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coal containing sulfur in excess of 1.0% (wt). Subsection (f) relieves USSC from compliance with Sections 123.21, 123.22 and 123.23 when in compliance with this Section. Finally, subsection (g) voids the bubble if one or more of the sources identified in subsection (a) is permanently shut down.

In order for the PA DER to determine compliance with these regulations, monitoring, recordkeeping and reporting requirements have been developed as conditions in the operating permit. USSC will be required to monitor and record all natural gas, fuel oil and coke oven gas usage on a daily basis. In addition, the company must analyze all fuel oils for sulfur and heat content; blended coal for sulfur content; and coke oven gas for hydrogen sulfide on a daily basis. The above analyses must be conducted in accordance with approved State/EPA methods. All daily and weekly sulfur dioxide emission calculations must be performed in accordance with the instructions prescribed in the State operating permit.

EPA is today proposing to approve this bubble plan as a SIP revision since it has met the requirements of the April 7, 1982 Emissions Trading Policy (47 FR 15076).

The public is invited to submit, to the address stated above, comments on whether the proposed changes should be approved as a revision to the Pennsylvania SIP. The Administrator's decision to approve or disapprove the proposed revision will be based on the comments received and on a determination of whether the amendments meet the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51.

The Office of Management and Budget has exempted this rule from requirements of Section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(42 U.S.C. 7401-7642)

Dated: March 2, 1983.

Stanley L. Laskowski,
Regional Administrator.

[FR Doc 83-11717 Filed 4-29-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-5-FRL 2356-6]

Approval and Promulgation of Implementation; Ohio

AGENCY: Environmental Protection Agency (EPA)

ACTION: Extension of the public comment period.

SUMMARY: On February 13, 1983, the U.S. Environmental Protection Agency (EPA) proposed rulemaking on a revision in the form of individual variance permits for two coal-fired boilers and three PVC resin storage silos at the B.F. Goodrich Chemical Plant located in Avon Lake (Lorain County), Ohio (48 FR 7211). The State requested that EPA approve an alternate strategy "bubble" which would involve trading emission reductions between the boilers and the silos.

At the time of proposed rulemaking a 30 day comment period was provided. On April 18, 1983 (47 FR 16507), EPA published in the Federal Register an extension of the public comment period to April 20, 1983. The Natural Resources Defense Council (NRDC) requested a second extension of the public comment period to May 5, 1983.

On February 3, 1983, EPA proposed rulemaking on a revision to the ozone and carbon monoxide (CO) State Implementation Plan (SIP) for Cincinnati, Ohio to demonstrate attainment of the National Ambient Air Quality Standards (NAAQS) by December 31, 1987. (48 FR 5118).

On April 18, 1983, (47 FR 16507), EPA published in the Federal Register an extension of the public comment period to April 20, 1983. The Tri-State Air Committee, Inc. requested a second extension of the public comment period to May 5, 1983.

DATES: Comments for both notices must be received on or before May 5, 1983.

ADDRESSES: Comments should be submitted to: Gary V. Gulezian, Chief, Regulatory Analysis Section (5 AP-26), Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, (312) 896-6036.

Dated: April 22, 1983.

Valdas V. Adamkus,
Regional Administrator.

[FR Doc. 83-11623 Filed 4-29-83; 8:45 am]

BILLING CODE 6560-50-M

LEGAL SERVICES CORPORATION

45 CFR Part 1626

Restrictions on Legal Assistance To Aliens

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: The Continuing Resolution under which the Legal Services Corporation is presently operating restricts categories of aliens who may receive legal assistance financed with fiscal year 1983 funds. This proposed rule adds a new Part 1626 to implement these restrictions. It clarifies and interprets them, sets forth procedures for verification of eligibility, requirements for recordkeeping and protection of confidential information, and guidelines for withdrawal from representation when an alien client is found to be ineligible.

DATE: Comments must be received on or before June 1, 1983.

