tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 22, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: July 10, 2015.

Ron Curry,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart GG—New Mexico

■ 2. In § 52.1620(c), the table titled ''EPA Approved New Mexico Regulations'' is amended by revising the entry for ''Part 1'' under ''New Mexico Administrative Code (NMAC) Title 20—Environment Protection, Chapter 2—Air Quality'' to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED NEW MEXICO REGULATIONS

State citation	Title/subject	State approval/ effective date	EPA approval date	Comments
New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 2—Air Quality				
Part 1	General Provisions	1/23/2015	7/24/2015 [Insert **Federal Register** citation].	
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[FR Doc. 2015–18098 Filed 7–23–15; 8:45 am]

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LEGAL SERVICES CORPORATION

45 CFR Part 1628

Recipient Fund Balances

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule revises the Legal Services Corporation (LSC or Corporation) regulation on recipient fund balances to give the Corporation 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 final rule also provides that recipients facing a fund balance in excess of 25% of their annual LSC support may submit a waiver request prior to submitting their annual audited financial statements.

DATES: This final rule is effective August 24, 2015.

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.*

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 recipients' ability 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 must repay to LSC any funds retained at the end of the fiscal year in excess of 10% of its total annual LSC support. *Id.* The Instruction also prohibited a recipient from ever retaining a fund balance in excess of 25% of its annual support, thereby limiting the Corporation's waiver granting authority to fund balance amounts of 25% or less of a recipient's annual LSC support. *Id.*

In 1984, LSC substantially adopted the Instruction in a regulation published at 45 CFR part 1628. 49 FR 21331, May 21, 1984. Part 1628 remained unchanged until 2000, when LSC promulgated revisions in response to public comments and staff advice that the rule was ''more strict'' than the fund balance requirements of most federal agencies. 65 FR 66637, 66638, Nov. 7, 2000. The revised rule provided the Corporation with more discretion to grant a recipient's request for a waiver to retain a fund balance of up to 25% of its annual LSC support. *Id.* at 66637.

In addition, for the first time, the rule authorized the Corporation to exercise its discretion to grant a recipient's request for a waiver to retain a fund balance in excess of 25% of its annual LSC support. *Id.* The Corporation reasoned that, by allowing for waivers to retain that amount, ''[t]he recipient can better plan and find the best use for the funds, rather than being forced into a hasty expenditure simply to avoid the limitation on the carryover of fund balances.'' *Id.* at 66640. The rule, however, limited the situations justifying a recipient's request to retain more than 25% of its annual support to ''three specific circumstances when extraordinary and compelling reasons exist for such a waiver,'' listed in § 1628.3(c). *Id.* at 66638. These extraordinary and compelling circumstances were restricted to the following situations when a recipient received income derived from its use of LSC funds: ''(1) An insurance reimbursement; (2) the sale of real property; and (3) the receipt of monies from a lawsuit in which the recipient was a party.'' *Id.* at 66639. Although the Operations and Regulations Committee (Committee) ''considered using a standard of 'extraordinary and compelling' for these waivers with the three specific circumstances discussed as examples,'' it ultimately decided ''that more guidance was required to avoid erosion of the standard,'' and the three circumstances became exclusive limitations, not mere examples. *Id.* at 66640. The LSC Board of Directors (Board) adopted the revisions to part 1628 on November 20, 1999, and the revised rule has been in effect since December 7, 2000. *Id.* at 66637–38.

During the nearly 15-year period since part 1628 was last revised, LSC grantees have experienced various unexpected occurrences outside of those listed in § 1628.3(c) that caused them to accrue fund balances in excess of 25% of their annual support. These occurrences have included an end-of-year transfer of assets from a former grantee to a current grantee, a natural disaster that resulted in a significant infusion of use-or-lose disaster relief funds from non-LSC sources, and receipt of a large attorneys' fees award in an LSC-funded case near the end of the fiscal year. In each of these situations, LSC determined that part 1628 prevented recipients with legitimate reasons for having fund balances exceeding 25% of their annual LSC support from seeking and obtaining needed waivers.

