



LEGAL SERVICES CORPORATION

45 CFR Part 1635

Timekeeping Requirement

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: The Legal Services Corporation (LSC) is adopting a final rule amending its regulation related to the timekeeping requirements of employees at LSC funding recipients. The final rule makes multiple changes to how recipients keep time. Aside from making multiple technical edits for clarity, the final rule defines the term “case oversight” and clarifies that employees who are subject to the timekeeping requirement are those doing work that can be charged to any of the recipient’s awards as a direct cost. The final rule changes the requirements for timekeeping by requiring recipient employees who charge their time to awards as direct costs to keep time consistent with this part; establishing that employees must submit their time by the end of the pay period; requiring recipients to use the same documentation and standards for LSC grants as non-LSC grants; and allowing recipients to decide the time increments that their employees should use to record their time.

DATE: This final rule is effective on January 1, 2022.

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SUPPLEMENTARY INFORMATION:

I. Background.

In 1995, LSC initiated rulemaking to require recipient employees to keep records of time spent working on LSC-funded activities. 60 FR 48956, Sep. 21, 1995. LSC took this

step to “improve accountability of recipients for their Corporation funds, and in response to concerns expressed during Congressional hearings.” *Id.* LSC wanted to assure that recipients maintained adequate documentation to support allocation of costs to the LSC grant. *Id.* at 48957. Consequently, LSC intended the rule “to require all recipients to account for the time spent on all cases, matters and other activities by their attorneys and paralegals, whether funded by [LSC] or other sources.” *Id.* LSC did not define either “attorney” or “paralegal,” although LSC did define the terms “cases” and “matters.” *Id.* LSC did not prescribe either the format or the content of the required timekeeping reports. *Id.*

After receiving public comment, LSC adopted the proposed rule as final, with limited changes. 61 FR 14261, Apr. 1, 1996. In the preamble to the final rule, LSC stated that the rule applied to recipient attorneys and paralegals regardless of whether their salaries were paid using LSC funds. *Id.* Applying the rule to all attorneys and paralegals, LSC explained, reflected language that Congress included in a version of the fiscal year 1996 appropriations act that it passed, but the President vetoed. *Id.* LSC retained the requirement because it anticipated that Congress and the President would agree on legislation containing a similar requirement for fiscal year 1996, which they did. Sec. 504(a)(10), Pub. L. 104-134, 110 Stat. 1321, 1321-54 (1996) (stating that LSC could not award appropriated funds to any person or entity unless “such person or entity agrees to maintain records of time spent on each case or matter with respect to which the person or entity is engaged.”). This requirement has been incorporated by reference annually thereafter.

In the preamble to the final rule, LSC explained how it expected recipients to implement the requirement to maintain “contemporaneous” time records. LSC stated that “contemporaneous” meant “in most cases, by the end of the day.” 61 FR at 14262.

LSC initiated its first revision of part 1635 in 1998. That year, the Office of Inspector General (OIG) conducted an audit of recipients' compliance with specific regulations, including part 1635, and issued a report that formed the basis for Management's recommended changes. In the report, OIG stated its finding that, based on records maintained in compliance with part 1635, it could not tell whether part-time employees of an LSC funding recipient engaged in restricted work during LSC-funded time. 63 FR 56594, Oct. 22, 1998.

In response to OIG's findings, LSC proposed two changes. The first was to require recipients to ensure that the time records for both full- and part-time employees were consistent with their payroll time and attendance records. In other words, "the time spent by an employee must at least add up to the amount reflected in the attendance records." *Id.* at 56595. LSC also proposed to require full-time and part-time attorneys and paralegals to record, for each case, matter, or supporting activity that they handled, the date and exact time of day they worked on that activity. *Id.* Alternatively, LSC proposed that part-time attorneys and paralegals could certify that they did not engage in restricted activities during the time they were working for the recipient. *Id.*

