

will not take further action on this proposed rule

**DATES:** Written comments must be received by May 20, 2015.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R01-RCRA-2015-0195, by mail to Sharon Leitch, RCRA Waste Management and UST Section, Office of Site Remediation and Restoration (OSRR07-1), U.S. EPA Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109-3912. Comments may also be submitted electronically or thorough hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Sharon Leitch, RCRA Waste Management and UST Section, Office of Site Remediation and Restoration (OSRR07-1), U.S. EPA Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109-3912; telephone number: (617) 918-1647; fax number: (617) 918-0647; email address: [leitch.sharon@epa.gov](mailto:leitch.sharon@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing these changes by a direct final rule. EPA did not make a proposal prior to the direct final rule because we believe this action is not controversial and do not expect adverse comments that oppose it. We have explained the reasons for this authorization in the preamble to the direct final rule. Unless we receive written adverse comments which oppose this authorization during the comment period, the direct final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the direct final rule and it will not take immediate effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you should do so at this time.

Dated: March 24, 2015.

**H. Curtis Spalding,**

*Regional Administrator, EPA Region 1.*  
[FR Doc. 2015-08996 Filed 4-17-15; 8:45 am]

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## LEGAL SERVICES CORPORATION

### 45 CFR Parts 1610, 1627, and 1630

#### Use of Non-LSC Funds, Transfer of LSC Funds, Program Integrity; Subgrants and Membership Fees or Dues; Cost Standards and Procedures

**AGENCY:** Legal Services Corporation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule revises the Legal Services Corporation (LSC or Corporation) regulations governing transfers of LSC funds, subgrants to third parties, and cost standards and procedures.

**DATES:** Comments must be submitted by May 20, 2015.

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

*Email:* [SubgrantRulemaking@lsc.gov](mailto:SubgrantRulemaking@lsc.gov). Include "Subgrant Rulemaking" in the subject line of the message.

*Fax:* (202) 337-6519, ATTN: Subgrant Rulemaking.

*Mail:* Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007, ATTN: Subgrant Rulemaking.

*Hand Delivery/Courier:* Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007, ATTN: Subgrant Rulemaking.

*Instructions:* Electronic submissions are preferred via email with attachments in Acrobat PDF format. LSC may not consider written comments sent via any other method or received after the end of the comment period.

**FOR FURTHER INFORMATION CONTACT:** Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007, (202) 295-1563 (phone), (202) 337-6519 (fax), [sdavis@lsc.gov](mailto:sdavis@lsc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Regulatory History

*A. Part 1627.* LSC initially promulgated 45 CFR part 1627 in 1983 to improve its oversight of and accountability for LSC funds transferred by recipients to third parties. 48 FR 54206, 54207, Nov. 30, 1983. Prior to the issuance of part 1627, LSC did not regulate subawards of its funds. LSC intended part 1627 to apply to all transfers of LSC funds, which it described in the rule as subgrants, fees and dues, contributions, transfers to other recipients (considered a type of subgrant), training and education activities, and payments to tax-sheltered annuities, retirement accounts, and pensions on behalf of employees. *Id.* at

54209. LSC did not intend the rule to govern a recipient's procurement of goods and services for its own use. 48 FR 28485, June 22, 1983; 48 FR 54206, 54209, Nov. 30, 1983.

In the proposed rule for part 1627, LSC defined the term *subgrant* as

any transfer of funds received from the Corporation by a recipient to any organization for the purpose of carrying out a portion of the recipient's program under a grant or contract from the Corporation; it shall not include a contract for services to be rendered directly to the recipient, nor shall it include any contract with private attorneys or law firms for the direct provision of legal services to eligible clients.

48 FR 28485, 28486, June 22, 1983. In the final rule, LSC incorporated the quoted language into the definition of *subrecipient*, along with new language explaining what LSC considered activities conducted "for the purpose of carrying out a portion of the recipient's program." 48 FR 54206, 54207, Nov. 30, 1983. LSC also made contracts with private attorneys or law firms for the direct provision of legal services to eligible clients subject to the subgrant rule if the contract cost exceeded \$25,000. *Id.* LSC redefined the term *subgrant* as "any transfer of Corporation funds from a recipient which qualifies the organization receiving such funds as a subrecipient under the [revised definition of subrecipient]." *Id.*

In part 1627, LSC established the process by which a recipient could seek approval of a proposed subgrant, the maximum duration of a subgrant, the recipient's responsibilities for ensuring compliance with LSC's fiscal and audit requirements, and the recipient's responsibility to repay any disallowed costs. 48 FR 54206, 54209, Nov. 30, 1983. LSC also asserted its own rights to oversee subgrants to ensure the subgrantees' compliance with the LSC Act and other applicable statutes, LSC's regulations, and Corporation guidelines and instructions. *Id.* A separate section of the rule made these requirements applicable to subgrants from one LSC recipient to another. *Id.* Because a subgrant of LSC funds from one LSC recipient to another is a transfer of funds granted by the same agency, LSC established reporting, accounting, and repayment rules for these types of arrangements that reflect LSC's relationship to both parties. *Id.* at 54210.

LSC last revised part 1627 in 1996. LSC published an interim rule to reflect the complete prohibition on the use of LSC funds to pay fees or dues enacted as part of its fiscal year 1996 appropriations act ("FY96 appropriations act"). Sec. 505, Public Law 104-134, 110 Stat. 1321 (1996).

LSC also added a requirement that recipients establish adequate recordkeeping policies to document compliance with part 1627. 61 FR 45753, 45754, Aug. 29, 1996. The subgrant provisions remained unchanged, as did the provisions prohibiting contributions of LSC funds to other organizations and allowing recipients to make payments to tax-sheltered annuity funds, retirement accounts, or pension funds on behalf of its employees. *Id.* at 45753. The interim rule became final with only minor, non-substantive changes in 1997. 62 FR 19417, Apr. 21, 1997.

*B. Part 1610.* Part 1610 implements the statutory restrictions on the use of non-LSC funds by LSC recipients. 45 CFR 1610.1. Originally promulgated in 1976, part 1610 has been revised relatively frequently due to changes in statutory restrictions and in LSC's policies regarding the application of those restrictions. As with part 1627, LSC amended part 1610 in 1996 and 1997 to implement new restrictions Congress placed on recipients' LSC and non-LSC funds through the FY96 appropriations act. Sec. 504, Public Law 104-134, 110 Stat. 1321 (1996). Relevantly, in the December 1996 final rule, LSC added § 1610.7 to govern the application of the LSC Act restrictions and the FY96 appropriations act restrictions to recipient transfers of LSC funds and non-LSC funds to third parties. 61 FR 63749, 63752, Dec. 2, 1996. Newly added § 1610.7 also established requirements for aligning a third-party's priorities for the use of transferred funds with the LSC recipient's priorities and for timekeeping on cases and matters undertaken with the transferred funds. *Id.*

LSC issued a new interim rule in March 1997 in which it removed transfers of non-LSC funds from § 1610.7. 62 FR 12101, Mar. 14, 1997. LSC made this change to part 1610 in response to an order issued by the United States District Court for the District of Hawaii preliminarily enjoining LSC from enforcing the application of some of the FY96 appropriations act restrictions to non-LSC funds. *Id.*; see also *Legal Aid Society of Hawaii v. Legal Services Corporation*, 961 F. Supp. 1402 (D. Haw. 1997). LSC made no other changes to § 1610.7 as it applied to transfers of LSC funds. Section 1610.7 became final with only minor, non-substantive changes. 62 FR 27695, 27699, May 21, 1997.

