
45 CFR Part 1627

Subgrants, Fees and Dues

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule establishes a new Part 1627 governing all transfers of Corporation funds by recipients to other

organizations. There are, at present, no Corporation regulations governing such transfers, and, consequently, there is inadequate control over and accountability for such transfers. This final rule requires prior Corporation approval for subgrants and limits the amount of Corporation funds which recipient programs can expand on fees and dues, exclusive of routine training.

EFFECTIVE DATE: This regulation is effective December 30, 1983.

FOR FURTHER INFORMATION CONTACT: John C. Meyer, Deputy General Counsel, (202) 272-4010.

SUPPLEMENTARY INFORMATION:

General

The title of this regulation has been changed from "Limitations on the Transfer of Corporation Funds by Recipients and on Certain Expenditures" to "Subgrants, Fees and Dues." This change is made for the sake of brevity; the regulation is still intended to govern all transfers of Corporation funds by a recipient to any other organization.

This regulation was proposed on June 22, 1983 (48 FR 29485). Thirty-two comments on this regulation were received by the deadline for receipt of comments. Most comments were critical of the regulation in whole or in part; one was favorable, and another contained only technical comments.

Several commentators raised a general argument that the Corporation lacks authority to issue this regulation. In response to this argument, the Authority section of the regulation has been amended to cite sections 1006(b)(1) and 1007(a)(3) of the Legal Services Corporation Act, as well as section 1006(e). Section 1007(a)(3) requires the Corporation to "insure that grants and contracts are made so as to provide the most economical and effective delivery of legal assistance to persons in both urban and rural areas." The applicability of this section to subgrants is obvious. As for fees and dues and other transfers of funds, what the Corporation is doing is insuring that its funds given to recipients under grants and contracts are expended for the purposes intended and are not dissipated by excessive payment of fees and dues to other organizations.

Furthermore, section 1006(b)(1)(A) of the Act confers on the Corporation "the authority to insure the compliance of recipients and their employees with the provisions of this title and the rules, regulations and guidelines promulgated pursuant to this title Uncontrolled transfers of Corporation funds by recipients to other

organizations make it very difficult for the Corporation to insure such compliance regarding the expenditure of Corporation funds. The ability to hold the recipient responsible for improper expenditures by other organizations after the fact is not sufficient to insure such compliance. Recipients are selected with a view to their understanding of and compliance with the Act and Corporation regulations, and the Corporation needs a voice in the selection of other organizations which are to expend Corporation funds.

Some comments argue that the Corporation can only issue regulations when there is an explicit grant of authority to issue regulations in the section of the Act upon which the regulations are based. The Corporation regards section 1006(e) of the Act as a general grant of authority to issue regulations, and it has understood that it has such a general grant of authority and acted consistent with this understanding since its inception. Had Congress disagreed with this interpretation, it would have so indicated when the Corporation was reauthorized in 1977.

Some comments argue that there was insufficient statement of purpose in the proposed rule. The Corporation disagrees, as the purpose of the rule was clearly stated in the preamble to the proposed rule. In any event, the foregoing discussion again restates the purpose of this regulation.

As both the significant comments and the significant changes are in § 1627.2, 1627.3, and 1627.4, these three sections will be discussed individually and a very few other matters discussed at the end of this preamble.

Section 1627.2 Definitions.

In § 1627.2(b)(1) of the proposed rule, subgrant was defined at length, and in § 1627.2(b)(2) subgrantee (subrecipient in the final rule) was defined in terms of subgrant. In the final rule, this order is reversed and subgrant is defined in terms of subrecipient, in order to conform with the terminology of the Legal Services Corporation Audit and Accounting Guide and auditing procedure. The definition of subrecipient is elaborated in the final rule to clarify that it includes organizations receiving funds for state support, training, and client involvement activities. The exception for transfers of funds to private attorneys or law firms on a fee-for-service or *judicare* basis is retained, but is limited to transfers involving no more than \$25,000; thus transfers to private attorneys or law firms in excess of \$25,000 are considered subgrants. Aside from the exceptions in the

definition, all transfers of funds on a grant or contract basis are intended to be included as transfers related to a recipient's program. Any such transfer not "related" to a recipient's program would be a disallowed cost anyway, since recipients are not permitted to expend Corporation funds for purposes not related to their program.

