FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

Choctaw Legal Defense
July 18-20, 2011
Case Service Report/Case Management Systems Review

Recipient No. 625100

I. EXECUTIVE SUMMARY

Finding 1: CLD's automated case management system (ACMS) is not sufficient to ensure that the information necessary for the effective management of cases is accurately and timely recorded. Sample cases revealed that the information contained in the files is not consistent with the information in the case management system.

Finding 2: CLD's intake procedures and case management system do not adequately support the program's compliance related requirements.

Finding 3: CLD's new financial eligibility policy is in substantial compliance with the requirements of 45 CFR Part 1611 (Financial eligibility), however the staff is not familiar with the policy and the policy has not been adopted by CLD's Board. Sampled case files evidenced compliance with the requirements of 45 CFR § 1611.4, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines (FPG). However, since staff was not aware of the eligibility policy it could not be determined if the information contained in each case file was an accurate reflection of the client's income.

Finding 4: CLD's new financial eligibility policy is in substantial compliance with the requirements of 45 CFR Part 1611 (Financial eligibility), however the staff is not familiar with the policy and the policy has not been adopted by the board. Sampled cases evidenced non-compliance with asset eligibility documentation as required by 45 CFR §§ 1611.3(c)(d), and CSR Handbook (2008 Ed.), § 5.4.

Finding 5: Sampled cases evidenced compliance with the documentation requirements of 45 CFR Part 1626 (Restrictions on legal assistance to aliens), and the CSR Handbook (2008 Ed.), § 5.5.

Finding 6: Sampled cases evidenced substantial compliance with the requirements of 45 CFR § 1611.9 (Retainer agreements).

Finding 7: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts).

Finding 8: Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources). However, CLD contracts out conflict cases and reports them to LSC as CSR cases. They are requesting an opinion from Choctaw's Tribal Attorney General to determine whether CLD is allowed to accept conflict cases to contract out.

Finding 9: Sampled cases evidenced several contract cases in which evidence of legal assistance was not properly documented pursuant to CSR Handbook (2008 Ed.), § 5.6.

Finding 10: Sampled cases evidenced that CLD's application of the CSR case closure categories and problem codes are not in compliance with Chapters VIII and IX, CSR

Handbook (2008 Ed.). There were several sampled cases reviewed which did not have the proper closing code or problem code required by CSR Handbook (2008 Ed.).

Finding 11: Sampled cases evidenced non-compliance with the requirements of CSR Handbook (2008 Ed.), § 3.3 as there were a few case files reviewed that were either dormant or closed in an untimely manner.

Finding 12: Sampled cases evidenced compliance with the requirements of CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases.

Finding 13: Review of the list of attorneys who have engaged in the outside practice of law and interviews revealed that CLD is in compliance with that portion of 45 CFR Part 1604 requirements (Outside practice of law). However, CLD has not adopted written policies relating to the outside practice of law as required by 45 CFR Part 1604.

Finding 14: Sampled cases and review of CLD's accounting and financial records for the review period evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

Finding 15: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

Finding 16: A limited review of CLD's accounting and financial records, observations of the physical locations of program field offices, and interviews with staff indicated compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity).

Finding 17: CLD is in compliance with the requirements of 45 CFR § 1614.1 and CSR Handbook (2008 Ed.), § 4.2 (Private attorney involvement).

Finding 18: The review of documentation related to CLD's payment policies and procedures determined that the program does not comply with the requirements of 45 CFR Part 1627 (Subgrants and membership fees or dues).

Finding 19: The sample documentation reviewed indicates that CLD is in substantial compliance with the requirements of 45 CFR Part 1635 (Timekeeping requirements).

Finding 20: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).

Finding 21: Sampled cases reviewed and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

Finding 22: Sampled cases evidenced compliance with the requirements of 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings, and actions collaterally attacking criminal convictions).

Finding 23: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Finding 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

Finding 25: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

Finding 26: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).

Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

Finding 28: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

Finding 29: Sampled cases evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).

Finding 30: CLD is in non-compliance with the requirements of 45 CFR § 1620.6, which requires those staff who handle cases or matters, or make case acceptance decisions sign written agreements indicating they have read and are familiar with the recipient's priorities, have read and are familiar with the definition of an emergency situation and procedures for dealing with an emergency, and will not undertake any case or matter for the recipient that is not a priority or an emergency.

Finding 31: A limited review of CLD's Accounting Manual, procedures, and internal control policies demonstrated that the program's policies and procedures compare favorably to LSC's Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System (Accounting Guide for LSC Recipients (2010 Edition) AGFLR and LSC Program Letter 10-2). However, the reconciliations are not being signed or dated to reflect when they were completed; MBCI is not familiar with the AGFLR or LSC regulations; and a few issues were noted during review of payments made in 2010 and 2011.

II. BACKGROUND OF REVIEW

On July 18-20, 2011, staff of the Office of Compliance and Enforcement (OCE) conducted a Case Service Report/Case Management System (CSR/CMS) review at Choctaw Legal Defense (CLD). The purpose of the visit was to assess the program's compliance with the LSC Act, regulations, and other applicable guidance such as Program Letters, the LSC Accounting Guide for LSC Recipients (2010 Edition), and the Property Acquisition and Management Manual. The visit was conducted by a team consisting of one (1) attorney, one (1) Barnett fellow, and one (1) fiscal analyst.

The onsite review was designed and executed to assess program compliance with basic client eligibility, intake, case management, regulatory and statutory requirements, and to ensure that CLD has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed CLD for compliance with the regulatory requirements of: 45 CFR Part 1611 (Financial eligibility); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR §§ 1620.4 and 1620.6 (Priorities in use of resources); CFR § 1611.9 (Retainer agreements); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 1604 (Outside practice of law); 45 CFR Part 1608 (Prohibited political activities); 45 CFR Part 1609 (Fee-generating cases); 45 CFR Part 1614 (Private attorney involvement);[1] 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); 45 CFR Part 1642 (Attorneys' fees);[2] 45 CFR Part 1630 (Cost standards and procedures); 45 CFR 1612 (Restrictions on lobbying and certain other activities); 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and Restrictions on actions collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1637 (Representation of prisoners); 45 CFR Part 1638 (Restriction on solicitation); 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, or mercy killing); and 42 USC 2996f § 1007 (Abortion, school desegregation litigation and military selective service act or desertion).

The OCE team interviewed CLD's Executive Director, Managing Attorney, the sole staff attorney funded by LSC funds, and support staff. CLD's case intake, case acceptance, case management, and case closure practices and policies were assessed. In addition to interviews, a case file review was conducted. The sample case review period was from January 1, 2009 through May 31, 2011. Case file review relied upon randomly selected files as well as targeted files identified to test for compliance with LSC requirements, including eligibility, potential duplication, timely closing, and proper application of case closure categories. In the course of the onsite review, the OCE team selected 35 cases to review, which included some targeted files.

CLD became an LSC grantee effective January 1, 2009. CLD is an agency of the tribal government of the Mississippi Band of Choctaw Indians (MBCI). CLD's service area encompasses a total land area of 32,541 square miles which is entirely rural.

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[1] In addition, when reviewing files with pleadings and court decisions, compliance with other regulatory restrictions was reviewed as more fully reported *infra*.

[2] On December 16, 2009, the enforcement of this regulation was suspended and the regulation was later revoked during the LSC Board of Directors meeting on January 30, 2010. During the instant visit, LSC's review and enforcement of this regulation was therefore only for the period prior to December 16, 2009.

CLD received Native American grant awards from LSC in the amount of $88,831 for 2009, $97,400 for 2010, and $91,949 for 2011. In its 2010 submission to LSC, the program reported 394 closed cases. CLD's 2010 self-inspection certification revealed a 0.00% error rate in CSR reporting even though the program listed that they noted 45 cases with asset screening errors in their sample.

By letter dated May 10, 2011, OCE requested that CLD provide a list of all cases reported to LSC in its 2009 CSR data submission (closed 2009 cases), a list of all cases reported in its 2010 CSR data submission (closed 2010 cases), a list of all cases closed between January 1, 2011 and May 31, 2011 (closed 2011 cases), and a list of all cases which remained open as of May 31, 2011 (open cases). OCE requested that the lists contain the client name, the file identification number, the name of the advocate assigned to the case, the opening and closing dates, the CSR case closing category assigned to the case, and the funding code assigned to the case. CLD was advised that OCE would seek access to such cases consistent with Section 509(h), Pub.L. 104-134, 110 Stat. 1321 (1996), LSC Grant Assurance Nos. 10, 11, and 12, and the LSC *Access to Records* protocol (January 5, 2004). CLD was requested to notify OCE promptly, in writing, if it believed that providing the requested material in the specified format would violate the attorney-client privilege or would be otherwise protected from disclosure.

Thereafter, an effort was made to create a representative sample of cases that the team would review during the onsite visit. The sample was developed proportionately among 2009, 2010, and 2011 closed and 2011 open cases. The sample consisted largely of randomly selected cases, but also included targeted cases selected to test for compliance with the CSR instructions relative to timely closings, proper application of the CSR case closing categories, duplicate reporting, etc.

During the visit, access to case-related information was provided through staff intermediaries. Pursuant to the OCE and CLD agreement of June 29, 2011, CLD staff maintained possession of the file and discussed with the team the nature of the client's legal problem and the nature of the legal assistance rendered. In order to maintain confidentiality such discussion, in some instances, was limited to a general discussion of the nature of the problem and the nature of the assistance provided.[3]

CLD's management and staff cooperated fully in the course of the review process. As discussed more fully below, CLD was made aware of compliance issues during the onsite visit. This was accomplished by informing the intake staff, the staff attorney, as well as the Managing Attorney and the Executive Director, of any compliance issues uncovered during case review.

At the conclusion of the visit, OCE conducted an exit conference during which CLD was made aware of the areas in which a pattern of non-compliance was found. No significant distinctions between 2009, 2010, and 2011 cases were found. Of the 35 cases reviewed, 22 were found to be non-CSR eligible cases. Seventeen (17) of these 22 cases were cases that were contracted out to

[3] In those instances where it was evident that the nature of the problem and/or the nature of the assistance provided had been disclosed to an unprivileged third party, such discussion was more detailed, as necessary to assess compliance.

private attorneys. OCE cited instances of non-compliance in the area of the intake, documentation requirements of 45 CFR Part 1611 (Financial eligibility), documentation requirements of CSR Handbook (2008 Ed.), § 5.3, timely case closure, documentation of legal advice, application of closing codes, utilization and information contained within the automated case management system, documentation requirements of 45 CFR § 1620.6, and the requirements of 45 CFR Part 1627 (Subgrants and membership fees and dues). CLD was found to be in substantial compliance in the areas of 45 CFR § 1611.4, (Income eligibility), 45 CFR Part 1604 (Outside practice of law), documentation requirements of 45 CFR § 1611.9 (Retainer agreements), and documentation requirements of 45 CFR Part 1635 (Timekeeping requirements). As discussed below, CLD was found to be in compliance with the remaining regulatory requirements reviewed.

Additionally, the review team learned that CLD's Executive Director drafted the written policies required by 45 CFR Parts 1604, 1605, 1609, 1611, 1612, 1617, 1619, 1620, 1626, 1627, 1632, 1633, 1636, 1637, 1638, 1639, 1643, and 1644 in response to the document request letter sent by OCE prior to the onsite CSR/CMS review. An electronic copy of these policies was sent to OCE on June 24, 2011. In drafting their policies, CLD had literally copied the language from the required Parts and replaced the term "program" or "recipient" with "CLD." With the exception of some parts of the Income and Asset Policy drafted in response to OCE's request, a policy was not created for any of the other Parts that required CLD to actually establish a policy, as opposed to simply adopting the language of the regulation. CLD's staff was not aware of any of the policies, and none of the policies had been reviewed or accepted by the Board. CLD was instructed to revise their policies, provide them to their Board for adoption, and to train their staff accordingly.

CLD was advised that they would receive a Draft Report that would include all of OCE's findings, and that they would have 30 days to submit written comments in response. Thereafter, a Final Report would be issued that would include CLD's comments.

By letter dated October 19, 2011, OCE issued a Draft Report (DR) detailing its findings, recommendations, and required corrective actions. CLD was asked to review the DR and provide written comments within 30 days. CLD requested additional time to prepare their comments to the DR and submitted them by letter dated November 28, 2011. The letter stated that attachments would be sent via mail and where received by LSC on December 1, 2011. CLD has taken several corrective measures in response to the DR, which are detailed in their comments to the DR. CLD also provided some additional details on a few of the specific findings in the DR. OCE has carefully considered CLD's comments and has either accepted and incorporated them within the body of the report or responded accordingly. CLD's comments, in their entirely, are attached to this Final Report.

III. FINDINGS

Finding 1: CLD's automated case management system (ACMS) is not sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. Sample cases revealed that the information contained in the files is not consistent with the information in the case management system.

Recipients are required to utilize automated case management system (ACMS) and procedures which will ensure that information necessary for the effective management of cases is accurately and timely recorded in a case management system. At a minimum, such systems and procedures must ensure that management has timely access to accurate information on cases and the capacity to meet funding source reporting requirements. *See* CSR Handbook (2008 Ed.), § 3.1.

Based on a comparison of the information yielded by the ACMS to information contained in the case files sampled, CLD's ACMS system is not sufficient to ensure that information necessary for the effective management of cases is timely and accurately recorded. At the time of review CLD was using Abacus Law as their ACMS. CLD stated that they were in the process of converting to KEMPS but had not completed the process yet. Interview of the staff members and the Executive director indicated that Abacus Law does not have sufficient fields to capture the information needed to conduct an effective eligibility screening for applicants or to appropriately manage a case through closing.

For example, at the time of the CSR review, Abacus Law did not contain fields for documenting an applicant's income, assets, expenses or other criteria that could supports income or asset eligibility screening. CLD was unable to determine the funding source allocated to the cases from information included on the ACMS. The case list provided to the review team indicated funding code 7000 as the LSC funding code designated to the CSR-eligible cases provided on the lists. Interviews with the Executive Director and members of the accounting department revealed that 7000 is not an existing funding code within CLD's accounting system. The CLD funding code for LSC is 214. CLD's Executive Director had obtained funding code number 7000 by calling another LSC recipient and asking them what their LSC funding code number was. This number was then used as the LSC funding code on the case list provided to the team leader prior to the onsite visit.

Additionally, Abacus Law does not have the capability of generating or sorting CSR reportable or non-reportable cases. The case lists sent to OCE prior to the review were all manually typed into an excel spread sheet. As such CLD's current ACMS does not have the capability to ensure that information necessary for the effective management of cases is accurately or timely recorded.

Sampled case review revealed that in 26 of the 35 cases reviewed, the information contained in the case lists provided by CLD prior to the visit was inconsistent with the information disclosed during the visit. *See e.g.* Case No. 101000147, where the problem code in the file was different from the problem code stated on the case list. The problem code in the ACMS was 5, but the case file reflected that it was 95; Case No. 091001653, where the problem code in the file was different from the problem code stated on the case list. The problem code in the ACMS was 327,

but the case file reflected that it was 43; and Case No. 1110011453, where the problem code in the file was different from the problem code stated on the case list. The problem code in the ACMS was 5, but the case file reflected that it was 95.

CLD should verify that the correct case file information is entered and recorded in the ACMS. Additionally, it is recommended that CLD update their ACMS so that it: contains the necessary fields for conducting intake; has the capability to allow proper case management; and is capable of generating reports to meet CLD's regulatory and CSR reporting requirements.

In response to the DR, CLD stated that Choctaw Legal Defense is presently using Kemps Case Works to enter new cases. CLD further stated that they are in the process of getting all of their files converted into the Kemps software and were planning to have an extensive training session in December 2011 with Mr. Kemps in Atlanta, GA to learn how to better utilize Kemps Case Works.

This area of non-compliance is the subject of a special grant condition, with reporting requirements due on or before March 30, 2012.

Finding 2: CLD's intake procedures and case management system do not adequately support the program's compliance related requirements.

OCE staff assessed CLD's intake procedures by interviewing the primary intake staff person responsible for conducting intake screenings. Intake could not be observed during the onsite review because the staff had made sure not to schedule any intake appointments during our visit. CLD has one (1) primary intake staff and one (1) back-up staff member. The back-up staff member was not available for interviews during OCE's visit. LSC was informed that intake hours are Monday through Friday from 8:00 am to 4:30 pm, however interview revealed that only the initial screening is conducted during these specified times unless the case is an emergency. Non-emergency cases are scheduled for full intake Monday to Friday from 8:30 am - 9:30 am and 1:00 pm - 3:30 pm. A description of the intake process is provided below followed by specific findings.

Walk-in or In-Person Intake Procedures:

The receptionist initially screens each walk-in or in-person applicant to determine the nature of the applicant's legal problem and if it is within CLD's priorities. If the case is not within CLD's priorities the applicant is directed to an appropriate service provider. If the case does fall within CLD's priorities and is an emergency then the applicant is scheduled for an interview and screened promptly. If the case is within CLD's priorities but is not an emergency then the case is scheduled for an intake appointment at a later date. Full intake is only conducted with an appointment. All applicants are required to come in to the office for an in-person intake unless they are out-of-state. Full-intake interviews are scheduled Monday to Friday from 8:30 am - 9:30 am and 1:00 pm - 3:30 pm. Upon arriving for a full-intake appointment, the receptionist provides the applicant with a manual intake form which the applicant is directed to complete. This information is then entered into the ACMS by the receptionist. If the intake staff

determines, based on the information obtained from the initial intake form that the applicant is eligible for LSC funded services then the applicant is provided a grant package which contains another intake form, retainer agreement, grievance procedure, income guidelines, Verification of Income and Citizenship Attestation form, Statement of Fact, Authorization for Release of Services, and a Waiver form. Once all the forms are completed and filled out the information obtained is provided to the receptionist and entered into the ACMS.

Telephone Intake Procedures:

Telephone intake is only conducted for out-of-state applicants. All other applicants are required to come in for a scheduled in-person intake appointment. Telephone intake is conducted in the same manner as walk-in or in-person intake, except that intake staff asks the applicant the questions listed on the manual intake form and completes it instead of having the applicant complete the form themselves. The retainer agreement, citizenship attestation, and other applicable paper work are then mailed to the applicant to be completed and returned to the office.

Conflict Checks:

Intake interviews revealed that, according to the reported sequence of how intake is conducted, income and asset eligibility information is obtained before CLD conducts the conflict check. CLD staff was not able to properly explain what happens to the information obtained from applicants if there is a conflict that prevents case acceptance.

Reasonable Income Prospects Screening:

The intake staff interviewed reported that proper inquiry is not made into the reasonable income prospects of applicants. There are no specific questions for reasonable income prospects screening in the ACMS system or on the manual intake form. As such, it is recommended that CLD revise its manual intake form to screen for reasonable income prospects as required by 45 CFR § 1611.5(a)(4)(i), which mandates that CLD inquire into every applicant's reasonable income prospects during intake. It is also recommended that CLD update their ACMS to contain a specific question for reasonable income prospect screening.

Citizenship and Eligible Alien Status Screening:

Intake staff demonstrated familiarity with the alien eligibility requirements of 45 CFR Part 1626. Intake staff verifies citizenship status during intake screening, and written citizenship attestations are obtained prior to conclusion of the initial intake interview for those applicants who walk into the office: (the applicant is instructed to sign the citizenship attestation form, which contains a proper citizenship attestation). This procedure complies with 45 CFR § 1626.6(a) and CSR Handbook (2008 Ed.), § 5.5, which requires recipients to obtain written citizenship attestations whenever program staff has in-person contact with the applicant.

The intake staff interviewed in the branch office did not demonstrate an understanding of the applicability of 45 CFR § 1626.4 and Program Letter 06-2, Violence Against Women Act 2006 Amendments.

CLD must ensure that staff is appropriately trained on the applicability of 45 CFR § 1626.4 and Program Letter 06-2, Violence Against Women Act 2006 Amendments.

In response to the DR, CLD stated that "[a]ll staff signed and dated a form indicating that they have received and read Program Letter 06-02, Violence Against Women Act 2006 Amendments. Due to the limited representation of only enrolled tribal members, our office has never encountered a matter that would require application of 45 CFR § 1626.4 as the Domestic Violence Program handles representation for all battered tribal members."

Income Screenings:

Interviews with intake staff revealed that intake staff is not aware of CLD's income policy. The income policy was drafted in response to the OCE visit and was not shared with staff prior to OCE's arrival. Intake staff uses the Federal Poverty Guidelines to determine acceptability; if an applicant's income falls below that limit then the case is determined eligible to be funded with LSC funds.

The intake staff was not aware of what constitutes income, or any of the applicable exceptions to general income guidelines adopted in CLD's policy in accordance with 45 CFR § 1611.5.

It is recommended that CLD's intake staff be trained on the applicability of 45 CFR § 1611.5 and the procedures enumerated therein for obtaining a waiver and/or applying authorized exceptions when an applicant is over-income, and CLD's income policy. CLD must ensure that all cases reported to LSC have been adequately and accurately screened for income eligibility.

In response to the DR, CLD stated as follows:

"Actions taken to ensure compliance with 45 CFR § 1611.5:

a. Staff responsible for completing intakes were given a copy of the financial eligibility guidelines that included detailed explanations of asset and income eligibility determination
b. Staff responsible for completing intakes were instructed on the requirements established by the financial eligibility guidelines.
c. A more detailed Asset/Income verification form was created (please see Attachment 1).
d. To avoid errors and emissions, a list of questions to be asked of clients to determine financial eligibility was created (please see Attachment 2)."

Asset Screenings:

Interviews revealed that intake staff is not familiar with CLD's asset limit and does not have an understanding of the categories of assets that should be included or excluded from asset eligibility determination. Additionally, one of the manual intake forms used does not ask any

questions regarding the applicant's assets and as such those applicants are never screened for assets.

CLD should ensure that all intake staff is familiar with CLD asset policy, and every applicant is screened for assets.

In response to the DR, CLD stated the following "[i]n addition to the actions taken above, the Staff Attorney will review at least 30% of grant files after the formal intake is complete to ensure staff are correctly applying CLD's asset policy."

Group Eligibility:

Intake staff indicated they do not normally receive group applicants; when they do, they seek guidance from the Executive Director. Interview with the Executive Director revealed that CLD has not had any group applicants while she has been at the program but she stated that she is aware of the requirements of 45 CFR §1611.6.

Outreach:

Intake for outreach is conducted in the same manner as in-person applicants.

Case Acceptance and Oversight:

Once intake is completed and the case is entered into the ACMS the Executive Director decides whether the case can be accepted for service or not. Conflict cases are assigned to contract private attorneys and not monitored in any manner. If the case is accepted as a staff case, it is assigned to a staff attorney. The Executive Director runs monthly reports to check on the status of the staff cases as they progress. At the conclusion of the case, the staff attorney closes the case with the appropriate closing code and the paralegal verifies that the information in the ACMS and the file is complete and accurate.

The areas of non-compliance noted above are the subject of special grant conditions, with reporting requirements due on or before February 29, 2012 and March 30, 2012.

Finding 3: CLD's new financial eligibility policy is in substantial compliance with the requirements of 45 CFR Part 1611 (Financial eligibility), however the staff is not familiar with the policy and the policy has not been adopted by CLD's Board. Sampled case files evidenced compliance with the requirements of 45 CFR § 1611.4, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines (FPG). However, since staff was not aware of the eligibility policy it could not be determined if the information contained in each case file was an accurate reflection of the client's income.

Recipients may provide legal assistance supported with LSC funds only to individuals whom the recipient has determined to be financially eligible for such assistance. *See* 45 CFR § 1611.4(a).

Specifically, recipients must establish financial eligibility policies, including annual income ceilings for individuals and households, and record the number of members in the applicant's household and the total income before taxes received by all members of such household in order to determine an applicant's eligibility to receive legal assistance.[4] *See* 45 CFR § 1611.3(c)(1), and CSR Handbook (2008 Ed.), § 5.3. For each case reported to LSC, recipients shall document that a determination of client eligibility was made in accordance with LSC requirements. *See* CSR Handbook (2008 Ed.), § 5.2.

In those instances in which the applicant's household income before taxes is in excess of 125% but no more than 200% of the applicable Federal Poverty Guidelines (FPG) and the recipient provides legal assistance based on exceptions authorized under 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4), the recipient shall keep such records as may be necessary to inform LSC of the specific facts and factors relied on to make such a determination. *See* 45 CFR § 1611.5(b), and CSR Handbook (2008 Ed.), § 5.3.

For CSR purposes, individuals financially ineligible for assistance under the LSC Act may not be regarded as recipient "clients" and any assistance provided should not be reported to LSC. In addition, recipients should not report cases lacking documentation of an income eligibility determination to LSC. However, recipients should report all cases in which there has been an income eligibility determination showing that the client meets LSC eligibility requirements, regardless of the source(s) of funding supporting the cases, if otherwise eligible and properly documented. *See* CSR Handbook (2008 Ed.), § 4.3.

CLD's Executive Director drafted the program's Financial Eligibility Policy in response to the OCE document request letter sent out prior to the onsite CSR/CMS review. An electronic copy of this policy was sent to OCE on June 24, 2011. CLD's Financial Eligibility Policy is in substantial compliance with the requirements of 45 CFR Part 1611, however certain sections of the policy had been literally copied out of the regulation and, as such, fail to reflect the programs policy for those specific areas. *See e.g.* CLD's Income and Asset Policy regarding § 1611.3.

CLD's staff was not aware of the Financial Eligibility policy, and the policy had not been reviewed or accepted by the Board.

At the time of the onsite review, CLD cases appeared to be in compliance with 45 CFR § 1611.4, CSR Handbook (2008 Ed.) § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the FPG. However, since CLD staff was not aware of the eligibility policy, OCE was unable to determine if the income information recorded in the files was an accurate reflection of the client's actual income, or merely a partial screening.

The DR directed that CLD must re-draft its Financial Eligibility Policy so that it appropriately reflects the program's policy regarding each section of Part 1611. Once the CLD Board approves a revised policy, CLD should ensure that their staff is aware of the policy and its applications.

[4] A numerical amount must be recorded, even if it is zero. *See* CSR Handbook (2008 Ed.), § 5.3.

In response to the DR, CLD stated the following "[t]he Financial Eligibility Policy is being worked on by all attorneys to ensure that we cover each section of Part 1611. A draft copy will be mailed to your office by the end of this week."

CLD further stated that "[o]nce the policies are completed, the Director will present them to the Policy Board for their input and approval. We are hoping for a completion date in February 2012."

The income eligibility policy provided by CLD was reviewed and was found to be incomplete and the income eligibility form attached was non-compliant. The eligibility policy does not address 45 CFR §§ 1611.4(b) and 1611.5. The eligibility form provided by CLD lists "Distributions" under the section titled "Gross income." The review team was informed during the onsite visit that "Distributions" refer to the funds received by Native American applicants from their Indian trust income. CLD was specifically informed and trained during the onsite review that the program needs to redraft its income eligibility policy and that "distributions" up to $2,000 a year are not to be counted as income.[5] The form also lists food stamps as income. The program was informed onsite and during training that food stamps are not income and should not be recorded as such. Furthermore, the form lists wages, child support, and alimony as non-exempt assets. These items are all income and not assets.

CLD must review CFR Part 1611 and redraft its policy and forms so that they are compliant with the requirements of the regulation. A sample policy is attached for review. This policy needs to be adapted to fit the requirements of CLD and cannot be adopted verbatim.

As noted previously, this area of non-compliance is the subject of a special grant condition, with reporting requirements due on or before February 29, 2012 and March 30, 2012.

Finding 4: CLD's new financial eligibility policy is in substantial compliance with the requirements of 45 CFR Part 1611 (Financial eligibility), however the staff is not familiar with the policy and the policy has not been adopted by the board. Sampled cases evidenced non-compliance with asset eligibility documentation as required by 45 CFR §§ 1611.3(c)(d), and CSR Handbook (2008 Ed.), § 5.4.

As part of its financial eligibility policies, recipients are required to establish reasonable asset ceilings in order to determine an applicant's eligibility to receive legal assistance. *See* 45 CFR § 1611.3(d)(1). For each case reported to LSC, recipients must document the total value of assets except for categories of assets excluded from consideration pursuant to its Board-adopted asset eligibility policies.[6] *See* CSR Handbook (2008 Ed.), § 5.4.

In the event that a recipient authorizes a waiver of the asset ceiling due to the unusual circumstances of a specific applicant, the recipient shall keep such records as may be necessary to inform LSC of the reasons relied on to authorize the waiver. *See* 45 CFR § 1611.3(d)(2).

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[5] *See* 45 CFR § 1611.2(i) which defines "income" specifically excludes up to $2,000 per year of funds received by individual Native Americans that is derived from Indian trust income from that definition.

[6] A numerical total value must be recorded, even if it is zero or below the recipient's guidelines. *See* CSR Handbook (2008 Ed.), § 5.4.

The revisions to 45 CFR Part 1611 changed the language regarding assets from requiring the recipient's governing body to establish, "specific and reasonable asset ceilings, including both liquid and non-liquid assets," to "reasonable asset ceilings for individuals and households." *See* 45 CFR § 1611.6 in prior version of the regulation and 45 CFR § 1611.3(d)(1) of the revised regulation. Both versions allow the policy to provide for authority to waive the asset ceilings in unusual or meritorious circumstances. The older version of the regulation allowed such a waiver only at the discretion of the Executive Director. The revised version allows the Executive Director or his/her designee to waive the ceilings in such circumstances. *See* 45 CFR § 1611.6(e) in prior version of the regulation and 45 CFR § 1611.3(d)(2) in the revised version. Both versions require that such exceptions be documented and included in the client's files.

As noted previously, CLD's Executive Director drafted CLD's Financial Eligibility policy in response to the document request letter OCE sent prior to the onsite CSR/CMS review. An electronic copy of these policies was sent to OCE on June 24, 2011. CLD's financial eligibility policy is in substantial compliance with the requirements of 45 CFR Part 1611, however the CLD's staff was not aware of this policy. Additionally, this policy had not been reviewed or accepted by the Board.

Sampled case files reviewed revealed that CLD is non-compliance with 45 CFR § 1611.6, revised 45 CFR §§ 1611.3(c) and (d), and CSR Handbook (2008 Ed.) § 5.4. Sampled cases evidenced that 21 of the 35 cases selected for review did not contained the asset determination required by LSC. *See e.g.* Case Nos. 101000147, 091001653, and 101000145. Asset information was not obtained in any of these cases.

CLD should ensure that once the Board approves a revised policy, their staff is aware of the financial eligibility policy and its applications. CLD should further ensure that the proper inquiry of the applicant's assets is made and recorded for each case charged to LSC funds.

In response to the DR, CLD stated to see actions taken in response to Required Corrective Action #3.

The deficiencies of the actions taken are addressed above. As such, CLD must review 45 CFR Part 1611 and redraft its policy and forms so that they are compliant with the requirements of the regulation. A sample policy is attached for review. This policy needs to be adapted to fit the requirements of CLD and cannot be adopted verbatim.

Finding 5: Sampled cases evidenced compliance with the documentation requirements of 45 CFR Part 1626 (Restrictions on legal assistance to aliens), and the CSR Handbook (2008 Ed.), § 5.5.

The level of documentation necessary to evidence citizenship or alien eligibility depends on the nature of the services provided. With the exception of brief advice or consultation by telephone, which does not involve continuous representation, LSC regulations require that all applicants for legal assistance who claim to be citizens execute a written attestation. *See* 45 CFR § 1626.6. Aliens seeking representation are required to submit documentation verifying their eligibility.

See 45 CFR § 1626.7. In those instances involving brief advice and consultation by telephone, which does not involve continuous representation, LSC has instructed recipients that the documentation of citizenship/alien eligibility must include a written notation or computer entry that reflects the applicant's oral response to the recipient's inquiry regarding citizenship/alien eligibility. *See* CSR Handbook (2008 Ed.), § 5.5; *See also*, LSC Program Letter 99-3 (July 14, 1999). In the absence of the foregoing documentation, assistance rendered may not be reported to LSC. *See* CSR Handbook (2008 Ed.), § 5.5.

Prior to 2006, recipients were permitted to provide non-LSC funded legal assistance to an alien who had been battered or subjected to extreme cruelty in the United States by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household, or an alien whose child had been battered or subjected to such cruelty.[7] Although non-LSC funded legal assistance was permitted, such cases could not be included in the recipient's CSR data submission. In January 2006, the Kennedy Amendment was expanded and LSC issued Program Letter 06-2, "Violence Against Women Act 2006 Amendment" (February 21, 2006), which instructs recipients that they may use LSC funds to provide legal assistance to ineligible aliens, or their children, who have been battered, subjected to extreme cruelty, is the victims of sexual assault or trafficking, or who qualify for a "U" visa. LSC recipients are now allowed to include these cases in their CSRs.

Sampled cases evidenced compliance with the documentation requirements of 45 CFR Part 1626 (Restrictions on legal assistance to aliens) and the CSR Handbook (2008 Ed.), § 5.5.

There are no recommendations or corrective actions required.

There was no response to this Finding.

Finding 6: Sampled cases evidenced substantial compliance with the requirements of 45 CFR § 1611.9 (Retainer agreements).

Pursuant to 45 CFR § 1611.9, recipients are required to execute a retainer agreement with each client who receives extended legal services from the recipient. The retainer agreement must be in a form consistent with the applicable rules of professional responsibility and prevailing practices in the recipient's service area and shall include, at a minimum, a statement identifying the legal problem for which representation is sought, and the nature of the legal service to be provided. *See* 45 CFR § 1611.9(a).

The retainer agreement is to be executed when representation commences or as soon thereafter is practical and a copy is to be retained by the recipient. *See* 45 CFR §§ 1611.9(a) and (c). The lack of a retainer does not preclude CSR reporting eligibility. [8] Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

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[7] *See* Kennedy Amendment at 45 CFR § 1626.4.

[8] However, a retainer is more than a regulatory requirement. It is also a key document clarifying the expectations and obligations of both client and program, thus assisting in a recipient's risk management.

CLD is in substantial compliance with the requirements of 45 CFR § 1611.9. Pursuant to 45 CFR § 1611.9 (a), the retainer agreement shall identify the nature of the legal services to be provided. Two (2) case files lacked an adequate description of the scope of representation. *See.* Case Nos. 111000997, and 101000726. The retainer agreement executed in each of these cases lacked a description of the scope or representation.

CLD must ensure that each file is in compliance with the requirements of 45 CFR § 1611.9 (Retainer agreements) by reviewing all case files required to have a retainer agreement to verify that all agreements contain a detailed scope and subject matter of the representation to be provided, and are executed in a timely manner.

In response to the DR, CLD stated that "[a] retainer agreement is completed in every eligible grant case. The retainer is completed during the formal intake process. The retainer agreement includes a statement of the legal problem for which representation is sought and the nature of the legal services to be provided. The completed retainer agreement is maintained in the client's file."

CLD is reminded to ensure that all executed retainers contain a sufficiently detailed scope and subject matter of the representation to be provided.

Finding 7: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts).

LSC regulations require that recipients identify by name each plaintiff it represents in any complaint it files, or in a separate notice provided to the defendant, and identify each plaintiff it represents to prospective defendants in pre-litigation settlement negotiations. In addition, the regulations require that recipients prepare a dated, written statement signed by each plaintiff it represents, enumerating the particular facts supporting the complaint. *See* 45 CFR §§ 1636.2(a) (1) and (2).

The statement is not required in every case. It is required only when a recipient files a complaint in a court of law or otherwise initiates or participates in litigation against a defendant, or when a recipient engages in pre-complaint settlement negotiations with a prospective defendant. *See* 45 CFR § 1636.2(a).

Case files reviewed indicated that CLD is in compliance with the requirements of 45 CFR Part 1636. A signed statement of fact is obtained from every applicant during intake.

There are no recommendations or corrective actions required.

There was no response to this Finding.

Finding 8: Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources). However, CLD contracts out conflict cases and reports them to LSC as CSR cases. They are requesting an opinion from Choctaw's Tribal Attorney General to determine whether CLD is allowed to accept conflict cases to contract out.

LSC regulations require that recipients adopt a written statement of priorities that determines the cases which may be undertaken by the recipient, regardless of the funding source. *See* 45 CFR § 1620.3(a). Except in an emergency, recipients may not undertake cases outside its priorities. *See* 45 CFR § 1620.6.

Prior to the visit, OCE was provided a list of CLD's priorities. CLD's most recent Statement of Priorities lists program priorities as: Elder Law Issues; Disabled/handicapped Issues; Domestic Violence; Conservatorship; Bankruptcy 7 & 13; Replevin/Wrongful repossession; Credit collection; Truth-in lending; Utilities; General consumer claims; Employment related matters; Divorces; Protective Orders; Custody; Child Support; Visitation; Adoption; Annulment; Separate maintenance; Emancipation; Guardianship; Birth certificate; Name change; Paternity; Parental termination defense; Modification (support reduction); Child support contempt; Neglect/abuse; eviction; Foreclosures; Quitclaim Deeds; Wills; Probate; License; Medicaid; Medicare; Advance Directives; and Power of Attorney.

Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources). However, CLD accepts conflict cases. These cases are contracted out to private attorneys and reported to LSC on their CSR as staff cases. *See.* CSR Handbook (2008 Ed.), § 4.2. CLD indicated that it would be requesting an opinion from Choctaw's Tribal Attorney General to determine whether they are allowed to accept conflict cases to contract out and to conduct the required LSC oversight in order to report such cases in their CSR data submission. At the time of the OCE review CLD was not conducting any oversight of the cases contracted out to the private attorneys.

The DR directed that CLD must confirm that accepting conflict cases and conducting oversight over such cases does not violate the applicable rules of professional conduct.

In response to the DR, CLD stated that "confirmation is attached as Attachment 3." Attachment 3 is a document titled "CONFIRMATION THAT ACCEPTANCE OF CONFLICT CASES AND CONDUCTING OVERSIGHT OVER SUCH CASES DOES NOT VIOLATE APPLICABLE RULES OF PROFESSIONAL CONDUCT". This document outlines the circumstances in which conflict cases can be accepted by the program. It states, in part, that "most, if not almost all, conflicts can be waived if handled accordingly (full disclosure, written consent, etc) so long as substantive/confidential information is not obtained about any person prior to representation." The document further states that "once an attorney client relationship is formed and terminated, then CLD can still do an intake (not gaining substantive/confidential information) for an opposing party, but must send that matter to a non-conflict attorney."

The document does not define what constitutes "substantive/confidential information." [10]

When OCE asked for clarification as to who drafted the above "response," CLD responded that their supervising attorney had done so and that the program was still awaiting a formal opinion from the General Counsel for the Mississippi Bar Association. CLD is directed to provide OCE with a copy of that opinion once it is received.

CLD is reminded that LSC requires that each applicant is screened for eligibility and in doing so CLD is required to ask detailed questions regarding the applicant's income and asset sources. If this information falls in the category of "substantive/confidential information" then CLD must not accept such cases.

Finding 9: Sampled cases evidenced several contract cases in which evidence of legal assistance was not properly documented pursuant to CSR Handbook (2008 Ed.), § 5.6.

LSC regulations specifically define "case" as a form of program service in which the recipient provides legal assistance. *See* 45 CFR §§ 1620.2(a) and 1635.2(a). Consequently, whether the assistance that a recipient provides to an applicant is a "case", reportable in the CSR data depends, to some extent on whether the case is within the recipient's priorities and whether the recipient has provided some level of legal assistance, limited or otherwise.

If the applicant's legal problem is outside the recipient's priorities, or if the recipient has not provided any type of legal assistance, it should not report the activity in its CSR. For example, recipients may not report the mere referral of an eligible client as a case when the referral is the only form of assistance that the applicant receives from the recipient. *See* CSR Handbook (2008 Ed.), § 7.2.

Recipients are instructed to record client *and* case information, either through notations on an intake sheet or other hard-copy document in a case file, or through electronic entries in an ACMS database, or through other appropriate means. For each case reported to LSC such information shall, at a minimum, describe, *inter alia*, the level of service provided. *See* CSR Handbook (2008 Ed.), § 5.6.

CLD is not in compliance with the requirements of CSR Handbook (2008 Ed.), § 5.6. Nine (9) reviewed cases did not include documentation of the legal assistance provided to the client. *See e.g.* Case No. 101000147, this case was opened on November 4, 2009 and contracted out to a private attorney. The case file did not contain any updates or a description of the legal assistance provided to the client. The case is still open. This case should be closed, de-selected and not included in the CSR data submission reporting. Case No. 111000360 was contracted out to a private attorney. The only work noted in the file was a motion to withdraw filed by the CLD staff attorney. The case file did not contain a description of the legal assistance provided to the client. This case was closed on April 1, 2011. This case should have been closed, de-selected and not included in CSR data submission reporting. Case No. 091001653 was opened on

[10] When asked for clarification as to who drafted this "response," CLD responded that their supervising attorney had done so and that the program was still awaiting a formal opinion from the General Counsel for the Mississippi Bar Association. CLD is directed to provide OCE with a copy of that opinion once it is received.

September 17, 2009 and was also contracted out to a private attorney. There was no evidence of legal work noted in the file as of the date of review. This case should be closed, de-selected and not included in the CSR data submission reporting. Case No. 101001844 was opened on September 20, 2010 and closed on February 17, 2011 with a "K" closing code. There was no evidence of legal work noted in the file as of the date of review. CLD was instructed to de-select this case and not included it in their CSR data submission reporting.

CLD must ensure that each case reported to LSC contains a description of the legal assistance provided to the client. Cases lacking assistance should be deselected from CSRs.

In response to the DR, CLD stated that "[t]he Director checks each case to make sure that it contains a description of the services that were provided to the client, along with the outcome of the client's case. If the case ends up not qualifying under the LSC guidelines, the case is then removed as an LSC eligible case."

The review team's understanding, based on interviews conducted during the onsite review was that this was the practice at the time of review. As such additional steps need to be taken to ensure compliance as this practice was deemed insufficient during the review.

This area of non-compliance is the subject of a special grant condition, with reporting requirements due on or before January 31, 2012.

Finding 10: Sampled cases evidenced that CLD's application of the CSR case closure categories and problem codes are not in compliance with Chapters VIII and IX, CSR Handbook (2008 Ed.). There were several sampled cases reviewed which did not have the proper closing code or problem code required by CSR Handbook (2008 Ed.).

The CSR Handbook defines the categories of case service and provides guidance to recipients on the use of the closing codes in particular situations. Recipients are instructed to report each case according to the type of case service that best reflects the level of legal assistance provided. *See* CSR Handbook (2008 Ed.), § 6.1.

The files reviewed demonstrated that CLD's application of the CSR case closing categories is not consistent with Chapters VIII CSR Handbook (2008 Ed.). The case sample evidenced 15 instances of incorrect application of closing codes. *See e.g.* Case No. 101000986, this case was closed under closing code "K," Other. The case notes indicate that a petition was drafted for the client. Closing code "B", Limited Action, is the applicable closing code; Case No. 101001256, this case was closed under closing code "K," Other. The case notes indicate that the attorney prepared pleading and mailed them out to the client. Closing code "B," Limited Action, is the applicable closing code; and Case No. 091000555, this case was closed under closing code "B," Limited Action. The case notes indicate that the attorney drafted an advice letter and sent it to the client. Closing code "A," Counsel and Advice, is the applicable closing code.

The files reviewed also demonstrated that CLD's application of the CSR case problem codes is not consistent with Chapters IX CSR Handbook (2008 Ed.). The case sample evidenced 24 instances of incorrect application of the problem codes. *See e.g.* Case No. 101000147, the case

list provided to OCE prior to the onsite visit listed the problem code in this case as problem code 5 (Predatory Lending Practice). The intermediary stated that the problem code for this case should have been 95 (Wills and Estates); Case No. 111000360, the case list provided to OCE prior to the onsite visit listed the problem code in this case as problem code 40, which is not an existing CSR problem code. The intermediary stated that the problem code for this case should have been 38 (Support); and Case No. 091001653, the case list provided to OCE prior to the onsite visit listed the problem code in this case as problem code 327, which is not an existing CSR problem code. The intermediary stated that the problem code for this case should have been 43 (Emancipation).

CLD should conduct periodic training on closure codes and problem codes to ensure that staff is aware of the applicability of each closing code and problem code.

In response to the DR, CLD stated that upon completion of the case, the Director reviews each file and places the correct closing code on the case closing report.

CLD further stated that the Director reviews each case when assigning the case to an attorney to ensure that the correct problem code is applied to a client's case.

The review team's understanding, based on interviews conducted during the onsite review, was that the Director was not familiar with the Problem Codes listed in the 2008 CSR Handbook, as such additional steps need to be taken to ensure compliance.

This area of non-compliance is the subject of a special grant condition, with reporting requirements due on or before January 31, 2012.

Finding 11: Sampled cases evidenced non-compliance with the requirements of CSR Handbook (2008 Ed.), § 3.3 as there several contract case files reviewed that were either dormant or closed in an untimely manner.

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice, or limited action (CSR Categories, A and B), should be reported as having been closed in the year in which the counsel and advice, limited action, or referral was provided. There is, however, an exception for cases opened after September 30, and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2008 Ed.), § 3.3(a). All other cases (F through L, 2008 CSR Handbook) should be reported as having been closed in the year in which the recipient determines that further legal assistance is unnecessary, not possible or inadvisable, and a closing memorandum or other case-closing notation is prepared. *See* CSR Handbook (2008 Ed.), § 3.3(b). Additionally LSC regulations require that systems designed to provide direct services to eligible clients by private attorneys must include, among other things, case oversight to ensure timely disposition of the cases. *See* 45 CFR § 1614.3(d)(3).

Case review demonstrated that CLD is not in compliance with the requirements CSR Handbook (2008 Ed.), § 3.3(a). There were nine (9) case files reviewed that were either dormant or closed in an untimely manner. Six (6) of these cases also lacked evidence of legal advice and were

noted as such in Finding No.9. *See e.g.* Case No. 101000147, this case was opened and contracted out to a private attorney on November 4, 2009. There has been no activity noted in the file since that date and the case is still open in the system. As such this case is dormant and should be closed, de-selected, and not reported on the CSR; Case No. 091001653, this case was opened and contracted out to a private attorney on September 18, 2009. There has been no activity noted in the file since that date and the case is still open in the system. As such this case is dormant and should be closed, de-selected, and not reported on the CSR; and Case No. 101000145, this case was opened and contracted out to a private attorney on November 4, 2009. There has been no activity noted in the file since that date and the case is still open in the system. As such this case is dormant and should be closed, de-selected, and not reported on the CSR.

CLD should ensure that all cases are timely closed, and that dormant/untimely closed cases are not reported to LSC. It is recommended that CLD conduct periodic reviews of case management reports on closed cases. CLD should have an oversight system in place to track the activity and services provided in the cases that it contracts out to private attorneys. It is further recommended that CLD review its list of open cases and mark for rejection, and exclusion from the CSR data submission, all dormant and inactive case files.

In response to the DR, CLD stated that "[a]ll closed cases will be reviewed by the Director. Those cases still opened after nine months, the Director will review the case with the attorney to determine if any assistance is required from CLD. At the end of the year, a report will be generated by the attorney to include the reason it is taking so long to close."

This area of non-compliance is the subject of a special grant condition, with reporting requirements due on or before January 31, 2012.

Finding 12: Sampled cases evidenced compliance with the requirements of CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases.

Through the use of automated case management systems and procedures, recipients are required to ensure that cases involving the same client and specific legal problem are not recorded and reported to LSC more than once. *See* CSR Handbook (2008 Ed.), § 3.2.

When a recipient provides more than one type of assistance to the same client during the same reporting period, in an effort to resolve essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem, the recipient may report only the highest level of legal assistance provided. *See* CSR Handbook (2008 Ed.), § 6.2.

When a recipient provides assistance more than once within the same reporting period to the same client who has returned with essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem, the recipient is instructed to report the repeated instances of assistance as a single case. *See* CSR Handbook (2008 Ed.), § 6.3. Recipients are further instructed that related legal problems presented by the same client are to be reported as a single case. *See* CSR Handbook (2008 Ed.), § 6.4.

CLD is in compliance with the requirements of CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases. The case sample included targeted files to test possible duplicate files. The case sample did not disclose any duplicate files. Interviews revealed that duplicate checks are conducted during intake for each applicant prior to case acceptance.

There are no recommendations or corrective actions required.

There was no response to this Finding.

Finding 13: Review of the list of attorneys who have engaged in the outside practice of law and interviews revealed that CLD is in compliance with that portion of 45 CFR Part 1604 requirements (Outside practice of law). However, CLD has not adopted written policies relating to the outside practice of law as required by 45 CFR Part 1604.

This part is intended to provide guidance to recipients in adopting written policies relating to the outside practice of law by recipients' full-time attorneys. Under the standards set forth in this part, recipients are authorized, but not required, to permit attorneys, to the extent that such activities do not hinder fulfillment of their overriding responsibility to serve those eligible for assistance under the Act, to engage in pro bono legal assistance and comply with the reasonable demands made upon them as members of the Bar and as officers of the Court.

Based on interviews with the staff attorney funded by LSC funds, the Executive Director, and a review of the list of attorneys who have engaged in the outside practice of law, CLD is in compliance with the general requirement of 45 CFR Part 1604. However, CLD has not adopted written policies relating to the outside practice of law as required by 45 CFR Part 1604. Prior to the onsite review, the OCE review team requested a copy of the program's policy relating to the outside practice of law. On June 24, 2011, CLD sent an electronic copy of a packet titled Regulatory Policies and Reporting Requirements (RPRR). One of the sections of this packet was titled "Outside Practice of Law 45 CFR §1604." This policy was a literal copy of the regulatory language in 45 CFR Part 1604. The only change that had been made was replacing the words "recipient" or "program" with "CLD." CLD's staff was not aware of the policy, and this policy had not been reviewed or adopted by the Board.

The DR directed that CLD must draft and adopt a policy in accordance with the requirements of 45 CFR Part 1604.

In response to the DR, CLD provided a revised policy to address the requirements of 45 CFR Part 1604. The policy provided is a statement as opposed to a policy. CLD must to draft a policy which will advise its staff as to the requirements of the regulation. A sample policy is attached for review. This policy needs to be adapted to fit the requirements of your program and cannot be adopted verbatim.

This area of non-compliance is the subject of a special grant condition, with reporting requirements due on or before February 29, 2012 and March 30, 2012.

Finding 14: Sampled cases and review of CLD's accounting and financial records for the review period evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

LSC regulations prohibit recipients from expending grants funds or contributing personnel or equipment to any political party or association, the campaign of any candidate for public or party office, and/or for use in advocating or opposing any ballot measure, initiative, or referendum. *See* 45 CFR Part1608.

OCE's review of CLD's accounting records and documentation for the period of January 2010, through June 2011, along with discussion with program management did not reveal or indicate that the program expended grant funds or contributed personnel or equipment and resources in violation of 45 CFR §§ 1608.3(b) and 1608.4(b).

Sampled files reviewed, and the review of CLD's accounting and financial records for the review period stated above, indicate that CLD is not involved in such activity. Discussions with the LSC-funded staff attorney and the Executive Director also confirmed that CLD is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

There was no response to this Finding.

Finding 15: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

Except as provided by LSC regulations, recipients may not provide legal assistance in any case which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably might be expected to result in a fee for legal services from an award to the client, from public funds or from the opposing party. *See* 45 CFR §§ 1609.2(a) and 1609.3.

Recipients may provide legal assistance in such cases where the case has been rejected by the local lawyer referral service, or two private attorneys; neither the referral service nor two private attorneys will consider the case without payment of a consultation fee; the client is seeking, Social Security, or Supplemental Security Income benefits; the recipient, after consultation with the private bar, has determined that the type of case is one that private attorneys in the area ordinarily do not accept, or do not accept without pre-payment of a fee; the Executive Director has determined that referral is not possible either because documented attempts to refer similar cases in the past have been futile, emergency circumstances compel immediate action, or recovery of damages is not the principal object of the client's case and substantial attorneys' fees are not likely. *See* 45 CFR §§ 1609.3(a) and 1609.3(b).

LSC has also prescribed certain specific recordkeeping requirements and forms for fee-generating cases. The recordkeeping requirements are mandatory. *See* LSC Memorandum to All Program Directors (December 8, 1997).

Sampled cases and interview with the LSC-funded staff attorney and the Executive Director evidenced compliance with the requirements of 45 CFR Part 1609.

There are no recommendations or corrective actions required.

There was no response to this Finding.

Finding 16: A limited review of CLD's accounting and financial records, observations of the physical locations of program field offices, and interviews with staff indicated compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity).

Part 1610 was adopted to implement Congressional restrictions on the use of non-LSC funds and to assure that no LSC funded entity engage in restricted activities. Essentially, recipients may not themselves engage in restricted activities, transfer LSC funds to organizations that engage in restricted activities, or use its resources to subsidize the restricted activities of another organization.

The regulations contain a list of restricted activities. *See* 45 CFR § 1610.2. They include lobbying, participation in class actions, representation of prisoners, legal assistance to aliens, drug related evictions, and the restrictions on claiming, collecting or retaining attorneys' fees.

Recipients are instructed to maintain objective integrity and independence from any organization that engages in restricted activities. In determining objective integrity and independence, LSC looks to determine whether the other organization receives a transfer of LSC funds, and whether such funds subsidize restricted activities, and whether the recipient is legally, physically, and financially separate from such organization.

Whether sufficient physical and financial separation exists is determined on a case by case basis and is based on the totality of the circumstances. In making the determination, a variety of factors must be considered. The presence or absence of any one or more factors is not determinative. Factors relevant to the determination include:

i) the existence of separate personnel;
ii) the existence of separate accounting and timekeeping records;
iii) the degree of separation from facilities in which restricted activities occur, and the extent of such restricted activities; and
iv) the extent to which signs and other forms of identification distinguish the recipient from the other organization.

See 45 CFR § 1610.8(a); *see also*, OPO Memo to All LSC Program Directors, Board Chairs (October 30, 1997).

Recipients are further instructed to exercise caution in sharing space, equipment and facilities with organizations that engage in restricted activities. Particularly if the recipient and the other organization employ any of the same personnel or use any of the same facilities that are accessible to clients or the public. But, as noted previously, standing alone, being housed in the same building, sharing a library or other common space inaccessible to clients or the public may be permissible as long as there is appropriate signage, separate entrances, and other forms of identification distinguishing the recipient from the other organization, and no LSC funds subsidize restricted activity. Organizational names, building signs, telephone numbers, and other forms of identification should clearly distinguish the recipient from any organization that engages in restricted activities. *See* OPO Memo to All LSC Program Directors, Board Chairs (October 30, 1997).

While there is no *per se* bar against shared personnel, generally speaking, the more shared staff, or the greater their responsibilities, the greater the likelihood that program integrity will be compromised. Recipients are instructed to develop systems to ensure that no staff person engages in restricted activities while on duty for the recipient, or identifies the recipient with any restricted activity. *See* OPO Memo to All LSC Program Directors, Board Chairs (October 30, 1997).

OCE's review of CLD's general ledger (GL), its chart of GL accounts, GL account coding of transactions, the GL trial balances as of January 1, 2010 and June 30, 2011, and its Accounting Manual found that CLD's accounting system, along with its operating policies and procedures, have the capabilities to separately and distinctly account for LSC and non-LSC funds. The design of CLD's accounting records also properly identifies the source of non-LSC funds and documents how CLD spends/transfers its non-LSC and LSC funds, respectively, as required by 45 CFR Part 1610 and the Accounting Guide for LSC Recipients. Further, the review noted no exceptions to, or inconsistencies with, LSC accounting and financial reporting requirements in this area. MBCI maintains separate records for CLD, and maintains a separate account (214) to record all transactions regarding CLD. There is one (1) attorney that services clients that are LSC-eligible who is paid with LSC funds based on a percentage basis, all other staff at CLD are paid with Tribal funds.

OCE's review of the program's donor notification policies and procedures determined that CLD does not receive any donations from non-LSC funding sources and as such does not have a donor notification policy in place. CLD was advised that if they receive donations from non-LSC sources in the future they must comply with the notification requirements of 45 CFR § 1610.5.

While onsite, CLD provided OCE with its 2009 and 2010 program integrity certifications and the Executive Director's memorandums to the Board of Directors. The review found no exceptions with this documentation and overall compliance with 45 CFR § 1610.8.