In 2010, LSC revised part 1610 in response to legislation that removed the FY96 appropriations act restriction on

recipients' ability to claim or collect attorneys' fees. 79 FR 21506, 21508, Apr. 26, 2010. The 2010 revision did not affect § 1610.7.

## II. History of This Rulemaking

*A. Office of Inspector General Audit of the Technology Initiative Grant Program.* In 2010, LSC's Office of Inspector General (OIG) conducted an audit of the Corporation's Technology Initiative Grant (TIG) program. Among its findings was a conclusion that LSC improperly applied part 1627 to the TIG program. Audit of Legal Services Corporation's Technology Initiative Grant Program, Report No. AU-11-01, at 41-44, Dec. 2010. In support of its finding, OIG looked to the definition of the term *subrecipient*, particularly the portion stating that the entity receiving the award of LSC funds "agree[s] to conduct certain activities specified by or supported by the [original] recipient related to the recipient's programmatic activities. Such activities would normally include those that might otherwise be expected to be conducted by the recipient itself[.]" *Id.* at 41; see also 45 CFR 1627.2(b)(1). Based on this language, OIG found that

LSC's subgrant rule applies to all payments made by TIG grantees to third parties that then carry out some or all of the activities that 'might otherwise be expected to be conducted directly by the recipient' of a TIG grant made for the purposes specified in the grant documents. The TIG grants specify programmatic purposes other than the direct provision of legal services, namely the implementation of certain technological improvements. Payments by TIG grantees to third parties for services that fall within these purposes amount to subgrants within the meaning of LSC's regulations as currently written and should be administered consistent with the requirements of Part 1627.

*Id.* at 42.

OIG reached the same conclusion regarding the application of § 1610.7 to third-party payments of TIG funds. *Id.* at 50.

OIG noted in its report that the programmatic purposes of some TIG grants appeared to overlap the sort of business services that might not be treated as subgrants in other contexts. There is a degree of ambiguity in the application of LSC's subgrant rule to grants with relatively narrow, technological programmatic purposes, as was the case with some TIG grants. Part 1627 draws a distinction between payments to third parties to carry out activities 'related to the [grantee's] programmatic activities,' which must be treated as subgrants, and services provided by 'vendors or consultants in the normal course of business,' which need not be treated as subgrants when the services 'would not be expected to be provided

directly by the [grantee] itself.' The subgrant rule appears to have been written with the LSC's principal legal service grants in mind, such that ordinarily, programmatic activities consist of the provision of legal services, and business services can easily be classified as ancillary. This division is not as easy to make in the case of TIG grants, and the rule does not seem to have anticipated this problem.

*Id.* at 42.

OIG recommended that LSC Management "initiate a process to amend LSC regulations to account for [unique features of TIG projects]. . . ." *Id.* at 44. Management responded that LSC would review the subgrant rule "to determine whether it adequately accounts for the unique features of TIGs" and to determine whether to make recommendations for revising part 1627 to the Board of Directors. *Id.* Management also affirmed its reading of the subgrant rule by stating that it had consulted the Office of Legal Affairs to distinguish between "programmatic subgrants" and "non-programmatic expenditures for goods and services. . . ." *Id.* at 45. OIG considered Management's proposal to be responsive, but noted that its own recommendation contemplated rulemaking beyond merely making changes to part 1627. *Id.* OIG stated that it would leave the recommendation open until "all actions are completed and the OIG is notified of the results." *Id.*

*B. 2012 Initiation of Rulemaking.* Consistent with its response to OIG's recommendation, LSC Management presented a Rulemaking Options Paper ("ROP") and Management recommendation to the Operations and Regulations Committee ("Committee") of the LSC Board of Directors ("Board") at its quarterly meeting on April 16, 2012. In the ROP, LSC staff discussed options for addressing two issues raised by OIG's report. The first set of options pertained to LSC's oversight of TIG subawards to third parties that were not considered subgrants. The second set of options related to OIG's recommendation to revise the regulations to account for the special features of TIGs.

With respect to LSC's oversight of non-subgrant awards of TIG funds, OIG was satisfied that LSC's newly adopted TIG third-party contracting policy addressed its concerns. OIG consequently closed the related recommendations. In light of this development, Management recommended against rulemaking to respond to OIG's recommendations. The Committee voted to adopt Management's recommendation.

LSC developed three options to address OIG's concern that TIG subawards were not treated properly as subgrants. LSC first proposed that the Board could choose not to engage in rulemaking on the matter and let Management continue to apply its interpretation of the subgrant rules at part 1627 and the transfer rule at part 1610. LSC's next options each contemplated rulemaking, but in opposing directions. The second option proposed initiating rulemaking to adopt Management's interpretation of part 1627: That in order to be considered a subgrant, the award to a third party must be for carrying out the recipient's overall programmatic purpose of providing legal assistance to eligible clients. The last option was to initiate rulemaking to adopt OIG's interpretation of the rule: That a subgrant is any award to a third party to carry out the programmatic purposes of the particular grant from which the award is made.

In its memo to the Committee, Management recommended that the Committee initiate rulemaking to amend parts 1610 and 1627. Management believed that both rules should be amended to reflect LSC's "longstanding reading of these rules—that is, that both rules are designed to address legal services activities." Management explained that the transfer rule, which takes the definition of "transfer" substantially from part 1627,

subjects the transferee to all of LSC's substantive restrictions on legal services activities, including the 1996 restrictions that reach the use of non-LSC funds. These restrictions involve *legal services* activities (such as class actions, representation of aliens, and lobbying) and *legal aid program operations* (such as program priorities and timekeeping for cases and matters). As with the subgrant rule, the transfer rule does not extend those restrictions to non-programmatic procurement of goods or services. *Management does not believe it would be prudent grant management to extend these types of restrictions and requirements to third-party vendors that provide business services and technology services as part of TIGs.* These LSC restrictions are meant to apply to entities that receive LSC funds for the provision of legal services under the LSC Act.

