of the restrictions to the LSC funds and non-LSC funds of a subrecipient with a subgrant described in part 1627.

Second, § 1610.5(b) will note that 45 CFR part 1630 prohibits using LSC funds for donations or gifts. LSC proposes adding this paragraph as an aid to the reader.

By contrast, § 1610.5(c) will explain that grants, subgrants, donations, or gifts provided by a recipient entirely with non-LSC funds normally are not subject to part 1610. The preamble to

the rule in 1997 explains that transfers of non-LSC funds are not subject to the restrictions. It does not state so in the rule because in 1997 LSC determined doing so would be superfluous. 62 FR 27695, 27697, May 21, 1997. LSC now proposes adding it to the rule because the topic comes up frequently and LSC prefers to address it in the rule text instead of the preamble.

*§ 1610.6 Exceptions for public defender programs and criminal or related cases.*

LSC proposes to reorganize and rename § 1610.6 for clarity.

First, LSC proposes to remove an obsolete reference to § 1610.7(a). That reference was added in 1996 along with the transfer section in § 1610.7. 61 FR 63749, 63751, Dec. 2, 1996. In 2017 LSC moved the transfer provisions to the subgrants rule at 45 CFR part 1627. 82 FR 10273, Feb. 10, 2017. LSC proposes to delete the reference instead of updating it because the reference is no longer necessary. The changes to both this paragraph and part 1627 make clear that these exceptions apply to both recipients and part 1627 subrecipients.

LSC also proposes to reorganize this section to state first the two types of programs to which these exceptions apply. The rule then lists the four restrictions subject to these exceptions with improved citations consistent with the proposed revisions to § 1610.2.

LSC has issued two advisory opinions determining that § 1610.6 applies to three specific situations involving a statutory right to counsel paid for by the government in non-criminal proceedings. LSC found that each situation was sufficiently fact specific, so LSC does not currently propose revising this section. Rather, LSC will continue to review questions about the application of this section on a case-by-case basis. We summarize the opinions here for reference.

EX-2009-1001 found that § 1610.6 applies to appointments when a state provides a statutory right to counsel paid by the government for low-income parents in family court child protective proceedings involving allegations of abuse or neglect.

AO-2016-005 addressed two situations. First, it found that § 1610.6 applies to paid statutory appointments for individuals charged with criminal acts who are mental health patients for whom the state seeks to impose involuntary medical treatment. The statute provides a right to counsel paid by the government to represent these individuals in hearings regarding involuntary medication plans intended to restore them to competency to stand trial in their criminal cases.

In the second situation, AO-2016-005 found that § 1610.6 applies to paid statutory appointments to represent individuals in hearings regarding involuntary commitment to a medical facility for mental health treatment or involving release from such a facility after either involuntary or voluntary commitment.

*§ 1610.7 Notification to non-LSC funders and donors.*

LSC proposes renumbering § 1610.7 as § 1610.8. LSC proposes replacing § 1610.7 with the current § 1610.5, rewriting this section in active rather than passive voice, and updating the description of the exception in § 1610.7(b) for “contributions of less than \$250.” In 1996, LSC based the \$250 exception on the Internal Revenue Service’s (IRS) requirement that donors who contribute \$250 or more to a charity must obtain documentation of the contribution. 61 FR 63749, 63751, Dec. 2, 1996. The IRS has explained that this requirement applies to “each single contribution of \$250 or more” and that “[s]eparate contributions of less than \$250 will not be

aggregated.” IRS Publication 1771. Consistent with our 1996 intent to adopt the same approach as the IRS regarding small individual contributions, LSC proposes updating the exception in § 1610.7(b) to apply to “receipt of any single contribution of less than \$250.”

## **SUBPART C—PROGRAM INTEGRITY**

### **§1610.8 Program integrity of recipient.**

LSC proposes moving § 1610.8 to a new § 1610.9. LSC proposes renumbering existing § 1610.7 as § 1610.8 within the new subpart C of the rule.

LSC proposes to add a reference to subgrants of LSC funds to § 1610.8(a)(2). Originally in 1996, this paragraph referenced a “transfer of LSC funds,” which was addressed in § 1610.7 and functionally identical to a subgrant in 45 CFR part 1627. 61 FR 63749, 63752, Dec. 2, 1996. In 2017, LSC removed the words “transfer of” as part of the rulemaking moving all transfer provisions to part 1627 and eliminating the use of the term “transfer” to refer to subgrants. 82 FR 10273, 10275, Feb. 10, 2017. LSC did not intend to change the meaning of this section. To make that clear, LSC proposes adding the term “subgrant of LSC funds” and reference to part 1627 where the words “transfer of LSC funds” appeared in the 1997 to 2017 version of the rule. In § 1610.8(a)(3), LSC proposes rewording the third sentence from passive to active voice to improve clarity.

