

BOARD OF DIRECTORS MEETING

October 13, 1983

8:00 A.M. to 5:00 P.M.

Sheraton Grand Ballroom

Second Floor

Sheraton Hotel

255 S. W. Temple

Salt Lake City, Utah 84101

TENTATIVE AGENDA

BOARD OF DIRECTORS MEETING

October 13, 1983  
8:00 A.M. - 5:00 P.M., Thursday

Sheraton Grand Ballroom  
2nd Floor  
Sheraton Hotel  
Salt Lake City, Utah 84101

Open Meeting

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Draft Minutes

Legal Services Corporation Board of Directors Meeting

June 7, 1983

The Legal Services Corporation Board of Directors convened its public meeting at 10:00 A.M. in the GSA Central Auditorium, 18th and F Streets, N.W., Washington, D.C., on June 7, 1983. The Chairman of the Board, Robert E. McCarthy, presided. Other Board members present included the following:

Frank Donatelli  
Milton Masson  
Daniel Rathbun

Also present were Donald P. Bogard, Corporation President; Dennis Daugherty, Vice President of Operations; Charles Ritter, Vice President of Finance; LeaAnne Bernstein, Secretary; Alan Swendiman, General Counsel; Jim Streeter, Director of Government Relations; Gregg Hartley, Director of the Office of Field Services; other Corporation staff; and members of the public.

Mr. McCarthy called the meeting to order and noted that the meeting had been postponed by a majority of the Board of Directors from June 6, 1983, the time of the meeting noticed in the Federal Register, to June 7, 1983, and that the present meeting was a properly noticed meeting of the Board of Directors. The tentative agenda was discussed, and an amendment to the order was suggested to maximize public input.

Milton Masson moved that the tentative agenda be adopted with the stipulation that item 8 appear immediately after item 4. Frank Donatelli seconded; the motion was carried.

Mr. Donatelli moved the adoption of the minutes of the March 15, 1983, Board meeting. Mr. Masson seconded the motion, and the minutes were approved as presented in the Board book.

Chairman McCarthy noted the Federal Register provision for a portion of the meeting to be closed to discuss personnel, litigation, and investigatory matters. He suggested that it commence no later than 11:30 A.M. Donatelli so moved, and Masson seconded.

Corporation President, Donald P. Bogard, asked for a roll call on the motion. The vote was unanimous to hold the closed Executive Session. Alan Swendiman, General Counsel, certified the vote.

Mr. Swendiman then reported from the Office of General Counsel on the proposed regulations on the alien rider (Public Law 97-377) as published in the Federal Register. He said 106 comments concerning the regulations were received and reviewed.

Focusing on Section 1626.5 (verification), Mr. Swendiman said a number of comments were received. To clear up potential misunderstanding in the field, it was recommended that the phrase "good cause" be changed to "reason to doubt." Some comments also mentioned the importance of a baptismal certificate to verify citizenship.

Another change in the proposed regulation was in subparagraphs (a) and (b) of 1626.4 covering all eligible aliens. Chairman McCarthy asked Mr. Swendiman whether the Immigration and Naturalization Service had expanded on its previous opinion regarding the categories of eligible aliens. Swendiman affirmed that INS had expanded on its earlier comments.

Provision also was made in the new draft for emergency services and rural verification. It was recommended that allowance be made for instances when photocopying of documents was impractical or illegal. Mr. Swendiman suggested in his concluding remarks that the Board consider a possible conflict between an attorney's professional responsibility and the Continuing Resolution's restrictions on alien funding.

Mr. McCarthy invited discussion of this problem. A member of the audience, Dwight Loines of the National Organization of Legal Services Workers, said the ethical questions had not been addressed by the Board. He said withdrawal or referral would prejudice a client, and he noted that uncompensated representation also raised ethical problems.

Charles Horsky of the American Bar Association Standing Committee on Legal Aid and Indigent Defendants expanded on both of these points and added that lawyers should make good faith efforts when withdrawing from a case. He cited an ABA opinion which states that the responsibility for a client rests with the recipient not the individual attorney. Bernie Veney of the

National Clients Council reiterated the point made by Horsky and Loines, and asked that the preamble reference protecting minority individuals from possible discrimination by legal agencies be moved to the main body of the regulations. Veney asked for more explicit guidelines on client grievance procedures. He said that a client should be represented by someone with expertise in immigration matters. He also said an indirect result of the proposed regulations would be to subject attorneys to actions by state or other bar associations.

Veney said there was a conflict in the Corporation's intentions concerning carryover funding. He challenged Congress's right to go directly to local legal service programs for desired information rather than to the Corporation itself.

Ellen Vargas of the Coalition for Legal Services agreed with the previous speakers saying that the regulations are ethically irresponsible and in violation of Section 1006(b) of the Act. She expressed appreciation of certain changes in the proposed regulation but asked that the Board give more time and consideration to the problems being raised.

President Bogard noted that he and the Board members, as well as four members of the General Counsel staff, had evaluated comments on the guidelines extensively and had made a serious effort to review the problems over a 30-day period. Mr. Donatelli explained that an appropriations rider has jurisdiction over the funds appropriated, and Congress's language that "no funds shall be made available" means no

funds. He said the Board had to move quickly to approve the necessary legislation before the end of the fiscal year. Mr. Donatelli and Mr. McCarthy each stated that it was their fiduciary duty to enact the resolution despite the little time available.

Masson moved and Donatelli seconded the adoption of the regulations as modified. The motion was carried by a voice vote.

John Meyer, Deputy General Counsel, discussed the proposed regulation relating to the transfer of Corporate funds which, if passed, would be published in the Federal Register for comment and voted on at a later Board meeting. Under the proposed regulation (1627.2), a recipient is defined as any organization that receives funds from the Corporation, and a subgrantee is similarly defined so that in effect there is no difference between the two. This would allow for stricter accountability in the transfer of Corporation funds.

President Bogard asked for clarification on 1627.2(b)(1) of the proposed regulations. He suggested that, prior to publication in the Federal Register, a statement be made that pro bono service or compensated service from a private attorney is not meant to be included under this category of subgrant.

John Meyer discussed the requirements for subgrants: (1) that subgrants be submitted in writing for prior approval by the Corporation; (2) that the Corporation has 45 days to

approve, disapprove, or suggest modifications; and (3) that, should the Corporation not respond within the period, the recipient shall notify the Corporation and then proceed within 7 days, having implicit approval. Further, subgrants are to be of a duration of no more than one year and must contain a self-termination provision should the grant be terminated before the subgrant is completed. Similarly, should there be substantial change in the grant, responsibility lies with the recipient to monitor the use of all funds granted. Meyer discussed other detailed provisions of the proposed regulations concerning recipients, fees and dues, and subgrants.

Mr. McCarthy recessed the meeting at 11:34 A.M. for Executive Session.

When the public meeting reconvened at 1:20 P.M., President Bogard delivered a report on the Executive Session stating that the Board had discussed personnel, litigation, and investigatory matters but that no Board actions had been taken. He noted his visits to programs around the country and said the Corporation had issued a \$200,000 grant to the Florida Justice Institute to establish the National IOLTA Clearinghouse. In addition, he said a number of Corporation positions had been filled: Robert Washington, Director of the Equal Opportunity Office; Joshua Brooks, Deputy Director of the Office of Field Services; Gail Francis, Acting Director of the Office of Information Management; LeaAnne Bernstein, Acting Director of the Office of Program Development; John Meyer,

Deputy General Counsel. Position announcements for Director of the Office of Information Management were to be posted, and it was hoped that the position would be filled within sixty days.

Masson moved and Rathbun seconded that the proposed regulations on the transfer of corporation funds be published for comment in the Federal Register, incorporating the changes suggested by the Board.

