

removed, and the citation “§ 405.378” is added in its place.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart G—Reconsiderations and Appeals Under Medicare Part A

6. The authority citation for part 405, subpart G continues to read as follows:

Authority: Secs. 1102, 1151, 1154, 1156, 1869(b), 1871, 1872, and 1879 of the Social Security Act (42 U.S.C. 1302, 1320c, 1320c-3, 1320c-4, 1395ff(b), 1395hh, 1395ii, and 1395pp).

§ 405.705 [Amended]

7. In § 405.705, in paragraph (d), the following changes are made:

- a. The citation “(31 U.S.C. 951–953)” is removed, and the citation “(31 U.S.C. 3711)” is added in its place.
- b. The citation “§ 405.374” is removed, and the citation “§ 405.376” is added in its place.

§ 405.1801 [Amended]

8. In § 405.1801, in paragraph (a)(4), the citation “§ 405.374” is removed, and the citation “§ 405.376” is added in its place.

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

9. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 411.28 [Amended]

10. In § 411.28, in paragraph (b), the citation “§ 405.374” is removed, and the citation “§ 405.376” is added in its place.

§ 413.20 [Amended]

11. In § 413.20, in paragraph (e), the citation “§ 405.371(a)” is removed wherever it appears (twice), and the citation “§ 405.372(a)” is added in place of the first appearance, and “§ 405.372(b)” is added in place of the second appearance.

§ 413.153 [Amended]

2. In § 413.153, in paragraph (a)(1)(iii), the citation “§ 405.376” is removed, and the citation “§ 405.378” is added in its place.

PART 447—PAYMENTS FOR SERVICES

13. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 447.31 [Amended]

14. In § 447.31, in paragraph (a), the citation “§ 405.375” is removed, and the citation “§ 405.377” is added in its place.

PART 493—LABORATORY REQUIREMENTS

15. The authority citation for part 493 continues to read as follows:

Authority: Sec. 353 of the Public Health Service Act, secs. 1102, 1861(e), the sentence following 1861(s)(11), 1861(s)(12), 1861(s)(13), 1861(s)(14), 1861(s)(15), and 1861(s)(16) of the Social Security Act (42 U.S.C. 263a, 1302, 1395x(e), the sentence following 1395x(s)(11), 1395(s)(12), 1395(s)(13), 1395(s)(14), 1395(s)(15), and 1395(s)(16)).

§ 493.1834 [Amended]

16. In § 493.1834, in paragraph (i)(1)(ii), the citation “§ 405.376(d)” is removed, and the citation “§ 405.378(d)” is added in its place.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 30, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: August 16, 1996.

Donna E. Shalala,

Secretary.

[FR Doc. 96–30057 Filed 11–29–96; 8:45 am]

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LEGAL SERVICES CORPORATION

45 CFR Part 1610

Use of Non-LSC Funds

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule revises the Legal Services Corporation’s (“Corporation” or “LSC”) interim rule concerning the use of non-LSC funds by LSC recipients. The revisions to this rule are intended to implement provisions first appearing in the Corporation’s Fiscal Year (“FY”) 1996 appropriations act that are currently incorporated by reference in the Corporation’s FY 1997 appropriations act. With a few exceptions, many of the new statutory conditions effectively restrict a recipient’s non-LSC funds to the same degree they restrict a recipient’s LSC funds. This rule also clarifies the extent to which conditions on a recipient’s non-LSC funds apply when a recipient transfers its funds to

another person or entity. Technical revisions are also made to the rule.

DATES: This final rule is effective on January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Victor Fortuno, General Counsel, (202) 336–8910.

SUPPLEMENTARY INFORMATION: On May 19, 1996, the Operations and Regulations Committee (“Committee”) of the LSC Board of Directors (“Board”) requested the LSC staff to prepare an interim rule to implement section 504 in the Corporation’s FY 1996 appropriations act, Pub. L. 104–134, 110 Stat. 1321 (1996), which applied most conditions contained therein to any person or entity receiving LSC funds, effectively restricting virtually all of a recipient’s funds to the same degree that it restricts LSC funds. The Committee held hearings on staff proposals on July 8 and 19, and the Board adopted an interim rule on July 20 for publication in the Federal Register. Although the interim rule was effective upon publication, see 61 FR 41960 (August 13, 1996), the Corporation also solicited comments on the rule for review and consideration by the Committee and Board.