ADDRESS: Comments may be mailed to Office of General Counsel, Legal Services Corporation, 733 Fifteenth Street, N.W., Room 620, Washington, D.C. 20005.

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

SUPPLEMENTARY INFORMATION:

Background

The Second Continuing Resolution (Pub. L. 97-377) prohibits the use of Fiscal Year 1983 funds appropriated to the Legal Services Corporation (the Corporation) for the provision of legal assistance "for or on behalf of" any alien except for aliens in four specific categories (enumerated in Section 1626.4(a) of this Part). All recipients of Corporation funds received with their 1983 grants a copy of this Continuing Resolution language governing legal assistance to aliens and are required by grant condition to comply therewith.

Scope of Eligibility for Legal Assistance

The broad scheme of this legislation is that all aliens not within an eligible category are ineligible. The eligible categories are generally: permanent residents; immediate family members of a citizen who have filed a petition for adjustment of status which has not been rejected; refugees, asylees, and conditional entrants admitted because of persecution or natural calamity; and aliens lawfully present in the United States as a result of the Attorney General's withholding of deportation under Section 243(h) of the Immigration

and Nationality Act. These categories reflect a general division Congress made between aliens who can be expected to remain in the United States permanently or indefinitely and those whose status is expected to be temporary. (Section 1626.4(a) includes a full list of the eligible alien categories.)

In determining the scope of eligibility, two significant questions arose. First, what is the meaning of the prohibition of legal assistance "for or on behalf of" an ineligible alien; second, at what point is an application for adjustment of status deemed "rejected"?

Interpretation of Legal Assistance "For or On Behalf of" an Ineligible Alien

Three alternatives presented themselves in interpreting the scope of the prohibition of legal assistance "for or on behalf of" an ineligible alien. First, it could be interpreted to prohibit any legal assistance to a client which would result in a significant benefit, even if incidental, to an ineligible alien. Second, it could be interpreted to prohibit any legal assistance which directly benefits an ineligible alien. Third, it could be interpreted as simply a precaution against an eligible client seeking legal assistance for the purpose of benefiting an ineligible alien. In the absence of legislative history bearing on the meaning of this phrase, the Corporation has chosen the second alternative. The first interpretation would interfere unduly with representation of eligible clients, while the third would be an unduly narrow interpretation of Congressional intent. The Corporation considers that the requirement of a direct benefit to the eligible client and only an incidental benefit to the ineligible alien is reasonable and feasible to administer. The Corporation has specifically concluded that all immigration cases in which an ineligible alien is a beneficiary, fall under this prohibition, because the direct benefit is to the ineligible individual, even if another eligible individual has an interest in that individual's immigration into or continued presence in the United States. The benefit to the ineligible alien is direct and the benefit to the eligible client is consequent on the benefit to the ineligible alien.

Interpretation of Rejection of Application for Adjustment of Status

The Continuing Resolution allows legal assistance to any spouse, parent or child under 21 of a citizen if that individual has filed a petition for adjustment of status to permanent resident and it has not been "rejected." Again, the Corporation considered three interpretations of the term "rejected":

(1) Rejection of the initial application by the Immigration and Naturalization Service (INS);

(2) Exhaustion of administrative appeals;

(3) A final judgment by a court. INS normally employs a one-step process to adjudicate petitions for adjustment of status; however, INS regulations do allow appeals in certain instances. As the word "rejected" properly applies to any denial of a petition, there is a strong argument for the first alternative. Nevertheless, the Corporation prefers to take the INS administrative process as a whole and interpret the term "rejected" as a denial of a petition not subject to further administrative appeal (see § 1626.2(c)). The third interpretation covers applications denied by INS which are being or could be challenged in court; it would negate the effect of the prohibition.