Mr. Donatelli and Mr. Veney exchanged views on the proposed guidelines relating to client input into local attorney board member appointments. Mr. Bogard offered to review the issue further. Mr. Swendiman followed by noting the procedural requirements for publication of proposed regulations, guidelines, and instructions.

Randy Chapman of the state support center in Pennsylvania, Law Coordination Center, said the guideline for Board composition should be put out for comment and not implemented as an instruction without feedback. Mr. Masson suggested that in this instance the guideline might be published to allow for comment. Masson moved and Donatelli seconded that that the staff publish, for a thirty-day period, the proposed regulation concerning the transfer of corporate funds by recipients. The Board voted unanimously in favor of the matter. No motion regarding the guideline was made.

Jim Braude, National Organization of Legal Services Workers; Mary Lanier, client; and Jawara Lamumba, NLADA; made policy statements to the Board.

Vice President of Finance, Charles Ritter, reported on expenditures through FY 1983. He said the funds available to the Corporation are approximately \$243,800,000, of which \$543,000 has not been allocated. He noted that for the consolidated operating budget as of March 31, 1983, staff has proposed changes within, but not among, some major budget categories. He stated that no allocation had been made for studies of the National and State Support Centers and the National Clients Council, and that, if necessary, unallocated funds were available for that purpose.

Vice President of Operations, Dennis Daugherty, noted that the Corporation was negotiating with a nationally-recognized survey firm to ascertain support needs. In addition, studies were being commissioned to find alternative support resources outside of Corporation funding. Evaluation visits were being planned for the Fall. Daugherty also noted that the Office of Field Services and the Office of Information Management were examining the census data to check the pattern of funding distribution among the poor. That data indicated striking discrepancies in per capita funding levels. Very few programs, he said, are being funded on the national average of \$6.61 for each poor individual, and many are being funded at less than the \$6.20 minimum formerly guaranteed recipients. He suggested that program funding be studied in relation to non-census factors as well as to population count, and he provided the Board with data on this subject. He noted that under the language of the Continuing Resolution the Corporation is arguably without authority to alter program funding.

There was a discussion between Gregg Hartley, Director of the Office of Field Services, and Mr. Rathbun regarding the one-time grants mentioned in the draft fund-balance resolution. It was the consensus of the Board that one criteria for the grants to be made should be a recipient's demonstrated need to complete ongoing representation of now ineligible aliens.

Masson moved and Rathbun seconded that the draft resolution be adopted. The Board voted in favor.

Jim Streeter, Director of Government Relations, said that the House Judiciary Committee had reported out a three-year reauthorization bill (H.R. 2909) for the Legal Services Corporation which authorizes a number of statute changes, including the establishment of State Advisory Councils; compensation limitations for recess appointees; repeal of section 1011 of the Act; prohibition on private club membership; specific limitations on lobbying; and specific limitations on class actions. Streeter noted that H.R. 2909 authorizes \$296 million for FY '84 and such sums as are necessary for the two subsequent years. He said the Senate budget proposal for Legal Services is \$241 million. He noted that the Corporation was responding to questions raised by Senators Hatch and Eagleton. It was believed that the Senate Labor and Human Resources Committee will report out a reauthorization bill by the end of July. He added that the draft GAO report was to be released soon.

Masson moved and Rathbun seconded that the meeting be adjourned. The Board approved, and at 3:08 P.M. the Board meeting was closed.

## SUMMARY

In summary, we wish to point out that we have not made a thorough review of all the LSC documents provided us by your office concerning the LSC survival campaign. Therefore, we are unable to determine whether the January 1981 Denver Regional Project Directors Meeting is representative of LSC activities during the period in question. Indeed, we selected the material on this training session because it appeared to contain evidence indicating violations of the statutory prohibitions that you cited in your request by LSC fund recipients. After reviewing the training session material, we determined that certain LSC fund recipients had violated these statutory prohibitions, as has been described above.

Although appropriated funds were expended by these fund recipients contrary to law, we are of the opinion that the Government would be unable to recover the illegally expended sums from the recipients. In each instance the Corporation authorized and encouraged fund recipients to make the expenditures. By separate correspondence, we are recommending that the Corporation take appropriate action to amend its regulations governing the activities of fund recipients and Corporation officials in order to prohibit such expenditures in the future.

In accordance with your request, we are continuing our work on the overall investigation of the LSC survival campaign and members of our staff will contact your office from time to time to discuss this project.

1627 - SUBGRANTS, FEES AND DUES

(Limitations on Transfer of Corporation Funds  
by Recipients and Certain Expenditures)  
Proposed Published Version

**SUPPLEMENTARY INFORMATION:****Background**

Pursuant to a December 1982 resolution of the Corporation's Board of Directors, a condition was attached to all recipient's 1983 grants which reads:

None of the funds awarded hereunder may be utilized for the payment of program membership fees or dues to any organization unless prior written approval is obtained from the Corporation, except that no prior approval shall be necessary if the payment of such fees or dues is made in order to qualify for Professional Liability Insurance at reduced rates (for 1983 only), for the payment of any mandatory fees or dues to any bar association or fees to any health insurance provider.

On April 15, 1983, the Director of the Office of Field Services, sent a memorandum to the regional offices, one section of which gave detailed guidelines as to the interpretation and administration of this grant condition.

Objections to this section of the memorandum were immediately raised by concerned organizations. Consideration of these objections has convinced the Corporation that policy concerning fees and dues should be embodied in a regulation adopted through the full regulatory process of public discussion and comment.

Furthermore, discussion of the question of recipient transfers of Corporation funds among themselves and to other organizations has shown that there are other forms of transfer of Corporation funds, in particular subgrants, which are not addressed in the Corporation's regulations. Consequently, the Corporation has found it desirable to issue a comprehensive proposed regulation covering this entire area.

**Subgrants**

A subgrant is defined in Section 1627.2(b) as a transfer by grant or contract of funds received by a recipient from the Corporation to an organization for the purpose of carrying out a part of the recipient's program (a recipient is defined more broadly than in the Act to include also grantees or contractors under Sections 1006(a)(1)(B) and 1006(a)(3) of the Act). Excepted from this definition are contracts for services rendered directly to the recipient (i.e., accounting services, general counsel, management consultants, computer services, etc.) and all contracts with private attorneys and law firms for direct provision of legal services to eligible clients.

The regulation requires prior, written Corporation approval of all subgrants. The intent of the regulation is that

recipients be free to contract for services and that private bar involvement programs not be required to seek approval for their contracts with individual attorneys or law firms for provisions of legal services; however, transfers of Corporation funds to other organizations which then carry out a part of the recipient's program require Corporation approval.

In order to further promote accountability for Corporation funds, audit responsibilities are clearly defined and provision is made that any disallowed costs may be recovered from either the subgrantee or subgrantor. As most Corporation grants and contracts are for a period of one year, this is the maximum term allowed for a subgrant without renewed Corporation approval.

**Membership Fees and Dues**

All fees and dues except four specific categories require prior, written Corporation approval. The four excepted categories are: (1) Fees or dues paid to qualify for professional liability insurance at reduced rates, (2) mandatory bar association fees or dues, (3) fees or dues to a health insurance provider or paid to qualify for health insurance at reduced rates, and (4) any fees or dues of \$25 or less.

In order to concentrate Corporation resources on the direct delivery of legal services, the maximum annual expenditure of Corporation funds for all fees and dues, except for categories 1 and 3 discussed above and routine training and education activities, is set at \$750 or one-half of one percent of a recipient's funding, whichever is greater.

A recipient may not contribute Corporation funds to any other organization, because the Corporation does not consider such contributions, however worthy, a proper use of taxpayer funds.