LSC did not finalize its revisions to part 1635 until 2000. At that time, LSC adopted the rule with two changes relevant here. 65 FR 41879, Jul. 7, 2000. First, LSC removed the proposed text requiring attorney and paralegal time records to be consistent with their payroll time and attendance records. *Id.* at 41880. Several commenters on the proposed rule expressed concern that a rule requiring employee time records to match the payroll records would put recipients at risk of violating the Fair Labor Standards Act. *Id.* Although LSC did not agree with the commenter raising the concern, LSC removed the language because it believed the language was not necessary. *Id.* Second, LSC adopted the certification requirement for part-time attorneys and paralegals. *Id.* Put differently, part-time attorneys and paralegals do not have to report the date and exact

time of day that they worked on cases, matter, or supporting activities, but must certify that they did not work on restricted activities during the hours they worked for a recipient.

Management believes regulatory action is justified at this time for three reasons. First, the lack of a definition for the term “paralegal” creates a lack of uniformity across recipients regarding which employees must keep time. In other words, some recipients employ staff who are called paralegals, but who do only administrative work, while others employ staff who perform substantive legal work under an attorney's supervision or who have satisfied their state's requirements for holding oneself out as a paralegal, but who may not have the title of paralegal. Because the regulation does not define the term “paralegal,” it is unclear whether some or all recipient employees described in the preceding sentence must keep time consistent with part 1635. Consequently, LSC cannot be certain that part 1635 covers all recipient employees who are doing significant amounts of work on the LSC grant, which appears to be what LSC intended when it originally drafted the rule to cover attorneys and paralegals. LSC proposes to remedy this problem by revising the language to include all employee staff, regardless of qualification or title, who are doing work that can be identified with specific awards. Conversely, employee staff whose work is solely allocated across awards as indirect costs need not record their time under part 1635.

Second, the federal government rules governing recipient timekeeping have changed significantly, as have best practices for nonprofit timekeeping. LSC believes it is reasonable to reconsider the requirements of part 1635 in light of these advances and determine whether to revise the rule to reflect the new standards. Finally, LSC proposes to remove any provisions of the rule that are obsolete.

LSC added rulemaking on part 1635 to its annual rulemaking agenda in April 2016. On January 30, 2020, the Operations and Regulations Committee (“Committee”) of the

Board voted to recommend that the Board authorize rulemaking on part 1635. The Board voted to authorize rulemaking on January 31, 2020. On October 19, 2020, the Committee voted to recommend that the Board approve publication of an NPRM in the *Federal Register* with a 60-day public comment period. On October 20, 2020, the Board accepted the Committee's recommendation and voted to approve publication of the NPRM. LSC published the rule in the *Federal Register* on November 5, 2020. The comment period remained open for ninety-two days and closed on February 5, 2021.

On April 19, 2021, the Committee voted to recommend that the Board adopt this final rule and approve its publication in the *Federal Register*. On April 20, 2021, the Board voted to adopt and publish this final rule.

Materials regarding this rulemaking are available in the open rulemaking section of LSC's website at <http://www.lsc.gov/about-lsc/laws-regulations-guidance/rulemaking>. After publication of the final rule, materials will migrate to the closed rulemaking section of LSC's website.

II. Section-by-Section Discussion of Proposed Changes and Comments.

LSC received eleven relevant comments—nine from executive directors of grantee organizations, one from the National Legal Aid and Defender Association (NLADA), and one from the Management Information Exchange. LSC also had a follow-up conversation with NLADA about their concerns with proposed § 1635.5.

§ 1635.1 *What is the purpose of this section?*

LSC proposed making technical edits to this section for clarity.

Comments: NLADA affirmatively endorsed the proposed changes. Four other commenters stated that they joined in NLADA's comments generally. No other comments explicitly referenced this section.

Response: LSC adopts the proposed rule as final without changes.

§ 1635.2 *Definitions*

LSC proposed revising the definition of the term “case” in paragraph (a) to be more consistent with the definition of the same term in the Case Service Report Handbook. LSC proposed introducing a new definition for the term “case oversight” in paragraph (b) of this section.