The Corporation received 8 comments on the rule. The Committee held public hearings on the rule on September 29, 1996, and made several recommendations for revisions to the Board. The Board adopted this final rule on September 30, 1996.

The Corporation’s FY 1997 appropriations act became effective on October 1, 1996, see Pub. L. 104–208, 110 Stat. 3009. It incorporated by reference the § 504 conditions on LSC grants and other sections of the FY 1996 appropriations act implemented by this rule. Accordingly, the preamble and text of this rule continue to refer to the appropriate section number of the FY 1996 appropriations act.

As did the interim rule, this final rule generally serves two purposes. First, it incorporates the new statutory conditions which apply to both a recipient’s LSC and non-LSC funds. Past appropriations acts applied restrictions contained in those acts only to the funds appropriated thereunder. In contrast, the new statutory provisions prohibit LSC from funding any recipient that engages in certain specified activities or that fails to act in a manner consistent with new statutory requirements. Second, this rule retains several technical revisions made in the interim rule which corrected provisions in the prior rule that had never been revised to be consistent with longstanding amendments to the LSC Act. Finally, in

response to public comment, this rule revises provisions in the interim rule dealing with transfers of a recipient's funds.

A section-by-section discussion of this final rule is provided below.

Section 1610.1 Purpose

The purpose of this rule is to implement statutory conditions on a recipient's use of non-LSC funds. These conditions are found in the LSC Act ("Act"), 42 U.S.C. § 2996 *et seq.*, and Pub. L. 104-134, 110 Stat. 1321 (1996), as incorporated by Pub. L. 104-208, 110 Stat. 3009 (1996).

Section 1610.2 Definitions

The interim rule revised the definition of "purposes prohibited by the LSC Act" in several ways. It deleted reference to a prohibition on the representation of juveniles, because the prohibition is no longer in the LSC Act. It also deleted reference to those restrictions on activities in the LSC Act that are now included in the broader restriction in the Corporation's appropriations act. Numbering changes were also made to correspond to the numbering changes that were made by the 1977 amendments to the LSC Act. These changes have been retained in the final rule.

The interim rule also deleted reference to fee-generating cases from the definition of a "purpose prohibited by the LSC Act." The deletion had a very narrow impact on recipients, in that they could take fee-generating cases with private funds without following the procedures set out in 45 CFR part 1609. However, LSC staff recommended and the Board agreed that the reference to fee-generating cases should be included in the final rule.

The deletion of the provision relating to fee-generating cases was based on an analysis that the provision in the Act merely imposes procedural requirements and does not prohibit the taking of fee-generating cases. On reflection, however, the Board concluded that the fee-generating provision is a prohibition.

One comment stated that the definition of "purpose prohibited by the LSC Act" is deficient, because the word "purpose" is not adequately defined in either the LSC Act or part 1610. The LSC Act and part 1610, however, do not attempt to define the word "purpose;" rather, the rule interprets the clause in the LSC Act that includes the word—"purpose prohibited by the LSC Act"—by specifically listing every activity the Corporation has determined to be a prohibited purpose under the Act. The prohibited purposes listed in this

definition have been in the definition since 1978, and the listing has been and still is very specific, in that it cites to sections of the LSC Act containing the prohibited purposes as well as to the regulations implementing those sections. In addition, the use of "purpose" is well understood in Federal Appropriations Law, and is rooted in 31 U.S.C. § 1301(a), which requires the use of Federal funds for the purposes for which they are appropriated. See Principles of Federal Appropriations Law, Chapter 4, "Availability of Appropriations: Purpose" at 4-1 (1991). No changes were made in response to this comment.

"Activity prohibited by or inconsistent with Section 504" lists the prohibitions and requirements in section 504 (a) of the Corporation's FY 1996 appropriations act that have been included by reference in the Corporation's FY 1997 appropriations act. These prohibitions and requirements apply to a recipient's activities, regardless of the source of funding. The definition also makes reference to subsections 504(b) and 504(e), which provide exceptions to those conditions on specific activities supported by non-LSC funds.