The definition of subgrant was criticized as being unclear in some instances. The Corporation expects that the new, more extensive definition of subrecipient will be clearer. The inclusion of state support was criticized, but this is, in the opinion of the Corporation, one of the areas most requiring direct Corporation approval. A few comments opposed the exception for private attorneys and firms, and a few comments mistakenly criticized the proposed rule for interfering with private attorney involvement. Because of the multiplicity of approvals that would be required if a typical *judicare* or fee-for-service program were covered, the Corporation decided to make this exception. The large number of approvals routinely required does differentiate such programs from other types of subgrants. The \$25,000 limit was added on the same logic, as there can, obviously, be only a small number of such expenditures over \$25,000 by a recipient.

Section 1627.3 Requirements for All Subgrants.

With the exception of rewriting § 1627.3(c) without substantive change so it references the Legal Services Corporation Audit and Accounting Guide and conforms to accounting terminology, the language of this section has been retained; however, there have been three additions.

The first is to § 1627.3(b)(1) to which an explicit statement has been added that funds not expended at the end of the grant period are considered part of the recipient's fund balance. The Corporation considered this to be implicit in existing practice, but an explicit statement was added to avoid confusion.

Secondly, a new subparagraph has been added to § 1627.3(a) allowing recipients to extend any subgrant which is a continuation of a previous subgrant until March 1, 1984, if a request for approval of a new subgrant is submitted to the Corporation by January 15, 1984. This is a transitional provision added because the adoption of this rule has been delayed longer than originally anticipated and recipients, consequently, may not have time to seek approval of their 1984 subgrants before

the new year begins. A further transitional provision provides that if any such agreement is submitted and rejected, the recipient shall be permitted to allow the subrecipient another 60 days of closeout funding.

Thirdly, a new § 1627.3(e) has been added requiring that all subgrant agreements shall provide that the Corporation has the same oversight rights over the subrecipient that it has over the recipient. The purpose of this addition is to resolve the issue of what oversight rights the Corporation has over subrecipients, and to assure that the Corporation has the power to ensure the expenditure of funds in conformity with law and applicable regulations, guidelines, and instructions.

Several comments opposed the requirement of prior approval of subgrants as excessive interference with recipients' conduct of their programs. The Corporation considers such prior approval a necessity if the Corporation is to carry out its statutory responsibilities. Most Federal grant-making agencies have requirements for the approval of subgrants. The largest such agency, the Department of Health and Human Services, requires such approval (see 45 CFR 74.103(d)). Indeed, the Corporation has experienced numerous problems in tracking and controlling the use of subgranted funds and considers the adoption of this standard management provision to be long overdue.

There were several comments that the 45 day period for approval of subgrants is too long. That period is intended to be the outside time limit, and in fact the Corporation expects to process most subgrant requests well within it; upon notification by the recipient that the period has been exceeded, the subgrant is considered automatically approved after another 7 days. Most such time periods do not carry an automatic waiver provision. This time period was set with regard to being a realistic deadline which can be met, even in complicated cases. The Corporation has retained this time period rather than setting a shorter time period and being compelled to disapprove some subgrants in order to maintain its review rights.

The extension until March 1, 1984 and the 60 day closeout period for current subgrants were both adopted to mitigate the transitional problems for 1984. In the future, recipients will know that this approval requirement must be met and will have time to plan for submission of subgrant agreements sufficiently in advance to secure approval before the intended beginning of the subgrant.

Section 1627.4 Fees and Dues.

In response to comments, the Corporation has revised this section significantly, eliminating the requirement of Corporation approval of each payment of fees or dues. The Corporation has retained the first three of the four purposes listed in § 1627.4(a) for which fees or dues could be paid and has added a new, fourth, general category of fees and dues "directly related to the delivery of legal services to eligible clients, the practice of law or the management of a law office." Fees and dues falling into any of these four categories do not require Corporation approval.