On January 22, 2015, LSC staff presented the Committee with a proposal to consider revising part 1628 to address the difficulties faced by recipients that encounter these types of occurrences, yet are unable to justify a waiver request to retain a balance in excess of 25% of their annual support under part 1628's standards. The Committee authorized LSC management to add the matter to the Committee's rulemaking agenda.

As required by the LSC Rulemaking Protocol, LSC staff prepared an explanatory rulemaking options paper, accompanied by a proposed rule amending part 1628. On April 12, 2015, the Committee voted to recommend that the Board publish the notice of proposed rulemaking (NPRM) in the **Federal Register** for notice and comment. On April 14, 2015, the Board accepted the Committee's recommendation and voted to approve publication of the NPRM in the **Federal Register**. 80 FR 21700, Apr. 20, 2015. The comment period remained open for thirty days and closed on May 20, 2015.

On July 16, 2015, the Committee considered the draft final rule for publication and voted to recommend its adoption publication to the Board. On July 18, 2015, the Board adopted the final rule and approved its publication.

Material regarding this rulemaking is available in the open rulemaking section of LSC's Web site at *http://www.lsc.gov/about/regulations-rules/open-rulemaking.* After the effective date of this rule, those materials will appear in the closed rulemaking section of LSC's Web site at *http://www.lsc.gov/about/regulations-rules/closed-rulemaking.*

II. Section-by-Section Discussion of Comments and Regulatory Provisions

LSC received two comments during the public comment period. One comment was submitted by an LSC recipient, the Northwest Justice Project (NJP). The other comment was submitted by the non-LSC-funded nonprofit National Legal Aid and Defender Association (NLADA) through its Civil Policy Group and Regulations and Policy Committee. Both commenters were generally supportive of LSC's proposed changes to part 1628.

Section 1628.3 Policy

LSC proposed to revise § 1628.3(c) to eliminate the language limiting the extraordinary and compelling circumstances in which LSC may grant a recipient's request for a waiver to retain a fund balance that exceeds 25% of its annual support. LSC staff determined that the list of extraordinary and compelling circumstances should be illustrative, rather than exhaustive, so that recipients that encounter truly unforeseeable situations can avoid having to make the difficult choice between returning large portions of unused balances and hurriedly spending funds before the end of the fiscal year. Whereas existing § 1628.3(c) is limited to three circumstances where a recipient receives a sudden infusion of income, the new section expands the types of situations that the Corporation, in its discretion, may consider to be extraordinary and compelling circumstances. The new section adds the example of a natural disaster to illustrate a situation where a recipient would be unable to expend its current LSC grant for reasons other than the receipt of new funds, such as being forced to temporarily shut down operations. The section also adds the example of ''a payment from an LSC-funded lawsuit, regardless of whether the recipient was a party to the lawsuit.'' This revision makes clear that a recipient may request a waiver to retain a fund balance in excess of 25% of its annual support when it receives an award as the result of a court decision in an LSC-funded case, even if the recipient was not named as a party to the action. LSC also proposed to make a minor revision to § 1628.3(d) to reflect the proposed redesignation of certain paragraphs in § 1628.4.

Comments: Both commenters expressed strong support of the revisions to § 1628.3.

Section 1628.4 Procedures

LSC proposed to add a new § 1628.4(d) to expressly allow recipients that expect to have a fund balance in excess of 25% of their annual support at the end of the fiscal year to submit a waiver request prior to the submission of their annual audited financial statements. This addition will require existing § 1628.4(d), (e), (f), and (g) to be redesignated as § 1628.4(e), (f), (g), and (h). The new § 1628.4(d) will list the written requirements for a waiver request to retain a fund balance in excess of 25% of annual support. It will also require recipients that receive early approval to later submit updated information consistent with the requirements of § 1628.4(a) to confirm the actual fund balance amount to be retained by the recipient, as determined by reference to its annual audited financial statements. Accordingly, an advance approval would be, in effect, an approval of the reasons for a waiver and of the proposed amount to be retained. The recipient must later provide confirmation of the actual amount of excess funds it has retained. Finally, LSC proposed to revise the introductory text of paragraph (a), as well as paragraphs (a)(2) and (a)(3), for clarity and readability.