There are no recommendations or corrective actions required.

There was no response to this Finding.

Finding 17: CLD is in compliance with the requirements of 45 CFR § 1614.1 and CSR Handbook (2008 Ed.), § 4.2 (Private attorney involvement).

LSC regulations require LSC recipients of Native American or migrant funding to provide opportunities for involvement in the delivery of services by the private bar in a manner which is generally open to broad participation in those activities undertaken with those funds, or demonstrate to the satisfaction of the Corporation that such involvement is not feasible. *See* 45 CFR § 1614.1. Cases closed by private attorneys using Migrant or Native American funds should be reported as Migrant or Native American and not as PAI cases. *See* CSR Handbook (2008 Ed.), § 4.2.

CLD utilizes contract private attorneys to fulfill its Private Attorney Involvement (PAI) effort. 50 % of the cases reported to LSC in CLD's CSR are PAI cases. CLD does not currently have an oversight procedure in place for any of the cases that are contracted out to private attorneys. As such over 90% of the PAI cases reviewed were not CSR eligible cases, due to dormancy, untimely closure, or lack of evidence of legal advice provided to the client. These cases have been referenced in the appropriate sections of this report.

Based on the above stated finding the DR recommended that CLD adopt a case oversight policy for cases that are contracted out to private attorneys.

In response to the DR, CLD stated that "[t]he Director will be reviewing all closed cases referred out to private attorneys, as well as all cases still open after nine months and then after one year." CLD further stated that "[a] list of all opened grant cases will be generated using Kemps Case Works at the beginning of each month for the Director's use."

The response to this Finding does not address LSC's concerns regarding the lack of oversight over PAI cases. The review team's understanding, based on interviews conducted during the onsite review, was that this was the practice at the time of review. CLD must adopt a case oversight policy for its PAI cases, which specifically states what steps will be taken to ensure there is oversight over PAI cases.

This area of non-compliance is not the subject of a special grant condition, however CLD should provide OCE with a draft PAI oversight policy no later than April 30, 2012.

Finding 18: The review of documentation related to CLD's payment policies and procedures determined that the program does not comply with the requirements of 45 CFR Part 1627 (Subgrants and membership fees or dues).

LSC has developed rules governing the transfer of LSC funds by recipients to other organizations. *See* 45 CFR § 1627.1. These rules govern subgrants, which are defined as any transfer of LSC funds from a recipient to an entity under a grant, contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient's

programmatic activities.[11] Except that the definition does not include transfers related to contracts for services rendered directly to the recipient, *e.g.*, accounting services, general counsel, management consultants, computer services, etc., or contracts with private attorneys and law firms involving $25,000.00 or less for the direct provision of legal assistance to eligible clients. See 45 CFR §§ 1627.2(b)(1) and (b)(2).

All subgrants must be in writing and must be approved by LSC. In requesting approval, recipients are required to disclose the terms and conditions of the subgrant and the amount of funds to be transferred. Additionally, LSC approval is required for a substantial change in the work program of a subgrant, or an increase or decrease in funding of more than 10%. Minor changes of work program, or changes in funding less than 10% do not require LSC approval, but LSC must be notified in writing. *See* 45 CFR §§ 1627.3(a)(1) and (b)(3).

Subgrants may not be for a period longer than one year, and all funds remaining at the end of the grant period are considered part of the recipient's fund balance. All subgrants must provide for their orderly termination or suspension, and must provide for the same oversight rights for LSC with respect to subrecipients as apply to recipients. Recipients are responsible for ensuring that subrecipients comply with LSC's financial and audit requirements. It is also the responsibility of the recipient to ensure the proper expenditure of, accounting for, and audit of the transferred funds. *See* 45 CFR §§ 1627.3(b)(1), (b)(2), (c), and (e).

LSC funds may not be used to pay membership fees or dues to any private or nonprofit organization, except that payment of membership fees or dues mandated by a governmental organization to engage in a profession is permitted. *See* 45 CFR § 1627.4. Nor may recipients may make contributions or gifts of LSC funds. *See* 45 CFR § 1627.5. Recipients must have written policies and procedures to guide staff in complying with 45 CFR Part 1627 and shall maintain records sufficient to document the recipient's compliance with 45 CFR Part 1627. *See* 45 CFR § 1627.8.

A limited review of accounting records and detailed general ledger for January 1, 2010 through June 30, 2011 disclosed that CLD is not in compliance with 45 CFR § 1627.4(a). CLD used LSC funds to pay non-mandatory dues in the amount of $105 to National Legal Aid and Defender Association. Non-mandatory dues and fees must be paid with non-LSC funds.

With regard to subgrants, CLD has no subgrant relationships using LSC funds. The review of accounting records did not reveal any subgrants.

The DR directed that CLD must discontinue payment of non-mandatory dues with LSC funds and must reimburse the $105 referenced above to the LSC funds. CLD was directed to certify, in its comments to the DR, the date upon which such inter-fund transfer took place.

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[11] Programmatic activities includes those that might otherwise be expected to be conducted directly by the recipient, such as representation of eligible clients, or which provides 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 $25,000.00 is included.

In response to the DR, CLD stated that "[t]his was a bookkeeper error on our part." CLD further stated that "[t]he Director of CLD certifies that the inter-fund transfer of $105.00 was accomplished on September 26, 2011." Although the response to the DR stated that the Director certifies that the funds were transferred, there was no actual certification statement provided. However, a copy of the journal voucher was sent as an attachment.

Finding 19: The sample documentation reviewed indicates that CLD is in substantial compliance with the requirements of 45 CFR Part 1635 (Timekeeping requirements).

The timekeeping requirement, 45 CFR Part 1635, is intended to improve accountability for the use of all funds of a recipient by assuring that allocations of expenditures of LSC funds pursuant to 45 CFR Part 1630 are supported by accurate and contemporaneous records of the cases, matters, and supporting activities for which the funds have been expended; enhancing the ability of the recipient to determine the cost of specific functions; and increasing the information available to LSC for assuring recipient compliance with Federal law and LSC rules and regulations. *See* 45 CFR § 1635.1.

Specifically, 45 CFR § 1635.3(a) requires that all expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities. The allocation of all expenditures must satisfy the requirements of 45 CFR Part 1630. Time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter, or supporting activity. Time records must be created contemporaneously and account for time by date and in increments not greater than one-quarter of an hour which comprise all of the efforts of the attorneys and paralegals for which compensation is paid by the recipient. Each record of time spent must contain: for a case, a unique client name or case number; for matters or supporting activities, an identification of the category of action on which the time was spent.

The timekeeping system must be able to aggregate time record information on both closed and pending cases by legal problem type. Recipients shall require any attorney or paralegal who works part-time for the recipient and part-time for an organization that engages in restricted activities to certify in writing that the attorney or paralegal has not engaged in restricted activity during any time for which the attorney or paralegal was compensated by the recipient or has not used recipient resources for restricted activities.

The review of one (1) advocate's timekeeping records for 2010 and 2011 disclosed that the records are manually and contemporaneously kept. The time spent on each case, matter or supporting activity is recorded in compliance with 45 CFR §§ 1635.3(b) and (c). However, the review of records disclosed the recording of time off is not being reported as is required by 45 CFR Part 1635. At the time of the onsite review, CLD was in the process of implementing a new ACMS that should resolve this issue.

The DR directed that CLD must ensure that after the implementation of the new ACMS it follows the timekeeping requirements of 45 CFR Part 1635.

In response to the DR, CLD stated that "[t]he staff attorney and paralegal reviewed the timekeeping regulations of 45 CFR Part 1635 before beginning to track their time on CLD's new

ACMS." CLD further stated that "[a]fter implementing the new ACMS, CLD's staff attorney and paralegal responsible for handling grant cases were required to track their time on the new ACMS." CLD also stated that the Director will review their timekeeping periodically as an oversight function.

Finding 20: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).

Prior to December 16, 2009, except as otherwise provided by LSC regulations, recipients could not claim, or collect and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. *See* 45 CFR § 1642.3.[12] However, with the enactment of LSC's FY 2010 consolidated appropriation, the statutory restriction on claiming, collecting or retaining attorneys' fees was lifted. Thereafter, at its January 23, 2010 meeting, the LSC Board of Directors took action to repeal the regulatory restriction on claiming, collecting or retaining attorneys' fees. Accordingly, effective March 15, 2010 recipients may claim, collect and retain attorneys' fees for work performed, regardless of when such work was performed. Enforcement action will not be taken against any recipient that filed a claim for, or collected or retained attorneys' fees during the period December 16, 2009 and March 15, 2010. Claims for, collection of, or retention of attorneys' fees prior to December 16, 2009 may, however, result in enforcement action. *See* LSC Program Letter 10-1 (February 18, 2010).[13]

The sampled files reviewed did not contain a prayer for attorneys' fees prior to December 16, 2009, as such CLD is in compliance with the requirements of 45 CFR Part 1642. Additionally, a limited review of the CLD fiscal records and the 2010 AFS, and interviews with the Controller and the Executive Director, evidenced that there were no attorneys' fees awarded, collected, and/or retained for cases serviced directly by CLD incompliance with the requirements of 45 CFR Part 1642.

There are no recommendations or corrective actions required.

There was no response to this Finding.

Finding 21: Sampled cases reviewed and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

The purpose of this part is to ensure that LSC recipients and their employees do not engage in certain prohibited activities, including representation before legislative bodies or other direct lobbying activity, grassroots lobbying, participation in rulemaking, public demonstrations,

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[12] The regulations define "attorneys' fees" as an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the award of such fees or a payment to an attorney from a client's retroactive statutory benefits. *See* 45 CFR § 1642.2(a).

[13] Recipients are reminded that the regulatory provisions regarding fee-generating cases, accounting for and use of attorneys' fees, and acceptance of reimbursement remain in force and violation of these requirements, regardless of when they occur, may subject the recipient to compliance and enforcement action.

advocacy training, and certain organizing activities. This part also provides guidance on when recipients may participate in public rulemaking or in efforts to encourage State or local governments to make funds available to support recipient activities, and when they may respond to requests of legislative and administrative officials.

None of the sampled files and documents reviewed, including the program's legislative activity reports, evidenced any lobbying or other prohibited activities. Discussions with the Executive Director and the Director of Litigation also confirmed that CLD is not involved in this prohibited activity. However, as mentioned previously prior to the onsite review, the OCE review team requested a copy of the program's policy relating to the class actions. On June 24, 2011, CLD sent an electronic copy of a packet titled RPRR. The 1612 policy provided was a literal copy of the regulatory language in 45 CFR Part 1612. The only change that had been made was replacing the words "recipient" or "program" with "CLD." CLD's staff was not aware of the policy, and this policy had not been reviewed or adopted by the Board.

The DR directed that CLD must draft and adopt a policy in accordance with the requirements of 45 CFR Part 1612.

In response to the DR, CLD provided a revised policy to address the requirements of 45 CFR Part 1612. The policy provided was a statement as opposed to a policy. CLD must draft a policy which will advise its staff as to the requirements of the regulation. A sample policy is attached for review. This policy needs to be adapted to fit the requirements of CLD and cannot be adopted verbatim.

This area of non-compliance is the subject of a special grant condition, with reporting requirements due on or before February 29, 2012 and March 30, 2012.

Finding 22: Sampled cases evidenced compliance with the requirements of 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings, and actions collaterally attacking criminal convictions).

Recipients are prohibited from using LSC funds to provide legal assistance with respect to a criminal proceeding. *See* 45 CFR § 1613.3. Nor may recipients provide legal assistance in an action in the nature of a habeas corpus seeking to collaterally attack a criminal conviction. *See* 45 CFR § 1615.1.

None of the sampled files reviewed involved legal assistance with respect to a criminal proceeding, or a collateral attack in a criminal conviction. Discussions with the Executive Director the LSC-funded staff attorney, and review of the recipient's policies, also confirmed that CLD is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

There was no response to this Finding.

Finding 23: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Recipients are prohibited from initiating or participating in any class action. *See* 45 CFR § 1617.3. The regulations define "class action" as a lawsuit filed as, or otherwise declared by a court of competent jurisdiction, as a class action pursuant Federal Rules of Civil Procedure, Rule 23, or comparable state statute or rule. *See* 45 CFR § 1617.2(a). The regulations define "initiating or participating in any class action" as any involvement, including acting as co-counsel, amicus curiae, or otherwise providing representation relative to the class action, at any stage of a class action prior to or after an order granting relief. *See* 45 CFR § 1617.2(b)(1).[14]

None of the sampled files reviewed involved initiation or participation in a class action. Discussions with the Executive Director and the LSC-funded staff attorney also confirmed that CLD is not involved in this prohibited activity. However, as mentioned previously prior to the onsite review, the OCE review team requested a copy of the program's policy relating to the class actions. On June 24, 2011, CLD sent an electronic copy of a packet titled RPRR. One of the sections of this packet was titled "Class Actions 45 CFR §1617." This policy was a literal copy of the regulatory language in 45 CFR Part 1617. The only change that had been made was replacing the words "recipient" or "program" with "CLD." CLD's staff was not aware of the policy, and this policy had not been reviewed or adopted by the Board.

The DR directed that CLD must draft and adopt a policy in accordance with the requirements of 45 CFR Part 1617.

In response to the DR, CLD provided a revised policy to address the requirements of 45 CFR Part 1617. The policy provided was a statement as opposed to a policy. CLD must draft a policy which will advise its staff as to the requirements of the regulation. A sample policy is attached for review. This policy needs to be adapted to fit the requirements of CLD and cannot be adopted verbatim.

This area of non-compliance is the subject of a special grant condition, with reporting requirements due on or before February 29, 2012 and March 30, 2012.

Finding 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

Recipients may not make available any funds , personnel, or equipment for use in advocating or opposing any plan or proposal, or representing any party, or participating in any other way in litigation, related to redistricting. *See* 45 CFR § 1632.3.

None of the sampled files reviewed revealed participation in litigation related to redistricting. Discussions with the Executive Director and the LSC-funded staff attorney also confirmed that CLD is not involved in this prohibited activity. However, as mentioned previously prior to the

[14] It does not, however, include representation of an individual seeking to withdraw or opt out of the class or obtain the benefit of relief ordered by the court, or non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate, or advise others about the terms of an order granting relief. *See* 45 CFR § 1617.2(b)(2).

onsite review, the OCE review team requested a copy of the program's policy relating to the redistricting. On June 24, 2011, CLD sent an electronic copy of a packet titled RPRR. One of the sections of this packet was titled "Redistricting 45 CFR §1632." This policy was a literal copy of the regulatory language in 45 CFR Part 1632. The only change that had been made was replacing the words "recipient" or "program" with "CLD." CLD's staff was not aware of the policy, and this policy had not been reviewed or adopted by the Board.

The DR directed that CLD must draft and adopt a policy in accordance with the requirements of 45 CFR Part 1632.

In response to the DR, CLD provided a revised policy which is in compliance with the requirements of 45 CFR Part 1632.

Finding 25: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

Recipients are prohibited from defending any person in a proceeding to evict the person from a public housing project if the person has been charged with, or has been convicted of, the illegal sale, distribution, manufacture, or possession with intent to distribute a controlled substance, and the eviction is brought by a public housing agency on the basis that the illegal activity threatens the health or safety or other resident tenants, or employees of the public housing agency. *See* 45 CFR § 1633.3.

None of the sampled files reviewed involved defense of any such eviction proceeding. Discussions with the Executive Director and the LSC-funded staff attorney, also confirmed that CLD is not involved in this prohibited activity. However, as mentioned previously prior to the onsite review, the OCE review team requested a copy of the program's policy relating to the restriction on representation in certain eviction proceedings. On June 24, 2011, CLD sent an electronic copy of a packet titled RPRR. One of the sections of this packet was titled "Restriction on representation in certain eviction proceedings 45 CFR §1633." This policy was a literal copy of the regulatory language in 45 CFR Part 1633. The only change that had been made was replacing the words "recipient" or "program" with "CLD." CLD's staff was not aware of the policy, and this policy had not been reviewed or adopted by the Board.

The DR directed that CLD must draft and adopt a policy in accordance with the requirements of 45 CFR Part 1633.

In response to the DR, CLD provided a revised policy which is in compliance with the requirements of 45 CFR Part 1633.

Finding 26: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).

Recipients may not participate in any civil litigation on behalf of a person incarcerated in a federal, state, or local prison, whether as plaintiff or defendant; nor may a recipient participate on

behalf of such incarcerated person in any administrative proceeding challenging the condition of the incarceration. *See* 45 CFR § 1637.3.

None of the sampled files reviewed involved participation in civil litigation, or administrative proceedings, on behalf of an incarcerated person. Discussions with the Executive Director and the LSC-funded staff attorney, also confirmed that CLD is not involved in this prohibited activity. However, as mentioned previously prior to the onsite review, the OCE review team requested a copy of the program's policy relating to the representation of prisoners. On June 24, 2011, CLD sent an electronic copy of a packet titled RPRR. One of the sections of this packet was titled "Representation of prisoners 45 CFR §1637." This policy was a literal copy of the regulatory language in 45 CFR Part 1637. The only change that had been made was replacing the words "recipient" or "program" with "CLD." CLD's staff was not aware of the policy, and this policy had not been reviewed or adopted by the Board.

The DR directed that CLD must draft and adopt a policy in accordance with the requirements of 45 CFR Part 1637.

In response to the DR, CLD provided a revised policy which is in compliance with the requirements of 45 CFR Part 1637.

Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

In 1996, Congress passed, and the President signed, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (the "1996 Appropriations Act"), Pub. L. 104-134, 110 Stat. 1321 (April 26, 1996). The 1996 Appropriations Act contained a restriction which prohibited LSC recipients and their staff from engaging a client which it solicited.[15] This restriction has been contained in all subsequent appropriations acts.[16] This restriction is a strict prohibition from being involved in a case in which the program actually solicited the client. As stated clearly and concisely in 45 CFR § 1638.1: "This part is designed to ensure that recipients and their employees do not solicit clients."

None of the sampled files, including documentation, such as community education materials and program literature indicated program involvement in such activity. Discussions with the Executive Director and the LSC-funded staff attorney, also confirmed that CLD is not involved in this prohibited activity. However, as mentioned previously prior to the onsite review, the OCE review team requested a copy of the program's policy relating to the restriction on solicitation. On June 24, 2011, CLD sent an electronic copy of a packet titled RPRR. One of the sections of this packet was titled "Restriction on solicitation 45 CFR §1638." This policy was a literal copy of the regulatory language in 45 CFR Part 1638. The only change that had been

[15] *See* Section 504(a)(18).
[16] *See* Pub. L. 108-7, 117 Stat. 11 (2003) (FY 2003), Pub. L. 108-199, 118 Stat. 3 (2004) (FY 2004), Pub. L. 108-447, 118 Stat. 2809 (2005) (FY 2005), and Pub. L. 109-108, 119 Stat. 2290 (2006) (FY 2006).

made was replacing the words "recipient" or "program" with "CLD." CLD's staff was not aware of the policy, and this policy had not been reviewed or adopted by the Board.

The DR directed that CLD must draft and adopt a policy in accordance with the requirements of 45 CFR Part 1638.

In response to the DR, CLD provided a revised policy which is in compliance with the requirements of 45 CFR Part 1638.

Finding 28: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

No LSC funds may be used to compel any person, institution or governmental entity to provide or fund any item, benefit, program, or service for the purpose of causing the suicide, euthanasia, or mercy killing of any individual. No may LSC funds be used to bring suit to assert, or advocate, a legal right to suicide, euthanasia, or mercy killing, or advocate, or any other form of legal assistance for such purpose. *See* 45 CFR § 1643.3.

None of the sampled files reviewed involved such activity. Discussions with the Executive Director and the LSC-funded staff attorney, also confirmed that CLD is not involved in this prohibited activity. However, as mentioned previously prior to the onsite review, the OCE review team requested a copy of the program's policy relating to the restriction on assisted suicide, euthanasia, and mercy killing. On June 24, 2011, CLD sent an electronic copy of a packet titled RPRR. One of the sections of this packet was titled "Restriction on assisted suicide, euthanasia, and mercy killing 45 CFR §1643." This policy was a literal copy of the regulatory language in 45 CFR Part 1643. The only change that had been made was replacing the words "recipient" or "program" with "CLD." CLD's staff was not aware of the policy, and this policy had not been reviewed or adopted by the Board.

The DR directed that CLD must draft and adopt a policy in accordance with the requirements of 45 CFR Part 1643.

In response to the DR, CLD provided a revised policy which is in compliance with the requirements of 45 CFR Part 1643.

Finding 29: Sampled cases evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).

Section 1007(b) (8) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation which seeks to procure a non-therapeutic abortion or to compel any individual or institution to perform an abortion, or assist in the performance of an abortion, or provide facilities for the performance of an abortion, contrary to the religious beliefs or moral convictions of such individual or institution. Additionally, Public Law 104-134,

Section 504 provides that none of the funds appropriated to LSC may be used to provide financial assistance to any person or entity that participates in any litigation with respect to abortion.

Section 1007(b) (9) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation relating to the desegregation of any elementary or secondary school or school system, except that nothing in this paragraph shall prohibit the provision of legal advice to an eligible client with respect to such client's legal rights and responsibilities.

Section 1007(b) (10) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation arising out of a violation of the Military Selective Service Act or of desertion from the Armed Forces of the United States, except that legal assistance may be provided to an eligible client in a civil action in which such client alleges that he was improperly classified prior to July 1, 1973, under the Military Selective Service Act or prior law.

All of the sampled files reviewed demonstrated compliance with the above LSC statutory prohibitions. Interviews conducted further evidenced and confirmed that CLD was not engaged in any litigation which would be in violation of Section 1007(b) (8) of the LSC Act, Section 1007(b) (9) of the LSC Act, or Section 1007(b) (10) of the LSC Act.

There are no recommendations or corrective actions required.

There was no response to this Finding.

Finding 30: CLD is in non-compliance with the requirements of 45 CFR § 1620.6, which requires those staff who handle cases or matters, or make case acceptance decisions sign written agreements indicating they have read and are familiar with the recipient's priorities, have read and are familiar with the definition of an emergency situation and procedures for dealing with an emergency, and will not undertake any case or matter for the recipient that is not a priority or an emergency.

The review team requested to see copies of the signed written agreements in accordance with this requirement during the visit. The Executive Director was not able to provide copies of the signed statements by the staff in accordance with the requirements of 45 CFR § 1620.6.

CLD must comply with the requirements of 45 CFR § 1620.6, and require all staff who handle cases or matters, or make case acceptance decisions sign written agreements indicating they have read and are familiar with CLD's priorities, have read and are familiar with the definition of an emergency situation and procedures for dealing with an emergency, and will not undertake any case or matter for CLD that is not a priority or an emergency.

In response to the DR, CLD stated as follows: "Choctaw Legal Defense used the suggested priorities for use of LSC Funds and the Policy Board approved these priorities. Staff members

have been given copies." CLD also provided a copy of signed written agreements in compliance with the requirements of 45 CFR § 1620.6.

Finding 31: A limited review of CLD's Accounting Manual, procedures, and internal control policies demonstrated that the program's policies and procedures compare favorably to LSC's Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System (Accounting Guide for LSC Recipients (2010 Edition) (AGFLR) and LSC Program Letter 10-2). However, the reconciliations are not being signed or dated to reflect when they were completed; MBCI is not familiar with the AGFLR or LSC regulations; and a few issues were noted during review of payments made in 2010 and 2011.

In accepting LSC funds, recipients agree to administer these funds in accordance with requirements of the Legal Services Corporation Act of 1974 as amended (Act), any applicable appropriations acts and any other applicable law, rules, regulations, policies, guidelines, instructions, and other directives of the LSC, including, but not limited to, LSC Audit Guide for Recipients and Auditors, AGFLR (1997 & 2010 Edition), the CSR Handbook, the LSC Property Acquisition and Management Manual, and any amendments to the foregoing. Applicants agree to comply with both substantive and procedural requirements, including recordkeeping and reporting requirements.

An LSC recipient, under the direction of its board of directors, is required to establish and maintain adequate accounting records and internal control procedures. Internal control is defined as a process effected by an entity's governing body, management and other personnel, designed to provide reasonable assurances regarding the achievement of objectives in the following categories: (1) Effectiveness and efficiency of operations; (2) Reliability of financial reporting; and (3) Compliance with applicable laws and regulations. *See* Chapter 3 of the Accounting Guide for LSC Recipients (August 2010).

AGFLR provides guidance on all aspects of fiscal operations and the 2010 edition has a significantly revised Accounting Procedures and Internal Control Checklist that provides guidance to programs on how accounting procedures and internal control can be strengthened and improved with the goal of eliminating, or at least reducing as much as reasonably possible, opportunities for fraudulent activities to occur.

CLD does not have its own accounting department. Instead, CLD is under the umbrella of the MBCI. The Executive Director of CLD approves all payments before the bill goes to CLD's secretary who completes the purchase order and request for payment needed form and takes both to the bookkeeper at MBCI for payment. These forms are also reviewed by the Grant Compliance Officer at MBCI. As such, the fiscal review was performed at the Finance Department in the MBCI premises.

Additionally, there is no staff at CLD to handle Human Resources management. However, the MBCI Human Resources department has a director and 12 employees which are adequate to handle the needs of CLD.

OCE's review of CLD's accounting policies and procedures manual, accounting records, as well as discussions with program management, found that the program has established an adequate internal control structure which includes adequate accounting records, competent personnel, defined duties and responsibilities, segregation of duties, independent checks and proofs, and a written Accounting Manual, which was being revised and updated at the time of the onsite review. Further, CLD's audit reports on internal controls for the review period did not identify any deficiencies in the internal controls that could be considered to be material weaknesses.

While onsite, the program provided sample copies of its cash disbursement supporting documentation and monthly bank reconciliations for its general operating accounts. The documentation illustrated that bank statement balances are reconciled to the General Ledger and reviewed bi-weekly and in a timely manner, with the corresponding approvals, and reconciled by a person with no accounting duties. However, the reconciliations were not being signed or dated to reflect when they were completed. Additionally, the review disclosed that outstanding checks are not being investigated or canceled if necessary until 18 months after the issue date, contrary to the CLD policy which states that checks are void after 180 days. As such, CLD must either adhere to comply with its own outdated check policies or revise those policies to reflect actual practice.

In response to the DR, CLD stated that the Finance Department will review their policy on outstanding checks and make corrections where needed. CLD further stated that when the Finance Department sends their corrected policy, the Director will forward it to LSC. As of the release date of the Final Report LSC had not received this new policy.

This area of non-compliance is the subject of a special grant condition, with reporting requirements due on or before February 29, 2012.

CLD's internal controls policies and procedures are outlined in the program's Accounting Manual. While onsite, using LSC's Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System (FCR) checklist, OCE interviewed the fiscal staff and Executive Director to discuss the program's internal control and accounting policies and procedures which are currently being followed with them. Interviews revealed that the financial staff is not aware of the requirements of the Accounting Guide for LSC Recipients (2010 Edition) or the LSC Regulations. CLD should ensure that MBCI staff is familiar with the AGFLR and the LSC Regulations so that they are able to apply the financial policies, procedures, requirements, and restrictions in the AGFLR and the LSC Regulations to the LSC funds.

In response to the DR, CLD stated the following: "the Director will review these regulations with the Finance Department so that the LSC/AG policies and procedures are followed. This will be accomplished by the end of December 2011."

This area of non-compliance is the subject of a special grant condition, with reporting requirements due on or before March 30, 2012.

Furthermore, the review of several payments from 2010 and January 1, 2011 through June 30, 2011, disclosed that, in general, payments are well documented and have corresponding approvals. However, several exceptions were noted as follows:

1) CLD is being charged $7,000.00 by the Independent Public Accountant (IPA) to perform CLD's annual Audit. This fee seems very high for a $90,000.00 grant. A review of two (2) LSC Mississippi programs disclosed that the percentage of audit costs compared to the LSC grant varied from .78% to 1.03%, compared to CLD's cost of 7.78%. CLD should renegotiate their current fee with their IPA in compliance with the requirements of 45 CFR § 1630.3(b) (Reasonable costs).

In its response to the DR, CLD stated that the Executive Director has talked with the Auditor, Breazeale, Saunders & O'Neil, Ltd. and they have agreed to charge CLD $4,000 for the audits going forward.

2) The salary of the attorney assigned to do LSC-eligible cases is being charged to the LSC grant at a rate of 75% of his salary. However, the review of his cases disclosed that approximately 50% of his cases are LSC-eligible cases. In light of this, CLD should only allocate 50% of his salary to LSC Funds in accordance with the requirements of 45 CFR § 1630.3(d) (Direct costs). Direct costs include, but are not limited to, the salaries and wages of recipient staff who are working on cases or matters that are identified with specific grants or contracts. Salary and wages charged directly to Corporation grants and contracts must be supported by personnel activity reports (timekeeping records). *See* 45 CFR §1630.3(d). Subsequently, for future determination of what percentage to charge to LSC, timekeeping records should be used to determine how much time was spent/dedicated on/to LSC-eligible cases versus non-LSC cases.

In response to the DR, CLD stated as follows:

> "On September 21, 2011, a Personnel Action for Change in Grant Usage was completed on Staff Attorney Andrew Hammond, which dropped the percentage of his salary from 75% to 50% (or 30%). To ensure that the 50% level is actually used for Legal Services casework, he will also be in charge of supervising the staff on using Kemps Case Works and ensuring the staff correctly complies with corrective actions #2, #3, and #4. (please see attachment 6.)
>
> On October 11, 2011, a Personnel Action was completed on Paralegal Lasandra Stewart paying 50% of her salary (or $20,073.04) with LSC funds. Unfortunately, an amended Personnel Action will need to be done as a typographical error resulted in LSC funds being used for 75% of her salary. The form will be sent to you once it has been processed. (please see attachment 7.)"

3) A travel expense report reviewed for the Executive Director's travel disclosed two (2) issues. The first issue was a charge of $738.26 for the use of a private vehicle from Mississippi to St. Petersburg, FL for 1,476.5 miles. When fiscal staff was questioned if a comparison between flying and driving was conducted, OCE was informed that no comparison was made to determine which would be less expensive. CLD should conduct a cost analysis between the cost of flying as opposed to driving to determine which method of transportation is the most economical and cost effective manner of travel prior to reimbursing the traveler, in compliance with 45 CFR § 1630.3(b) (Reasonable costs). A cost is reasonable if, in its nature or amount, it

does not exceed that which would be incurred by a prudent person under the same or similar circumstances prevailing at the time the decision was made to incur the cost. The second issue was that the hotel charges that were accrued during this travel exceeded the Federal Guidelines by $172.98. These charges should have been paid with Tribal Funds, in accordance with CLD's policies. However, LSC funds were incorrectly used. The DR directed that CLD reimburse the LSC funds $172.98 from Tribal funds in accordance with MBCI's accounting policies. CLD was directed to submit, with its comments to the Draft Report, a certification as to the date on which this inter-fund transfer took place.

In response to the DR CLD stated as follows:

> "An email is attached from Patty of The Travel Company, in which she states that according to Delta's historical tariff, the refundable fare would have been $1455.80 round trip total including taxes and their $35.00 booking fee (please see Attachment 8). When you add in local travel of about $80.00, long-term parking of about $44.00, and taxi fare of $60.00, the total costs would have been lower to drive. Going forward, the Director will make sure that a cost analysis is accomplished any time LSC funds are used for travel."

CLD further stated "[t]he Director certifies that the inter-fund transfer of $172.98 was accomplished on November 28, 2011. (please see Attachment 9)." Although the response to the DR stated that the Director certifies that the funds were transferred, there was no actual certification statement provided. However, a copy of the journal voucher was sent as an attachment.

IV. RECOMMENDATIONS[17]

Consistent with the findings of this report, it is recommended that CLD:

1. Update their ACMS so that it: contains the necessary fields for conducting intake; has the capability to allow proper case management; and is capable of generating reports to meet regulatory and CSR reporting requirements;

   There was no response to this Recommendation.

2. Revise its manual intake form to screen for reasonable income prospects as required by 45 CFR § 1611.5(a)(4)(i), which mandates that CLD inquire into every applicant's reasonable income prospects during intake;

   There was no response to this Recommendation. However, one of the attachments provided did list prospective income as a question to be asked during eligibility screening.

3. Update their ACMS to contain a specific question for reasonable income prospect screening;

   There was no response to this Recommendation.

4. Review its list of open cases and mark for rejection and exclusion from the CSR data submission all dormant and inactive case files;

   There was no response to this Recommendation.

5. Ensure that staff is appropriately trained on the applicability of 45 CFR § 1626.4 and Program Letter 06-2, Violence Against Women Act 2006 Amendments;

   There was no response to this Recommendation.

6. Ensure that all intake staff are trained on the applicability of 45 CFR § 1611.5 and the procedures enumerated therein for obtaining a waiver and/or applying authorized exceptions when an applicant is over-income, and CLD's income policy;

   There was no response to this Recommendation.

[17] Items appearing in the "Recommendations" section are not enforced by LSC and therefore the program is not required to take any of the actions or suggestions listed in this section. Recommendations are offered when useful suggestions or actions are identified that, in OCE's experience, could help the program with topics addressed in the report. Often recommendations address potential issues and may assist a program to avoid future compliance errors.
By contrast, the items listed in "Required Corrective Actions" must be addressed by the program, and will be enforced by LSC.

7. Conduct periodic training on closure codes to ensure that staff is aware of the applicability of each closing code;

   There was no response to this Recommendation.

8. Conduct periodic training on problem codes to ensure that staff is aware of the applicability of each problem code;

   There was no response to this Recommendation.

9. Review all case files required to have a retainer agreement and verifying that all agreements contain a detailed scope and subject matter of the representation, and are executed in a timely manner;

   There was no response to this Recommendation.

10. Conduct periodic reviews of case management reports on closed cases;

    There was no response to this Recommendation.

11. Ensure that MBCI staff is familiar with the AGFLR and the LSC regulations so that they are able to apply the financial policies, procedures, and restrictions in the AGFLR and the LSC regulations to the LSC funds;

    In response to the DR, CLD stated as follows "the Director will review these regulations with the Finance Department so that the LSC/AG policies and procedures are followed. This will be accomplished by the end of December 2011."

    As noted previously, this area of non-compliance is the subject of a special grant condition, with reporting requirements due on or before March 30, 2012.

12. Renegotiate their current fee with their IPA in compliance with the requirements of 45 CFR § 1630.3(b) (Reasonable costs); and

    In response to the DR, CLD stated " the Director talked with the Auditor, Breazeale, Saunders & O'Neil, Ltd. And they have agreed to charge us $4,000 for the audits going forward (please see Attachment 11)."

13. Train staff on the revised policies relating to 45 CFR Parts 1605, 1609, 1612, 1617, 1619, 1620, 1626, 1627, 1632, 1633, 1636, 1637, 1638, 1639, 1643, and 1644.

    There was no response to this Recommendation.

V. REQUIRED CORRECTIVE ACTIONS

Consistent with the findings of this report, CLD is required to take the following corrective actions:

1. Verify that the correct case file information is entered and recorded in the automated case management system;

   In response to the DR, CLD stated that Choctaw Legal Defense is presently using Kemps Case Works to enter new cases. CLD further stated that they are in the process of getting all of their files converted into the Kemps software and were planning to have an extensive training session in December 2011 with Mr. Kemps in Atlanta, GA to learn how to better utilize Kemps Case Works.

   As noted previously, this area of non-compliance is the subject of a special grant condition, with reporting requirements due on or before March 30, 2012.

2. Ensure that all staff correctly apply 45 CFR § 1626.4 and Program Letter 06-2, Violence Against Women Act 2006 Amendments;

   In response to the DR, CLD stated as follows "in response to the DR, CLD stated that all staff signed and dated a form indicating that they have received and read Program Letter 06-02, Violence Against Women Act 2006 Amendments. Due to the limited representation of only enrolled tribal members, our office has never encountered a matter that would require application of 45 CFR § 1626.4 as the Domestic Violence Program handles representation for all battered tribal members."

3. Ensure that all intake staff correctly apply 45 CFR § 1611.5 and the procedures enumerated therein for obtaining a waiver and/or applying authorized exceptions when an applicant is over-income, and CLD's income policy;

   In response to the DR, CLD stated as follows:

   "Actions taken to ensure compliance with 45 CFR § 1611.5:

   a. Staff responsible for completing intakes were given a copy of the financial eligibility guidelines that included detailed explanations of asset and income eligibility determination
   b. Staff responsible for completing intakes were instructed on the requirements established by the financial eligibility guidelines.
   c. A more detailed Asset/Income verification form was created (please see Attachment 1).
   d. To avoid errors and emissions, a list of questions to be asked of clients to determine financial eligibility was created (please see Attachment 2)."

4. Ensure that all intake staff correctly apply CLD's asset policy;

   In response to the DR, CLD stated as follows "in addition to the actions taken above, the Staff Attorney will review at least 30% of grant files after the formal intake is complete to ensure staff are correctly applying CLD's asset policy."

   As noted previously, this area of non-compliance is the subject of a special grant condition, with reporting requirements due on or before February 29, 2012 and March 30, 2012.

5. Re-draft its Financial Eligibility Policy so that it appropriately reflects the program's policy determination regarding each section of Part 1611 and ensure that their staff correctly apply CLD's policy;

   In response to the DR, CLD stated the following "[t]he Financial Eligibility Policy is being worked on by all attorneys to ensure that we cover each section of Part 1611. A draft copy will be mailed to your office by the end of this week."

   CLD further stated that "[o]nce the policies are completed, the Director will present them to the Policy Board for their input and approval. We are hoping for a completion date in February 2012."

   As stated above, the income eligibility policy provided by CLD was reviewed and was found to be incomplete and the income eligibility form attached was non-compliant. The eligibility policy does not address 45 CFR §§ 1611.4(b) and 1611.5. The eligibility form provided by CLD lists "Distributions" under the section titled "Gross income." The review team was informed during the onsite visit that "Distributions" refer to the funds received by Native American applicants from their Indian trust income. CLD was specifically informed and trained during the onsite review that the program needs to redraft its income eligibility policy and that "distributions" up to $2,000 a year are not to be counted as income.[18] The form also lists food stamps as income. The program was informed onsite and during training that food stamps are not income and should not be recorded as such. Furthermore, the form lists wages, child support, and alimony as non-exempt assets. These items are all income and not assets.

   CLD must review CFR Part 1611 and redraft its policy and forms so that they are compliant with the requirements of the regulation. A sample policy is attached for review. This policy needs to be adapted to fit the requirements of CLD and cannot be adopted verbatim.
   As noted previously, this area of non-compliance is the subject of a special grant condition, with reporting requirements due on or before February 29, 2012 and March 30, 2012.

6. Ensure that the Board approves their Financial Eligibility Policy;

[18] *See* 45 CFR § 1611.2(i) which defines "income" specifically excludes up to $2,000 per year of funds received by individual Native Americans that is derived from Indian trust income from that definition.

In response to the DR, CLD stated as follows "[o]nce the policies are completed, the Director will present them to the Policy Board for their input and approval. We are hoping for a completion date in February 2012."

As noted previously, this area of non-compliance is the subject of a special grant condition, with reporting requirements due on or before February 29, 2012 and March 30, 2012.

7. Ensure that the proper inquiry of the applicant's assets is made and recorded for each case charged to LSC funds;

   In response to the DR, CLD stated as follows: "Please see actions taken in response to Required Corrective Action #3" which stated as follows:

   "Actions taken to ensure compliance with 45 CFR § 1611.5:

   a. Staff responsible for completing intakes were given a copy of the financial eligibility guidelines that included detailed explanations of asset and income eligibility determination
   b. Staff responsible for completing intakes were instructed on the requirements established by the financial eligibility guidelines.
   c. A more detailed Asset/Income verification form was created (please see Attachment 1).
   d. To avoid errors and emissions, a list of questions to be asked of clients to determine financial eligibility was created (please see Attachment 2)."

8. Ensure that each file is in compliance with the requirements of 45 CFR § 1611.9 (Retainer agreements);

   In response to the DR, CLD stated that "[a] retainer agreement is completed in every eligible grant case. The retainer is completed during the formal intake process. The retainer agreement includes a statement of the legal problem for which representation is sought and the nature of the legal services to be provided. The completed retainer agreement is maintained in the client's file."

   CLD is reminded to ensure that all executed retainers contain a sufficiently detailed scope and subject matter of the representation to be provided.

9. Confirm that accepting conflict cases and conducting oversight over such cases does not violate the applicable rules of professional conduct;

   In response to the DR, CLD stated that "[t]he confirmation is attached as Attachment 3." Attachment 3 is a document titled "CONFIRMATION THAT ACCEPTANCE OF

CONFLICT CASES AND CONDUCTING OVERSIGHT OVER SUCH CASES DOES NOT VIOLATE APPLICABLE RULES OF PROFESSIONAL CONDUCT".

As stated above, this document does not define what constitutes "substantive/confidential information."

When OCE asked for clarification as to who drafted the above "response," CLD responded that their supervising attorney had done so and that the program was still awaiting a formal opinion from the General Counsel for the Mississippi Bar Association. CLD is directed to provide OCE with a copy of that opinion once it is received.

CLD is reminded that LSC requires that each applicant is screened for eligibility and in doing so CLD is required to ask detailed questions regarding the applicant's income and asset sources. If this information falls in the category of "substantive/confidential information" then CLD must not accept such cases.

10. Ensure that each case reported to LSC contains a description of the legal assistance provided to the client. Cases lacking assistance should be deselected from CSRs;

    In response to the DR, CLD stated that "[t]he Director checks each case to make sure that it contains a description of the services that were provided to the client, along with the outcome of the client's case. If the case ends up not qualifying under the LSC guidelines, the case is then removed as an LSC eligible case."

    As stated above, the review team's understanding, based on interviews conducted during the onsite review was that this was the practice at the time of review. As such additional steps need to be taken to ensure compliance as this practice was deemed insufficient during the review.

    As noted previously, this area of non-compliance is the subject of a special grant condition, with reporting requirements due on or before January 31, 2012.

11. Ensure that staff correctly apply closing codes;

    In response to the DR, CLD stated that upon completion of the case, the Director reviews each file and places the correct closing code on the case closing report.

    CLD further stated that the Director reviews each case when assigning the case to an attorney to ensure that the correct problem code is applied to a client's case.

    As stated above the review team's understanding, based on interviews conducted during the onsite review, was that the Director was not familiar with the Problem Codes listed in the 2008 CSR Handbook, as such additional steps need to be taken to ensure compliance.

    As noted previously, this area of non-compliance is the subject of a special grant condition, with reporting requirements due on or before January 31, 2012.

12. Ensure that staff correctly apply problem codes;

    In response to the DR, CLD stated that upon completion of the case, the Director reviews each file and places the correct closing code on the case closing report.

    CLD further stated that the Director reviews each case when assigning the case to an attorney to ensure that the correct problem code is applied to a client's case.

    As noted above, the review team's understanding, based on interviews conducted during the onsite review, was that the Director was not familiar with the Problem Codes listed in the 2008 CSR Handbook, as such additional steps need to be taken to ensure compliance.

    As noted previously, this area of non-compliance is the subject of a special grant condition, with reporting requirements due on or before January 31, 2012.

13. Ensure that all cases are timely closed;

    In response to the DR, CLD stated as follows: "[a]ll closed cases will be reviewed by the Director. Those cases still opened after nine months, the Director will review the case with the attorney to determine if any assistance is required from CLD. At the end of the year, a report will be generated by the attorney to include the reason it is taking so long to close."

    As noted previously, this area of non-compliance is the subject of a special grant condition, with reporting requirements due on or before January 31, 2012.

14. Ensure an oversight system is in place to track the activity and services provided in the cases that it contracts out to private attorneys;

    In response to the DR, CLD stated that "[t]he Director will be reviewing all closed cases referred out to private attorneys, as well as all cases still open after nine months and then after one year." CLD further stated that "[a] list of all opened grant cases will be generated using Kemps Case Works at the beginning of each month for the Director's use."

    As stated above, the response to this finding does not address LSC's concerns regarding the lack of oversight over PAI cases. The review team's understanding, based on interviews conducted during the onsite review, was that this was the practice at the time of review. CLD must to adopt a case oversight policy for its PAI cases, which specifically states what steps will be taken to ensure there is oversight over PAI cases.

    As noted previously, this area of non-compliance is not the subject of a special grant condition, however CLD should provide OCE with a draft PAI oversight policy no later than April 30, 2012.

15. Draft and adopt a policy in accordance with the requirements of 45 CFR Part 1604;

    In response to the DR, CLD provided a revised policy to address the requirements of 45 CFR Part 1604. The policy provided is a statement as opposed to a policy. CLD must to

draft a policy which will advise its staff as to the requirements of the regulation. A sample policy is attached for review. This policy needs to be adapted to fit the requirements of your program and cannot be adopted verbatim.

As noted previously, this area of non-compliance is the subject of a special grant condition, with reporting requirements due on or before February 29, 2012 and March 30, 2012.

16. Ensure that after the implementation of the new ACMS it follows the 45 CFR Part 1635 Timekeeping Regulations;

In response to the DR, CLD stated that "[t]he staff attorney and paralegal reviewed the timekeeping regulations of 45 CFR Part 1635 before beginning to track their time on CLD's new ACMS." CLD further stated that "[a]fter implementing the new ACMS, CLD's staff attorney and paralegal responsible for handling grant cases were required to track their time on the new ACMS." CLD also stated that the Director will review their timekeeping periodically as an oversight function.

17. Comply with the requirements of 45 CFR § 1620.6;

In response to the DR, CLD stated as follows: "Choctaw Legal Defense used the suggested priorities for use of LSC Funds and the Policy Board approved these priorities. Staff members have been given copies." CLD also provided a copy of signed written agreements in compliance with the requirements of 45 CFR § 1620.6.

18. Either follow their written policy or revise their policy regarding outstanding checks;

In response to the DR, CLD stated that the Finance Department will review their policy on outstanding checks and make corrections where needed. CLD further stated that when the Finance Department sends their corrected policy, the Director will forward it to LSC. As of the release date of the Final Report LSC had not received this new policy.

This area of non-compliance is the subject of a special grant condition, with reporting requirements due on or before February 29, 2012.

In response to the DR CLD stated the following: "[t]he Director will review these regulations with the Finance Department so that the LSC/AG policies and procedures are followed. This will be accomplished by the end of December 2011."

As noted previously, this area of non-compliance is the subject of a special grant condition, with reporting requirements due on or before March 30, 2012.

19. Ensure that MBCI staff is correctly applies the financial policies, procedures, and restrictions in the AGFLR and the LSC Regulations to the LSC funds;

In response to the DR CLD stated the following: "[t]he Director will review these regulations with the Finance Department so that the LSC/AG policies and procedures are followed. This will be accomplished by the end of December 2011."

As noted previously, this area of non-compliance is the subject of a special grant condition, with reporting requirements due on or before March 30, 2012.

20. Only allocate 50% of the LSC funded staff attorney's salary to LSC Funds in accordance with the requirements of 45 CFR § 1630.3(d) Direct costs, and device a policy/procedure for calculating future allocations based on actual work conducted on LSC-eligible cases;

    In response to the DR, CLD stated that "[o]n October 11, 2011, a Personnel Action was completed on Paralegal Lasandra Stewart paying 50% of her salary (or $20,073.04) with LSC funds. Unfortunately, an amended Personnel Action will need to be done as a typographical error resulted in LSC funds being used for 75% of her salary. The form will be sent to you once it has been processed. (please see attachment 7.)"

21. Conduct a cost analysis between the cost of flying as oppose to driving to determine which method of transportation is the most economical and cost effective manner of travel prior to reimbursing the traveler, in compliance with 45 CFR § 1630.3(b) (Reasonable costs);

    In response to the DR, CLD stated as follows: "An email is attached from Patty of The Travel Company, in which she states that according to Delta's historical tariff, the refundable fare would have been $1455.80 round trip total including taxes and their $35.00 booking fee (please see Attachment 8). When you add in local travel of about $80.00, long-term parking of about $44.00, and taxi fare of $60.00, the total costs would have been lower to drive. Going forward, the Director will make sure that a cost analysis is accomplished any time LSC funds are used for travel."

22. Reimburse LSC funds with $172.98 from Tribal funds in accordance with MBCI's accounting policies. Certify the date on which the inter-fund transfer was made;

    In response to the DR, CLD stated that "[t]he Director certifies that the inter-fund transfer of $172.98 was accomplished on November 28, 2011." Although the response to the DR stated that the Director certifies that the funds were transferred, there was no actual certification statement provided. However, a copy of the journal voucher was sent as an attachment.

23. Revise policies relating to 45 CFR Parts 1605, 1609, 1612, 1617, 1619, 1620, 1626, 1627, 1632, 1633, 1636, 1637, 1638, 1639, 1643, and 1644 so that they reflect CLD's policy regarding these issues as opposed to simply repeating the language in the regulation. These policies must then be adopted by the CLD board; and

    In response to the DR, CLD stated as follows: "[t]hese 16 policies have been revised by my staff and will be sent through the mail to you as an attachment to this Response. Once you have reviewed them, the Director will present them to the Policy Board for their review and approval in February 2012."

As noted throughout this Final Report, several policies submitted still do not comply with LSC regulations. This area of non-compliance is the subject of special grant conditions, with reporting requirements due on or before February 29, 2012, and March 30, 2012.

24. CLD must discontinue payment of non-mandatory dues with LSC funds and must reimburse the $105 referenced in Finding No.18 to the LSC funds. In its comments to the Draft Report, CLD must certify the date upon which such inter-fund transfer took place.

    In response to the DR, CLD stated that this was a bookkeeper error on their part. CLD further stated that "[t]he Director of CLD certifies that the inter-fund transfer of $105.00 was accomplished on September 26, 2011." Although the response to the DR stated that the Director certifies that the funds were transferred, there was no actual certification statement provided. However, a copy of the journal voucher was sent as an attachment.

CHOCTAW LEGAL DEFENSE
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P.O. BOX 6255 / 125 RIVER RIDGE CIRCLE
CHOCTAW, MS 39350

Choctaw Legal Defense Recipient No. 625100
Response to LSC Case Service Report/Case Management System Review
Monday, November 28, 2011

In reviewing the Case Service Report/Case Management System Review, we, the staff at Choctaw Legal Defense, would like to apologize to you for the many errors we have committed in servicing this grant area NMS-1. As a team, we have taken the findings to heart and are drafting policies and procedures to ensure that the requirements of the LSC regulations are met. If there is any training available, we are willing to travel to make sure we learn the correct way to perform our tasks.

V. Required Corrective Actions

1. **Verify that the correct case file information is entered and recorded in the automated case management system.**

   Choctaw Legal Defense is presently using Kemps Case Works to enter new cases. We are in the process of getting all of our files converted into the Kemps software and are planning to have an extensive training session in December 2011 with Mr. Kemps in Atlanta, GA to better utilize Kemps Case Works.

2. **Ensure that all staff correctly apply 45 CFR § 1626.4 and Program Letter 06-2, Violence Against Women Act 2006 Amendments.**

   All staff signed and dated a form indicating that they have received and read Program Letter 06-02, Violence Against Women Act 2006 Amendments. Due to the limited representation of only enrolled tribal members, our office has never encountered a matter that would require application of 45 CFR § 1626.4 as the Domestic Violence Program handles representation for all battered tribal members.

3. **Ensure that all intake staff correctly apply 45 CFR § 1611.5 and the procedures enumerated therein for obtaining a waiver and/or applying authorized exceptions when an applicant is over-income, and CLD's income policy.**

   Actions taken to ensure compliance with 45 CFR § 1611.5:

a. Staff responsible for completing intakes were given a copy of the financial eligibility guidelines that included detailed explanations of asset and income eligibility determination
b. Staff responsible for completing intakes were instructed on the requirements established by the financial eligibility guidelines.
c. A more detailed Asset / Income verification form was created (please see Attachment 1).
d. To avoid errors and omissions, a list of questions to be asked of clients to determine financial eligibility was created (please see Attachment 2).

4. **Ensure that all intake staff correctly apply CLD's asset policy.**

In addition to the actions taken above, the Staff Attorney will review at least 30% of grant files after the formal intake is complete to ensure staff are correctly applying CLD's asset policy.

5. **Re-draft its Financial Eligibility Policy so that it appropriately reflects the program's policy determination regarding each section of Part 1611 and ensure that their staff correctly apply CLD's policy.**

The Financial Eligibility Policy is being worked on by all attorneys to ensure that we cover each section of Part 1611. A draft copy will be mailed to your office by the end of this week.

6. **Ensure that the Board approves their Financial Eligibility Policy.**

Once the policies are completed, the Director will present them to the Policy Board for their input and approval. We are hoping for a completion date in February 2012.

7. **Ensure that the proper inquiry of the applicant's assets is made and recorded for each case charged to LSC funds.**

Please see actions taken in response to Required Corrective Action #3.

8. **Ensure that each file is in compliance with the requirements of 45 CFR § 1611.9 (Retainer agreements).**

A retainer agreement is completed in every eligible grant case. The retainer is completed during the formal intake process. The retainer agreement includes a statement of the legal problem for which representation is sought and the nature of the legal services to be provided. The completed retainer agreement is maintained in the client's file.

9. **Confirm that accepting conflict cases and conducting oversight over such cases does not violate the applicable rules of professional conduct.**

   The confirmation is attached as Attachment 3).

10. **Ensure that each case reported to LSC contains a description of the legal assistance provided to the client. Cases lacking assistance should be deselected from CSRs.**

    The Director checks each case to make sure that it contains a description of the services that were provided to the client, along with the outcome of the client's case. If the case ends up not qualifying under the LSC guidelines, the case is then removed as an LSC eligible case.

11. **Ensure that staff correctly apply closing codes.**

    Upon completion of the case, the Director reviews each file and places the correct closing code on the case closing report.

12. **Ensure that staff correctly apply problem codes.**

    The Director reviews each case when assigning the case to an attorney to ensure that the correct problem code is applied to a client's case.

13. **Ensure that all cases are timely closed.**

    All closed cases will be reviewed by the Director. Those cases still opened after nine months, the Director will review the case with the attorney to determine if any assistance is required from CLD. At the end of the year, a report will be generated by the attorney to include the reason it is taking so long to close.

14. **Ensure an oversight system is in place to track the activity and services provided in the cases that it contracts out to private attorneys.**

    The Director will be reviewing all closed cases referred out to private attorneys, as well as all cases still open after nine months and then after one year. A list of all opened grant cases will be generated using Kemps Case Works at the beginning of each month for the Director's use.

15. **Draft and adopt a policy in accordance with the requirements of 45 CFR Part 1604 (Outside practice of law).**

    45 CFR Part 1604 is attached as Attachment 4).

16. **Ensure that after the implementation of the new ACMS it follows the 45 CFR § 1635.**

    The staff attorney and paralegal reviewed the timekeeping regulations of 45 CFR § 1635 before beginning to track their time on CLD's new ACMS. After implementing the new ACMS, CLD's staff attorney and paralegal responsible for handling grant cases were required to track their time on the new ACMS. The Director reviews their timekeeping periodically as an oversight function.

17. **Comply with the requirements of 45 CFR 1620.6 (Priorities in use of resources).**

    Choctaw Legal Defense used the suggested priorities for use of LSC Funds and the Policy Board approved these priorities. Staff members have been given copies (please see Attachment 3).

18. **Either follow their written policy or review their policy regarding outstanding checks.**

    Finance Department will review their policy on outstanding checks and make corrections where needed. When they send their corrected policy, the Director will forward it to your office.

19. **Ensure that MBCI staff correctly applies the financial policies, procedures, and restrictions in the AGFLR and the LSC Regulations to the LSC funds.** Doug Weaver – need to send email.

    The Director will review these regulations with the Finance Department so that the LSC / AG policies and procedures are followed. This will be accomplished by the end of December 2011.

20. **Only allocate 50% of the LSC funded staff attorney's salary to LSC Funds in accordance with the requirements of 45 CFR 1630.3(d) Direct costs, and devise a policy/procedure for calculating future allocations based on actual work conducted on LSC-eligible cases.**

    On September 21, 2011, a Personnel Action for Change in Grant Usage was completed on Staff Attorney Andrew Hammond, which dropped the percentage of his salary from 75% to 50% (or $30,000). To ensure that the 50% level is actually used for Legal Services casework, he will also be in charge of supervising the staff on using Kemps Case Works and ensuring the staff correctly complies with corrective actions #2, #3, and #4. (please see attachment 6.)