Comments: LSC received few comments addressing this section, and the opinions about the changes varied. NLADA endorsed the proposed changes; they liked the addition of the new term “case oversight” and liked that it can be billed as a matter or case activity. One commenter, like NLADA, supported the addition of case oversight as a new time activity that will capture the review of cases at closing and the review of open cases. However, they wanted LSC to make it more explicit whether “case oversight” is a matter or case activity.

The sole commenter who criticized the change stated that “case oversight” is newly defined, and it is not clear why. They suggested explaining or removing the definition as unnecessary.

Response: LSC adopts the proposed rule as final with minor changes. LSC will include language in the definition explaining that a supervisor’s “case oversight” activities may be included within case activities when it involves extensive work on a single case—for example, reviewing, in detail, the advice provided to a client—and included within supporting activities when the oversight involves the aggregate work on a number of different cases, such as reviewing multiple files for a retainers or citizenship attestations.

§ 1635.3 *Who is covered by the timekeeping requirement?*

LSC proposed creating a new section dedicated to explaining which recipient employees must report time consistent with the requirements of this section. LSC proposed replacing the language limiting the application to part 1635 to recipient

employees with language extending part 1635 to any recipient employee whose salary is allocated, in whole or in part, to any of the recipient's funding sources as a direct cost.

Comments: LSC received six comments about this section. All commenters objected to LSC's proposed changes to this section, although they proposed different solutions.

NLADA said that the proposed requirement covers a broader group of recipient employees than necessary. They recommended that LSC revisit this proposal or add clarification about distinguishing between employees doing substantive legal work and non-substantive work. Generally, the comments evinced a concern among NLADA's stakeholders that the proposed rule would require a legal aid employee who is doing non-substantive work (like screening or intake) but whose salary is billed as a direct cost to comply with the part 1635 timekeeping requirements—an outcome that they believe to be “over-inclusive” and burdensome.

Three comments suggested that clearly defining “paralegal” is a better solution to the problem. One commenter stated that they are confused as to who must keep time under the proposed change; they stated that the preamble had many different definitions, but the actual regulation was “minimalist.” They proposed that the language instead be changed to, “Any attorney, paralegal, or other recipient employees who perform substantive legal work that is charged as a direct cost (as defined in 45 CFR 1630.5(d)) must keep time according to the standards set forth in § 1635.4.”

Another commenter suggested LSC add a sentence so that the definition of paralegal “does not include non-attorney time on administrative or supporting tasks that are not directly involved in providing clients substantive legal services, regardless of whether the compensation for the staff is characterized as direct or indirect in any applicable grant award.”

Response: LSC adopts the proposed rule as final with changes. LSC did not intend for employees doing an insubstantial amount of work on a grant (such as intake or screening)

to be subject to the timekeeping requirement. Rather, the intention was for anyone doing work identifiable to a grant to comply with the timekeeping requirement. LSC will modify the final rule in line with the suggestion of a commenter, so that the rule is clear that employees must comply with section 1635.4 when the work is charged to any award as a direct cost.

§ 1635.4 What are LSC's timekeeping standards?

LSC proposed replacing existing section 1635.3 with a new section 1635.4 that adopts documentation requirements for personal compensation from the Uniform Guidance. LSC specifically sought comment on the question of when employees covered by part 1635 must record their time in a recipient's timekeeping system.

Paragraph (a) proposed to establish several requirements for recipients' timekeeping records, including that records encompass both LSC-funded and all other activities compensated by the recipient on an integrated basis. LSC specifically requested comments on the question of when employees covered by part 1635 must record their time in a recipient's timekeeping system. Paragraph (b) proposed to require recipients to maintain records for employees who are not exempt from Fair Labor Standards Act overtime requirements stating the total number of hours worked each day. Paragraph (c) proposed to require recipients to use the same documentation and standards to justify counting salaries and wages of staff working on the LSC grant toward the cost-matching requirements of any Federal awards that they use to charge the salaries to the LSC grant.

Paragraph (d) proposed to allow recipients to establish the increments for which employees subject to part 1635 report their time, with the recommendation that the increment be no greater than one-quarter of an hour. LSC proposed that paragraph (e) be a rewrite of previous paragraph (d), with the language clarified and the reference to *de minimis* activities removed.