A few comments suggested that the Corporation should distinguish between those conditions on funds in the definition of "activity prohibited by or inconsistent with Section 504" that are prohibitions, such as restrictions on class actions and certain lobbying activities, and those that are operational requirements, such as those on priorities and timekeeping. The main concern of the comments relates to application of the rule to transfers of recipients' funds. The Board agreed that the concerns raised by the comments should be addressed, but did not make any changes to the definition. Rather, it made changes reflected in § 1610.7, which deals with the application of the conditions in this definition to transfers of recipient funds.

The definitions for "IOLTA funds," "non-LSC funds," "private funds," "public funds," and "tribal funds" are the same as in the interim rule. "IOLTA funds" is defined as funds derived from programs established by State court rules or legislation that collect and distribute interest earned on lawyers' client trust accounts. "Non-LSC funds" are funds derived from a source other than the Corporation and would include both public and private funds. "Private funds" are defined as funds derived from an individual or entity other than a governmental source or LSC. "Public funds" is similar to the definition of "public funds" in part 1600, but also

clarifies that, for the purposes of this part, IOLTA funds will be treated in the same manner as public funds. "Tribal funds" are defined as funds received by a recipient from an Indian tribe or from a private nonprofit foundation or organization that are given for the benefit of Indians or Indian tribes.

The definitions of "private attorney," "law firm," and "State or local entity of attorneys" have been deleted as no longer necessary, due to changes made by the Board to § 1610.6 of the interim rule, as discussed below.

A new definition of "transfer" has been added that was not included in the interim rule. The definition is necessary to clarify the application of this part to a transfer of recipient funds, as discussed below under § 1610.7. A "transfer" is defined as a transfer of a recipient's funds for the purpose of conducting programmatic activities that are normally conducted by the recipient, such as the representation of eligible clients, or that provide direct support to the recipient's legal assistance activities. A transfer is not intended to include a non-programmatic fee-for-service arrangement or a payment for goods or services.

Section 1610.3 Prohibition

The prohibition section in the interim rule included the new statutory restrictions on various activities in Section 504. No comments were received suggesting changes to this section, and the only changes made in the final rule are technical.

Section 1610.4 Authorized Use of Other Funds

This section clarifies that the restrictions in section 504 apply to activities supported by all funds except tribal funds, while those restrictions in the LSC Act which are not covered by section 504 apply only to LSC and private funds.

Section 1610.4(a): Paragraph (a) sets out an exception included in both the LSC Act and Section 504 for tribal funds. The exception exempts tribal funds from the general prohibition on the use of non-LSC funds, as long as the tribal funds are used for the purposes for which they were provided.

Section 1610.4(b). Section 1610.4(b) implements the exception in the LSC Act for public funds which permits recipients to use public funds in accordance with the purposes for which the funds were provided. However, because the Corporation's FY 1996 appropriations act contains no exception for public funds for most of its restrictions on activities, language is included providing that public funds

may not be used for any activity prohibited by or inconsistent with Section 504. In accordance with current LSC policy, the section also provides that for purposes of applying this regulation, IOLTA funds are to be treated the same as public funds.

Section 1610.4(c). Paragraph (c) states the exception that allows recipients to use private funds if they use them for the purposes for which they were provided, and if they do not use their private funds for any activity prohibited by the LSC Act or prohibited by or inconsistent with § 504.

Section 1610.4(d). Section 1610.4(d) reflects § 504(d)(2)(B) of the Corporation's FY 1996 appropriations act, which provides that a recipient may use non-LSC funds to provide legal assistance to financially ineligible persons, provided that the funds are used for the specific purpose for which they were received and are not used in a manner that violates the LSC Act or § 504.

Section 1610.5 Notification

This section incorporates the requirement of § 504(d)(1) of the appropriations act that recipients may not accept funds from non-LSC sources unless they provide written notice to the funders that their funds may not be used in any manner inconsistent with the LSC Act or § 504. The requirement applies only to cash contributions; recipients are not required to notify persons or organizations who make non-cash donations or volunteer their time or services to the recipient.

In an effort to relieve recipients of some of the administrative burden that might be imposed by the notice requirement, the interim regulation contained a *de minimis* exception. The exception relieves recipients of the notice requirement for contributions of less than \$250. One comment questioned whether the rule intends that LSC recipients follow the same reporting requirements and guidelines used by the IRS in reporting donations of \$250 or more. The comment also asked when and how often notification is required and commented that it is impracticable to include the notice in a one or two page community-wide solicitation letter.