On October 11, 2011, a Personnel Action was completed on Paralegal Lasandra Stewart paying 50% of her salary (or $20,073.04) with LSC funds. Unfortunately, an amended Personnel Action will need to be done as a typographical error resulted in LSC funds being used for 75% of her salary. The form will be sent to you once it has been processed. (please see attachment 7.)

21. **Conduct a cost analysis between the cost of flying as oppose to driving to determine which method of transportation is the most economical and cost effective manner of travel prior to reimbursing the traveler, in compliance with 45 CFR 1630.3(b) (Reasonable costs).**

An email is attached from Patty of TheTravel Company, in which she states that according to Delta's historical tariff, the refundable fare would have been $1,455.80 round trip total including taxes and their $35.00 booking fee (please see Attachment 8). When you add in local travel of about $80.00, long-term parking of about $44.00, and taxi fare of $60.00, the total costs would have been lower to drive. Going forward, the Director will make sure that a cost analysis is accomplished any time LSC funds are used for travel.

22. **Reimburse LSC funds with $172.98 from Tribal funds in accordance with MBCI's accounting policies. Certify the date on which the inter-fund transfer was made.**

The Director certifies that the inter-fund transfer of $172.98 was accomplished on November 28, 2011 (please see Attachment 9.

23. **Revise policies relating to 45 CFR Parts 1605, 1609, 1612, 1617, 1619, 1620, 1626, 1627, 1632, 1633, 1636, 1637, 1638, 1639, 1643, and 1644 so that they reflect CLD's policy regarding these issues as opposed to simply repeating the language in the regulation. These policies must then be adopted by the CLD board; and**

These 16 policies have been revised by my staff and will be sent through the mail to you as an attachment to this Response. Once you have reviewed them, the Director will present them to the Policy Board for their review and approval in February 2012.

24. **CLD must discontinue payment of non-mandatory dues with LSC funds and must reimburse the $105 referenced in Finding No. 18 to the LSC funds. In its comments to the Draft Report, CLD must certify the date upon which such inter-fund transfer took place.**

This was a bookkeeper error on our part. The Director of CLD certifies that the inter-fund transfer of $105.00 was accomplished on September

26, 2011 (please see Attachment 10).

In addition to these corrective actions, the Director talked with the Auditor, Breazeale, Saunders & O'Neil, Ltd. and they have agreed to charge us $4,000 for the audits going forward (please see Attachment 11).

The Director appreciates all that Legal Services Corporation has done for Choctaw Legal Defense and for our tribal members. We have met a lot of friends at the different conferences we have attended, we have a better rapport with the Legal Service offices within the state of Mississippi, and we have learned a lot of legal information along the way.

If there are corrective actions in which you need more information, please let me know and we will comply. If you will review our policies and make corrections as needed, we will certainly appreciate your assistance.

Sincerely,
Rita Jones, Director
Choctaw Legal Defense

CHOCTAW LEGAL DEFENSE

MISSISSIPPI BAND OF CHOCTAW INDIANS

GRANT ELIGIBILTY FORM
DATE: _____

NAME: _____ **SOCIAL SECURITY NO.:** _____
ADDRESS: _____ **TELEPHONE NO.:** _____
_____

GROSS INCOME
(This includes spousal income)

SOURCE	WEEKLY	MONTHLY	ANNUALLY
Individual			
Work			
Child Support			
Food Stamps			
Social Security			
Social Security Disability			
Distribution			
Other			
TOTAL			

NON-EXEMPT ASSETS

CATEGORY	VALUE	CATEGORY	VALUE
CASH:		EQUIPMENT:	
WAGES		NON-WORK	
GOVT			
CHILD SUPP		REALTY:	
ALIMONY		NON-PRINCIPAL	
RETIR/INSUR			
OTHER		VEHICLES:	
		NON-TRANS	
TOTALS:			

Attachment 1

VERIFICATION OF INCOME

I do hereby certify that the information about my income and assets given during this Initial Intake Interview is true and correct to the best of my knowledge. I do hereby promise to report to Choctaw Legal Defense any changes in my income or assets so long as I am being represented by Choctaw Legal Defense.

_____

CLIENTS SIGNATURE

_____

DATE

ELIGIBILITY QUESTIONS

1. Do you own any realty?
   A. Is the house your principal residence?
2. Do you own any vehicles?
   A. Are all vehicles owned used for transportation?
3. Do you own any equipment?
   A. Is the equipment work related and essential to your employment or self-employment or to a member of your family unit?
4. What is your monthly income?
   A. What is the source of this income?
   B. Do you receive any other cash, such as payments from a governmental entity, alimony, child support, retirement funds, investment funds, rents, royalties, estates, trusts or from other regular/re-occurring sources?
5. Do you receive Food Stamps, Medicaid or TANF benefits?
6. Are you seeking legal assistance to maintain benefits provided by a governmental program for low income individuals or families?
7. Are you responsible for medical or nursing home expenses?
8. Are you alleging a crime of domestic violence?
9. Do you expect any change in your income?

Attachment 2

CONFIRMATION THAT ACCEPTANCE OF CONFLICT CASES AND CONDUCTING OVERSIGHT OVER SUCH CASES DOES NOT VIOLATE APPLICABLE RULES OF PROFESSIONAL CONDUCT

It is always best to avoid/prevent conflicts, which would entail representing the first person to walk through the door, and upon realization that the next person is adverse to the first, send him on his way to obtain other counsel. However, due to the nature of this office and other poignant considerations, if there is a viable alternative, it must be utilized.

Most, if not almost all, conflicts can be waived if handled accordingly (full disclosure, written consent, etc). So long as substantive/confidential information is not obtained about any one person prior to representation, then I see no actual conflict with conducting two intakes and assigning the cases accordingly, so long as no two attorneys in the firm are representing opposing parties.

The contract attorneys are afforded complete control over the conduct of the case; however, if the client desires the attorney to perform acts outside of the agreed upon matter, then it must be approved prior to handling. This is done by the director. It must be assumed that the director does not communicate with attorneys on opposing matters, about those cases. Further, access to the files of opposing parties must be secured in such a way to prohibit any practicing attorney access to another's file.

Once an attorney client relationship is formed and terminated, then CLD can still do an intake (not gaining substantive/confidential information) for an opposing party, but must send that matter to a non-conflicted contract attorney.

All supervising/directing attorneys must make sure that these rules are implemented and strictly adhered to by all members of the office.

If, by happenstance, a conflict does arise, then the attorneys involved must immediately withdraw and protect the confidentiality of the client, as well as provide other non-conflicted attorneys.

The following Rules are implicated: 1.6, 1.7, 1.8, 1.9, 1.10, 5.1, 5.2, 5.3, 5.4.

Attachment 3

OUTSIDE PRACTICE OF LAW
16 C.F.R. 1604

Choctaw Legal Defense is a governmental department of the Mississippi Band of Choctaw Indians, and as such, CLD is tasked with the duty of representing the Members of the Tribe. In carrying out this function, CLD obtained a monetary grant from the Legal Services Corporation. Under Corporation law, recipients may permit its full-time attorneys to engage in pro bono legal services and to comply with reasonable demands of the Bar and Court.

CLD allows its attorneys to represent Tribal Members on both LSC grant cases and non-LSC grant cases. When engaged in LSC grant cases, CLD attorneys do not handle any matter outside the scope of that particular matter. When handling non-LSC cases, CLD does not utilize any funds of the LSC grant.

CLD is not supported in major part by the Corporation; therefore, CLD attorneys would not be considered full-time attorneys, under the Act.

Attachment 4

PRIORITIES IN USE OF RESOURCES
45 C.F.R. 1620.6
SIGNED WRITTEN AGREEMENT

I, Rita Jones, attorney for Choctaw Legal Defense, which receives grant money from the Legal Service Corporation, state that I have read and understand the priorities established by the recipient's governing body; the definition of an emergency situation and the procedures for dealing with same, and those emergencies falling outside the recipient's priorities; and agree to not undertake any case or matter that is not a priority or an emergency.

Rita Jones
Signature

11-28-2011
Date

Attachment 5

PRIORITIES IN USE OF RESOURCES
45 C.F.R. 1620.6
SIGNED WRITTEN AGREEMENT

I, James L. Lane, Jr., attorney for Choctaw Legal Defense, which receives grant money from the Legal Service Corporation, state that I have read and understand the priorities established by the recipient's governing body; the definition of an emergency situation and the procedures for dealing with same, and those emergencies falling outside the recipient's priorities; and agree to not undertake any case or matter that is not a priority or an emergency.

James L. Lane, Jr.
Signature

11-28-11
Date

PRIORITIES IN USE OF RESOURCES
45 C.F.R. 1620.6
SIGNED WRITTEN AGREEMENT

I, Ashley Lewis, attorney for Choctaw Legal Defense, which receives grant money from the Legal Service Corporation, state that I have read and understand the priorities established by the recipient's governing body; the definition of an emergency situation and the procedures for dealing with same, and those emergencies falling outside the recipient's priorities; and agree to not undertake any case or matter that is not a priority or an emergency.

Signature

11/28/11
Date

PRIORITIES IN USE OF RESOURCES
45 C.F.R. 1620.6
SIGNED WRITTEN AGREEMENT

I, Andrew Hammond, attorney for Choctaw Legal Defense, which receives grant money from the Legal Service Corporation, state that I have read and understand the priorities established by the recipient's governing body; the definition of an emergency situation and the procedures for dealing with same, and those emergencies falling outside the recipient's priorities; and agree to not undertake any case or matter that is not a priority or an emergency.

Signature

11/28/11
Date

EMERGENCY SITUATIONS FOR UNDERTAKING REPRESENTATION OUTSIDE PRIORITIES 45 C F R § 1620 4

Occasionally, emergency situations arise where it is the best interest of the client to secure immediate representation on a matter not within a priority area In such cases ethical and other considerations may compel Choctaw Legal Defense to undertake representation Accordingly such emergency representation is allowable with prior written approval from the Director under the following conditions

1 Client is financially eligible for legal services and

2 Client is unable to negotiate the legal process due to disability, language or cultural barrier, and significant legal rights or interest would be lost in the absence of immediate representation or

3 Client s health or safety is at imminent risk and would be endangered absent immediate representation or

4 The statute of limitations or time limits imposed on procedural requirements are about to run and failure to secure immediate legal assistance will cause irreparable harm to client, or

5. Failure to represent would place staff at risk of violating the Code of Professional Responsibility or

6 Issues arise due to unforeseen circumstances, such as natural disasters, changes in law affecting large numbers of clients and other emerging legal issues not anticipated when priorities were set, and

7. For other reasons, such as where the client s legal rights and interests are substantially affected in the absence of representation of legal assistance taking into consideration the severity of the consequences to the individual and family, the likelihood of success, the availability of the resources and the overall expenditure of time and resources by the staff

Authorization to undertake cases or matters in emergency situations shall be obtained in writing from the Director A copy of the written authorization shall be retained in the client's file

MISSISSIPPI LEGAL SERVICES
PROPOSED PRIORITIES AND CASE LIMITATIONS AND EMERGENCY POLICY

Consistent with applicable federal regulations, guidelines and restrictions, the Board of Directors adopts the following priorities, case limitations and Emergency policy for the allocation of limited resources to address the most pressing client needs.

CASE TYPE	POPULATION WITH SPECIAL VULNERABILITIES LIMITATIONS
1. Elder Law Issues	Case acceptance for clients aged 60 and over shall not be contingent on income eligibility while concentrating on those with the greatest social and economic need. Elder law cases that do not meet program priority or case acceptance policy will not be accepted unless otherwise stated.
2. Disabled/Handicapped Issues	Cases involving the rights of individuals with mental or physical disabilities are a priority as are elder law cases.
3. Domestic Violence	Accept where applicant is victim of imminent and/or ongoing domestic violence which threatens safety or health. In obtaining divorce or protective orders, defendant's income shall not be a factor nor shall any divorce restrictions apply
4. Language Barrier	No eligible person shall be denied equal access to services because of language barriers. (Programs shall take necessary steps to assure availability of interpreters).
5. Cultural/Education Barriers	Programs shall provide sensitivity training on cultural and educational barriers. Assure access to services while considering all other priorities (if necessary, may require outreach).
6. Conservatorship	Defend putative wards who are being subjected to conservatorship proceedings, provided the wards have the support of treating physicians. May file under extreme circumstances (Emergency)

CASE TYPE	LIMITATIONS
1. Bankruptcy 7 & 13	Shall not be filed for clients who are judgment proof. Chapter 7: The program shall not accept a case for a Chapter 7 bankruptcy unless: a) the applicant's home is in need of bankruptcy protection to avoid a lien on the home; b) the applicant's car is in need of bankruptcy protection to prevent repossession; or c) the applicant has $5000 or more in unsecured debt and his/her wages are subject to be garnished; EXCEPTION may be extended to persons 60 plus. Chapter 13: The program shall not accept a case for a Chapter 13 bankruptcy unless: a) It is to stop a foreclosure sale; b) When the applicant's home needs protection from foreclosure or repossession; c) The applicant's car needs protection from repossession; or d) In instances when a person cannot legally file a Chapter 7 bankruptcy, and the Chapter 13 Plan is feasible
2. Replevin	Will defend where property wrongfully seized by creditors with minimum of 3 working days notice
3. Credit Collections	If substantive defense and amount sought exceeds $500
4. Truth-in-Lending	Will handle if a) Can rescind deeds of trust b) Compulsory counterclaims may be filed c) Canceling contracts

5. Stud Loans	Cases involving student loan matters will be handled obligations to students. Establishing hardship waiver because of disability
6. Utilities	Will handle
7. General Consumer Claims	The program case handler is encouraged to accept consumer cases that involve patterns or practices of violating state and federal consumer rights laws. Small consumer claims that do not exceed Justice Court limit will not be accepted. Will accept consumer case if the applicant's home is the subject matter of foreclosure.
8. Education Related Matters	Will handle
9. Employment Related Matters	<u>Job Discrimination</u>: Refer to Equal Employment Opportunity Commission (EEOC) first then state litigation director for assessment to handle or refer pursuant to LSC regulations. <u>Public Employment Termination</u> Will handle if substantive defense <u>Wage Claims</u> Refer to Wage and Hour Division of Employment of Labor

10. Di[illegible]s	[illegible] period [illegible] Minor children of marriage EXCEPTION: 60 plus Must have fault ground although it may be filed as Irreconcilable Differences EXCEPTION: 60 plus or disabled and on disability and Defendant's income does not exceed $2500 per month
11. Protective Orders	Will handle
12. Custody	Defend modifications, if meritorious where no agreement File if agreement by all parties. In other instances, on cases by case basis
13. Support	All cases involving divorce and custody Seek modification to increase if obtained initial order and substantial material change in circumstances. Refer cases to Department of Human Services (DHS) where there are no court orders or divorce proceedings.
14. Visitation	Child support order exists but order is silent as to visitation If paternity is established, where father comes in and wants to pay support and obtain visitation Grandparent visitation consistent with statute
15. Adoption	If all parties agree including putative father Previous primary caretaker is deceased and minor child has been in client's continuous care for 2 years. Neither parent is deceased and minor child has been in client's continuous care for more than 2 years EXPRESSLY STATED TO CLIENT: Notice to all parties shall be given
16. Annulment	Pursuant to statute

17. Sc te Maintenance	File as part of divorce Custody and support if party is pregnant BY THE SPOUSE
18. Emancipation	Will handle for purposes of housing and employment ONLY
19. Guardianship	Will be handled except for trust purposes, and accounting can be waived.
20. Birth Certificate	Will be handled for: a) public benefits b) retirement c) identification d) work related purposes
21. Name Change	Will be handled for: a) public benefits b) retirement c) identification d) work related purposes
22. Legitimation	Provide and/or complete forms
23. Paternity	Refer to DHS Initiate to protect economic interest of a minor, pay full cost in advance, and where defendant can be served
24. Parental Termination Defense	Will handle if meritorious
25. Modification (Support Reduction)	Cases involving the reduction of court ordered child support shall not be accepted unless the applicant has been rendered disabled by SSA since the court order which has caused a significant loss of income. Cases solely involving the increase in court ordered child support shall be referred to the Department of Human Services.

CASE TYPE	PRESERVING THE HOME LIMITATIONS
1. Eviction	Will handle However, if the eviction is from a public housing project and the applicant has been charged with the alleged sale or distribution of a controlled substance and the eviction is alleged to be because the illegal drug activity threatens the health and safety of other tenants or employees of the public housing agency, Program will not accept the case.
2. Foreclosures	If appropriate for bankruptcy or loss mitigation
3. Land Matters	If person's homestead and Client has completed survey of property and cost including any appraisal paid in advance
4. Fair Housing	Will handle pursuant to fair housing grant
5. Housing Counseling	Will handle pursuant to housing counseling grant
6. Quitclaim Deeds	Will prepare
7. Wills	Will prepare except trust involved Will NOT probate
8. License	Will file petition to reinstate if meritorious and complete compliance with suspension requirement.

MISSISSIPPI BAND OF CHOCTAW INDIANS
TRIBAL OFFICE BUILDING
P.O. Box 6010
Choctaw, Mississippi 39350

9/27 dls
214 - 50%
527 - 50%

PERSONNEL ACTION

Date: September 21, 2011 Effective Date: January 1, 2011

Nature of Action: Change in grant usage

Employee's Name: John Andrew Hammond Date of Employment: October 25, 2010

Social Security No.: 425-37-1966 Date of Birth: February 2, 1980

Program: Choctaw Legal Defense

Department: Member Services Department

Grant No.: 50% 214-1-500-00 50% 527-1-500-00 Project Name: Indirect Cost

Position Title Staff Attorney

Grade: 18 Salary $ 60,000.00 /Yr: Salary $ 28.846 /Hr.

Check one: X Exempt Non-Exempt

Type of Employment:
X Regular Full Time
____ * Regular Part Time
____ Volunteer
____ Temporary (Casual Full Time)
____ * Temporary (Casual Part Time)
____ Regular Temporary Full Time
____ * Regular Temporary (Part Time)

If part time employment – number of hours employee will be working per week: ____

Supervisor's Name and Position Rita F. Jones, Director

Location of Employment: Choctaw Legal Defense, 125 River Ridge Circle, Choctaw, MS 3935

Rating by Supervisor: X Excellent: ____ Good: ____ Unsuitable

Does action request change salary? ____ Yes X No

(If "Yes") Previous salary $____ (Yr) $____ (Hr)

Authorized to drive Tribal vehicle ____ Yes ____ No

Remarks: LSC GRANT WILL ONLY ALLOW US TO PAY 50% OF MR. HAMMOND'S SALARY.

Concurred by

Signature of Supervisor

Initials of: Finance Officer Human Resources Director

Requested Personnel Action is hereby APPROVED:

Requested Personnel Action is hereby DENIED:

Signature of TRIBAL CHIEF Date

Concurred per Tribal Chief by telephone on Date Time

Acting Chief or Personnel Officer

* Any Signature other than the Tribal Chief must have concurrence of the Tribal Chief to the Acting Chief or the Personnel officer.

Human Resources Copy-WHITE; Finance Copy-GREEN; Dept. Head Copy-YELLOW, Program File Copy-PINK; Employee Copy-GOLDENROD; Miscellaneous Copy-BLUE

FAPOM – MBCI HR FORM

Attachment 6

MISSISSIPPI BAND OF CHOCTAW INDIANS
TRIBAL OFFICE BUILDING
P.O. Box 6010
Choctaw, Mississippi 39350

11/14 dlw 214 50% 75%
262 25%
214

PERSONNEL ACTION

Date: October 11, 2011 Effective Date: January 1, 2011

Nature of Action: Change in budget

Employee's Name: Lasandra Stewart Date of Employment: September 1, 2000

Social Security No.: 427-37-1467 Date of Birth: September 28, 1965

Program: Choctaw Legal Defense

Department: Administration

Grant No.: 214-1-500-00 262-1-500-00 ~~214-1-500-00~~ 527 Project Name: Indirect Cost

Position Title ~~Legal Secretary / Paralegal~~

Grade: 10 Salary $ 20,073.04 50% 10,036.52 25% 10,036.52 25% /Yr.; Salary $ 19.301 /Hr.

Check one: ____ Exempt X Non-Exempt

Type of Employment: X Regular Full Time ____ * Regular Part Time

____ Volunteer ____ Temporary (Casual Full Time) ____ * Temporary (Casual Part Time)

____ Regular Temporary Full Time ____ * Regular Temporary (Part Time)

* If part time employment number of hours employee will be working per week: ____

Supervisor's Name and Position Rita Jones, Director

Location of Employment: Chocaw Legal Defense, 125 River Ridge Circle, Choctaw, MS 39350

Rating by Supervisor: X Excellent; ____ Good; ____ Unsuitable

Does action request change salary? ____ Yes X No

(If "Yes") Previous salary $ ____ (Yr) $ ____ (Hr)

Authorized to drive Tribal vehicle X Yes ____ No

Remarks: The Legal Services grant provides for $20,073.04 of the annual salary for a staff member.

11/14 Angela Smalley
Concurred by

Rita Jones
Signature of Supervisor

Initials of: Finance Officer ____ Human Resources Director ____

Requested Personnel Action is hereby APPROVED: ____

Requested Personnel Action is hereby DENIED: ____

** ____ ____
Signature of TRIBAL CHIEF Date

Concurred per Tribal Chief by telephone on ____ ____
Date Time

____
Acting Chief or Personnel Officer

Attachment 7

Jones, Rita

From: Patty @TheTravel Company [pattytravelco@yahoo.com]
Sent: Monday, November 28, 2011 12:31 PM
To: Jones, Rita
Subject: Re: July 2010 Travel

Hello Rita,

Based on what I found on Delta's historical tariff, I believe the refundable fare from Jackson to Tampa for travel in July of 2010 would likely have been **$1455.80 roundtrip total** including taxes and our $35.00 booking fee.

Please let me know if you have questions or need additional information.

Patty Stewart

The Travel Company of Mississippi
419 Fairfield Drive, Madison MS 39110
601-519-0416 direct to Patty Stewart
800-844-1133 ext. 2145 Patty Stewart

— On **Sat, 11/26/11, Jones, Rita <*RFJones@choctaw.org*>** wrote:

From: Jones, Rita <RFJones@choctaw.org>
Subject: July 2010 Travel
To: "Patty @TheTravel Company" <pattytravelco@yahoo.com>
Date: Saturday, November 26, 2011, 4:29 PM

Patty:

My program was audited by the Legal Services Corp last summer and they had a question about my travel.

Last year in July 2010, I drove from Philadelphia , MS to St. Pete Beach, FL. The roundtrip mileage was 1480 miles x $.50/mile (or a total of $740.00). They want to know if it would have been cheaper to fly back and forth. They are requesting a cost analysis of the trip.

Is there any way you can help me find this information for them? I probably would have used Delta and got a connection through Atlanta . If you need the exact dates, please let me know. Our deadline for the response is Monday, November 28, 2011 at 2:30 p.m.

Thank you for your help,
Rita Jones, Director
Choctaw Legal Defense
Choctaw, MS

Attachment 8

Mississippi Band of Choctaw Indians
Journal Voucher

Library: GENERAL
Batch No: 8431
Date: November 28, 2011

Journal Voucher Type: PY
Journal Voucher No.: 21410011

DIST#	Account #	Description	P/P	Debit	Credit
001	214-1-111-10	A/R INTERFUND	10/10	172.98	
002	214-1-531-10	TRAVEL PER DIEM	10/10		172.98
		TFR EXCESS COST TO			
		FUND 527			
		TOTAL		172.98	172.98

Prepared By: Debra Smith Date: 11/28/11

Approved By: [signature] Date: 11/29/11

Entered By: Debra Smith Date: 11-28-11

Attachment 9

Mississippi Band of Choctaw Indians
Journal Voucher

SCANNED

Library: GENERAL
Batch No: 7274
Date: September 21, 2011

Journal Voucher Type: PY 11
Journal Voucher No.: 21410099

DIST#	Account #	Description	P/P	Debit	Credit
001	214-1-111-10	A/R INTERFUND	12/10	105.00	
002	214-1-511-00	OFFICE SUPPLIES	12/10		105.00
		TFR PO J2243 TO FUND 527			
		TOTAL		105.00	105.00

Prepared By: Debra Smith Date: 09/21/11

Approved By: Jacqueline Thompson Date: ——

Entered By: Debra Smith Date: 9-26-11

Approved: [signature]

Attachment 10

BREAZEALE, SAUNDERS & O'NEIL, LTD.
CERTIFIED PUBLIC ACCOUNTANTS

November 17, 2011

Chief Phyliss J. Anderson
Rita Jones, Esquire
Tribal Council
Board of Directors
Choctaw Legal Defense
Mississippi Band of Choctaw Indians
Post Office Box 6255
Choctaw, Mississippi 39350

Dear Chief Anderson, Ms. Jones, Tribal Council and Board of Directors:

We are pleased to confirm our understanding of the services we are to provide Choctaw Legal Defense ("CLD"), a special revenue fund of the Mississippi Band of Choctaw Indians, Tribal Government Services Division ("the Tribe") for the year ended September 30, 2011. We will audit the governmental financial statements and the fund information which comprises the basic financial statements of CLD as and for the year ended September 30, 2011. Accounting standards generally accepted in the United States of America provide for certain required supplementary information ("RSI"), such as management's discussion and analysis ("MD&A"), to supplement CLD's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accountings Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to CLD's RSI in accordance with auditing standards generally in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provided any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. The following RSI is required by generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

- Management's discussion and analysis
- Budgetary comparison schedules

We have also been engaged to report on supplementary information other than RSI that also accompanies the CLD's financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of CLD's financial statements and certain additional procedures, including comparing and reconciling such information directly to

the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America and will provide an opinion on it in relation to the financial statements as a whole:

- Governmental fund financial statements
- Schedule of expenditures of federal awards
- Other schedules required by the Legal Services Corporation

Audit Objectives

The objective of our audit is the expression of opinions as to whether CLD's basic financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of the supplementary information referred to in the second paragraph when considered in relation to CLD's basic financial statements taken as a whole. The objective also includes reporting on –

- Internal control related to the financial statements and compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards.*

- Internal control related to major programs and an opinion (or disclaimer of opinion) on compliance with laws, regulations, and the provision of contracts or grants agreements that could have a direct or material effect on CLD's major program in accordance with the Single Audit Act Amendments of 1996 and OMB Circular A-133, *Audits of States, Local Governments, and Non-profit Organizations* and the *Audit Guide for Recipients and Auditors and the Compliance Supplement for Audits of LSC Recipients.*

The reports on internal control and compliance will each include a statement that the report is intended solely for the information and use of the Tribal Council, Board of Directors, management, federal awarding agencies and pass-through agencies and is not intended to be and should not be used by anyone other than these specified parties.

Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America; the standards for financial audits contained in the *Government Auditing Standards,* issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; and the provisions of OMB Circular A-133, and will include tests of the accounting records, a determination of the major programs in accordance with OMB Circular A-133 and the LSC compliance supplement, and other procedures we consider necessary to enable us to express such opinion and render the required reports. If our opinions on CLD's basic financial statements or the Single Audit compliance opinions are other than unqualified, we will fully discuss the reasons with you in advance. If, for any reason, we are unable to complete the

audit or are unable to form or have not formed opinions, we may decline to express opinions or to issue a report as a result of this engagement.

Management Responsibilities

Management is responsible for CLD's basic financial statements and all accompanying information as well as all representations contained therein. Management is also responsible for identifying government award programs and understanding and complying with the compliance requirements, and for preparation of the schedule of expenditures of federal awards in accordance with the requirements of OMB Circular A-133. As a part of the audit, we will prepare a draft of the financial statements, schedule of expenditures of federal awards, and related notes. You are also responsible for making all management decisions and performing all management functions relating to CLD's financial statements; schedule of expenditures of federal awards, and related notes and for accepting full responsibility for such decisions. You will be required to acknowledge in the management representation letter that you have reviewed and approved the financial statements, schedule of expenditures of federal awards, and related notes prior to their issuance and have accepted responsibility for them. Further you are required to designate an individual with suitable skill, knowledge, or experience to oversee any nonaudit services we provide and for evaluating the adequacy and results of those services and accepting responsibility for them.

Management is responsible for establishing and maintaining effective internal controls, including internal controls over compliance, and for evaluating and monitoring ongoing activities, to help ensure that appropriate goals and objectives are met and that there is reasonable assurance that government programs are administered in compliance with compliance requirements. You are also responsible for the selection and application of accounting principles; and for the fair presentation in CLD's financial statements of the respective financial position of the governmental activities and CLD as a LSC defined major fund and the respective changes in financial position and, where applicable, cash flows, in conformity with U.S. generally accepted accounting principles; and for compliance with applicable laws and regulations and the provisions of contracts and grant agreements.

Management is also responsible for making all financial records and related information available to us and for ensuring that management and financial information is reliable and properly recorded. Your responsibilities also include identifying significant vendor relationships in which the vendor has responsibility for program compliance and for the accuracy and completeness of that information. Your responsibilities also include adjusting CLD's financial statements to correct material misstatements and confirming to us in the representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to CLD's financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud or illegal acts affecting the government involving (1) management, (2) employees who have significant roles in internal

control, and (3) others where the fraud or illegal acts could have a material effect on CLD's financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that CLD complies with applicable laws and regulations, contracts, agreements, and grants. Additionally, as required by OMB Circular A-133, it is management's responsibility to follow up and take corrective action on reported audit findings and to prepare a summary schedule of prior audit findings and a corrective action plan. You are responsible for the preparation of the supplementary information in conformity with U.S. generally accepted accounting principles. You agree to include our report on the supplementary information in any document that contains and indicates that we have reported on the supplementary information. You agree to include our report on the supplementary information in any document that contains and indicates that we have reported on the supplementary information. You also agree to include the audited financial statements with any presentation of the supplementary information that includes our report thereon or make the audited financial statements readily available to users of the supplementary information no later that the date the supplementary information is issued with our report thereon.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying for us previous financial audits or other attestation engagements, performance audits, or studies related to the objectives discussed in the Audit Objective sections of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

Audit Procedures—General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the CLD's financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. We will plan and perform the audit to obtain reasonable rather than absolute assurance about whether CLD's financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity. Because the determination of abuse is substantive, *Government Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse.

Because an audit is designed to provide reasonable, but not absolute assurance and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements or noncompliance may exist and not be detected by us. In addition, an audit is not designed to detect immaterial misstatements, or violations of laws or governmental regulations that do not have a direct and material effect on CLD's financial statements or major programs.

However, we will inform you of any material errors and any fraudulent financial reporting or misappropriation of assets that come to our attention. We will also inform you of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential, and of any material abuse that comes to our attention. We will include such matters in the reports required for a Single Audit. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about CLD's financial statements and related matters.

Audit Procedures—Internal Controls

Our audit will include obtaining an understanding of the entity and its environment, including internal control, sufficient to assess the risks of material misstatement of the CLD's financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to CLD's financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on CLD's financial statements. Our tests, if performed, will be less in scope that would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards.*

As required by OMB Circular A-133, we will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to CLD's major federal award program as defined by LSC. However, our tests will be less in scope that would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to OMB Circular A-133.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards, *Government Auditing Standards,* and OMB Circular A-133.

Audit Procedures—Compliance

As part of obtaining reasonable assurance about whether CLD's financial statements are free of material misstatement, we will perform tests of compliance with applicable laws and regulations and the provisions of contracts and agreements, including grant agreements. However, the

objective of those procedures will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

OMB Circular A-133 requires that we also plan and perform the audit to obtain reasonable assurance about whether the auditee has complied with applicable laws and regulations and the provisions of contracts and grant agreements applicable to major programs. Our procedures will consist of tests of transactions and other applicable procedures described in the *OMB Circular A-133 Compliance Supplement* and related addenda for the types of compliance requirements that could have a direct and material effect on CLD's major program. The purpose of these procedures will be to express an opinion on CLD's compliance with requirements applicable to its major program in our report on compliance issued pursuant to OMB Circular A-133.

Engagement Administration, Fees, and Other

We understand that your employees will prepare all cash or other confirmations we request and will locate any documents selected by us for testing.

At the conclusion of the engagement, we will complete the appropriate sections of the LSC Summary Report Form that summarizes our audit findings. We will provide three copies of our reports to submit in the reporting package (including financial statements, schedule of expenditures of federal awards, summary schedule of prior audit findings and management letter, if applicable, and auditors' reports). However, it is management's responsibility to submit the reporting package along with the LSC Summary Report Form to LSC Office of Inspector General.

The audit documentation for this engagement is the property of Breazeale, Saunders and O'Neil, Ltd. and constitutes confidential information. However, pursuant to authority given by law or regulation, we may be requested to make certain audit documentation available to the Department of the Interior, the cognizant agent for the Tribe, or its designee, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of Breazeale, Saunders and O'Neil, Ltd. personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including governmental agencies.

The audit documentation for this engagement will be retained for minimum of five years after the report release or for any additional period requested by the Department of the Interior or pass-through agencies. If we are aware that a federal awarding agency, pass-through entity, or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding prior to destroying the audit documentation.

We expect to begin our audit in December, 2011. Paul Breazeale is the engagement partner and is responsible for supervising the engagement and signing the report. Our fees for these services are not to exceed $4,000, as previously agreed upon. Our invoices for these fees will be rendered each month as work progresses and are payable on presentation. Our fees are based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you before we incur the additional costs.

Government Auditing Standards require that we provide you with a copy of our most recent external peer review report and any letter of comment, and any subsequent peer review reports and letters of comment received during the period of the contract. This will be provided to you under separate cover.

We appreciate the opportunity to be of service to CLD and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the letter and return it to us.

Sincerely yours,

BREAZEALE, SAUNDERS & O'NEIL, LTD.

Paul V. Breazeale
Certified Public Accountant

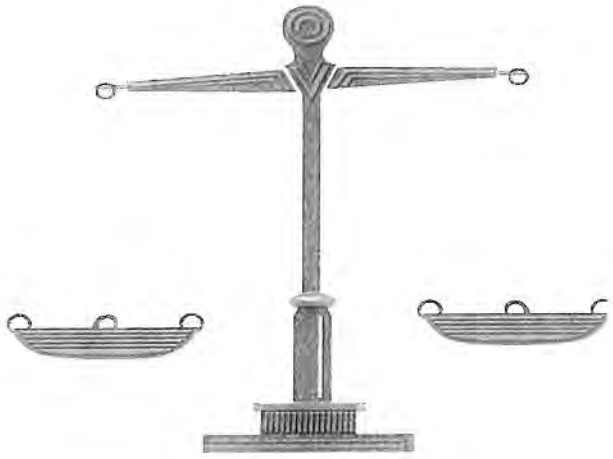
RESPONSE:

This letter correctly sets forth the understanding of CLD, a special revenue fund of the Mississippi Band of Choctaw Indians Tribal Government Services Division.

By: Rita Jones

Title: Director, CLD

CHOCTAW LEGAL DEFENSE
MISSISSIPPI BAND OF CHOCTAW INDIANS



REGULATORY POLICIES AND REPORTING REQUIREMENTS

CHOCTAW LEGAL DEFENSE
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OUTSIDE PRACTICE OF LAW
45 C.F.R. § 1604

Choctaw Legal Defense is a governmental department of the Mississippi Band of Choctaw Indians, and as such, CLD is tasked with the duty of representing the Members of the Tribe. In carrying out this function, CLD obtained a monetary grant from the Legal Services Corporation. Under Corporation law, recipients may permit its full-time attorneys to engage in pro bono legal services and to comply with reasonable demands of the Bar and Court.

Choctaw Legal Defense allows its attorneys to represent Tribal Members on both LSC grant cases and non-LSC grant cases. When engaged in LSC grant cases, CLD attorneys do not handle any matter outside the scope of that particular matter. When handlingnon-LSC cases, CLD does not utilize any funds of the LSC grant.

Choctaw Legal Defense is not supported in major party by the Corporation; therefore, CLD attorneys would not be considered full-time attorneys, under the Act.

APPEALS ON BEHALF OF CLIENTS
45 C.F.R. § 1605

Purpose

This part is intended to promote efficient and effective use of Corporation funds. It does not apply to any case or matter in which assistance is not being rendered with funds provided under the Act.

Policy

Choctaw Legal Defense does not utilize Corporation funds for any appeals conducted through the office.

FEE-GENERATING CASES
45 C.F.R. § 1609

Purpose

(a) To ensure that recipients do not use scarce legal services resources when private attorneys are available to provide effective representation and

(b) To assist eligible clients to obtain appropriate and effective legal assistance.

Definitions

(a) *Fee-generating case* means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds or from the opposing party.

(b) *Fee-generating case* does not include a case where:

(1) A court appoints a recipient or an employee of a recipient to provide representation in a case pursuant to a statute or a court rule or practice equally applicable to all attorneys in the jurisdiction, or

(2) A recipient undertakes representation under a contract with a government agency or other entity.

Policy

Choctaw Legal Defense represents Tribal Members pursuant to a Resolution established by the Mississippi Band of Choctaw Indians Tribal Council, the legislative body of the Tribe.

All eligible cases and matters are handled by Choctaw Legal Defense regardless of the availability of LSC funding; therefore, no fees are generated on any case handled by Choctaw Legal Defense.

PROGRAM INTEGRITY OF CHOCTAW LEGAL DEFENSE
45 C.F.R 1610.8

Choctaw Legal Defense is a distinct governmental entity of the Mississippi Band of Choctaw Indians, and operates under a Resolution of said government. CLD handles any eligible matter, civil or criminal, for Tribal Members, however, LSC funds are utilized only in accordance with the priorities established and under the auspices of the LSC Act.

Notwithstanding the funding from the Tribe, CLD does not engaged in any prohibited/restricted act under the LSC Act, as policy, nor does any Tribal Governmental agency have any direct control of the day to day affairs, or legal administrative decisions of CLD.

CLD does not utilize LSC funds for non-LSC activities, nor does it transfer or allow any other entity to do such.

CERTIFICATION OF PROGRAM INTEGRITY
45 C.F.R. § 1610

Recipient Name _____ Recipient Number _____

I certify that the governing body has received and reviewed a written report from the Executive Director pertaining to the recipient's compliance with the program integrity requirements of 45 C.F.R. 1610 and authorized me, based on the governing body's review and discussion of the director's report, to certify that:

1. The recipient is a legally separate entity from any organization which engages in restricted activity; and
2. Except for funds provided to a bar association, pro bono program, private attorney or law firm, or other entity for the sole purpose of funding private attorney involvement activities (PAI) pursuant to 45 C.F R. part 1614, since January 1, 1997, the recipient has not transferred LSC funds to any organization which engages in restricted activity; and
3. Since January 1, 1997, the recipient has not utilized recipient funds or resources to subsidize the restricted activity of any organization;
4. The recipient meets the requirements of 45 C.F.R. 1610.8(a) in that the recipient is physically and financially separate from any organization which engages in restricted activity. Factors relevant to the Board's determination of program independence and integrity include:
    a. The existence of separate personnel;
    b. The existence of separate accounting and timekeeping records;
    c. The degree of separation from facilities in which restricted activities occur, and the extent of such restricted activities;
    d. The extent to which signs and other forms of identification which distinguish the recipient from the other organization are present.

On behalf of the governing body, I acknowledge that compliance with the integrity and independence requirements of 45 C.F.R. 1610.8(a) is a prerequisite to the recipient receiving continued funding from LSC.

_____ **(Chair or President of the Board)**
_____ **(Date)**

FINANCIAL ELIGIBILITY POLICIES
45 C.F.R. § 1611

Purpose

This part sets forth requirements relating to the financial eligibility of individual applicants for legal assistance supported with LSC funds and Choctaw Legal Defense's responsibilities in making financial eligibility determinations. Financially eligible does not equate to entitlement of services.

This part also seeks to ensure that financial eligibility is determined in a manner conducive to development of an effective attorney-client relationship. In addition, this part sets forth standards relating to the eligibility of groups for legal assistance supported with LSC funds.

Finally, this part sets forth requirements relating to recipients' responsibilities in executing retainer agreements with clients.

Definitions

(a) "Advice and counsel" means legal assistance that is limited to the review of information relevant to the client's legal problem(s) and counseling the client on the relevant law and/or suggested course of action. Advice and counsel does not encompass drafting of documents or making third-party contacts on behalf of the client.

(b) "Applicable rules of professional responsibility" means the rules of ethics and professional responsibility generally applicable to attorneys in the jurisdiction where the recipient provides legal services.

(c) "Applicant" means an individual who is seeking legal assistance supported with LSC funds from a recipient. The term does not include a group, corporation or association.

(d) "Assets" means cash or other resources of the applicant or members of the applicant's household that are readily convertible to cash, which are currently and actually available to the applicant.

(e) "Brief services" means legal assistance in which the recipient undertakes to provide a discrete and time-limited service to a client beyond advice and consultation, including but not limited to activities, such as the drafting of documents or making limited third party contacts on behalf of a client.

(f) "Extended service" means legal assistance characterized by the performance of multiple tasks incident to continuous representation. Examples of extended service would include representation of a client in litigation, an administrative adjudicative proceeding, alternative dispute resolution proceeding, extended negotiations with a third

party, or other legal representation in which the recipient undertakes responsibility for protecting or advancing a client's interest beyond advice and counsel or brief services.

(g) "Governmental program for low income individuals or families" means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of financial need.

(h) "Governmental program for persons with disabilities" means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of mental and/or physical disability.

(i) "Income" means actual current annual total cash receipts before taxes of all persons who are resident members and contribute to the support of an applicant's household, as that term is defined by the recipient. Total cash receipts include, but are not limited to, wages and salaries before any deduction; income from self-employment after deductions for business or farm expenses; regular payments from governmental programs for low income persons or persons with disabilities; social security payments; unemployment and worker's compensation payments; strike benefits from union funds; veterans benefits; training stipends; alimony; child support payments; military family allotments; public or private employee pension benefits; regular insurance or annuity payments; income from dividends, interest, rents, royalties or from estates and trusts; and other regular or recurring sources of financial support that are currently and actually available to the applicant. Total cash receipts do not include the value of food or rent received by the applicant in lieu of wages; money withdrawn from a bank; tax refunds; gifts; compensation and/or one-time insurance payments for injuries sustained; non-cash benefits; and up to $2,000 per year of funds received by individual Native Americans that is derived from Indian trust income or other distributions exempt by statute.

Financial eligibility policies

(a) The governing body of Choctaw Legal Defense has adopted the following policies, which are consistent with 45 CFR 1611. Financial eligibility policies are reviewed at least once every three years and adjustments are made as necessary.

(b) Only individuals determined to be financially eligible under the Choctaw Legal Defense's financial eligibility policies and LSC regulations may receive legal assistance supported with LSC funds.

(c) Annual income ceilings for individuals and households are determined using LSC Income Guidelines (2011), at 125%. Information gathered includes sources of income and assets, which is recorded on Choctaw Legal Defense's Client Profile/Application for Assistance. Should the individual become ineligible, then the case/matter is converted to Choctaw Legal Defense's Tribal program.

(d) Choctaw Legal Defense does not represent groups/organizations.

(e) Choctaw Legal Defense gains asset information from the individual, which is recorded on the Client Profile/Application for Assistance. In establishing asset ceilings, Choctaw Legal Defense excludes consideration of a household's principal residence, vehicles used for transportation, assets used in producing income, and other assets which are exempt from attachment under State or Federal law.

Retainer agreements

(a) Choctaw Legal Defense executes a written retainer agreement with the client, at the time the Client Profile/Application for Assistance is completed. Said retainer agreement is consistent with the applicable rules of professional responsibility and prevailing practices in the Choctaw Legal Defense's service area and includes a statement identifying the legal problem for which representation is sought, and the nature of the legal services to be provided.

(b) As it is not required, Choctaw Legal Defense does not execute a retainer agreement for advice and counsel or brief services.

(c) Copies of all retainer agreements generated are maintained in the client file.

RESTRICTIONS ON LOBBYING AND CERTAIN OTHER ACTIVITIES 45 C.F.R. § 1612

Choctaw Legal Defense does not engage in Lobbying, nor any other prohibited activities under the Act.

CLASS ACTIONS
45 C.F.R. § 1617

Choctaw Legal Defense does not represent individuals on matters/cases relating to class actions.

DISCLOSURE OF INFORMATION
45 C.F.R. § 1619

Purpose

Disclosure of information that is a valid subject of public interest in the activities of a Choctaw Legal Defense

Policy

Any eligible member of the public may access the Act, Corporation rules, regulations and guidelines utilizing either the internet or an in-house meeting with the Director of Choctaw Legal Defense.

Choctaw Legal Defense's written policies, procedures, and guidelines, the names and addresses of the members of its governing body, and other materials are on file at the office of Choctaw Legal Defense. *

*Certain information requested may not be disclosed unless prior approval is obtained either from the Chief of the Mississippi Band of Choctaw Indians and/or Tribal Council.

Referral to the Corporation

If a person requests information, not required to be disclosed by this part, that the Corporation may be required to disclose under the Freedom of Information Act, Choctaw Legal Defense will inform the person seeking it how to request it from the Corporation.

Exemptions

Nothing in this part shall require disclosure of:

(a) Any information furnished to Choctaw Legal Defense by a client;

(b) The work product of an attorney or paralegal;

(c) Any material used by Choctaw Legal Defense in providing representation to clients;

(d) Any matter that is related solely to the internal personnel rules and practices of Choctaw Legal Defense; or

(e) Personnel, medical, or similar files.

PRIORITIES IN USE OF RESOURCES
45 C.F.R. § 1620

Purpose

Choctaw Legal Defense's governing body has written priorities for the types of cases and matters, including emergencies, to which Choctaw Legal Defense will limit its commitment of time and resources.

Establishing priorities

(a) Choctaw Legal Defense utilizes LSC suggested priorities for use of LSC funds. For non-LSC funds, Choctaw Legal Defense has developed a listing of all eligible case types.

(b) Choctaw Legal Defense handles specified cases/matters in all courts in Mississippi, regardless of the location of the case/matter. Utilization of surveys aid Choctaw Legal Defense in ascertaining the different legal issues presented by the approximately 10,000 Members; however, Choctaw Legal Defense generally handles only specified cases/matters, with importance being placed on time-sensitive cases/matters.

(c) Cases/matters are limited based on limited financial/personnel resources.

(d) All cases/matters not handled by Choctaw Legal Defense are referred to the local LSC agency.

Establishing policies and procedures for emergencies

Choctaw Legal Defense incorporates policies and procedures regarding undertaking emergency cases/matters not within established priorities. Emergencies include those non-priority cases/matters that require immediate legal action to:

(a) Secure or preserve the necessities of life,

(b) Protect against or eliminate a significant risk to the health or safety of the client or immediate family members, or

(c) Address other significant legal issues that arise because of new and unforeseen circumstances.

Annual review

(a) Priorities shall be set periodically and shall be reviewed by the governing body of the Choctaw Legal Defense annually.

(b) The following factors are among those considered in determining whether Choctaw Legal Defense's priorities should be changed:

(1) The extent to which the objectives of Choctaw Legal Defense's priorities have been accomplished;

(2) Changes in the resources of Choctaw Legal Defense;

(3) Changes in the size, distribution, or needs of the eligible client population; and

(4) The volume of non-priority emergency cases or matters in a particular legal area since priorities were last reviewed.

Signed written agreement

All staff who handle cases or matters, or are authorized to make decisions about case acceptance, must sign a simple agreement developed by the recipient that indicates that the signatory:

(a) Has read and is familiar with the priorities of Choctaw Legal Defense;

(b) Has read and is familiar with the definition of an emergency situation and the procedures for dealing with an emergency that have been adopted by Choctaw Legal Defense; and

(c) Will not undertake any case or matter for the recipient that is not a priority or an emergency.

RESTRICTION ON LEGAL ASSISTANCE TO ALIENS
45 C.F.R. § 1626

Purpose

This section of CLD's policy is to ensure that legal assistance is only provided to Enrolled Tribal members. CLD does not provide legal assistance to non-tribal members or illegal aliens.

Definitions

(a) Tribal Member includes persons described or defined by the Mississippi Band of Choctaw Indians to be Enrolled Tribal Members of the Mississippi Band of Choctaw Indians, or Enrolled Tribal Members of another federally recognized Native American tribe as defined by those tribes' enrollment standards.

Prohibitions

CLD shall not provide legal assistance for or on behalf of non-tribal members or illegal aliens. Legal assistance does not include normal intake and referral services.

Verification of Enrollment Status

(a) All applicants for legal assistance who claim to be Tribal Members shall be required to attest in writing in a standard form provided or approved by the Legal Service's Corporation that they are Tribal Members, unless the only service provided for a Tribal Member is brief advice and consultation by telephone which does not include continuous representation. Applicants are also required to provide written verification of their enrollment status.

(1) CLD may accept written verification in the form of originals, certified copies, or photocopies that appear to be complete, correct and authentic tribal enrollment documents.

(2) CLD may also accept any other authoritative document issued by a court or by another tribal entity that provides evidence of enrollment status.

SUBGRANTS AND MEMBERSHIP FEES OR DUES
45 C.F.R. § 1627

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).

Definitions

(a) Recipient refers to Choctaw Legal Defense.

(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) Membership fees or dues as used in this part means payments to an organization on behalf of a program or individual to be a member thereof, or to acquire voting or participatory rights therein.

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 paragraph (a)(2) of this section 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 before 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 the 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 45 CFR § 1627.3(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 by 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; 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 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 Instructions, 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.

Membership fees or dues

(a) LSC funds may not be used to pay membership fees or dues to any private or nonprofit organization, whether on behalf of a recipient or an individual.

(b) Paragraph (a) of this section does not apply to the payment of membership fees or dues mandated by a governmental organization to engage in a profession, or to the payment of membership fees or dues from non-LSC funds.

Contributions

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

Transfers to other recipients

(a) The requirements of 45 CFR § 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 45 CFR § 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.

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.

REDISTRICTING
45 C.F.R. § 1632

Purpose

CLD shall not participate in redistricting activities.

Definitions

(a) *Advocating or opposing any plan* means any effort, whether by request or otherwise, even if of a neutral nature, to revise a legislative, judicial, or elective district at any level of government.

(b) *Recipient* means Choctaw Legal Defense. For the purposes of this part, *recipient* includes subrecipient and employees of recipients and subrecipients.

(c) *Redistricting* means any effort, directly or indirectly, that is intended to or would have the effect of altering, revising, or reapportioning a legislative, judicial, or elective district at any level of government, including influencing the timing or manner of the taking of a census.

Prohibition

(a) Neither the Corporation nor any recipient shall make available any funds, personnel, or equipment for use in advocating or opposing any plan or proposal, or representing any party, or participating in any other way in litigation, related to redistricting.

(b) This part does not prohibit any litigation brought by a recipient under the Voting Rights Act of 1965, as amended, 42 U.S.C. 1971 *et seq.*, provided such litigation does not involve redistricting.

RESTRICTION ON REPRESENTATION IN CERTAIN EVICTION PROCEEDINGS 45 C.F.R. § 1633

Purpose

CLD shall refrain from defending persons in an eviction proceeding that were charged with or convicted of illegal drug activities.

Definitions

(a) *Controlled substance* has the meaning given that term in section 102 of the Controlled Substances Act (21 U.S.C. 802);

(b) *Public housing project* and *public housing agency* have the meanings given those terms in section 3 of the United States Housing Act of 1937 (42 U.S.C. 1437a);

(c) *Charged with* means that a person is subject to a pending criminal proceeding instituted by a governmental entity with authority to initiate such proceeding against that person for engaging in illegal drug activity.

Prohibition

CLD is prohibited from defending any person in a proceeding to evict that person from a public housing project if:

(a) The person has been charged with or has been convicted of the illegal sale, distribution, or manufacture of a controlled substance, or possession of a controlled substance with the intent to sell or distribute; and

(b) The eviction proceeding is brought by a public housing agency on the basis that the illegal drug activity for which the person has been charged or for which the person has been convicted threatens the health or safety of other tenants residing in the public housing project or employees of the public housing agency.

CLIENT STATEMENT IDENTITY AND STATEMENT OF FACTS 45 C.F.R. § 1636

Purpose

In all court proceedings CLD shall identify the plaintiff it represents to the defendant and ensures that the plaintiff has a colorable claim.

Requirements

(a) When CLD files a complaint in a court of law or otherwise initiates or participates in litigation against a defendant, or before CLD engages in pre-complaint settlement negotiations with a prospective defendant on behalf of a client who has authorized it to file suit in the event that the settlement negotiations are unsuccessful, it shall:

(1) Identify each plaintiff it represents by name in any complaint it files, or in a separate notice provided to the defendant against whom the complaint is filed where disclosure in the complaint would be contrary to law or court rules or practice, and identify each plaintiff it represents to prospective defendants in pre-litigation settlement negotiations, unless a court of competent jurisdiction has entered an order protecting the client from such disclosure based on a finding, after notice and an opportunity for a hearing on the matter, of probable, serious harm to the plaintiff if the disclosure is not prevented; and

(2) Prepare a dated written statement signed by each plaintiff it represents, enumerating the particular facts supporting the complaint, insofar as they are known to the plaintiff when the statement is signed.

(b) The statement of facts must be written in English and, if necessary, in a language other than English that the plaintiff understands.

(c) In the event of an emergency, where CLD reasonably believes that delay is likely to cause harm to a significant safety, property or liberty interest of the client, CLD may proceed with the litigation or negotiation without a signed statement of facts, provided that the statement is prepared and signed as soon as possible thereafter.

Access to written statements

(a) Written statements of facts prepared in accordance with this part are to be kept on file by CLD and made available to the Corporation or to any Federal department or agency auditing or monitoring the activities of the recipient or to any auditor or monitor receiving Federal funds to audit or monitor on behalf of a Federal department or agency or on behalf of the Corporation.

(b) This part does not give any person or party other than those listed in paragraph (a) of this section any right of access to the plaintiff's written statement of facts, either in the lawsuit or through any other procedure. Access to the statement of facts by such other persons or parties is governed by applicable law and the discovery rules of the court in which the action is brought.

Applicability

This part applies to cases for which private attorneys are compensated by CLD as well as to those cases initiated by the CLD's staff.

REPRESENTATION OF PRISONERS
45 C.F.R. § 1637

Purpose

CLD shall not use funds received from the Corporation under section 45 CFR § 1006(a)(1)(B) or 1006(a)(3) of the Act to participate in any civil litigation on behalf of persons incarcerated in Federal, State or local prisons.

Definitions

(a) *Incarcerated* means the involuntary physical restraint of a person who has been arrested for or convicted of a crime.
(b) *Federal, State or local prison* means any penal facility maintained under governmental authority.

Prohibition

CLD may not use funds received from the Corporation under section 145 CFR § 1006(a)(1)(B) or 1006(a)(3) of the Act to participate in any civil litigation on behalf of a person who is incarcerated in a Federal, State or local prison, whether as a plaintiff or as a defendant, nor may CLD participate on behalf of such an incarcerated person in any administrative proceeding challenging the conditions of incarceration.

Change in circumstances

If, to the knowledge of CLD, a client becomes incarcerated after litigation has commenced, and CLD has used funds received from the Corporation under section 45 CFR § 1006(a)(1)(B) or 1006(a)(3) of the Act to fund the client's representation, CLD must use its best efforts to withdraw promptly from the litigation, unless the period of incarceration is anticipated to be brief and the litigation is likely to continue beyond the period of incarceration.

RESTRICTION ON SOLICITATION
45 C.F.R. § 1638

Purpose

This part is designed to ensure that CLD and CLD employees do not solicit clients.

Definitions

(a) In-person means a face –to –face encounter or a personal encounter via other means of communication such as a personal letter or telephone call.
(b) Unsolicited advice means advice to obtain counsel or take legal action given by CLD or its employee to an individual who did not seek the advice and with whom CLD does not have an attorney-client relationship.

Prohibition (§ 1638.3):

(a) CLD and its employees are prohibited from representing a client as a result of in-person unsolicited advice.
(b) CLD and its employees are also prohibited from referring to other recipients individuals to whom they have given in-person unsolicited advice.