Management further explained that its interpretation avoids absurd results in other contexts. For example, LSC makes disaster relief grants to recipients whose offices have been damaged or destroyed by natural disasters. Those grants may be used to hire contractors to rebuild the offices or purchase new office supplies. Under OIG's reading, Management said, the building contractor would become a subgrantee under part 1627 because the

purpose of the emergency grant is to help the recipient rebuild. Under Management's interpretation of parts 1610 and 1627, it would not.

The Committee accepted Management's recommendation. On April 16, 2012, the Chairman of the Committee presented the Committee's recommendation to initiate rulemaking on parts 1610 and 1627 to the Board of Directors for a vote. Some members of the Board raised concerns that because conflicting interpretations of parts 1610 and 1627 were the impetus for the rulemaking, rulemaking was perhaps an inefficient and inappropriate vehicle for resolving the dispute. Rather than voting on the Committee's recommendation, the Board voted to return the issue to the Committee to determine whether LSC could adopt a particular interpretation of parts 1610 and 1627 through a policy document rather than through rulemaking.

In response to the Board's instruction, the Committee directed LSC and OIG staff to determine whether LSC had options other than rulemaking to resolve the ambiguity regarding which subawards were covered by part 1627. The Committee met telephonically on June 18, 2012, to discuss the results of the staff deliberations. Both OIG and Management concluded that rulemaking was necessary to ensure that part 1627 reflected Management's concept of subgrants as awards to a third party for carrying out part of an LSC recipient's grant to provide legal services to eligible clients. The Committee concurred, and voted again to recommend that the Board initiate rulemaking to revise the subgrant rule.

On July 27, 2012, the Chairman of the Committee presented the Committee's recommendation to the Board of Directors. The Board accepted the recommendation and directed LSC staff to develop a draft rule for the Board's consideration, and OIG closed the related recommendation from its report. The rulemaking, however, became a lower priority on the Committee's agenda as a result of two factors. The first was the issuance of LSC's Pro Bono Task Force Report, which led to the extensive rulemaking process to revise part 1614. The second was the need to revise parts 1613 and 1626 to accommodate legislative changes to LSC's authority to provide legal assistance to individuals facing criminal charges in tribal courts and to certain non-citizen victims of violence, respectively. LSC revived the part 1627 rulemaking as a priority item on its 2015–2016 rulemaking agenda.

On April 12, 2015, the Committee voted to recommend that the Board

publish this NPRM in the **Federal Register** for notice and comment. On April 14, 2015, the Board accepted the Committee's recommendation and approved publication of the NPRM.

### III. Section-by-Section Analysis of Proposed Changes.

As will be discussed in more detail below, LSC proposes to revise part 1627 to adopt Management's interpretation of the rule as applying only to those subgrants awarded to third parties for the purpose of carrying out legal assistance activities authorized by the recipient's LSC grant. LSC also proposes to transfer § 1610.7, which governs the applicability of the restrictions placed upon acceptance of LSC funds by the LSC Act and § 504 of LSC's fiscal year 1996 appropriations act, to part 1627. Finally, LSC proposes to transfer existing §§ 1627.4, 1627.5, and 1627.7 from part 1627 to part 1630, which governs the allowability and allocability of costs to LSC grants. LSC seeks comments on each of the proposed changes.

#### A. Proposed Changes to Part 1627

**§ 1627.1 Purpose.** LSC proposes to revise this section to state more clearly that part 1627 establishes the requirements for subgrants of LSC funds.

**§ 1627.2 Definitions.** LSC proposes to alphabetize the definitions for ease of reference. Because LSC is proposing to relocate existing § 1627.4 to part 1630, LSC proposes to remove the definition of *membership fees or dues* currently located in paragraph (c) of this section.

**§ 1627.2(a) Private attorney.** LSC proposes to adopt the definition of the term *private attorney* established by 45 CFR part 1614.

**§ 1627.2(b) Programmatic.** LSC proposes to define the term *programmatic* to mean "activities or functions carried out for the purpose of providing legal assistance, as defined in § 1002 of the LSC Act, 42 U.S.C. 2996a(5)." Programmatic activities do not include the provision of goods or services by vendors or consultants that the recipient would not be expected to provide itself.

LSC proposes defining *programmatic* to explicitly reference the definition of *legal assistance* provided in the LSC Act to ensure that Management's interpretation of part 1627 applies. In other words, activities are programmatic only if they are conducted in furtherance of a recipient's grant to provide legal assistance to eligible clients. Activities are *not* programmatic if they are technical in nature, such as

the provision of web development services.

*§ 1627.2(c) Recipient.* LSC proposes to remove recipients of grants or contracts awarded under section 1006(a)(3) of the LSC Act, 42 U.S.C. 2996e(a)(3), from the definition of *recipient*. Section 1006(a)(3) of the LSC Act authorizes LSC “to undertake directly, or by grant or contract, the following activities relating to the delivery of legal assistance—research . . . training and technical assistance, and [] to serve as a clearinghouse for information.” 42 U.S.C. 2996e(a)(3). LSC proposes to remove these types of awards from the scope of part 1627 because, as Congress stated, the activities funded through these awards are related to the delivery of legal assistance, but are not themselves an integral part of a recipient’s delivery of legal assistance. LSC currently does not make awards under § 1006(a)(3) of the LSC Act; if LSC did, 45 CFR part 1630, LSC’s cost standards and procedures, would continue to govern entities receiving such awards.

*§ 1627.2(d) Subgrant.* LSC proposes to revise the definition of *subgrant* currently in § 1627.2(b)(2). LSC proposes to adopt a definition that substantially mirrors the definition of *subaward* contained in the Uniform Grants Guidance (UGG), 2 CFR 200.92, which applies to Federal awards. LSC proposes to revise the definition to make clear that the purpose of the award is to carry out part of the recipient’s grant to provide legal assistance and to remove the references to “pass-through entities.” LSC is not bound by the UGG, and does not intend, by adopting this definition, to obligate itself or its recipients to abide by the rules for pass-through entities and subgrantees established by the UGG.

LSC proposes to retain the exclusion from the definition of *subgrant* for *judicare* arrangements or contracts with private attorneys for the direct delivery of legal assistance to recipients’ clients. LSC also seeks comment regarding the \$25,000 threshold for private attorney involvement (PAI) contracts supported with LSC funds. During the rulemaking to revise part 1614 on PAI, LSC received a comment recommending that LSC increase the threshold from \$25,000 to \$60,000 to account for inflation since LSC established the \$25,000 threshold in 1983. 70 FR 61770, 61780, Oct. 15, 2014. After consideration, LSC determined that it would benefit from receiving additional information before making any adjustments to the threshold. For this reason, *LSC specifically requests comments on whether it should amend the \$25,000*

*threshold, on what amount LSC should set as the new threshold, and providing justification for the proposed threshold.*

*§ 1627.2(e) Subrecipient.* LSC proposes to simplify the existing definition of *subrecipient* currently located at § 1627.2(b)(1). LSC proposes to move relevant portions of the current definition to the definitions of *programmatic* and *subgrant* to improve clarity. The revised definition will continue to make clear that a single entity may be a subrecipient with respect to some activities, while not being a subrecipient for other activities it conducts for a recipient.