Section 1610.5 is not intended to implement the IRS instructions and guidelines concerning contributions to charities; therefore, it does not incorporate the IRS reporting or other procedural requirements. Rather, it simply recognizes that, because recipients must provide acknowledgements for donations for \$250 or more for IRS purposes, it does

not constitute any significant additional burden to incorporate the required notification into the acknowledgement. No change has been made in response to this comment.

Section 504(d)(1) and the interim rule required notification before the recipient "accepts" the funds. The Corporation has advised recipients in Program Letter 96-3 that notice should be given during the course of soliciting funds or applying for a grant or contract. For unsolicited donations, the program letter states that notice should be given in the recipient's letter acknowledging the contribution. For contracts and grants already awarded for which notice has not been given, recipients are advised in the program letter to notify the funding source before the next payment is accepted. No change has been made in response to this comment.

Finally, the notification requirement relates to funds received by recipients as grants, contracts or charitable donations from funders other than the Corporation, which are intended to fund the non-profit work of the recipient. It does not include funds received from sources such as court payment to attorneys for their work under court appointments; nor does it include payments to the recipient for rent, bank interest, or sale of goods, such as manuals.

The Board determined that the substance of this section, including the under-\$250 *de minimis* exception, should be retained. Nonetheless, the Board made two changes to this section in the final rule. First, in response to a comment from a recipient that receives tribal funds, paragraph (a) is revised to clarify that notification is required only when the funds are in fact restricted. Thus, when a recipient receives tribal funds to which the restrictions do not apply, no notice is required to the source of the funds. This language clarifies that notice is not required for those restrictions on non-LSC funds that are found exclusively in the LSC Act. Second, for clarity, a technical change was made to paragraph (b) by adding "receipt of" before contributions.

Section 1610.6 Applicability

This section in the interim rule addressed two distinct situations. Paragraph (a) addressed the applicability of this part to a recipient's use of non-LSC funds for court appointments and for certain criminal representation as permitted under section 1010(c) of the LSC Act. The rest of the section dealt with transfers of a recipient's funds.

For clarity, the final rule treats these issues in two separate sections: the

subject matter of paragraph (a) becomes the whole of § 1610.6, and a new § 1610.7 (corresponding to §§ 1610.6(b) and (c) of the interim rule) is created to address the transfer of funds provisions.

Comments on paragraph (a) of the interim rule expressed concern and confusion about the scope of the paragraph. Most of the confusion focused on the paragraph's attempt to implement a provision in section 1010(c) of the LSC Act. Section 1010(c) generally requires that if a recipient's LSC funds are subject to a prohibition under the LSC Act, a recipient's private funds are also subject to the same prohibition. An exception to this requirement, however, was included in the Act for "private attorneys, private law firms, or other State or local entities of attorneys, or * * * legal aid societies having separate public defender programs." This exception was intended to provide relief for these individuals and entities with limited or special grants or contracts made by the Corporation, such as demonstration grants. See Conf. Rep. No. 845 93rd Cong., 2d Sess. 30-31 (1974); Cong. Rec. H5132-33 (June 21, 1973); H3952-53 (May 16, 1974); S12629 (July 16, 1974); S12923, 12925, 12935, 12954 (July 18, 1974). The exception was also intended to allow the Corporation to fund the civil legal assistance activities of programs, such as legal aid societies, with separate public defender programs.

The new statutory conditions in the Corporation's FY 1996 appropriations act, as incorporated by the Corporation's FY 1997 appropriations act, modify this exception because the Corporation is prohibited from giving grants to any person or entity that does not comply with the conditions set out in section 504. Accordingly, the Board decided to revise paragraph (a) in the final rule to limit the exception to a recipient's public defender programs and projects which provide legal representation in criminal proceedings and actions challenging criminal convictions, and to explicitly permit such representation on behalf of aliens and prisoners. There is no conflict with the restrictions in section 504 on representation of aliens and prisoners because these restrictions apply only to civil representation. Except for the narrow category of separately funded public defender programs or projects protected by section 1010(c), LSC recipients are prohibited from engaging in or using resources for any criminal representation.

The interim rule's exception for criminal or related cases accepted by a recipient or subrecipient pursuant to a

court appointment has been retained as paragraph (b) in the final rule.