The Corporation has retained the limit of one-half of one percent of a recipient's annualized funding (except for dues falling into categories 1627.4(a)(1) and (3)). However, in response to comments, the minimum amount of fees and dues allowed to all recipients has been increased from \$750 to \$1500; an absolute ceiling of \$20,000 has also been added.

With one minor exception, discussed under other issues below, the other changes in this section are merely changes in terminology to conform the rest of this section to the changes discussed above.

Several comments opposed any regulation of fees and dues. A few claimed that such regulation violates the First Amendment rights of recipients. That claim was implausible, in any event; however, the change in the regulatory scheme to limit only the total amount of such fees and dues without requiring any individual approval by the Corporation obviates any possibility of a First Amendment issue.

Other comments claimed that the amount of Corporation funds used by a recipient for fees and dues should be solely a matter for the recipient to decide. The Corporation does not accept the argument that it must defer entirely to the judgment of the recipient as to how these funds supplied by the Corporation should be spent in achieving the goals of the recipient's grant or contract. The Corporation believes that a limit on the expenditure of Corporation funds by recipients for fees and dues conserves these funds for direct use in the provision of legal services to eligible clients (or, in the case of recipients not directly providing legal services, for the purpose of their grants).

Other Issues

With the exception of technical changes, there are only two other changes in this final rule. The first is in

section 1627.5 where the words "or gifts" are added after "contributions" to make it clear that any transfer of Corporation funds by recipients that is not a subgrant or for fees or dues, and is not otherwise provided for in this rule, is prohibited.

The second is that in §§ 1627.4(d) and 1627.7(b)(1) the words "other applicable Federal law" are added to the list of statutory and regulatory restrictions which may not be circumvented by payment to other organizations for fees and dues or for educational and training activities.

Several comments opposed the restrictions on payment of fees and dues to organizations and payments for training activities in the areas of political activities, voter registration, and, in particular, lobbying. The issue concerning lobbying is that some limited lobbying is permitted to recipients, so commentators contend that training in that area and payment of fees and dues to organizations that lobby should be permitted.

As for training, funds used for training should be used in areas of normal programmatic activities. Lobbying should not be such an area under the stringent restrictions presently in force. Furthermore, as documented in the September 19, 1983 GAO report on violation of restrictions on lobbying and related activities in 1980-81, training relating to lobbying has been a significant area of abuse. Consequently, the Corporation retains the ban on such training in § 1627.7.

As for payment of fees and dues, the operative language is "payment of fees and dues to organizations whose activities would violate the Act, or Corporation Regulations, Guidelines, or Instructions." If an organization lobbies only within the very narrow restrictions currently applicable to lobbying by a recipient, it could receive fees or dues from recipients. If its lobbying activities are of a wider scope, then it could not. This prohibition is designed to prevent the circumvention of restrictions on lobbying by indirect financing of lobbying with Corporation funds through fees or dues. As such, it is a legitimate provision to enforce these Congressionally mandated restrictions.

List of Subjects in 45 CFR Part 1627

Legal services, Grant programs.

For the reasons set out in the preamble, 45 CFR Chapter XVI is amended by adding Part 1627 to read as follows:

PART 1827—SUBGRANTS, FEES AND DUES

Sec.	
1827.1	Purpose.
1827.2	Definitions.
1827.3	Requirements for all subgrants.
1827.4	Fees and dues.
1827.5	Contributions.
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1827.7	Training and education activities.
1827.8	Tax sheltered annuities, retirement accounts and pensions.

Authority: Sections 1006(b)(1), 1007(a)(3), and 1009(e) Legal Services Corporation Act of 1974, as amended (42 U.S.C. 2996e(b)(1), 2996f(a), and 2996g(e)).

§ 1827.1 Purpose.

In order to promote accountability for Corporation funds and the observance of the provisions of the Legal Services Corporation Act and the Corporation's regulations adopted pursuant thereto, it is necessary to set out the rules under which Corporation funds may be transferred by recipients to other organizations (including other recipients).

§ 1827.2 Definitions.

(a) "Recipient" as used in this part means any recipient as defined in Section 1002(8) of the Act and any grantee or contractor receiving funds from the Corporation under Section 1006(a)(1)(B) or 1006(a)(3) of the Act.