*§ 1627.3 Characteristics of subgrants.* LSC proposes to add a new § 1627.3 stating the factors that recipients should consider in determining whether a potential award is a subgrant and requiring recipients to support subgrants using funds, rather than goods or services. LSC proposes to add this section to provide recipients with a framework for determining whether a proposed award to a third party is a subgrant subject to the requirements of this part. This section will make clear that subgrants are awards to third parties that support a recipient’s delivery of legal assistance to eligible clients, consistent with Management’s interpretation of part 1627.

The first two paragraphs of proposed § 1627.3 are taken substantially from the UGG, specifically 2 CFR 200.330. Paragraph (a) adopts the language at § 200.330(c), which explains that the listed characteristics are indicative of a subgrant, but need not all be present in order for an award to be considered a subgrant. Paragraph (b) sets forth the characteristics of a subgrant from § 200.330(a), with minor revisions to make clear that the context for subgrant activities and the performance of the subrecipient is the LSC recipient’s legal services work.

In considering whether an award should be a subgrant, the primary question is whether the work the subrecipient is doing essentially substitutes for the recipient’s legal services work. The following examples demonstrate whether certain types of awards to third parties meet the characteristics of a subgrant.

*Example 1:* An LSC recipient provides an award to another legal services organization to conduct telephone intake and refer cases either to private attorneys for handling or to another organization if the caller is not eligible for LSC-funded legal assistance. This award would properly be considered a subgrant because it meets all five of the characteristics. First, the subrecipient is

responsible for determining who is eligible, including whether the person’s case is within the recipient’s priorities, for legal assistance under the recipient’s LSC grant. Second, the subrecipient’s performance in referring cases to private attorneys is measured in relation to the recipient’s objectives for referring cases to private attorneys in order to meet the requirements of the PAI rule. Third, the subrecipient has responsibility for programmatic decisionmaking because it determines which types of cases it will refer to private attorneys and which it will refer to another provider. Fourth, as it acknowledges in the subgrant agreement, the subrecipient is responsible for adhering to applicable LSC program requirements specified in the award. Finally, the subrecipient will use the LSC funds to carry out legal assistance activities authorized by LSC’s governing statutes and regulations, as opposed to providing goods or services for the benefit of the recipient.

*Example 2:* An LSC recipient provides an award to a web designer to develop an online portal for clients and other stakeholders to obtain general legal information about particular areas of law, such as divorces and bankruptcies, as well as contact information for the legal services providers in the state. This award would not be a subgrant because it does not have most of the characteristics set forth in § 1627.3(b). The web designer does not determine eligibility to receive legal assistance under the recipient’s LSC grant, nor does it have responsibility for programmatic decision making. The designer does not have its performance measured in relation to whether the recipient’s objectives for providing legal services are met, and it is not required to adhere to the programmatic requirements set forth in the recipient’s award from LSC. With respect to the fifth characteristic—that the subrecipient uses LSC funds to carry out a program for a public purpose specified in LSC’s governing statutes and regulations, rather than providing goods or services for the recipient’s benefit—there is room for debate about whether the web designer’s work is for the public purpose of providing legal information to eligible clients, or is instead technical services provided for the benefit of the recipient. On balance, however, this type of award appears to be considered more appropriately as a procurement contract.

LSC reminds recipients that awards of LSC funds to third parties that do not meet the characteristics of subgrants, including procurements of services, must meet the applicable requirements of 45 CFR part 1630, as well as the

Property Acquisition and Management Manual (PAMM).

Proposed paragraph (c) states that any award to a third party that is determined to be a subgrant based on an analysis of the factors in paragraph (b) must be supported using LSC funds. LSC has learned that some recipients have entered into agreements with other entities in which the recipients provided goods, including office space and office supplies, in exchange for the other entities' carrying out PAI activities on behalf of the recipient. The recipients in question did not seek prior approval of these agreements because they were exchanges of goods and services, rather than funds; therefore, the recipients did not consider the arrangements to be subgrants subject to the requirements of part 1627.

As an organization responsible for disbursing and ensuring accountability for the use of appropriated public funds, LSC must be able to determine that any funds it awards are spent consistent with the terms of its governing statutes and regulations. It is difficult to ensure that goods and services, which may be purchased in whole or in part with LSC funds, transferred to a third party are used in a manner consistent with LSC's governing statutes. Ensuring the accountability of LSC-supported resources is particularly crucial when the resources are provided to a third party that conducts restricted activities in addition to the activities that it is carrying out on behalf of an LSC recipient. In order to ensure the proper use of LSC funds by any entity receiving those funds or resources supported by those funds, LSC believes that any arrangement qualifying as a subgrant under § 1627.3(b) must be paid for with actual funds and not with goods or services.

*§ 1627.4 Requirements for all subgrants.* LSC proposes to transfer existing § 1627.4, prohibiting the use of LSC funds to pay membership fees or dues, to part 1630. LSC proposes this transfer to limit the scope of part 1627 to subgrants and to move a provision pertaining to the allowability of costs to the part of LSC's regulations governing cost standards. To accommodate the inclusion of new § 1627.3, LSC proposes to restructure existing § 1627.3 and redesignate it as § 1627.4. LSC also proposes to revise the text of certain paragraphs to reflect changes to the grant approval process and the resulting changes to the subgrant approval process.

*§ 1627.4(a) Corporation approval of subgrants.* LSC proposes to revise paragraph (a) to tell recipients how to submit subgrant applications for

approval. The process will vary based on the type of grant—Basic Field or special—for which the recipient seeks to award a subgrant, and the time at which the recipient is seeking approval.

In paragraph (a)(1)(i), LSC proposes that recipients must submit applications for subgrants of Basic Field Grant funds at the same time as recipients submit their proposals for Basic Field Grant funding. This would consolidate the subgrant approval process with the main grant competition process. LSC also proposes to prescribe the format and substance of requests for subgrant approval annually through notice in the **Federal Register**. Finally, in paragraph (a)(1)(ii), LSC proposes to inform recipients of its decision to approve, disapprove, or suggest modifications to the proposed subgrants prior to or at the same time as it informs recipients of its decision whether to award Basic Field Grant funding.

In paragraph (a)(2), LSC proposes to formalize in regulation its current process for requesting and approving subgrants in its special grant programs. The application and award processes for special grants proceed on different schedules from the Basic Field Grant application and award process. LSC's special grant programs are all programs outside of Basic Field Grants—which include Basic Field-Migrant and Basic Field-Native American grants. TIG and the Pro Bono Innovation Fund (PBIF) grants are examples of special grants, as are disaster relief grants.