Comments: All eleven commenters discussed the proposed changes to this section. The comments on § 1635.4 clustered around five major subcategories, outlined below.

1. Comments about the deadline for entering time.

Seven commenters stated that the time period by which an employee's time needs to be entered into the system should be by the end of the employee's pay period (usually every two weeks or bimonthly). One recipient commenter stated that it currently asks its staff to enter time at least every 14 days and that they believe this satisfies the current requirement that time records be entered contemporaneously with the work being done. Another commenter stated that having a deadline to enter as the end of the pay period would "address the reality of legal work while providing a uniform definition."

NLADA did not specifically suggest that the end of the pay period be the deadline by which to enter time. Rather, they encouraged LSC to develop as long a timeframe as possible for employees to enter time. One commenter echoed this sentiment, asking for the deadline to be as liberal as possible, but "no less than 30 days." According to this commenter, this would avoid instances of noncompliance and allow programs to meet requirements of various funders.

Response: LSC adopts the proposed rule as final with changes. LSC adopts a deadline for entering time that is the end of the recipient employee's pay period.

2. Comments about proposed section 1635.4(a) and requirements for timekeeping records/"integrated basis."

Three grantees and NLADA expressed concern about the proposed changes to this part of the section. The comments indicated that recipients share confusion about what "integrated basis" means. On top of that, the example provided in paragraph (a)(7)(ii) raised concerns that costs would need to be allocated to a specified funding source by every attorney at the moment the attorney enters time.

NLADA stated that its stakeholders did not know what LSC intended by the term "integrated basis." However, they also said that if the term just means that LSC and non-

LSC work be located in the same case management system, then they have no objection. One commenter said that if “integrated basis” means that LSC will require that other funds and other types of grants be integrated into a single payroll system, the requirement would be a problem for them.

The example that LSC provided in § 1635.4(a)(7)(ii) said: “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, LSC grant.’” Several commenters expressed alarm that this example indicated that LSC expected grantee employees to make funding allocations up front when they are entering their hours. They stated that this would be a problem because funding allocations are not made at that stage or by individual attorneys.

As a separate concern with this section, one commenter pointed out a discrepancy that arose in this section of whether “matter” includes indirect services. They wrote:

Section 1635.2 states that a “Matter” may include indirect services. Section 1635.4(a)(7)(ii) provides, however, that a recipient’s time system must contain ‘[f]or 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.’ This implies that matters include only direct services since indirect services may not be linked to a specific award.

One commenter, also noting this as a potential point of confusion, proposed changing the language of the rule to reflect how grantees allocate costs to “link the activity to a specific award or indirect cost amount.”

Response: LSC adopts the proposed rule as final with changes. LSC will clarify that LSC and non-LSC funds need to be “integrated” into the same case management system, not the same payroll system. LSC will remove the part of the example in § 1635.4(a)(7)(ii) that describes the attorney entering and also allocating the time, as this does not reflect how time is allocated in recipient organizations. Finally, LSC will insert language in § 1635.4(a)(7)(ii) clarifying that “matter” does include indirect services.

3. Comments about paragraphs (b) and (c).

NLADA, referring to paragraphs 1635.4(b) and (c), took no position on whether to state DOL's regulations within LSC's regulations. They said that while it seemed unnecessary, it imposed no new burdens on LSC recipients. They did discuss general concerns with looking towards Uniform Guidance to regulate recipients, as "the relationship between LSC and its recipients is a unique one," and the Uniform Guidance "will never be a perfect fit for LSC programs." No other commenters addressed this section.

Response: LSC adopts the proposed rule as final without changes.

4. Comments about paragraph (d) and recording time in particular time increments.

Most commenters were either silent on this proposed change or supportive. NLADA endorsed LSC's removal of 15-minute time increments but wanted LSC to remove the language that it "recommends" still using increments of no more than 15 minutes. One commenter stated something similar, writing:

Essentially, by maintaining this language, LSC is continuing to encourage this inefficient practice. Also, a 'recommendation' from LSC carries weight. It conveys that this is a 'best practice' and this surely cannot be the intent here.