Section 1610.7 Transfers of Recipient Funds

A new § 1610.7 has been added to this rule to address the applicability of the statutory conditions listed in § 1610.2 (a) and (b) when a recipient transfers its LSC or non-LSC funds to another individual or entity (hereinafter, both "individual" and "entity" are referred to as "entity"). This section replaces § 1610.6 (b) and (c) of the interim rule. The statutory conditions on a recipient's funds in the LSC Act and the Corporation's current appropriations act do not address the effect of these provisions on a transfer of a recipient's funds to another entity. However, as a matter of policy, the Corporation has historically applied such provisions to transfers of a recipient's funds. See, for example, 45 CFR parts 1627 and 1632 and Program Letter dated December 11, 1995. This policy reflects the intent of the Corporation that transfers of funds not become a means to circumvent statutory conditions on a recipient's LSC and non-LSC funds.

The interim rule continued this policy. Comments made it clear, however, that more specific guidance was necessary. Other comments described situations where Congressional intent would not be served by strict application of this policy. Accordingly, certain substantive changes have been made by the Board in this final rule, as described below.

Section 1610.7(a) (Transfers of LSC funds): Paragraph (a) provides that, for transfers of LSC funds, the conditions in § 1610.2 (a) and (b) of this part, except as modified by paragraphs (c) and (d) of this section, will apply to both the LSC funds and the non-LSC funds of the entity receiving those funds. This requirement is based on the Corporation's interpretation of legislative intent that the statutory conditions on LSC funds attach to a recipient's non-LSC funds and that, in most situations, this should also be the case when LSC funds are transferred by a recipient. Otherwise, recipients would be able to avoid legislative intent by simply transferring their LSC funds to other persons or entities.

Section 1610.7(b) (Transfers of non-LSC funds): This paragraph provides that, for a transfer of non-LSC funds, the conditions in § 1610.2 (a) and (b) of this part, except as modified by paragraphs (c) and (d) of this section, will apply to the funds transferred but not to the other funds of the entity receiving the funds. When a recipient transfers its non-LSC funds to an entity that has no

LSC funds, the conditions remain attached to the transferred funds; but because they are not LSC funds, the other funds of the entity are not affected. The Corporation requires that the transferred non-LSC funds be subject to the conditions, because otherwise recipients would be able to avoid the conditions on their non-LSC funds by simply transferring the funds.

Section 1610.7(c): Modifications to the requirements in paragraphs (a) and (b) of this section are set out in this paragraph which provides that the § 1610.2(b) requirements regarding priorities and timekeeping be modified for entities that receive transfers of recipients' funds. The provisions on priorities and timekeeping are administrative requirements more appropriately applicable to a recipient's own use of its funds. The intent is to assure greater accountability for the recipient's use of its funds. The administrative burden of extending these requirements to all funds of an entity to which a recipient's funds are transferred would be significant.

Accordingly, the final rule applies the administrative requirements on priorities and timekeeping only to the funds transferred and only to the extent to ensure accountability for those funds. Thus, paragraph (c) requires that entities receiving a transfer of recipient funds must either use the funds consistent with the recipient's priorities or establish their own priorities for the use of those funds. In regard to timekeeping, the language tracks the statutory requirement so that such entities are required to maintain records of time spent on each case or matter undertaken with the funds transferred. However, they are not required to keep time in accordance with the Corporation's timekeeping regulation, 45 CFR part 1635.

Section 1610.7(d) (Transfers for PAI activities): Paragraph (d) responds to comments from the American Bar Association and others that pointed out that many of the individual attorneys, private firms, and bar associations that provide representation or establish projects or programs for referral of cases pursuant to a recipient's private attorney involvement program ("PAI") would not be able to continue their involvement in PAI if involvement meant the application of all of the conditions listed in this part to their other funds.

The Board determined that a strict application of the Corporation's policy to PAI activities would significantly undermine PAI efforts. Accordingly, this paragraph provides an exception for the other funds of bar associations,

private attorneys and other entities when the sole purpose of the transfer is to fund involvement in PAI activities. Such activities would include establishing judicare panels or referral services. This paragraph does not authorize any involvement in any restricted activities with the funds transferred. It is clear in this paragraph and under part 1614 that no activities inconsistent with the conditions on the use of LSC funds may be attributed to a recipient's PAI requirement under part 1614.