As described in proposed paragraph (a)(2)(i), recipients currently submit applications for approval of subgrants in special grant programs after LSC has awarded them grants. Because the special grant programs are highly competitive, LSC structured the process this way to avoid making recipients invest significant amounts of time in developing, finalizing, and executing subgrant agreements for projects that ultimately are not funded. To allow for flexibility in the form and substance of subgrant applications for the special grant programs, LSC also proposes in this paragraph to publish the requirements for subgrant applications on its Web site and in the **Federal Register** on an annual basis.

In paragraph (a)(2)(ii), LSC proposes to adopt existing § 1627.3(a)(2) in substantial part. LSC proposes to require recipients to submit applications for subgrant approval at least 45 days prior to the start date of the subgrant. LSC will consider and make a decision to approve, disapprove, or suggest modifications to applications for approval. Recipients may resubmit for approval applications to which LSC

suggested modifications or that LSC has disapproved. LSC proposes to omit the sentence deeming subgrants approved if LSC fails to make a decision on the subgrant application within the specified period of time. LSC is committed to making timely decisions on recipient requests for subgrant approval and does not believe the current policy is consistent with its responsibility to ensure that recipients spend their LSC funds efficiently and effectively.

Finally, LSC proposes to establish in § 1627.4(a)(3) a process for the submission and approval of subgrant applications during the grant period for both Basic Field and special grants. LSC recognizes that unanticipated situations, such as the need to terminate and replace an underperforming subrecipient, may cause a recipient to need approval of a subgrant during the grant period. For mid-grant subgrant applications, LSC proposes in paragraph (a)(3)(i) that recipients should submit an application, using the format prescribed by LSC on its Web site and in the **Federal Register**. Finally, LSC proposes to adopt the 45-day period for submission of applications established in paragraph (a)(2)(ii) of this section.

LSC proposes conforming changes to existing § 1627.3(a)(3), which will be relocated to § 1627.4(a)(4).

LSC proposes to remove existing § 1627.3(a)(4), which authorized the extension of subgrants that were being executed at the time part 1627 became effective in 1983. This rule is obsolete and should be removed from part 1627. Finally, LSC proposes to relocate existing § 1627.3(b)(3), which requires recipients to seek Corporation approval of any substantial changes in the scope, objectives, or funding amount of a subgrant, to § 1627.4(a)(5) without change. LSC proposes this change to place all requirements for Corporation approval of subgrant proposals or substantial changes within the same paragraph.

*§ 1627.4(b) Duration of subgrant.* LSC proposes to revise paragraph (b) to establish the maximum length of subgrant periods. For Basic Field grants, LSC proposes to limit subgrant periods to one year and to require recipients to submit a new application for each subgrant in each year of the Basic Field grant. For special grants, including TIG and PBIF grants, LSC proposes to allow the maximum subgrant period to match the period of the recipient's special grant.

Recipients of Basic Field grants must either compete for new grants or apply for renewal of their current grants annually. This schedule supports a

conclusion that recipient's subgrants should likewise be reviewed annually to ensure that the subgrants comply with LSC's statutes and regulations, and that the subgrants represent an effective and efficient use of the recipient's LSC resources.

By contrast, special grants are for discrete, time-limited projects that may require recipients to engage the subrecipient for the life of the project in order to secure the subrecipient's participation. Additionally, LSC requires special grant recipients to report more frequently about their progress toward meeting project milestones or objectives. This increased reporting allows LSC to assess whether a recipient's subgrants are performing effectively and efficiently throughout the grant period. Because reporting on the performance of a special grant, including the performance of subrecipients of special grant funds, occurs more frequently than once a year, it is not necessary for LSC to limit the maximum duration of a subgrant awarded as part of a special grant to one year.

For similar reasons, LSC proposes to treat subgrant funds remaining at the end of the grant year differently. In paragraph (b)(1), LSC proposes to retain the existing language stating that unexpended Basic Field subgrant funds will be considered part of the recipient's available LSC funds. In paragraph (b)(2), LSC proposes to require recipients to return funds remaining on a special grant program subgrant at the end of the grant term to LSC, unless the recipient requests and receives approval from the Corporation to retain such funds. This approach is consistent with the current terms of both the TIG and PBIF grant assurances, which allow recipients to ask LSC for approval to retain any funds that were awarded by LSC to carry out the project, but that were not spent because of lower costs or increased efficiencies in the operation of the project.

LSC proposes to redesignate existing § 1627.3(b)(2) as § 1627.4(b)(3) with revisions. The most substantive of the proposed revisions deletes the references to termination and denials of refunding as the exclusive events for which recipients should have procedures for the orderly termination of subgrants, and replaces them with general language that subgrants should terminate "in the event that the recipient is no longer an LSC recipient." LSC proposes adopting the general language to reflect that a recipient's policies governing the orderly termination of subgrants should apply in any instance where the recipient

ceases to be an LSC recipient, including termination by LSC, voluntary termination by the recipient, or a failure to receive funding through competition. The other changes LSC proposes are editorial.

*§ 1627.4(c) Recipient responsibilities.* For ease of reference, LSC proposes to restructure and consolidate the paragraphs of existing § 1627.3 governing the recipient's particular oversight and repayment obligations into a new § 1627.4(c). Proposed paragraphs (c)(1) and (2) adopt the first two sentences of existing § 1627.3(c) regarding recipients' duties to ensure that their subrecipients comply with LSC's financial and audit provisions and to ensure that their subrecipients properly spend, account for, and audit subgrant funds, respectively. LSC proposes to relocate existing § 1627.3(d), which requires a recipient to repay LSC for any disallowed expenditures of LSC funds incurred by a subrecipient, to paragraph (c)(3).

*§ 1627.4(d) Accounting of funds.* LSC proposes to restructure and consolidate the paragraphs of existing § 1627.3 governing the accounting of subgrant funds into a new § 1627.4(d). This paragraph states that subgrants of LSC funds are subject to the audit and financial requirements of the Audit and Accounting Guide for Recipients and Auditors. LSC proposes to delete the last two sentences in existing § 1627.3(c), which authorize recipients to enter into subgrant agreements that provide for an alternate auditing method. LSC is not aware that this provision has been used and proposes to remove it as unnecessary.

*§ 1627.4(e) Oversight.* LSC proposes to relocate existing § 1627.3(e) to new § 1627.4(e) with minor editorial changes.

*§ 1627.5 Applicability of restrictions, timekeeping, and recipient priorities; private attorney involvement subgrants.* LSC proposes to transfer existing § 1627.5, prohibiting the use of LSC funds to make contributions or gifts to other organizations or individuals, to part 1630. LSC proposes this transfer to limit the scope of part 1627 to subgrants and to move another provision pertaining to the allowability of costs to the part of LSC's regulations governing cost standards.