Permissible activities (§ 1638.4):

(a) This part does not prohibit CLD or its' employees from providing information regarding legal rights and responsibilities or providing information regarding the CLD's services and intake procedures through community legal education activities such as outreach, public service announcements, maintaining an ongoing presence in a courthouse to provide advice at the invitation of the court, disseminating community legal education publications, and giving presentations to groups that request them.
(b) CLD may represent an otherwise eligible individual seeking legal assistance from CLD as a result of information provided as described in section 1638.4(a), provided that the request has not resulted from in-person unsolicited advice.
(c) This part does not prohibit representation or referral of clients by CLD pursuant to a statutory or private ombudsman program that provides investigatory and referral services and/or legal assistance on behalf of persons who are unable to seek assistance on their own, including those who are institutionalized or are physically or mentally disabled.

Purpose

The purpose of this rule is to ensure that CLD does not initiate litigation involvement, or challenge or participate in, efforts to reform a Federal or State welfare system. The rule also clarifies when CLD may engage in representation on behalf of an individual client seeking specific relief from a welfare agency and under what circumstances CLD may use funds from sources other than the Corporation to comment on public rulemaking or respond to requests from legislative or administrative officials involving a reform of a Federal of State welfare system.

Section 1639.2:

An effort to reform a Federal or State welfare system includes all of the provisions, except for the Child Support Enforcement provisions of Title III, of Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Personal Responsibility Act), 110 Stat. 2105 (1996), and subsequent legislation enacted by Congress or the States to implement, replace or modify key components of the provisions of the Personal Responsibility Act or by States to replace or modify key components of their General Assistance or similar means-tested programs conducted by States or by counties with State funding or State mandates.

Prohibition (§ 1639.3):

Except a provided in Sections 1639.4 and 1639.5, CLD may not initiate legal representation, or participate in any other way in litigation, lobbying or rulemaking, involving an effort to reform Federal or State welfare systems. Prohibited activities include participation in:

(a) Litigation challenging laws or regulations enacted as part of an effort to reform a Federal or State welfare system.
(b) Rulemaking involving proposals that are being considered to implement an effort to reform a Federal or State welfare system.
(c) Lobbying before legislative or administrative bodies undertaken directly or through grassroots efforts involving pending or proposed legislation that is part of an effort to reform a Federal or State welfare system.

Permissible representation of eligible clients (§ 1639.4):

CLD may represent an individual eligible client who is seeking specific relief from a welfare agency.

Exceptions for public rulemaking and responding to requests with non-LSC funds (§ 1639.5):

Consistent with the provisions of 45 CFR 1612.6 (a) through (e), CLD may use non-LSC funds to comment in a public rulemaking proceeding or respond to a written request for information or testimony from a Federal, State or local agency, legislative body, or committee, or a member thereof, regarding an effort to reform a Federal or State welfare system.

RESTRICTION ON ASSISTED SUICIDE, EUTHANASIA, AND MERCY KILLING 45 C.F.R. § 1643

Purpose

This part is intended to ensure that CLD does not use funds for any assisted suicide, euthanasia or mercy killing activities prohibited by this part.

Definitions

(a) Assisted suicide means the provision of any means to another person with the intent of enabling or assisting that person to commit suicide.
(b) Euthanasia (or mercy Killing) is the use of active means by one person to cause the death of another person for reasons assumed to be merciful, regardless of whether the person killed consents to be killed.
(c) Suicide means the act or instance or taking one's own life voluntarily and intentionally.

Prohibition (§ 1643.3):

CLD may not use LSC funds to assist in, support, or fund any activity or service which has a purpose of assisting in, or to bring suit or provide any other form of legal assistance for the purpose of:

(a) Securing or funding any any item, benefit, program, or service furnished for the purpose of causing, or the purpose of assisting in causing, the suicide, euthanasia, or mercy killing of any individual;
(b) Compelling any person, institution, or governmental entity to provide or fund any item, benefit, program, or service for such purpose;
(c) Asserting or advocating a legal right to cause, or to assist in causing, the suicide, euthanasia, or mercy killing of any individual.

Applicability (§1643.4):

(a) Nothing in Section 1643.3 shall be interpreted to apply to:

(1) The withholding or withdrawing of medical treatment or medical care;
(2) The withholding of withdrawing of nutrition or hydration;
(3) Abortion;
(4) The use of items, goods, benefits, or services furnished for purposes relating to the alleviation of pain or discomfort even if they may increase the risk of death, unless they are furnished for the purpose of causing or assisting in causing death; or

(5) The provision of factual information regarding applicable law on assisted suicide, euthanasia and mercy killing. Nor shall section 1643.3 be interpreted as limiting or interfering with the operation of any statute or regulation governing the activities listed in this paragraph.

(b) This part does not apply to activities funded with a recipient's non-LSC funds.

DISCLOSURE OF CASE INFORMATION
45 C.F.R. § 1644

Purpose

The Purpose of this rule is to ensure that CLD discloses to the public and to the corporation certain information on cases filed in the court by their attorneys.

Definitions

For the purposes of this part:

(a) To disclose the cause of action means to provide a sufficient description of the case to indicate the type or principal nature of the case.

(b) Recipient means any entity receiving funds from the corporation pursuant to a grant or contract under section 1006(a)(1)(A) of the Act.

(c) Attorney means any full-time or part-time employed by CLD as a regular or contract employee.

Applicability

(a) The case disclosure requirements of this part apply:

(1) To actions filed on behalf of plaintiffs or petitioners who are clients of CLD.

(2) Only to the original filing of a case, except for appeals filed in appellate courts by CLD if CLD was not the attorney of record in the case below and CLD's client is the appellant;

(3) To a request filed on behalf of a client of CLD in a court of competent jurisdiction for judicial review of an administrative action;

(4) To cases filed pursuant to subgrants under 45 CFR part 1627 for the direct representation of eligible clients, except for subgrants for private attorney involvement activities under part 1614 of this chapter.

(b) This part does not apply to any cases filed by private attorneys as part of CLD's private attorney involvement activities pursuant to part 1614 of this chapter.

Case disclosure requirements

a. For each case filed in court by its attorney on behalf of a client CLD after January 1, 1998, CLD shall disclose, in accordance with the requirements of this part, the following information:
    1. The name and full address of each party to a case, unless:
        i. The information is protected by an order or rule of court or by State or Federal law; or
        ii. The CLD's attorney reasonably believes that revealing such information would put the client of the recipient at risk of physical harm;
    2. The cause of action;
    3. The name and full address of the court where the case is filed; and
    4. The case number assigned to the case by the court.

b. CLD shall provide the information required in paragraph (a) of this section to the corporation in semiannual reports in the manner specified by the Corporation. Recipients may file such reports on behalf of the subrecipients of cases that are filed under subgrants. Reports filed with the Corporation will be made available by the Corporation to the public upon request pursuant to the Freedom of Information Act, 5 U.S.C. 552.

c. Upon request, CLD shall make the information required in paragraph (a) of this section available in written form to any person. CLD may charge a reasonable fee for mailing and copying documents.

SAMPLE POLICIES

RESOLUTION NO. 60

LONE STAR LEGAL AID

BOARD OF DIRECTORS

POLICY AND PROCEDURE REGARDING CLASS ACTIONS

ATTEST:

The attached ***Policy and Procedure Regarding Class Actions*** was reviewed and adopted during a meeting of the Board of Directors of Lone Star Legal Aid held on December 09, 2005, by a majority of the members present.

December 09, 2005

RHONDA CAMPBELL
Secretary

LYDIA CLAY-JACKSON
Chair, Board of Directors

LONE STAR LEGAL AID

Policy and Procedure Regarding Class Actions

POLICY

A. It is the policy of LSLA to comply with the requirements of Section 504(a)(7) of P.L. 104-134 and 45 C.F.R. Part 1617, as amended from time to time, which are incorporated herein by reference. In the event a conflict arises between this Policy and the statute or regulations, the provisions of the statute or regulations will control. A copy of the current version of the Statute and Regulations is attached.

B. This policy replaces all prior policies.

C. (1) No attorney employed by LSLA shall initiate or participate in a class action.

(2) Initiating or participating in a class action means any involvement, at any stage of a class action, prior to or after an order granting relief. "Involvement" includes acting as amicus curiae, co-counsel or otherwise providing representation relating to a class action.

(3) Initiating or participating in a class action does not include:

(a) representation of an individual client seeking to withdraw from or opt out of a class, or obtain the benefit of relief ordered by the court, or

(b) non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate or advise others about, the terms of an order granting relief.

DISCUSSION

1. The prohibition on participating in a class action is extremely broad. An attorney employed by LSLA cannot do so, not as co-counsel, amicus curiae or otherwise.

2. The only thing an attorney can do, before final judgment is entered, is to represent an individual client who seeks to withdraw or opt out of a class. After final judgment, an attorney can represent an individual client seeking to enforce the relief ordered by the court.

3. An attorney can advise and inform people about a class action, and perform other non-adversarial activities.

4. The very breadth of this prohibition informs the interpretation of other regulations, where participation as co-counsel or amicus curiae is not expressly prohibited.

Public Law 104-134, 110 Stat. 1321 (1996)

Sec. 504(a) None of the funds appropriated in this Act to the Legal Services Corporation may be used to provide financial assistance to any person or entity (which may be referred to in this section as a 'recipient') --

(7) that initiates or participates in a class action suit;

61 FR 63754-01
1996 WL 685305 (F.R.)
(Cite as: 61 FR 63754)

RULES and REGULATIONS

LEGAL SERVICES CORPORATION

45 CFR Part 1617

Class Actions

Monday, December 2, 1996

*63754 **AGENCY**: Legal Services Corporation.

ACTION: Final rule.

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

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

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

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

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

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

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

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

Section 1617.1: Purpose.

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

Section 1617.2: Definitions.

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

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

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

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

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

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

The Board agreed that efforts to withdraw from a class action are consistent with the Congressional intent that LSC recipients provide representation to individual clients and should not be viewed as efforts to participate or to be included in a class action. The Board revised paragraph (b) of the definition of "*initiating or participating in any class action*" to clarify that the definition does not include the representation of an individual client seeking to withdraw from or opt out of a class by deleting reference to withdrawing or opting out from the definition. This change only authorizes actions by a recipient ***63755** necessary to ensure that its client is not included in the class or that any class order would not apply to the recipient's client. Any other activity in the case, however, is not permitted.

In summary, the final rule clarifies the definition of "*initiating or participating in any class action*" as extending to all types of involvement at all stages of a class action. Recipients may not initiate a class action or participate in one initiated by others, either at the trial or appellate level, nor may they continue involvement in a case that is later certified or otherwise determined by the court to be a class action. However, in response to comments on a situation where the recipient's client does not file for or move for certification of a class action, the Board requested that the following example be included in this commentary regarding the definition of "*initiating or participating in a class action*": In a case where the recipient files or otherwise initiates action to have the case certified as a class action, participation in the case is prohibited from the point that the recipient takes such actions. On the other hand, if the recipient is representing a client in a pending action that was not filed as a class action, and another party moves to have the case certified as a class action, the recipient will not be deemed to be participating in a class action until the court certifies it as such. Finally, recipients may not act as amicus curiae or co-counsel in a class action or intervene in a class action on behalf of individual

clients who seek to intervene in, modify, or challenge the adequacy of the representation of a class. Finally, recipients may not represent defendants in a class action.

Certain situations are not within the definition and are thus not prohibited by this rule. For example, recipients may advise clients about the pendency of a class action or its effect on the client and what the client would need to do to benefit from the case. Recipients may represent an eligible client in withdrawing from or opting out of a class action. Furthermore, the definition of a class action would not include a mandamus action or injunctive or declaratory relief actions, unless such actions are filed or certified as class actions.

Recipients may also represent an individual client seeking the benefit of the order, provided that any such involvement is only on behalf of an individual client and does not involve representation of an entire class and may represent an individual client seeking to withdraw from or opt out of a class.

Section 1617.3: Prohibition.

This section prohibits LSC recipients from initiating or participating in any class action.

Section 1617.4: Recipient Policies and Procedures.

This section requires recipients to adopt written policies and procedures to guide the recipient's staff in ensuring compliance with this rule.

List of Subjects in 45 CFR Part 1617

Grant programs--law, Legal services.

For reasons set out in the preamble, LSC revises 45 CFR Part 1617 to read as follows:

PART 1617--CLASS ACTIONS

Sections:

Authority: 29 U.S.C. 2996e(d)(5); 110 Stat. 3009 (1996); 110 Stat. 1321 (1996).

§ 1617.1: Purpose.

This rule is intended to ensure that LSC recipients do not initiate or participate in class actions.

§ 1617.2: Definitions.

(a) Class action means a lawsuit filed as, or otherwise declared by the court having jurisdiction over the case to be, a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure or the comparable State statute or rule of civil procedure applicable in the court in which the action is filed.

(b) (1) Initiating or participating in any class action means any involvement at any stage of a class action prior to or after an order granting relief. "Involvement" includes acting as amicus curiae, co-counsel or otherwise providing representation relating to a class action.

(2) Initiating or participating in any class action does not include representation of an individual client seeking to withdraw from or opt out of a class or obtain the benefit of relief ordered by the court, or non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate or advise others about the terms of an order granting relief.

§ 1617.3: Prohibition.

Recipients are prohibited from initiating or participating in any class action.

§ 1617.4: Recipient policies and procedures.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part.

Dated: November 26, 1996.

Victor M. Fortuno,
General Counsel.

[FR Doc. 96-30620 Filed 11-29-96; 8:45 am]

BILLING CODE 7050-01-P

61 FR 63754-01, 1996 WL 685305 (F.R.)
END OF DOCUMENT

*** THIS SECTION IS CURRENT THROUGH THE OCTOBER 27, 2005 ISSUE OF ***
*** THE FEDERAL REGISTER ***

TITLE 45 -- PUBLIC WELFARE
SUBTITLE B -- REGULATIONS RELATING TO PUBLIC WELFARE
CHAPTER XVI -- LEGAL SERVICES CORPORATION
PART 1617 -- CLASS ACTIONS

§ 1617.1: Purpose:

This rule is intended to ensure that LSC recipients do not initiate or participate in class actions.

§ 1617.2: Definitions:

(a) Class action means a lawsuit filed as, or otherwise declared by the court having jurisdiction over the case to be, a class action pursuant to *Rule 23 of the Federal Rules of Civil Procedure* or the comparable State statute or rule of civil procedure applicable in the court in which the action is filed.

(b) (1) "*Initiating or participating in any class action*" means any involvement at any stage of a class action prior to or after an order granting relief. "*Involvement*" includes acting as amicus curiae, co-counsel or otherwise providing representation relating to a class action.

(2) Initiating or participating in any class action does not include representation of an individual client seeking to withdraw from or opt out of a class or obtain the benefit of relief ordered by the court, or non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate or advise others about the terms of an order granting relief.

§ 1617.3: Prohibition:

Recipients are prohibited from initiating or participating in any class action.

§ 1617.4: Recipient policies and procedures:

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part.

HISTORY: *[41 FR 51607,* Nov. 23, 1976; *61 FR 41963, 41964,* Aug. 13, 1996; *61 FR 63754, 63755,* Dec. 2, 1996]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART: *29 U.S.C. 2996e*(d)(5); 110 Stat. 3009 (1996); 110 Stat. 1321 (1996).

NOTES: [EFFECTIVE DATE NOTE: *61 FR 63754, 63755,* Dec. 2, 1996, revised Part 1617, effective Jan. 1, 1997.]

RESOLUTION NO. 65

LONE STAR LEGAL AID

BOARD OF DIRECTORS

POLICY REGARDING OUTSIDE PRACTICE OF LAW

ATTEST:

The attached ***Policy Regarding Outside Practice of Law*** was reviewed and adopted during a meeting of the Board of Directors of Lone Star Legal Aid held on December 09, 2005, by a majority of the members present.

December 09, 2005

Rhonda Campbell

RHONDA CAMPBELL
Secretary

L Clay-Jackson

LYDIA CLAY-JACKSON
Chair, Board of Directors

LONE STAR LEGAL AID

Outside Practice of Law Policy

Lone Star Legal Aid policy requires that attorneys comply with Legal Services Corporation regulation 45 C.F.R. § 1604 regarding the outside practice of law and generally devote full time to LSLA duties. Further, LSLA policy requires that to avoid actual or appearance of conflict of interest, any employee who engages in any remunerative activity in any field directly related to LSLA work must have prior approval from the Chief Executive Officer or his/her designee. See LSLA Personnel Policies and Procedures.

LSC Regulation 45 C.F.R. § 1604 limits the uncompensated, as well as compensated outside practice of law, and requires the Chief Executive Officer to determine that such practice is not inconsistent with the attorney's full-time responsibilities. Compensated outside practice is limited to newly employed attorneys who have a professional responsibility to close cases from a previous law practice or an attorney who acts pursuant to an appointment made under a court rule or practice of equal applicability to all attorneys in a jurisdiction and who remits to the program all compensation received. Uncompensated outside practice is limited to an attorney who is acting in a jurisdiction or an attorney who is acting on behalf of a close friend or family member or a religious, community or charitable group.

All attorneys must seek prior approval from the Chief Executive Officer or his/her designee prior to engaging in any form of outside practice of law, so that the Chief Executive Officer may determine that such practice is not inconsistent with the attorney's full-time responsibilities.

*** THIS SECTION IS CURRENT THROUGH THE OCTOBER 27, 2005 ISSUE OF ***
*** THE FEDERAL REGISTER ***

TITLE 45 -- PUBLIC WELFARE
SUBTITLE B -- REGULATIONS RELATING TO PUBLIC WELFARE
CHAPTER XVI – LEGAL SERVICES CORPORATION
PART 1604 -- OUTSIDE PRACTICE OF LAW

§ 1604.1: Purpose.

This part is intended to provide guidance to recipients in adopting written policies relating to the outside practice of law by recipients' full-time attorneys. Under the standards set forth in this part, recipients are authorized, but not required, to permit attorneys, to the extent that such activities do not hinder fulfillment of their overriding responsibility to serve those eligible for assistance under the Act, to engage in pro bono legal assistance and comply with the reasonable demands made upon them as members of the Bar and as officers of the Court.

§ 1604.2: Definitions.

As used in this part –

(a) Full-time attorney means an attorney who is employed full-time by a recipient in legal assistance activities supported in major part by the Corporation, and who is authorized to practice law in the jurisdiction where assistance is provided.

(b) Outside practice of law means the provision of legal assistance to a client who is not receiving that legal assistance from the employer of the full-time attorney rendering assistance, but does not include court appointments except where specifically stated or the performance of duties as a Judge Advocate General Corps attorney in the United States armed forces reserves.

(c) Court appointment means an appointment in a criminal or civil case made by a court or administrative agency under a statute, rule or practice applied generally to attorneys practicing in the court or before the administrative agency where the appointment is made.

§ 1604.3: General policy.

(a) A recipient shall adopt written policies governing the outside practice of law by full-time attorneys that are consistent with the LSC Act, this part and applicable rules of professional responsibility.

(b) A recipient's policies may permit the outside practice of law by full-time attorneys only to the extent allowed by the LSC Act and this part, but may impose additional restrictions as necessary to meet the recipient's responsibilities to clients.

§ 1604.4: Permissible outside practice.

A recipient's written policies may permit a full-time attorney to engage in a specific case or matter that constitutes the outside practice of law if:

(a) The director of the recipient or the director's designee determines that representation in such case or matter is consistent with the attorney's responsibilities to the recipient's clients;

(b) Except as provided in § 1604.7, the attorney does not intentionally identify the case or matter with the Corporation or the recipient; and

(c) The attorney is –

(1) Newly employed and has a professional responsibility to close cases from a previous law practice, and does so on the attorney's own time as expeditiously as possible; or

(2) Acting on behalf of him or herself, a close friend, family member or another member of the recipient's staff; or

(3) Acting on behalf of a religious, community, or charitable group; or

(4) Participating in a voluntary pro bono or legal referral program affiliated with or sponsored by a bar association, other legal organization or religious, community or charitable group.

§ 1604.5: Compensation.

(a) Except as provided in paragraph (b) of this section and § 1604.7(a), a recipient's written policies shall not permit a full-time attorney to receive any compensation for the outside practice of law.

(b) A recipient's written policies which permit a full-time attorney who meets the criteria set forth in § 1604.4(c)(1) to engage in the outside practice of law shall permit full-time attorneys to seek and receive personal compensation for work performed pursuant to that section.

§ 1604.6: Use of recipient resources.

(a) For cases undertaken pursuant to § 1604.4(c)(1), a recipient's written policies may permit a full-time attorney to use de minimis amounts of the recipient's resources for

permissible outside practice if necessary to carry out the attorney's professional responsibilities, as long as the recipient's resources, whether funded with Corporation or private funds, are not used for any activities for which the use of such funds is prohibited.

(b) For cases undertaken pursuant to § 1604.4(c) (2) through (4), a recipient's written policies may permit a full-time attorney to use limited amounts of the recipient's resources for permissible outside practice if necessary to carry out the attorney's professional responsibilities, as long as the recipient's resources, whether funded with Corporation or private funds are not used for any activities for which the use of such funds is prohibited.

§ 1604.7: Court appointments.

(a) A recipient's written policies may permit a full-time attorney to accept a court appointment if the director of the recipient or the director's designee determines that:

(1) Such an appointment is consistent with the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters;

(2) The appointment is made and the attorney will receive compensation for the court appointment under the same terms and conditions as are applied generally to attorneys practicing in the court where the appointment is made; and

(3) Subject to the applicable law and rules of professional responsibility, the attorney agrees to remit to the recipient any compensation received.

(b) A recipient's written policies may permit a full-time attorney to use program resources to undertake representation pursuant to a court appointment.

(c) A recipient's written policies may permit a full-time attorney to identify the recipient as his or her employer when engaged in representation pursuant to a court appointment.

(d) If, under the applicable State or local court rules or practices or rules of professional responsibility, legal services attorneys are mandated to provide pro bono legal assistance in addition to the attorneys' work on behalf of the recipient's clients, the recipient's written policies shall treat such legal assistance in the same manner as court appointments under paragraphs (a)(1), (a)(3), (b) and (c) of this section, provided that the policies may only permit mandatory pro bono activities that are not otherwise prohibited by the LSC Act, applicable appropriations laws, or LSC regulation.

HISTORY: *[68 FR 67372, 67378,* Dec. 2, 2003]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART: *42 U.S.C. 2996e*(b)(3), 2996e(d)(6), 2996f(a)(4), 2996g(e).

NOTES: [EFFECTIVE DATE NOTE: *68 FR 67372, 67378,* Dec. 2, 2003, added this section as part of the revision of Part 1604, effective Feb. 2, 2004.]

RESOLUTION NO. 139

LONE STAR LEGAL AID

BOARD OF DIRECTORS

POLICY AND PROCEDURE REGARDING THE OUTSIDE PRACTICE OF LAW

ATTEST:

The attached ***Policy and Procedure Regarding the Outside Practice of Law*** was reviewed and adopted at a meeting of the Board of Directors of Lone Star Legal Aid held on December 11, 2009, by a majority of the members present.

December 11, 2009

RHONDA CAMPBELL
Secretary

RICHARD E. ROBERTS
Chair, Board of Directors

LONE STAR LEGAL AID

Policy and Procedure Regarding the Outside Practice of Law 45 C.F.R. Part 1604

POLICY

A. (1) It is the policy of LSLA to comply with the requirements of 45 C.F.R. Part 1604, as amended from time to time, which are incorporated herein by reference. In the event a conflict arises between this Policy and the regulations, the provisions of the regulations will control. A copy of the current version of the regulations is attached as Appendix A.

(2) This policy replaces all prior policies.

(3) Lone Star Legal Aid policy requires that attorneys comply with Legal Services Corporation regulation 45 C.F.R. § 1604 regarding the outside practice of law and generally devote full time to LSLA duties. Further, LSLA policy requires that to avoid actual or appearance of conflict of interest, any employee who engages in any remunerative activity in any field directly related to LSLA work must have prior approval from the Chief Executive Officer or his/her designee. See LSLA Personnel Policies and Procedures.

(4) LSC Regulation 45 C.F.R. § 1604 limits the uncompensated, as well as compensated outside practice of law, and requires the Chief Executive Officer to determine that such practice is not inconsistent with the attorney's full-time responsibilities.

(5) Compensated outside practice of law is limited to newly employed attorneys who have a professional responsibility to close cases from a previous law practice or an attorney who acts pursuant to an appointment made under a court rule or practice of equal applicability to all attorneys in a jurisdiction and who remits to the program all compensation received.

(6) Uncompensated outside practice of law is limited to an attorney who is acting in a jurisdiction pursuant to a court appointment or an attorney who is acting on behalf of him or herself, an LSLA staff member, a close friend or family member or a religious, community or charitable group.

(7) Attorneys may use de minimis amounts of LSLA resources for permissible outside practice of law if necessary to carry out the attorney's professional responsibilities, as long as LSLA's resources, whether funded with LSC or private funds, are not used for any activities for which the use of such funds is prohibited.

(8) All attorneys must seek prior approval from the Chief Executive Officer or his/her designee prior to engaging in any form of outside practice of law, so that the Chief Executive Officer or his/her designee may determine that such practice is not inconsistent with the attorney's full-time responsibilities.

PROCEDURE

1. LSLA Attorneys shall not engage in the outside practice of law without prior written approval of the Chief Executive Officer or his/her designee. Approval shall be requested using the Outside Practice of Law Request Form.

LONE STAR LEGAL AID

Outside Practice of Law Request Form

Attorney Name: _____

Reason Permission Requested: _____

_____

Compensation:

☐ Compensated (select appropriate box below):

☐ Attorney is newly employed and has a professional responsibility to close cases from a previous law practice, and does so on the attorney's own time as expeditiously as possible.

☐ Uncompensated (select appropriate box below):

☐ Attorney is acting on behalf of him or herself, a close friend, family member or another member of the recipient's staff; or

☐ Attorney is acting on behalf of a religious, community, or charitable group; or Attorney is participating in a voluntary pro bono or legal referral program affiliated with or sponsored by a bar association, other legal organization or religious, community or charitable group.

☐ Court Appointments:

☐ Attorney is acting on behalf of a jurisdiction pursuant to a Court Appointment. Subject to the applicable law and rules of professional responsibility, the attorney agrees to remit to LSLA any compensation received.

I have determined that such practice is not inconsistent with the Attorney's full-time responsibilities and the attorney has not intentionally identified the case or matter with LSLA or LSC.

Approval:

_____ _____

Chief Executive Officer or Designee Date

Policy and Procedure Regarding the Outside Practice of Law

Appendix A

45 C.F.R. 1604

provision of legal services to eligible clients in the State as the council may deem advisable.

§ 1603.10 Multi-state recipients.

Where a recipient has offices in more than one State, the council of the State in which the apparent violation occurred has the responsibility for notifying the Corporation and the recipient at its local and administrative offices.

PART 1604—OUTSIDE PRACTICE OF LAW

Sec.
1604.1 Purpose.
1604.2 Definitions.
1604.3 General policy.
1604.4 Permissible outside practice.
1604.5 Compensation.
1604.6 Use of recipient resources.
1604.7 Court appointments.

AUTHORITY: 42 U.S.C. 2996e(b)(3), 2996e(d)(6), 2996f(a)(4), 2996g(e).

SOURCE: 68 FR 67377, Dec. 2, 2003, unless otherwise noted.

§ 1604.1 Purpose.

This part is intended to provide guidance to recipients in adopting written policies relating to the outside practice of law by recipients' full-time attorneys. Under the standards set forth in this part, recipients are authorized, but not required, to permit attorneys, to the extent that such activities do not hinder fulfillment of their overriding responsibility to serve those eligible for assistance under the Act, to engage in pro bono legal assistance and comply with the reasonable demands made upon them as members of the Bar and as officers of the Court.

§ 1604.2 Definitions.

As used in this part—

(a) *Full-time attorney* means an attorney who is employed full-time by a recipient in legal assistance activities supported in major part by the Corporation, and who is authorized to practice law in the jurisdiction where assistance is provided.

(b) *Outside practice of law* means the provision of legal assistance to a client who is not receiving that legal assistance from the employer of the full-time attorney rendering assistance, but does not include court appointments except where specifically stated or the performance of duties as a Judge Advocate General Corps attorney in the United States armed forces reserves.

(c) *Court appointment* means an appointment in a criminal or civil case made by a court or administrative agency under a statute, rule or practice applied generally to attorneys practicing in the court or before the administrative agency where the appointment is made.

§ 1604.3 General policy.

(a) A recipient shall adopt written policies governing the outside practice of law by full-time attorneys that are consistent with the LSC Act, this part and applicable rules of professional responsibility.

(b) A recipient's policies may permit the outside practice of law by full-time attorneys only to the extent allowed by the LSC Act and this part, but may impose additional restrictions as necessary to meet the recipient's responsibilities to clients.

§ 1604.4 Permissible outside practice.

A recipient's written policies may permit a full-time attorney to engage in a specific case or matter that constitutes the outside practice of law if:

(a) The director of the recipient or the director's designee determines that representation in such case or matter is consistent with the attorney's responsibilities to the recipient's clients;

(b) Except as provided in §1604.7, the attorney does not intentionally identify the case or matter with the Corporation or the recipient; and

(c) The attorney is—

(1) Newly employed and has a professional responsibility to close cases from a previous law practice, and does so on the attorney's own time as expeditiously as possible; or

(2) Acting on behalf of him or herself, a close friend, family member or another member of the recipient's staff; or

(3) Acting on behalf of a religious, community, or charitable group; or

(4) Participating in a voluntary pro bono or legal referral program affiliated with or sponsored by a bar association, other legal organization or religious, community or charitable group.

§ 1604.5 Compensation.

(a) Except as provided in paragraph (b) of this section and § 1604.7(a), a recipient's written policies shall not permit a full-time attorney to receive any compensation for the outside practice of law.

(b) A recipient's written policies which permit a full-time attorney who meets the criteria set forth in § 1604.4(c)(1) to engage in the outside practice of law shall permit full-time attorneys to seek and receive personal compensation for work performed pursuant to that section.

§ 1604.6 Use of recipient resources.

(a) For cases undertaken pursuant to § 1604.4(c)(1), a recipient's written policies may permit a full-time attorney to use *de minimis* amounts of the recipient's resources for permissible outside practice if necessary to carry out the attorney's professional responsibilities, as long as the recipient's resources, whether funded with Corporation or private funds, are not used for any activities for which the use of such funds is prohibited.

(b) For cases undertaken pursuant to § 1604.4(c) (2) through (4), a recipient's written policies may permit a full-time attorney to use limited amounts of the recipient's resources for permissible outside practice if necessary to carry out the attorney's professional responsibilities, as long as the recipient's resources, whether funded with Corporation or private funds are not used for any activities for which the use of such funds is prohibited.

§ 1604.7 Court appointments.

(a) A recipient's written policies may permit a full-time attorney to accept a court appointment if the director of the recipient or the director's designee determines that:

(1) Such an appointment is consistent with the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters;

(2) The appointment is made and the attorney will receive compensation for the court appointment under the same terms and conditions as are applied generally to attorneys practicing in the court where the appointment is made; and

(3) Subject to the applicable law and rules of professional responsibility, the attorney agrees to remit to the recipient any compensation received.

(b) A recipient's written policies may permit a full-time attorney to use program resources to undertake representation pursuant to a court appointment.

(c) A recipient's written policies may permit a full-time attorney to identify the recipient as his or her employer when engaged in representation pursuant to a court appointment.

(d) If, under the applicable State or local court rules or practices or rules of professional responsibility, legal services attorneys are mandated to provide pro bono legal assistance in addition to the attorneys' work on behalf of the recipient's clients, the recipient's written policies shall treat such legal assistance in the same manner as court appointments under paragraphs (a)(1), (a)(3), (b) and (c) of this section, provided that the policies may only permit mandatory pro bono activities that are not otherwise prohibited by the LSC Act, applicable appropriations laws, or LSC regulation.

PART 1605—APPEALS ON BEHALF OF CLIENTS

Sec.

AUTHORITY: Secs. 1007(a)(7), 1008(e), 42 U.S.C. 2996f(a)(7), 2996g(e).

SOURCE: 41 FR 18513, May 5, 1976, unless otherwise noted.

§ 1605.1 Purpose.

This part is intended to promote efficient and effective use of Corporation funds. It does not apply to any case or matter in which assistance is not being rendered with funds provided under the Act.

RESOLUTION NO. 55

LONE STAR LEGAL AID

BOARD OF DIRECTORS

POLICY AND PROCEDURE REGARDING FEE-GENERATING CASES

ATTEST:

The attached ***Policy and Procedure Regarding Fee-Generating Cases*** was reviewed and adopted during a meeting of the Board of Directors of Lone Star Legal Aid held on December 09, 2005, by a majority of the members present.

December 09, 2005

RHONDA CAMPBELL
Secretary

LYDIA CLAY-JACKSON
Chair, Board of Directors

LONE STAR LEGAL AID

Policy and Procedure Regarding Fee-Generating Cases

POLICY

A. It is the policy of LSLA to comply with the requirements of 42 U.S.C. §2996f(b)(1) and 45 C.F.R. Part 1609, as amended from time to time, which are incorporated herein by reference. In the event a conflict arises between this Policy and the statute or regulations, the provisions of the statute or regulations will control. A copy of the current version of the Statute and Regulations is attached.

B. This policy replaces all prior policies.

C.(1) (a) Fee-generating case means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds or from the opposing party.

(b) Fee-generating case does not include a case where:

(i) A court appoints LSLA or an employee of LSLA to provide representation in a case, pursuant to a statute or a court rule or practice equally applicable to all attorneys in the jurisdiction, or

(ii) LSLA undertakes representation under a contract with a government agency or other entity, which pays LSLA for each case taken.

(2) LSLA may not provide legal assistance in a fee-generating case unless referral of the case has been attempted, or the applicant had already consulted the local lawyer referral service and/or two private attorneys, and:

(a) The case has been rejected either by the local lawyer referral service, or by two private attorneys; or

(b) Neither the referral service nor two private attorneys will consider the case without payment of a consultation fee.

(3) LSLA may provide legal assistance in a fee-generating case without first attempting to refer the case only when:

(a) An eligible client is seeking Social Security Title II benefits or SSI benefits;

(b) LSLA, after consultation with appropriate representatives of the private bar, has determined that the type of case is one that private attorneys in the area served by the branch office ordinarily do not accept, or do not accept without prepayment of a fee; or

(c) The Chief Executive Officer, the Litigation Director or the Managing Attorney has determined that referral of the case to the private bar is not possible because:

(i) Documented attempts to refer similar cases in the past generally have been futile;

(ii) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate, and consistent with professional responsibility, referral will be attempted at a later time; or

(iii) Recovery of damages is not the principal object of the applicant's case and substantial statutory attorneys' fees are not likely to be available.

DISCUSSION

A. It is important to note that, while this policy permits LSLA to provide representation in certain fee-generating cases, LSLA is precluded from claiming or collecting and retaining any attorneys' fees unless that is permitted by the Policy and Procedure regarding Attorney Fees.

B.(1) LSLA can continue accepting Social Security and SSI cases, as in the past.

(2) Where a statute provides for an award of attorney fees, or where the recovery of damages is the principal object of the case, LSLA may not accept the case unless:

(a) The case has been rejected by the referral service or by two private attorneys;

(b) The referral service, and two private attorneys, require that the applicant pay a consultation fee;

(c) LSLA has determined, after consultation with the private bar, that private attorneys do not accept that type of case, or require prepayment of a fee;

(d) The case is an emergency, and client is advised of referral in the future;

(e) LSLA can document that referral of similar cases in the past has been futile.

C.(1) Each Managing Attorney needs to consult with representatives of the organized bar, the local referral service, or individual private practitioners with knowledge about practices in the branch office service area, particularly related to fee-generating matters. The purpose of this consultation is:

(a) To determine the practices of the referral service and private attorneys with respect to considering cases without the payment of consultation fees;

(b) To determine what types of cases private attorneys in the area served by the branch office do not ordinarily accept, or do not accept without prepayment of a fee.

(2) Each Managing Attorney is to submit a report of his consultation to the Chief Executive Officer and to the Litigation Directors.

(3) The results of this consultation will determine the cases which need to be referred to the referral service or private attorney.

D. There are two substantive changes in this rule, as compared to the old rule:

(1) Under the old rule, LSLA could represent a client in a case where the recovery of damages was not the principal object of the case, but merely ancillary to an action for equitable relief. The new rule distinguishes between cases where statutory attorney fees are provided for and cases where damages are sought.

Under the new rule:

(a) If adequate statutory fees are available to attract private counsel, LSLA is obligated to refer the case out to the private bar, regardless of whether recovery of damages is a principal object of the client's case.

(b) If statutory fees are not available, and recovery of damages is the principal object of the case, LSLA is obligated to refer the case out to the private bar.

(c) If statutory fees are not available, and recovery of damages is not the principal object of the case, the case is not considered a fee-generating case. For example, if the principal relief sought is equitable or a declaratory judgment, inclusion of a prayer for damages would not turn the matter into a fee-generating case. Similarly, if LSLA is representing the defendant in a case, the inclusion of a counterclaim for damages to protect the defendant's rights would not make the matter a fee-generating case.

(d) This is a significant change.

(2) Under the old rule, LSLA could take a case if neither the referral service, nor <u>any</u> attorney will consider the case without the payment of the consultation fee. The new rule authorizes LSLA to take a fee-generating case if neither the referral service, nor <u>two</u> attorneys, will consider the case without a consultation fee.

E. Aside from consulting with the private bar in an attempt to determine categories of case types that private attorneys would not accept, or would not accept without prepayment of a fee, each branch office needs to document cases which the office has unsuccessfully attempted to refer to the private bar. With such documentation, it will not be necessary to attempt to refer cases of the same type with the same circumstances. Documentation and experience will allow LSLA to flesh out this generalized provision.

F. In family law cases, the recovery of damages is not the principal object of the case. Statutory fees are available, but they are not likely to be substantial. LSLA can accept family law cases, as in the past, unless it appears that the attorney fees likely to be available from the opposing party are likely to be substantial. In addition, it would appear that private attorneys in the area would not accept family law cases without prepayment of fees, though that is something that the private bar needs to be consulted about.

PROCEDURE

A. Social Security and SSI cases can be treated as in the past, and the following procedure does not apply to such cases.

B.1. Determine whether the case is a fee-generating case. If it is, you need to complete the Fee Generating Case Form.

2. You can treat the application as in the past, without any further reference to its fee generating status, if:

(a) The case is an emergency case, and the required advice is given the client.

(b) Consultations with the private bar indicate that the case is of a type or category that private attorneys would not accept the case, or would not accept it without prepayment of fees.

(c) Documented attempts to refer similar cases in the past have been futile.

(d) Recovery of damages is not the principal object of the applicant's case and substantial statutory attorneys' fees are not likely to be available.

C. In all other circumstances, referral of the case must be considered.

1. Ask the applicant if he has talked to the local referral service, and what were the results. Note the results on the Fee Generating Case Form.

2. Ask the applicant if he has talked to any private attorney about the case, and what were the results. Note the results on the Fee Generating Case Form.

3. If the local referral service considers cases without payment of a consultation fee, refer the applicant to the local referral service, and provide the applicant with two Lone Star Legal Aid Fee Generating Case Referral Cards.

   (a) Explain to the applicant that a private attorney might accept the case, without a fee, and ask the applicant to see the two private attorneys the local referral service recommends. If an attorney declines the case, or requires any payment, the applicant is to request the attorney to sign the Card.

   (b) Inform the applicant that if he cannot get an appointment with a private attorney, or the private attorney refuses to sign the Card, the applicant should note that fact on the back of the Card.

   (c) If transportation is a problem, the applicant can make telephone contact with two private attorneys; if the attorneys refuse the case without payment, the applicant can note that on the back of the Card.

   (d) In appropriate circumstances, you may refer the applicant to two private attorneys, rather than the local lawyer referral service.

4. Advise the applicant to return to LSLA if two attorneys refuse the case, or refuse the case without prepayment, and the applicant has the Cards to so indicate. If the applicant returns, note the results on the Fee Generating Case Form, attach the Cards to the Form and keep the Form with the intake sheet.

Lone Star Legal Aid

FEE GENERATING CASE FORM

Attorney: _____

Office: _____

Client Name: _____

LSLA File Number: _____

Check off all that apply:

The case is a fee-generating case because:

☐ Statutory attorney fees are provided.

☐ The recovery of damages is the principal object of the case.

A.

☐ The case has been rejected by the local lawyer referral service.

☐ The case has been rejected by two private attorneys:

_____ and _____

If you have checked either box, the case may be accepted by LSLA.

B.

☐ The referral service will not consider the case without payment of a consultation fee.

☐ Two private attorneys refused to consider the case without payment of a consultation fee:

_____ and _____

If you have checked both boxes, the case may be accepted by LSLA.

C.

☐ LSLA has determined that the type of case is one that private attorneys in the area ordinarily do not accept, or do not accept without prepayment of a fee.

☐ LSLA has determined that referral of the case to the private bar is not possible because documented attempts to refer similar cases in the past generally have been futile.

☐ LSLA has determined that referral of the case to the private bar is not possible because emergency circumstances compel immediate action before referral can be made, but the client has been advised that, if appropriate, and consistent with professional responsibility, referral will be attempted at a later time.

☐ LSLA has determined that referral of the case to the private bar is not possible because recovery of damages is not the principal object of the applicant's case and substantial statutory attorneys' fees are not likely to be available.

If you have checked any of the boxes, the case may be accepted by LSLA.

Other: _____

_____
Signature

_____
Date

42 U.S.C. § 2996f(b)

No funds made available by the Corporation under this subchapter, either by grant or contract, may be used --

(1) to provide legal assistance (except in accordance with guidelines promulgated by the Corporation) with respect to any fee-generating case (which guidelines shall not preclude the provision of legal assistance in cases in which a client seeks only statutory benefits and appropriate private representation is not available);

62 FR 19398-01
1997 WL 188198 (F.R.)
(Cite as: 62 FR 19398)

RULES and REGULATIONS

LEGAL SERVICES CORPORATION

45 CFR Part 1609

Fee-Generating Cases

Monday, April 21, 1997

***19398 AGENCY**: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule revises the Legal Services Corporation's ("Corporation" or "LSC") regulation relating to fee-generating cases. A major revision is the removal of the old regulation's provisions on attorneys' fees. Attorneys' fees now are addressed in 45 CFR Part 1642 of the Corporation's regulations. In addition, other substantive and clarifying revisions are made, some sections have been merged, and unnecessary provisions have been eliminated.

DATES: Effective May 21, 1997.

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

SUPPLEMENTARY INFORMATION: This rule, which includes provisions on fee-generating cases and attorneys' fees has been under review by the Operations and Regulations Committee ("Committee") of the LSC Board of Directors ("Board") since September 1994. The Committee held public hearings on September 17 and October 28, 1994, and February 17, 1995, on proposed revisions. When it became apparent that Congress was considering legislation that would significantly affect this rule, the Committee suspended consideration until the new legislation became law on April 26, 1996. See Public Law 104-134, 110 Stat. 1321 (1996), the Corporation's FY 1996 appropriations act.

The new legislation did not affect this part's provisions on fee-generating cases but it did change the law on attorneys' fees by prohibiting recipients from claiming, or collecting and retaining, any attorneys' fees pursuant to any Federal or State law permitting or requiring the awarding of such fees. See §504(a)(13) of Pub. L. 104-134. On May 19, 1996, the Committee directed LSC staff to prepare an interim rule to implement the new legislative restriction on the

taking of attorneys' fees by LSC recipients. The Corporation adopted a separate rule, 45 CFR Part 1642, to address the attorneys' fees issue, which was published as an interim rule on August 29, 1996.

In order to delete the attorneys' fees provisions from Part 1609 and make other revisions, the Committee met on July 10 and 19, 1996, to consider draft revisions to Part 1609 and make a recommendation to the Board. The Board authorized the publication of a proposed rule, which was published in the Federal Register for public notice and comment on August 29, 1996.

The Corporation received 37 timely comments. The Committee held public hearings on the rule on December 14, 1996, and January 5, 1997, and made revisions to the proposed rule, which they recommended to the Board. The Board adopted the Committee's recommended version on January 6, 1997, as a final rule.

This final rule deletes the attorneys' fees provisions in the old rule. The issue of attorneys' fees is now addressed in 45 CFR Part 1642. This rule also retains the Corporation's longstanding definition of a "fee-generating case," but has added clarification of what is not considered to be a fee-generating case. In addition, the rule has been clarified and simplified by structural and minor substantive changes. Several changes have also been made to the requirements related to the referral of cases.

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

Section 1609.1: Purpose.

This section is revised to state more clearly the purposes of this regulation, which are: (1) To ensure that recipients do not use scarce resources for cases where private attorneys are available to provide effective representation, and (2) to assist eligible clients to obtain appropriate and effective legal assistance.

Section 1609.2: Definition.

This section defines "*fee-generating case*." The proposed rule made a technical change in numbering intended to clarify what is intended in the definition. However, the change raised comments on whether substantive changes to the definition were intended. To avoid such an interpretation, the Board rejected the changes in the proposed rule and retained the longstanding definition from the prior rule. The Board did adopt language in the proposed rule that was added to explain what is not a "*fee-generating case*." This revision makes it clear that court appointments are not to be considered fee-generating cases, even where fees are paid, since such cases are a professional obligation. The definition also does not include situations where recipients undertake representation under a contract with a government agency or other entity in which the agency or entity pays the recipient for each case taken. Such cases are not considered fee-generating under the rule, because a contract payment does not constitute fees that come from an award to a client or attorneys' fees that come from the losing party in a case, or from public funds.

It is important to clarify that, while this rule permits recipients to provide representation in certain fee-generating cases under the conditions set out in this rule, recipients are precluded from claiming or collecting and retaining any attorneys' fees as prohibited under part 1642.

Section 1609.3: General Requirements.

This section defines the limits within which recipients may undertake fee-generating cases. This new section reorganizes and replaces § 1609.3 and § 1609.4 of the old rule in order to make them easier to understand. It is also retitled. The provision requiring recipients to establish procedures for the referral of fee-generating cases is deleted, and a new section on policies and procedures is added to the rule.

Paragraph (a) provides that, except as provided in paragraph (b) of this section, a recipient may undertake a fee-generating case only after the case has been rejected by the local lawyer referral service or by two private attorneys, or when neither the referral service nor two attorneys will take the case without a consultation fee. The old rule stated that "neither the referral service nor any attorney will consider the case without payment of a consultation fee." [emphasis added] The old rule set up an impossible standard for a recipient to meet, and the Board has decided that the standard in this final rule is reasonable and consistent with the rule's purposes.

Paragraph (b) clarifies when a recipient may undertake a fee-generating case without first attempting to refer the case to the private bar. The first situation is delineated in § 1609.3(b)(1). The proposed rule would have revised this section to include any cases which, like Social Security cases, meet the terms of the underlying statutory provision, § 1007(b)(1) of the Legal Services Corporation Act, under which the Corporation may not preclude recipients from taking "cases in which a client seeks only statutory benefits and appropriate private representation is not available." 42 U.S.C. § 2996f(b)(1). The Committee sought comments in the proposed rule on whether there are other similar cases that should be treated in the same manner as Social Security cases. No comments urging extension of the provision to other types of cases were provided to the Corporation, and the Board decided to continue to limit the provision to Social Security cases. The only other similar type of case identified *19399 to the Board was Veterans' benefits cases, and oral comments indicated that there has not been much demand for LSC program assistance in such cases. If a particular case should arise, a program could decide to take the case after attempted referral or pursuant to § 1609.3(b)(2) or (3).

Another circumstance under which a recipient may undertake a fee-generating case without first attempting to refer the case to the private bar is set out in § 1609.3(b)(2). This provision is based, in part, on a provision that appeared in the original LSC regulation adopted in 1976 that allowed a recipient to determine that the case was of the type that private attorneys did not accept or did not accept without a fee. LSC removed that provision in 1984, in part because of concern that it gave too much discretion to project directors. The final rule adopts a middle ground between the two positions. It restores to the discretion of the recipient the decision about what kinds of cases would qualify, but requires that the recipient consult with appropriate representatives of the private bar in making that determination. The recipient has the authority to determine the appropriate representatives, which could include representatives of the organized

bar, the local referral service, or individual private practitioners with knowledge about practices in the area, particularly related to fee-generating matters. The provision contemplates either the governing body or the director of the recipient undertaking the consultation based on local conditions.

Finally, recipients that have State-wide, multiple or exceptionally large service areas are encouraged to make separate determinations when appropriate for different sub-areas within their total service area. For example, an area that includes a large city may have attorneys that normally accept a particular type of case, while rural areas may not.

Numerous revisions are made in the language and organization of § 1609.3(b)(3), which is based on the remaining provisions of § 1609.4 of the old rule. The old rule used the term "free referral" instead of "referral to the private bar." The Board has decided that the term "free referral" was too vague and has substituted the more descriptive term, "referral of the case to the private bar." This provision specifically authorizes the director of the recipient (or the director's designee) to make the determinations listed, subject to policies adopted by the recipient.

Section 1609.3(b)(3)(i) is new. It recognizes that in certain cases prior experience has shown that referral efforts would be futile. The Corporation does not wish scarce resources to be expended for efforts that the recipient knows will prove useless. This provision, which is intended to address the specific circumstances in a particular case, differs from § 1609.3(b)(2), which deals with categories of case types.

Section 1609.3(b)(3)(ii) is essentially the same as the comparable provision in the old rule. It allows a recipient to take a case if emergency circumstances require immediate action before referral procedures can be undertaken. The recipient must advise the client that, if appropriate, referral of the case will be attempted at a later time. However, any referral of the case must be done consistent with professional responsibility requirements.

Section 1609.3(b)(3)(iii) is a revised version of the old § 1609.4(b) and is included under the category of cases where the recipient's director or designee needs to make a case-by-case determination of the appropriate treatment of the case. Language on statutory fees has been added to make it clear that if adequate statutory fees are available to attract private counsel, the recipient should try to refer the case out to the private bar, regardless of whether recovery of damages is a principal object of the client's case. This was not clear under the old rule. The Board wants it to be clear that, if fees might be available sufficient to attract private counsel and the case does not fall under any of the other categories authorizing representation, the recipient is obligated to attempt referral in accordance with § 1609.3(a).

The language in the old rule relating to ancillary relief and counterclaims is deleted because it was confusing and unnecessarily complicated. Instead, this commentary includes examples of the kinds of circumstances under which the recipient's director could determine that the recovery of damages was not the principal object of the case. For example, if the principal relief sought is equitable or a declaratory judgment, inclusion of a prayer for damages would not turn the matter into a fee-generating case. Similarly, if the recipient is representing the defendant

in a case, the inclusion of a counterclaim for damages to protect the defendant's rights would not make the matter a fee-generating case.

Finally, because this final rule has deleted provisions on attorneys' fees, paragraph (c) directs recipients to the Corporation's new rule on attorneys' fees, 45 CFR Part 1642.

Section 1609.4: Recipient Policies, Procedures and Recordkeeping.

This new section requires that recipients establish written policies, procedures and recordkeeping requirements that will guide recipient staff to ensure compliance with this rule.

Miscellaneous Changes.

Sections 1609.5 through 1609.7 of the old rule are deleted and are superseded by 45 CFR Part 1642.

List of Subjects in 45 CFR Part 1609

Grant programs, Legal services.

For reasons set forth in the preamble, 45 CFR Part 1609 is revised to read as follows:

PART 1609--FEE-GENERATING CASES

Sections:

Authority: 42 U.S.C. §2996f(b)(1) and §2996e(c)(6).

§ 1609.1: Purpose.

This part is designed:

(a) To ensure that recipients do not use scarce legal services resources when private attorneys are available to provide effective representation and

(b) To assist eligible clients to obtain appropriate and effective legal assistance.

§ 1609.2: Definition.

(a) Fee-generating case means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to

result in a fee for legal services from an award to a client, from public funds or from the opposing party.

(b) Fee-generating case does not include a case where:

(1) A court appoints a recipient or an employee of a recipient to provide representation in a case pursuant to a statute or a court rule or practice equally applicable to all attorneys in the jurisdiction, or

(2) A recipient undertakes representation under a contract with a government agency or other entity.

§ 1609.3: General requirements.

(a) Except as provided in paragraph (b) of this section, a recipient may not provide legal assistance in a fee-generating case unless:

(1) The case has been rejected by the local lawyer referral service, or by two private attorneys; or

***19400**

(2) Neither the referral service nor two private attorneys will consider the case without payment of a consultation fee.

(b) A recipient may provide legal assistance in a fee-generating case without first attempting to refer the case pursuant to paragraph (a) of this section only when:

(1) An eligible client is seeking benefits under Subchapter II of the Social Security Act, 42 U.S.C. §401 et seq., as amended, Federal Old Age, Survivors, and Disability Insurance Benefits; or Subchapter XVI of the Social Security Act, 42 U.S.C. §1381 et seq., as amended, Supplemental Security Income for Aged, Blind, and Disabled;

(2) The recipient, after consultation with appropriate representatives of the private bar, has determined that the type of case is one that private attorneys in the area served by the recipient ordinarily do not accept, or do not accept without prepayment of a fee; or

(3) The director of the recipient, or the director's designee, has determined that referral of the case to the private bar is not possible because:

(i) Documented attempts to refer similar cases in the past generally have been futile;

(ii) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate, and consistent with professional responsibility, referral will be attempted at a later time; or

(iii) Recovery of damages is not the principal object of the recipient's client's case and substantial statutory attorneys' fees are not likely to be available.

(c) Recipients should refer to 45 CFR Part 1642 for restrictions on claiming, or collecting and retaining attorneys' fees.

§ 1609.4: Recipient policies, procedures and recordkeeping.

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

Dated: April 14, 1997.

Victor M. Fortuno,
General Counsel.

[FR Doc. 97-10038 Filed 4-18-97; 8:45 am]

BILLING CODE 7050-01-P

62 FR 19398-01, 1997 WL 188198 (F.R.)
END OF DOCUMENT

TITLE 45 -- PUBLIC WELFARE
SUBTITLE B -- REGULATIONS RELATING TO PUBLIC WELFARE
CHAPTER XVI -- LEGAL SERVICES CORPORATION
PART 1609 -- FEE-GENERATING CASES

§ 1609.1: Purpose.

This part is designed:

(a) To ensure that recipients do not use scarce legal services resources when private attorneys are available to provide effective representation and

(b) To assist eligible clients to obtain appropriate and effective legal assistance.

§ 1609.2: Definition.

(a) Fee-generating case means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds or from the opposing party.

(b) Fee-generating case does not include a case where:

(1) A court appoints a recipient or an employee of a recipient to provide representation in a case pursuant to a statute or a court rule or practice equally applicable to all attorneys in the jurisdiction, or

(2) A recipient undertakes representation under a contract with a government agency or other entity.

§ 1609.3: General requirements.

(a) Except as provided in paragraph (b) of this section, a recipient may not provide legal assistance in a fee-generating case unless:

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(2) Neither the referral service nor two private attorneys will consider the case without payment of a consultation fee.

(b) A recipient may provide legal assistance in a fee-generating case without first attempting to refer the case pursuant to paragraph (a) of this section only when:

(1) An eligible client is seeking benefits under Subchapter II of the Social Security Act, *42 U.S.C. 401* et seq., as amended, Federal Old Age, Survivors, and Disability Insurance Benefits; or Subchapter XVI of the Social Security Act, *42 U.S.C. 1381* et seq., as amended, Supplemental Security Income for Aged, Blind, and Disabled;

(2) The recipient, after consultation with appropriate representatives of the private bar, has determined that the type of case is one that private attorneys in the area served by the recipient ordinarily do not accept, or do not accept without prepayment of a fee; or

(3) The director of the recipient, or the director's designee, has determined that referral of the case to the private bar is not possible because:

(i) Documented attempts to refer similar cases in the past generally have been futile;

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(iii) Recovery of damages is not the principal object of the recipient's client's case and substantial statutory attorneys' fees are not likely to be available.

(c) Recipients should refer to 45 CFR Part 1642 for restrictions on claiming, or collecting and retaining attorneys' fees.

§ 1609.4: Recipient policies, procedures and recordkeeping.

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

HISTORY: *[49 FR 19656,* May 9, 1984; *62 FR 19398, 19400,* April 21, 1997]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART: *42 U.S.C. 2996f*(b)(1) and 2996e(c)(6).

