

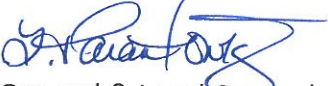


Office of Inspector General
Legal Services Corporation

3333 K Street, NW, 3rd Floor
Washington, DC 20007-3558
202.295.1660 (p) 202.337.6616 (f)
www.oig.lsc.gov

MEMORANDUM

TO: Stefanie K. Davis
Assistant General Counsel

FROM: Laurie Tarantowicz 
Assistant Inspector General & Legal Counsel

DATE: June 10, 2015

SUBJ: Comments Concerning Notice of Proposed Rulemaking on Use of Non-LSC Funds, Transfer of LSC Funds, Program Integrity; Subgrants and Membership Fees or Dues; Cost Standards and Procedures

The Legal Services Corporation Office of Inspector General (OIG) offers the following comments on the subject notice of proposed rulemaking (NPRM).

Defining Subgrants as Limited to Awards to Provide Legal Assistance

As noted in the NPRM, the OIG conducted an audit of LSC's Technology Initiative Grant (TIG) program and issued a report in December 2010 (Audit of Legal Services Corporation's Technology Initiative Grant Program, Report No. AU-11-01). In that report the OIG found that LSC had not properly applied Part 1627, LSC's subgrant rule, when grantees provided TIG funds to third parties. Accordingly, the report recommended that LSC "initiate a process to amend LSC regulations to account for [the unique features of TIG grants]." Report at 44. The OIG

based its recommendation on an interpretation of Part 1627 that differed from that of LSC management.¹ The OIG did not believe the rule was susceptible to multiple readings, particularly given the statutory context in which it was enacted and its regulatory history. Therefore the OIG recommended that if LSC wishes to continue its practice of considering subgrants as limited to awards to third parties for carrying out part of the recipient's grant to provide legal services to eligible clients it should codify that practice in its subgrant regulation.

The OIG believes that the proposed amendment of the subgrant rule (which would bring it into conformity with LSC practice concerning payments to third parties not engaged in the provision of legal services), coupled with the improvements LSC has made to its requirements for third party contracting of TIG funds, adequately addresses the findings leading to the rulemaking recommendation.

Accountability for Subgranted Funds

The OIG recently issued a report summarizing its findings on subgrantee compliance with LSC regulations. The OIG initiated its subgrant review project after certain OIG investigations and regulatory vulnerability assessments found evidence of thefts of program funds, conflicts of interest, personal purchases, and other abuses demonstrating a potential risk of fraud at the subgrantee level.

The subgrant review project included a review of 20 subgrantees, focusing primarily on subgrantee compliance with the fiscal and other requirements of Part 1627. The OIG found

¹ LSC's consideration of the varying interpretations and the resulting recommendations made to the Operations and Regulations Committee and the Board of Directors, which culminated in this rulemaking, are recounted in the NRM.

deficiencies at virtually every one of the subgrantees reviewed, identifying problems such as lack of adequate grantee fiscal oversight; minimal or non-existent accounting policies; weak internal controls; a lack of understanding of LSC-restricted activities; and less-than-adequate fidelity bond coverage. Significant abuses included executive directors using subgrantee credit cards for personal business; early destruction of fiscal documents; unsupported reimbursements to executive directors; employees preparing and signing checks payable to themselves; lack of adequate accounting records; transactions with family members; questionable travel and meal expenses; and engaging in LSC-restricted activities.

The OIG's report recommended that LSC management enhance grantee oversight of subgrantees by incorporating specific instructions and requirements into the subgrant application process to improve the fiscal responsibilities of subgrantees, a process LSC management has begun. We do not make any additional specific recommendations for improvements to the rule itself, believing that it contains adequate oversight provisions as drafted. See NPRM, § 1627.4(c). We find the restructuring of the relevant provision, which calls attention to the specific grantee oversight responsibilities by using subparts instead of one long paragraph, to be a positive step. As the final rule is considered, we would recommend LSC consider including more expansive language in the preamble to rule, emphasizing recipients' oversight responsibilities vis-à-vis subgrantees.

Timekeeping

In the NPRM, LSC proposed to require all subrecipients to comply with the timekeeping requirements of part 1635 for all LSC-funded subgrant activities, and specifically sought

comment on this proposal. The OIG supports LSC's proposal and believes it will provide needed clarity and enhanced accountability for the use of LSC funds.

LSC has consistently required timekeeping for the use of LSC funds by subrecipients, although it has not applied the particular timekeeping requirements prescribed in its timekeeping regulation. As described in the NPRM, this lack of clear guidance leaves the potential for confusion regarding the level of timekeeping required. The regulation, moreover, sets out the minimum requirements LSC believes necessary to ensure accountability.

LSC promulgated its timekeeping regulation, part 1635, to implement the statutory requirement that recipients agree "to maintain records of time spent on each case or matter with respect to which the [recipient] is engaged." LSC's 1996 appropriations act, Pub. L. 104-134, 110 Stat. 1321 (1996), § 504(a)(10)(A) (incorporated by reference in subsequent appropriations acts). As stated in the regulation, part 1635 was intended to improve accountability for the use of all funds of a recipient by:

- (a) Assuring that allocations of expenditures of LSC funds pursuant to [Regulation 1630, cost standards and procedures] are supported by accurate and contemporaneous records of the cases, matters, and supporting activities for which funds have been expended;
- (b) Enhancing the ability of the recipient to determine the cost of specific functions; and
- (c) Increasing the information available to LSC for assuring recipient compliance with Federal law and LSC rules and regulations.

45 C.F.R. § 1635.1. This stated purpose appears consistent with legislative intent.²

² That Congress intended the timekeeping requirement as an accountability tool is supported by the context in which the requirement appears. In addition to timekeeping, section 504(a)(10) of the appropriations act requires that "[non-LSC funds] are accounted for and reported as recipients and disbursements, respectively, separate and distinct from Corporation funds" and

As it initially established the regulatory timekeeping requirements, LSC was mindful of potential additional costs associated with the regulatory requirement and decided the benefits outweighed any potential costs:

The Corporation is mindful of the costs which this regulation will impose on its recipients. Nevertheless, despite the possibility that implementation of this rule will reduce a recipient's LSC-funded capacity for client services, the Corporation has concluded that timekeeping by attorneys and paralegals will materially improve recipients' accountability for their funds. Stated simply, the potential benefits of timekeeping to recipients outweigh the costs. These benefits include improved supervisory information, better cost estimation in bidding for other funds, enhanced control of priority implementation by local boards of directors, and more informative reports to the Corporation, other grantors, and the public.

61 Fed. Reg. 14261 - 62 (April 1, 1996).

As a basic accountability tool, the timekeeping requirement should apply to all those receiving LSC funds to provide legal assistance, including subgrantees.

requires grantees to make such records available to LSC and its auditors and monitors. Pub. L. 104-134 at § 504(a)(10)(B) and (C).