Additionally, LSC proposes technical changes to the current § 1610.7(b), renumbered § 1610.8(b). LSC proposes to remove language about the program integrity certifications first required in 1997 after adoption of the rule, but not the annual requirement. 62 FR 27695, 27698, May 21, 1997. LSC proposes keeping the language about annual certifications.

#### **IV. SUBPART D—ACCOUNTING AND COMPLIANCE**

##### *§1610.9 Accounting.*

LSC proposes to renumber § 1610.8 to § 1610.9(a) and reword this paragraph from passive to active voice to improve clarity.

LSC also proposes to add new §§ 1610.9(b) and (c) to state in the rule the longstanding requirements for recipients to create and maintain policies, procedures, and documentation. Pursuant to this rule, the cost standards at 45 CFR part 1630, and the LSC Accounting Guide, recipients separately track and account for LSC funds and non-LSC funds. Whenever a recipient claims to use non-LSC funds to permissibly engage in a restricted activity, the recipient must document that it charged the costs to those non-LSC funds.

Similar language appears in other regulations, including parts 1636, 1637, and 1638. LSC proposes to add the language here to improve consistency among the regulations.

##### *§1610.10 Compliance.*

LSC proposes adding this new section to connect part 1610 with the section of the costs standards rule that permits LSC to disallow LSC funds when a recipient uses non-LSC funds in violation of the currently stated in § 1610.3. LSC also proposes to update §1630.16 to better cross-reference part 1610.

#### **PART 1630—COST STANDARDS AND PROCEDURES**

*§ 1630.16 Applicability to non-LSC funds.* LSC proposes technical changes to this section to improve clarity. Section 1630.16 provides that if a recipient uses non-LSC funds in violation of

the rule stated in § 1610.3, then LSC can disallow an equivalent amount of LSC funds. The current § 1630.16(a) and (b) attempt to restate the prohibition in § 1610.3 rather than reference it. LSC proposes to remove those paragraphs and replace them with a new § 1630.16(a) that will reference the new §§ 1610.3 and 1610.4. LSC proposes to renumber § 1630.16(c) as § 1630.16(b) and change the last sentence from passive voice to active voice.

### **List of Subjects**

#### *45 CFR Part 1610*

Grant programs – law, Legal services.

#### *45 CFR Part 1630*

Accounting, Government contracts, Grant programs—law, Hearing and appeal procedures, Legal services, Questioned costs.

For the reasons set forth in the preamble, the Legal Services Corporation proposes to amend 45 CFR chapter XVI as follows:

1. Revise part 1610 to read as follows:

### **PART 1610—USE OF NON-LSC FUNDS; PROGRAM INTEGRITY**

#### **Subpart A—General Provisions**

##### **Sec.**

**1610.1 Purpose.**

**1610.2 Definitions.**

**1610.3 Requirements that apply to all funds.**

#### **Subpart B—Use of Non-LSC Funds**

- 1610.4 Prohibitions on the use of non-LSC funds.**
- 1610.5 Grants, subgrants, donations, and gifts made by recipients.**
- 1610.6 Exceptions for public defender programs and criminal or related cases.**
- 1610.7 Notification to non-LSC funders and donors.**

#### **Subpart C—Program Integrity**

- 1610.8 Program integrity of recipient.**

#### **Subpart D—Accounting and Compliance**

- 1610.9 Accounting.**
- 1610.10 Compliance.**

**Authority:** 42 U.S.C. 2996g(e).

#### **Subpart A—General Provisions**

##### **§1610.1 Purpose.**

This part is designed to implement restrictions and requirements on the use of non-LSC funds by LSC recipients and to set requirements for each LSC recipient to maintain program integrity with respect to any organization that engages in LSC-restricted activities.

##### **§1610.2 Definitions.**

- (a) *Use of funds* means the expenditure of funds by an LSC recipient.
  - (1) *Authorized use of funds* means any use of funds within the purpose for which the funds were provided, including:
    - (i) Limited purposes such as providing legal services for victims of domestic violence regardless of income or financial resources;

(ii) General purposes such as providing any civil legal services to people with household incomes below 200% of the Federal Poverty Guidelines; and

(iii) Any purposes for funds provided without any instructions from the donor or grantor regarding the use of the funds.

(2) *Unauthorized use of funds* means any use of funds that is not an authorized use as defined in paragraph (a)(1) of this section.