Verification of Eligibility

The proposed regulation allows recipients to accept self-declarations from United States citizens as to their citizenship, but requires recipients to obtain documentation from aliens claiming to be eligible for legal services before commencing representation. The Corporation considered, as an alternative, requiring recipients to accept self-declaration in every case, but rejected that approach since it could lead to recipients expending scarce resources to provide legal services to ineligible persons rather than to citizens and eligible aliens. Indeed, many aliens may not know whether they are eligible until they seek legal assistance and a recipient makes this determination. On the other hand, the Corporation considered and rejected an approach that would require documentation of citizens and aliens alike, since most legal services clients are citizens and imposing a verification requirement in all cases would be unnecessarily expensive, time-consuming, and a diversion of resources from the provision of legal services. The proposed regulation, which allows self-declarations by citizens but requires documentation as to alien status, recognizes that recipients should not be required to spend unnecessary time and resources verifying citizenship. It also recognizes, however, that the Corporation is obligated to ensure that recipients represent only aliens who are demonstrably eligible for assistance. Hence it allows a recipient to require verification of citizenship if the recipient has good reason to believe that a person is not a citizen. The Corporation expects that recipients will not rely on factors

such as a person's appearance, race or national origin, or limited ability to speak English to justify requiring documentation of citizenship, as recipients are required by law to provide legal services in a nondiscriminatory manner. Rather a recipient may require verification of citizenship only when specific circumstances arising either at the outset of or during the representation of an individual indicate that the individual may not be a citizen.

Disposition of Cases Involving Representation of Ineligible Aliens

The Corporation recognizes that recipients may have begun representation of persons who are "ineligible aliens" under proposed § 1626.2(b) prior to the receipt of funds appropriated under Pub. L. 97-377, and that attorneys have certain ethical and professional responsibilities toward those clients. Nevertheless the language of Pub. L. 97-377 does not allow of the use of such funds to complete representation of ineligible aliens. Consequently, proposed § 1626.6 requires the use of funds other than those appropriated by Pub. L. 97-377 to complete legal assistance for or on behalf of an "ineligible alien" where referral or discontinuance of representation is impossible. Should no such funds be available, a recipient and its attorneys may need to make a special effort to seek the assistance of the local bar, solicit other funds, and/or allow its attorneys to complete these cases on an uncompensated basis.

Proposed § 1626.7 requires a recipient to discontinue representation supported by funds appropriated by Pub. L. 97-377 if a client becomes an ineligible alien as defined in proposed § 1626.2(b) due to a change in circumstances, or if representation was commenced due to an erroneous eligibility determination or false information provided by the alien, if discontinuance is not inconsistent with the attorney's professional responsibilities. Immediate discontinuance is required after the discovery of false information provided by the alien relating to eligibility.

Confidentiality and Recordkeeping

There is a clear need to retain records of eligibility documents to allow review by recipients and by the Corporation of the implementation of these restrictions. Consequently, retention of copies of eligibility documents for all persons seeking legal assistance is required. As those who are found ineligible often have no documentation or irrelevant documentation, retention of copies of

said documentation is not required in all instances, but recipients are required to keep a record of what documentation, if any, was given to them.

The Corporation gives high priority to the protection of the confidentiality of eligibility documentation. Therefore, § 1626.9 prohibits release of such documentation except under court order or by Congressional request to any third party except the Corporation for the purpose of reviewing eligibility determinations.

Eligibility of Micronesia

Under Section 1002(8) of the Legal Services Corporation Act (the Act), the term "State" is defined to include * * * the Trust Territory of the Pacific Islands * * * (Micronesia). The Corporation funds recipients in all states, as defined in Section 1002(8), except American Samoa. The authority of the Corporation to fund Micronesia Legal Services is clear under the Act. However, the issue is whether funds appropriated under the Continuing Resolution can be used for provision of legal assistance to citizens and permanent residents of Micronesia, very few of whom are citizens of the United States and who do not fall within the definition of eligible aliens under the Continuing Resolution.