(b)(1) "Subrecipient" shall mean any entity that accepts Corporation funds from a recipient under a grant contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient's programmatic activities. Such activities would normally include those that might otherwise be expected to be conducted directly by the recipient itself, such as representation of eligible clients, or which provide direct support to a recipient's legal assistance activities or such activities as client involvement, training or state support activities. Such activities would not normally include those that are covered by a fee-for-service arrangement, such as those provided by a private law firm or attorney representing a recipient's clients on a contract or judicare basis, except that any such arrangement involving more than \$25,000 shall be included. Subrecipient activities would normally also not include the provision of goods or services by vendors or consultants in the normal course of business if such goods or services would not be expected to be provided directly by the recipient itself, such as auditing or business machine purchase and/or maintenance. A single entity could 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.

(2) "Subgrant" shall mean any transfer of Corporation funds from a recipient which qualifies the organization receiving such funds as a subrecipient under the definition set forth in paragraph (b)(1) of this section.

(c) "Fees and dues" as used in this Part shall mean fees or dues paid to an organization on behalf of a program or individual to be a member thereof, or to acquire voting or participatory rights therein; it shall also include fees and dues required by a professional licensing body. The term "fees and dues" shall not include one-time fees or expenses for programs or individuals to participate in routine training and education activities.

§ 1827.3 Requirements for all subgrants.

(a)(1) All subgrants must be submitted in writing to the Corporation for prior, written approval. The submission shall include the terms and conditions of the subgrant and the amount of funds intended to be transferred.

(2) The Corporation shall have 45 days to approve, disapprove, or suggest modifications to the subgrant. A subgrant which is disapproved or to which modifications are suggested may be resubmitted for approval. Should the Corporation fail to take action within 45 days, the recipient shall notify the Corporation of this failure and, unless the Corporation responds within 7 days of the receipt of such notification, the subgrant shall be deemed to have been approved.

(3) Any subgrant not approved according to the procedures of subsection (a)(2) shall be subject to audit disallowance and recovery of all the funds expended pursuant thereto.

(4) Any subgrant which is a continuation of a previous subgrant and which expires between January 1 and March 1, 1984 may be extended until March 1, 1984, if a new subgrant agreement is submitted for approval to the Corporation by January 15, 1984. In the event the Corporation refuses to allow the renewal of any such submitted agreement, the recipient shall be permitted to allow the subrecipient 60 days' funding to close out the subgrant activities.

(b)(1) A subgrant may not be for a period longer than one year, and all funds remaining at the end of the grant period shall be considered part of the recipient's fund balance.

(2) All subgrants shall contain a provision providing for their orderly termination in the event that the

recipient's funding is terminated or recipient is not refunded and for suspension of activities if the recipient's funding is suspended.

(3) A substantial change in the work program of a subgrant or an increase or decrease in funding of more than 10% shall require Corporation approval pursuant to the provisions of Section 1827.3(a). Minor changes of work program or changes in funding of less than 10% shall not require prior Corporation approval, but the Corporation shall be informed in writing thereof.

(c) Recipients shall be responsible for ensuring that subrecipients comply with the financial and audit provisions of the Corporation. The recipient is responsible for ensuring the proper expenditure, accounting for, and audit of delegated funds. Any funds delegated to a recipient to a subrecipient shall be subject to the audit and financial requirements of the Audit and Accounting Guide for Recipients and Auditors. The delegated funds may be separately disclosed and accounted for and reported upon in the audited financial statements of a recipient; 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 in accordance with generally accepted accounting principles. A subgrant agreement may provide for alternative means of assuring the propriety of subrecipient expenditures, especially in instances where a large organization receives a small subgrant. If such an alternate means is approved by the Audit Division of the Corporation, the information provided thereby shall satisfy the recipient's annual audit requirement with regard to the subgrant funds.

(d) The recipient shall be responsible for repaying the Corporation for any disallowed expenditures by a subrecipient, irrespective of whether the recipient is able to recover such expenditures from the subrecipient.