Comments: Both commenters were supportive of LSC's proposal to allow recipients with fund balances in excess of 25% of annual support to submit waiver requests prior to the submission of their annual audit reports. NLADA recommended that LSC further revise § 1628.4 to also allow recipients expecting to have fund balances in excess of 10% and up to 25% of their annual LSC support to submit early waiver requests. NLADA reasoned that this would allow recipients seeking such waivers to plan for the next fiscal year with greater certainty. NJP, on the other hand, expressed support for continuing the standard waiver request process for recipients with fund balances that do not exceed 25% of annual support. NJP stated that, in its experience, such requests are more than likely to be approved and that using annual audit report information to draft them assures that the amount approved for retention is equal to the final audited carryover.

Response: As stated in the preamble of the NPRM, LSC staff found that limiting early approvals to waiver requests for fund balances in excess of 25% of annual support was proper in light of the unique and significant financial planning burdens faced by recipients that experience extraordinary and compelling circumstances causing them to accrue substantial amounts of unused funds. Furthermore, while the Corporation will continue to apply the heightened standard of ''extraordinary and compelling circumstances'' to requests to retain fund balances in excess of 25% of annual support, it will maintain the less burdensome standard of ''special circumstances'' for requests to retain fund balances that do not exceed 25% of annual support. Therefore, LSC believes that recipients seeking to retain fund balance amounts in excess of 10% and up to 25% of annual support would not benefit significantly from the minimal level of additional assurance that allowing the early submission of waiver requests may potentially provide. In addition, recipients that receive early approvals of such requests would later have to provide confirmation of the actual amount of excess funds they accrued when they submit their annual audited financial statements. LSC believes that the additional time and effort required by this process would not be justified by the small amount of additional assurance that it may provide.

List of Subjects in 45 CFR Part 1628

Administrative practice and procedure, Grant programs—law, Legal services.

For the reasons set forth in the preamble, the Legal Services Corporation amends 45 CFR part 1628 as follows:

PART 1628—RECIPIENT FUND BALANCES

■ 1. The authority citation for Part 1628 is revised to read as follows:

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

■ 2. Revise paragraphs (c) and (d) of § 1628.3 to read as follows:

§ 1628.3 Policy.

* * * * *

(c) Recipients may request a waiver to retain a fund balance in excess of 25% of a recipient's LSC support only for extraordinary and compelling circumstances, such as when a natural disaster or other catastrophic event prevents the timely expenditure of LSC funds, or when the recipient receives an insurance reimbursement, the proceeds from the sale of real property, a payment from a lawsuit in which the recipient was a party, or a payment from an LSC-funded lawsuit, regardless of whether the recipient was a party to the lawsuit.

(d) A waiver pursuant to paragraph (b) or (c) of this section may be granted at the discretion of the Corporation pursuant to the criteria set out in § 1628.4(e).

* * * * *

■ 3. Amend § 1628.4 by revising paragraphs (a) introductory text, (a)(2) and (3), and (d) to read as follows:

§ 1628.4 Procedures.

(a) A recipient may request a waiver of the 10% ceiling on LSC fund balances within 30 days after the submission to LSC of its annual audited financial statements. The request shall specify:

* * * * *

(2) The reason(s) for the excess fund balance;

(3) The recipient's plan for disposing of the excess fund balance during the current fiscal year;

* * * * *

(d) A recipient may submit a waiver request to retain a fund balance in excess of 25% of its LSC support prior to the submission of its audited financial statements. The Corporation may, at its discretion, provide approval in writing. The request shall specify the extraordinary and compelling circumstances justifying the fund balance in excess of 25%; the estimated fund balance that the recipient anticipates it will accrue by the time of the submission of its audited financial statements; and the recipient's plan for disposing of the excess fund balance. Upon the submission of its annual audited financial statements, the recipient must submit updated information consistent with the requirements of paragraph (a) of this section to confirm the actual fund balance to be retained.

* * * * *

Dated: July 20, 2015.

Stefanie K. Davis,

Assistant General Counsel.

[FR Doc. 2015–18138 Filed 7–23–15; 8:45 am]

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