Congress, has, however, expressed no intent to exclude them; they do not come from and neither were or are citizens of any other country, but rather are citizens of a Trust Territory administered under U.N. mandate. It is the interpretation of the Corporation that the scheme of the aliens provision is to exclude all aliens not likely to be permanent or long-term residents of the United States and its territories. Thus the distinctions expressed in the Continuing Resolution are not appropriate to Micronesians. Consequently, the Corporation considers all such permanent residents of Micronesia in a category analogous to permanent alien residents of the United States; as such the Corporation has determined that such permanent residents of Micronesia are eligible to receive legal assistance provided they are otherwise eligible under the Act.

Eligibility of Cross-Border Indian Tribes

Canadian-born American Indians at least 50% Indian by blood have a right to freely "pass and repass" the Canadian-American border under the Jay Treaty of 1794 and 8 U.S.C. 1359. They are not subject to the Immigration Act of 1952, as amended, as held in *Akins v. Saxbe*, 380 F. Supp. 1210 (D. Me. 1974). Thus, the Corporation has concluded that because such Canadian-born American Indians are not treated as aliens for immigration

purposes, they fall outside of the restrictions of the continuing resolution, and are eligible to receive legal assistance.

Likewise, the Texas Band of Kickapoo who live on both sides of the U.S.-Mexican border were granted rights similar to those of Canadian-born American Indians by Pub. L. 97-684. This statute also requires the Interior Department to make a permanent record of all members of the Kickapoo during 1983 and allows them to apply for United States citizenship at any time within the next 5 years. Although their technical status at present is that of parolees, Congress has thus indicated that their relationship to the United States is of a permanent nature and most of them can be expected to become citizens within the next 5 years. On the basis of this recently passed legislation expressing the intent of Congress to regularize the status of the Kickapoo, they are deemed eligible to receive legal assistance.

List of Subjects in 45 CFR Part 1626

Privacy, Aliens, Legal services, Reporting and recordkeeping requirements.

For the reasons set out above, 45 CFR Chapter XVI is proposed to be amended by adding Part 1626 to read as follows:

PART 1626—RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS

Sec.

- 1626.1 Purpose.
- 1626.2 Definitions.
- 1626.3 Prohibition of legal assistance "for or on behalf of" an ineligible alien.
- 1626.4 Alien status and eligibility.
- 1626.5 Verification of citizenship and eligible alien status.
- 1626.6 Disposition of cases involving ongoing representation of ineligible aliens.
- 1626.7 Change in circumstances.
- 1626.8 Records.
- 1626.9 Use and confidentiality of records pertaining to determination of eligible alien status.
- 1626.10 Special eligibility questions.

Authority: Section 1008(e) Pub. L. 93-355, 88 Stat. 378 (42 U.S.C. 2996g(e)); Pub. L. 97-377, 96 Stat. 1874.

§ 1626.1 Purpose.

This Part is designed to assist recipients in determining the eligibility and immigration status of persons who seek legal assistance, to provide guidelines for referral of ineligible persons, and to protect the confidentiality of information obtained from clients and prospective clients. This Part does not apply to any case or matter in which assistance is not being

provided with funds appropriated under Pub. L. 97-377.

§ 1626.2 Definitions.

As used in this Part the term—

- (a) "Eligible alien" means an alien who meets the requirements of § 1626.4(a).
- (b) "Ineligible alien" means an alien who does not meet the requirements of § 1626.4(a) and who is consequently determined not to be eligible to receive legal assistance under Pub. L. 97-377.
- (c) "Rejected" refers to an application for adjustment of status that has been denied by the Immigration and Naturalization Service (INS) and is not subject to further administrative appeal.

§ 1626.3 Prohibition of legal assistance "for or on behalf of" an ineligible alien.

(a) *General.* No funds made available to a recipient by the Corporation under the authority of Pub. L. 97-377 shall be used to provide legal services for or on behalf of any person unless that person is a citizen of the United States or an eligible alien, except as authorized in this part.