(b) *Derived from* means the recipient obtained the funds either directly from the source or as the result of a series of grants and subgrants (or similar arrangements) originating from the source and maintaining the character and purpose designated by the source. For example, a state provides public funds to a private, non-LSC-funded statewide legal aid entity to distribute as grants for civil legal services subject to rules set by the state. The statewide legal aid entity subgrants some of those public funds to an LSC recipient to provide services in six counties subject to the state rules. The subgranted funds remain public funds under this rule because they are derived from public funds.

(c) *Non-LSC funds* means funds derived from any source other than LSC.

(1) *Private funds* means funds that are derived from any source other than LSC or the other categories of non-LSC funds in this section. Examples of private funds are donations from individuals or grants that do not qualify as public funds or tribal funds in this section.

(2) *Public funds* means funds that are:

(i) Derived from a Federal, State, or local government or instrumentality of a government; or

(ii) Derived from Interest on Lawyers' Trust Account (IOLTA or IOLA) programs established by State court rules or legislation that collect and distribute interest on lawyers' trust accounts.

(3) *Tribal funds* means funds that are derived from an Indian tribe or from a private nonprofit foundation or organization for the benefit of Indians or Indian tribes.

(d) *Restrictions* means the prohibitions or limitations on the use of LSC funds by a recipient and on the use of non-LSC funds as described in this part. LSC has three categories of restrictions: extended, standard, and limited. The restrictions appear in 45 CFR parts 1600 through 1644, in the LSC Act at 42 U.S.C. 2996–2996l and in the sections of LSC's annual appropriation (Appropriations Restrictions) that incorporate the restrictions enacted in § 504 of Title V in Public Law 104-134, 122 Stat. 1321-50 (1996), as incorporated through Pub. L. 105-119, tit. V, § 502(a)(2), 111 Stat. 2440, 2510 (1998) and subject to modifications in other statutes.

(1) *Extended restrictions* are the restrictions on:

(i) Abortion litigation (other abortion activities are subject to a standard restriction)—Section 504(a)(14) of the Appropriations Restrictions;

(ii) Aliens (representation of non-U.S. citizens)—45 CFR part 1626;

- (iii) Class actions—45 CFR part 1617;
  - (iv) Evictions from public housing involving illegal drug activities—45 CFR part 1633;
  - (v) Lobbying in general—45 CFR 1612.3, subject to the limitations and exceptions in § 1612.5 (activities that are not lobbying) and § 1612.6 (exceptions for non-LSC funds that are a limited restriction);
  - (vi) Prisoner litigation—45 CFR part 1637;
  - (vii) Redistricting or census—45 CFR part 1632;
  - (viii) Solicitation of clients—45 CFR part 1638;
  - (ix) Training on prohibited topics—45 CFR 1612.8; and
  - (x) Welfare reform—45 CFR part 1639.
- (2) *Standard restrictions* are the restrictions on:
- (i) Abortion activities (other than abortion litigation subject to an extended restriction)—42 U.S.C. 2996f(b)(8);
  - (ii) Criminal proceedings—45 CFR part 1613;
  - (iii) Draft registration violations (violations of Military Selective Service Act) or military desertion—42 U.S.C. 2996f(b)(10);
  - (iv) Desegregation of schools—42 U.S.C. 2996f(b)(9);
  - (v) Fee-generating cases—45 CFR part 1609;
  - (vi) Habeas corpus (collaterally attacking criminal convictions)—45 CFR part 1615;

- (vii) Organizing—45 CFR 1612.9;
  - (viii) Persistent incitement of litigation and other activities prohibited by rules of professional responsibility for attorneys—Section 42 U.S.C. 2996f(a)(10); and
  - (ix) Political activities—the provisions of 45 CFR part 1608 that are stated as restrictions on the use of LSC funds (other provisions of part 1608 are addressed in §1610.3).
- (3) *Limited restrictions* are the restrictions on:
- (i) Lobbying permitted with non-LSC funds (upon government request, in public rulemaking, or regarding state or local funding of the recipient)—45 CFR 1612.6;
  - (ii) Assisted suicide, euthanasia, and mercy killing—45 CFR part 1643; and
  - (iii) Use of appropriated LSC funds to file or pursue a lawsuit against LSC—Section 506 of the Appropriations Restrictions.

(e) *Restricted activity* means an activity prohibited or limited by the restrictions.

(f) *Program integrity* means that a recipient is maintaining objective integrity and independence from any organization that engages in restricted activities, as required by subpart C of this part.

### **§1610.3 Requirements that apply to all funds.**

The following requirements apply to all activities of a recipient regardless of the funding used for the activity to the extent provided in the referenced regulation.

(a) Client identity and statement of facts—45 CFR part 1636.