Response: LSC adopts the proposed rule as final without change. LSC will maintain the recommendation that grantees enter time in 15-minute time intervals, as this is an increment of time that is small enough to capture the minimum amount of time an employee spends on a case or matter, but not so small as to create a significant time entry burden on employees subject to part 1635.

5. Comments about paragraph (e), the removal of *de minimis* language and quarterly basis certification.

LSC received two comments about proposed paragraph (e). NLADA and another commenter wanted LSC to clarify if the exception for *de minimis* activities still exists

because the language was removed in the proposed revision. The commenter said that having the exception makes the rule clearer. They expressed the concern that in deleting the language, this might be interpreted as deleting the exception.

Response: LSC adopts the proposed rule as final with changes. LSC will re-insert the *de minimis* exception to clarify that the exception still exists.

§ 1635.5 What are LSC's standards for ensuring the proper allocation of employee compensation costs across awards?

LSC proposed to create a new section requiring recipients to have a method for ensuring the accuracy of timekeeping records and proper allocation of salaries and wages charged to awards as direct costs.

Comments: Eight commenters raised significant concerns with LSC's proposed changes in this section. NLADA flatly opposed the changes, saying:

The proposed § 1635.5 is an overly prescriptive solution that attempts to impose a one-size-fits-all approach to direct cost allocation. It would require extensive additional administrative costs, is not necessarily the most sensible approach for salaried staff working on the basic field grant, and would not necessarily provide any clear benefit when it comes to accurately allocating direct costs across funding sources.

The commenters read the proposed changes as meaning that LSC would require the reconciling of hours between a recipient's payroll system and timekeeping system. One commenter discussed the fact that most payroll records do not reflect total hours that attorneys work. Rather, payroll tracks attendance and leave. Thus, they assert that "payroll and timekeeping systems cannot be linked." Echoing this theme, another commenter said that the proposed changes "conflates two separate, independent record keeping systems." This commenter stated that in most situations, the payroll and timekeeping records for attorneys will not match. Another commenter said that the requirement to reconcile "deprives organizations of flexibility and options...by conflating these systems in the timekeeping regulation."

At least five commenters simply indicated that they didn't know what LSC meant by "reconciling." A commenter urged LSC not to adopt proposed § 1635.5. But if LSC does adopt it, they asked that LSC clarify if "reconciliation" means a true reconciliation—an accounting process that ensures two sets of records are in agreement—or a more general comparison of records. Furthermore, this commenter advocated for LSC to allow the "sampling" of data as a means of comparison.

Other commenters expressed confusion over why LSC issued the proposed change in the first place. One commenter pointed out that LSC already can review timekeeping records as part of its annual audit. This commenter would like LSC to provide a more detailed discussion of the challenges it has faced so that it can provide alternate solutions. Additionally, another commenter would like to have a better understanding of LSC's needs in proposing this change. NLADA is unclear what the benefit would be to LSC.

Finally, a commenter suggested that § 1635.5 not be added to the Timekeeping Requirement, but instead be located in part 1630—Cost Standards and Procedures.

In LSC's conversation with NLADA, NLADA reiterated its stakeholders' concerns with proposed § 1635.5. NLADA stated that they would like for LSC to clarify why the reconciliation requirement was incorporated in the first place. They said that recipient organizations reported that if they knew what the underlying problem was that LSC was attempting to correct with this rulemaking, they could then make alternative suggestions that would be less burdensome for them.

Response: LSC appreciates the commenters' thoughtful concerns and will remove this section from the final rule. LSC drafted this proposed change to address issues raised by its compliance staff regarding difficulty they had experienced finding support in recipients' records to justify salaries and wages the recipient charged directly to LSC grants and contracts. The comments make clear that LSC's proposed approach raises legitimate concerns about administrative burdens on grantees, as well as whether the

approach will address the oversight concern LSC intended to resolve. LSC will proceed with finalizing the rest of the changes proposed in this rulemaking; upon completion of this rulemaking, LSC will initiate conversations with stakeholders about how to address LSC's oversight needs while responding to stakeholders' concerns.