(b) *Prohibited legal assistance "for" an ineligible alien.*—(1) To provide legal assistance "for" an ineligible alien is equivalent to furnishing legal assistance to a client and it shall be deemed to be coextensive with accepting an ineligible alien as a client. Consequently, all recipients are prohibited from using fiscal year 1983 Corporation funds to pay any costs connected with furnishing legal assistance to clients who are ineligible aliens.

(2) Normal intake procedures and referral of ineligible alien clients by the same procedures used to refer other classes of ineligible clients are excepted from this prohibition. If a referral is not possible, an ineligible alien client may not be represented if any fiscal year 1983 funds are used in such representation. If such an ineligible alien client is referred, a recipient may not participate further in the case (using fiscal year 1983 funds).

(3) The provisions of Section 1010(c) of the Legal Services Corporation Act do not apply to the expenditure of funds to represent ineligible aliens. Such aliens may be represented if all costs of such representation, including staff time, are funded from non-Corporation sources.

(c) *Prohibited legal assistance "on behalf of" an ineligible alien.*—(1) To provide legal assistance "on behalf of" an ineligible alien is to render legal assistance to an eligible person which directly benefits an ineligible alien. Ineligible aliens may benefit but only as an incidental result of the relief

obtained for eligible clients. As an example, where a group of individuals renting a residence is faced with eviction, and one of the group is an eligible alien or a citizen, representation of that individual is allowed because there is a direct benefit inuring to the client represented which would exist even absent the involvement of ineligible clients. The other aliens may not be named as parties or represented and no relief may be sought for them, but they may receive an incidental benefit if successful representation of the eligible client leads to their not being evicted.

(2) Any case in which an eligible client seeks legal assistance to facilitate immigration of or adjustment of status of an ineligible alien constitutes provision of legal assistance "on behalf of" an ineligible alien, even if there is a benefit to the eligible client. The benefit to the eligible client occurs only as a consequence of the benefit to the ineligible alien. Consequently, the prohibition of assistance on behalf of an ineligible alien extends to all legal assistance wherein the admission of a person into the United States is sought and to any other immigration matter wherein an eligible client is assisted to aid or facilitate the adjustment of the status of an ineligible alien.

§ 1626.4 Alien status and eligibility.

(a) Subject to all other eligibility requirements of the Act, an alien who is a resident of the United States and who is within one of the following categories shall be eligible for legal services:

(1) An alien lawfully admitted for permanent residence as an immigrant as defined by section 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a) (15) and (20));

(2) An alien who is either married to a United States citizen or is a parent or an unmarried child under the age of twenty-one years of such a citizen and who has filed an application for adjustment of status to permanent resident under the Immigration and Nationality Act, and such application has not been rejected;

(3) An alien who is lawfully present in the United States pursuant to an admission under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157 relating to refugee admissions) or who has been granted asylum by the Attorney General under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), or who is lawfully present in the United States as a result of being granted conditional entry pursuant to section 203(a)(7) of the Immigration and Nationality Act (8

U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic natural calamity; or

(4) An alien who is lawfully present in the United States as a result of the Attorney General's withholding of deportation pursuant to section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)).

(b) An alien who is not within one of the eligibility categories defined in § 1626.4(a) shall not be eligible for legal services. Categories of ineligible aliens include but are not limited to:

(1) Aliens present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5) relating to parolee admissions); or

(2) Aliens admitted into the United States as nonimmigrants under section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), including:

(i) Ambassadors and other diplomatic officers and employees, embassy attendants and servants, and their immediate families;

(ii) Tourists and temporary business visitors;

(iii) Aliens in transit through the United States or going to and from the United Nations;

(iv) Alien crewmen from foreign vessels and aircraft who enter the United States temporarily and intend to depart on their vessels or aircraft;

(v) Alien traders and investors present in the U.S. pursuant to treaties of commerce and navigation, and their immediate families;

(vi) Foreign students who enter the United States to study at academic institutions, and their spouses and minor children;