Section 1610.8 Accounting

This section has been renumbered from the interim rule but has not been otherwise revised. This section sets out the general accounting requirement for recipients for their non-LSC funds. Currently, recipients are directed by the accounting guidance issued by the Corporation.

List of subjects in 45 CFR Part 1610

Grant programs—law, Legal services.

For reasons set forth in the preamble, LSC revises 45 CFR part 1610 to read as follows:

PART 1610—USE OF NON-LSC FUNDS

Sec.	
1610.1	Purpose.
1610.2	Definitions.
1610.3	Prohibition.
1610.4	Authorized use of other funds.
1610.5	Notification.
1610.6	Applicability.
1610.7	Transfers of recipient funds.
1610.8	Accounting.

Authority: 42 U.S.C. 2996i; 110 Stat. 3009 (1996); 110 Stat. 1321 (1996).

§ 1610.1 Purpose.

This part is designed to implement statutory restrictions on the use of non-LSC funds by LSC recipients.

§ 1610.2 Definitions.

(a) *Purpose prohibited by the LSC Act* means any activity prohibited by the following sections of the LSC Act and those provisions of the Corporation's regulations that implement such sections of the Act:

- (1) Sections 1006(d)(3), 1006(d)(4), 1007(a)(6), and 1007(b)(4) of the LSC Act and 45 CFR part 1608 of the LSC Regulations (Political activities);
- (2) Section 1007(a)(10) of the LSC Act (Activities inconsistent with professional responsibilities);
- (3) Section 1007(b)(1) of the LSC Act and 45 CFR part 1609 of the LSC Regulations (Fee-generating cases);
- (4) Section 1007(b)(2) of the LSC Act and 45 CFR part 1613 of the LSC Regulations (Criminal proceedings);

(5) Section 1007(b)(3) of the LSC Act and 45 CFR part 1615 of the LSC Regulations (Actions challenging criminal convictions);

(6) Section 1007(b)(7) of the LSC Act and 45 CFR part 1612 of the LSC Regulations (Organizing activities);

(7) Section 1007(b)(8) of the LSC Act (Abortions);

(8) Section 1007(b)(9) of the LSC Act (School desegregation); and

(9) Section 1007(b)(10) of the LSC Act (Violations of Military Selective Service Act or military desertion).

(b) *Activity prohibited by or inconsistent with Section 504* means any activity prohibited by, or inconsistent with the requirements of, the following sections of 110 Stat. 1321 (1996) and those provisions of the Corporation's regulations that implement those sections:

(1) Section 504(a)(1) and 45 CFR part 1632 of the LSC Regulations (Redistricting);

(2) Sections 504(a) (2) through (6), as modified by Sections 504 (b) and (e), and 45 CFR part 1612 of the LSC Regulations (Legislative and administrative advocacy);

(3) Section 504(a)(7) and 45 CFR part 1617 of the LSC Regulations (Class actions);

(4) Section 504(a)(8) and 45 CFR part 1636 of the LSC Regulations (Statement of facts and client identification);

(5) Section 504(a)(9) and 45 CFR part 1620 of the LSC Regulations (Priorities);

(6) Section 504(a)(10) and 45 CFR part 1635 of the LSC Regulations (Timekeeping);

(7) Section 504(a)(11) and 45 CFR part 1626 of the LSC Regulations (Aliens);

(8) Section 504(a)(12) and 45 CFR part 1612 of the LSC Regulations (Public policy training);

(9) Section 504(a)(13) and 45 CFR part 1642 of the LSC Regulations (Attorneys' fees);

(10) Section 504(a)(14) (Abortion litigation);

(11) Section 504(a)(15) and 45 CFR part 1637 of the LSC Regulations (Prisoner litigation);

(12) Section 504(a)(16), as modified by Section 504(e), and 45 CFR part 1639 of the LSC Regulations (Welfare reform);

(13) Section 504(a)(17) and 45 CFR part 1633 of the LSC Regulations (Drug-related evictions); and

(14) Section 504(a)(18) and 45 CFR part 1638 of the LSC Regulations (In-person solicitation).

(c) *IOLTA funds* means funds derived from programs established by State court rules or legislation that collect and distribute interest on lawyers' trust accounts.

(d) *Non-LSC funds* means funds derived from a source other than the Corporation.

(e) *Private funds* means funds derived from an individual or entity other than a governmental source or LSC.

