




OFFICE OF LEGAL AFFAIRS

Legal Services Corporation
America's Partner For Equal Justice

RULEMAKING OPTIONS PAPER

TO: Helaine M. Barnett
President

FROM: Victor M. Fortunato 
Vice President & General Counsel

DATE: October 11, 2005

SUBJ: Revision of 45 CFR Part 1621 – Client Grievance Procedures

The Operations & Regulations Committee of LSC's Board of Directors determined that LSC should initiate a rulemaking to consider whether LSC should initiate a rulemaking to consider revision to Part 1621. This Rulemaking Options Paper ("ROP") has been prepared in accordance with the LSC Rulemaking Protocol to assist you in responding to the Committee on this issue.¹

¹ Under the Rulemaking Protocol:

In most instances, prior to undertaking a rulemaking LSC's Office of Legal Affairs ("OLA"), in close consultation with appropriate Corporation staff, will develop a *Rulemaking Options Paper* ("ROP"). The ROP will contain a discussion of the subject for the potential rulemaking, and will include an outline of the policy and legal issues involved. The ROP shall also recommend whether the potential rulemaking should be accomplished by *Notice and Comment Rulemaking*, including whether holding a Rulemaking Workshop would be appropriate, or whether it should be *Negotiated*.

Once the ROP is developed and approved by the LSC President, it will be submitted to the Committee. The Committee will have the opportunity to deliberate and determine whether to recommend to the Board that the Board initiate a rulemaking. If the Committee recommends that the Board initiate a rulemaking, the Committee deliberations will also provide an opportunity for the Committee to recommend policy direction on the

Background

Part 1621 requires recipients to establish a grievance committee and procedures for receiving and investigating complaints that service was improperly denied or that service provided was inadequate. The purpose of Part 1621 is to ensure that recipients are accountable to those persons they are expected to serve. The regulation was adopted in 1977 and has not been amended since then.²

Summary of Major Issues

The client grievance process is vital to the shared interests of LSC, grantees and clients in ensuring that grantees are providing high quality legal services to eligible clients in an effective and efficient manner. It has now been nearly thirty years since the adoption of Part 1621 and the rule appears not to present major problems for our grantees, and compliance with the regulation has not been problematic. Nevertheless, LSC staff and field representatives³ agree that there may be a better way to achieve a balance of the interests of clients/applicants with those of grantees in the

scope and issues expected to be involved in the rulemaking. As noted above, the Board will make decisions regarding whether to undertake a rulemaking, the method to be used for the rulemaking, and any policy direction to be given to staff at the outset. The appropriate rulemaking process shall be selected on a case-by-case basis consistent with the objectives of this Protocol.

67 *Fed. Reg.* 60762, 69763 (November 19, 2002).

² A Notice of Proposed Rulemaking (NPRM) was published in 1994 which would have instituted some more specific requirements for the grievance process and clarified the situations in which access to the grievance process is appropriate. No final action was ever taken on the 1994 NPRM, however (due to the significant legislative activity in 1995 and 1996), and the original regulation remains in effect.

³ See page 3 of the Comments of the Center for Law and Social Policy (on behalf of the Civil Policy Group of the National Legal Aid and Defenders Association), dated June 17, 2005, and submitted to LSC in response to LSC's *Federal Register* notice soliciting comments on LSC's Regulatory Agenda for 2005-2006.

creation of a meaningful process by which clients and applicants may pursue complaints with a grantee about the grantee's service or decision to deny service, while providing grantees with flexibility and protecting grantees from expending resources on frivolous complaints.

The major issues which a rulemaking to consider revisions to Part 1621 should address can be summarized as follows:

1. How the client grievance procedures should distinguish between applicants and clients, and the process applicable to each;
2. The appropriate scope of the available grievance procedures (i.e., what types of complaints are appropriately addressed by the grievance process);
3. The procedural requirements appropriately placed on complainants;
4. Whether there are better ways to protect the confidentiality of client information in the grievance process (including how the adoption of the LSC Access Protocol affects this issue);
5. The appropriate ways grantee flexibility can be enhanced with regard to the composition of grievance committees and the requirements for complaint procedures, particularly in light of the increase in the number of statewide grantees and decrease in numbers of branch offices and improvements in information technology (which may have an impact on questions regarding the necessity for requiring in-person hearings);
6. Whether and to what extent some client grievance procedure requirements should apply to private attorneys providing services pursuant to a grantee's PAI program.

Recommendation for Action

Accordingly, I recommend that LSC undertake a rulemaking to revise 45 CFR Part 1621. I further recommend that this rulemaking be undertaken through Notice and Comment Rulemaking and that, prior to the development of an NPRM, LSC convene a Rulemaking Workshop.⁴ Conducting a formal Negotiated Rulemaking⁵ is not necessary in this instance but, because review of Part 1621 would likely benefit greatly from the client perspective, it would be especially important to convene a Rulemaking Workshop and thus provide for direct client participation and input.

RECOMMENDATION APPROVED:



 Helaine M. Barnett, President

Date: 10/13/05

⁴ Under LSC's Rulemaking Protocol, a Rulemaking Workshop is a meeting at which the participants (which may include LSC Board members, staff, grantees and other interested parties) "hold open discussions designed to elicit information about problems or concerns with the regulation (or certain aspects thereof) and provide an opportunity for sharing ideas regarding how to address those issues. [* * * A] Workshop is not intended to develop detailed alternatives or to obtain consensus on regulatory proposals." 67 *Fed. Reg.* 69762, 69763 (November 19, 2002). After a Workshop, management must report back to the Board for "policy guidance on the issues discussed to aid staff in the development of the *Draft Notice of Proposed Rulemaking* ("NPRM")." *Id.*

⁵ Under LSC's Rulemaking Protocol, a Negotiated Rulemaking involves the formal appointment of a Working Group composed of LSC representatives, grantee representatives and other interested parties. The Working Group meets with the assistance of a professional, third-party facilitator, with the intention of developing a consensus-based Notice of Proposed Rulemaking, which would subsequently be published for written public comment. 67 *Fed. Reg.* 69762, 69764 (November 19, 2002).