**Categories of Disapproved Expenditures**

The regulation prohibits expenditures to accomplish or promote indirectly activities, such as voter registration, for which direct expenditures are prohibited. This prohibition applies to fees, dues, contributions, and training and educational activities.

**List of Subjects in 45 CFR Part 1627**

Legal Services, Grant programs.

For the reasons set out in the preamble, 45 CFR Chapter XVI is proposed to be amended by adding Part 1627 to read as follows:

**LEGAL SERVICES CORPORATION****45 CFR Part 1627****Limitations on Transfer of Corporation Funds by Recipients and on Certain Expenditures**

**AGENCY:** Legal Service Corporation.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule creates a new Part 1627 governing transfers of Corporation funds by recipients to other organizations. There are, at present, no Corporation regulations governing this area and, consequently, there is inadequate control over and accountability for such transfers. This proposed rule requires prior written Corporation approval for all subgrants and for most categories of payment of fees and dues and contributions of Corporation funds, but not for routine training expenditures.

**DATE:** Comments must be received on or before July 22, 1983.

**ADDRESS:** Comments may be addressed to Office of General Counsel, Legal Service Corporation, 733 Fifteenth Street, NW., Room 620, Washington, D.C. 20005.

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

**PART 1627—LIMITATIONS ON  
TRANSFER OF CORPORATION FUNDS  
BY RECIPIENTS AND ON CERTAIN  
EXPENDITURES**

Sec.

1627.1 Purpose.

1627.2 Definitions.

1627.3 Requirements for all subgrants.

1627.4 Membership fees and dues.

1627.5 Contributions.

1627.6 Transfers to other recipients.

1627.7 Training and education activities.

1627.8 Tax sheltered annuities, retirement  
accounts and pensions

Authority: Sec. 1008(e) Pub. L. 93-355, 88  
Stat. 378 (42 U.S.C. 29969g(e)).

**§ 1627.1 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).

**§ 1627.2 Definitions.**

(a) "Recipient" as used in this part means any recipient as defined in Section 1002(6) of the Act and any grantee or contractor receiving funds from the Corporation under Section 1006(a)(1)(B) or 1006(a)(3) of the Act.

(b)(1) "Subgrant" as used in this Part shall mean any transfer of funds received from the Corporation by a recipient to any organization for the purpose of carrying out a portion of the recipient's program under a grant or contract from the Corporation; it shall not include a contract for services to be rendered directly to the recipient, nor shall it include any contract with private attorneys or law firms for the direct provision of legal services to eligible clients.

(2) "Subgrantee" as used in this Part shall mean any organization receiving a subgrant.

(c) "Membership fees and dues" as used in this Part shall mean fees or dues paid to an organization on behalf of a program or individual to be a member thereof, or to acquire voting or participatory rights therein; it shall also include fees and dues required by a professional licensing body. The term "membership fees and dues" shall not include one-time fees or expenses for programs or individuals to participate in routine training and education activities.

**1627.3 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.

(b)(1) A subgrant may not be for a period longer than one year.

(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 § 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) The responsibility for assuring the proper expenditure of funds by the subgrantee rests with the recipient. The recipient is also responsible for auditing the subgrantee's expenditure of funds. The recipient may either: (1) Include a subgrantee's audit in its annual audit or (2) audit the subgrantee as a part of its annual audit. A subgrant agreement may provide for alternate means of assuring the propriety of subgrantee expenditures, especially in instances where a large organization receives a small subgrant. In such alternate means are 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 subgrantee, irrespective of whether the recipient is able to recover such expenditures from the subgrantee.

**§ 1627.4 Membership fees and dues.**

(a) No Corporation funds may be used for membership fees or dues to any

organization, whether on behalf of a recipient or an individual, without prior written approval by the Corporation, except that the following payments may be made without such approval:

(1) Fees or dues paid to an organization in order to qualify for professional liability insurance at reduced rates, provided the reduction in rates is reasonably comparable to the amount of the payment;

(2) Mandatory fees or dues to a bar association, Supreme Court or professional licensing body;

(3) Fees or dues paid to a health insurance provider or to an organization in order to qualify for health insurance at reduced rates, provided the reduction in rates is reasonably comparable to the amount of the payment; and

(4) Any fees or dues of \$25 or less, provided they do not fall under the prohibitions set forth in § 1627.4(d).

(b) In order to prevent a significant diversion of funds from the direct provision of legal services to eligible clients, the Corporation has determined that the total of any one recipient's annual expenditure on membership fees and dues should be strictly limited. With the exception of categories (1) and (3) listed in § 1627.4(a), that total shall not exceed one-half of one per cent of the recipient's annualized funding level or \$750, whichever is greater.

(c) In determining whether to grant a specific request to use funds for fees or dues, preference will be given to such uses as: (1) Payment of voluntary bar association dues and similar dues for paralegal and legal service or law office administrator organizations; and (2) the provision of special training related to activities designed to enhance the skill of program staff in provision of legal services to clients. Training relating to skills the use of which is often not permissible if supported with Corporation funds (e.g. lobbying) shall not be approved.

(d) No request for payment of fees or dues shall be approved if the effect of that payment would be allowed recipients to use Corporation funds indirectly in areas (such as lobbying, political activities, voter registration) for which direct expenditures by recipients are prohibited or severely restricted under the Act, Corporation regulations (45 CFR Chapter XVI), or Corporation Guidelines or Instructions.

Consequently, the Corporation will deny permission for payment of fees or dues to organizations whose activities would violate the Act, or Corporation Regulations, Guidelines or Instructions.

**§ 1627.5 Contributions.**

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

**§ 1627.6 Transfers to other recipients.**

(a) The requirements of § 1627.3 shall apply to all subgrants by one recipient to another recipient.

(b) The subgrantee shall audit any funds subgranted to it in its annual audit and supply a copy of this audit to the subgrantor. The subgrantor shall either make the relevant part of this audit a part of its next annual audit or, if it applies to an audit recently submitted, submit it as an addendum to that recently submitted audit.

(c) In addition to the provisions of § 1627.3(d), the Corporation may hold the subgrantee directly responsible for any disallowed expenditures of subgrant funds. Thus, the Corporation may recover all of the disallowed costs from either subgrantor or subgrantee 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.

**§ 1627.7 Training and education activities.**

(a) Corporation funds may be utilized to pay for participation of programs and individuals in routine training and educational activities.

(b) No recipient shall expend Corporation funds for training or educational activities or utilize Corporation funds to pay for programs or individuals to participate in outside training or educational activities if the effect of such payment would be to allow the use of these program funds:

(1) For purposes for which direct expenditures are prohibited under the Act, Corporation regulations (45 CFR Chapter XVI), or Corporation Guidelines of Instructions; or

(2) For training or educational activities in areas in which program involvement is prohibited (such as political activities or voter registration, etc.) or in areas wherein only limited and incidental activities are allowed (such as lobbying).

**§ 1627.8 Tax sheltered annuities, retirement accounts and pensions.**

No provision contained in this Part shall be construed to prohibit or restrict 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.

Dated: June 16, 1983.

Alan R. Swendiman,  
General Counsel.

[FR Doc. 83-16626 Filed 6-21-83; 6:45 am]

BILLING CODE 6820-35-M

Recommended Final Regulation 1627. Items in brackets are in proposed rule and deleted from recommended final rule; items underlined are new language in recommended final rule.

Part 1627      Subgrants, Fees and Dues

Sec.