(f) *Public funds* means non-LSC funds derived from a Federal, State, or local government or instrumentality of a government. For purposes of this part, IOLTA funds shall be treated in the same manner as public funds.

(g) *Transfer* means a transfer of a recipient's funds for the purpose of conducting programmatic activities that are normally conducted by the recipient, such as the representation of eligible clients, or that provide direct support to the recipient's legal assistance activities.

(h) *Tribal funds* means funds received from an Indian tribe or from a private nonprofit foundation or organization for the benefit of Indians or Indian tribes.

§ 1610.3 Prohibition.

A recipient may not use non-LSC funds for any purpose prohibited by the LSC Act or for any activity prohibited by or inconsistent with section 504, unless such use is authorized by §§ 1610.4, 1610.6 or 1610.7 of this part.

§ 1610.4 Authorized use of other funds.

(a) A recipient may receive tribal funds and expend them in accordance with the specific purposes for which the tribal funds were provided.

(b) A recipient may receive public or IOLTA funds and use them in accordance with the specific purposes for which they were provided, if the funds are not used for any activity prohibited by or inconsistent with section 504.

(c) A recipient may receive private funds and use them in accordance with the purposes for which they were provided, provided that the funds are not used for any activity prohibited by the LSC Act or prohibited or inconsistent with section 504.

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

§ 1610.5 Notification.

(a) Except as provided in paragraph (b) of this section, no recipient may accept funds from any source other than the Corporation, unless the recipient provides to the source of the funds

written notification of the prohibitions and conditions which apply to the funds.

(b) A recipient is not required to provide such notification for receipt of contributions of less than \$250.

§ 1610.6 Applicability.

Notwithstanding § 1610.7(a), the prohibitions referred to in §§ 1610.2(a)(4) (Criminal proceedings), (a)(5) (Actions challenging criminal convictions), (b)(7) (Aliens) or (b)(11) (Prisoner litigation) of this part will 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.

§ 1610.7 Transfers of recipient funds.

(a) For a transfer of LSC funds, the prohibitions and requirements referred to in this part, except as modified by paragraphs (c) and (d) of this section, will apply both to the funds transferred and to the non-LSC funds of the person or entity.

(b) For a transfer of non-LSC funds, the prohibitions and requirements referred to in this part, except as modified by paragraphs (c) and (d) of this section, will apply to the funds transferred, but will not apply to the other non-LSC funds of the person or entity.

(c)(1) In regard to the requirement in § 1610.2(b)(5) on priorities, persons or entities receiving a transfer of LSC or non-LSC funds shall either:

(i) Use the funds transferred consistent with the recipient's priorities; or

(ii) Establish their own priorities for the use of the funds transferred consistent with 45 CFR part 1620;

(2) In regard to the requirement in § 1610.2(b)(6) on timekeeping, persons or entities receiving a transfer of LSC or non-LSC funds are required to maintain records of time spent on each case or matter undertaken with the funds transferred.

(d) For a transfer of LSC or non-LSC funds to bar associations, *pro bono* programs, private attorneys or law firms, or other entities for the sole purpose of funding private attorney involvement activities (PAI) pursuant to 45 CFR part 1614, the prohibitions or requirements of this part shall apply only to the funds transferred.

§ 1610.8 Accounting.

Funds received by a recipient from a source other than the Corporation shall be accounted for as separate and distinct

receipts and disbursements in a manner directed by the Corporation.

Dated: November 26, 1996.

Victor M. Fortuno,

General Counsel.

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45 CFR Part 1617

Class Actions

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule revises the Legal Services Corporation's ("Corporation" or "LSC") interim regulation concerning class actions. The revisions are intended to implement a restriction contained in the Corporation's Fiscal Year ("FY") 1996 appropriations act which is currently incorporated by reference in the Corporation's FY 1997 appropriations act. The restriction prohibits the involvement of LSC recipients in class actions.

DATES: This final rule is effective on January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, (202) 336-8910.

