

the corporation may not have ready access. As part of its planning and budgeting process, a recipient must match funds if it receives with activities that are consistent with the funding and, therefore, the recipient will have a basic for its determination that readily can be documented. Also, as the Corporation's 1981 and 1986 editions of the *Audit and Accounting Guide for Recipients and Auditors* require that contributions with restrictions be recorded in a restricted fund, a recipient's independent auditors will likely have made an independent determination of the nature of all the recipient's funds, which will be able to substantiate the recipient's assertion. Finally, because § 1630.3 allocates to the recipient the burden of proof in defending a questioned cost to show that funds used are not subject to a restriction, a recipient should be able to determine the existence of any restrictions before allocating expenses.

The proposal also establishes a presumption that all private funds received by a recipient are received for the provision of legal assistance, absent a clear and convincing showing that the funds were received for other than legal assistance activities. Basic field and support recipients deliver services using lawyers and paralegal staff, and so all services provided by a recipient should be for the purpose of legal assistance. Therefore, unless a private funding source specifically restricts the use of its funds to some non-legal purpose, all LSC and private funds would be considered received for legal assistance.

Finally, the authority section is proposed to be amended to add section 1008(e) of the LSC Act, which provides authority for the Corporation to promulgate regulations.

List of Subjects in 45 CFR Part 1610

Legal services.

For reasons set out above, 45 CFR Part 1610 is proposed to be amended as follows:

PART 1610—USE OF FUNDS FROM SOURCES OTHER THAN THE CORPORATION

1. The authority citation for Part 1610 is revised to read as follows:

Authority: 42 U.S.C. 2996g(e) and 2996i(c).

2. Section 1610.1 is revised to read as follows:

§ 1610.1 Definitions.

As used in this part, the phrase "purposes prohibited by the Act or Corporation Regulations" refers to activities prohibited by the following Sections of the Act and the regulations promulgated thereunder:

(a) Section 1008(a)(3) (Broad general legal or policy research);

(b) Sections 1008(d)(3), 1008(d)(4),

1007(a)(6) (Political activities);

(c) Section 1008(d)(5) (Class actions);

(d) Section 1007(a)(2)(A) (Ineligible clients);

(e) Section 1007(a)(5) (Legislative and administrative lobbying);

(f) Section 1007(a)(10) (Activities inconsistent with professional responsibilities);

(g) Section 1007(b)(1)–(10) (Fee-generating cases; criminal proceedings; civil actions challenging criminal convictions; political activities; grants or contracts with public interest law firms; advocacy training; organizing activities; abortions; school desegregation; and violations of Military Selective Service Act or military desertion).

3. Section 1610.4 is amended by designating the current text as paragraph (a) and adding paragraph (b) to read as follows:

§ 1610.4 Accounting.

(b) All funds received by recipients shall be presumed to be LSC or private funds received for the provision of legal assistance, absent a clear and convincing demonstration to the contrary by the recipient.

December 28, 1988.

Timothy B. Shea,

General Counsel.

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45 CFR Part 1611

Eligibility

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: The Legal Services Corporation proposes to amend Part 1611 by revising § 1611.3(e), so that no person whose income exceeds the maximum annual income level established by a recipient would be eligible for legal assistance provided with private funds. This amendment would conform Part 1611 to the changes proposed in an accompanying proposed rule for 45 CFR Part 1610, LSC's regulation governing the use of funds from sources other than the Corporation.

In addition, a technical change is proposed for the authority section to include section 1008(e) of the LSC Act, 42 U.S.C. 2996g, the provision providing the Corporation authority to promulgate regulations.

DATE: Comments must be submitted on or before February 2, 1989.

FOR FURTHER INFORMATION CONTACT:
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SUPPLEMENTARY INFORMATION:

Section 1010(c) of the LSC Act restricts the use of private funds received for the provision of legal assistance to purposes not prohibited by the Act, 42 U.S.C. section 2996i. In 1976, LSC promulgated 45 CFR Part 2010 to implement section 1010(c). Section 1610.1 listed those activities which the Corporation decided to include as "any purpose prohibited" within the meaning of section 1010(c). No prohibition against providing legal assistance to ineligible clients with private funds was included. Similarly, when LSC first promulgated Part 1611 in 1976, it included a provision, § 1611.3(e), allowing the use of non-LSC funds for ineligible clients.

Upon review, as set out in the accompanying notice of proposed revisions to 45 CFR Part 1610, it is proposed that private funds should not be used to represent ineligible clients, because program resources should be focused on the client population with the most pressing needs. This proposal would revise § 1611.3(e) to prohibit the representation of ineligible clients with private funds.

List of Subjects in 45 CFR Part 1611

Legal services.

For reasons set out above, 45 CFR Part 1611 is proposed to be amended as follows:

PART 1611—ELIGIBILITY

1. The authority citation for Part 1611 is revised to read as follows:

Authority: Sec. 1008(b)(1), 42 U.S.C. 2996e(b)(1); sec. 1007(a)(1), 42 U.S.C. 2996f(a)(1); sec. 1007(a)(2), 42 U.S.C. 2996f(a)(2); sec. 1996(e), 42 U.S.C. 2996g.

2. Section 1611.3(e) is revised to read as follows:

§ 1611.3 Maximum income level.

(e) Unless authorized by § 1611.4, no person whose income exceeds the maximum annual income level established by a recipient shall be eligible for legal assistance provided with private funds.

December 28, 1988.

Timothy B. Shea,

General Counsel.

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