- 1627.1 Purpose
- 1627.2 Definitions
- 1627.3 Requirements for all Subgrants
- 1627.4 Fees and Dues
- 1627.5 Contributions
- 1627.6 Transfers to other Recipients
- 1627.7 Training and Education Activities
- 1627.8 Tax Sheltered Annuities, Retirement Accounts and Pensions

AUTHORITY: Section 1008(e) Pub. L. 93-355, 88 Stat. 378 (42 U.S.C. Section 2996g(e))

Subgrants, Fees and Dues

1627.1 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).

1627.2 Definitions.

(a) "Recipient" as used in this part means any recipient as defined in Section 1002(6) of the Act and any grantee or contractor receiving funds from the Corporation under Section 1006(a)(1)(B) or 1006(a)(3) of the Act.

[(b) (1) "Subgrant" as used in this Part shall mean any transfer of funds received from the Corporation by a recipient

the recipient's program under a grant or contract from the Corporation; it shall not include a contract for services to be rendered directly to the recipient, nor shall it include any contract with private attorneys or law firms for the direct provision of legal services to eligible clients.]

(b) (1) "Subrecipient" shall mean any entity that accepts Corporation funds from a recipient under a grant or contract agreement to conduct certain activities specified by or supported by the recipient and closely related to the furnishing of legal assistance to eligible clients. 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, such 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.

[(b) (2) "Subgrantee" as used in this Part shall mean any organization receiving a subgrant.]

(b) (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) "Fees and dues" as used in this Part shall mean fees or dues paid to an organization on behalf of a program or individual to be a member thereof, or to acquire voting or participatory rights therein; it shall also include fees and dues required by a professional licensing body. The term "fees and dues" shall not include one-time fees or expenses for programs or individuals to participate in routine training and education activities.

1627.3 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 subsection (a)(2) shall be subject to audit disallowance and recovery of all the funds expended pursuant thereto.

(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 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.

[The responsibility for assuring the proper expenditure of funds by the subgrantee rests with the recipient. The recipient is also responsible for auditing the subgrantee's expenditure of funds. The recipient may either (1) include a subgrantee's audit in its annual audit or (2) audit the subgrantee as a part of its annual audit.]

(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 subgrantee 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.

1627.4 Fees and Dues.

(a) [No] Corporation funds may be used for fees or dues to an organization, whether on behalf of a recipient or an individual, without prior written approval by the Corporation, [except that the following payments may be made without such approval including] only for the following purposes:

(1) Fees or dues paid to an organization in order to qualify for professional liability insurance at reduced rates, provided the reduction in rates is reasonably comparable to the amount of the payment;

(2) Mandatory or voluntary fees or dues to a bar association, Supreme Court or professional licensing body;

(3) Fees or dues paid to a health insurance provider or to an organization in order to qualify for health insurance at reduced rates, provided the reduction in rates is reasonably comparable to the amount of the payment; and

[(4) Any fees or dues at \$25 or less, provided they do not fall under the prohibitions set forth in Section 1627.4]

(4) Fees or dues to other organizations provided such are directly related to the delivery of legal services to eligible clients, the practice of law, or the management of a law office.

(b) In order to prevent a significant diversion of funds from the direct provision of legal services to eligible clients, the Corporation has determined that the total of any one recipient's annual expenditure on fees and dues should be strictly limited. With the exception of categories (1) and (3) listed in Section 1627.4(a), that total shall not exceed one-half of one per cent of the recipient's annualized funding level or [\$750 whichever is greater] except that each recipient may expend up to \$1,500 and no recipient may expend more than \$20,000 on fees and dues.

(c) In determining whether to [grant a specific request to] use funds for fees or dues, [preference will be given] recipients shall give preference to such uses as (1) payment of bar association dues and similar dues for paralegal and legal service or law office administrator organizations; and (2) the provision of special training related to activities designed to enhance the skill of program staff in provision of legal services to clients. Training relating to skills the use of which is often not permissible if supported with Corporation funds (e.g. lobbying) shall not be approved.

(d) [No request for payment of fees or dues shall be approved] Corporation policy forbids payment of fees or dues if the effect of that payment would be to allow recipients to use

Corporation funds indirectly in areas (such as lobbying, political activities, voter registration) for which direct expenditures by recipients are prohibited or severely restricted under the Act, other applicable Federal law, Corporation regulations (45 CFR Chapter XVI), or Corporation Guidelines or Instructions. Consequently, [the Corporation will deny permission for] recipients shall not make payment of fees or dues to organizations whose activities would violate the Act, or Corporation Regulations, Guidelines or Instructions.

1627.5 Contributions.

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

1627.6 Transfers to Other Recipients.

(a) The requirements of Section 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 subgrantor. The subgrantor shall either [make] submit the relevant part of this audit [a part of] with its next annual audit or, if [it applies to] an audit has been recently submitted, submit it as an addendum to that recently submitted audit.

(c) In addition to the provisions of Section 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 subgrantor 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.

1627.7 Training and Education Activities.

(a) Corporation funds [may be] utilized to pay for participation of programs and individuals in routine training and educational activities do not count toward computation of the maximum allowable total of fees and dues under Sec.

1627.4(b).

(b) No recipient shall expend Corporation funds for training or educational activities or utilize Corporation funds to pay for programs or individuals to participate in outside training or educational activities if the effect of such payment would be to allow the use of these program funds:

(1) For purposes for which direct expenditures are prohibited under the Act, other applicable Federal law, Corporation regulations (45 CFR Chapter XVI), or Corporation Guidelines or Instructions; or

(2) For training or educational activities in areas in which program involvement is prohibited (such as political activities or voter registration, etc.) or in

areas wherein only limited and incidental activities are allowed (such as lobbying).

1627.8      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.

**CURRENT Part 1606 - Procedures Governing Termination  
of Financial Assistance and Denial of Refunding**

(As is now in force)

2996f(a)(1), 2996f(a)(3), 2996f(a)(9),  
2996f(d), 2996g(e), 2996j).

SOURCE: 43 FR 32770, July 28, 1978, unless otherwise noted.

**§ 1606.1 Purpose.**

By affording a recipient the opportunity for a timely, full, and fair hearing that will promote informed deliberation by the Corporation when there is reason to believe a grant or contract should be terminated or refunding denied, this part seeks to avoid unnecessary disruption in the delivery of legal assistance to eligible clients.

**§ 1606.2 Definitions.**

(a) "Termination" means a decision that financial assistance to a recipient will be permanently terminated in whole or in part prior to expiration of the recipient's current grant or contract.

(b) "Denial of refunding" means a decision that, after expiration of its current grant or contract, a recipient:

(1) Will not be provided with financial assistance; or

(2) Will have its annual level of financial support reduced to an extent that is not required either by a change of law or by a reduction in the Corporation's appropriation that is apportioned among all recipients of the same class in proportion to their current level of funding, and is either more than 10 percent or more than \$20,000 below the recipient's annual level of financial assistance under its current grant or contract; or

(3) Will be provided with financial assistance subject to a new condition or restriction that is not generally applicable to all recipients of the same class, and that would significantly reduce the ability of a recipient to maintain the quality and quantity of its current legal assistance to eligible clients.

(c) "Director of a recipient" means the person who has overall day-to-day responsibility for management of operations by the recipient.

(d) "Presiding Officer" means the person appointed by the President to recommend a decision that a grant or contract should be continued or termi-

**PART 1606—PROCEDURES GOVERNING TERMINATION OF FINANCIAL ASSISTANCE AND DENIAL OF REFUNDING**

Sec.	Purpose.
1606.1	Purpose.
1606.2	Definitions.
1606.3	Grounds for denial or refunding.
1606.4	Grounds for termination.
1606.5	Preliminary determination.
1606.6	Informal conference.
1606.7	Initiation of proceedings.
1606.8	Presiding officer.
1606.9	Pre-hearing conference.
1606.10	Conduct of hearing.
1606.11	Burden of proof.
1606.12	Briefs and argument.
1606.13	Recommended decision.
1606.14	Final decision.
1606.15	Time extension and waiver.
1606.16	Right to counsel.
1606.17	Reimbursement.
1606.18	Interim funding.
1606.19	Termination funding.
1606.20	Notice.