(vii) Officials, employees, and representatives of international organizations, and their immediate families;

(viii) Temporary workers, trainees, and persons of distinguished ability and their spouses and minor children;

(ix) Members of the foreign press, radio, film, and other media, and their spouses and children;

(x) Participants in State Department-sponsored exchange programs, and their spouses and minor children;

(xi) Fiances and fiancées of United States citizens who enter the United States solely to conclude valid marriages, and their minor children;

(xii) Employees of United States corporations or businesses based in another country who enter the United States to work for the same employers, and their spouses and minor children;

(xiii) Foreign students who enter the United States to study at vocational or nonacademic institutions, and their spouses and minor children.

§ 1626.5 Verification of citizenship and eligible alien status.

(a) A citizen seeking representation shall attest in writing to the fact of his or her United States citizenship.

Verification of citizenship shall not be required unless a recipient has good cause to conclude that a person may not be a United States citizen. A recipient shall accept the original or a certified copy of any of the following documents as proof of citizenship:

- (1) United States passport;
- (2) Birth certificate;
- (3) Naturalization certificate;
- (4) United States Citizenship Identification Card; (INS Form I-197);
- (5) Commuter Status Card (INS Form I-178).

If a person is unable to produce any of the above documents, he or she may submit a notarized statement signed by a third party, who can produce proof of that party's own United States citizenship that the person seeking legal assistance is a United States citizen.

(b) An alien seeking representation shall submit appropriate documents to verify eligibility. A recipient shall accept originals of any of the following documents as proof of eligibility:

(1) An alien in the category specified in § 1626.4(a)(1) shall present an Alien Registration Receipt Card (INS Forms I-151, I-551, or AR-3a), Temporary Evidence of Lawful Admission for Permanent Residence (INS Form I-181B), or a valid passport and immigrant visa.

(2) An alien in the category specified in § 1626.4(a)(2) shall present the fee receipt issued to the alien by the Immigration and Naturalization Service (INS) at the time that the Application for Status as Permanent Resident (INS Form I-485) was filed; or, if such fee receipt is not available, a copy of the Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa (INS Form I-130) and the Application for Status as Permanent Resident accompanied by a notarized statement, signed by the alien that such forms were filed with INS.

(3) An alien in the category specified in Part 1626.4(a)(3) shall present an Arrival-Departure Record (INS Form I-94) marked "section 207" or "Refugee" (if claiming refugee status), "section 208" or "Asylum" (if claiming asylee

status), or "section 203(a)(7)" or "Conditional entry" (if claiming conditional entrant status).

(4) An alien in the category specified in Part 1626.4(a)(4) shall present an Arrival-Departure Record (INS form I-94) marked "section 243(h)," or a court order or letter signed by an immigration judge stating that the Attorney General is withholding deportation of the alien.

(c) The following documents shall not be considered evidence of eligible alien status:

- (1) Nonimmigrant Visa;
- (2) Arrival-Departure Record (INS Form I-94) marked with any code from "A" through "M" for nonimmigrants, or marked "section 212(d)(5)" for parolees;
- (3) Crewman's Landing Permit (INS Form I-95A);
- (4) Mexican Border Visitors Permit (INS Form I-144);
- (5) Nonresident Alien Canadian Border Crossing Card (INS Form I-185);
- (6) Nonresident Alien Mexican Border Crossing Card (INS Form I-186);
- (7) Nonresident Alien Canadian Border Crossing Identification Card (unnumbered).

(d) A recipient shall upon request furnish each person seeking legal assistance with a list of the documents described in this section. Persons applying for legal assistance are responsible for producing the appropriate documents to verify eligibility.

§ 1626.6 Disposition of cases involving ongoing representation of ineligible aliens.