NOTES: [EFFECTIVE DATE NOTE: *62 FR 19398, 19400,* April 21, 1997, revised Part 1609, effective May 21, 1997.]

RESOLUTION NO. 152

LONE STAR LEGAL AID
BOARD OF DIRECTORS

FINANCIAL ELIGIBILITY GUIDELINES

ATTEST:

The attached ***Financial Eligibility Guidelines*** were reviewed and adopted at a meeting of the Board of Directors of Lone Star Legal Aid held on May 01, 2010, by a majority of the members present.

May 01, 2010

RHONDA CAMPBELL
Secretary

RICHARD E. ROBERTS
Chair, Board of Directors

LONE STAR LEGAL AID

Financial Eligibility Policy

I. Introduction

(A) It is the policy of LSLA to comply with the requirements of 45 CFR 1611, as amended from time to time, which are incorporated herein by reference. A copy of the current version of the regulation is attached as Appendix A. A copy of the current Final Rule for 45 CFR 1611 is attached as Appendix B.

(B) This policy is effective as of January 1, 2010, and replaces all prior Financial Eligibility Guidelines.

(C) LSLA's Financial Eligibility Policy sets forth the requirements relating to the financial eligibility of individual applicants for legal assistance supported with LSC funds and LSLA's responsibilities in making financial eligibility determinations. LSLA's Financial Eligibility Policy is not intended to and does not create any entitlements to services for persons deemed financially eligible. LSLA seeks to ensure that financial eligibility is determined in a manner conducive to development of an effective attorney-client relationship.

(D) LSLA's Financial Eligibility Policy also sets forth standards relating to the eligibility of groups for legal assistance supported with LSC funds.

(E) LSLA's Financial Eligibility Policy also sets forth requirements relating to LSLA's responsibilities in executing representation agreements with our clients.

(F) In establishing income and asset ceilings, LSLA has considered the cost of living in the locality; the number of clients who can be served by LSLA's resources; the potentially eligible population at various ceilings; and the availability of other sources of legal assistance.

(G) All provisions of this policy are to be interpreted in such a way as to be consistent with federal law and regulations. In the event that a conflict arises between this policy and the regulation, the provisions of the regulation will control.

(H) The Chief Executive Officer (CEO) is given authority to make temporary changes in this policy so that the policy complies with changes in federal statutes and regulations, or their interpretation. Such temporary changes may remain in effect for such time as is necessary to allow the Board to consider the changes at a regular board meeting.

II. Applicability of Financial Eligibility Policy

(A) Only individuals and groups determined to be financially eligible under LSLA's Financial Eligibility Policy and LSC regulations may receive legal assistance supported with LSC funds. However, nothing herein shall preclude LSLA from providing legal assistance to an individual or a group without regard to that individual or group's income and assets if the legal assistance is wholly supported by funds from a source other than LSC, and is otherwise permissible under applicable law and regulations.

(B) LSLA may determine an applicant to be financially eligible for legal assistance if the applicant's income is at or below LSLA's annual income ceiling or the applicant's income exceeds LSLA's annual income ceiling but one or more of the exceptions to the annual income ceilings applies and the applicant's assets do not exceed LSLA's asset ceiling or the asset ceiling has been waived.

III. Definitions

(A) "*Advice and counsel*" means legal assistance that is limited to the review of information relevant to the client's legal problem(s) and counseling the client on the relevant law and/or suggested course of action. Advice and counsel does not encompass drafting of documents or making third-party contacts on behalf of the client.

(B) "*Applicable rules of professional responsibility*" means the rules of ethics and professional responsibility generally applicable to attorneys in the jurisdiction where LSLA provides legal services.

(C) "*Applicant*" means an individual who is seeking legal assistance supported with LSC funds from LSLA. The term does not include a group, corporation or association.

(D) "*Assets*" means cash or other resources of the applicant or members of the applicant's household that are readily convertible to cash, which are currently and actually available to the applicant.

(E) "*Brief services*" means legal assistance in which LSLA undertakes to provide a discrete and time-limited service to a client beyond advice and consultation, including but not limited to activities, such as the drafting of documents or making limited third party contacts on behalf of a client.

(F) "*Extended service*" means legal assistance characterized by the performance of multiple tasks incident to continuous representation. Examples of extended service would include representation of a client in litigation, an administrative adjudicative proceeding, alternative dispute resolution proceeding, extended negotiations with a third party, or other legal representation in which the

recipient undertakes responsibility for protecting or advancing a client's interest beyond advice and counsel or brief services.

(G) "*Governmental program for low income individuals and families*" means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of financial need.

(H) "*Governmental program for persons with disabilities*" means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of mental and/or physical disability.

(I) "*Household*" means:

(1) in general, persons who:

(i) Live together;

(ii) Are related by blood, marriage or adoption; and

(iii) Have a legal obligation of support;

(2) Self-declared households may be recognized as a "household" for the purpose of determining financial eligibility for:

(i) Persons who declare themselves to be a household, but who do not fall within the definition set forth in ¶ III(I)(1) above, by considering the following:

(a) shared housing,
(b) relationship,
(c) legally enforceable duty to support,
(d) moral obligation of support,
(e) local custom,
(f) local economic and social factors, and
(g) local resource availability.

(ii) Client files must document the basis of all determinations of self-declared households.

(J) "*Income*" means actual current annual total cash receipts before taxes of all persons who are resident members and contribute to the support of an applicant's household.

(1) *"Total cash receipts"* includes, but is not limited to, wages and salaries before any deduction; income from self-employment after deductions for business or farm expenses; regular payments from governmental programs

for low income persons or persons with disabilities; social security payments; unemployment and worker's compensation payments; strike benefits from union funds; veterans benefits; training stipends; alimony; child support payments; military family allotments; public or private employee pension benefits; regular insurance or annuity payments; income from dividends, interest, rents, royalties or from estates and trusts; and other regular or recurring sources of financial support that are currently and actually available to the applicant.

(2) *"Total cash receipts"* does not include the value of food or rent received by the applicant in lieu of wages; money withdrawn from a bank; tax refunds; gifts; compensation and/or one-time insurance payments for injuries sustained; non-cash benefits; and up to $2,000 per year of funds received by individual Native Americans that is derived from Indian trust income or other distributions exempt by statute.

IV. Applicant Determined to be Financially Eligible if Household Income Derived Solely From a Governmental Program for Low - Income Individuals or Families

(A) LSLA has determined that the income standards of the following governmental programs for low income individuals or families are at or below 125% of the Federal Poverty Guideline amounts and that the governmental programs have eligibility standards which include an assets test:

(1) TANF and

(2) SSI.

(B) An applicant for legal assistance is determined to be financially eligible, without the necessity of an independent determination of the applicant's income or asset eligibility, if the applicant's income is derived solely from one or more of the governmental programs listed in ¶ IV(A) herein.

V. Income and Asset Eligibility of Applicants Who Are Victims of Domestic Violence

In assessing the income or assets of an applicant who is a victim of domestic violence, LSLA shall consider only the assets and income of the applicant and members of the applicant's household other than those of the alleged perpetrator of the domestic violence and shall not include any assets held by the alleged perpetrator of the domestic violence, jointly held by the applicant with the alleged perpetrator of the domestic violence, or assets jointly held by any member of the applicant's household with the alleged perpetrator of the domestic violence.

VI. Financial Eligibility - Income

(A) General Income Eligibility Rule

(1) The annual income ceiling for receipt of LSLA services shall be 125% of the poverty guidelines published in the Federal Register by the U.S. Department of Health and Human Services ("HHS").

(2) An applicant is financially eligible if the applicant's assets do not exceed LSLA's asset ceiling, or the asset ceiling has been waived, and the applicant's income is equal to or below the annual income ceiling.

(3) LSLA's income ceiling shall change automatically as changes in the poverty guidelines are published by HHS in the Federal Register.

(B) Special Exceptions to the General Income Eligibility Rule

(1) An applicant whose income exceeds 200% of the federal poverty guidelines is financially eligible if the applicant's assets do not exceed LSLA's asset ceiling, or the asset ceiling has been waived, and:

(i) The applicant is seeking to maintain benefits provided by a governmental program to persons whose eligibility is determined on the basis of financial need; or

(ii) The Chief Executive Officer or his/her designee determines, based on documentation received by LSLA, that the applicant's income is primarily committed to medical or nursing home expenses and that, excluding such portion of the applicant's income which is committed to medical or nursing home expenses, the applicant would otherwise be financially eligible for service.

(2) An applicant whose income exceeds LSLA's annual income ceiling, but does not exceed 200% of the Federal Poverty Guidelines, is financially eligible if the applicant's assets do not exceed LSLA's asset ceiling, or the asset ceiling has been waived, and:

(i) The applicant is seeking legal representation in order to obtain benefits provided by a governmental program to persons whose eligibility is determined on the basis of financial need; or

(ii) The applicant is seeking legal representation to obtain or maintain governmental benefits for persons with disabilities.

(C) Income Exceptions

(1) An applicant whose household income exceeds LSLA's annual income ceiling, but does not exceed 200% of the Federal Poverty Guidelines, shall be considered financially eligible if the applicant's assets do not exceed

LSLA's asset ceiling, or the asset ceiling has been waived, based on consideration of one or more of the following factors as applicable to the applicant or members of the applicant's household:

(i) Current income prospects, taking into account seasonal variations in income;

(ii) Unreimbursed medical expenses and medical insurance premiums;

(iii) Fixed debts and obligations;

(iv) Expenses such as dependent care, transportation, clothing and equipment expenses necessary for employment, job training, or educational activities in preparation for employment;

(v) Non-medical expenses associated with age or disability;

(vii) Current taxes; or

(viii) Other significant factors that affect the applicant's ability to afford legal assistance, with approval from the C.E.O. or his designee.

(2) When an applicant is determined to be income eligible pursuant to one or more of the factors listed in ¶ VI(C)(1) herein, and is provided legal assistance, the basis of the financial eligibility determination shall be documented and retained in the client's file.

(D) Income Prospects

(1) As part of the financial eligibility assessment, all applicants shall be asked if they have reason to believe their income will change significantly in the near future.

(2) For those applicants who state a belief that their income will change significantly in the near future:

(i) The nature of the change and the basis of the belief shall be recorded in the file and

(ii) Shall be considered in determining the applicant's financial eligibility.

(3) For those applicants who do not believe their income will change significantly in the near future, no further inquiry is required, unless another reasonable basis for inquiry exists.

(E) Income Exception Form

(1) A copy of LSLA's Income Exception Form is attached as Appendix C.

VII. Financial Eligibility - Assets

(A) The non-excludable asset ceiling for receipt of LSLA services shall be $7500.00 per applicant plus $500.00 for each additional household member.

(B) Non-excludable assets shall be valued at their equity value, which shall be calculated as the current fair market value minus any encumbrances and costs of sale. Unless there is a good faith reason for doubt, LSLA shall accept the applicant's estimate of the current equity value of assets. The value of all non-excludable assets shall be considered subject to the asset ceiling.

(C) The following assets are not excludable and the current equity value of each must be recorded in the case management system and counted toward the asset ceiling for the household:

(1) Cash on hand;

(2) The current balance of all checking accounts;

(3) The current balance of all savings accounts, except those listed as excluded in VII(F)(5) below;

(4) The current value of all stocks, bonds, and/or certificates of deposit, except those held in plans described in VII(F)(5) below;

(5) All real property, except:

(i) the applicant's principal residence or

(ii) the applicant's homestead;

(6) All vehicles not used to transport members of the applicant's household or to produce income;

(7) All personal property in excess of the household's aggregate personal property exemption, based on equity value, as follows:

(i) $60,000 for a household of more than 1 person; or

(ii) $30,000 for a household of 1 person;

(8) Any other property not excluded in ¶ VII(F) below.

(D) The asset ceiling may be waived for specific applicants under unusual circumstances when approved by the CEO or his/her designee.

(1) Unusual circumstances for which the asset ceiling may be waived include, but are not limited to, the following:

(i) the applicant or a member of the applicant's household is over 60 years of age and the assets in excess of the household's asset ceiling are necessary for medical, burial, or necessary living expenses; and

(ii) the assets in excess of the household's asset ceiling plus the household's annual income is less than the annual income ceiling for the household.

(2) Whenever an asset waiver is obtained for applicants under unusual circumstances, LSLA shall record the reason for each asset waiver and retain the record of the waiver.

(3) A copy of LSLA's Asset Waiver Form is attached as Appendix D.

(E) This policy is intended to establish a rebuttable presumption that non-primary residence real property is readily convertible to cash and the equity value of such real property must be included in calculating the countable assets of the applicant's household. The presumption is rebutted by significant facts showing that such real property is not readily convertible to cash.

(F) The following assets are excluded and shall not be included in calculating the countable assets of an applicant's household:

(1) Disaster relief funds from any source, including but not limited to government funds, insurance benefits, and/or funds from charitable organizations;

(2) The household's principal residence;

(3) Non-recreational vehicles used for transporting members of the applicant's household;

(4) Income producing assets (such as a farmer's tractor or a carpenter's tools);

(5) Professionally prescribed health aids of members of the applicant's household;

(6) Certain savings plans as follows:

(i) assets held in or to receive payments, whether vested or not, under any stock bonus, pension, profit-sharing, or similar plan, including a retirement plan for self-employed individuals, and under any annuity or similar contract purchased with assets distributed from that type of plan, and under any retirement annuity or account described by Section 403(b) or 408A of the Internal Revenue Code of 1986, and under any individual retirement account or any individual retirement annuity, including a simplified employee pension plan, and under any health savings account described by Section 223 of the Internal Revenue Code of 1986;

(ii) assets held in or to receive payments, whether vested or not, under a government or church plan or contract, unless the plan or contract does not qualify under the definition of a government or church plan under the applicable provisions of the federal Employee Retirement Income Security Act of 1974;

(iii) contributions to a Roth IRA described in Section 408A, Internal Revenue Code of 1986;

(iv) assets held in or to receive payments or benefits under any of the following:

(a) any fund or plan established under Subchapter F, Chapter 54, Texas Education Code, including the person's interest in a prepaid tuition contract;

(b) any fund or plan established under Subchapter G, Chapter 54, Texas Education Code, including the person's interest in a savings trust account;

(c) any qualified tuition program of any state that meets the requirements of Section 529, Internal Revenue Code of 1986, as amended;

(7) Personal property with total aggregate equity value not more than $30,000 for a household of 1 person or $60,000 for a household of more than 1 person;

(8) One or more lots used for a place of burial for the dead;

(9) Cash surrender value of a life insurance policy or policies, insuring the life of the applicant, not to exceed $9,300 after subtracting any outstanding loans against the policy or policies; and/or

(10) Homestead, without regard to whether it is being temporarily rented and provided the applicant has not acquired another homestead, as described below:

(i) urban homestead of not more than 10 acres in one or more contiguous lots and including the improvements thereon, or

(ii) rural homestead of not more than 200 acres for a household of more than 1 person, or not more than 100 acres for a single person, in one or more parcels with the improvements thereon, and

(iii) defined as follows:

(a) "Urban" homesteads are those which, at the time the designation is made, the property is located within the limits of a municipality or its extraterritorial jurisdiction or a platted subdivision and is served by police protection, paid or volunteer fire protection, and at least three of the following services provided by a municipality or under contract to a municipality:

[1] electric;

[2] natural gas;

[3] sewer;

[4] storm sewer; and

[5] water; and

(b) "Rural" homesteads are all of those which are not "urban."

VIII. Group Representation

(A) LSLA may provide legal assistance to a group, corporation, association or other entity, if it provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel and either:

(1) The group, or for a non-membership group the organizing or operating body of the group, is primarily composed of individuals who would be financially eligible for LSC-funded legal assistance; or

(2) The group has as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance and the legal assistance relates to such activity.

(B) In order to make a determination that a group, corporation, association or other entity is eligible for legal services, LSLA shall consider the resources available to the group, such as the group's income and income prospects, assets and obligations, and either:

(1) For a group primarily composed of individuals who would be financially eligible for LSC funded legal assistance, whether the financial or other socioeconomic characteristics of the persons comprising the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance; or

(2) For a group having as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance, whether the financial or other socioeconomic characteristics of the persons served by the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance and the assistance sought relates to such activity of the group.

(C) LSLA shall collect information that reasonably demonstrates that the group, corporation, association or other entity meets the eligibility criteria set forth herein. A copy of LSLA's Group Eligibility Form is attached as Appendix E.

IX. Substantial Reason for Doubt

Whenever there is substantial reason to doubt the accuracy of an applicant's financial eligibility information, an appropriate inquiry to verify the information shall be made in a manner consistent with the attorney-client relationship.

X. Referrals from Other LSC Funded Programs

When LSLA receives a request from another LSC-funded program to extend legal assistance or undertake representation on behalf of a client in the same case or matter in which the referring program initially determined the client to be financially eligible, the client's financial eligibility shall not be re-determined, unless there has been a change in the client's financial status or there is substantial reason to doubt the validity of the original determination, provided that the referring program provides LSLA with a copy of the intake form documenting the financial eligibility of the client and LSLA retains a copy of that intake form.

XI. Confidentiality of Financial Information

Financial eligibility information obtained from clients shall be obtained and recorded by use of LSLA's computerized case management system or a paper intake sheet when the computerized case management system is unavailable. All such information shall be obtained and maintained so as to preserve client confidentiality and shall not be disclosed

in any manner that permits client identification to anyone except LSLA employees. LSLA need not verify the information, unless there is a substantial reason to doubt it, and then financial eligibility may be verified only in a manner consistent with the attorney-client relationship and in such a way as to not undermine attorney and client trust.

XII. Representation Agreement

(A) In all cases, except advice and counsel and brief service, applicants must sign a representation agreement when representation commences or as soon thereafter as is practicable.

(B) The Representation Agreement shall include a statement identifying the legal problem for which representation is sought and the nature of the legal services to be provided.

(C) Cases which are accepted for "investigation only" shall require an initial representation agreement for that purpose and, subsequently, should LSLA decide to provide further representation, an additional representation agreement for that purpose.

(D) For persons unable to sign a representation agreement, the representation agreement may be signed by their legal representative or, if none exists, their relative or other legally competent person seeking services on their behalf.

(E) In cases where no one is able to sign a representation agreement, e.g., incapacitated applicant without relatives or minor child for which the LSLA attorney was appointed ad litem, the attorney shall simply note the source of the referral on the representation agreement.

(F) Representation Agreements shall be retained in the relevant case files.

(G) A copy of LSLA's Representation Agreement Form is attached as Appendix F.

XIII. Change in Financial Eligibility Status

(A) If, after making a determination of financial eligibility and accepting a client for service, LSLA becomes aware that a client has become financially ineligible through a change in circumstances, LSLA shall discontinue representation supported with LSC funds if all of the following conditions are met:

(1) The changed financial status is sufficient and likely to continue long enough for the client to be able to hire a private attorney;

(2) The LSLA attorney can withdraw or discontinue representation without violating her/his professional responsibilities; and

(3) If a lawsuit is pending, the judge allows the LSLA attorney to withdraw.

(B) If, after making a determination of financial eligibility and accepting a client for service, LSLA later determines that the client is financially ineligible on the basis of later discovered or disclosed information, LSLA shall discontinue representation supported with LSC funds if all of the following conditions are met:

(1) The LSLA attorney can withdraw or discontinue representation without violating her/his professional responsibilities; and

(2) If a lawsuit is pending, the judge allows the LSLA attorney to withdraw.

XIV. Triennial Review

At least once every three (3) years, LSLA's Board shall review this Financial Eligibility Policy and make adjustments as necessary to maintain compliance with then current regulations.

Financial Eligibility Policy

Appendix A

45 C.F.R. 1611

activities. A recipient will be found to have objective integrity and independence from such an organization if:

(1) The other organization is a legally separate entity;

(2) The other organization receives no transfer of LSC funds, and LSC funds do not subsidize restricted activities; and

(3) The recipient is physically and financially separate from the other organization. Mere bookkeeping separation of LSC funds from other funds is not sufficient. Whether sufficient physical and financial separation exists will be determined on a case-by-case basis and will be based on the totality of the facts. The presence or absence of any one or more factors will not be determinative. Factors relevant to this determination shall include but will not be limited to:

(i) The existence of separate personnel;

(ii) The existence of separate accounting and timekeeping records;

(iii) The degree of separation from facilities in which restricted activities occur, and the extent of such restricted activities; and

(iv) The extent to which signs and other forms of identification which distinguish the recipient from the organization are present.

(b) Each recipient's governing body must certify to the Corporation within 180 days of the effective date of this part that the recipient is in compliance with the requirements of this section. Thereafter, the recipient's governing body must certify such compliance to the Corporation on an annual basis.

§ 1610.9 Accounting.

Funds received by a recipient from a source other than the Corporation shall be accounted for as separate and distinct receipts and disbursements in a manner directed by the Corporation.

PART 1611—FINANCIAL ELIGIBILITY

Sec.

AUTHORITY: 42 U.S.C. 2996e(b)(1), 2996e(b)(3), 2996f(a)(1), 2996f(a)(2); Section 509(h) of Pub. L. 104–134, 110 Stat. 1321 (1996); Pub. L. 105–119, 111 Stat. 2512 (1998).

SOURCE: 70 FR 45562, Aug. 8, 2005, unless otherwise noted.

§ 1611.1 Purpose.

This part sets forth requirements relating to the financial eligibility of individual applicants for legal assistance supported with LSC funds and recipients' responsibilities in making financial eligibility determinations. This part is not intended to and does not create any entitlement to service for persons deemed financially eligible. This part also seeks to ensure that financial eligibility is determined in a manner conducive to development of an effective attorney-client relationship. In addition, this part sets forth standards relating to the eligibility of groups for legal assistance supported with LSC funds. Finally, this part sets forth requirements relating to recipients' responsibilities in executing retainer agreements with clients.

§ 1611.2 Definitions.

(a) "Advice and counsel" means legal assistance that is limited to the review of information relevant to the client's legal problem(s) and counseling the client on the relevant law and/or suggested course of action. Advice and counsel does not encompass drafting of documents or making third-party contacts on behalf of the client.

(b) "Applicable rules of professional responsibility" means the rules of ethics and professional responsibility generally applicable to attorneys in the jurisdiction where the recipient provides legal services.

(c) "Applicant" means an individual who is seeking legal assistance supported with LSC funds from a recipient. The term does not include a group, corporation or association.

(d) "Assets" means cash or other resources of the applicant or members of

the applicant's household that are readily convertible to cash, which are currently and actually available to the applicant.

(e) "Brief services" means legal assistance in which the recipient undertakes to provide a discrete and time-limited service to a client beyond advice and consultation, including but not limited to activities, such as the drafting of documents or making limited third party contacts on behalf of a client.

(f) "Extended service" means legal assistance characterized by the performance of multiple tasks incident to continuous representation. Examples of extended service would include representation of a client in litigation, an administrative adjudicative proceeding, alternative dispute resolution proceeding, extended negotiations with a third party, or other legal representation in which the recipient undertakes responsibility for protecting or advancing a client's interest beyond advice and counsel or brief services.

(g) "Governmental program for low income individuals or families" means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of financial need.

(h) "Governmental program for persons with disabilities" means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of mental and/or physical disability.

(i) "Income" means actual current annual total cash receipts before taxes of all persons who are resident members and contribute to the support of an applicant's household, as that term is defined by the recipient. Total cash receipts include, but are not limited to, wages and salaries before any deduction; income from self-employment after deductions for business or farm expenses; regular payments from governmental programs for low income persons or persons with disabilities; social security payments; unemployment and worker's compensation payments; strike benefits from union funds; veterans benefits; training stipends; alimony; child support payments; military family allotments; public or private employee pension benefits; regular insurance or annuity payments; income from dividends, interest, rents, royalties or from estates and trusts; and other regular or recurring sources of financial support that are currently and actually available to the applicant. Total cash receipts do not include the value of food or rent received by the applicant in lieu of wages; money withdrawn from a bank; tax refunds; gifts; compensation and/or one-time insurance payments for injuries sustained; non-cash benefits; and up to $2,000 per year of funds received by individual Native Americans that is derived from Indian trust income or other distributions exempt by statute.

§ 1611.3 Financial eligibility policies.

(a) The governing body of a recipient shall adopt policies consistent with this part for determining the financial eligibility of applicants and groups. The governing body shall review its financial eligibility policies at least once every three years and make adjustments as necessary. The recipient shall implement procedures consistent with its policies.

(b) As part of its financial eligibility policies, every recipient shall specify that only individuals and groups determined to be financially eligible under the recipient's financial eligibility policies and LSC regulations may receive legal assistance supported with LSC funds.

(c)(1) As part of its financial eligibility policies, every recipient shall establish annual income ceilings for individuals and households, which may not exceed one hundred and twenty five percent (125%) of the current official Federal Poverty Guidelines amounts. The Corporation shall annually calculate 125% of the Federal Poverty Guidelines amounts and publish such calculations in the FEDERAL REGISTER as a revision to appendix A to this part.

(2) As part of its financial eligibility policies, a recipient may adopt authorized exceptions to its annual income ceilings consistent with § 1611.5.

(d)(1) As part of its financial eligibility policies, every recipient shall establish reasonable asset ceilings for individuals and households. In establishing asset ceilings, the recipient may exclude consideration of a household's principal residence, vehicles used for transportation, assets used in producing income, and other assets which are exempt from attachment under State or Federal law.

(2) The recipient's policies may provide authority for waiver of its asset ceilings for specific applicants under unusual circumstances and when approved by the recipient's Executive Director, or his/her designee. When the asset ceiling is waived, the recipient shall record the reasons for such waiver and shall keep such records as are necessary to inform the Corporation of the reasons for such waiver.

(e) Notwithstanding any other provision of this part, or other provision of the recipient's financial eligibility policies, every recipient shall specify as part of its financial eligibility policies that in assessing the income or assets of an applicant who is a victim of domestic violence, the recipient shall consider only the assets and income of the applicant and members of the applicant's household other than those of the alleged perpetrator of the domestic violence and shall not include any assets held by the alleged perpetrator of the domestic violence, jointly held by the applicant with the alleged perpetrator of the domestic violence, or assets jointly held by any member of the applicant's household with the alleged perpetrator of the domestic violence.

(f) As part of its financial eligibility policies, a recipient may adopt policies that permit financial eligibility to be established by reference to an applicant's receipt of benefits from a governmental program for low-income individuals or families consistent with §1611.4(c).

(g) Before establishing its financial eligibility policies, a recipient shall consider the cost of living in the service area or locality and other relevant factors, including but not limited to:

(1) The number of clients who can be served by the resources of the recipient;

(2) The population that would be eligible at and below alternative income and asset ceilings; and

(3) The availability and cost of legal services provided by the private bar and other free or low cost legal services providers in the area.

§1611.4 Financial eligibility for legal assistance.

(a) A recipient may provide legal assistance supported with LSC funds only to individuals whom the recipient has determined to be financially eligible for such assistance. Nothing in this part, however, prohibits a recipient from providing legal assistance to an individual without regard to that individual's income and assets if the legal assistance is wholly supported by funds from a source other than LSC, and is otherwise permissible under applicable law and regulation.

(b) Consistent with the recipient's financial eligibility policies and this part, the recipient may determine an applicant to be financially eligible for legal assistance if the applicant's assets do not exceed the recipient's applicable asset ceiling established pursuant to §1611.3(d)(1), or the applicable asset ceiling has been waived pursuant §1611.3(d)(2), and:

(1) The applicant's income is at or below the recipient's applicable annual income ceiling; or

(2) The applicant's income exceeds the recipient's applicable annual income ceiling but one or more of the authorized exceptions to the annual income ceilings, as provided in §1611.5, applies.

(c) Consistent with the recipient's policies, a recipient may determine an applicant to be financially eligible without making an independent determination of income or assets, if the applicant's income is derived solely from a governmental program for low-income individuals or families, provided that the recipient's governing body has determined that the income standards of the governmental program are at or below 125% of the Federal Poverty Guidelines amounts and that the governmental program has eligibility standards which include an assets test.

§ 1611.5 Authorized exceptions to the annual income ceiling.

(a) Consistent with the recipient's policies and this part, a recipient may determine an applicant whose income exceeds the recipient's applicable annual income ceiling to be financially eligible if the applicant's assets do not exceed the recipient's applicable asset ceiling established pursuant to § 1611.3(d), or the asset ceiling has been waived pursuant to § 1611.3(d)(2), and:

(1) The applicant is seeking legal assistance to maintain benefits provided by a governmental program for low income individuals or families; or

(2) The Executive Director of the recipient, or his/her designee, has determined on the basis of documentation received by the recipient, that the applicant's income is primarily committed to medical or nursing home expenses and that, excluding such portion of the applicant's income which is committed to medical or nursing home expenses, the applicant would otherwise be financially eligible for service; or

(3) The applicant's income does not exceed 200% of the applicable Federal Poverty Guidelines amount and:

(i) The applicant is seeking legal assistance to obtain governmental benefits for low income individuals and families; or

(ii) The applicant is seeking legal assistance to obtain or maintain governmental benefits for persons with disabilities; or

(4) The applicant's income does not exceed 200% of the applicable Federal Poverty Guidelines amount and the recipient has determined that the applicant should be considered financially eligible based on consideration of one or more of the following factors as applicable to the applicant or members of the applicant's household:

(i) Current income prospects, taking into account seasonal variations in income;

(ii) Unreimbursed medical expenses and medical insurance premiums;

(iii) Fixed debts and obligations;

(iv) Expenses such as dependent care, transportation, clothing and equipment expenses necessary for employment, job training, or educational activities in preparation for employment;

(v) Non-medical expenses associated with age or disability;

(vi) Current taxes; or

(vii) Other significant factors that the recipient has determined affect the applicant's ability to afford legal assistance.

(b) In the event that a recipient determines that an applicant is financially eligible pursuant to this section and is provided legal assistance, the recipient shall document the basis for the financial eligibility determination. The recipient shall keep such records as may be necessary to inform the Corporation of the specific facts and factors relied on to make such determination.

§ 1611.6 Representation of groups.

(a) A recipient may provide legal assistance to a group, corporation, association or other entity if it provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel and either:

(1) The group, or for a non-membership group the organizing or operating body of the group, is primarily composed of individuals who would be financially eligible for LSC-funded legal assistance; or

(2) The group has as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance and the legal assistance sought relates to such activity.

(b)(1) In order to make a determination that a group, corporation, association or other entity is eligible for legal services as required by paragraph (a) of this section, a recipient shall consider the resources available to the group, such as the group's income and income prospects, assets and obligations and either:

(i) For a group primarily composed of individuals who would be financially eligible for LSC-funded legal assistance, whether the financial or other socioeconomic characteristics of the persons comprising the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance; or

(ii) For a group having as a principal activity the delivery of services to

those persons in the community who would be financially eligible for LSC-funded legal assistance, whether the financial or other socioeconomic characteristics of the persons served by the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance and the assistance sought relates to such activity of the group.

(2) A recipient shall collect information that reasonably demonstrates that the group, corporation, association or other entity meets the eligibility criteria set forth herein.

(c) The eligibility requirements set forth herein apply only to legal assistance supported by funds from LSC, provided that any legal assistance provided by a recipient, regardless of the source of funds supporting the assistance, must be otherwise permissible under applicable law and regulation.

§ 1611.7 Manner of determining financial eligibility.

(a)(1) In making financial eligibility determinations regarding individual applicants, a recipient shall make reasonable inquiry regarding sources of the applicant's income, income prospects and assets. The recipient shall record income and asset information in the manner specified in this section.

(2) In making financial eligibility determinations regarding groups seeking LSC-supported legal assistance, a recipient shall follow the requirements set forth in § 1611.6(b) of this part.

(b) A recipient shall adopt simple intake forms and procedures to obtain information from applicants and groups to determine financial eligibility in a manner that promotes the development of trust between attorney and client. The forms shall be preserved by the recipient.

(c) If there is substantial reason to doubt the accuracy of the financial eligibility information provided by an applicant or group, a recipient shall make appropriate inquiry to verify the information, in a manner consistent with the attorney-client relationship.

(d) When one recipient has determined that a client is financially eligible for service in a particular case or matter, that recipient may request another recipient to extend legal assistance or undertake representation on behalf of that client in the same case or matter in reliance upon the initial financial eligibility determination. In such cases, the receiving recipient is not required to review or redetermine the client's financial eligibility unless there is a change in financial eligibility status as described in § 1611.8 or there is substantial reason to doubt the validity of the original determination, provided that the referring recipient provides and the receiving recipient retains a copy of the intake form documenting the financial eligibility of the client.

§ 1611.8 Change in financial eligibility status.

(a) If, after making a determination of financial eligibility and accepting a client for service, the recipient becomes aware that a client has become financially ineligible through a change in circumstances, a recipient shall discontinue representation supported with LSC funds if the change in circumstances is sufficient, and is likely to continue, to enable the client to afford private legal assistance, and discontinuation is not inconsistent with applicable rules of professional responsibility.

(b) If, after making a determination of financial eligibility and accepting a client for service, the recipient later determines that the client is financially ineligible on the basis of later discovered or disclosed information, a recipient shall discontinue representation supported with LSC funds if the discontinuation is not inconsistent with applicable rules of professional responsibility.

§ 1611.9 Retainer agreements.

(a) When a recipient provides extended service to a client, the recipient shall execute a written retainer agreement with the client. The retainer agreement shall be executed when representation commences or as soon thereafter as is practicable. Such retainer agreement must be in a form consistent with the applicable rules of professional responsibility and prevailing practices in the recipient's service area and shall include, at a minimum, a statement identifying the

legal problem for which representation is sought, and the nature of the legal services to be provided.

(b) No written retainer agreement is required for advice and counsel or brief service provided by the recipient to the client or for legal services provided to the client by a private attorney pursuant to 45 CFR part 1614.

(c) The recipient shall maintain copies of all retainer agreements generated in accordance with this section.

APPENDIX A TO PART 1611—LEGAL SERVICES CORPORATION 2008 POVERTY GUIDELINES*

Size of household	48 contiguous states and the District of Columbia	Alaska	Hawaii
1	$13,000	$16,250	$14,950
2	17,500	21,875	20,125
3	22,000	27,500	25,300
4	26,500	33,125	30,475
5	31,000	38,750	35,650
6	35,500	44,375	40,825
7	40,000	50,000	46,000
8	44,500	55,625	51,175
For each additional member of the household in excess of 8, add	4,500	5,625	5,175

*The figures in this table represent 125% of the poverty guidelines by household size as determined by the Department of Health and Human Services.

REFERENCE CHART—200% OF DHHS FEDERAL POVERTY GUIDELINES

Size of household	48 contiguous states and the District of Columbia	Alaska	Hawaii
1	$20,800	$26,000	$23,920
2	28,000	35,000	32,200
3	35,200	44,000	40,480
4	42,400	53,000	48,760
5	49,600	62,000	57,040
6	56,800	71,000	65,320
7	64,000	80,000	73,600
8	71,200	89,000	81,880
For each additional member of the household in excess of 8, add:	7,200	9,000	8,280

[73 FR 5458, Jan. 30, 2008]

PART 1612—RESTRICTIONS ON LOBBYING AND CERTAIN OTHER ACTIVITIES

Sec.
1612.1 Purpose.
1612.2 Definitions.
1612.3 Prohibited legislative and administrative activities.
1612.4 Grassroots lobbying.
1612.5 Permissible activities using any funds.
1612.6 Permissible activities using non-LSC funds.
1612.7 Public demonstrations and activities.
1612.8 Training.
1612.9 Organizing.
1612.10 Recordkeeping and accounting for activities funded with non-LSC funds.
1612.11 Recipient policies and procedures.

AUTHORITY: Pub. L. 104-208, 110 Stat. 3009; Pub. L. 104-134, 110 Stat. 1321, secs. 504(a) (2), (3), (4), (5), (6), and (12), 504 (b) and (e); 42 U.S.C. 2996e(b)(5), 2996f(a) (5) and (6), 2996f(b) (4), (6) and (7), and 2996g(e).

SOURCE: 62 FR 19404, Apr. 21, 1997, unless otherwise noted.

§ 1612.1 Purpose.

The purpose of this part is to ensure that LSC recipients and their employees do not engage in certain prohibited activities, including representation before legislative bodies or other direct lobbying activity, grassroots lobbying, participation in rulemaking, public demonstrations, advocacy training, and certain organizing activities. The

Financial Eligibility Policy

Appendix B

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Final Rule

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
*	*	*	*	*
Subchapter C—Vehicle Inspection and Maintenance; Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program; and Early Action Compact Counties Division 3: Early Action Compact Counties				
Section 114.80	Applicability	11/17/04	8/8/05 [Insert FR page number where document begins].	
Section 114.81	Vehicle Emissions Inspection Requirements.	11/17/04	8/8/05 [Insert FR page number where document begins].	
Section 114.82	Control Requirements	11/17/04	8/8/05 [Insert FR page number where document begins].	Subsection 114.82(b) is NOT part of the approved SIP.
Section 114.83	Waivers and Extensions	11/17/04	8/8/05 [Insert FR page number where document begins].	
Section 114.84	Prohibitions	11/17/04	8/8/05 [Insert FR page number where document begins].	
Section 114.85	Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers.	11/17/04	8/8/05 [Insert FR page number where document begins].	
Section 114.86	Low Income Repair Assistance Program (LIRAP) for Participating Early Action Compact Counties.	11/17/04	8/8/05 [Insert FR page number where document begins].	
Section 114.87	Inspection and Maintenance Fees	11/17/04	8/8/05 [Insert FR page number where document begins].	
*	*	*	*	*

[FR Doc. 05–15607 Filed 8–5–05; 8:45 am]
BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Financial Eligibility

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: The Legal Services Corporation ("LSC" or "Corporation") is amending its regulations relating to financial eligibility for LSC-funded legal services and client retainer agreements. The revisions are intended to reorganize the regulation to make it easier to read and follow; simplify and streamline the requirements of the rule to ease administrative burdens faced by LSC recipients in implementing the regulation and to aid LSC in enforcement of the regulation; and to clarify the focus of the regulation on the financial eligibility of applicants for LSC-funded legal services.

DATES: This final rule is effective September 7, 2005.

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 3333 K. St., NW., Washington, DC 20007–3522; (202) 295–1624 (phone); (202) 337–6519 (fax); *mcondray@lsc.gov.* (e-mail).

SUPPLEMENTARY INFORMATION: Section 1007(a) of the Legal Services Corporation Act requires LSC to establish guidelines, including setting maximum income levels, for the determination of applicants' financial eligibility for LSC-funded legal assistance. Part 1611 implements this provision, setting forth the requirements relating to determination and documentation of client financial eligibility. Part 1611 also sets forth requirements related to client retainer agreements.

Procedural Background

On June 30, 2001, LSC initiated a Negotiated Rulemaking and appointed a Working Group comprised of representatives of LSC (including the Office of Inspector General), the National Legal Aid and Defenders Association, the Center for Law and Social Policy, the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants and a number of individual LSC recipient programs. The Negotiated Rulemaking Working Group met three times throughout 2002 and developed a Draft Notice of Proposed Rulemaking (NPRM) which was the basis for the NPRM published by LSC on November 22, 2002 proposing significant revisions to Part 1611 (67 FR 70376).[1] Futher action on the rulemaking was suspended, in deference to a request by Representative James Sensenbrenner, Chairman of the U.S. House of Representatives Judiciary Committee, that LSC suspend action on the rulemaking pending the confirmation of new LSC Board of Directors members appointed by President Bush.

After the confirmation of nine new board members and the appointment of a new LSC President, the reconstituted Operations and Regulations Committee resumed consideration of the Part 1611 rulemaking in early 2004. At the meeting of the full Board of Directors on April 30, 2005, the Board approved the republication of a revised NPRM for public comment. That NPRM was published on May 24, 2005 (70 FR 29695).

LSC received thirteen (13) comments on the NPRM, including nine comments from individual LSC grant recipients, one comment from a senior attorney with a recipient commenting in his personal capacity, one comment from a member of the public, and comments from the Center for Law and Social Policy on behalf of the National Legal Aid and Defenders Association, and the American Bar Association's Standing Committee on Legal Aid and Indigent

[1] For additional discussion of the Negotiated Rulemaking Working Group, see 67 FR 70376 (November 22, 2002).

Defendants. With minor exceptions (discussed in greater detail below), the commenters strongly supported the proposed revisions. Upon receipt of the comments, LSC prepared a Draft Final Rule discussing the comments and making permanent the proposed revisions. The Draft Final Rule was considered by the Operations and Regulations Committee of the Board of Directors at its meeting of July 28, 2005, and the Final Rule was adopted by the Board of Directors at its meeting of July 30, 2005.

Revisions to Part 1611

While specific revisions are discussed in greater detail in the Section-by-Section analysis below, it should be noted that the revisions reflect several overall goals of the original Negotiated Rulemaking Working Group: Reorganization of the regulation to make it easier to read and follow; simplification and streamlining of the requirements of the rule to ease administrative burdens faced by LSC recipients in implementing the regulation, facilitate compliance and aid LSC in enforcement of the regulation; and clarification of the focus of the regulation on the financial eligibility of applicants for LSC-funded legal services as an issue separate from decisions on whether to accept a particular client for service. In particular, LSC is significantly reorganizing and simplifing the sections of the rule which set forth the various requirements relating to establishment of recipient annual income and asset ceilings, authorized exceptions and determinations of eligibility. These changes are intended to clarify the regulation and include substentive changes to make intake simpler and less burdensome and render basic financial eligibility determinations easier for recipients to make. LSC is also moving the existing provisions on group representation, with some amendment, to a separate section of the regulation. Finally, LSC is simplifying and clarifying the retainer agreement requirement.

Title of Part 1611

LSC is changing the title of Part 1611 from "Eligibility" to "Financial Eligibility." This change is intended, first, to make clear that with respect to individuals seeking LSC-funded legal assistance, the standards of this part deal only with the financial eligibility of such persons. LSC believes this change will help clarify that a finding of financial eligibility under Part 1611 does not create an entitlement to service. Rather, financial eligibility is merely a threshold question and the issue of whether any otherwise eligible applicant will be provided with legal assistance is a matter for the recipient to determine with reference to its priorities and resources. In addition, this part does not address eligibility based on citizenship or alienage status; those eligibility requirements are set forth in Part 1626 of LSC's regulations, Restrictions on Legal Assistance to Aliens. Finally, LSC received one comment suggesting that because this Part contains LSC's requirements pertaining to when and how recipients must execute retainer agreements with clients (a subject not directly related to financial eligibility determinations), that the title of this Part should refer to retainer agreements. While the requirements for retainer agreements are included in this Part, it primarily addresses financial eligibility and LSC disagrees that retainer agreements should be specifically included in the title of this Part.

Section-by-Section Analysis

Section 1611.1—Purpose

LSC is revising this section to make clear that the standards of this part concern only the financial eligibility of persons seeking LSC-funded legal assistance and that a finding of financial eligibility under Part 1611 does not create an entitlement to service. In addition, LSC is removing the language in the current regulation referring to giving preferences to "those least able to obtain legal assistance." Although the original LSC Act contained language indicating that recipients should provide preferences in service to the poorest among applicants, that language was deleted when the Act was reauthorized in 1977 and has remained out of the legislation ever since. Moreover, section 504(a)(9) of the FY 1996 appropriations act, Public Law 104–134 (incorporated by reference in the current appropriations act and implemented by regulation at 45 CFR Part 1620) provides that recipients are to make service determinations in accordance with written priorities, which take into account factors other than the relative poverty among applicants. Thus, as there is no statutory basis for a preference for those least able to afford assistance and because LSC believes that the regulation should focus on financial eligibility determinations without reference to issues relating to determinations by a recipient to provide services to a particular applicant, LSC has determined that such language should be removed from the regulation. LSC is also adding language specifying that this Part also sets forth financial standards for groups seeking legal assistance supported by LSC funds. Finally, LSC is adding a reference to the retainer agreement requirement in the purpose section to provide a notice at the beginning of the regulation that this subject is included in Part 1611. LSC received several comments specifically supporting and no comments objecting to these changes. LSC adopts the revisions as proposed.

Section 1611.2—Definitions

LSC is adding definitions for several terms and amending the definitions for each of the existing terms currently defined in the regulation. LSC believes that the new definitions and the amended definitions will help to make the regulation more easily comprehensible.

Section 1611.2(a)—Advice and Counsel

LSC is adding a definition of the term "advice and counsel" as that term appears in proposed section 1611.9, Retainer Agreements. Under the new definition, "advice and counsel" is defined as limited legal assistance that involves the review of information relevant to the client's legal problem(s) and counseling the client on the relevant law or action(s) to take to address the legal problem(s). Advice and counsel does not encompass drafting of documents or making third-party contacts on behalf of the client. Thus, for example, advising a client of what notice a landlord is required to provide to a tenant before evicting the tenant would fall under "advice and counsel," but making a phone call to a landlord to prevent the landlord from evicting a tenant would not be considered "advice and counsel." Several commenters specifically supported this proposed definition, and no commenters opposed the proposed definition. Accordingly, LSC adopts the definition as proposed.

Three of the commenters who specifically supported this proposed definition did express a concern, however, about the statement in the preamble to the NPRM in which LSC stated that LSC anticipates that advice and counsel will generally be characterized by a one-time or very short term relationship between the attorney and the client. These commenters noted that there are any number of situations in which a recipient attorney has to do some research in order to properly advise a client or in which the attorney provides advice and counsel to a client on a limited number of occasions, but over a somewhat extended period of time.

These commenters suggested deleting any reference to an anticipated time period in relation to the intended meaning of "advice and counsel."

The use of the word "generally" in the sentence the commenters objected to was intended to convey that LSC is aware that there are circumstances in which a case would qualify as "advice and counsel" notwithstanding that the advice and counsel may be provided over a somewhat extended time period. Nonetheless, it is the case that many, if not most, advice and counsel cases involve a short-term relationship between the attorney and the client. Even if the attorney must do some research prior to providing advice, LSC does not expect that the need to do research will create a relationship which extends for a significant period of time in most cases. Indeed, part of the justification for exempting advice and counsel cases from the retainer agreement requirement has been the fact that such relationships are of generally short duration, such that requiring the recipient to ensure an executed retainer agreement is obtained may take longer than the time it takes for the attorney to provide the advice and counsel to the client. If, instead, it was the case that advice and counsel cases typically last for a long time, the opportunity to obtain retainer agreements would not be lacking. Thus, LSC continues to anticipate that in most cases "advice and counsel" will be characterized by a one-time or short term relationship between the attorney and the client, but recognizes that this may not always be the case. Whether a particular case meets the definition of "advice and counsel" or not will continue to be determined on a case-by-case basis, considering the facts and circumstances.

Section 1611.2(b)—Applicable Rules of Professional Responsibility

LSC is adding a definition of the term "applicable rules of professional responsibility" as that term appears in proposed sections 1611.8, Change in Financial Eligibility Status and 1611.9, Retainer Agreements. This definition is intended to make clear that the references in the regulation refer to the rules of ethics and professional responsibility applicable to attorneys in the jurisdiction where the recipient either provides legal services or maintains its records. LSC received no comments objecting to this definition and adopts the definition as proposed.

Section 1611.2(c)—Applicant

Consistent with the intention to keep the focus of the regulation on the standards and criteria for determining the financial eligibility of persons seeking legal assistance supported with LSC funds, LSC has decided to use the term "applicant" throughout the regulation to emphasize the distinction between applicants, clients, and persons seeking or receiving assistance supported by other than LSC funds. Accordingly, LSC is adding a definition of applicant providing that an applicant is an individual seeking legal assistance supported with LSC funds. Groups, corporations and associations are specifically excluded from this definition, as the eligibility of groups is addressed wholly within section 1611.6.

Recipients currently may provide legal assistance without regard to a person's financial eligibility under Part 1611 when the assistance is supported wholly by non-LSC funds. LSC is not changing this (in fact, this principle is restated in section 1611.4(a)) and believes that the use of the term applicant as adopted herein will help to clarify the application of the rule.

LSC received no comments objecting to these changes and adopts the revisions as proposed.

Section 1611.2(d)—Assets

LSC is adding a definition of the term assets to the regulation. The new definition, "cash or other resources that are readily convertible to cash, which are currently and actually available to the applicant," is intended to provide some guidance to recipients as to what is meant by the term assets, yet provide considerable latitude to recipients in developing a description of assets that addresses local concerns and conditions. The key concepts intended in this definition are (1) ready convertibility to cash; and (2) availability of the resource to the applicant.

Although the term is not defined in the regulation, current section 1611.6(c) states that "assets considered shall include all liquid and non-liquid assets * * *" The intent of this requirement is that recipients are supposed to consider all assets upon which the applicant could draw in obtaining private legal assistance. While there was no intent to change the underlying requirement, in discussing the issues of assets and asset ceilings in the Working Group it became apparent that the terms "liquid" and "non-liquid" were obscuring understanding of the regulation. To some, the term "non-liquid" implied something not readily convertible to cash, while to others the term implied an asset that was simply something other than cash, without regard to the ease of converting the asset to cash. Thus, the Working Group agreed that the terms "liquid" and "non-liquid" should be eliminated and that the regulation should focus instead on the ready convertibility of the asset to cash.

The other key concept in the definition of asset is the availability of the resource to the applicant. Although the current regulation notes that the recipient's asset guidelines "shall take into account impediments to an individual's access to assets of the family unit or household," the Working Group was of the opinion that this principle could be more clearly articulated. LSC believes that the proposed language accomplishes that purpose.

LSC received numerous comments specifically supporting the proposed definition of assets. LSC, however, also received one comment expressing concern that defining assets as resources "readily convertible to cash" could preclude recipients from deeming all non-primary residence real estate as an asset and require a more lengthy inquiry into the property's ready convertibility to cash. LSC notes at the outset that under the current rules, recipients are already required to "take into account impediments" to access to the resources. Thus, to the extent that the monetary value of a particular applicant's real property is not available to an applicant, recipients should already be taking that inaccessibility into account in reviewing the applicant's resources. Nonetheless, LSC believes that recipients currently have sufficient discretion to establish a rebuttable presumption that an applicant's non-primary residence real property is a resource readily convertible to cash and countable toward the recipient's asset ceiling and also to determine that a particular piece of property is not readily convertible to cash and, as such, should not be considered a resource available to the applicant for the purpose of the asset ceiling. Nothing in the rule being adopted today disturbs that discretion. Accordingly, LSC adopts the definition as proposed.

Section 1611.2(e)—Brief Services

LSC is adding a definition of the term "brief services" as it is used in section 1611.9, Retainer Agreements. LSC notes that brief services is legal assistance characterized primarily by being distinguishable from both extended service and advice and counsel. Under the new definition, brief service is the performance of a discrete task (or tasks) which are not incident to continuous representation in a case but which involve more than the mere provision of advice and counsel. Examples of brief

services include activities such as the drafting of documents or personalized assistance with the completion of pleadings being prepared and filed by pro se litigants, and making limited third-party contacts on behalf of a client over, in most instances, a short time period.

LSC received two comments specifically supporting the proposed definition. LSC received one comment noting that the proposed definition does not address the relative simplicity or brevity of documents which may be drafted by a recipient within the scope of brief service. This commenter was concerned that the definition was contrary to the Case Service Reporting (CSR) definition of "brief services." This commenter suggested changing the definition or adding a statement that the definition in the regulation should not apply to the CSR. LSC notes that this definition of "brief services" is, while not identical, specifically intended to be fully consistent with the definition of "brief services" in the CSR. As such, LSC disagrees that the definitions are inconsistent and LSC adopts the definition as proposed.

Section 1611.2(f)—Extended Service

LSC is adding a definition of the term "extended service" as that term is used in section 1611.9, Retainer Agreements. As defined, extended service means legal assistance characterized by the performance of multiple tasks incident to continuous representation in which the recipient undertakes responsibility for protecting or advancing the client's interests beyond advice and counsel or brief services. Examples of extended service include representation of a client in litigation, administrative adjudicative proceeding, alternate dispute resolution proceeding, or extended negotiations with a third party. LSC received no comments objecting to the proposed definition and adopts the definition as proposed.

Section 1611.2(f)—Governmental Program for Low Income Individuals or Families

LSC is changing the term that is used in the regulation from "governmental program for the poor" to "governmental program for low income individuals and families." This change is not intended to create any substantive change in the current definition, but merely reflect preferred nomenclature. LSC received no comments objecting to this change and adopts the revision as proposed.

Section 1611.2(g)—Governmental Program for Persons With Disabilities

LSC is adding a definition of the term "governmental program for persons with disabilities." LSC is including in the authorized exceptions to the annual income ceilings an exception relating to applicants seeking to obtain or maintain governmental benefits for persons with disabilities. Accordingly, it is appropriate to include a definition for this term. The definition, "any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of mental and/or physical disability," is intended to be similar in structure and application to the definition of the term "governmental program for low income individuals and families." LSC received no comments objecting to the proposed definition and adopts the definition as proposed.

Section 1611.2(h)—Income

LSC is revising the current definition of income to refer to the total cash receipts of a "household," instead of a "family unit" and to make clear that recipients have the discretion to define the term household in any reasonable manner. Currently, the definition of income refers to "family unit," while the phrase "household or family unit" appears in the section on asset ceilings. It appears that there is no difference intended by the use of different terms in these sections and LSC believes that it is appropriate to simplify the regulation to use the same single term in each provision, without creating a substantive change in the meaning of either term. LSC has decided to use "household" instead of "family unit" because it is a simpler, more understandable term.

As noted above, LSC does not intend the use of the term "household" to have a different meaning from the current term "family unit." Under current guidance from the LSC Office of Legal Affairs, recipients have considerable latitude in defining the term "family unit." Specifically, OLA External Opinion No. EX–2000–1011 states:

> Neither the LSC Act nor the LSC regulations define "family unit" for client eligibility purposes. The Corporation will defer to recipient determinations on this issue, within reason. Recipients may consider living arrangements, familial relationships, legal responsibility, financial responsibility or family unit definitions used by government benefits agencies, amongst other factors, in making such decisions.

LSC intends that this standard would also apply to definitions of "household" and the definition makes this clear.

LSC received one comment specifically supporting the change from "household or family unit" to "household." This commenter suggested that the change would provide "more flexibility" to recipients. LSC notes that the change in the terminology used in the regulation in this instance is not creating any substantive change. As noted above, recipients already have considerable discretion and flexibility to determine the scope of an applicant's household; the change in terminology being adopted with this final rule neither increases nor decreases that discretion and flexibility. LSC adopts the change in terminology as proposed.

Throughout the course of the rulemaking field representatives have suggested deleting the words "before taxes" from the definition of income. Five commenters reiterated this position in comments on the NPRM, while one commenter specifically opposed deleting "before taxes" from the definition of income. Such a change is desirable, the proponents contend, because automatically deducted taxes are not available for an applicant's use and the failure to take current taxes into account in determining income has an adverse impact on the working poor. While it is undoubtedly true that automatically deducted taxes are not available to an applicant, LSC agrees with the other commenter that the definition of income is not the appropriate place in the regulation to deal with this issue.

Taking the phrase "before taxes" out of the definition of income would effectively change the meaning of income from gross income to net income after taxes. The term income has meant gross income since the original adoption of the financial eligibility regulation in 1976. See 41 FR 51604, at 51606, November 23, 1976. The maximum income guidelines are based on the Department of Health and Human Services (DHHS) Federal Poverty Guidelines amounts. DHHS' Federal Poverty Guidelines are, by law, based on the Census Bureau's Federal Poverty Thresholds, which are calculated using gross income before taxes. 42 U.S.C. 9902(2); Office of Management and Budget Directive No. 14 (May 1978). Changing the definition of income effectively from gross to net after taxes would introduce two different uses of the term income into the regulations (one use in the income guidelines published annually by LSC in Appendix A to Part 1611 and another use in the text of the regulation). This is problematic in two ways.

First, with respect to the annual income ceiling limits, unilaterally changing the standard from gross to net income after taxes would arguably exceed LSC's authority. LSC is required by the LSC Act to set its maximum income guidelines in consultation with the Office of Management and Budget and the Governors of the states. 42 U.S.C. 2996f(a)(2)(A). The annual income ceiling agreed to by LSC, OMB and the Governors (set at 125% of the Federal Poverty Guidelines amounts) was arrived at based on gross income; changing to a net income after taxes standard would effectively increase the annual ceiling amounts beyond what was agreed. LSC is concerned that it could only undertake such an action in consultation with OMB and the Governors, which consultation has not happened.