Additionally, because LSC has considered subgrants and transfers as functionally the same, LSC proposes to transfer 45 CFR 1610.7, the transfer rule, to part 1627 and redesignate it as § 1627.5. The restrictions listed in 45 CFR 1610.2—restrictions established by both the LSC Act and the FY96 appropriations act—will continue to

apply to all subgrants. LSC proposes to make only minor edits to paragraphs (a) and (b) for clarity.

*§ 1627.5(c) Timekeeping.* LSC proposes to move the timekeeping requirement to its own paragraph and revise the requirement itself. Currently, § 1610.7(b)(2) requires only that recipients "maintain records of time spent on each case or matter undertaken with the funds transferred." In the preamble to the 1997 final rule, LSC tied the timekeeping requirement to the language in Section 504(a)(10)(A) of the FY96 appropriations act, which prohibited LSC funds from being awarded to any person or entity unless "prior to receiving the financial assistance, 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." Sec. 504(a)(10)(A), Pub. L. 104-134, 110 Stat. 1321, 1321-54. LSC stated in the preamble that the rule did not require recipients "to keep time in accordance with the Corporation's timekeeping regulation, 45 CFR part 1635," but also did not provide guidance to recipients about the level of timekeeping that would be sufficient "to ensure accountability for [the transferred] funds." 62 FR 27695, 27697, May 21, 1997. To further confuse matters, part 1614 states that "[i]f any direct or indirect time of staff attorneys or paralegals is to be allocated as a cost to PAI, such costs must be documented by time sheets accounting for the time those employees have spent on PAI activities." 45 CFR 1614.7(a)(1).

LSC considered multiple options for creating coherent timekeeping requirements for recipients and subrecipients alike. LSC considered leaving the current language in place and adding language describing the minimum requirements for subrecipient timekeeping. Doing so would allow recipients and subrecipients flexibility to develop timekeeping systems that would ensure accountability for expenditures of LSC funds, while minimizing the administrative burden to the subrecipient. LSC also considered making the part 1635 timekeeping requirements applicable to non-PAI subgrants and the part 1614 timekeeping requirements applicable to PAI subgrants. This option would be consistent with the way in which LSC's regulations direct recipients to document time spent on the recipients' non-PAI and PAI activities, respectively.

LSC ultimately chose to propose a requirement that all subrecipients comply with the part 1635 timekeeping requirements for all LSC-funded subgrant activities. LSC chose this

option for three reasons. First, LSC learned that some recipients have interpreted § 1610.7(b)(2) as not requiring subrecipients to keep time records. This interpretation is incorrect. Section 1610.7(b)(2) clearly states that subrecipients “are required to maintain records of time spent on each case or matter undertaken” with LSC funds, although LSC also stated in the preamble to the 1997 final rule for part 1610 that subrecipients did not have “to keep time in accordance with the Corporation’s timekeeping regulation, 45 CFR part 1635.” 62 FR 27695, 27697, May 21, 1997. Second, LSC’s experience overseeing subgrants over the eighteen years since LSC revised § 1610.7 has given LSC reason to believe that clear timekeeping requirements for subgrants will lead to increased accountability for the use of LSC funds by subrecipients. Finally, LSC believes that having three distinct timekeeping requirements creates unnecessary confusion about which requirements apply to which uses of LSC funds. LSC’s proposal will make the timekeeping provisions of parts 1627 and 1635 consistent and will reflect the methods that recipients use to document time charged to their LSC grants.

LSC understands that some subrecipients may be small organizations that currently do not have, or may find it difficult to develop, the capacity to maintain timekeeping records that comply with part 1635. For that reason, *LSC specifically seeks comment on the proposal to require all subrecipients to comply with the timekeeping requirements of part 1635.*

§ 1627.5(d) PAI subgrants. LSC proposes to redesignate existing § 1610.7(c) as § 1627.5(d) and to make editorial changes to the paragraph for clarity. LSC also proposes to adopt a new paragraph (d)(2) stating that, with respect to PAI subgrants, all funds that a recipient uses to support the subgrant are deemed to be LSC funds for purposes of the restrictions listed in 45 CFR 1610.2. LSC requires its recipients to expend an amount equal to at least 12.5% of its LSC grant to PAI activities. See 45 CFR 1614.1(a). This language gives recipients discretion about whether they spend entirely LSC funds, entirely non-LSC funds, or some combination of the two, on PAI activities. The reason for the proposed paragraph is to put in the regulation the analysis reflected in AO–2009–1004 that activities carried out as part of a recipient’s PAI program, regardless of the source of funds, must be consistent with LSC’s governing statutes and regulations. See Advisory Opinion AO–2009–1004, at 3–4, June 19, 2009.

§ 1627.6 Subgrants to other recipients. LSC proposes to make only non-substantive editorial changes to this section.

§ 1627.7 Recipient policies, procedures, and recordkeeping. LSC proposes to transfer existing § 1627.7, regarding recipient payments to tax-sheltered annuities, retirement accounts, and pensions, to part 1630. LSC proposes this transfer to limit the scope of part 1627 to subgrants and to move the final provision in part 1627 pertaining to the allowability of costs to the part of LSC’s regulations governing cost standards. LSC proposes to redesignate existing § 1627.8 as § 1627.7 without revision.

#### B. Proposed Changes to Part 1610

§ 1610.2 Definitions. LSC proposes to eliminate the term *transfer* and replace it with the term *subgrant*, as defined in § 1627.2(d). LSC intended the current definition of *transfer* to mirror the definition of *subgrant*, but it does not. The slight differences between the two definitions have caused confusion about whether the terms are coextensive. LSC has treated the terms as functionally equivalent since it enacted § 1610.7 in 1997. LSC’s proposed change will eliminate ambiguity by combining the two concepts into one term. The proposed change will not affect the current order of definitions in § 1610.2. If this change becomes final, LSC will need to amend § 1610.8(a)(2) to conform with the change.

§ 1610.7 Transfers of LSC funds. As described more fully above, LSC proposes to transfer this section to part 1627 because it governs the application of the LSC Act and FY96 appropriations act restrictions listed in § 1610.2 to a subrecipient’s LSC and non-LSC funds. LSC believes that because § 1610.7 effectively applies to subgrants, it should be located in part 1627 with the rest of the subgrant rules. Should this proposed change become final, LSC will need to redesignate existing §§ 1610.8 and 1610.9 to reflect the removal of § 1610.7.

#### C. Proposed Changes to Part 1630

In the interest of making its regulations easier to use, LSC proposes to limit the scope of part 1627 to provisions applicable to subgrants. Three provisions of part 1627 are not related to subgrants, but instead proscribe the use of LSC funds to pay membership fees or dues (§ 1627.4) or to make contributions to other entities or individuals (§ 1627.5), or allow recipients to make certain benefits contributions on behalf of its employees

(§ 1627.7). LSC proposes to transfer these three provisions to part 1630, which establishes LSC’s cost standards. LSC proposes to redesignate these provisions as §§ 1630.14–16. LSC does not propose to revise the text of these provisions at this time.