SUPPLEMENTARY INFORMATION: On May 19, 1996, the Operations and Regulations Committee ("Committee") of the LSC Board of Directors' ("Board") requested LSC staff to prepare an interim rule to implement § 504(a)(7), a restriction in the Corporation's FY 1996 appropriations act, Pub. L. 104-134, 110 Stat. 1321 (1996), which prohibited involvement of LSC recipients in class actions. The Committee held public hearings on staff proposals on July 8 and 19, and the Board adopted an interim rule on July 20 for publication in the Federal Register. Although the interim rule was effective upon publication, see 61 FR 41963 (Aug. 13, 1996), the Corporation also solicited comments on the rule for review and consideration by the Committee and Board.

The Corporation received 7 comments on the interim rule. The Committee held public hearings on the rule on September 29, 1996, and made several recommendations for revisions to the Board. The Board adopted this final rule on September 30, 1996.

The Corporation's FY 1997 appropriations act became effective on October 1, 1996, see Pub. L. 104-208, 110 Stat. 3009. It incorporated by reference the § 504 condition on LSC grants included in the FY 1996 appropriations act implemented by this

rule. Accordingly, the preamble and text of this rule continue to refer to the appropriate section number of the FY 1996 appropriations act.

The interim rule was intended to implement a clear prohibition in the Corporation's FY 1996 appropriations act on any participation in class actions by LSC recipients. Other than providing a transition period for programs to withdraw from pending cases, the appropriations act provided no exceptions and allowed for no Corporation waivers to the prohibition. The legislative history of this provision indicates an intent that legal services programs should focus their resources on representation of individual poor clients and not be involved in any class actions. Accordingly, the interim rule contained a strict prohibition on participation in class actions with no exceptions or waivers. This final rule continues the interim rule's strict prohibition but better clarifies those activities that constitute participation in class actions.

A section-by-section discussion of this final rule is provided below.

Section 1617.1 Purpose

The purpose of this rule is to prohibit involvement by LSC recipients in class actions.

Section 1617.2 Definitions

The definition of "class action" in the interim rule deferred to widely accepted Federal and local court rules and statutory definitions. Thus, a class action for the purposes of this part was defined as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure or the comparable State statute or rule of civil procedure governing the action in the court where it is filed. No comments challenged the definition, and no changes have been made to the definition in this final rule.

The definition of "initiating or participating in any class action" in the interim rule was intended to clarify that any involvement in a class action is prohibited prior to an order granting relief. Public comments on part 1617 generally asked for more clarity as to the scope of the definition. In general, the Board decided that it should state in the rule that all participation, whether before or after entry of an order, is prohibited; and the final rule reflects that change. In addition, the Board decided to address some of the specific issues addressed by the comments.

One comment urged the deletion of "non-adversarial" before "monitoring," stating that any action, even an adversarial action, should be allowed once an order granting relief has been

issued. The Board did not take this approach. Participation in adversarial actions, even after entry of an order, constitutes active participation in a class action, and such involvement is not permitted under the law. The use of the term "non-adversarial" was intentional. The Corporation meant to prohibit any adversarial action after relief is granted, and the term is retained in this final rule. Furthermore, the term "monitoring" is replaced with "activities" because its use seemed to imply a more active role for recipients than was intended.

Comments further indicated that the rule should be more explicit about the types of activities the Corporation considers to be adversarial and non-adversarial. Accordingly, this final rule adds language to clarify what would be considered to be non-adversarial. Non-adversarial activities would include efforts to remain informed about the terms of an order granting relief as well as efforts to explain, clarify, educate or give advice about an order granting relief.

One comment questioned the use of the term "legal assistance" in the definition of "initiating or participating in any class action." Because the term as defined in 45 CFR part 1600 has a different focus than is intended in this definition, the Board changed "legal assistance" to "representation."

Other comments suggested deleting the language in the definition that prohibits program attorneys from assisting their clients to "withdraw from" or "opt out of" a class action. The comments stated that the inclusion of the language in the definition goes beyond the intent of the statutory restriction and has the opposite effect of "participating" in a class action. Arguing that representation to withdraw from or opt out of a class action may be essential to allow individual representation, the comments urged the Corporation to change the rule to allow such representation.

The Board agreed that efforts to withdraw from a class action are consistent with the Congressional intent that LSC recipients provide representation to individual clients and should not be viewed as efforts to participate or to be included in a class action. The Board revised paragraph (b) of the definition of "initiating or participating in any class action" to clarify that the definition does not include the representation of an individual client seeking to withdraw from or opt out of a class by deleting reference to withdrawing or opting out from the definition. This change only authorizes actions by a recipient