Section 1635.6 Who outside the recipient has access to these records?

LSC proposed to make only stylistic changes to changes to this section.

Comments: NLADA stated that they did not have any objections to these changes. All other comments were silent on this section.

Response: LSC will redesignate this section as 1635.5 in the final rule and adopt the rule without additional changes.

Additional Comments

Comments: NLADA and another commenter suggested that changes not be implemented until 2022. An additional commenter requested that LSC invite further discussion before adoption of any of the provisions.

Response: LSC agrees with the commenters. LSC will adopt the rule with an effective date of January 1, 2022.

III. List of Subjects in 45 CFR Part 1635

Grant program—law; Legal services; Reporting and recordkeeping requirements

For the reasons discussed in the preamble, the Legal Services Corporation revises 45 CFR part 1635 to read as follows:

PART 1635—TIMEKEEPING REQUIREMENT

Sec.

1635.1 What is the purpose of this part?

1635.2 Definitions.

1635.3 Who is covered by the timekeeping requirement?

1635.4 What are LSC's timekeeping standards?

1635.5 Who outside the recipient has access to these records?

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

§ 1635.1 What is the purpose of this part?

This part is intended to improve recipient accountability for the use of all funds by:

- (a) Assuring that allocations of direct costs to a recipient's LSC grant pursuant to 45 CFR part 1630 are supported by accurate records of the cases, matters, and supporting activities for which the funds have been expended;
- (b) Enhancing the recipient's ability to determine the cost of specific functions; and
- (c) Increasing the information available to LSC for assuring recipient compliance with Federal law and LSC rules and regulations.

§ 1635.2 Definitions.

As used in this part—

- (a) *Case* means a form of program service in which a recipient employee provides legal assistance to one or more specific clients, including but not limited to providing representation in litigation, administrative proceedings, and negotiations, and such actions as advice, providing brief services, and transactional assistance.
- (b)(1) *Case oversight* means a supervisor's review of a case for regulatory compliance, consistency with Case Service Report reporting rules, and quality control purposes. Case oversight activities include, but are not limited to, review of file for retainer, citizenship attestation or documentation of eligible non-citizen status, and documentation of financial eligibility determination; review of closing codes; and review of advice provided or pleadings filed.
- (2) *Case oversight* activities may be counted as case activity when the supervisor conducts extended review of the substantive legal advice provided in the case. *Case oversight* activities may be reported as a supporting activity when it represents the aggregate of a supervisor's time spent doing brief review of a large number of cases.
- (c) *Matter* means an action that contributes to the overall delivery of program services but does not involve direct legal advice to or legal representation of one or more specific

clients. Examples of matters include both direct services, such as community education presentations, operating pro se clinics, providing information about the availability of legal assistance, and developing written materials explaining legal rights and responsibilities; and indirect services, such as training, continuing legal education, supervision of program services, preparing and disseminating desk manuals, PAI recruitment, referral, intake when no case is undertaken, and tracking substantive law developments.

(d) *Restricted activities* means those activities that recipients may not engage in pursuant to 45 CFR part 1610.

(e) *Supporting activity* means any action that is not a case or matter.

§ 1635.3 Who is covered by the timekeeping requirement?

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 CFR 1630.5(d)) must keep time according to the standards set forth in § 1635.4.

§ 1635.4 What are LSC's timekeeping standards?

(a) 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 grantee'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.”

(b) In accordance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR 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.

(c) 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.

(d) Recipients may establish the increments of time for which employees must record their activities (*e.g.*, .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.

(e)(1) 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.

(2) 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.

§ 1635.5 Who outside the recipient has access to these records?

Recipients must make time records required by this section available for examination by auditors and representatives of LSC, and by any other person or entity statutorily entitled to access to such records. LSC shall not disclose any time record except to a Federal, State, or local law enforcement official or to an official of an appropriate bar association to enable such bar association official to investigate of an alleged violation of the rules of professional conduct.

Dated: May 10, 2021.

Stefanie Davis

Senior Assistant General Counsel.