**AUTHORITY:** Sec. 1006(b)(1) and (3), 1007(a)(1), 1007(a)(3), 1007(a)(9), 1007(d), 1008(e); 1011 (42 U.S.C. 2996c(b)(1) and (3).

nated, or that refunding should be granted or denied.

#### § 1606.3 Grounds for denial or refunding.

Refunding may be denied when

(a) Denial is required by, or will implement, a provision of law, a Corporation rule, regulation, guideline, or instruction that is generally applicable to all recipients of the same class, or a funding policy, standard, or criterion approved by the Board; or

(b) There has been substantial failure by a recipient to comply with a provision of law, or a rule, regulation, or guideline issued by the Corporation, or a term or condition of a current or prior grant from or contract with the Corporation. In the absence of unusual circumstances, refunding shall not be denied for this cause unless the Corporation has given the recipient notice of such failure and an opportunity to take effective corrective action; or

(c) There had been substantial failure by a recipient to use its resources to provide economical and effective legal assistance of high quality as measured by generally accepted professional standards, the provisions of the act, or a rule, regulation or guideline issued by the Corporation. In the absence of unusual circumstances, refunding shall not be denied for this cause unless the Corporation has given the recipient notice of such failure and an opportunity to take effective corrective action.

#### § 1606.4 Grounds for termination.

A grant or contract may be terminated on any of the grounds and under the circumstances stated in § 1606.3, except that termination shall not be based on a Corporation rule, regulation, guideline, or instruction that was not in effect when the current grant was made or when the current contract was entered into.

#### § 1606.5 Preliminary determination.

(a) When there is reason to believe that a grant or contract should be terminated or that refunding should be denied, the Corporation shall serve a written preliminary determination upon the recipient, which shall state the grounds for the proposed action,

and shall identify, with reasonable specificity, any facts or documents relied upon as justification for that action.

(b) The preliminary determination shall advise the recipient that it may, within 10 days of receipt of the preliminary determination, make written request for:

(1) A hearing under this part, or

(2) An informal conference under § 1606.6 of this part, with a subsequent right as there provided to request a hearing.

(c) The preliminary determination shall also advise the recipient of its right to receive interim, and to request termination, funding, under §§ 1606.18 or 1606.19 of this part.

(d) If the recipient advises the Corporation that it will not request review, or if it fails to request review within the time prescribed in §§ 1606.5(b) or 1606.6, the preliminary determination shall become final.

#### § 1606.6 Informal conference.

On timely request by the recipient, the Corporation employee who made the preliminary determination shall promptly conduct an informal conference with the recipient at a time and place designated by the employee. The parties thereto shall exchange views, seek to narrow the issues, and explore the possibilities of settlement or compromise. At the conclusion of the conference, which may be adjourned for deliberation or consultation, the Corporation employee may, in writing, modify, withdraw, or affirm the preliminary determination. The recipient may, within 5 days thereafter, make written request for a hearing under §§ 1606.9 through 1606.15 of this part.

#### § 1606.7 Initiation of proceedings.

Within 10 days after receipt of a request for a hearing made under §§ 1606.5(b) or 1606.6, the Corporation shall notify a recipient in writing of:

(a) The name of the presiding officer, and of the attorney who will represent the Corporation;

(b) The date, time and place scheduled for a prehearing conference, if any should be requested or ordered; and

## § 1606.8

(c) The date, time and place scheduled for the hearing.

### § 1606.8 Presiding officer.

(a) The presiding officer shall be appointed by the President, and shall be a person who is familiar with legal services and supportive of the purposes of the Act, who is independent, and who is not an employee of the Corporation.

(b) Within 5 days of receipt of the notice required under § 1606.7, the recipient shall notify the Corporation if it objects to the presiding officer on the grounds that the person does not satisfy the criteria stated in § 1606.8(a), or is personally biased. The notice shall state the specific facts and documents that the recipient contends support its objection, and, if a pre-hearing conference has not been scheduled, shall request a pre-hearing conference for the purpose of presenting the objection. At the pre-hearing conference, the recipient and the Corporation may question the presiding officer for a reasonable period of time on matters relevant to the recipient's objection.

(c) The recipient shall, within 5 days following the pre-hearing conference, notify the Corporation of any further facts that it contends support its objections. The President shall, within 10 days following the pre-hearing conference, either sustain the objection and appoint a new hearing officer or overrule the objection.

(d) No objection to the appointment of a presiding officer may be made unless presented in the manner specified by this section.

### § 1606.9 Pre-hearing conference.

(a) A pre-hearing conference may be ordered by the presiding officer, and shall be ordered if requested by either the recipient or the Corporation. The matters to be considered at the conference shall include:

(1) Proposals to define and narrow the issues;

(2) Efforts to stipulate the facts, in whole or in part;

(3) The probable number, identity, and order of presentation of exhibits and witnesses;

## Title 45—Public Welfare

(4) On the agreement of the parties, the possibility of presenting the case on written submission or oral argument;

(5) The desirability of advance submission of some or all of the direct testimony in writing;

(6) Any necessary variation in the date, time and place of the hearing;

(7) Discussion of settlement; and

(8) Such other matters as may be appropriate.

(b) In advance of the pre-hearing conference, the presiding officer may require a party to submit a written statement discussing any matter described in paragraph (a) of this section. After the pre-hearing conference, the presiding officer may establish the procedures, consistent with this part, to be followed at the hearing.

(c) The presiding officer may, at the pre-hearing conference or at any subsequent appropriate time prior to completion of the hearing, require the Corporation or the recipient, on sufficient notice, to produce a relevant document in its possession, to make a report not unduly burdensome to prepare, or to produce a person in its employ to testify, if any might offer a relevant and substantial addition to the accuracy or completeness of the record. With the consent of the presiding officer, a party may make a written submission before the hearing.

### § 1606.10 Conduct of hearing.

(a) The hearing shall be scheduled to commence at the earliest appropriate date, ordinarily not later than 45 days after the notice required by § 1606.7, and, whenever practical, shall be held at a place convenient to the recipient and the community it serves. A hearing affecting more than one community or recipient shall be held in a single centrally located place unless the presiding officer determines that an additional hearing place is required.

(b) The presiding officer shall preside, conduct a full and fair hearing, avoid delay, maintain order, and insure that a record sufficient for full disclosure of the facts and issues is made. The hearing shall be open to the public unless, for good cause and

in the interests of justice, the presiding officer shall determine otherwise.

(c) The presiding officer may allow any interested person or organization to participate in the hearing if such participation will not broaden the issues unduly or cause delay, and will aid in proper determination of the issues.

(1) A person or organization wishing to participate in a hearing shall request permission from the presiding officer, stating the reason for the request, and the nature of the evidence or argument to be offered; and shall notify the Corporation and the recipient of its request.

(2) The presiding officer shall notify the Corporation, the recipient, and the person or organization requesting participation whether the request has been granted, and in case of denial shall include a brief statement of the reasons therefor.

(3) The presiding officer may limit the scope or form of participation authorized under this paragraph.

(d) The Corporation and the recipient each may present its case by oral or documentary evidence, conduct examination and cross-examination of witnesses, examine any document submitted by another party, and submit rebuttal evidence.

(e) If a party fails, without good cause, to produce a person or document required under § 1606.9(c), the presiding officer may make an adverse finding on the fact or issue with respect to which production was required.