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

### PART 1610—USE OF NON-LSC FUNDS, TRANSFERS OF LSC FUNDS, PROGRAM INTEGRITY

■ 1. The authority citation for part 1610 continues to read as follows:

**Authority:** 42 U.S.C. 2996i; Pub. L. 104–208, 110 Stat. 3009; Pub. L. 104–134, 110 Stat. 1321; Pub. L. 111–117; 123 Stat. 3034.

#### § 1610.7 [Removed]

■ 2. Remove § 1610.7.

#### §§ 1610.8 and 1610.9 [Redesignated as §§ 1610.7 and 1610.8]

■ 3. Sections 1610.8 and 1610.9 are redesignated as §§ 1610.7 and 1610.8, respectively.

### PART 1630—COST STANDARDS AND PROCEDURES

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

**Authority:** 5 U.S.C. App. 3, 42 U.S.C. 2996e, 2996f, 2996g, 2996h(c)(1); Pub. L. 105–119, 111 Stat. 2440; Pub. L. 104–134, 110 Stat. 1321.

### PART 1627—SUBGRANTS AND MEMBERSHIP FEES OR DUES

■ 5. The authority citation for part 1627 is revised to read as follows:

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

#### § 1627.4 [Transferred to Part 1630 and Redesignated as § 1630.14]

■ 6. Section 1627.4 is transferred to part 1630 and redesignated as § 1630.14.

#### § 1627.5 [Transferred to Part 1630 and Redesignated as § 1630.15]

■ 7. Section 1627.5 is transferred to part 1630 and redesignated as § 1630.15.

#### § 1627.7 [Transferred to Part 1630 and Redesignated as § 1630.16]

■ 8. Section 1627.7 is transferred to part 1630 and redesignated as § 1630.16.

■ 9. Revise part 1627 to read as follows:

### PART 1627—SUBGRANTS

Sec.

1627.1 Purpose.

1627.2 Definitions.

1627.3 Characteristics of subgrants.

1627.4 Requirements for all subgrants.

1627.5 Applicability of restrictions, timekeeping, and recipient priorities; private attorney involvement subgrants.  
 1627.6 Transfers to other recipients.  
 1627.7 Recipient policies, procedures and recordkeeping.

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

**§ 1627.1 Purpose.**

The purpose of this part is to establish the requirements for subgrants of LSC funds from recipients to third parties to assist in the recipient's provision of legal assistance to eligible clients.

**§ 1627.2 Definitions.**

(a) *Private attorney* has the meaning given that term in 45 CFR 1614.3(i).

(b) *Programmatic* means activities or functions carried out to provide legal assistance, as defined in § 1002 of the LSC Act, 42 U.S.C. 2996a(5). Programmatic activities do not include the provision of goods or services by vendors or consultants in the normal course of business that the recipient would not be expected to provide itself.

(c) *Recipient* as used in this part means any recipient as defined in section 1002(6) of the Act and any grantee or contractor receiving funds from LSC under section 1006(a)(1)(B) of the Act.

(d)(1) *Subgrant* means an award of LSC funds provided by a recipient to a subrecipient for the subrecipient to carry out part of the recipient's programmatic activities.

(2) Except for judicare arrangements and contracts with private attorneys for the direct delivery of legal assistance under 45 CFR part 1614 that exceed \$25,000, *subgrant* does not include activities that are covered by a fee-for-service arrangement.

*Subrecipient* means any entity receiving a subgrant. A single entity may be a subrecipient with respect to some activities it conducts for a recipient while not being a subrecipient with respect to other activities it conducts for a recipient.

**§ 1627.3 Characteristics of subgrants.**

(a) In determining whether an agreement between a recipient and another entity should be considered a subgrant or a procurement contract, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed below may not be present in all cases, and the recipient must use judgment in classifying each agreement as a subgrant or a procurement contract.

(b) An award from a recipient to another entity will be considered a subgrant when the entity:

(1) Determines who is eligible to receive legal assistance under the recipient's LSC grant;

(2) Has its performance measured in relation to whether programmatic objectives of the LSC grant were met;

(3) Has responsibility for programmatic decisionmaking;

(4) Is responsible for adherence to applicable LSC program requirements specified in the LSC grant award; and

(5) In accordance with its agreement, uses the LSC funds to carry out a program for a public purpose specified in LSC's governing statutes and regulations, as opposed to providing goods or services for the benefit of the recipient.

(c) Any award to a third party that is determined to be a subgrant based on an analysis of these factors must be supported using LSC funds. Recipients may not use goods and services paid for in whole or in part with LSC funds as payment for a subgrant.

**§ 1627.4 Requirements for all subgrants.**

(a) *Corporation approval of subgrants.* Recipients must submit all applications for subgrants to LSC in writing for prior written approval.

(1) *Basic Field Grants.* (i) Recipients should submit applications for subgrants of Basic Field Grant funds along with the recipient's proposal for funding, including applications for renewals of funding. LSC will publish the requirements concerning the format and contents of the application annually in the **Federal Register** and on LSC's Web site.

(ii) LSC will notify a recipient of its decision to approve, disapprove, or suggest modifications to an application for subgrant approval prior to, or at the same time as LSC provides notice of its decision with respect to the applicant's proposal for Basic Field Grant funding.

(2) *Special grants.* (i) Recipients of special grants (e.g., Technology Initiative Grants, Pro Bono Innovation Fund grants, disaster assistance grants), should submit their subgrant applications following notification of approval of special grant funds. LSC will publish the requirements concerning the format and contents of the application annually in the **Federal Register** and on LSC's Web site.

(ii) A subgrant application must be submitted at least 45 days in advance of its proposed effective date. LSC will notify the recipient in writing of its decision to approve, disapprove, or suggest modifications to the subgrant. A subgrant that is disapproved or to which LSC has suggested modifications may be resubmitted for approval.

(3) *Mid-year subgrant requests.* A recipient may apply for prior approval of a subgrant outside of the periods prescribed in paragraphs (a)(1) and (a)(2) of this section as needed. LSC will publish the requirements concerning the format and contents of the application annually in the **Federal Register** and on LSC's Web site. LSC will follow the time periods prescribed in paragraph (a)(2)(ii) of this section to consider and notify a recipient of its decision to approve, disapprove, or suggest modifications to the subgrant.

(4) Any subgrant not approved according to paragraphs (a)(1)–(3) of this section will be subject to disallowance and recovery of all funds expended under the subgrant.

(5) A recipient must obtain LSC approval of any substantial change in the scope or objectives of a subgrant or an increase or decrease in the funding amount of more than 10%. Minor changes in the scope or objectives or changes in funding of less than 10% do not require prior approval, but the recipient must notify LSC of such changes in writing.

(b) *Duration of subgrant.* (1) For Basic Field grants, a subgrant may not be for a period longer than one year. All funds unexpended at the end of the subgrant period will be considered part of the recipient's available LSC funds.