Second, adopting a net income after taxes standard would, as one commenter noted, increase the upper income limit as well. This would have the effect of further increasing the potential eligible applicant pool. Although LSC believes that the slight increase in the eligible applicant pool which will result from increasing the upper income limit from 187.5% to 200% of the Federal Poverty Guidelines amounts is justifiable (see discussion of section 1611.5, below), LSC is concerned that an additional increase in the eligible applicant pool is not necessary to effectively deal with the practical problem that taxes, indeed, represent funds unavailable to the applicant.

It was suggested in several comments that adopting a net income after taxes standard is preferable because it would be easier for recipients as they would only have to consider "take home pay" in computing income at intake. However, as one commenter noted, take home pay is often not simply pay net of taxes; there are other deductions from gross pay which an applicant could have (*e.g.*, 401(k) deductions, medical savings account deductions, insurance premium deductions, child support, garnishments). In such cases, the recipient would not be able to simply determine that income equaled take home pay, but would have to identify and add amounts for such deductions from gross pay back in when determining the applicant's income. In addition, some, but not all, of such other deductions from pay could qualify as factors under the allowable exceptions to the annual income ceiling amounts. LSC is concerned that this would add confusion in the income determination process, contrary to the intent of this rulemaking.

None of the comments supporting removal of "before taxes" from the definition of income addressed the problems discussed above. Moreover, LSC believes that the practical problem (that taxes, indeed, are funds unavailable to the applicant), is better addressed by treating taxes as a separate factor which can be considered by the recipient in making financial eligibility determinations. (This matter is presented in greater detail in the discussion of section 1611.5, below.) Further, although LSC does not consider defining income as gross income (rather than net after taxes) as presenting any "apparent preference" for non-working applicants, permitting current taxes to be a factor to be considered by the recipient in making financial eligibility determinations eliminates any such apparent preference that may be perceived as existing. Accordingly, LSC declines to remove the words "before taxes" from the definition of income.

In addition, LSC is moving the information on what is encompassed by the term "total cash receipts" into the definition of income. LSC believes that having this information in the definition of income, rather than in a separate definition will make the regulation easier to understand, particularly as the term "total cash receipts" is used only in the definition of income. In incorporating the language on "total cash receipts," LSC is retaining the current definition of the term without any substantive amendment, but reorganizing it to make it easier to understand. Specifically, LSC is separating the definition into two sentences, one of which sets forth those things which are included in total cash receipts and one which sets forth those things which are specifically excluded from the definition of total cash receipts. It is worth noting that the list of items included is not intended to be exhaustive, while the list of items to be excluded is intended to be exhaustive. LSC received no comments objecting to these changes and adopts the revisions as proposed.

Finally, LSC wishes to restate in this preamble guidance on the treatment of Indian trust fund monies in making income determinations. Several provisions of Federal law regulate whether or not income or interests in Indian trusts are taxable or should be considered as resources or income for federal benefits. See 25 U.S.C. 1407–1408; 25 U.S.C. 117a–117c. Under the terms of those laws, LSC has determined that recipients may disregard up to $2000 per year of funds received by individual Native Americans that are derived from income or interests in Indian trusts from being considered income for the purpose of determining financial eligibility of Native American applicants for service, and that such funds or interests of individual Native Americans in trust or restricted lands should not be considered as a resource for the purpose of LSC financial eligibility. See LSC Office of Legal Affairs External Opinion 99–17, August 27, 1999.

As noted in External Opinion 99–17, the exclusion applies only to funds and other interests held in trust by the federal government and investment income accrued therefrom. The following have been found to qualify for the exclusion from income in determining eligibility for various government benefits: income from the sale of timber from land held in trust; income derived from farming and ranching operations on reservation land held in trust by the federal government; income derived from rentals, royalties, and sales proceeds from natural resources of land held in trust; sales proceeds from crops grown on land held in trust; and use of land held in trust for grazing purposes. On the other hand, per capita distributions of revenues from gaming activity on tribal trust property are not protected because such funds are not held in trust by the federal government. Thus, such distributions are considered to be income for purposes of determining LSC financial eligibility.

Total Cash Receipts

LSC is deleting the definition of "total cash reciepts," currently at section 1611.2(h), as a separately defined term in the regulation. Rather, LSC has reorganized the information contained in the definition and moved it directly into the definition of "income." As noted above, the only place the term "total cash reciepts" is used is in the defintion of "income" and LSC believes that having a separate definition for "total cash reciepts" is cumbersome and unnecessary. LSC received no comments objecting to this change and adopts the revision as proposed.

Section 1611.3—Financial Eligibility Policies

LSC is creating a new section 1611.3, Financial Eligibility Policies, based on requirements currently found in sections 1611.5(a), 1611.3(a)–(c) and 1611.6. The comments generally supported these revisions, although LSC received a few comments suggesting some changes to what was proposed. LSC adopts the revisions as proposed, with certain amendments, as discussed below.

The new section 1611.3 addresses in one section recipients' responsibilities for adopting and implementing financial eligibility policies. Under the new section, the current requirement that recipients' governing bodies have to adopt policies for determining financial eligibility is retained. However, LSC is changing the current requirement for an annual review of these policies and instead will now require recipients' governing bodies to conduct triennial reviews of policies. The Working Group agreed that an annual review was unnecessary and has tended to result in rather pro forma reviews of policies. LSC believes that a triennial review requirement will be sufficient to ensure that financial eligibility policies remain relevant and will encourage a more thorough and thoughtful review when such review is undertaken. The section also adds an express requirement that recipients adopt implementing procedures. While this is already implicit in the current regulation, LSC believes it is preferable for this requirement to be expressly stated. Such implementing procedures may be adopted either by a recipient's governing body or by the recipient's management. LSC received several comments supporting these changes and no comments objecting to them. Accordingly, LSC adopts the revisions as proposed.

Section 1611.3 also contains certain minimum requirements for the content of recipient's financial eligibility policies. Specifically, LSC is requiring that the recipient's financial eligibility policy must:

- Specify that only applicants for service determined to be financially eligible under the policy may be further considered for LSC-funded service;
- Establish annual income ceilings of no more than 125% of the current DHHS Federal Poverty Guidelines amounts;
- Establish asset ceilings; and
- Specify that, notwithstanding any other provisions of the regulation or the recipient's financial eligibility policies, in assessing the financial eligibility of an individual known to be a victim of domestic violence, the recipient shall consider only the income and assets of the applicant and shall not consider any assets jointly held with the abuser.

In establishing income and asset ceilings, the recipient will have to consider the cost of living in the locality; the number of clients who can be served by the resources of recipient; the potentially eligible population at various ceilings; and the availability of other sources of legal assistance. With respect to assets of domestic violence victims jointly held with their abusers, this requirement applies when the applicant has made the recipient aware that he or she is a victim of domestic violence.

In addition, this section permits recipients to adopt financial eligibility policies which provide for authorized exceptions to the annual income ceiling pursuant to section 1611.5 and for waiver of the asset ceiling for an applicant in a particular case under unusual circumstances and when approved by the Executive Director or his/her designee. Finally, LSC will permit recipients to adopt financial eligibility policies which permit financial eligibility to be established by reference to an applicant's receipt of benefits from a governmental program for low-income individuals or families consistent with section 1611.4(b).

These provisions are, with two exceptions, based directly on current requirements with a few substantive changes. First among the changes, recipients will no longer be required to routinely submit their asset ceilings to LSC. This requirement appears to serve little or no purpose, as compliance with this requirement has been spotty and LSC has taken no action to obtain the information from recipients which have not automatically submitted it. Moreover, the information collected is not being put to any routine use. In addition, LSC has not had a parallel requirement for the submission of income ceilings. LSC has determined that this requirement can be eliminated without any adverse effect on program compliance with or Corporation enforcement of the regulation. LSC received several comments supporting this change and no comments objecting to it. Accordingly, LSC adopts the revision as proposed.

Another substantive change is that recipients will be permitted to provide in their financial eligibility policies for the exclusion of (in addition to a primary residence, as provided for in the existing regulation) vehicles used for transportation, assets used in producing income (such as a farmer's tractor or a carpenter's tools) and other assets excluded from attachment under State or Federal law from the calculation of assets. In identifying other assets excluded from attachment under State or Federal law, LSC has in mind assets that are excluded from bankruptcy proceedings or other assets that may not be attached for the satisfaction of a debt, etc.

Most of the comments received reiterated the position that field representatives had expressed during the Working Group discussions and in comments to the November 2002 NPRM, that the list of excludable assets should be illustrative, rather than exhaustive. The commenters argue that having an illustrative rather than an exhaustive list will provide recipients with greater flexibility in developing asset policies and note that many recipients already exclude certain other assets. Commenters alternatively suggested some specific assets be added to the list, such as household furnishings, computers, and such assets which are excluded from other governmental benefit programs for which the applicant is eligible. A few comments also specifically suggested that the exclusion for vehicles should not be limited to vehicles needed for work. One of these commenters noted that the Social Security Administration has recently changed its rules on eligibility for Supplemental Security Income (SSI) to exclude from an SSI applicant's assets one vehicle used for transportation, without specific regard to the particular transportation use (as was previously the case), provided it is not strictly a recreational vehicle such as a dune buggy. See 70 FR 6340, at 6342–43 (February 7, 2005).

LSC believes that some of the comments indicate that LSC was not clear in the NPRM about the relationship between the asset ceiling adopted by a recipient and the list of excludable items. Under the current regulation recipients are required to adopt asset ceilings based on the economy and the relative cost of living in the service area. Recipients are also to take into account special needs of the elderly, institutionalized and persons with disabilities, along with the reasonable equity value in work-related equipment used to provide income. Implicit in the requirement is the expectation that the recipient will set its ceiling at a level as to cover the value of such things as household furnishings, clothing and other personal affects of applicant (and members of applicant's households) and other such assets as applicants may reasonably be expected to have without liquidating in the attempt to secure legal assistance. Once the asset ceiling has been set, the recipient is expected to consider all of the applicant's assets against that ceiling, except for the value of a principle residence. The exclusion of a principle residence is intended to ensure that homeowners do not exceed the asset ceiling just on the value of the home.

With the NPRM, LSC proposed to allow recipients to exclude from the asset computation a limited number of

additional assets which would be likely to cause an applicant to exceed the applicable asset ceiling without liquidation of that or other significant household assets. As such, LSC continues to prefer to retain the approach in the current regulation in which the list of excludable assets is set forth in toto. LSC believes that this approach emphasizes the policy that most assets are to be considered and maintains a basic level of consistency nationally with respect to this issue. LSC continues to expect that recipients will set asset ceilings and asset ceiling waiver policies so as to permit applicants to have reasonable amounts of assets which will not count against them in eligibility determinations and believes that the new language does afford recipients some additional flexibility in developing asset ceilings, consistent with the policy articulated above particularly in light of the amendment to the asset ceiling waiver standard discussed below.

Turning to comments on the specific proposed excludable assets, LSC agrees that it is neither necessary nor desirable to restrict the exclusion for vehicles to those used for work only. There are many situations in which a vehicle is an applicant's only reliable, accessible method of transportation for vital life activities other than work, such as education and training activities, reaching medical appointments, grocery shopping, transporting children to school or activities, etc. As such, it is reasonable to consider such vehicles as among the significant assets that a recipient should be able to own and not have counted towards the applicant's applicable asset ceiling. Accordingly, LSC is amending the language in proposed 1611.2(d)(1) which read "vehicles required for work" and adopting instead the language "vehicles required for transportation." Under this formulation, the value of vehicles which are not used for transportation, such as vehicles used purely for recreational activities (*e.g.*, dune buggies, golf carts, go-karts, and the like) would have to be included in determining whether an applicant's assets exceed the recipient's applicable asset ceiling.

LSC declines, however, to expand the list to include the exclusion of any assets excluded under benefits programs for low income persons for which the applicant is eligible. There are myriad benefit programs with a widely varying range of excludable assets. Some programs have relatively low asset ceilings, but exclude more assets from the calculation, while other programs exclude fewer assets, but have higher asset ceilings. If LSC were to include all assets excludable under all benefits program for low-income individuals, the relative national consistency which LSC believes is important would be impeded. As noted above, LSC believes that the revised language does afford recipients sufficient additional flexibility in developing asset ceiling policies.

As noted above, LSC is changing the asset ceiling waiver standard slightly. The current regulation permits waiver in "unusual or extremely meritorious situations;" the new rule permits waiver in "unusual circumstances." The Working Group determined that the current language is unnecessarily stringent and that it is unclear what the difference is intended to be between "unusual" and "extremely meritorious." It was suggested in the Working Group that the standard should be "where appropriate." LSC, however, felt that the regulation should continue to reflect the policy that waivers of the asset ceilings should only be granted sparingly and not as a matter of course. The Working Group agreed that the revised language accomplishes this goal, while providing some additional appropriate discretion to recipients. In addition, where the current rule requires all waiver decisions to be made by the Executive Director, LSC proposed to permit those decisions to be made by the Executive Director or his/her designee. LSC believes it is important that a person in significant authority be involved in making asset ceiling waiver decisions, but recognizes that, especially as more recipients have consolidated and now serve larger areas, it is important for recipients to have the discretion to delegate certain authority to regional or branch office managers or directors to increase administrative efficiency. LSC received several comments supporting this change and no comments objecting to it. Accordingly, LSC adopts the revision as proposed.

The first totally new element is the language regarding victims of domestic violence. This new language implements LSC's FY 1998 appropriations law. Specifically, section 506 of that act provides:

> In establishing the income or assets of an individual who is a victim of domestic violence, under section 1007(a)(2) of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(2)), to determine if the individual is eligible for legal assistance, a recipient described in such section shall consider only the assets and income of the individual and shall not include any jointly held assets.

Public Law 105–119, 111 Stat. 2440 (November 26, 1997). Although this law has been in effect since 1997, it has never been formally incorporated into Part 1611. Nevertheless, this provision of law applies regardless of whether it appears in the regulation. However, incorporating this language into the regulation is appropriate, particularly in light of the goal of this rulemaking to clarify the requirements relating to financial eligibility determinations.[2]

LSC received one comment asking whether this proposal means that the financial eligibility of an applicant who is the victim of domestic violence is to be determined solely on the basis of the applicant's income and assets, without regard to the income and assets of other members of the household (beyond the alleged perpetrator of the domestic violence). LSC intended that the income of the alleged perpetrator and assets jointly held by the applicant with the alleged perpetrator must be disregarded in assessing the financial eligibility of the applicant, but that income and assets not jointly held with the alleged perpetrator of other members of the household (as defined by the recipient) would have to be considered in the financial eligibility assessment. LSC acknowledges that the language of the statute (and LSC's originally proposed implementation thereof) could be read so as to suggest that only the applicant's individual income and assets may be counted. However, LSC believes that such a reading would require a substantive change to the financial eligibility requirements that Congress did not intend.

At the time of adoption of section 506, the regulation permitted recipients to take into account an applicant's ability to access certain assets (including assets of alleged perpetrators of domestic violence) and permitted recipients to consider the applicant's lack of access to the alleged perpetrator's income as an "other significant factor related to the inability to afford legal assistance." 45 CFR 1611.6(d); 1611.5(b)(1)(E). However, in some cases, the victim's household income including the income of the alleged perpetrator was above the upper income limit, such that the recipient was not able to even apply the "significant other factors" factor to make a determination of eligibility and in some cases there was a problem related to the extent to which the victim could access household assets over

[2] This point is demonstrated by the fact that LSC received one comment specifically supporting the implementation of section 506 into Part 1611 on the basis that the new language in 1611 would provide recipients with enhanced ability to provide legal assistance to victims of domestic violence. Rather, the incorporation of this statutory mandate into the regulation at this time does not create any substantive change in the authority and responsibility recipients have had with respect to this issue since 1997.

which the alleged perpetrator had joint control. Thus, the practical problem addressed by section 506 is that in many cases a victim of domestic violence cannot draw upon the income or assets of the alleged perpetrator (including jointly held assets) as a source of funds with which to obtain private legal assistance.

As the report language accompanying Public Law 105–119 notes, Congress was "aware that the current statute and regulations * * * already provide for such determinations to be made" but "given concerns regarding access to the legal system for victims of domestic violence, the conferees have included this provision to provide greater clarity regarding this matter." H. Rpt. 105–405, p. 186. This indicates that Congress did not intend to require significant changes to LSC's regulations on financial eligibility, but rather only that Congress, in adopting section 506, wanted to ensure that the income and assets of the alleged perpetrator (which are generally under the control of the perpetrator and which the victim cannot readily access) not render the victim financially ineligible for legal assistance. As the regulation did not then provide for disregarding the income and assets of other members of the victim's household not jointly held with the alleged perpetrator in the assessment of the victim's financial eligibility, LSC does not believe Congress was attempting to change the general requirement that LSC consider the income and assets of other members of the victim's household in making financial eligibility determinations as long as they are available to the victim.

In light of the foregoing, LSC is amending section 1611.3(e) to make this clearer by revising it to read:

> Notwithstanding any other provision of this Part, or other provision of the recipient's financial eligibility policies, every recipient shall specify as part of its financial eligibility policies that in assessing the income or assets of an applicant who is a victim of domestic violence, the recipient shall consider only the assets and income of the applicant and members of the applicant's household other than those of the alleged perpetrator of the domestic violence and shall not include any assets held by the alleged perpetrator of the domestic violence, jointly held by the applicant with the alleged perpetrator of the domestic violence, or assets jointly held by any member of the applicant's household with the alleged perpetrator of the domestic violence.

LSC also received a comment requesting clarification of whether the special rule applies in all cases involving a victim of domestic violence or only in cases in which the request for assistance is related to alleviating the domestic violence or involves the perpetrator as an adverse party. Neither the statute (nor the accompanying report language) specify that the request for legal assistance must relate to alleviating the domestic violence or require the perpetrator to be an adverse party. As such, as noted above, the special rule applies at any time when the applicant has made the recipient aware that he or she is a victim of domestic violence. LSC does not find it likely that applicants who are victims of domestic violence identify themselves as such in seeking legal assistance in matters wholly unrelated to the domestic violence. However, if an applicant seeking assistance with an unrelated matter self-identifies as a victim, LSC believes that this would likely be done as a way of explaining why certain income and/or assets are unavailable for use in obtaining private legal assistance. As such, the rationale of the special rule would appear to be satisfied and recipients should have the ability to disregard the perpetrator's income and assets (including jointly held assets) in such situations. LSC does not believe the risk that an applicant would self-identify as a domestic violence victim in order to circumvent the financial eligibility requirements is significant and is confident a recipient would explore the situation further if the recipient suspected the claims of the applicant were specious.

Finally, LSC has decided to permit recipients to adopt financial eligibility policies which permit financial eligibility to be established by reference to an applicant's receipt of benefits from a governmental program for low-income individuals or families consistent with section 1611.4(b). This issue is discussed in greater detail below.

Section 1611.4—Financial Eligibility for Legal Assistance

This section sets forth the basic requirement that recipients may provide legal assistance supported with LSC funds only to those individuals whom the recipient has determined are financially eligible for such assistance pursuant to their policies, consistent with this Part. This section also contains a statement that nothing in Part 1611 prohibits a recipient from providing legal assistance to an individual without regard to that individual's income and assets if the legal assistance is supported wholly by funds from a source other than LSC (regardless of whether LSC funds were used as a match to obtain such other funds, as is the case with Title III or VOCA grant funds) and the assistance is otherwise permissible under applicable law and regulation.

This section further provides that a recipient may find an applicant to be financially eligible if the applicant's assets are at or below the recipient's applicable asset ceiling level (or the ceiling has been properly waived) and the applicant's income is at or below the recipient's applicable income ceiling, or if one or more of the authorized exceptions to the ceiling applies. These provisions are based on existing provisions found in sections 1611.3, 1611.4 and 1611.6. As revised, the new provisions do not represent a substantive change, but LSC believes having the basic statements as to who may be found to be financially eligible for assistance in one section makes the regulation much clearer. In addition, where the existing regulation uses a construction that speaks to when a recipient may provide legal assistance, the new language emphasizes the point that the requirements speak only to determinations of financial eligibility and not to decisions regarding whether or not to actually provide legal assistance. LSC received several comments supporting these changes and no comments opposing these changes. Accordingly, LSC adopts the revisions as proposed.

LSC is also incorporating into this section a significant substantive change to the regulation. Consistent with section 1611.3 as discussed above the regulation will now permit recipients to determine an applicant to be financially eligible because the applicant's income is derived solely from a governmental program for low-income individuals or families, provided that the recipient's governing body has determined that the income standards of the governmental program are at or below 125% of the Federal Poverty Guidelines amounts. For many recipients, a significant proportion of applicants rely on governmental benefits for low-income individuals and families as their sole source of income. In order to qualify for these benefits, such persons have already been screened by the agency providing the benefits (using an eligibility determination process that is at least as strict as the one required under LSC regulations) and determined to be financially eligible for those benefits. In Working Group discussions, many representatives of the field noted that if they could rely on the determinations made by these agencies without having to otherwise make an independent inquiry into financial eligibility, it would substantially ease the administrative burden involved in making financial eligibility determinations.

The Working Group also noted that current LSC practice permits recipients to determine that an applicant's assets are within the recipient's asset ceiling level without additional review if the applicant is receiving governmental benefits for low-income individuals and families, eligibility for which includes an asset test. Key to this practice is that the recipient's governing body has to take some identifiable action to recognize the asset test of the governmental benefit program being relied upon. This ensures that the eligibility standards of the governmental program have been carefully considered and are incorporated into the overall financial eligibility policies adopted and regularly reviewed by the recipient's governing body. As this practice has proved efficient and effective, it was determined that a parallel process could also be adopted for income screening and that these practices should be expressly included in the regulations. It is important to note that this provision would only apply to applicants whose sole source of income is derived from such benefits. Applicants who also have income derived from other sources would be subject to an independent inquiry and assessment of financial eligibility.

LSC received several comments supporting these changes and one comment suggesting expanding this authority to permit recipients to make a determination that an applicant is financially eligible on the basis of receipt of governmental benefits for low income persons even when the applicant has another source of income, provided that the applicant's additional income was counted in determining eligibility for a governmental benefit program for low income persons (such as supplemental security income (SSI), in which the benefit is decreased as an offset to the other income). LSC is concerned that in such situations it cannot be guaranteed that an applicant's income would of necessity remain below the recipient's applicable income ceiling. The SSI program, for example, does not offset all other income dollar for dollar. Thus, an individual living alone whose income is solely derived from SSI will have an income of $579/month, while an individual living alone receiving Social Security income of $99 will receive an SSI payment of $500/month, for a total income of $599/month, and an individual living alone, with a monthly earned income of $317 and a state governmental benefit payment of $15/month, will receive an SSI benefit of $463/month, for a total monthly income of $795/month. See, Understanding Supplemental Security Income, Social Security Administration Web site, *http://www.ssa.gov/notices/supplemental-security-income/text-income-ussi.htm*. With the streamlined financial eligibility determination requirements LSC is adopting, LSC believes that performing a full financial eligibility screen on persons having income derived from sources in addition to governmental benefits for low income persons does not present an undue administrative burden and is necessary to ensure that only those who meet the recipient's financial eligibility criteria (based on applicable LSC laws and regulations) are determined to be financially eligible for LSC-funded legal assistance. Accordingly, LSC declines to expand the scope of § 1611.4(c) and adopts the revisions as proposed.

LSC received one additional comment about the basic financial eligibility criteria for LSC-funded legal assistance. This commenter suggested that the determination of an applicant's financial eligibility be conditioned somehow upon the financial circumstances of the adverse party(ies) with whom the applicant has the problem for which the legal assistance is sought. LSC's financial eligibility requirements are based upon the statutory mandate that the eligibility of clients be based upon the assets and income of the applicant, the fixed debts, medical expenses and other factors which affect the applicant's ability to afford legal assistance, and the cost of living in the locality. See 42 U.S.C. 2996f(a)(2)(B). With the exception of the cost of living in the locality, all of the criteria set forth in the LSC Act relate to the ability of the applicant to afford legal assistance. There is no suggestion in either the Act itself or in its legislative history, that the financial circumstances of adverse parties are at all relevant to the determination of an financial eligibility of the applicant. Moreover, LSC believes that conditioning a determination of financial eligibility upon the financial situation of adverse parties would unfairly discriminate against some persons who are otherwise unable to afford private legal assistance and would be inconsistent with LSC statutory mission of fostering equal access to justice. See 42 U.S.C. 2996. Accordingly, LSC declines to add as a criteria for determining financial eligibility an assessment of the financial situation of potential or actual adverse parties.[3]

[3] This commenter also suggested that LSC adopt requirements relating to the regular sharing among the various parties to a case of information about costs expended by all parties (including hours and costs for attorney time) during the course of a recipient's representation of a client. This suggestion does not address financial eligibility determinations or the retainer agreement requirements. As such, it is outside the scope of this rulemaking and is not further addressed.

Section 1611.5—Authorized Exceptions to the Annual Income Ceiling

This section provides for authorized exceptions to the annual income ceiling. The language, like the current language of sections 1611.4 and 1611.5, on which it is based, is permissive. A recipient is at liberty to include some, none, or all of the authorized exceptions discussed below in its financial eligibility policies. Thus, to the extent a recipient chooses to avail itself of the authority provided in this section, a recipient is permitted to determine a particular applicant is financially eligible for assistance, notwithstanding that the applicant's income is in excess of the recipient's applicable income ceiling, if the applicant's situation fits within one or more of the authorized exceptions. In making such determinations, however, the recipient will also have to detemine that the applicant's assets are at or below the recipient's applicable asset ceiling (or the ceiling would have had to have been waived). This requirement is consistent with the current regulation, but is affirmatively stated for greater clarity. LSC received one comment specifically supporting this clarification and LSC adopts the language as proposed.

Under the revised section, there are two situations in which an applicant's income could exceed the recipient's income ceiling without an absolute upper limit: (1) Where the applicant is seeking to maintain governmental benefits for low-income individuals and families; and (2) where the executive director (or his/her designee) determines, on the basis of documentation received by the recipient, that the applicant's income is primarily committed to medical or nursing home expenses and, in considering only that portion of the applicant's income which is not so committed, the applicant would otherwise be financially eligible.

The first instance represents a new addition to the regulation. Currently, an applicant seeking to obtain governmental benefits for low income persons may be deemed financially eligible if the applicant's income does not exceed 150% of the LSC national eligibility level. The existing regulation, however, does not specifically address applicants seeking to maintain such benefits. Thus, under the current regulation, an applicant whose income

is over the income ceiling but under 150% of the LSC national eligibility level may be deemed financially eligible for assistance in obtaining benefits, but not for assistance in maintaining them. Thus, the applicant seeking assistance to maintain benefits would have to be turned down, but that same applicant could then be found financially eligible for assistance to re-obtain such benefits once the benefits were lost. Accordingly, LSC is addressing this problem in the regulation. However, unlike the situation in obtaining the benefits, in seeking to maintain benefits LSC considers an upper limit on income unnecessary since in such cases the applicant's income will necessarily be rather limited (for the applicant to have been eligible in the first place for the benefits he or she is seeking to maintain). LSC received several comments supporting these changes and no comments opposing them. Accordingly, LSC adopts the revisions as proposed.

The second instance is taken from section 1611.5(b)(1)(B) of the current regulation addressing instances in which the applicant's income is primarily devoted to medical or nursing home expenses and does not represent a substantive change in the current regulation. LSC is now specifying in the regulation, however, that in such cases the recipient is required to make a determination of financial eligibility with regard to the applicant's remaining income. The existing regulation could be read to permit an applicant with an income of $300,000 to be deemed financially eligible if $250,000 of the income is devoted to nursing home expenses, notwithstanding that the applicant's remaining income is $50,000—substantially in excess of the income ceiling. This situation is not intended, and, indeed, LSC has no reason to believe recipients are serving such persons. However, consistent with the overall goal of clarifying the regulation, LSC believes that a requirement that an applicant must be otherwise financially eligible considering only that portion of the applicant's income which is not devoted to medical or nursing home expenses should be clearly set forth in the regulation.

LSC received several comments generally supporting this change (and none opposing it) but asking LSC to delete the requirement that the determination that the applicant's income is primarily committed to medical or nursing home expenses be made by the Executive Director or his/her designee. These commenters argued that removing this requirement would afford recipients greater administrative flexibility in making financial eligibility determinations. The existing rule, however, does requires that the Executive Director make determinations regarding whether an applicant's income is primarily committed to medical or nursing home expenses. LSC believes it is important to continue this requirement in this instance because a recipient is making a determination of financial eligibility for an applicant whose income exceeds the otherwise absolute upper limit of the income ceiling, and such a determination should be made by a person in significant authority.[4] This is similar to the LSC view regarding decisions to waive the asset ceiling. LSC does understand, however, that it is important for recipients to have the discretion to delegate certain authority to regional or branch office managers or directors to increase administrative efficiency. This is why LSC proposed broadening the existing rule to permit the Executive Director to designate a responsible individual to make such determinations. LSC believes that this approach provides additional administrative flexibility to recipients yet is consistent with the underlying policy. Accordingly, LSC adopts the revision as proposed.

LSC is also permitting exceptions for certain situations in which the applicant's income is in excess of the recipient's applicable income ceiling, but does not exceed 200% of the applicable Federal Poverty Guidelines amount. At the outset, LSC notes that this section changes the current upper income limit of 150% of the LSC national income guidelines amount, which is 150% of 125% of the Federal Poverty Guidelines amounts, or 187.5% of the Federal Poverty Guidelines amounts. Under the new regulation, the maximum upper limit increases to 200% of the Federal Poverty Guidelines amounts. Consequently, recipients will be able to consider applicants having slightly higher incomes than was previously possible. (For example, the 2005 LSC income guideline for a applicant in a three member household in the 48 contiguous states and the District of Columbia is $20,113. Under the existing rule, the maximum upper income limit for an applicant with a three member household is $30,170; under the new rule the maximum income limit for that household will be $32,180.) This action will slightly increase the pool of potential applicants for service. However, LSC believes that this slight increase in the eligible applicant pool will not have a negative impact on the quantity or quality of services delivered. Rather, this change recognizes the changing demographic of the legal services client base, which now increasingly includes the working poor. Moreover, amending the rule to increase the upper limit to 200% of the Federal Poverty Guidelines amounts will further simplify the regulation, which will aid grantees and their staff in making financial eligibility determinations. LSC received several comments strongly supporting this change, including one comment which noted that the change will allow for significant improvement in facilitating service collaboration and referrals among LSC and non-LSC service providers in many states because 200% of the Federal Poverty Guidelines amounts is used as an upper limit for income eligibility for a wide variety of programs providing services to low income persons. LSC received no comments opposing this change. LSC accordingly adopts this revision as proposed.

Turning to the exceptions, LSC is retaining the current exception for individuals seeking to obtain governmental benefits for low-income individuals and families. Second, LSC is adding an exception for individuals seeking to obtain or maintain governmental benefits for persons with mental and/or physical disabilties. Many disability benefit programs provide only subsistance support and those individuals should be treated the same way as those seeking to obtain benefits available on the basis of financial need. However, many persons with disabilties who are eligible for disability benefits may not be particularly economically disadvantaged and should not be eligible for legal assistance simply by virtue of eligibility for such disability benefits. Therefore, those applicants must have incomes below 200% of the applicable poverty level in order to be considered financially eligible for LSC-funded services. LSC received several comments supporting these provisions and no comments opposing them. Accordingly, LSC adopts these exceptions as proposed.

Finally, the revised regulation maintains the current authorized exceptions found in the factors listed in

[4] This situation is distinguishable from the other exception to the absolute income limit relating to applicants seeking to maintain governmental benefits for low income persons. As noted above, in those instances, the applicant's income will already be rather limited, even if exceeding the absolute income ceiling. In the medical/nursing home expenses situation, this may not be the case and the applicant's income may be considerably in excess of the ceiling.

current section 1611.5. Specifically, the recipient will be permitted to determine an applicant whose income is below 200% of the applicable Federal Poverty Guidelines amount to be financially eligible for legal assistance supported with LSC funds based on one or more enumerated factors that affect the applicant's ability to afford legal assistance. As in the current regulation, recipients will not be required to apply these factors in a "spend down" fashion. That is, although recipients are permitted to do so, they are not required to determine that, after deducting the allowable expenses, the applicant's income is below the applicable income ceiling before determining the applicant to be financially eligible. The regulation is also amended to clarify that the factors apply to the applicant and members of the applicant's household. The factors proposed are identical to the ones in the current regulation, with the following exceptions:

- The factor relating to medical expenses is restated to make clear that it refers only to unreimbursed medical expenses, but that medical insurance premiums are included;
- The factor relating to employment expenses is reorganized for clarity and would expressly include expenses related to job training or educational activities in preparation for employment;
- The factor relating to expenses associated with age or disability no longer refers to resident members of the family as a reference to the applicant or members of the applicant's household has been incorporated elsewhere in this section of the regulation;
- The factor relating to fixed debts and obligations is amended to read only "fixed debts and obligations;"
- A new factor, "current taxes" is added to the list.

With regard to "fixed debts and obligations," the current regulation provides little guidance as to what is meant by this term, except to specifically include unpaid taxes from prior years. LSC has decided to simply use the term "fixed debts and obligations," while providing guidance in the preamble as to what is encompassed by the term. LSC believes that this approach will provide recipients with flexibility in applying the rule, while providing more guidance than could easily be contained in regulatory text.

Prior guidance from the LSC Office of Legal Affairs has stated that, "in the absence of any regulatory definition or guidance as to the meaning of 'fixed debts and obligations,' the common meaning of the term applies" and that it encompasses debts fixed as to both time and amount. See Letter of November 1, 1993 from J. Kelly Martin, LSC Assistant General Counsel, to Stephen St. Hilaire, Executive Director, Camden Regional Legal Services, Inc. Examples of such "fixed debts and obligations" would include mortgage payments, rent, child support, alimony, business equipment loan payments, and unpaid taxes from prior years. LSC intends that this term also include rent in addition to mortgage payments. Previous OLA opinions have addressed mortgage payments but not rent and rent has, heretofore, not been considered a fixed debt. LSC now sees no rational distinction between the two for the purposes of this regulation; in addition, LSC received several comments supporting the inclusion of rent as a fixed debt or obligation and no comments opposed. Therefore LSC will treat rent and mortgage expenses in a similar manner.

The term "fixed debts and obligations," however, is not without limit. It is not intended to include expenses, such as food costs, utilities, credit card debt, etc. These types of debts are usually not fixed as to time and amount. The Working Group considered whether there were additional factors which should be enumerated in this section and several members of the Working Group proposed adding other factors, such as utilities, to the list. Several commenters supported adding utilities to the overall list of factors. Although, as the commenters note, applicants must pay for some measure of utilities, the same can be said for clothing and food, which are also certainly basic necessary expenses. However, these sorts of costs have never been covered by the types of expenses which recipients are generally permitted to consider in determining the ability of an applicant to afford legal assistance. With the exception of housing expenses (which fall under the heading of fixed debts and obligations, a category which does not generally include utilities because utility bills are not typically fixed as to time and amount), the other factors represent expenses for items which may not be particularly extraordinary, but which are for things other than the most basic necessities. Accordingly, LSC declines to add utilities to the list of fixed debts and obligations.

Related to the treatment of utilities, two commenters supported the idea LSC clarify that recipients have the flexibility to consider unusually high utility costs as an "other significant factor" under section 1611.5(a)(vii). LSC agrees that, under certain unusual circumstances, utility bills could be considered an "other significant factor" affecting an applicant's ability to afford legal assistance. LSC does not intend that section 1611.5(a)(vii) be used to routinely consider applicants' utility costs. This is true even if utility costs are typically high for an applicant because, for example, the applicant lives in a very hot or very cold area of the country. However, there may be circumstances in which an area of the country suffers a period of unusually hot or cold weather, or perhaps a discreet time period in which heating oil or gas prices are significantly higher than the normal range of prevailing prices. In addition, an individual applicant may have unusually high utility bills because of a malfunctioning furnace or some other problem with their home that they cannot get their landlord to fix or that they cannot afford to fix themselves. In such unusual circumstances, it could be appropriate for a recipient to take into account the extra amount of utility costs incurred by an applicant as an "other significant factor" in making a financial eligibility determination.

As noted above, another issue is whether to include current taxes within the scope of the term "fixed debts and obligations." Prior to 1983, Part 1611 included current taxes along with past due unpaid taxes as a fixed debt. When the regulation was changed in 1983, the reference to taxes was amended to refer only to unpaid prior year taxes. This change was justified on the basis that the 1611.5 factors were intended to account only for "special circumstances" affecting the ability to afford legal assistance. See 48 FR 54201 at 54203 (November 30, 1983). However, given that other types of expenses included in the list do not seem to be particularly "special" (*e.g.*, mortgage payments; child care expenses), LSC no longer finds this explanation persuasive. Rather, LSC believes that the exclusion of current taxes, but not prior unpaid taxes, from the list of factors which recipients' may consider under exceptions to the income ceiling has the effect of punishing those persons who are in compliance with the law in favor of persons who are delinquent in their legal responsibility to pay taxes. Moreover, as noted above, applicants for legal services are increasingly the working poor. Excluding current taxes has a disproportionate effect on applicants who work versus applicants who do not work. Consequently, in the November 2002 NPRM, LSC proposed including current taxes within scope of

the term "fixed debts and obligations" (as they had been prior to 1983).

When the Operations and Regulations Committee once again addressed this issue, field representatives reiterated their recommendation that the term "income" should be defined as income after taxes. LSC continues to believe, as noted above, that effectively defining income as net income, while the LSC income guidelines (and the underlying DHHS Federal Poverty Guidelines amounts on which the LSC guidelines are based) are calculated on the basis of gross income would make the regulation internally inconsistent. Rather, LSC believes that considering taxes as a factor which can be considered by the recipient in making financial eligibility determinations addresses the practical problem raised by the commenters. However, the Committee considered current taxes as a fundamentally different kind of expense than the other expenses falling within the scope of "fixed debts or obligations." Instead, the Committee recommended, and the Board agreed, that current taxes should be a separate category of authorized exception to the annual income ceiling. Accordingly, LSC proposed adding a new subsection (iv) to section 1611.5(a)(4) and specifically invited comment on the proposed addition of an authorized exception for current taxes and on the appropriate scope and specific terminology which LSC should use to describe and define this proposed exception.

LSC received numerous comments reiterating the position that "income" should be defined as net after taxes, but that in the alternative (should LSC retain income as gross income) supported the proposal to include current taxes as a separate factor which recipients may consider as an authorized exception to the income ceiling. The one comment LSC received supporting LSC's proposal to retain the phrase "before taxes" in the definition of income expressly supported also treating current taxes as a separate factor which recipients may consider as an authorized exception to the income ceiling. All of these commenters also supported including a discussion in the preamble of what taxes should be included in the scope of the term "current taxes" rather than specifying a particular list in the text of the regulation. LSC agrees that such an approach is preferable. LSC believes that permitting some flexibility in the scope of the term "current taxes" is appropriate and in keeping with the intent of this rulemaking, although LSC also believes that the term "current taxes" should not be without limits. Thus, LSC intends that "current taxes" should include local, State and Federal income and employment taxes, Social Security and Medicare taxes, and local property taxes (including special property tax assessments) but not sales taxes or excise fees, such as airline ticket fees, hotel occupancy taxes, gas taxes, cigarette taxes, etc. Past tax debts, having become fixed debts owing, remain a fixed debt or obligation which recipients may consider under that factor.

Section 1611.6—Representation of Groups

The eligibility of groups for legal assistance supported with LSC funds was a subject of extensive discussion among both the members of the Working Group and at the 2004 and 2005 meetings of the current Operations and Regulations Committee. Prior to 1983, the regulation permitted representation of groups that were either primarily composed of eligible persons, or which had as their primary purpose the furtherance of the interests of persons in the community unable to afford legal assistance. In 1983, the regulation was amended to preclude the use of LSC funds for the representation of groups unless they were composed primarily of individuals financially eligible for service.

During the Working Group meetings, representatives from the field proposed that LSC revise the regulation to once again permit the representation of groups which, although not primarily composed of eligible persons, have as a primary function the delivery of services to, or furtherance of the interests of, persons in the community unable to afford legal assistance. Examples of such a group might be a food bank or a rural community development corporation working to develop affordable housing in an isolated community. Field representatives noted that in such cases, there may not be local counsel willing to provide pro bono representation and that the group might not otherwise be able to afford private counsel. Further, the field representatives noted that restricting recipients to representing with LSC funds only those groups primarily composed of eligible individuals prevents them from providing legal assistance in the most efficient manner possible as other groups may be better able to accomplish results benefitting more members of the eligible community than would representation of eligible individuals or groups composed primarily of such individuals. Field representatives also noted that the rule requires that the group would have to provide information showing that it lacks and has no means of obtaining the funds to retain private counsel, so that the rule would not permit representation of well funded groups.

The LSC representatives were concerned that allowing the use of LSC funds to support the representation of groups not composed primarily of eligible clients would be problematic. In the examples given, the "primary function" of the group is easily discernable. It may be, however, that there is or can be a wide variety of opinion on what the "primary function" of any group is and on what is "in the interests" of the eligible client community. The LSC representatives were concerned that the risk and effort related to articulating and enforcing a necessarily subjective standard would be inappropriate. Rather, LSC representatives were of the opinion that already scarce legal services resources would be better devoted to providing assistance to eligible individuals or groups of eligible individuals. In the end, the Working Group did not achieve consensus on this issue and the Draft NPRM did not propose to permit the representation of groups other than those primarily composed of eligible individuals.

In its deliberations on the Draft NPRM, the prior Board's Operations and Regulations Committee acknowledged the legitimacy of the concerns of the LSC representatives, but determined that the value of permitting the representation of groups having a primary function of providing services to, or furthering the interests of, those who would be financially eligible outweighed any risks attendant upon such representation. In approving the recommendation of the Committee, the Board directed that the Draft NPRM be amended to propose permitting such representation (including any conforming amendments necessary) prior to publication of the NPRM for comment. The NPRM published in November 2002 reflected this direction.

When the new Operations and Regulations Committee considered this issue, field representatives once again supported changing the regulation to permit the representation of groups having as their primary function the provision of services to, or furthering the interests of, those who would be financially eligible (providing the group could demonstrate its inability to afford to retain private counsel), while LSC Management initially once again supported permitting only the representation of groups primarily composed of eligible individuals.

However, upon further reflection and consideration of the arguments made by the field and the comments made by members of the Operations and Regulation Committee, LSC Management ultimately recommended that the regulation could be broadened to permit the representation, in addition to groups primarily composed of eligible individuals, groups which have as a primary activity the delivery of services to persons who would be eligible. Management continued to recommend that the regulation not permit the representation of groups whose primary activity is the "furtherance of the interests of" persons who would be eligible.

The Board agreed that permitting LSC recipients to use LSC funds for the representation of groups which provide services to low income persons is consistent with the LSC mission and could be an efficient use of LSC resources, provided that the legal assistance is related to the services the group provides. The Board also agreed that extending the permissible use of LSC funds for the representation of groups whose primary activity is the "furtherance of the interests of" low income persons would not be appropriate because of the necessarily subjective nature of determining what is in the "furtherance of the interests of" low income persons.

Accordingly, LSC proposed to permit a recipient to provide legal assistance supported with LSC funds to a group, corporation, association or other entity if the recipient has determined that the group, corporation, association or other entity lacks and has no practical means of obtaining private counsel in the matter for which representation is sought and either:

(1) The group, or for a non-membership group, the organizing or operating body of the group, is primarily composed of individuals who would be financially eligible for legal assistance under the Act; or

(2) The group has as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance and the legal assistance sought relates to such activity.

Under the proposal, any group seeking LSC-funded legal assistance would have to lack, and have no practical means of obtaining, the funds to obtain private counsel. LSC received no comments opposing this proposal and adopts it as proposed. LSC notes that there are instances in which a group without funds to pay for private legal counsel may, nonetheless, be able to obtain pro bono private counsel, although there are many instances in which no such pro bono private counsel is available. LSC understands that recipients currently take into account the availability of pro bono private counsel when determining whether to accept an eligible group as a client. LSC expects that this practice will continue.

Proposed subsection (1) above, relating to the eligibility and representation of groups composed primarily of eligible individuals, represents the practice under the current section 1611.5(c). The new rule is intended to have the same interpretation of "primarily composed" that has developed and been adopted in practice over the years since 1983. In the case of membership groups, at least a majority of the members would have to be individuals who would be financially eligible; in the case of non-membership groups, at least a majority of members of the governing body would have to be individuals who would be financially eligible. LSC received no comments opposing this proposal and adopts it as proposed.

The latter instance (proposed subsection (2), above) represents a variation on one of the situations permitted by the pre-1983 rule, although the language has been revised to focus on "principal activity" rather than "primary purpose" (or "primary activity") and the rule permits only the representation of groups which have as a principal activity the delivery of services to low income persons. Limiting permissible representation to groups which have as a "principal activity" the provision of services to low income persons and the exclusion of groups which act in the "furtherance of the interest of the poor" are intended to make the analysis required in determining the permissibility of the representation more objective.

All but one of the comments strongly supported the addition of groups having as a principal activity the delivery of services to those persons in the community who would be financially eligible for legal assistance.[5] The commenters stated that this change, if adopted, will provide recipients with much needed flexibility to address pressing legal needs of low income persons in their communities. One comment noted in particular that providing legal assistance to human services organizations results in positive benefits to thousands of low income individuals and is generally very much supported by local communities. Examples cited by the commenter include helping a domestic violence shelter keep its residents' information confidential and providing legal assistance in the creation of an indigent health care plan providing free medical services to low income persons.

Although the Office of Inspector General (OIG) did not file separate comments on the NPRM, the OIG has previously raised a question as to whether permitting the representation of groups not comprised of eligible clients is problematic because, in its view, neither the LSC Act itself nor the legislative history endorse the premise that LSC may permit the representation of groups that are not composed of eligible clients. Although LSC appreciates the OIG's comments, LSC believes that the proposed regulatory requirements are consistent with the applicable laws. The LSC Act, on its face, does not prohibit the representation of groups other than those composed of otherwise eligible individuals. The Act only speaks to "eligible clients" and there is nothing in the text of the Act which suggests that a group which has as its principal activity the provision of services to persons who would be eligible for LSC-funded legal assistance is necessarily excluded from the scope of the term "eligible clients." In addition, LSC believes that the legislative history of the Act and the 1977 LSC Act amendments is not dispositive on the issue of whether the statute was intended to prohibit the representation of groups other than those comprised of eligible individuals. Rather, support for the notion that Congress contemplated the provision of legal assistance to groups providing services to eligible clients can be seen in the comments Senator Riegle made in discussing an amendment relating to the prohibition by recipients on organizing:

> A similar clarification is made in section 9(c) [of the Senate Reauthorization Bill] regarding the prohibition on organizing activities. Legal Services should not directly organize groups. *However*, it should provide full representation, education and outreach to those organized groups who are made up of *or which represent* eligible clients.

Congressional Record of October 10, 1977, p. S 16804. (emphasis added).

Accordingly, LSC is adopting the proposal to permit recipients to provide legal assistance to groups having as a principal activity the delivery of services to those persons who would be eligible for LSC-funded legal assistance. In addition, LSC is adopting the proposed further limitation that the legal assistance must be related to the services delivered by the group. One commenter objected to this limitation.

[5] The remaining comment did not address this aspect of the proposed rule.

This commenter stated that legal assistance in an unrelated matter could have a significant impact on an organization's ability to provide its services. LSC notes that although there may be instances in which an unrelated legal matter could ultimately have an impact on the group's delivery of services, LSC believes that this limitation is important. LSC believes that this limitation, along with the limitation relating to the group's "principal activity," will avoid creating a potential situation whereby recipients might feel free to undertake broad based social change activities, but will permit recipients to provide legal assistance that will enable a group to pursue its goals of service to the eligible client community. LSC believes that these limitations will help ensure that LSC funds will be used to provide financially eligible groups with the day-to-day legal services which are the hallmark of LSC-funded legal assistance. Finally, LSC notes that if a recipient wishes to provide legal assistance to a group whose principal activity is the delivery of services to low income persons in a legal matter not related to that service, the recipient may provide that legal assistance with non-LSC funds, provided the legal assistance is otherwise permissible under applicable law and regulations.

LSC is adding a provision to the regulation specifying the manner of determining the eligibility of groups. Although the practice has been that recipients must collect information that reasonably demonstrates that the group meets the eligibility requirements set forth in the regulation, standards for determining and documenting the eligibility of groups has not previously been specifically addressed in the regulation. LSC Management does not believe that recipients are representing ineligible groups, but the Working Group was nevertheless in agreement that it is important and appropriate for the regulation to expressly state the Corporation's expectations in this area. The November 2002 NPRM would have required a recipient to collect information reasonably demonstrating that the group meets the eligibility requirements set forth in the regulation.

In written comments filed in response to the November 2002 NPRM, and again in the course of the new Operations and Regulation Committee's 2004 and 2005 deliberations, the OIG expressed concern that the proposed rule should provide eligibility criteria sufficient to ensure that groups seeking LSC-funded legal assistance qualify for such legal assistance and should require grantees to retain adequate documentation of such group eligibility. Although LSC believes that the November 2002 proposed financial eligibility standards for groups effectuated the principal criterion in the Act that those seeking LSC-funded legal assistance must be financially unable to afford legal assistance and were in no way inconsistent with the LSC Act, LSC does agree with the OIG that the standards for determining the eligibility of groups can and should be more specific than those set forth in the November 2002 NPRM.

Accordingly, in assessing the eligibility of a group, LSC proposed to require recipients to consider the resources available to the group, such as the group's income and income prospects, assets and obligations. LSC also proposed that for a group primarily composed of individuals who would be financially eligible for LSC-funded legal assistance under the Act, the recipient would also have to consider whether the characteristics of the persons primarily composing the group are consistent with financial eligibility under the Act. LSC further proposed that for a group having as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance under the Act, the recipient would also have to consider whether the characteristics of the persons served by the group are consistent with financial eligibility under the Act and whether the legal assistance sought relates to the principal activity of the group. Finally, LSC proposed to require a recipient to document group eligibility determinations by collecting information that reasonably demonstrates that the group meets the eligibility criteria set forth in the rule.

All but one of the commenters supported the proposal to require recipients to consider the resources available to the group, such as the group's income and income prospects, assets and obligations.[6] Several of the commenters, however, opposed the proposed requirement that the recipient must determine whether the characteristics of the group (or the characteristics of the persons receiving the services of the group) are consistent with financial eligibility for LSC-funded legal assistance. These commenters suggested that these proposals were not clear and could lead to disputes between LSC and recipients over whether the articulated standard was met. These commenters suggested that it would be sufficient only to require that recipients consider and collect information that "reasonably demonstrates" that the group meets the eligibility criteria.

As discussed above, LSC believes that it is important that the regulation specify what information recipients must consider in order to make determinations that the eligibility criteria are met. In the case of individual applicants, the eligibility criteria are that applicants must have income and assets valued at below the set levels and the regulation expressly requires recipients specifically consider the applicant's income and assets. Similarly, since the group eligibility criteria include that the group or the persons served by the group must be those who would be financially eligible, it is appropriate for the regulation to expressly require that recipients consider whether the group or the persons served by the group are those who would be financially eligible.

In discussions during the Operations and Regulations committee meetings on this subject, it was noted that the November 2002 NPRM standards for determining the eligibility of a group (which the commenters essentially suggest LSC adopt) were intended to reflect the current, unwritten practice with regard to determinations of eligibility of groups primarily composed of eligible individuals. The information adduced during those discussions indicated that recipients generally consider the nature and financial and other socioeconomic characteristics of the group in making group eligibility determinations, particularly in cases in which the group is sufficiently large as to make individualized screening a majority of the members of the group impracticable. LSC believed (and still believes) that the standard set forth in the proposed rule fairly reflects the current practice. Contrary to the concern expressed by the commenters, this practice has not proved to be problematic to date, nor is there any suggestion in the comments that LSC is currently "second guessing" recipients' determinations of group eligibility. LSC does not anticipate that incorporating the currently unwritten standard into the regulation will change this situation. LSC is, however, slightly modifying the language in the final rule to specify that it is the financial and other socioeconomic characteristics of the group (or the persons being served by the group) which recipients must consider in making eligibility determinations and that those particular characteristics must be consisent with those of persons who are financially eligible for LSC-funded legal asssitance.

[6] The other comment did not address the proposal regarding group eligibility.

The following are examples of how the new rule on group eligibility will apply:

Example 1: Group primarily composed of eligible individuals

A public housing tenants' association seeks representation to require the landlord to provide required maintenance services to the buildings and grounds. To make a determination of eligibility, the recipient would have to review the resources available to the group (such as any assets and liabilities of the tenants' association, *i.e.*, dues or other monetary donations to the association; outstanding bills or obligations of the association) and make a determination that the association lacks the financial resources with which to hire private counsel. In addition, the recipient would have to determine that a majority of the association (or the association's organizing body) are persons who would be financially eligible under the Act by considering whether the group's financial and other socioeconomic characteristics are consistent with those of persons who are financially eligible under the Act. The recipient could perform a standard eligibility screen on the members of the tenants' association (or its organizing body) or could make a determination that the requirement is met on the basis that financial eligibility for residency in the public housing complex in the recipient's area is consistent with the recipient's financial eligibility policies. The recipient would have to be able to support its determination of eligibility by collecting and maintaining such information as reasonably demonstrates that the tenants' association had met the eligibility criteria.

Example 2: Group primarily composed of eligible individuals

Five women who are currently on public assistance have come together as a group to open and operate a daycare center. The group has a grant from the state social services agency which permits the grant to be used of obtaining legal assistance and a line of credit secured by the Small Business Administration to create and operate this business. The group seeks legal assistance in obtaining the necessary permits and negotiating a lease for space for the center. To make a determination of eligibility, the recipient would have to review the resources available to the group (such as the grant, line of credit, other funds available, as well as liabilities, such as costs for obtaining licenses, space rental, etc) to see if the group lacks the financial resources with which to hire private counsel. In addition, the recipient would have to determine that a majority of the women are persons who would be financially eligible under the Act by considering the financial and other socioeconomic characteristics of the women. In this case, although the women (being recipients of public assistance) are likely persons who would be eligible for legal assistance under the Act, the group's grant and line of credit may provide enough resources to the group so as to enable the group to obtain private legal assistance. If the recipient determines that this is the case, the recipient would not be able to provide the group LSC-funded legal assistance.

Example 3: Group which has as a principal activity the provision of services to those who would be financially eligible under the Act.

A community group runs a food bank which distributes food to low-income persons in the community. The community group is a 501(c)(3) organization which is run by a volunteer board of directors who are not personally financially eligible for LSC-funded legal assistance. The food bank warehouse occupies rented space. The group is seeking legal assistance to renegotiate its lease to obtain favorable long-term lease terms to allow it to remain in the warehouse space. To make a determination of eligibility, the recipient would have to review the resources available to the group (*i.e.*, how much the group takes in donations, what the group's expenses are) and make a determination based on that information that the group lacks the financial resources with which to hire private counsel. In addition, the recipient would have to determine that the group has as a principal activity the provision of services to those would would be financially eligible for LSC-funded legal assistance. In this case, the recipient could consider such financial and other socioeconomic characteristics of the group being served such as homeless status, eligibility for the services offered, etc. The recipient would also have to consider the relative significance of the food bank in comparison to the other activities of the community group and to determine that the legal assistance sought related to that service. In this case, renegotiation of the lease appears related to the provision of the service. The recipient would have to be able to support its determination of eligibility by collecting and maintaining such information as reasonably demonstrates that the community group had met the eligibility criteria.