(f) Technical rules of evidence shall not apply. The presiding officer shall make any procedural or evidentiary ruling that may help to insure full disclosure of the facts, to maintain order, or to avoid delay. Irrelevant, immaterial, repetitious or unduly prejudicial matter may be excluded.

(g) Official notice may be taken of published policies, rules, regulations, guidelines, and instructions of the Corporation, of any matter of which judicial notice may be taken in a Federal court, or of any other matter whose existence, authenticity, or accuracy is not open to serious question.

(h) A stenographic or electronic sound record, or a summary of the

hearing shall be made in a manner determined by the presiding officer, and a copy shall be made available to a party upon payment of its cost.

#### § 1606.11 Burden of proof.

At a hearing under § 1606.10:

(a) The Corporation shall have the obligation of proving, by a preponderance of the evidence, the existence of any disputed fact relied upon as justification for termination or denial of refunding; and

(b) On all other issues, the Corporation shall have the obligation of establishing a substantial basis for terminating the grant or contract or denying refunding.

#### § 1606.12 Briefs and argument.

(a) Within 10 days after the close of the hearing, each party may, and, upon request of the presiding officer, shall, submit to the presiding officer, with service upon all other parties, proposed findings of fact and argument on matters of law or policy.

(b) The presiding officer may direct or permit oral argument at the close of the hearing or after submission of briefs.

#### § 1606.13 Recommended decision.

(a) As soon as practicable after the hearing, and normally within 20 days after its conclusion, the presiding officer shall issue a written recommended decision.

(1) Continuing the recipient's current grant or contract, or granting refunding subject to any modification or condition that may be deemed necessary on the basis of information adduced at the hearing; or

(2) Terminating financial assistance to the recipient as of a particular date, or denying refunding.

(b) The recommended decision shall contain findings of the significant and relevant facts and shall state the reasons for the decision. Findings of fact shall be based solely on the evidence adduced at the hearing or on matters of which official notice was taken.

#### § 1606.14 Final decision.

(a) If neither the Corporation nor the recipient requests review by the President, a recommended decision

## § 1606.15

shall become final 10 days after receipt by a recipient.

(b) The recipient or the Corporation may seek review by the President of a recommended decision. A request shall be made in writing within 10 days after receipt by the party of the recommended decision, and shall state in detail the reasons for seeking review.

(c) As soon as practicable after receipt of a request for review of a recommended decision, and normally within 30 days, the President shall adopt, modify, or reverse the recommended decision, or direct further consideration of the matter. In the event of modification or reversal, the President's decision shall conform to the requirements of § 1606.13(b).

(d) A decision by the President shall become final upon receipt by a recipient.

### § 1606.15 Time and extension and waiver.

(a) Any period of time provided in these rules may, upon good cause shown and determined, be extended:

(1) By the person making the preliminary determination, prior to the time the presiding officer is designated;

(2) By the presiding officer, prior to the issuance of a recommended decision; or

(3) By the President at any time.

(b) Requests for extensions of time shall be considered in light of the overall objective that the procedures prescribed by this part ordinarily shall be concluded within 90 days of the preliminary determination.

(c) Any other provision of these rules may be waived or modified:

(1) By the presiding officer with the assent of the recipient and of counsel for the Corporation; or

(2) By the President upon good cause shown and determined.

### § 1606.16 Right to counsel.

At a hearing under § 1606.10, the Corporation and the recipient each shall be entitled to be represented by counsel, or by another person. The attorney designated may be an employee, or may be outside counsel retained for the purpose. Unless prior written approval is received from the Corporation, the fee paid to outside counsel

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shall not exceed the hourly equivalent of the rate of level V of the executive schedule specified in section 5316 of title 5, United States Code.

### § 1606.17 Reimbursement.

If the recipient's grant or contract is continued or refunding is granted after a preliminary determination has been issued under § 1606.5, a recipient shall receive reimbursement by the Corporation, to the extent it has prevailed, for reasonable and actual expenses that were required in connection with proceedings under this part.

### § 1606.18 Interim funding.

Failure by the Corporation to meet a time requirement of this part shall not entitle a recipient to continuation of its grant or contract or to refunding. Pending a final determination under this part, the Corporation shall provide the recipient with interim funding necessary to maintain its current level of legal assistance activities under the act.

### § 1606.19 Termination funding.

After a final determination to terminate a recipient's grant or contract or to deny refunding, and without regard to whether a hearing has occurred, the Corporation may authorize temporary funding if necessary to enable a recipient to close or transfer current matters in a manner consistent with the recipient's professional responsibility to its present clients.

### § 1606.20 Notice.

A notice required to be sent to a recipient under this part shall be sent to the director of the recipient, and may be sent to the chairperson of its governing body.

Services Corporation, 733 15th Street - NW., Room 620, Washington, D.C. 20005.

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

**SUPPLEMENTARY INFORMATION:**

**General**

This proposed rule establishes a new Part 1625 for denial of refunding procedures which are presently included in Part 1606 with termination procedures. Part 1606 is left intact except for technical amendments removing references to denial of refunding and subsections referring exclusively to denial of refunding. The significant changes effected by the new regulation are summarized below:

**Definitions**

Section 1625.2 differs from the corresponding § 1606.2 in two ways.

First, the definition of denial of refunding is simplified to cover only a reduction of 10 percent or more in annualized funding level; reference to a reduction of \$20,000 or more is eliminated. Furthermore, the whole of what is presently § 1606.2(a)(3) concernign the addition of a new condition or restriction on the recipient's grant not generally applicable to all recipients of the same class is also eliminated.

Second, the proposed regulation excludes changes in the level annualized funding "apportioned among all recipients of the class \* \* \* by the uniform application of a statistical formula for the reallocation of funding among members of the class" from the definition of denial of refunding, thus recognizing the Corporation's ability to reallocate resources on the basis of 1980 census data.

**Grounds for Denial of Refunding**

The major difference between the proposed § 1625.3 and the current § 1606.3 is the addition of a new subsection (d) allowing denial of refunding when "the Corporation finds that another organization, whether a current recipient or not, could better serve eligible clients in the recipient's service area." The purpose of this change is to insure "the most economical and effective delivery of legal assistance" pursuant to Section 1007(a)(3) of the Legal Services Corporation Act by allowing the Corporation to transfer some or all of the funding of a recipient to another organization when that organization could better serve clients in the service area. This decision, like other denial of refunding decisions, will only be made after the recipient has been afforded full

procedural rights under Section 1011 of the Act and this regulation. Such rights include the right to examine the application of and question representatives of the organization or organizations which the Corporation proposes to fund in place of the recipient.

Another change in the grounds for denial of refunding is that in § 1625.3 (b) and (c) failures of performance by recipients are required to be "significant" rather than "substantial" to support a denial of refunding. This change is intended to reduce the magnitude of the failure required to justify denial of refunding, while continuing to exclude minor or technical violations or failures to provide efficient and effective legal services.

Finally, in § 1625.3(b), a recipient is no longer entitled to prior notice of and opportunity to correct a specific violation of law, regulation, grant condition, etc. Under the more general criterion of § 1625.3(c), a recipient is still entitled to such notice. The reason for this change is that a recipient should know whether it is engaged in a significant violation of law, regulation, etc. It may not be as obvious, however, if its legal assistance is not economical and effective; consequently, a second chance is warranted under this broader criterion.

**Prehearing Procedures**

The proposed regulation streamlines prehearing procedures. The required "informal conference" provided for in § 1606.6 is abolished, although there is nothing in the regulation forbidding such a conference if the parties so desire. The prehearing conference provided for in § 1606.9 is retained in § 1625.7.