- (b) Demonstrations, picketing, boycotts, or strikes—45 CFR 1612.7(a).
- (c) Disclosure of case information—45 CFR part 1644.
- (d) Political activities—the provisions of 45 CFR part 1608 other than those stated as restrictions on the use of LSC funds (which are standard restrictions).
- (e) Priorities for the provision of services—45 CFR part 1620.
- (f) Rioting, civil disturbances, or violations of injunctions—45 CFR 1612.7(b).
- (g) Timekeeping—45 CFR part 1635.

#### **Subpart B—Use of Non-LSC Funds**

##### **§ 1610.4 Prohibitions on the use of non-LSC funds.**

Non-LSC funds may not be used by recipients for restricted activities as described in this section, subject to the exceptions in §§ 1610.5 and 1610.6 of this part.

(a) *Extended restrictions.* The extended restrictions apply to the following uses of non-LSC funds:

- (1) Private funds—any use of private funds;
- (2) Public funds—any use of public funds; and
- (3) Tribal funds—any unauthorized use of tribal funds.

(b) *Standard restrictions.* The standard restrictions apply to the following uses of non-LSC funds:

- (1) Private funds—any use of private funds;

(2) Public funds—any unauthorized use of public funds; and

(3) Tribal funds—any unauthorized use of tribal funds.

(c) *Limited restrictions.* The limited restrictions do not apply to the use of non-LSC funds.

**§ 1610.5 Grants, subgrants, donations, and gifts made by recipients.**

(a) 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 CFR part 1627. That rule 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.

(b) Donations and gifts using LSC funds are prohibited by 45 CFR part 1630.

(c) Grants, subgrants, donations, or gifts provided by a recipient and funded entirely with non-LSC funds are not subject to this part, unless the source of the funds does not authorize the use of its funds for those purposes.

**§ 1610.6 Exceptions for public defender programs and criminal or related cases.**

The following restrictions do not apply to:

(a) A recipient's or subrecipient's separately funded public defender program or project; or

(b) Criminal or related cases accepted by a recipient or subrecipient pursuant to a court appointment:

(1) Criminal proceedings—45 CFR part 1613;

(2) Actions challenging criminal convictions—45 CFR part 1615;

(3) Aliens—45 CFR part 1626;

(4) Prisoner litigation—45 CFR part 1637.

**§ 1610.7 Notification to non-LSC funders and donors.**

(a) No recipient may accept funds from any source other than LSC unless the recipient provides the source of the funds with written notification of LSC prohibitions and conditions that apply to the funds, except as provided in paragraph (b) of this section.

(b) LSC does not require recipients to provide written notification for receipt of any single contribution of less than \$250.

**Subpart C—Program Integrity**

**§ 1610.8 Program integrity of recipient.**

(a) A recipient must have objective integrity and independence from any organization that engages in restricted activities. A recipient will be found to have objective integrity and independence from such an organization if:

(1) The other organization is a legally separate entity;

(2) The other organization receives no subgrant of LSC funds from the recipient, as defined in 45 CFR part 1627, and LSC funds do not subsidize restricted activities; and

(3) The recipient is physically and financially separate from the other organization.

Mere bookkeeping separation of LSC funds from other funds is not sufficient. LSC will determine whether sufficient physical and financial separation exists on a case-by-case basis and will base its determination 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 shall include but will not be 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, and the extent of such restricted activities; and
  - (iv) The extent to which signs and other forms of identification that distinguish the recipient from the organization are present.
- (b) Each recipient's governing body must certify to LSC on an annual basis that the recipient is in compliance with the requirements of this section.

#### **Subpart D—Accounting and Compliance**

##### **§1610.9 Accounting.**

- (a) Recipients shall account for funds received from a source other than LSC as separate and distinct receipts and disbursements in a manner directed by LSC.
- (b) Recipients shall adopt written policies and procedures to implement the requirements of this part.
- (c) Recipients shall maintain records sufficient to document the expenditure of non-LSC funds for any restricted activities and to otherwise demonstrate compliance with this part.

**§1610.10 Compliance.**

In addition to all other compliance and enforcement options, LSC may recover from a recipient's LSC funds an amount not to exceed the amount improperly charged to non-LSC funds, as provided in § 1630.16 of this chapter.

**PART 1630—COST STANDARDS AND PROCEDURES**

2. The authority citation for part 1630 continues to read as follows:

AUTHORITY: 42 U.S.C. 2996g(e).

3. Revise § 1630.16 to read as follows:

**§ 1630.16 Applicability to non-LSC funds.**

(a) No cost may be charged to non-LSC funds in violation of §§ 1610.3 or 1610.4 of this chapter.

(b) LSC may recover from a recipient's LSC funds an amount not to exceed the amount improperly charged to non-LSC funds. The review and appeal procedures of §§ 1630.11 and 1630.12 govern any decision by LSC to recover funds under this paragraph.

Dated: August 1, 2019

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Senior Associate General Counsel

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