Example 4: Group which has as a principal activity the provision of services to persons who would be financially eligible under the Act

A non-profit organization runs a shelter for homeless families. The Board of the shelter is comprised of persons who would not be financially eligible for assistance under the Act. The shelter seeks legal assistance in defending itself against a claim for damages filed by a person who came to the shelter uninvited to distribute a menu for a local take out restaurant and slipped and fell on ice on the shelter's stairs. To make a determination of eligibility, the recipient would have to review the resources available to the group (*i.e.*, how much the shelter receives in donations, the shelter's expenses, etc.) and make a determination based on that information that the group lacks the financial resources with which to hire private counsel. In addition, the recipient would have to determine that the group has as a principal activity the provision of services to those would be financially eligible for LSC-funded legal assistance. In this case, the recipient would consider the financial and other socioeconomic characteristics of the group being served (homeless status, financial eligibility for access to the shelter, etc.). The recipient would also have to assess whether the legal assistance being sought relates to the principal activity. In this case, the tort claim is unlikely to be related to the primary activity of the shelter and, as such, the recipient would not be able to provide LSC-funded legal assistance to the shelter.

In addition, the revised rule retains and restates the current provision of the rule that these requirements apply only to a recipient providing legal assistance supported by LSC funds, provided that regardless of the source of funds used, any legal assistance provided to a group must be otherwise permissible under applicable law and regulation.

LSC notes that, as with other aspects of this rule, section 1611.6 does not speak to eligibility of groups for legal assistance under other applicable law and regulation. For example, the eligibility of a group under proposed section 1611.6 does not address issues related to the eligibility of the group under Part 1626 of LSC's regulations, concerning citizenship and alien status eligibility. Similarly, the fact that a recipient may determine a group to be eligible for legal assistance under this Part, does not address other questions relating to permissibility of the representation (*i.e.*, this Part does not confer authority for the representation of a group on restricted matters, such as class action lawsuits or redistricting matters, etc.)

Finally, LSC notes that in the November 2002 NPRM, this section was numbered 1611.8 and placed at the end of that proposed regulation. LSC is now placing this section before the sections on Manner of Determining Financial Eligibility, Change in Financial Eligibility Status and Retainer Agreements as those sections are applicable to both groups and individual applicants and clients.

Section 1611.7—Manner of Determining Financial Eligibility

LSC is making several revisions to this section. First, LSC is including a requirement that in making financial eligibility determinations a recipient shall make reasonable inquiry regarding sources of the applicant's income, income prospects and assets and shall record income and asset information in the manner specified for determining financial eligibility in section 1611.4. This requirement replaces the process currently required by section 1611.5, whereby a recipient is effectively required to conduct a lengthy and often cumbersome inquiry as to the applicant's income, assets and income prospects, including inquiry into a detailed list of factors relating to an applicant's specific financial situation and ability to afford private counsel.

The Working Group discussed this issue at length and representatives of the field noted that conducting such a detailed inquiry in most cases is a task which is often difficult to accomplish efficiently at the point of intake, especially as much of intake is performed by volunteers, interns or receptionists. Rather, many recipients, in practice, conduct a somewhat abbreviated version of the otherwise required process, inquiring into current income, assets, income prospects and probing for additional information based on the responses provided, the requirements of the regulation and their knowledge of local circumstances. This approach, the field representatives noted, is less prone to error and assists in fostering an appropriate attorney-client relationship with individuals accepted as clients. As LSC is not finding widespread instances of service being provided to financially ineligible persons, it was agreed that the process required by the existing regulation is unduly complicated and that the simplified requirement proposed would be adequate to ensure that recipients are making sufficient inquiry into applicants' financial situations to determine financial eligibility status under the regulation while being less administratively burdensome for recipients and more conducive to the development of the attorney-client relationship. LSC also believes that adoption of the streamlined financial eligibility determination process will aid the Corporation in conducting compliance reviews.

As noted above, LSC originally proposed in the November 2002 NPRM, to include this provision in proposed section 1611.4, Financial Eligibility for Legal Assistance. Upon reflection, LSC believes that as this requirement is really a requirement as to how financial eligibility determinations are to be made, it is better included in this section on the manner of determining financial eligibility. LSC believes that this will improve the organization and clarity of the regulation.

Second, LSC is deleting the requirement in existing paragraph (a) of this section that LSC eligibility forms and procedures must be approved by the Corporation. It has been LSC's experience that receiving the forms has not enhanced its ability to conduct oversight of recipients. These documents are readily available to LSC from recipients when needed. This requirement appears only to create unnecessary work for recipients and LSC staff without serving any policy purpose.

LSC is also adding a provision to the regulation making clear that a recipient agreeing to extend legal assistance to a client referred from another recipient may rely upon the referring recipient's determination of financial eligibility, provided that the referring recipient provides and the receiving recipient retains a copy of the eligibility form documenting the financial eligibility of the client. This is the currently accepted practice, but is addressed nowhere in the existing regulation.

LSC received several comments supporting these changes and no comments opposing them. Accordingly, LSC adopts the revisions as proposed.

Section 1611.8—Change in Financial Eligibility Status

LSC is adding language to this section to provide that if a recipient later learns of information which indicates that a client never was, in fact, financially eligible, the recipient must discontinue the representation consistent with the applicable rules of professional responsibility. This addition is being adopted because sometimes, after an applicant or group has been accepted as a client, the recipient discovers or the client discloses information that indicates that the client was not, in fact, financially eligible for service. This situation is not covered by the existing regulation because the client may not have experienced a change in circumstance but rather, the recipient has discovered new pertinent information about the client. LSC notes that the new language, like the current regulation, is not intended to require a recipient to make affirmative inquiry after accepting an applicant or group as a client for information that would indicate a change in circumstance or the presence of additional information regarding the client's financial eligibility.

The regulation requires that when a client is found to be no longer financially eligible on the basis of later discovered information, the recipient shall discontinue representation supported with LSC funds, if discontinuing the representation is not inconsistent with applicable rules of professional responsibility. This language is parallel to the current requirement regarding discontinuation of representation upon a change in circumstance. LSC wishes to note that, to the extent that discontinuation of representation is not possible because of professional responsibility reasons, a recipient may continue to provide representation supported by LSC funds. This is currently the case and LSC intends to make no change in the regulation on this point.

In addition, LSC is changing the name of this section from "change in circumstances" to "change in financial eligibility status" to reflect the addition of the later discovered information provision.

LSC received several comments supporting these changes and no comments opposing them. LSC accordingly adopts the revisions as proposed.

Section 1611.9—Retainer Agreements

The retainer agreement requirement, found at section 1611.8 of the existing regulation, was the subject of significant discussion in the Working Group. Representatives of the field agreed with the LSC representatives that a retainer agreement may be appropriate under certain circumstances, but argued that this regulatory requirement is not required by statute, is not justified under applicable rules of professional responsibility, may be unnecessarily burdensome in some instances and is not related to financial eligibility determinations. They contended that, barring a statutory mandate, decisions about the use of retainer agreements, like those involving many other matters relating to the best manner of providing high quality legal assistance, should be determined by a recipient's Board, management and staff, with guidance from LSC. They urged LSC to delete this requirement. The LSC representatives, however, were of the opinion that the existing provision in the regulations requiring the execution of retainer agreements is professionally desirable, authorized in accordance with LSC's mandate under Section 1007(a)(1) of the Act to assure the maintenance of the highest quality of service and professional standards, and appropriate to assure that there are no misunderstandings as to what services are to be rendered to a particular client. Retainer agreements protect the attorney and recipient in cases of an unfounded malpractice claim and protect the client if the attorney and the recipient should fail to provide legal assistance measuring up to professional standards. In the end, the Working Group was unable to reach consensus on this issue and the Draft NPRM retained a provision generally requiring the execution of retainer agreements, along with proposing requirements for client service notices and PAI referral notices in lieu of retainer agreements under certain circumstances.

After deliberations on the Draft NPRM, the Board determined to propose elimination of the retainer agreement

requirement altogether and the November 2002 NPRM published by LSC reflected this determination. With the exception of the comments of the LSC OIG, all of the comments LSC received on the November 2002 NPRM supported the elimination of the retainer agreement requirement.

With the appointment of the new members of the Board of Directors and the new LSC President, LSC had the opportunity to reconsider this proposal. Field representatives reiterated their support for elimination of the retainer agreement requirement from the regulation, while LSC Management reiterated its support for retention of a retainer agreement requirement for extended service in the regulation, with certain amendments intended to clarify and streamline the requirement. The Board agrees with Management. LSC is committed to keeping a retainer agreement requirement in the regulations. LSC considers the practice of providing retainer agreements to be professionally desirable and in accordance with its mandate under Section 1007(a)(1) of the Act to assure the maintenance of the highest quality of service and professional standards and to assure that there are no misunderstandings as to what services are to be rendered to a particular client. Retainer agreements protect the attorney and recipient in cases of an unfounded malpractice claim and protect the client if the attorney and the recipient should fail to provide legal assistance measuring up to professional standards.

LSC agrees, however, that there are changes that can be made in the retainer agreement requirement to clarify the application of the requirement and to lessen the burden on recipients, without interfering with the underlying goals of the requirements. First, LSC believes that it is not necessary for LSC to approve retainer agreements and proposes to remove the requirement at current section 1611.8(a) that retainer agreements be in a form approved by LSC. Instead, LSC is requiring the retainer agreements must be in a form consistent with the local rules of professional responsibility and must contain statements identifying the legal problem for which representation is being provided and the nature of the legal services to be provided. LSC believes that this simplification will eliminate possible sources of confusion for recipients in drafting retainer agreements, yet will continue to foster the essential communication between the recipient and the client.

Second, LSC is clarifying the circumstances in which retainer agreements are required. Under current section 1611.8(b) a recipient is not required to execute a retainer agreement "when the only service to be provided is brief advice and consultation." Although the plain language of this provision would seem to encompass situations in which the attorney is providing only some information and guidance on a suggested course of action to the client, it has over the years, come to include brief services such as drafting simple documents or making limited contacts (by phone or in writing) with third parties, such as a landlord, an employer or a government benefits agency, on behalf of the client. LSC has determined that the discrepancy between the plain language and the practical meaning of the exception must be corrected.

During the public deliberations on this matter in the 2004 and 2005 Operations and Regulations Committee meetings, LSC considered different approaches to resolving the discrepancy between the regulation as written and the prevailing practice. Field representatives suggested in the event that a retainer agreement requirement remains in the rule (although still preferring the elimination of any such requirement) that the language of the exception should reflect the current practice by expressly including brief service type activities along with advice and counsel. They asserted that the proposed rule should add no new administrative or regulatory burdens on recipients. While recognizing the value of retainer agreements in some circumstances, the field representatives also argued that the rules of professional responsibility in most jurisdictions do not require that a retainer agreement be executed or that any other form of notice be provided in the brief service context. Although LSC Management expressed the belief that while some form of written communication between the attorney and the client in brief services cases about the nature of the relationship and a clear understanding as to what services are to be rendered is important to achieving the highest quality of legal service and professional standards, it ultimately recommended against requiring grantees to provide specific written communications to clients when only brief services are being provided.

Most of the comments LSC received on the NPRM reiterated the arguments previously made by field representatives. At the same time, however, the commenters noted that if LSC was going to remain committed to maintaining a retainer agreement requirement in the regulation, that the proposed revisions were an appropriate and helpful change from the current requirement. In particular, several comments supported proposals to exclude PAI attorneys from the scope of the requirement and to delete the requirement for LSC prior approval of retainer agreement forms.

After considering all of the various arguments on this matter in LSC has determined that, on balance, written communications in brief services cases represents a "best practice" and, for the purposes of a regulatory requirement, the current practice by which retainer agreements are only required when the recipient is providing extended service to the client is appropriate. Accordingly, LSC is adopting the revisions as proposed. Under the new rule, recipients will only be required to execute retainer agreements when providing extended services to clients. Extended service is characterized by the performance of multiple tasks incident to continuous representation in a case. Examples of extended service include representation of a client in litigation, an administrative adjudicative proceeding, alternative dispute resolution proceeding, and more than brief representation of a client in negotiations with a third party. In addition, LSC is retaining the provision in the current regulation that the retainer agreement must be executed when representation commences or as soon thereafter as is practicable.

To further clarify the regulation, LSC is including express language specifying that recipients are not required to execute retainer agreements if the only services being provided are advice and counsel or brief service. Advice and counsel is characterized by a limited relationship between the attorney and the client in which the attorney does no more than review information and provide information and guidance to the client. Advice and counsel does not encompass drafting of documents or making third-party contacts on behalf of the client. LSC notes also that it proposes to use the term "advice and counsel" instead of "advice and consultation" because the term "advice and counsel" is a widely understood case reporting term throughout the legal services community and LSC believe that use of the standard term will be simpler and clearer. Brief service is the performance of a discrete task (or tasks) which are not incident to continuous representation in a case but which involve more than the mere provision of advice and counsel. Examples of brief service include activities, such as the drafting of documents such as a contract or a will for a client or the making of one or a few third-party contacts on

behalf of a client in a narrow time period. In advice and counsel and brief service cases, the interaction between the recipient and the client is generally limited in nature and duration so that executing a retainer agreement is administratively burdensome. In these situations it may take more time and effort for the recipient to prepare the retainer and ensure that the client has signed and returned an executed copy of the retainer agreement to the recipient than it takes for the recipient to provide the service to the client. At that point, the benefit of having the executed retainer agreement is outweighed by the effort required to comply with the requirement.

Finally, LSC is adding a statement to the regulation providing that no written retainer agreement is required for legal services provided to the client by a private attorney pursuant to 45 CFR Part 1614. Until now, LSC has consistently interpreted the retainer agreement requirement as applying to cases handled by private attorneys pursuant to a recipient's PAI program and OLA has advised recipients that the best course of action is to have the client execute retainer agreements with both the recipient and with the private attorney (OLA Opinion 99–03, August 9, 1999). Recipients have reported that entering into retainer agreements with clients with whom it does not have on-going direct relationships does not further the goal of the retainer agreement requirement and that ensuring that retainer agreements be executed between clients and private attorneys is unduly administratively burdensome. LSC agrees.

The application of the retainer agreement requirement comes from the current structure of the text of the regulation. Under the current regulation, a recipient is required to execute a retainer agreement (unless otherwise excepted) "with each client who receives legal services from the recipient." Cases referred to private attorneys pursuant to a recipient's PAI program remain cases of the recipient and the clients in those cases remain clients of the recipient and the client is considered to be receiving some legal services from the recipient. However, by amending the language of the text of the regulation to say that the recipient is only required to execute a retainer agreement "when the recipient is providing extended service to the client" the necessity of applying the requirement to PAI cases is removed. In cases handled by PAI attorneys, although the client can be said to be receiving some legal services from the recipient, the recipient is not providing extended services. Although this change to the language alone could arguably be sufficient to remove the necessity of applying the retainer agreement requirement to cases being handled by PAI attorneys, LSC believes the text of the regulation should be further clarified to explicitly so state.

Other

LSC received numerous comments supporting LSC's decision not to incorporate the requirements of section 509(h) of LSC's FY 1996 appropriations act. Public Law 104–134, 110 Stat. 1321 (carried forward in each successive appropriation, including the current appropriation, Public Law 108–447, 118 Stat. 2809) with respect to records covered by this Part. Section 509(h) provides that, among other records, eligibility records "shall be made available to any auditor or monitor of the recipient * * * except for such records subject to the attorney-client privilege." During the prior stages of this rulemaking, there had been some discussion and consideration of having this language expressly incorporated into Part 1611. LSC continues to believe that, as 509(h) covers significantly more than eligibility records, having a full discussion of the meaning of 509(h) in the context of 1611, which addresses only financial eligibility issues, is not appropriate. LSC is making final its decision not to address 509(h) requirements in this rule. For a fuller discussion of this issue, see the preamble to the November 22, 2002 NPRM, 67 FR 70376.

List of Subjects in 45 CFR Part 1611

Legal services.

■ For reasons set forth in the preamble, LSC revises 45 CFR part 1611 to read as follows:

PART 1611—FINANCIAL ELIGIBILITY

Sec.

Authority: 42 U.S.C. 2996e(b)(1), 2996e(b)(3), 2996f(a)(1), 2996f(a)(2); Section 509(h) of Pub. L. 104–134, 110 Stat. 1321 (1996); Pub. L. 105–119, 111 Stat. 2512 (1998).

§ 1611.1 Purpose.

This part sets forth requirements relating to the financial eligibility of individual applicants for legal assistance supported with LSC funds and recipients' responsibilities in making financial eligibility determinations. This part is not intended to and does not create any entitlement to service for persons deemed financially eligible. This part also seeks to ensure that financial eligibility is determined in a manner conducive to development of an effective attorney-client relationship. In addition, this part sets forth standards relating to the eligibility of groups for legal assistance supported with LSC funds. Finally, this part sets forth requirements relating to recipients' responsibilities in executing retainer agreements with clients.

§ 1611.2 Definitions.

(a) "Advice and counsel" means legal assistance that is limited to the review of information relevant to the client's legal problem(s) and counseling the client on the relevant law and/or suggested course of action. Advice and counsel does not encompass drafting of documents or making third-party contacts on behalf of the client.

(b) "Applicable rules of professional responsibility" means the rules of ethics and professional responsibility generally applicable to attorneys in the jurisdiction where the recipient provides legal services.

(c) "Applicant" means an individual who is seeking legal assistance supported with LSC funds from a recipient. The term does not include a group, corporation or association.

(d) "Assets" means cash or other resources of the applicant or members of the applicant's household that are readily convertible to cash, which are currently and actually available to the applicant.

(e) "Brief services" means legal assistance in which the recipient undertakes to provide a discrete and time-limited service to a client beyond advice and consultation, including but not limited to activities, such as the drafting of documents or making limited third party contacts on behalf of a client.

(f) "Extended service" means legal assistance characterized by the performance of multiple tasks incident to continuous representation. Examples of extended service would include representation of a client in litigation, an administrative adjudicative proceeding, alternative dispute resolution proceeding, extended negotiations with a third party, or other legal representation in which the

recipient undertakes responsibility for protecting or advancing a client's interest beyond advice and counsel or brief services.

(g) "Governmental program for low income individuals or families" means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of financial need.

(h) "Governmental program for persons with disabilities" means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of mental and/or physical disability.

(i) "Income" means actual current annual total cash receipts before taxes of all persons who are resident members and contribute to the support of an applicant's household, as that term is defined by the recipient. Total cash receipts include, but are not limited to, wages and salaries before any deduction; income from self-employment after deductions for business or farm expenses; regular payments from governmental programs for low income persons or persons with disabilities; social security payments; unemployment and worker's compensation payments; strike benefits from union funds; veterans benefits; training stipends; alimony; child support payments; military family allotments; public or private employee pension benefits; regular insurance or annuity payments; income from dividends, interest, rents, royalties or from estates and trusts; and other regular or recurring sources of financial support that are currently and actually available to the applicant. Total cash receipts do not include the value of food or rent received by the applicant in lieu of wages; money withdrawn from a bank; tax refunds; gifts; compensation and/or one-time insurance payments for injuries sustained; non-cash benefits; and up to $2,000 per year of funds received by individual Native Americans that is derived from Indian trust income or other distributions exempt by statute.

§ 1611.3 Financial eligibility policies.

(a) The governing body of a recipient shall adopt policies consistent with this part for determining the financial eligibility of applicants and groups. The governing body shall review its financial eligibility policies at least once every three years and make adjustments as necessary. The recipient shall implement procedures consistent with its policies.

(b) As part of its financial eligibility policies, every recipient shall specify that only individuals and groups determined to be financially eligible under the recipient's financial eligibility policies and LSC regulations may receive legal assistance supported with LSC funds.

(c)(1) As part of its financial eligibility policies, every recipient shall establish annual income ceilings for individuals and households, which may not exceed one hundred and twenty five percent (125%) of the current official Federal Poverty Guidelines amounts. The Corporation shall annually calculate 125% of the Federal Poverty Guidelines amounts and publish such calculations in the Federal Register as a revision to Appendix A to this part.

(2) As part of its financial eligibility policies, a recipient may adopt authorized exceptions to its annual income ceilings consistent with § 1611.5.

(d)(1) As part of its financial eligibility policies, every recipient shall establish reasonable asset ceilings for individuals and households. In establishing asset ceilings, the recipient may exclude consideration of a household's principal residence, vehicles used for transportation, assets used in producing income, and other assets which are exempt from attachment under State or Federal law.

(2) The recipient's policies may provide authority for waiver of its asset ceilings for specific applicants under unusual circumstances and when approved by the recipient's Executive Director, or his/her designee. When the asset ceiling is waived, the recipient shall record the reasons for such waiver and shall keep such records as are necessary to inform the Corporation of the reasons for such waiver.

(e) Notwithstanding any other provision of this part, or other provision of the recipient's financial eligibility policies, every recipient shall specify as part of its financial eligibility policies that in assessing the income or assets of an applicant who is a victim of domestic violence, the recipient shall consider only the assets and income of the applicant and members of the applicant's household other than those of the alleged perpetrator of the domestic violence and shall not include any assets held by the alleged perpetrator of the domestic violence, jointly held by the applicant with the alleged perpetrator of the domestic violence, or assets jointly held by any member of the applicant's household with the alleged perpetrator of the domestic violence.

(f) As part of its financial eligibility policies, a recipient may adopt policies that permit financial eligibility to be established by reference to an applicant's receipt of benefits from a governmental program for low-income individuals or families consistent with § 1611.4(c).

(g) Before establishing its financial eligibility policies, a recipient shall consider the cost of living in the service area or locality and other relevant factors, including but not limited to:

(1) The number of clients who can be served by the resources of the recipient;

(2) The population that would be eligible at and below alternative income and asset ceilings; and

(3) The availability and cost of legal services provided by the private bar and other free or low cost legal services providers in the area.

§ 1611.4 Financial eligibility for legal assistance.

(a) A recipient may provide legal assistance supported with LSC funds only to individuals whom the recipient has determined to be financially eligible for such assistance. Nothing in this part, however, prohibits a recipient from providing legal assistance to an individual without regard to that individual's income and assets if the legal assistance is wholly supported by funds from a source other than LSC, and is otherwise permissible under applicable law and regulation.

(b) Consistent with the recipient's financial eligibility policies and this part, the recipient may determine an applicant to be financially eligible for legal assistance if the applicant's assets do not exceed the recipient's applicable asset ceiling established pursuant to § 1611.3(d)(1), or the applicable asset ceiling has been waived pursuant § 1611.3(d)(2), and:

(1) The applicant's income is at or below the recipient's applicable annual income ceiling; or

(2) The applicant's income exceeds the recipient's applicable annual income ceiling but one or more of the authorized exceptions to the annual income ceilings, as provided in § 1611.5, applies.

(c) Consistent with the recipient's policies, a recipient may determine an applicant to be financially eligible without making an independent determination of income or assets, if the applicant's income is derived solely from a governmental program for low-income individuals or families, provided that the recipient's governing body has determined that the income standards of the governmental program are at or below 125% of the Federal Poverty Guidelines amounts and that the governmental program has eligibility standards which include an assets test.

§ 1611.5 Authorized exceptions to the annual income ceiling.

(a) Consistent with the recipient's policies and this Part, a recipient may determine an applicant whose income exceeds the recipient's applicable annual income ceiling to be financially eligible if the applicant's assets do not exceed the recipient's applicable asset ceiling established pursuant to § 1611.3(d), or the asset ceiling has been waived pursuant to § 1611.3(d)(2), and:

(1) The applicant is seeking legal assistance to maintain benefits provided by a governmental program for low income individuals or families; or

(2) The Executive Director of the recipient, or his/her designee, has determined on the basis of documentation received by the recipient, that the applicant's income is primarily committed to medical or nursing home expenses and that, excluding such portion of the applicant's income which is committed to medical or nursing home expenses, the applicant would otherwise be financially eligible for service; or

(3) The applicant's income does not exceed 200% of the applicable Federal Poverty Guidelines amount and:

(i) The applicant is seeking legal assistance to obtain governmental benefits for low income individuals and families; or

(ii) The applicant is seeking legal assistance to obtain or maintain governmental benefits for persons with disabilities; or

(4) The applicant's income does not exceed 200% of the applicable Federal Poverty Guidelines amount and the recipient has determined that the applicant should be considered financially eligible based on consideration of one or more of the following factors as applicable to the applicant or members of the applicant's household:

(i) Current income prospects, taking into account seasonal variations in income;

(ii) Unreimbursed medical expenses and medical insurance premiums;

(iii) Fixed debts and obligations;

(iv) Expenses such as dependent care, transportation, clothing and equipment expenses necessary for employment, job training, or educational activities in preparation for employment;

(v) Non-medical expenses associated with age or disability;

(vi) Current taxes; or

(vii) Other significant factors that the recipient has determined affect the applicant's ability to afford legal assistance.

(b) In the event that a recipient determines that an applicant is financially eligible pursuant to this section and is provided legal assistance, the recipient shall document the basis for the financial eligibility determination. The recipient shall keep such records as may be necessary to inform the Corporation of the specific facts and factors relied on to make such determination.

§ 1611.6 Representation of groups.

(a) A recipient may provide legal assistance to a group, corporation, association or other entity if it provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel and either:

(1) The group, or for a non-membership group the organizing or operating body of the group, is primarily composed of individuals who would be financially eligible for LSC-funded legal assistance; or

(2) The group has as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance and the legal assistance sought relates to such activity.

(b)(1) In order to make a determination that a group, corporation, association or other entity is eligible for legal services as required by paragraph (a) of this section, a recipient shall consider the resources available to the group, such as the group's income and income prospects, assets and obligations and either:

(i) For a group primarily composed of individuals who would be financially eligible for LSC-funded legal assistance, whether the financial or other socioeconomic characteristics of the persons comprising the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance; or

(ii) For a group having as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance, whether the financial or other socioeconomic characteristics of the persons served by the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance and the assistance sought relates to such activity of the group.

(2) A recipient shall collect information that reasonably demonstrates that the group, corporation, association or other entity meets the eligibility criteria set forth herein.

(c) The eligibility requirements set forth herein apply only to legal assistance supported by funds from LSC, provided that any legal assistance provided by a recipient, regardless of the source of funds supporting the assistance, must be otherwise permissible under applicable law and regulation.

§ 1611.7 Manner of determining financial eligibility.

(a)(1) In making financial eligibility determinations regarding individual applicants, a recipient shall make reasonable inquiry regarding sources of the applicant's income, income prospects and assets. The recipient shall record income and asset information in the manner specified in this section.

(2) In making financial eligibility determinations regarding groups seeking LSC-supported legal assistance, a recipient shall follow the requirements set forth in § 1611.6(b) of this part.

(b) A recipient shall adopt simple intake forms and procedures to obtain information from applicants and groups to determine financial eligibility in a manner that promotes the development of trust between attorney and client. The forms shall be preserved by the recipient.

(c) If there is substantial reason to doubt the accuracy of the financial eligibility information provided by an applicant or group, a recipient shall make appropriate inquiry to verify the information, in a manner consistent with the attorney-client relationship.

(d) When one recipient has determined that a client is financially eligible for service in a particular case or matter, that recipient may request another recipient to extend legal assistance or undertake representation on behalf of that client in the same case or matter in reliance upon the initial financial eligibility determination. In such cases, the receiving recipient is not required to review or redetermine the client's financial eligibility unless there is a change in financial eligibility status as described in § 1611.8 or there is substantial reason to doubt the validity of the original determination, provided that the referring recipient provides and the receiving recipient retains a copy of the intake form documenting the financial eligibility of the client.

§ 1611.8 Change in financial eligibility status.

(a) If, after making a determination of financial eligibility and accepting a client for service, the recipient becomes aware that a client has become financially ineligible through a change in circumstances, a recipient shall discontinue representation supported with LSC funds if the change in circumstances is sufficient, and is likely

to continue, to enable the client to afford private legal assistance, and discontinuation is not inconsistent with applicable rules of professional responsibility.

(b) If, after making a determination of financial eligibility and accepting a client for service, the recipient later determines that the client is financially ineligible on the basis of later discovered or disclosed information, a recipient shall discontinue representation supported with LSC funds if the discontinuation is not inconsistent with applicable rules of professional responsibility.

§ 1611.9 Retainer agreements.

(a) When a recipient provides extended service to a client, the recipient shall execute a written retainer agreement with the client. The retainer agreement shall be executed when representation commences or as soon thereafter as is practicable. Such retainer agreement must be in a form consistent with the applicable rules of professional responsibility and prevailing practices in the recipient's service area and shall include, at a minimum, a statement identifying the legal problem for which representation is sought, and the nature of the legal services to be provided.

(b) No written retainer agreement is required for advice and counsel or brief service provided by the recipient to the client or for legal services provided to the client by a private attorney pursuant to 45 CFR part 1614.

(c) The recipient shall maintain copies of all retainer agreements generated in accordance with this section.

Appendix A to Part 1611

LEGAL SERVICES CORPORATION 2005 POVERTY GUIDELINES *

Size of family unit	48 Contiguous States and the District of Columbia [1]	Alaska [2]	Hawaii [3]
1	$11,963	$14,938	$13,763
2	16,038	20,038	18,450
3	20,113	25,138	23,138
4	24,188	30,238	27,825
5	28,263	35,338	32,513
6	32,338	40,438	37,200
7	36,413	45,538	41,888
8	40,488	50,638	46,575

* The figures in this table represent 125% of the poverty guidelines by family size as determined by the Department of Health and Human Services.

[1] For family units with more than eight members, add $4,075 for each additional member in a family.

[2] For family units with more than eight members, add $5,100 for each additional member in a family.

[3] For family units with more than eight members, add $4,688 for each additional member in a family.

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. 05–15553 Filed 8–5–05; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 551

[Docket No. NHTSA–2005–21972]

RIN 2127–AJ69

Service of Process on Foreign Manufacturers and Importers

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends NHTSA's regulation on service of process on foreign manufacturers and importers to clarify existing regulatory requirements by rephrasing the regulation in a plain language, question and answer format and inserting an appendix containing a suggested designation form for use by foreign manufacturers and their agents. It also will enhance communications between foreign manufacturers and the agency by spelling out existing requirements for providing notice to NHTSA of changes in company name, address and product names, and changing the office to which foreign manufacturers must submit designation and related documents to reflect organizational changes occurring since the regulation was adopted.

EFFECTIVE DATE: This final rule becomes effective October 7, 2005.

Petitions: Any petitions for reconsideration of today's final rule must be received by NHTSA not later than September 22, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Dana Sade, Office of the Chief Counsel, at (202) 366–1834, facsimile (202) 366–3820. You may send mail to Ms. Sade at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: NHTSA published a rule on December 25, 1968 that established a procedure for foreign manufacturers, assemblers and importers of motor vehicles and motor vehicle equipment (hereinafter referred to as "foreign manufacturers") to designate an agent for service of process in the United States. Over time, NHTSA has found that many foreign manufacturers have submitted incomplete designation documents containing common errors and omissions. Often NHTSA receives designation documents not properly dated or signed, or otherwise lacking information necessary to effect a valid designation or replacement of agent under the regulation. NHTSA has found also that foreign manufacturers often fail to provide adequate notice to NHTSA of changes in company name, address and product names or trademarks.

This document clarifies existing regulatory requirements by rephrasing 49 CFR part 551, subpart D in a plain language, question and answer format and inserting an appendix containing a suggested designation form for use by foreign manufacturers and their agents. It also will enhance communications between foreign manufacturers and the agency by spelling out requirements for providing notice to NHTSA of changes in company name, address and product names, marks, or other designations of origin. Finally, it changes the NHTSA office to which foreign manufacturers must submit documents, as a result of organizational changes that have occurred in the agency since the regulation was adopted.

The purpose of the amendments is to make clearer the requirements of 49 CFR part 551, subpart D and improve communications between the agency and foreign manufacturers, thereby reducing the burdens associated with repeated filings to correct common errors. Since they are technical amendments only and make no substantive changes to the regulation, pursuant to 5 U.S.C. 553(b)(3)(B) prior notice and comment are not required.

Statutory Basis for the Final Rule

Section 110(e) of the National Traffic and Motor Vehicle Safety Act of 1966 (49 U.S.C. 30164) requires a foreign manufacturer offering a motor vehicle or motor vehicle equipment for importation into the United States to designate a permanent resident of the United States as its agent upon whom service of notices and processes may be made in administrative and judicial proceedings. This final rule revises a regulation that implements that statutory requirement at 49 CFR Part 551, Subpart D.

Financial Eligibility Policy

Appendix C

Income Exception Forms

LONE STAR LEGAL AID

Income Exception Form

Name: _____

Application No: _____

☐ Applicant's household's income derived **solely** from TANF and/or SSI.

☐ Asset eligible, or the asset ceiling has been waived, and seeking to **maintain** benefits provided by a governmental program to persons whose eligibility is determined on the basis of **financial need**.

☐ Asset eligible or the asset ceiling has been waived, and the Chief Executive Officer or his/her designee determines, based on documentation received by LSLA, that the applicant's income is primarily committed to **medical or nursing home expenses** and that, excluding such portion of the applicant's income which is committed to medical or nursing home expenses, the applicant would otherwise be financially eligible for LSLA services.

- ☐ Approved in writing by Chief Executive Officer or designee
- ☐ Documentation of expenses received

☐ Asset eligible or the asset ceiling has been waived, income over 125% but does not exceed 200% of the Federal Poverty Guidelines, and seeking to **obtain** benefits provided by a governmental program to persons whose eligibility is determined on the basis of **financial need**.

☐ Asset eligible or asset ceiling has been waived, income over 125% but does not exceed 200% of the Federal Poverty Guidelines, and seeking to **obtain or maintain** governmental benefits for **persons with disabilities**.

☐ Asset eligible or the asset ceiling has been waived, income over 125% but less than 200% of the Federal Poverty Guidelines, and eligible based on consideration of one or more of the factors listed on the attached Income & Expense Documentation Form.

- ☐ Documentation Form attached

LONE STAR LEGAL AID

Income & Expense Documentation to Support Exception

Name: _____

Application No.: _____

Current Income: _____

1. Current annual income prospects, taking into account seasonal variations: _____

2. Unreimbursed medical expenses and medical insurance premiums: _____

3. Fixed debts and obligations: _____

4. Expenses necessary for employment, job training, or educational activities in preparation for employment:

   a. Dependent care _____

   b. Transportation _____

   c. Clothing and equipment _____

5. Non-medical expenses associated with age or disability: _____

6. Current taxes: _____

7. Other significant factors that affect applicant's ability to afford legal assistance, provided the Chief Executive Officer or his designee approves an exception on this basis:

_____

_____

Signed:_____ Date:_____

Financial Eligibility Policy

Appendix D

Asset Waiver Form

LONE STAR LEGAL AID

Asset Eligibility Waiver

(to be kept in client's file)

Name: _____

Application Number: _____

Extent to which assets exceed LSLA's asset ceiling:

Reason for waiver:

- ☐ Person is over 60 and assets are necessary for medical, burial or necessary living expenses,
- ☐ Excess assets plus annual income are less than the annual income ceiling
- ☐ Other Unusual Circumstances – Explain:

Approval:

_____ _____

Chief Executive Officer or Designee Date

Financial Eligibility Policy

Appendix E

Group Eligibility Form

LONE STAR LEGAL AID

Group Eligibility Form

A. GENERAL INFORMATION

Name of Group: _____

Type of Group (e.g. 'non-profit corporation,' etc.) _____

Group's Purpose: _____

_____

_____

Name of Group Representative: _____

Representative's Address: _____

Representative's Phone Numbers: _____

Representative's Title/Position: _____

B. INABILITY TO PAY FOR PRIVATE COUNSEL

On the basis of the following information, the Group represents that it lacks, and has no practical means of obtaining, funds to retain private counsel.

Group's Average Monthly Income: _____ Average Monthly Expenses: _____

The Group currently has:
$_____ in cash on hand.
$_____ in its bank account(s).
$_____ in accounts receivable.
$_____ in accounts payable.

The Group
- ☐ does not own any real estate.
- ☐ owns real estate in which the Group's equity interest has an approximate value of $_____.
- ☐ does not own any motor vehicles.
- ☐ owns the following motor vehicles: _____
- ☐ does not own any other assets.
- ☐ has other assets with a fair market value of: _____

C. ELIGIBILITY

If this is a **membership group**, then it is [☐ TRUE or ☐ FALSE] that most members of the group (at least 51%) receive:

- monthly income at, or below, the federal poverty guidelines; or
- food stamps; or
- subsidized housing; or
- Medicaid; or
- TANF benefits; or
- SSI (Supplemental Security Income) payments; or
- Other: _____

OR

If this is a **non-membership group**, then it is [☐ TRUE or ☐ FALSE] that most members of the group's organizing or operating body (at least 51%) receive:

- monthly income at, or below, the federal poverty guidelines; or
- food stamps; or
- subsidized housing; or
- Medicaid; or
- TANF benefits; or
- SSI (Supplemental Security Income) payments; or
- Other: _____

OR

If one of the group's **principal activities is the delivery of services** to low-income persons in the community, then it is [☐ TRUE or ☐ FALSE] that most recipients of the group's services (at least 51%) receive:

- monthly income at, or below, the federal poverty guidelines; or
- food stamps; or
- subsidized housing; or
- Medicaid; or
- TANF benefits; or
- SSI (Supplemental Security Income) payments; or
- Other: _____

D. ATTESTATION

I have personal knowledge of the facts which are set out above and that the facts set out above are true and correct.

_____ _____

Signature Date

_____

Printed Name

ELIGIBILITY [☐ APPROVED ☐ DENIED] BY: _____

Financial Eligibility Policy

Appendix F

Representation Agreement Form

LONE STAR LEGAL AID

Representation Agreement

I, _____, retain Lone Star Legal Aid (LSLA), and anyone designated by LSLA to be my representative, in the following matter [describe the legal problem]:

_____

_____

I understand that LSLA will represent me only in the following forum:

_____

I understand that LSLA is not agreeing to be my representative in any appeal of the results obtained in this matter. If I want to appeal, a new Representative Agreement may be needed, if LSLA, in its own and sole discretion, agrees to help me with the appeal.

FREE LEGAL SERVICES

I understand that I am eligible to receive free legal services under the rules of LSLA.

ATTORNEYS' FEES

I understand and agree that, should this representation lead to litigation resulting in an award of attorneys' fees, these attorneys' fees shall be apart from any award I obtain and shall be the sole property of LSLA. I understand that whether to bring forth a claim for attorneys' fees is a strategic decision that will be made in consultation with my attorneys and that I have the right to direct that a claim for attorneys' fees not be made in my case.

COURT COSTS

If my case involves lawsuit, I understand that there may be expenses to pay. These include filing fees, publication fees, service fees, witness fees, deposition costs, and similar expenses. I understand that, provided I meet all legal requirements at the time such expenses must be paid, I may be eligible to have such expenses waived by the court. Otherwise, LSLA may, at its own and sole discretion, choose to pay some or all of these expenses on my behalf. I agree to pay those expenses that LSLA does not pay. I further agree to reimburse LSLA for any expenses it pays out of any money that I receive as a result of the legal assistance I received from LSLA.

COOPERATION

I agree to tell LSLA of any changes of my address, telephone number, household income, or the people living in my household.

I agree to tell LSLA of any legal papers I receive.

I agree to fully cooperate with LSLA, keep all appointments, attend all court hearings, respond promptly to all requests for information, and keep all time limits set by LSLA.

TERMINATION OF REPRESENTATION

I understand that I may cancel this agreement at any time by telling LSLA.

I agree that LSLA may stop being my representative if:

1. I do not fully cooperate with LSLA; or

2. LSLA is not able to contact me, despite its best efforts.

I understand that LSLA may have to stop representing me, if the law requires it to do so.

CONFIDENTIALITY

LSLA will keep all information about my case confidential. I understand, however, that LSLA may be required to disclose certain information about my case. I consent to such disclosure.

COMPLAINTS

If I am not satisfied with the work done on my case, I have the right to complain to LSLA.

I have read this Agreement, understand it, and sign my name below indicating my consent to its terms and conditions.

Approved by Client

_____ Date _____

Approved by LSLA

_____ Date _____

Financial Eligibility Policy

Appendix G

Income Guidelines Effective as of 1/23/2009

LONE STAR LEGAL AID

2009 Financial Eligibility Guidelines

Household size	125% LSC - IOLTA - BCLS		187.50% CVCLS		200% LSC w/exceptions	
	monthly	annual	monthly	annual	monthly	annual
1	$1,128.00	$13,537.00	$1,692.00	$20,306.00	$1,805.00	$21,660.00
2	$1,518.00	$18,212.00	$2,277.00	$27,319.00	$2,428.00	$29,140.00
3	$1,907.00	$22,887.00	$2,861.00	$34,331.00	$3,052.00	$36,620.00
4	$2,297.00	$27,562.00	$3,445.00	$41,344.00	$3,675.00	$44,100.00
5	$2,686.00	$32,237.00	$4,030.00	$48,356.00	$4,298.00	$51,580.00
6	$3,076.00	$36,912.00	$4,614.00	$55,369.00	$4,922.00	$59,060.00
7	$3,465.00	$41,587.00	$5,198.00	$62,381.00	$5,545.00	$66,540.00
8	$3,855.00	$46,262.00	$5,783.00	$69,394.00	$6,168.00	$74,020.00
each extra person	$390.00	$4,675.00	$584.00	$7,012.00	$623.00	$7,480.00

Effective: January 23, 2009

Note: Annual $ limits at 125% and at 200% are taken from the federal regulations as posted on the LSC website.

Financial Eligibility Procedures

Appendix 1

Advisory Opinion # AO – 2009 – 1006
"Inquiry into Income Prospects Pursuant to 45 CFR § 1611.7(a)"

LSC

Legal Services Corporation
America's Partner For Equal Justice

OFFICE OF LEGAL AFFAIRS

ADVISORY OPINION

Advisory Opinion # AO – 2009 – 1006

Subject: Inquiry into Income Prospects Pursuant to 45 CFR §1611.7(a)

Date: September 3, 2009

This Office was asked for an opinion on whether recipients must inquire as to the income prospects of each applicant for LSC-supported legal assistance, or whether recipients may choose not to ask such applicants about income prospects unless the applicant otherwise provides information indicating that there may be an upcoming change to his or her current income.

Brief Answer

As part of their financial eligibility screening, recipients are required by 45 CFR §1611.7(a) to make a reasonable inquiry into the income prospects of each applicant for LSC-funded legal assistance.

Background

In the course of Case Service Report/Case Management System reviews of two recipients, LSC's Office of Compliance and Enforcement found that the recipients were not inquiring into the income prospects of all applicants for LSC-supported legal assistance during financial eligibility screening. As a result, the two programs were instructed by OCE to begin inquiring into the income prospects of all applicants for LSC-supported legal assistance. The two recipients acknowledged that the OCE finding was accurate, but each has taken issue with OCE's instruction. The challenges to the instruction are based on a contention that the financial eligibility regulation at 45 CFR Part 1611 does not require recipients to inquire into the income prospects of all applicants for LSC-supported legal assistance. The recipients have inquired with this Office regarding this point.

Analysis

Under 45 CFR Part 1611, *Financial Eligibility*, recipients are permitted to accept as clients and provide LSC-supported legal assistance only to applicants who have been determined to be financially eligible for such legal assistance in accordance with the requirements of 45 CFR Part 1611 and the financial eligibility policies adopted by the recipient. 45 CFR §1611.4. Section 1611.7(a) provides that "[i]n making financial eligibility determinations regarding individual applicants, a recipient **shall make reasonable inquiry regarding** sources of the applicant's income, **income prospects** and assets." (Emphasis added.) Generally accepted

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principles of statutory construction, which apply equally to regulations, provide that when the language of a statute is clear and unambiguous on its face it is to be given its plain language meaning. *Public Citizen, Inc. v. Rubber Manufacturers Association*, 533 F3d 810 (C.A.D.C. 2008); see also, 73 C.J.S. Public Administrative Law and Procedure § 211. It is my considered opinion that the language of this regulatory provision is "clear and unambiguous" on its face. Neither the plain language of §1611.7(a), nor the plain language of any other section of Part 1611 contains any limitation on or exception to the requirements relating to the manner of determining financial eligibility. Rather, the regulation on its face expressly requires that a reasonable inquiry into an applicant's income prospects be part of the financial eligibility determination in all cases. Therefore, giving the regulation its plain language meaning, there is no basis to interpret the income prospects inquiry requirement of §1611.7(a) as limited to only those situations in which the recipient already has a reason to believe that the income prospects of the applicant are likely to change in the near future.[1]

One recipient argues that because the term "current income prospects" is used in the section addressing exceptions to the income ceiling (45 CFR §1611.5(a)(4)(i)), the term only has "substantive meaning" in that particular regard. Therefore, it is argued, because that particular exemption is stated as "current income prospects, taking into account seasonal variations in income" the use of the term "income prospects" by itself in §1611.7(a) regarding the "[m]anner of determining financial eligibility" may only mean income prospects related to seasonal variations in income. I find this contention unpersuasive.

The term "income prospects" is used in three different contexts in Part 1611; each use compliments the others for a more complete understanding of how to inquire about and consider them. The three uses do not, as has been suggested, limit or constrain each other. Section 1611.7(a) gives a general rule, quoted above, that the recipient shall make a reasonable inquiry about income prospects as part of the initial financial eligibility determination. Section 1611.5 deals with the separate question of exceptions to the annual income ceiling that can be considered **after** the preliminary income determination is made. In that context "current income prospects, taking into account seasonal variations in income" can be considered as a reason to determine that an otherwise over-income applicant is financially eligible. The fact that a

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[1] Although neither recipient raised this specific argument, it has been suggested that had the provision in question been intended to require an inquiry into prospective income in all cases, the regulation could have read "shall inquire" rather than "shall make reasonable inquiry." In my opinion the problem with this argument is that it could similarly be claimed that if the provision in question had been intended to mean that inquiry into income prospects was only required when the recipient deemed it reasonable, the regulation could have read "shall make inquiry [into income prospects] when the recipient deems such inquiry reasonable." Just because there could have been different linguistic constructions of the phrase, the failure to use any such different construction is not dispositive.

Moreover as a matter of English construction, in the sentence "the recipient shall make reasonable inquiry regarding sources of the applicant's income, income prospects and assets," the appearance of the word "reasonable" directly before the noun "inquiry" indicates that it is an adjective intended to modify the noun, rather than a conditional which is typically indicated by the use of another conditional signifier, such as if, when, or unless. Thus, the phrase "reasonable inquiry" is best interpreted as an inquiry that is reasonable, not an inquiry performed when it is deemed reasonable And the use of the direct command form "shall" further indicates that the inquiry is mandatory, rather than permissive.

recipient has discretion to consider seasonal income variations as an exception to the income ceiling has no bearing on its obligation to inquire about any income prospects (seasonal or otherwise) as part of a financial eligibility determination.

In addition to the two contexts already discussed, §1611.6(b)(1) also discusses "income prospects" in connection with the manner of determining eligibility for groups seeking LSC funded legal assistance from recipients. The fact that income prospects must be also considered for groups does not affect the need to inquire about them for non-group applicants, nor does the discussion of seasonal income prospects alter the need to inquire about a group's income prospects. As such, the term must have "substantive meaning" apart from its use in §§1611.5(a)(4)(i) and 1611.6(b)(1) .

It has also been argued that a different reading is supported by the definition of "income" in §1611.2(i) because it includes only "actual current annual total cash receipts . . . ." To the contrary, that definition has no bearing on the inquiry into income prospects. Section 1611.7(a)(1) requires "reasonable inquiry regarding sources of the applicant's income, income prospects and assets." The definition of "income" does not affect the need to also inquire into income prospects and assets.

Rather, making a reasonable inquiry into all applicants' income prospects furthers the purpose of the regulation, while limiting the applicability of the income prospect inquiry works at cross-purposes to the regulation. An applicant's financial eligibility is based in the applicant's ability to afford legal assistance; the required inquiry is important in all cases as a particular applicant's income prospects might be relevant to the financial eligibility determination precisely because the applicant's income prospects might not otherwise be obvious. Without asking, the recipient cannot make the reasonable determination required. Furthermore, failure to make a reasonable inquiry could create a situation in which a recipient accepts an applicant as a client only to have to shortly thereafter discontinue representation of that client with LSC funds (unless professional responsibility requires otherwise) under §1611.8.

Both recipients suggested that requiring an inquiry into an applicant's income prospects in all cases would require recipients and applicants to speculate wildly about a variety of scenarios which might or might not occur which could affect an applicant's income prospects. However, the regulation does not require applicants or recipients to speculate about the entire universe of events which could potentially have an effect on an applicant's income. Rather, *as with the inquiry into income and assets,* the inquiry need only be "reasonable" in its scope.

Although the regulation does not define the word "reasonable," the following may serve as a guide to what is intended: after inquiring about an applicant's income, the intake screener could ask a question along the lines of "Do you have any reason to believe that your income is likely to change significantly in the near future?" If the applicant's response is "yes," further inquiry would appear to be appropriate. If, however, the applicant's response is in the negative, unless something else about the information provided gives the recipient some reasonable basis to inquire further, the inquiry would end. This is no different than the reasonableness of the inquiry required of recipients into income and assets.

It should be noted that during the rulemaking in which the current requirement was adopted, the "reasonable inquiry" standard was specifically proposed and endorsed by many recipients as appropriate and, in fact, consonant with their current practice. The preamble to the current version of Part 1611 contains the following discussion of the matter:

> LSC is including a requirement that in making financial eligibility determinations a recipient shall make reasonable inquiry regarding sources of the applicant's income, income prospects and assets and shall record income and asset information in the manner specified for determining financial eligibility in section 1611.4. This requirement replaces the process currently required by section 1611.5, whereby a recipient is effectively required to conduct a lengthy and often cumbersome inquiry as to the applicant's income, assets and income prospects, including inquiry into a detailed list of factors relating to an applicant's specific financial situation and ability to afford private counsel. The Working Group discussed this issue at length and representatives of the field noted that conducting such a detailed inquiry in most cases is a task which is often difficult to accomplish efficiently at the point of intake, especially as much of intake is performed by volunteers, interns or receptionists. Rather, many recipients, in practice, conduct a somewhat abbreviated version of the otherwise required process, inquiring into current income, assets, income prospects and probing for additional information based on the responses provided, the requirements of the regulation and their knowledge of local circumstances. This approach, the field representatives noted, is less prone to error and assists in fostering an appropriate attorney-client relationship with individuals accepted as clients. As LSC is not finding widespread instances of service being provided to financially ineligible persons, it was agreed that the process required by the existing regulation is unduly complicated and that the simplified requirement proposed would be adequate to ensure that recipients are making sufficient inquiry into applicants' financial situations to determine financial eligibility status under the regulation while being less administratively burdensome for recipients and more conducive to the development of the attorney-client relationship.

70 Fed. Reg. 45545, at 45560 (August 8, 2005).[2] As such, there is no reason to believe that the "reasonable inquiry" standard cannot be implemented by recipients with respect to inquiries into income prospects.

One of the recipients further argues that even an inquiry into "imminently realistic possibilities for future income" would have "no bearing on the applicant's eligibility for program services." Presumably the argument is that absent absolute certainty, any prospective income should not be considered. In adopting this requirement, the LSC Board determined otherwise.

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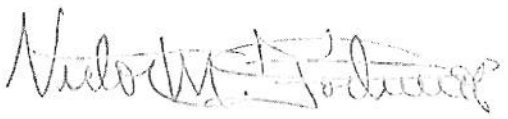
[2] Moreover, in addition to the Working Group negotiations in 2002, as discussed by the quote above, the revised language was subject to informal general public comment throughout 2005 as the LSC Board of Directors (and its Operations and Regulations Committee) reviewed the draft NPRM and formal public comment upon the publication of the NPRM. LSC received no comments during that time evidencing confusion over the meaning of the provision or suggesting that making a reasonable inquiry in all cases would be administratively problematic.

Reasonable inquiries into income prospects are required for all applicants. While the answer may be "no" in most cases, the recipient is required to find out whether the answer is yes and then consider the specific available information in making a reasonable financial eligibility determination.



Victor M. Fortuno
Vice President & General Counsel

RESOLUTION NO. 53

LONE STAR LEGAL AID

BOARD OF DIRECTORS

POLICY AND PROCEDURE REGARDING LOBBYING AND CERTAIN OTHER ACTIVITIES

ATTEST:

The attached ***Policy and Procedure Regarding Lobbying and Certain Other Activities*** was reviewed and adopted during a meeting of the Board of Directors of Lone Star Legal Aid held on December 09, 2005, by a majority of the members present.

December 09, 2005

Rhonda Campbell

RHONDA CAMPBELL
Secretary

L Clay-Jackson

LYDIA CLAY-JACKSON
Chair, Board of Directors

LONE STAR LEGAL AID

Policy and Procedure Regarding Lobbying and Certain Other Activities

POLICY

A. It is the policy of LSLA to comply with the requirements of §§ 504(a)(2), (3), (4), (5), (6) and (12) and 504 (b) and (e) of P.L. 104-134, 110 Stat. 1321 (1996) and 45 C.F.R. Part 1612, as amended from time to time, which are incorporated herein by reference. In the event a conflict arises between this Policy and the statute or regulations, the provisions of the statute or regulations will control. A copy of the current version of the Statute and Regulations is attached.

B. This policy replaces all prior policies.

C.(1) Employees of LSLA shall not engage in any grassroots lobbying, as that term is defined in 45 C.F.R. § 1612.2(a).

(2) During working hours, while providing legal assistance or representation to clients or while using LSLA resources, no person shall participate in public demonstrations and activities prohibited by 45 C.F.R. § 1612.7.

(3) Employees of LSLA may not support or conduct training programs prohibited by 45 C.F.R. § 1612.8.

(4) Employees of LSLA may not use any LSLA resources to engage in organizing activities prohibited by 45 C.F.R. § 1612.9.

(5) Employees of LSLA shall not engage in legislative or administrative activities prohibited by 45 C.F.R. § 1612.3.

(6) (a) LSLA may provide administrative representation for an eligible client in a proceeding that adjudicates the particular rights or interests of such eligible client or in negotiations directly involving that client's legal rights or responsibilities, including pre-litigation negotiation and negotiation in the course of litigation.

(b) LSLA may initiate or participate in litigation challenging agency rules, regulations, guidelines or policies, unless such litigation is otherwise prohibited by law or Corporation regulations.

(c) Nothing in this policy is intended to prohibit LSLA from:

(i) Applying for a governmental grant or contract;

(ii) Communicating with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies;

(iii) Informing clients, other legal services programs, or attorneys representing eligible clients about new or proposed statutes, executive orders, or administrative regulations;

(iv) Communicating directly or indirectly with LSC for any purpose including commenting upon existing or proposed LSC rules, regulations, guidelines, instructions and policies;

(v) Permitting its employees to participate in bar association activities, provided that LSLA resources are not used to support, and LSLA is not identified with, activities of bar associations that are devoted to activities prohibited by this policy;

(vi) Advising a client of the client's right to communicate directly with an elected official; or

(vii) Participating in activity related to the judiciary, such as the promulgation of court rules, rules of professional responsibility and disciplinary rules.

(7) LSLA and its employees may use non-LSC funds to respond to a written request from a governmental agency or official thereof, elected official, legislative body, committee, or member thereof, in accordance with 45 C.F.R. § 1612.6.

(8) (a) No funds made available by the Corporation shall be used to pay for administrative overhead or related costs associated with any activity listed in § (7).

(b) LSLA shall maintain separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities permitted by § (7).

(c) LSLA shall submit semi-annual reports describing its legislative activities with non-LSC funds conducted pursuant to § (7), together with such supporting documentation as specified by the Corporation.

DISCUSSION

A. The purpose of this policy is to ensure that LSLA employees do not engage in certain activities, including rulemaking, lobbying, grassroots lobbying, and

advocacy training, and to prohibit participation in public demonstrations, strikes, boycotts and organizing activities.

B. The policy does not affect LSLA litigation activities, including pre-litigation negotiations and negotiations in the course of litigation.

C. The policy prohibits any legislative lobbying, before any legislative body, a committee or member thereof, acting in legislative capacity, except in response to a written request, and using non-LSC funds.

D. The policy does not prohibit administrative representation for an eligible client in a proceeding that adjudicates the particular rights or interests of such eligible client or in negotiations directly involving that client's legal rights or responsibilities.

E. The policy does prohibit a variety of other administrative activities regarding rulemaking.

F. Because of the complex nature of the regulatory prohibitions, and the fine line between what is permitted and what is prohibited, attached to this policy is the explanation provided by LSC in the Federal Register, outlining what is permitted and what is prohibited. This merits careful study.