(2) For special grants (e.g., Pro Bono Innovation Fund grants, Technology Initiative Grants, disaster assistance grants), a subgrant may not be for a period longer than the term of the grant. Absent written approval from LSC, all unexpended funds must be returned to LSC at the end of the subgrant period.

(3) All subgrants must contain provisions for their orderly termination in the event that the recipient is no longer an LSC recipient, and for suspension of activities if the recipient's funding is suspended.

(c) *Recipient responsibilities.* (1) Recipients must ensure that subrecipients comply with LSC's financial and audit provisions.

(2) The recipient must ensure that the subrecipient properly spends, accounts for, and audits funds received through the subgrant.

(3) The recipient must repay LSC for any disallowed expenditures by a subrecipient. Repayment is required regardless of whether the recipient is able to recover such expenditures from the subrecipient.

(d) *Accounting of funds.* Any LSC funds paid by a recipient to a subrecipient through a subgrant are subject to the audit and financial requirements of the Audit Guide for Recipients and Auditors and the

Accounting Guide for LSC Recipients. Subgranted funds may be separately disclosed and accounted for, and reported upon in the audited financial statements of a recipient; or such funds may be included in a separate audit report of the subrecipient. The relationship between the recipient and subrecipient will determine the proper method of financial reporting following generally accepted accounting principles.

(e) *Oversight*. To ensure subrecipient compliance with the LSC Act, LSC's appropriations statutes, Congressional restrictions having the force of law, and LSC's regulations, guidelines, and instructions, agreements between a recipient and a subrecipient must provide the same oversight rights for LSC with respect to subrecipients as apply to subrecipients.

**§ 1627.5 Applicability of restrictions, timekeeping, and recipient priorities; private attorney involvement subgrants.**

(a) *Applicability of restrictions*. The prohibitions and requirements set forth in 45 CFR part 1610 apply both to the subgrant and to the subrecipient's non-LSC funds, except as modified by paragraphs (b), (c), and (d) of this section.

(b) *Priorities*. Subrecipients must either:

(1) Use the subgrant consistent with the recipient's priorities; or

(2) Establish their own priorities for the use of the subgrant consistent with 45 CFR part 1620;

(c) *Timekeeping*. Subrecipients must comply with 45 CFR part 1635 regarding timekeeping for all LSC-funded subgrant activities.

(d) *PAI subgrant*. (1) The prohibitions and requirements set forth in 45 CFR part 1610 apply *only* to the subgrant, when the subrecipient is a bar association, *pro bono* program, private attorney or law firm, or other entity that receives a subgrant for the sole purpose of funding private attorney involvement activities (PAI) pursuant to 45 CFR part 1614.

(2) Any funds used by a recipient as payment for a PAI subgrant are deemed LSC funds for purposes of this paragraph.

**§ 1627.6 Subgrants to other recipients.**

(a) The requirements of § 1627.4 apply to all subgrants from one recipient to another recipient.

(b) The subrecipient must audit any funds provided by the recipient under a subgrant in its annual audit and supply a copy of this audit to the recipient. The recipient must either submit the relevant part of this audit with its next

annual audit or, if an audit has been recently submitted, submit it as an addendum to that recently submitted audit.

(c) In addition to the provisions of § 1627.4(c)(3), LSC may hold the recipient responsible for any disallowed expenditures of subgrant funds. Thus, LSC may recover all of the disallowed costs from either the recipient or the subrecipient or may divide the recovery between the two. LSC's total recovery may not exceed the amount of expenditures disallowed.

(d) Funds received by a recipient from other recipients in the form of fees and dues shall be accounted for and included in the annual audit of the recipient receiving these funds as LSC funds.

**§ 1627.7 Recipient policies, procedures and recordkeeping.**

Each recipient must adopt written policies and procedures to guide its staff in complying with this part and must maintain records sufficient to document the recipient's compliance with this part.

**PART 1630—COST STANDARDS AND PROCEDURES**

■ 10. In newly transferred and redesignated § 1630.14, revise the section heading to read as follows:

**§ 1630.14 Membership fees or dues.**

■ 11. In newly transferred and redesignated § 1630.15, revise the section heading to read as follows:

**§ 1630.15 Contributions.**

■ 12. In newly transferred and redesignated § 1630.16, revise the section heading to read as follows:

**§ 1630.16 Tax sheltered annuities, retirement accounts, and pensions.**

Dated: April 14, 2015.

**Stefanie K. Davis,**

*Assistant General Counsel.*

[FR Doc. 2015-08951 Filed 4-17-15; 8:45 am]

**BILLING CODE 7050-01-P**

**LEGAL SERVICES CORPORATION**

**45 CFR Part 1628**

**Recipient Fund Balances**

**AGENCY:** Legal Services Corporation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would revise the Legal Services Corporation (LSC or Corporation) regulation on recipient fund balances to provide the Corporation with more discretion to grant a recipient's request for a waiver

to retain a fund balance in excess of 25% of its annual LSC support. This proposed rule would also provide that recipients that face extraordinary and compelling circumstances may submit a waiver request to retain a fund balance in excess of 25% of their annual LSC support prior to the submission of their annual audited financial statements.

**DATE:** Comments must be submitted by May 20, 2015.

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

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

• *Email:* [1628rulemaking@lsc.gov](mailto:1628rulemaking@lsc.gov). Include "Comments on Revisions to Part 1628" in the subject line of the message.

• *Fax:* (202) 337-6519, ATTN: Part 1628 Rulemaking.

• *Mail:* Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007, ATTN: Part 1628 Rulemaking.

• *Hand Delivery/Courier:* Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007, ATTN: Part 1628 Rulemaking.

*Instructions:* Electronic submissions are preferred via email with attachments in Acrobat PDF format. Written comments sent to any other address or received after the end of the comment period may not be considered by LSC.

**FOR FURTHER INFORMATION CONTACT:** Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007; (202) 295-1563 (phone), (202) 337-6519 (fax), or [sdavis@lsc.gov](mailto:sdavis@lsc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Regulatory Background**

LSC issued its first instruction on recipient fund balances in 1983 to implement what is now the Corporation's longstanding objective of ensuring the timely expenditure of LSC funds for the effective and economical provision of high quality legal assistance to eligible clients. 48 FR 560, 561, Jan. 5, 1983. Later that year, LSC published a redrafted version titled Instruction 83-4, Recipient Fund Balances ("Instruction"). 48 FR 49710, 49711, Oct. 27, 1983. The Instruction limited the ability of recipients to carry over LSC funds that remained unused at the end of the fiscal year. *Id.* Specifically, the Instruction provided that, in the absence of a waiver granted by the Corporation, a recipient's end-of-year fund balance in excess of 10% of its total annual LSC support must be repaid to LSC. *Id.* The Instruction also