Procedures for challenges to the hearing officer have been shortened and simplified by restricting them to written submission of evidence and arguments and by requiring that specific statements or actions by the hearing officer be cited to support any claim of personal bias against the recipient.

**Time Periods**

Throughout the proposed rule, the time periods within which procedural steps should be completed have been reduced with the goal of completing the procedure in 60 days, as contrasted with the goal of 90 days in Part 1606. For example, the proposed rule states that the hearing should begin not less than 20 days after the issuance of the preliminary determination rather than not more than 45 days after this action. The hearing officer is urged to issue the recommended decision within 10 rather

**LEGAL SERVICES CORPORATION**

**45 CFR Parts 1606 and 1625**

**Procedures Governing Denial of Refunding**

**AGENCY:** Legal Services Corporation.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule separates the Corporation's denial of refunding regulations from its termination regulations and revises the denial of refunding regulations. This action is needed because denial of refunding proceedings are excessively costly and time-consuming. This rule simplifies and expedites denial of refunding proceedings to the extent consonant with the statutory requirement for a timely, full and fair hearing for recipients.

**DATES:** Comments must be received on or before September 14, 1983.

**ADDRESS:** Comments may be submitted to Office of General Counsel, Legal

than 20 days of the close of the hearing. The recipient has 5 rather than 10 days after receipt of the recommended decision to request review by the President of the Corporation.

**The Hearing**

The hearing procedures set out in § 1625.8 of the proposed rule are similar to those in § 1606.10 with two exceptions. The first is that there is no longer any provision for the intervention of parties other than the recipient and the Corporation, as was provided in § 1606.10. This deletion is pursuant to the general thrust of the proposed rule towards simplifying and streamlining the denial of refunding proceedings. Deletion of this provision does not prevent either party in a proceeding under § 1625.3(d) from examining representatives of a proposed new recipient that the Corporation asserts could better serve the clients in the current recipient's service area.

The second change is the addition of a new § 1625.8(h)(2) specifically providing "that the validity of Corporation rules, regulations, guidelines, and instructions published pursuant to § 1008(e) of the act may not be challenged in a denial of refunding proceeding.

**Burden of Proof**

The proposed regulation retains the requirement that the Corporation must prove, by a preponderance of the evidence, any disputed fact relied upon as justification for denial of refunding. However, the burden of proof with respect to other issues is shifted to the recipient. Thus, the proposed rule requires the recipient to establish that the Corporation lacked a substantial basis for denying refunding, while § 1606.11 required the Corporation to establish a substantial basis for denying refunding.

**Reimbursement**

Current § 1608.17 allows a recipient reimbursement for expenses incurred to the extent it prevails. The proposed rule, § 1625.14, would limit reimbursement to situations in which the recipient prevails and the hearing officer finds the Corporation's position to have been "substantially without merit."

**Notice**

Section 1606.20 requires that all notices concerning a denial of refunding proceeding be sent to the program director, but states only that they "may" be sent to the chairperson of the recipient's Board. The corresponding § 1625.17 requires that all such notices be sent to both the program director and the chairperson of the Board.

**List of Subjects in 45 CFR Parts 1606 and 1625**

Administrative practice and procedure, legal services.

**PART 1606—[Amended]**

For the reasons set out above, 45 CFR Part 1606 is proposed to be amended as follows:

1. Part 1606, *Procedures Governing Termination of Financial Assistance and Denial of Refunding*, is renamed "Procedures Governing Termination of Financial Assistance."

2. The authority citation for Part 1606 reads as follows:

Authority: Sec. 1006(b) (1) and (3), 1007(a)(1), 1007(a)(3), 1007(a)(9), 1007(d), 1008(e), 1011 (42 U.S.C. Sections 2996e(b) (1) and (3), 2996f(a)(1), 2996f(a)(3), 2996f(a)(9), 2996f(d), 2996g(e), 2996j.

**§ 1606.1 [Amended]**

3. Section 1606.1 is amended by removing the phrase "or refunding denied."

**§ 1606.2 [Amended]**

4. Section 1606.2 is amended by removing paragraph (b) and redesignating paragraphs (c) and (d) as paragraphs (b) and (c) respectively.

5. Newly redesignated § 1606.2(c) is further amended by removing the phrase "or that refunding should be granted or denied."

6. Section 1606.3 is removed in its entirety and §§ 1606.4 through 1606.20 are redesignated §§ 1606.3 through 1606.19.

7. The references to the following sections are redesignated as indicated wherever they appear in Part 1606.

Old section	New section
1606.5	1606.4
1606.5(b)	1606.4(b)
1606.6	1606.5
1606.7	1606.6
1606.8	1606.7
1606.9	1606.8
1606.9(c)	1606.8(c)
1606.10	1606.9
1606.13(b)	1606.12(b)
1606.15	1606.14
1606.16	1606.17
1606.19	1606.18

8. Newly redesignated § 1606.3 is revised to read as follows:

**§ 1606.3 Grounds for termination.**

A grant or contract may be terminated when:

(a) Termination is required by, or will implement a provision of law, a Corporation rule, regulation, guideline, or instruction that is generally applicable to all recipients of the same class or a funding policy, standard, or criterion approved by the Board, except

that termination shall not be based on Corporation rule, regulation, guideline, or instruction that was not in effect when the current grant was made or when the current contract was entered into; or

(b) There has been substantial failure by a recipient to comply with a provision of law, or a rule, regulation, or guideline issued by the Corporation, or a term or condition of a current or prior grant from or contract with the Corporation. In the absence of unusual circumstances, a grant or contract shall not be terminated for this cause unless the Corporation has given the recipient notice of such failure and an opportunity to take effective corrective action; or

(c) There has been substantial failure by a recipient to use its resources to provide economical and effective legal assistance of high quality as measured by generally accepted professional standards, the provisions of the Act, or a rule, regulation or guideline issued by the Corporation. In the absence of unusual circumstances, a grant or contract shall not be terminated for this cause unless the Corporation has given the recipient notice of such failure and an opportunity to take effective corrective action.

**§ 1606.4 [Amended]**

9. Newly redesignated § 1606.4(a) is amended by removing the phrase "or that refunding should be denied."

**§ 1606.10 [Amended]**

10. Newly redesignated § 1606.10(a) is amended by removing the words "or denial of refunding."

11. Newly redesignated § 1606.10(b) is amended by removing the words "or denying refunding."

**§ 1606.12 [Amended]**

12. Newly redesignated § 1606.12(a)(1) is amended by removing the words "or granting refunding."

13. Newly redesignated § 1606.12(a)(2) is amended by removing the words "or denying refunding."

**§ 1606.16 [Amended]**

14. Newly redesignated § 1606.16 is amended by removing the words "or refunding is granted."

**§ 1606.17 [Amended]**

15. Newly redesignated § 1606.17 is amended by removing the phrase "or to refunding" is the first sentence

**§ 1606.18 [Amended]**

16. Newly redesignated § 1606.18 is amended by removing the phrase "or to deny refunding."

For the reasons set out above a new 45 CFR Part 1625 is proposed to be added as follows:

## PART 1625—DENIAL OF REFUNDING

### Sec.

- 1625.1 Purpose.
- 1625.2 Definitions.
- 1625.3 Grounds for denial of refunding.
- 1625.4 Preliminary determination.
- 1625.5 Initiation of proceedings.
- 1625.6 Presiding officer.
- 1625.7 Pre-hearing procedures.
- 1625.8 Conduct of the hearing.
- 1625.9 Burden of proof.
- 1625.10 Recommended decision.
- 1625.11 Final decision.
- 1625.12 Extension of time and waiver.
- 1625.13 Right to counsel.
- 1625.14 Reimbursement.
- 1625.15 Interim funding.
- 1625.16 Termination funding.
- 1625.17 Notice.