(a) A recipient may not use funds available to it under the authority of Pub. L. 97-377 to provide legal assistance to ineligible aliens; other alternatives must be used to dispose of pending cases in which the client is an ineligible alien. Generally, three alternatives are available:

(1) Referral to alternative counsel who can provide adequate representation;

(2) Withdrawal from pending judicial or administrative proceedings where permission to withdraw can be obtained under the rules of procedure of the tribunal; or

(3) Continuance of representation supported by funds available to the recipient either from non-Corporation sources or from unexpended carryover balances of prior year Corporation funds. As such other funds will normally be limited, referral or discontinuance of representation should be chosen wherever not inconsistent with an attorney's professional responsibilities.

(b)(1) Where referral or

discontinuance of representation are not possible and no other funds are available, the recipient may permit a staff attorney to complete the case (or bring it to a stage where referral or discontinuance is possible) on an uncompensated basis. In such instances, the attorney may use the necessary minimum of recipient overhead support, but direct expenditures of Pub. L. 97-377 funds will not be permitted.

(2) In any such circumstances, a recipient shall maintain documentation clearly differentiating the time the attorney used on an uncompensated basis from his or her paid time and establishing the approximate amount of any overhead services allocable to completion of the case.

§ 1626.7 Change in circumstances.

(a) A recipient shall not use funds made available to it under the authority of Pub. L. 97-377 to provide legal assistance for or on behalf of an alien if:

- (1) The alien becomes an ineligible alien due to a change in circumstances after representation has commenced;
- (2) Representation of an ineligible alien was commenced due to an erroneous eligibility determination made by the recipient; or
- (3) Representation of an ineligible alien was commenced due to false information provided by the alien to the recipient.

(b) A recipient shall discontinue representation supported by funds authorized by Pub. L. 97-377 under the circumstances described in § 1626.7(a) provided discontinuance is not inconsistent with with attorney's professional responsibilities. In discontinuing representation, a recipient shall follow the procedures set out in § 1626.6. In the event of discovery of false information relating to eligibility as set forth in § 1626.7(a)(3), steps to discontinue representation shall be taken immediately.

§ 1626.8 Records.

Programs shall keep records of whether a client or prospective client claims to be a citizen or an alien. For all individuals seeking legal assistance, recipients shall keep copies of all documents given to them to establish eligibility. Such records shall be kept whether the individual was found to be eligible or ineligible for legal assistance. If an alien is found ineligible, a record of documentation (or lack thereof) may be kept in lieu of copies of said documentation.

§ 1626.9 Use and confidentiality of records pertaining to determination of eligible alien status.

(a) All records pertaining to determination of the eligibility of an alien for legal assistance shall be available (with deletion of names and personal identification) for review by the Corporation of recipients' actions and procedures in determining the eligibility of the alien for legal services. Such records shall not be released by the Corporation or by any recipient to any third party except in statistical form, nor may they be used for any other purpose than that stated in this subsection. This subsection shall not prevent release to Congress of information specifically requested by Congress.

(b) Release of any such record by a recipient, except to the Corporation or under court order, shall subject the recipient to appropriate sanctions by the Corporation.

(c) Such records shall be retained for a minimum of three years or until resolution of all audit questions pertaining thereto, whichever period is longer. Recipients shall keep a statistical record of the number of aliens found eligible and ineligible and the number of persons found eligible who subsequently were discovered to have been ineligible.

§ 1626.10 Special eligibility question.

(a) *Micronesia.* The residents of the Trust Territory of the Pacific Islands (Micronesia) currently receive legal assistance under the Legal Services Corporation Act. As Congress has expressed no intention to exclude them, the Corporation deems all citizens and permanent residents of Micronesia eligible to receive legal assistance provided they are otherwise eligible under the Act.

(b) *Cross-Border Indian Tribes.*—(1) All Canadian-born American Indians at least 50% Indian by blood are eligible to receive legal assistance provided they are otherwise eligible under the Act.

(2) Members of the Texas Band of Kickapoo are eligible to receive legal assistance provided they are otherwise eligible under the Act.

Dated: April 28, 1983.

Alan R. Swendiman,
General Counsel.

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