PROCEDURE

1. Any employee of LSLA who receives a written request from a governmental agency or official thereof, elected official, legislative body, committee, or member thereof to testify, provide information, or participate in negotiated rulemaking shall discuss the matter with the Director of Litigation or assigned Litigation Director before taking any action on the request.

2. Any employee of LSLA who intends to engage in any administrative activity other than representation of a client in a proceeding to adjudicate that client's particular rights should consult his Managing Attorney or Director of Litigation or assigned Litigation Director.

Section 504(a): None of the funds appropriated in this Act to the Legal Services Corporation may be used to provide financial assistance to any person or entity (which may be referred to in this section as a 'recipient')--

(2) that attempts to influence the issuance, amendment, or revocation of any executive order, regulation, or other statement of general applicability and future effect by any Federal, State, or local agency;

(3) that attempts to influence any part of any adjudicatory proceeding of any Federal, State, or local agency if such part of the proceeding is designed for the formulation or modification of any agency policy of general applicability and future effect;

(4) that attempts to influence the passage or defeat of any legislation, constitutional amendment, referendum, initiative, or any similar procedure of the Congress or a State or local legislative body;

(5) that attempts to influence the conduct of oversight proceedings of the Corporation or any person or entity receiving financial assistance provided by the Corporation;

(12) that supports or conducts a training program for the purpose of advocating a particular public policy or encouraging a political activity, a labor or antilabor activity, a boycott, picketing, a strike, or a demonstration, including the dissemination of information about such a policy or activity, except that this paragraph shall not be construed to prohibit the provision of training to an attorney or a paralegal to prepare the attorney or paralegal to provide--

(A) adequate legal assistance to eligible clients; or

(B) advice to any eligible client as to the legal rights of the client;

Section 504(b): Nothing in this section shall be construed to prohibit a recipient from using funds from a source other than the Legal Services Corporation for the purpose of contacting, communicating with, or responding to a request from, a State or local government agency, a State or local legislative body or committee, or a member thereof, regarding funding for the recipient, including a pending or proposed legislative or agency proposal to fund such recipient.

62 FR 19400-01
1997 WL 188199 (F.R.)
(Cite as: 62 FR 19400)

RULES and REGULATIONS

LEGAL SERVICES CORPORATION

45 CFR Part 1612

Restrictions on Lobbying and Certain Other Activities

Monday, April 21, 1997

*19400 **AGENCY**: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule revises the Legal Services Corporation's ("Corporation" or "LSC") regulation on lobbying, rulemaking and other restricted activities. It is intended to implement provisions in the Corporation's FY 1996 appropriations act that are currently incorporated by reference in the Corporation's FY 1997 appropriations act, and which prohibit recipients from engaging in agency rulemaking, legislative lobbying activity or advocacy training. The final rule also implements statutory exceptions to the prohibitions, which permit recipients to use non-LSC funds to comment on public rulemaking, respond to requests from legislative and administrative bodies, and engage in efforts to encourage State and local governments to make funds available for recipient activities. Finally, the final rule continues the pre- existing prohibitions on participation in organizing activities, public demonstrations and certain illegal activities.

DATES: Effective May 21, 1997.

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

SUPPLEMENTARY INFORMATION: On May 19, 1996, the Operations and Regulations Committee ("Committee") of the LSC Board of Directors ("Board") requested LSC staff to prepare an interim rule with a request for comments to implement §§ 504(a)(2), (3), (4), (5), (6) and (12) and 504 (b) and (e) of the Corporation's FY 1996 appropriations act, 110 Stat. 1321 (1996), prohibiting recipients from engaging in most rulemaking, lobbying and advocacy training activities. The Committee held hearings on staff proposals on July 10 and 19, 1996, and the Board adopted an interim rule on July 20, 1996, for publication in the Federal Register. Although the interim rule was effective upon publication, see 61 FR 45741 (August 29, 1996),

the Corporation also solicited comments on the rule for review and consideration by the Committee and Board.

Eight written timely comments were received by the Corporation. The comments generally approved the rule, but raised technical and clarifying issues as well as substantive policy concerns, particularly about the participation of recipient attorneys in bar association activities and in certain training programs. The Committee held public hearings on the rule on December 13, 1996, and January 5, 1997, and approved revisions to the interim rule to take into account the written comments and LSC staff recommendations. The Board adopted the Committee's recommended version on January 6, 1997, as a final rule.

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

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

Section 1612.1: Purpose.

The purpose of this rule is to ensure that LSC recipients and their employees do not engage in certain activities, including rulemaking, lobbying, grassroots lobbying, and advocacy training, banned by Section 504 in the Corporation's FY 1996 appropriations act, as incorporated by the Corporation's FY 1997 appropriations act. The rule continues existing provisions of the LSC Act that prohibit participation in public demonstrations, strikes, boycotts and organizing activities. It also provides guidance on when recipients may participate in public rulemaking, respond to requests from legislative and administrative bodies, and encourage State and local governments to make funds available to support recipient activities. In response to comments that the meaning of the term "fundraising" used in the interim rule was misleading, the final rule deletes the term "fundraising" in order to clarify that this part does not restrict efforts by recipients to engage in resource development activities. The activity that is restricted is what is commonly called "self- interest lobbying," which is any effort by recipients to encourage State or local governments to appropriate funds for the financial support of recipients. This final rule prohibits the use of LSC funds by recipients for self-interest lobbying, but permits recipients to use non-LSC funds for such efforts.

Section 1612.2: Definitions.

The final rule significantly revises the definitions that were used in prior rules in order to reflect the new statutory restrictions and thus ensure that recipients do not engage in prohibited activity, and to provide greater clarity about the scope of the restrictions. In addition, definitions have been revised or eliminated because they are no longer necessary or the prior definition was inconsistent with the common sense usage of terms (such as the term ***19401** "legislation," which was defined to include administrative rulemaking).

"*Grassroots lobbying*," is defined to prohibit all communications and participation in activities which are designed to influence the public to contact public officials to support or oppose pending or proposed legislation. The definition does not use the term "publicity or propaganda," which was used in prior regulations, because the FY 1996 appropriations act does not use the term. However, the new definition of grassroots lobbying incorporates the definition of "publicity or propaganda" that was previously used. The definition also provides that "*grassroots lobbying*" does not include communications which are limited solely to reporting the content or status of, or explaining, pending or proposed legislation or regulations. The interim rule would have allowed recipients to report on the effect such legislation or regulations may have on eligible clients or on their legal representation. This final rule has deleted the reference to "reporting on the effect of legislation" with language that permits recipients to explain pending and proposed legislation. This change clarifies that it is appropriate for recipients to prepare communications explaining the meaning and analyzing pending or proposed legislation when communicating about such legislation, but that it is inappropriate for recipients to prepare communications that could be used for or interpreted as grassroots lobbying. Thus, a recipient's communication about pending or proposed legislation could explain what the legislation does, the changes it would make in existing laws, the problems which the proposed legislation addresses, and who would be affected by the proposal. However, recipients could not prepare communications which encourage the public to support or oppose proposed or pending legislation.

"*Legislation*" means any action or proposal for action by Congress or by a State or local legislative body which is intended to prescribe law or public policy. It does not include those actions of a legislative body which adjudicate the rights of individuals under existing laws (such as action taken by a local council sitting as a Board of Zoning Appeals). The Corporation has also retained the long-standing interpretation that "legislative bodies" do not include Indian Tribal Councils.

"*Public policy*" is defined to include an overall plan embracing the general goals and procedures of any governmental body as well as pending or proposed statutes, rules, and regulations. This term is found in this rule's section on training and is also found in the definition of "legislation." As used in § 1612.8 in regard to training, the modification of the definition from the prior regulation ensures that, consistent with current law, information on existing laws and regulations may be disseminated during training programs.

The definition of "*political activity*" is eliminated from this regulation, because the provision in which it was used in the prior rule has been deleted. The provision was deleted because it did not deal with lobbying activity but rather with electoral and partisan political activities, which are governed by another LSC regulation, 45 CFR Part 1608. The elimination of the term does not result in any substantive change in any restriction on political activity.

"*Rulemaking*" is defined to include the customary procedures on rulemaking used by agencies, such as negotiated rulemaking and notice and comment rulemaking procedures under the Federal Administrative Procedure Act, or similar procedures used by State or local government agencies. The term includes adjudicatory proceedings that formulate or modify

agency policy of general applicability and future effect, but does not include administrative proceedings that produce determinations that are of particular, rather than general, applicability, such as Social Security hearings, welfare fair hearings or granting or withholding of licenses. The definition also does not include efforts by recipients to communicate with agency personnel for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, guidelines, policies or practices.

The term "*public rulemaking*," which is used in § 504(e) of 110 Stat. 1231, is defined as any rulemaking proceeding that is open to the public. The term would include proceedings that are the subject of (1) notices of proposed rulemaking published in the Federal Register or similar State or local journals; (2) announcements of public hearings on proposed rules or notices of proposed rulemaking, including those that are routinely sent to interested members of the public; or (3) other similar notifications to members of the public.

The term "*similar procedure*," which is used in the prohibition on legislative lobbying in § 504(a)(4) of 110 Stat. 1321, is defined to mean a legislative process for the consideration of matters which by law must be determined by a vote of the electorate.

The Committee considered but did not include in this final rule new definitions for the terms "employee" and "recipient" in order to reflect the different types of entities which may become recipients in a system of competition. Currently, these terms are defined in 45 CFR § 1600.1. Until the Corporation makes clarifying changes in these definitions, for the purposes of this rule, the term "recipient" includes all types of recipients, including law firms, and the term "employee" includes all personnel of recipients, including partners and associates in law firms.

Section 1612.3: Prohibited Legislative and Administrative Activities.

This section sets out the broad prohibitions on lobbying and rulemaking of §§ 504(a)(2)-(6) of 110 Stat. 1321. These prohibitions are far more extensive than those included in prior appropriations provisions or in the LSC Act, which permitted rulemaking activity and direct contact with legislators on behalf of clients or when engaged in self-interest lobbying.

While this part sets out the Corporation's general restrictions on lobbying and rulemaking, certain other LSC rules may also include lobbying restrictions specific to the activity restricted in the particular rule. See, e.g., 45 CFR Part 1639 (welfare reform).

Paragraph (a) sets out the prohibitions on legislative lobbying. Paragraph (b) prohibits participation in rulemaking and efforts to influence executive orders, except as permitted in §§ 1612.5 and 1612.6. Paragraph (c) tracks § 504(a)(6) of 110 Stat. 1321, and provides that recipients may not use any funds to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or any other device associated with an activity prohibited in paragraphs (a) and (b) in this section.

Section 1612.4: Grassroots Lobbying.

This section sets out the absolute prohibition on grassroots lobbying by a recipient and its employees. There is no exception to the prohibition on grassroots lobbying. Thus, none of the activities permitted under §§ 1612.5 or 1612.6 may include grassroots lobbying.

Section 1612.5: Permissible Activities Using Any Funds.

As with prior regulations regarding lobbying and rulemaking, the final regulation seeks to clarify the activities that are not prohibited by the rule. This list is not intended to be exhaustive. Rather, it seeks to clarify those instances likely to raise close questions.

Paragraph (a) provides that recipients may represent eligible clients in administrative agency proceedings that ***19402** are intended to adjudicate the rights of an individual client, such as welfare and food stamp fair hearings, Social Security or SSI hearings, public housing hearings, veterans benefits hearings, unemployment insurance hearings and similar administrative adjudicatory hearings or negotiations directly involving that client's legal rights or responsibilities, including pre-litigation negotiation and negotiation in the course of litigation.

Paragraph (b) provides that an employee of a recipient may initiate or participate in any litigation challenging agency rules, regulations, guidelines or policies, unless, of course, such litigation is otherwise prohibited by law or other Corporation regulations, such as Part 1639 on welfare reform or Part 1617 on class actions.

Paragraph (c) includes a list of some of the other activities that are not proscribed by the prohibitions on lobbying or rulemaking. The listing includes many permissible activities that have been included in prior regulations and others about which the Corporation has received inquiries. In response to public comments, subparagraph (c)(1) was added to make clear that recipients may apply for a governmental grant or contract that is issued by a legislative body or administrative agency. Subparagraph (c)(2) provides that recipients and employees of recipients can communicate with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies. Under subparagraph (c)(3), recipients and their employees can inform clients, other recipients, or attorneys representing eligible clients about new or proposed statutes, executive orders, or administrative regulations. Thus, recipients can advise clients about the effect of agency rules and policies, analyze them and explain proposed changes and their effect, and advise their clients about their right to participate on their own behalf in agency rulemaking proceedings.

Under subparagraph (c)(4), recipients and their employees may communicate directly or indirectly with the Corporation for any purpose, including commenting upon existing or proposed Corporation rules, regulations, guidelines, instructions and policies. Because the restriction applies only to contacts with government agencies and the Corporation is not a department, agency or instrumentality of the Federal Government, 42 U.S.C. § 2996d(e)(1), recipients can contact LSC about any matter and comment on LSC rules, regulations or policies.

Subparagraph (c)(5) allows recipient employees to participate in bar association activities, provided that recipient resources are not used to support and the recipient is not identified with activities of bar associations that are devoted to activities prohibited by this part. This provision is a change from that in the prior rule, which permitted a recipient's employees to use recipient funds to participate in bar activities involving otherwise prohibited advocacy, provided the employee did not engage in grassroots lobbying. Although comments urged the Corporation to retain the prior rule's policy, the Board determined that a policy change was necessary, because the statutory prohibitions on lobbying and rulemaking in 110 Stat. 1321 are significantly more extensive and restrictive than in past legislation. Recognizing that recipient attorneys participate in bar association activities as members of the legal profession rather than as staff attorneys, this new provision allows recipient attorneys to participate fully and actively in bar association activities, provided that they do not use recipient resources for and do not identify the recipient with any activities devoted to activities proscribed by this part. Permissible participation may include attending meetings and serving on committees of a bar association or serving as an officer or in other leadership roles in a bar association.

The Corporation recognizes that there will be some situations where bar association activities will require the attorneys employed by a recipient to decline participation or to participate on the attorney's own time as, for example, when a bar association activity is devoted to a prohibited activity, such as participating in a meeting whose principal purpose is to determine and communicate the bar's position on pending or proposed legislation or regulations. Recipient attorneys must either decline to participate or participate solely on their own time. On the other hand, recipient attorneys could use recipient resources to attend and participate in a bar association meeting that was not focused on prohibited legislative or regulatory activity and where any discussion of prohibited activity was incidental to the decisions and actions taken at the meeting. Because it is not possible to craft a bright line between permissible and impermissible bar association activities, attorneys employed by recipients will have to exercise careful judgment when they are participating in bar association activities that may involve prohibited activities.

Subparagraph (c)(6) allows recipients and their employees to advise a client of the client's right to communicate directly with an elected official. For example, recipient staff may advise specific clients whom they are representing of the identity of their elected representatives, about how legislation is enacted, and about the procedures for testifying. However, providing advice does not authorize recipient staff to prepare testimony for their clients or to conduct formal training sessions for clients on how to participate in lobbying or rulemaking.

Finally, subparagraph (c)(7) permits recipients and their employees to participate in activity related to the judiciary, such as the promulgation of court rules, rules of professional responsibility or disciplinary rules, or participating on committees appointed by the courts to advise the courts about judicial matters. However, a recipient cannot become involved in any attempt to influence a legislative body confirming judicial nominations.

Section 1612.6: Permissible Activities Using Non-LSC Funds.

This section sets out activities authorized by §§ 504 (b) and (e) of the Corporation's FY 1996 appropriations act to be conducted with non-LSC funds. Paragraphs (a) through (e) implement § 504(e) and delineate the records required to be maintained by recipients responding to requests from appropriate officials. Paragraph (a) provides that employees of recipients may use non-LSC funds to respond to a written request from a governmental agency or official thereof, elected official, legislative body, committee, or member thereof made to the employee or to a recipient. Such response could include testifying, providing information and analyses, and participating in negotiated rulemaking. The Board deleted a reference in the interim rule to testifying or providing information to commissions, committees or advisory bodies because it judged that there was no need to single out this particular activity from the more generic listings of activities that could be undertaken in response to such a written request. The Board did not intend, however, to restrict participation on commissions, committees or advisory bodies provided that the participation is consistent with the requirements of this section. Under no circumstances may recipients engage in any grassroots lobbying when ***19403** responding to a request for information or testimony.

Paragraph (b) provides that responses to requests may be distributed only to parties that make the request or to other persons or entities to the extent that such distribution is required to comply fully with the request. For example, agencies may require specific distribution of written testimony to committee members. If required by the agency or legislative rules, such distribution would be proper.

Paragraph (c) includes the statutory restriction that no employee of the recipient shall solicit or arrange a request from any official to testify or otherwise provide information in connection with legislation or rulemaking.

In order to ensure compliance with § 504(e), paragraph (d) requires that recipients maintain copies of all written requests received by the recipient and any written responses provided, and make such requests and written responses available to monitors and other representatives of the Corporation upon request.

Paragraph (e) implements § 504(e), which provides that recipients may use non- LSC funds to provide oral or written comment to an agency and its staff in a public rulemaking proceeding. Recipients may prepare written comments in response to a Notice of Proposed Rulemaking in the Federal Register, in response to a similar notice in a State or local publication, or in response to any notice to the general public regarding a rulemaking proceeding that is public under State or local law. Commenting in public rulemaking, however, does not permit a recipient to engage in grassroots efforts to encourage comment by other recipients or other persons.

Paragraph (f) implements § 504(b), which permits recipients to engage in self-interest lobbying with non-LSC funds to seek funds for program activities. Under this provision, recipients may contact, communicate with, or respond to a request from a State or local government agency, a State or local legislative body or committee, or a member thereof,

regarding funding for the recipient, including a pending or proposed legislative or agency proposal to fund such recipient. Consistent with § 1612.6(c)(1), writing grant proposals in response to a request for proposals is not covered by this section and is not prohibited by this part. Both LSC and non-LSC funds may be used for this activity.

Section 1612.7: Public Demonstrations and Activities.

This section prohibits participation in public demonstrations and related activities. Two technical changes were made from the interim rule. Paragraph (a) was revised to clarify that the provision is referring to "recipient" resources, and the term "person" is used instead of "employee." Thus, paragraph (a) prohibits any person from participating in public demonstrations, picketing, boycotts, or strikes (except as permitted by law in connection with the employee's own employment situation) or encouraging, directing, or coercing others to engage in such activities during working hours, while providing legal assistance or representation to the recipient's clients or while using recipient resources provided by the Corporation or private entities. This section is similar to previous regulations, but the text was rewritten to set out the prohibition more clearly.

Paragraph (b) sets out prohibitions on activities engaged in by employees at any time, whether during working hours or not. These prohibitions apply to any recipient employee and apply regardless of what source of funds is used for the employee's compensation. Thus, employees of a recipient may not engage in or encourage others to engage in (1) any rioting or civil disturbance; (2) any activity determined by a court to be in violation of an outstanding injunction of any court of competent jurisdiction; or (3) any other illegal activity that is inconsistent with an employee's responsibilities under the LSC Act, appropriation law, Corporation regulation, or the rules of professional responsibility of the jurisdiction where the recipient is located or the employee practices law.

Minor changes in the regulatory provisions have been made from the previous rule. First, the prohibition on identification of the Corporation or any recipient with any political activity was removed from Part 1612 because an identical prohibition is included in 45 CFR § 1608.4(b). In addition, the regulatory language used in § 1612.7(b)(2) now explicitly provides that it is a court, and not LSC, that should determine whether there has been a violation of an outstanding injunction. Finally, the regulation clarifies in § 1612.7(b)(3) that the prohibition against the participation by employees in other illegal activity refers to activity that violates the LSC Act or other appropriate law or the rules of professional responsibility in the jurisdiction where the recipient is located or the employee practices law. By clarifying what activity is proscribed, § 1612.7(b)(3) gives realistic guidance to recipients about what illegal activity would be deemed a violation.

Consistent with the longstanding regulatory provisions, paragraph (c) provides that the restrictions on public demonstrations, strikes and boycotts do not prohibit an attorney working for or paid by a recipient from (1) informing and advising a client about legal alternatives to litigation or the lawful conduct thereof or (2) taking such action on behalf of a client as may be required by professional responsibilities or applicable law of any State or other jurisdiction.

Section 1612.8: Training.

This section implements the prohibitions on public policy advocacy training in § 504(a)(12) of 110 Stat. 1321 and § 1007(b)(6) of the LSC Act. Also, § 1612.8(c) of the interim rule has been moved to § 1612.8(a)(4) of this rule.

Paragraph (a) sets out the prohibitions on advocacy training, including the dissemination of information about public policies and political activities. New subparagraph (4) clarifies that recipients may not conduct a training program to train participants to engage in activities prohibited by the Act, other applicable law, or Corporation regulations, guidelines or instructions. A similar restriction was included in both the interim and prior regulations, but the Board has adopted language in this final rule which more carefully delineates the scope of the restriction. Thus, under this new formulation of the restriction, a recipient could not run a training program which included training participants about how to engage in class actions, lobbying, welfare reform and the like. This new formulation makes clear, however, that using recipient resources, recipient employees may attend and participate in training programs sponsored by bar associations or continuing legal education institutes even if a portion of the training program involved training about a prohibited activity.

Paragraph (b) tracks other provisions of § 504(a)(12) and provides that attorneys or paralegals may be trained to prepare them to (1) provide adequate legal assistance to eligible clients and (2) inform any eligible client of the client's rights under any existing statute, order or regulation, or about the meaning or significance of particular bills. In previous regulations on training, there was an explicit statement that it was permissible to train attorneys and paralegals to understand what activities are permitted or prohibited under relevant laws and regulations. ***19404** This language was removed in both the interim and final rules as unnecessary and self-evident.

Section 1612.9: Organizing.

This section implements § 1007(b)(7), 42 U.S.C. § 2996f(b)(7), of the LSC Act which prohibits organizing activities. It is essentially the same as in the prior rule but has been restructured for clarity. The final rule makes no changes from the interim rule. Paragraph (a) provides that no funds made available by the Corporation or by private entities may be used to initiate the formation or to act as an organizer of any association, federation, labor union, coalition, network, alliance, or any similar entity. Paragraph (b) includes the two existing exceptions included in prior regulations. It first provides that the prohibition on organizing does not apply to informational meetings attended by persons engaged in the delivery of legal services at which information about new developments in law and pending cases or matters are discussed. Thus, recipients can establish or participate in task forces and other meetings of advocates to share information and develop more effective approaches to representation in particular subject areas. Paragraph (b) also provides that the prohibition does not apply to organizations composed exclusively of eligible clients formed for the purpose of advising legal services programs about the delivery of legal services. Finally, paragraph (c) provides that the organizing prohibition does not prevent recipients and their employees from providing legal advice or assistance to eligible

clients who desire to plan, establish or operate organizations, such as by preparing articles of incorporation and bylaws.

Section 1612.10: Recordkeeping and Accounting for Activities Funded With Non-LSC Funds.

This section implements § 504(a)(6) of 110 Stat. 1321. No changes have been made from the interim rule. Thus, under paragraph (a) no LSC funds may be used to pay for administrative overhead or related costs associated with any activity permitted to be undertaken with non-LSC funds by § 1612.6.

Paragraph (b) continues existing practice that requires recipients to maintain separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities permitted by § 1612.6.

Paragraph (c) provides that recipients shall submit semi-annual reports describing their non-LSC funded legislative and rulemaking activities conducted pursuant to these regulations under § 1612.6, together with such supporting documentation as specified by the Corporation. The only change from existing policy is that the period for reporting such activities has been changed from quarterly to semi-annually in order to reduce the administrative burden on recipients.

Section 1612.11: Recipient Policies and Procedures.

This section requires that recipients adopt written policies and procedures to guide the recipient's staff in compliance with the requirements of this part.

Additional Changes:

The prior rule, which was superseded by the interim rule and now this final regulation, included § 1612.12, which set out enforcement procedures for part 1612. Section 1612.12 was deleted because the Corporation will be developing a comprehensive enforcement regulation that will address enforcement of all regulations and restrictions. Section 1612.13, permitting the use of private funds for certain lobbying activities, was also deleted, because, under 110 Stat. 1321, all funds of a recipient are restricted and the statutory exceptions to the prohibitions in § 1612.6 make no distinction between non-LSC public or private funds.

List of Subjects in 45 CFR Part 1612

Civil disorders, Grant program, Legal services, Lobbying.

For the reasons set forth in the preamble, 45 CFR Part 1612 is revised to read as follows:

PART 1612--RESTRICTIONS ON LOBBYING AND CERTAIN OTHER ACTIVITIES

Sections:

Authority: Pub. L. 104-208, 110 Stat. 3009; Pub. L. 104-134, 110 Stat. 1321, secs. 504(a) (2), (3), (4), (5), (6), and (12), 504 (b) and (e); 42 U.S.C. §§ 2996e(b)(5), 2996f(a) (5) and (6), 2996f(b) (4), (6) and (7), and 2996g(e).

§ 1612.1: Purpose.

The purpose of this part is to ensure that LSC recipients and their employees do not engage in certain prohibited activities, including representation before legislative bodies or other direct lobbying activity, grassroots lobbying, participation in rulemaking, public demonstrations, advocacy training, and certain organizing activities. The part also provides guidance on when recipients may participate in public rulemaking or in efforts to encourage State or local governments to make funds available to support recipient activities, and when they may respond to requests of legislative and administrative officials.

§ 1612.2: Definitions.

(a)(1) "*Grassroots lobbying*" means any oral, written or electronically transmitted communication or any advertisement, telegram, letter, article, newsletter, or other printed or written matter or device which contains a direct suggestion to the public to contact public officials in support of or in opposition to pending or proposed legislation, regulations, executive decisions, or any decision by the electorate on a measure submitted to it for a vote. It also includes the provision of financial contributions by recipients to, or participation by recipients in, any demonstration, march, rally, fundraising drive, lobbying campaign, letter writing or telephone campaign for the purpose of influencing the course of such legislation, regulations, decisions by administrative bodies, or any decision by the electorate on a measure submitted to it for a vote.

(2) "*Grassroots lobbying*" does not include communications which are limited solely to reporting on the content or status of, or explaining, pending or proposed legislation or regulations.

(b)(1) "*Legislation*" means any action or proposal for action by Congress or by a State or local legislative body which is intended to prescribe law or public policy. The term includes, but is not limited to, action on bills, constitutional amendments, ratification of treaties and intergovernmental agreements, approval of appointments and budgets, and approval or disapproval of actions of the executive.

(2) Legislation not include those actions of a legislative body which adjudicate the rights of individuals under existing laws; nor does it include legislation adopted by an Indian Tribal Council.

(c) "*Public policy*" means an overall plan embracing the general goals and procedures of any governmental body and pending or proposed statutes, rules, and regulations. ***19405**

(d)(1) "*Rulemaking*" means any agency process for formulating, amending, or repealing rules, regulations or guidelines of general applicability and future effect issued by the agency pursuant to Federal, State or local rulemaking procedures, including:

(i) The customary procedures that are used by an agency to formulate and adopt proposals for the issuance, amendment or revocation of regulations or other statements of general applicability and future effect, such as negotiated rulemaking and "notice and comment" rulemaking procedures under the Federal Administrative Procedure Act or similar procedures used by State or local government agencies; and

(ii) Adjudicatory proceedings that are formal adversarial proceedings to formulate or modify an agency policy of general applicability and future effect.

(2) Rulemaking does not include:

(i) Administrative proceedings that produce determinations that are of particular, rather than general, applicability and affect only the private rights, benefits or interests of individuals, such as Social Security hearings, welfare fair hearings, or granting or withholding of licenses;

(ii) Communication with agency personnel for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, guidelines, policies or practices.

(e) Public rulemaking means any rulemaking proceeding or portion of such proceeding or procedure that is open to the public through notices of proposed rulemaking published in the Federal Register or similar State or local journals, announcements of public hearings on proposed rules or notices of proposed rulemaking including those that are routinely sent to interested members of the public, or other similar notifications to members of the public;

(f) Similar procedure refers to a legislative process by which matters must be determined by a vote of the electorate.

§ 1612.3: Prohibited legislative and administrative activities.

(a) Except as provided in §§ 1612.5 and 1612.6, recipients shall not attempt to influence:

(1) The passage or defeat of any legislation or constitutional amendment;

(2) Any initiative, or any referendum or any similar procedure of the Congress, any State legislature, any local council, or any similar governing body acting in any legislative capacity;

(3) Any provision in a legislative measure appropriating funds to, or defining or limiting the functions or authority of, the recipient or the Corporation; or,

(4) The conduct of oversight proceedings concerning the recipient or the Corporation.

(b) Except as provided in §§ 1612.5 and 1612.6, recipients shall not participate in or attempt to influence any rulemaking, or attempt to influence the issuance, amendment or revocation of any executive order.

(c) Recipients shall not use any funds to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, administrative expense, or related expense associated with an activity prohibited in paragraphs (a) and (b) in this section.

§ 1612.4: Grassroots lobbying.

A recipient shall not engage in any grassroots lobbying.

§ 1612.5: Permissible activities using any funds.

(a) A recipient may provide administrative representation for an eligible client in a proceeding that adjudicates the particular rights or interests of such eligible client

or in negotiations directly involving that client's legal rights or responsibilities, including pre-litigation negotiation and negotiation in the course of litigation.

(b) A recipient may initiate or participate in litigation challenging agency rules, regulations, guidelines or policies, unless such litigation is otherwise prohibited by law or Corporation regulations.

(c) Nothing in this part is intended to prohibit a recipient from:

(1) Applying for a governmental grant or contract;

(2) Communicating with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies;

(3) Informing clients, other recipients, or attorneys representing eligible clients about new or proposed statutes, executive orders, or administrative regulations;

(4) Communicating directly or indirectly with the Corporation for any purpose including commenting upon existing or proposed Corporation rules, regulations, guidelines, instructions and policies;

(5) Permitting its employees to participate in bar association activities, provided that recipient resources are not used to support and the recipient is not identified with activities of bar associations that are devoted to activities prohibited by this part.

(6) Advising a client of the client's right to communicate directly with an elected official; or

(7) Participating in activity related to the judiciary, such as the promulgation of court rules, rules of professional responsibility and disciplinary rules.

§ 1612.6: Permissible activities using non-LSC funds.

(a) If the conditions of paragraphs (b) and (c) of this section are met, recipients and their employees may use non-LSC funds to respond to a written request from a governmental agency or official thereof, elected official, legislative body, committee, or member thereof made to the employee, or to a recipient to:

(1) Testify orally or in writing;

(2) Provide information which may include analysis of or comments upon existing or proposed rules, regulations or legislation, or drafts of proposed rules, regulations or legislation; or

(3) Participate in negotiated rulemaking under the Negotiated Rulemaking Act of 1990, 5 U.S.C. § 561, et seq., or comparable State or local laws.

(b) Communications made in response to requests under paragraph (a) may be distributed only to the party or parties that made the request and to other persons or entities only to the extent that such distribution is required to comply with the request.

(c) No employee of the recipient shall solicit or arrange for a request from any official to testify or otherwise provide information in connection with legislation or rulemaking.

(d) Recipients shall maintain copies of all written requests received by the recipient and written responses made in response thereto and make such requests and written responses available to monitors and other representatives of the Corporation upon request.

(e) Recipients may use non-LSC funds to provide oral or written comment to an agency and its staff in a public rulemaking proceeding.

(f) Recipients may use non-LSC funds to contact or communicate with, or respond to a request from, a State or local government agency, a State or local legislative body or committee, or a member thereof, regarding funding for the recipient, including a pending or proposed legislative or agency proposal to fund such recipient.

§ 1612.7: Public demonstrations and activities.

(a) During working hours, while providing legal assistance or representation to the recipient's clients or while using recipient resources provided by the Corporation or by private entities, no person shall: ***19406**

(1) Participate in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation; or

(2) Encourage, direct, or coerce others to engage in such activities.

(b) No employee of a recipient shall at any time engage in or encourage others to engage in any:

(1) Rioting or civil disturbance;

(2) Activity determined by a court to be in violation of an outstanding injunction of any court of competent jurisdiction; or

(3) Other illegal activity that is inconsistent with an employee's responsibilities under applicable law, Corporation regulations, or the rules of professional responsibility of the jurisdiction where the recipient is located or the employee practices law.

(c) Nothing in this section shall prohibit an attorney from:

(1) Informing and advising a client about legal alternatives to litigation or the lawful conduct thereof; or

(2) Taking such action on behalf of a client as may be required by professional responsibilities or applicable law of any State or other jurisdiction.

§ 1612.8: Training.

(a) A recipient may not support or conduct training programs that:

(1) Advocate particular public policies;

(2) Encourage or facilitate political activities, labor or anti-labor activities, boycotts, picketing, strikes or demonstrations, or the development of strategies to influence legislation or rulemaking;

(3) Disseminate information about such policies or activities; or

(4) Train participants to engage in activities prohibited by the Act, other applicable law, or Corporation regulations, guidelines or instructions.

(b) Nothing in this section shall be construed to prohibit training of any attorneys or paralegals, clients, lay advocates, or others involved in the representation of eligible clients necessary for preparing them:

(1) To provide adequate legal assistance to eligible clients; or

(2) To provide advice to any eligible client as to the legal rights of the client.

§ 1612.9: Organizing.

(a) Recipients may not use funds provided by the Corporation or by private entities to initiate the formation, or to act as an organizer, of any association, federation, labor union, coalition, network, alliance, or any similar entity.

(b) This section shall not be construed to apply to:

(1) Informational meetings attended by persons engaged in the delivery of legal services at which information about new developments in law and pending cases or matters are discussed; or

(2) Organizations composed exclusively of eligible clients formed for the purpose of advising a legal services program about the delivery of legal services.

(c) Recipients and their employees may provide legal advice or assistance to eligible clients who desire to plan, establish or operate organizations, such as by preparing articles of incorporation and bylaws.

§ 1612.10: Recordkeeping and accounting for activities funded with non-LSC funds.

(a) No funds made available by the Corporation shall be used to pay for administrative overhead or related costs associated with any activity listed in § 1612.6.

(b) Recipients shall maintain separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities permitted by § 1612.6.

(c) Recipients shall submit semi-annual reports describing their legislative activities with non-LSC funds conducted pursuant to § 1612.6, together with such supporting documentation as specified by the Corporation.

§ 1612.11: Recipient policies and procedures.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part.

Dated: April 14, 1997.

Victor M. Fortuno,
General Counsel.

[FR Doc. 97-10037 Filed 4-18-97; 8:45 am]

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62 FR 19400-01, 1997 WL 188199 (F.R.)
END OF DOCUMENT

*** THIS SECTION IS CURRENT THROUGH THE OCTOBER 27, 2005 ISSUE OF ***
*** THE FEDERAL REGISTER ***

TITLE 45 -- PUBLIC WELFARE
SUBTITLE B -- REGULATIONS RELATING TO PUBLIC WELFARE
CHAPTER XVI -- LEGAL SERVICES CORPORATION
PART 1612 -- RESTRICTIONS ON LOBBYING AND CERTAIN OTHER ACTIVITIES

§ 1612.1: Purpose.

The purpose of this part is to ensure that LSC recipients and their employees do not engage in certain prohibited activities, including representation before legislative bodies or other direct lobbying activity, grassroots lobbying, participation in rulemaking, public demonstrations, advocacy training, and certain organizing activities. The part also provides guidance on when recipients may participate in public rulemaking or in efforts to encourage State or local governments to make funds available to support recipient activities, and when they may respond to requests of legislative and administrative officials.

§ 1612.2: Definitions.

(a) (1) Grassroots lobbying means any oral, written or electronically transmitted communication or any advertisement, telegram, letter, article, newsletter, or other printed or written matter or device which contains a direct suggestion to the public to contact public officials in support of or in opposition to pending or proposed legislation, regulations, executive decisions, or any decision by the electorate on a measure submitted to it for a vote. It also includes the provision of financial contributions by recipients to, or participation by recipients in, any demonstration, march, rally, fundraising drive, lobbying campaign, letter writing or telephone campaign for the purpose of influencing the course of such legislation, regulations, decisions by administrative bodies, or any decision by the electorate on a measure submitted to it for a vote.

(2) Grassroots lobbying does not include communications which are limited solely to reporting on the content or status of, or explaining, pending or proposed legislation or regulations.

(b) (1) Legislation means any action or proposal for action by Congress or by a State or local legislative body which is intended to prescribe law or public policy. The term includes, but is not limited to, action on bills, constitutional amendments, ratification of treaties and intergovernmental agreements, approval of appointments and budgets, and approval or disapproval of actions of the executive.

(2) Legislation does not include those actions of a legislative body which adjudicate the rights of individuals under existing laws; nor does it include legislation adopted by an Indian Tribal Council.

(c) Public policy means an overall plan embracing the general goals and procedures of any governmental body and pending or proposed statutes, rules, and regulations.

(d) (1) Rulemaking means any agency process for formulating, amending, or repealing rules, regulations or guidelines of general applicability and future effect issued by the agency pursuant to Federal, State or local rulemaking procedures, including:

(i) The customary procedures that are used by an agency to formulate and adopt proposals for the issuance, amendment or revocation of regulations or other statements of general applicability and future effect, such as negotiated rulemaking and "notice and comment" rulemaking procedures under the Federal Administrative Procedure Act or similar procedures used by State or local government agencies; and

(ii) Adjudicatory proceedings that are formal adversarial proceedings to formulate or modify an agency policy of general applicability and future effect.

(2) Rulemaking does not include:

(i) Administrative proceedings that produce determinations that are of particular, rather than general, applicability and affect only the private rights, benefits or interests of individuals, such as Social Security hearings, welfare fair hearings, or granting or withholding of licenses;

(ii) Communication with agency personnel for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, guidelines, policies or practices.

(e) Public rulemaking means any rulemaking proceeding or portion of such proceeding or procedure that is open to the public through notices of proposed rulemaking published in the Federal Register or similar State or local journals, announcements of public hearings on proposed rules or notices of proposed rulemaking including those that are routinely sent to interested members of the public, or other similar notifications to members of the public;

(f) Similar procedure refers to a legislative process by which matters must be determined by a vote of the electorate.

§ 1612.3: Prohibited legislative and administrative activities.

(a) Except as provided in §§ 1612.5 and 1612.6, recipients shall not attempt to influence:

(1) The passage or defeat of any legislation or constitutional amendment;

(2) Any initiative, or any referendum or any similar procedure of the Congress, any State legislature, any local council, or any similar governing body acting in any legislative capacity;

(3) Any provision in a legislative measure appropriating funds to, or defining or limiting the functions or authority of, the recipient or the Corporation; or,

(4) The conduct of oversight proceedings concerning the recipient or the Corporation.

(b) Except as provided in §§ 1612.5 and 1612.6, recipients shall not participate in or attempt to influence any rulemaking, or attempt to influence the issuance, amendment or revocation of any executive order.

(c) Recipients shall not use any funds to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, administrative expense, or related expense associated with an activity prohibited in paragraphs (a) and (b) in this section.

§ 1612.4: Grassroots lobbying.

A recipient shall not engage in any grassroots lobbying.

§ 1612.5: Permissible activities using any funds.

(a) A recipient may provide administrative representation for an eligible client in a proceeding that adjudicates the particular rights or interests of such eligible client or in negotiations directly involving that client's legal rights or responsibilities, including pre-litigation negotiation and negotiation in the course of litigation.

(b) A recipient may initiate or participate in litigation challenging agency rules, regulations, guidelines or policies, unless such litigation is otherwise prohibited by law or Corporation regulations.

(c) Nothing in this part is intended to prohibit a recipient from:

(1) Applying for a governmental grant or contract;

(2) Communicating with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies;

(3) Informing clients, other recipients, or attorneys representing eligible clients about new or proposed statutes, executive orders, or administrative regulations;

(4) Communicating directly or indirectly with the Corporation for any purpose including commenting upon existing or proposed Corporation rules, regulations, guidelines, instructions and policies;

(5) Permitting its employees to participate in bar association activities, provided that recipient resources are not used to support and the recipient is not identified with activities of bar associations that are devoted to activities prohibited by this part.

(6) Advising a client of the client's right to communicate directly with an elected official; or

(7) Participating in activity related to the judiciary, such as the promulgation of court rules, rules of professional responsibility and disciplinary rules.

§ 1612.6: Permissible activities using non-LSC funds.

(a) If the conditions of paragraphs (b) and (c) of this section are met, recipients and their employees may use non-LSC funds to respond to a written request from a governmental agency or official thereof, elected official, legislative body, committee, or member thereof made to the employee, or to a recipient to:

(1) Testify orally or in writing;

(2) Provide information which may include analysis of or comments upon existing or proposed rules, regulations or legislation, or drafts of proposed rules, regulations or legislation; or

(3) Participate in negotiated rulemaking under the Negotiated Rulemaking Act of 1990, *5 U.S.C. 561,* et seq., or comparable State or local laws.

(b) Communications made in response to requests under paragraph (a) may be distributed only to the party or parties that made the request and to other persons or entities only to the extent that such distribution is required to comply with the request.

(c) No employee of the recipient shall solicit or arrange for a request from any official to testify or otherwise provide information in connection with legislation or rulemaking.

(d) Recipients shall maintain copies of all written requests received by the recipient and written responses made in response thereto and make such requests and written responses available to monitors and other representatives of the Corporation upon request.

(e) Recipients may use non-LSC funds to provide oral or written comment to an agency and its staff in a public rulemaking proceeding.

(f) Recipients may use non-LSC funds to contact or communicate with, or respond to a request from, a State or local government agency, a State or local legislative body or com-

mittee, or a member thereof, regarding funding for the recipient, including a pending or proposed legislative or agency proposal to fund such recipient.

§ 1612.7: Public demonstrations and activities.

(a) During working hours, while providing legal assistance or representation to the recipient's clients or while using recipient resources provided by the Corporation or by private entities, no person shall:

(1) Participate in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation; or

(2) Encourage, direct, or coerce others to engage in such activities.

(b) No employee of a recipient shall at any time engage in or encourage others to engage in any:

(1) Rioting or civil disturbance;

(2) Activity determined by a court to be in violation of an outstanding injunction of any court of competent jurisdiction; or

(3) Other illegal activity that is inconsistent with an employee's responsibilities under applicable law, Corporation regulations, or the rules of professional responsibility of the jurisdiction where the recipient is located or the employee practices law.

(c) Nothing in this section shall prohibit an attorney from:

(1) Informing and advising a client about legal alternatives to litigation or the lawful conduct thereof; or

(2) Taking such action on behalf of a client as may be required by professional responsibilities or applicable law of any State or other jurisdiction.

§ 1612.8: Training.

(a) A recipient may not support or conduct training programs that:

(1) Advocate particular public policies;

(2) Encourage or facilitate political activities, labor or anti-labor activities, boycotts, picketing, strikes or demonstrations, or the development of strategies to influence legislation or rulemaking;

(3) Disseminate information about such policies or activities; or

(4) Train participants to engage in activities prohibited by the Act, other applicable law, or Corporation regulations, guidelines or instructions.

(b) Nothing in this section shall be construed to prohibit training of any attorneys or paralegals, clients, lay advocates, or others involved in the representation of eligible clients necessary for preparing them:

(1) To provide adequate legal assistance to eligible clients; or

(2) To provide advice to any eligible client as to the legal rights of the client.

§ 1612.9: Organizing.

(a) Recipients may not use funds provided by the Corporation or by private entities to initiate the formation, or to act as an organizer, of any association, federation, labor union, coalition, network, alliance, or any similar entity.

(b) This section shall not be construed to apply to:

(1) Informational meetings attended by persons engaged in the delivery of legal services at which information about new developments in law and pending cases or matters are discussed; or

(2) Organizations composed exclusively of eligible clients formed for the purpose of advising a legal services program about the delivery of legal services.

(c) Recipients and their employees may provide legal advice or assistance to eligible clients who desire to plan, establish or operate organizations, such as by preparing articles of incorporation and bylaws.

§ 1612.10: Recordkeeping and accounting for activities funded with non-LSC funds.

(a) No funds made available by the Corporation shall be used to pay for administrative overhead or related costs associated with any activity listed in § 1612.6.

(b) Recipients shall maintain separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities permitted by § 1612.6.

(c) Recipients shall submit semi-annual reports describing their legislative activities with non-LSC funds conducted pursuant to § 1612.6, together with such supporting documentation as specified by the Corporation.

§ 1612.11: Recipient policies and procedures.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part.

HISTORY: *[52 FR 28436,* July 29, 1987; *61 FR 45741, 45747,* Aug. 29, 1996; *62 FR 9400, 19406,* April 21, 1997]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART: Pub. L. 104-208, 110 Stat. 3009; Pub. L. 104-134, 110 Stat. 1321, secs. 504(a) (2), (3), (4), (5), (6), and (12), 504 (b) and (e); *42 U.S.C. 2996e*(b)(5), 2996f(a) (5) and (6), 2996f(b) (4), (6) and (7), and 2996g(e).

NOTES: [EFFECTIVE DATE NOTE: *62 FR 19400, 19406,* April 21, 1997, revised Part 1612, effective May 21, 1997.]

RESOLUTION NO. 58

LONE STAR LEGAL AID

BOARD OF DIRECTORS

POLICY AND PROCEDURE REGARDING APPEALS ON BEHALF OF CLIENTS

ATTEST:

The attached ***Policy and Procedure Regarding Appeals on Behalf of Clients*** was reviewed and adopted during a meeting of the Board of Directors of Lone Star Legal Aid held on December 09, 2005, by a majority of the members present.

December 09, 2005

RHONDA CAMPBELL
Secretary

LYDIA CLAY-JACKSON
Chair, Board of Directors

LONE STAR LEGAL AID

Policy and Procedure Regarding Appeals on Behalf of Clients

POLICY

It is the policy of LSLA to comply with the requirements of 45 C.F.R. Part 1605, as amended from time to time, which are incorporated herein by reference. In the event a conflict arises between this Policy and the statute or regulations, the provisions of the statute or regulations will control. A copy of the current version of the Regulations is attached.

PROCEDURE

LSLA Staff Attorneys shall not file an appeal on behalf of a client without the prior approval of the Chief Executive Officer or his/her designee. The Chief Executive Officer or designee reviewing appeals must be a licensed attorney.

"Appeal" as used herein shall include actions in or beyond the federal circuit courts and state courts of appeal; but shall not include administrative proceedings or appeals from inferior courts through the trial court level.

The Chief Executive Officer or designee shall make the following determinations prior to approving appeals:

1. The basis for the appeal is supported by a good faith argument in law or fact; and

2. The potential benefit from the appeal to the client or client community justifies the probable cost in time and money.

LONE STAR LEGAL AID

APPROVAL OF APPEALS

The Case Attorney is to complete the top portion.

The Chief Executive Officer is to complete the bottom portion.

Client's Name: _____

Case Number: _____

Attorney: _____

Court and date of order from which appeal is taken:

Court to which appeal is taken:

Approval:

Date: _____

By Whom: _____

How (phone call, letter, etc.): _____

Confirmation of Approval:

_____ The basis for the appeal is supported by a good faith argument in law or fact.

_____ The potential benefit to the client/client community justifies the probable cost in time and money.

_____

Chief Executive Officer
Chief Operating Officer

Cc: ***Case File***
Appeal Approval File

TITLE 45 -- PUBLIC WELFARE
SUBTITLE B -- REGULATIONS RELATING TO PUBLIC WELFARE
CHAPTER XVI -- LEGAL SERVICES CORPORATION
PART 1605 -- APPEALS ON BEHALF OF CLIENTS

§ 1605.1: Purpose.

This part is intended to promote efficient and effective use of Corporation funds. It does not apply to any case or matter in which assistance is not being rendered with funds provided under the Act.

§ 1605.2: Definition.

Appeal means any appellate proceeding in a civil action as defined by law or usage in the jurisdiction in which the action is filed.

§ 1605.3: Review of Appeals.

The governing body of a recipient shall adopt a policy and procedure for review of every appeal to an appellate court taken from a decision of any court or tribunal. The policy adopted shall:

(a) Discourage frivolous appeals, and

(b) Give appropriate consideration to priorities in resource allocation adopted by the governing body, or required by the Act, or Regulations of the Corporation; but

(c) Shall not interfere with the professional responsibilities of an attorney to a client.

HISTORY: *41 FR 18513*, May 5, 1976.

AUTHORITY: Secs. 1007(a)(7), 1008(e), *42 U.S.C. 2996f*(a)(7), 2996g(e).

RESOLUTION NO. 122

LONE STAR LEGAL AID

BOARD OF DIRECTORS

POLICY AND PROCEDURE
REGARDING APPEALS ON BEHALF OF CLIENTS

ATTEST:

The attached ***Policy and Procedure Regarding Appeals on Behalf of Clients*** was reviewed and adopted during a meeting of the Board of Directors of Lone Star Legal Aid held on September 26, 2009, by a majority of the members present.

September 26, 2009

RHONDA CAMPBELL
Secretary

RICHARD E. ROBERTS
Chair, Board of Directors

LONE STAR LEGAL AID

Policy and Procedure
Regarding Appeals on Behalf of Clients
45 C.F.R. Part 1605

POLICY

A (1) It is the policy of LSLA to comply with the requirements of 45 C.F.R. Part 1605, as amended from time to time, which are incorporated herein by reference. In the event a conflict arises between this Policy and the regulations, the provisions of the regulations will control. A copy of the current version of the regulations is attached.

(2) This policy replaces all prior policies.

PROCEDURE

1. LSLA Staff Attorneys shall not file an appeal on behalf of a client without the prior approval of the Chief Executive Officer or his/her designee. The Chief Executive Officer or designee reviewing appeals must be a licensed attorney.

2. "Appeal" as used herein shall include actions in or beyond the federal circuit courts and state courts of appeal; but shall not include administrative proceedings or appeals from inferior courts through the trial court level.

3. The Chief Executive Officer or designee shall make the following determinations prior to approving appeals:

   a. The basis for the appeal is supported by a good faith argument in law or fact; and

   b. The potential benefit from the appeal to the client or client community justifies the probable cost in time and money.

LONE STAR LEGAL AID

APPROVAL OF APPEALS FORM

1. The Case Attorney is to complete the following for every approval of appeal request made pursuant to 45 C.F.R. Part 1605:

Client's Name: _____

Case Number: _____

Attorney: _____

Court and date of order from which appeal is taken: _____

_____

_____

2. Appeal approval is to be completed by CEO or designee:

Approval: ☐ **Approved** ☐ **Not Approved**

Date: _____

How (phone call, letter, etc.): _____

_____
CEO/designee

3. Confirmation of Approval is to be completed by CEO:

_____ The basis for the appeal is supported by a good faith argument in law or fact, and is within LSLA priorities; and

_____ The potential benefit to the client/client community justifies the probable cost in time and money.

_____
Chief Executive Officer

cc: Case File
CEO Appeal Approval File

(4) Participating in a voluntary pro bono or legal referral program affiliated with or sponsored by a bar association, other legal organization or religious, community or charitable group.

§ 1604.5 Compensation.

(a) Except as provided in paragraph (b) of this section and §1604.7(a), a recipient's written policies shall not permit a full-time attorney to receive any compensation for the outside practice of law.

(b) A recipient's written policies which permit a full-time attorney who meets the criteria set forth in §1604.4(c)(1) to engage in the outside practice of law shall permit full-time attorneys to seek and receive personal compensation for work performed pursuant to that section.

§ 1604.6 Use of recipient resources.

(a) For cases undertaken pursuant to §1604.4(c)(1), a recipient's written policies may permit a full-time attorney to use *de minimis* amounts of the recipient's resources for permissible outside practice if necessary to carry out the attorney's professional responsibilities, as long as the recipient's resources, whether funded with Corporation or private funds, are not used for any activities for which the use of such funds is prohibited.

(b) For cases undertaken pursuant to §1604.4(c) (2) through (4), a recipient's written policies may permit a full-time attorney to use limited amounts of the recipient's resources for permissible outside practice if necessary to carry out the attorney's professional responsibilities, as long as the recipient's resources, whether funded with Corporation or private funds are not used for any activities for which the use of such funds is prohibited.

§ 1604.7 Court appointments.

(a) A recipient's written policies may permit a full-time attorney to accept a court appointment if the director of the recipient or the director's designee determines that:

(1) Such an appointment is consistent with the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters;

(2) The appointment is made and the attorney will receive compensation for the court appointment under the same terms and conditions as are applied generally to attorneys practicing in the court where the appointment is made; and

(3) Subject to the applicable law and rules of professional responsibility, the attorney agrees to remit to the recipient any compensation received.

(b) A recipient's written policies may permit a full-time attorney to use program resources to undertake representation pursuant to a court appointment.

(c) A recipient's written policies may permit a full-time attorney to identify the recipient as his or her employer when engaged in representation pursuant to a court appointment.

(d) If, under the applicable State or local court rules or practices or rules of professional responsibility, legal services attorneys are mandated to provide pro bono legal assistance in addition to the attorneys' work on behalf of the recipient's clients, the recipient's written policies shall treat such legal assistance in the same manner as court appointments under paragraphs (a)(1), (a)(3), (b) and (c) of this section, provided that the policies may only permit mandatory pro bono activities that are not otherwise prohibited by the LSC Act, applicable appropriations laws, or LSC regulation.

PART 1605—APPEALS ON BEHALF OF CLIENTS

Sec.

AUTHORITY: Secs. 1007(a)(7), 1008(e), 42 U.S.C. 2996f(a)(7), 2996g(e).

SOURCE: 41 FR 18513, May 5, 1976, unless otherwise noted.

§ 1605.1 Purpose.

This part is intended to promote efficient and effective use of Corporation funds. It does not apply to any case or matter in which assistance is not being rendered with funds provided under the Act.

§ 1605.2 Definition.

Appeal means any appellate proceeding in a civil action as defined by law or usage in the jurisdiction in which the action is filed.

§ 1605.3 Review of Appeals.

The governing body of a recipient shall adopt a policy and procedure for review of every appeal to an appellate court taken from a decision of any court or tribunal. The policy adopted shall

(a) Discourage frivolous appeals, and

(b) Give appropriate consideration to priorities in resource allocation adopted by the governing body, or required by the Act, or Regulations of the Corporation; but

(c) Shall not interfere with the professional responsibilities of an attorney to a client.

PART 1606—TERMINATION AND DEBARMENT PROCEDURES; RECOMPETITION

Sec.

AUTHORITY: 42 U.S.C. 2996e (b)(1) and 2996f(a)(3); Pub. L. 105–119, 111 Stat. 2440, Secs. 501(b) and (c) and 504; Pub. L. 104–134, 110 Stat. 1321.

SOURCE: 63 FR 64643, Nov. 23, 1998, unless otherwise noted.

§ 1606.1 Purpose.

The purpose of this rule is to:

(a) Ensure that the Corporation is able to take timely action to deal with incidents of substantial noncompliance by recipients with a provision of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, a Corporation rule, regulation, guideline or instruction, or the terms and conditions of the recipient's grant or contract with the Corporation;

(b) Provide timely and fair due process procedures when the Corporation has made a preliminary decision to terminate a recipient's LSC grant or contract, or to debar a recipient from receiving future LSC awards of financial assistance; and

(c) Ensure that scarce funds are provided to recipients who can provide the most effective and economical legal assistance to eligible clients.

§ 1606.2 Definitions.

For the purposes of this part:

(a) *Debarment* means an action taken by the Corporation to exclude a recipient from receiving an additional award of financial assistance from the Corporation or from receiving additional LSC funds from another recipient of the Corporation pursuant to a subgrant, subcontract or similar agreement, for the period of time stated in the final debarment decision.

(b) *Knowing and willful* means that the recipient had actual knowledge of the fact that its action or lack thereof constituted a violation and despite such knowledge, undertook or failed to undertake the action.

(c) *Recipient* means any grantee or contractor receiving financial assistance from the Corporation under section 1006(a)(1)(A) of the LSC Act.

(d)(1) *Termination* means that a recipient's level of financial assistance under its grant or contract with the Corporation will be reduced in whole or in part prior to the expiration of the term of a recipient's current grant or contract. A partial termination will affect only the recipient's current year's funding, unless the Corporation provides otherwise in the final termination decision.

(2) A termination does not include:

(i) A reduction of funding required by law, including a reduction in or rescission of the Corporation's appropriation that is apportioned among all recipients of the same class in proportion to their current level of funding;