(e) To assure subrecipient compliance with the Act, Congressional restrictions having the force of law, Corporation Regulations (45 CFR Chapter XVI), and Corporation Guidelines or Instructional contracts between a recipient and a subrecipient shall provide for the same oversight rights for the Corporation with respect to subrecipients as apply to recipients.

§ 1827.4 Fees and dues.

(a) Corporation funds may be used for fees or dues to an organization, whether

on behalf of a recipient or an individual, without prior written approval by the Corporation, only for the following purposes:

(1) Fees or dues paid to an organization in order to qualify for professional liability insurance at reduced rates, provided the reduction in rates is reasonably comparable to the amount of the payment;

(2) Mandatory or voluntary fees or dues to a bar association, Supreme Court or professional licensing body;

(3) Fees or dues paid to a health insurance provider or to an organization in order to qualify for health insurance at reduced rates, provided the reduction in rates is reasonably comparable to the amount of the payment; and

(4) Fees or dues to other organizations provided such are directly related to the delivery of legal services to eligible clients, the practice of law, or the management of a law office.

(b) In order to prevent a significant diversion of funds from the direct provision of legal services to eligible clients, the Corporation has determined that the total of any one recipient's annual expenditure on fees and dues should be strictly limited. With the exception of categories (1) and (3) listed in § 1627.4(a), that total shall not exceed one-half of one per cent of the recipient's annualized funding level except that each recipient may expend up to \$1,500 and no recipient may expend more than \$20,000 on fees and dues.

(c) In determining whether to use funds for fees or dues, recipients shall give preference to such uses as (1) payment of bar association dues and similar dues for paralegal and legal service or law office administrator organizations; and (2) the provision of special training related to activities designed to enhance the skill of program staff in provision of legal services to clients. Training relating to skills the use

of which is often not permissible if supported with Corporation funds (e.g. lobbying) shall not be approved.

(d) Corporation policy forbids payment of fees or dues if the effect of that payment would be to allow recipients to use Corporation funds indirectly in areas (such as lobbying, political activities, voter registration) for which direct expenditures by recipients are prohibited or severely restricted under the Act, other applicable Federal law, Corporation regulations (45 CFR Chapter XVI), or Corporation Guidelines or Instructions. Consequently, recipients shall not make payment of fees or dues to organizations whose activities would violate the Act, or Corporation Regulations, Guidelines or Instructions.

§ 1627.5 Contributions.

Any contributions or gifts of Corporation funds to another organization or to an individual are prohibited.

§ 1627.6 Transfers to other recipients.

(a) The requirements of § 1627.3 shall apply to all subgrants by one recipient to another recipient.

(b) The subrecipient shall audit any funds subgranted to it in its annual audit and supply a copy of this audit to the recipient. The recipient shall 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 § 1627.3(d), the Corporation may hold the subrecipient directly responsible for any disallowed expenditures of subgrant funds. Thus, the Corporation may recover all of the disallowed costs from either recipient or subrecipient or may divide the recovery between the two; the Corporation'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 Corporation funds.

§ 1627.7 Training and education activities.

(a) Corporation funds utilized to pay for participation of programs and individuals in routine training and educational activities do not count toward computation of the maximum allowable total of fees and dues under Sec. 1627.4(b).

(b) No recipient shall expend Corporation funds for training or educational activities or utilize Corporation funds to pay for programs or individuals to participate in outside training or educational activities if the effect of such payment would be to allow the use of these program funds:

(1) For purposes for which direct expenditures are prohibited under the Act, other applicable Federal law, Corporation regulations (45 CFR Chapter XVI), or Corporation Guidelines or Instructions; or

(2) For training or educational activities in areas in which program involvement is prohibited (such as political activities or voter registration, etc.) or in areas wherein only limited and incidental activities are allowed (such as lobbying).

§ 1627.8 Tax Sheltered Annuities, Retirement Accounts and Pensions.

No provision contained in this Part shall be construed to affect any payment by a recipient on behalf of its employees for the purpose of contributing to or funding a tax sheltered annuity, retirement account, or pension fund.

Dated: November 23, 1983.

Alan R. Swandiman,
General Counsel.

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