*Authority:* Sec. 1006(b) (1) and (3); 1007(a)(1), 1007(a)(3), 1007(a)(9), 1007(d), 1008(e), 1011 (42 U.S.C. 2996e(b) (1) and (3), 2996f(a)(1), 2996f(a)(3), 2996f(a)(g), 2996f(d), 2996g(e), 2996j).

### § 1625.1 Purpose.

This part is intended to provide a fair, impartial, timely and flexible process for reaching a final determination when there is reason to believe that refunding of a grant or contract should be denied. At the same time, this part seeks to avoid unnecessary and precipitous disruption in the delivery of legal assistance to eligible clients.

### § 1625.2 Definitions.

(a) "Denial of refunding" means a decision that after the expiration of a grant or contract a recipient:

- (1) Will not be provided financial assistance; or
- (2) Will have its annual level of financial support reduced to an extent that is not required either by a change of law, or a reduction in the Corporation's appropriation that is apportioned among all recipients of the class in proportion to their current level of funding, or by the uniform application of a statistical formula for the reallocation of funding among the members of a class, and is more than 10 percent below the recipient's annual level of financial assistance under its current grant or contract.

(b) "Director of a recipient" means the person who has overall day-to-day responsibility for management of operations by the recipient.

(c) "Presiding officer" means the person appointed by the President to recommend a decision that refunding should be granted or denied.

### § 1625.3 Grounds for denial of refunding.

Refunding may be denied when:

(a) Denial is required by, or will implement, a provision of law, a Corporation rule, regulation, guideline, or instruction that is generally applicable to all recipients of the same class, or a funding policy, standard, or criterion approved by the Board; or

(b) There has been significant failure by a recipient to comply with a provision of law, or a rule, regulation, or guideline issued by the Corporation, or a term or condition of a current or prior grant from or contract with the Corporation; or

(c) There has been significant failure by a recipient to use its resources to provide economical and effective legal assistance of high quality as measured by generally accepted professional standards, the provisions of the act, or a rule, regulation or guideline issued by the Corporation. In the absence of unusual circumstances, refunding shall not be denied for this cause unless the Corporation has given the recipient notice of such failure and an opportunity to take effective corrective action; or

(d) The Corporation finds that another organization, whether a current recipient or not, could better serve eligible clients in the recipient's service area.

### § 1625.4 Preliminary determination.

(a) Where there is reason to believe that refunding should be denied, the Corporation shall serve a written preliminary determination upon the recipient, which shall state the grounds for the proposed action, and shall identify, with reasonable specificity, any facts or documents relied upon as justification for that action.

(b) The preliminary determination shall advise the recipient that it may, within 10 days of receipt of the preliminary determination, make written request for a review of the preliminary determination in accordance with the procedures under this part.

(c) The preliminary determination shall also advise the recipient of its right to receive interim funding, and to request termination funding under Sections 1625.15 and 1625.16.

(d) If the recipient advises the Corporation it will not seek review, or if it fails to request review within the time prescribed in paragraph (b) of this section, the preliminary determination shall become final.

### § 1625.5 Initiation of proceedings.

Within 7 days after receipt of a request for continued review made under § 1625.4(b), the Corporation will send the recipient an acknowledgment, enclose a copy of these procedures, and notify the recipient of the name of the

presiding officer appointed by the President, of the attorney representing the Corporation, of the proposed date, time and place of the hearing, and of the next steps in the review process.

### § 1625.6 Presiding officer.

(a) The presiding officer shall be appointed by the President, and shall be a person who is familiar with legal services and supportive of the purposes of the Act, who is independent, and who is not an employee of the Corporation.

(b) Within 5 days of receipt of notice of the name of the presiding officer, the recipient may file a written notice that it objects to the presiding officer on the basis that this person does not fit the criteria or paragraph (a) of this section or has made statements or taken actions indicating personal bias against the recipient.

(c) Within 10 days thereafter, the President shall consider the recipient's objection(s) with any supporting documentation and either retain or replace the presiding officer, and shall promptly notify the recipient of the decision.

(d) No objection to the appointment of a presiding officer may be made unless presented in the manner specified in this section.

### § 1625.7 Pre-hearing procedures.

(a) A pre-hearing conference may be ordered by the presiding officer, and shall be ordered if requested by either the recipient or the Corporation. The matters to be considered at the conference shall include:

- (1) Proposals to define and narrow the issues;
- (2) Efforts to stipulate the facts, in whole or in part;
- (3) The probable number, identity, and order of presentation of exhibits and witnesses;
- (4) The possibility of presenting the case on written submission or oral argument;
- (5) The advance submission of some or all of the direct testimony in writing;
- (6) Any necessary variation in the date, time and place of the hearing;
- (7) Discussion of settlement; and
- (8) Such other matters as may be appropriate.

(b) With or without a pre-hearing conference, the presiding officer may establish specific procedures consistent with this part for conduct of the hearing. The presiding officer may require or permit written submission of statements discussing any matter described in paragraph (a) of this section as well as any other arguments and supporting material at any time prior to the hearing.

(c) The presiding officer, may, at any time prior to the completion of the hearing, require either party, upon sufficient notice, to produce a relevant document in its possession; the presiding officer may require either party to produce a person in its employ to testify at the hearing.

**§ 1625.8 Conduct of the hearing.**

(a) The hearing shall be scheduled to commence at the earliest appropriate date no less than 20 days after the date of the notice to the recipient required under § 1625.5.

(b) The hearing shall be held at a place convenient to the recipient and the community it serves. A hearing affecting more than one community shall be held in a single centrally located place unless the presiding officer determines that additional hearing places are required.

(c) The presiding officer shall preside over the hearing, avoid delay, maintain order, conduct a fair hearing, and insure that an adequate record of the facts and issues is made.

(d) The hearing shall be open to the public, unless, in the interests of justice or maintaining order, the presiding officer shall determine otherwise.

(e) Unless the parties agree as a result of the pre-hearing conference to present all or part of the case on written submission or oral argument, the Corporation and the recipient each may present its case by written or oral documentary evidence, conduct examination and cross-examination or witnesses, examine any document submitted by another party, and submit rebuttal evidence.

(f) If a party fails, without good cause, to produce a person or document required under § 1625.7(c), the presiding officer may make a finding adverse to the party, or any lesser determination may be made.

(g) Technical rules of evidence shall not apply. The presiding officer shall make any procedural or evidentiary ruling that may help to insure full disclosure of the facts, to maintain order, or to avoid delay. Irrelevant, immaterial, repetitious or unduly prejudicial matter may be excluded.

(h)(1) Official notice may be taken of published policies, rules, regulations, guidelines, and instruction of the Corporation, of any matter of which judicial notice may be taken in Federal court, or of any other matter whose existence, authenticity, or accuracy is not open to serious question.

(2) The validity of rules, regulations, guidelines and instructions duly published under Section 1008(e) of the Act shall not be challenged in a denial of refunding proceeding.

(i) The hearing will be recorded at Corporation expense. The Corporation will send one copy of the transcript to the recipient and the presiding officer as soon as it is received.

(j) At the discretion of the presiding officer, the parties may be required or allowed to submit post-hearing briefs or proposed findings and conclusions. A party should note any major judicial transcript errors in an addendum to its post-hearing brief (or if no brief will be submitted, in a letter submitted within a time limit set by the presiding officer.)

(k) The transcript and any post-hearing briefs or letters will become part of the record.

**§ 1625.9 Burden of proof.**

The Corporation shall have the obligation of proving, by a preponderance of the evidence contained in the record, any disputed fact relied upon by the Corporation as justification for denial of refunding; with respect to all other issues, the recipient shall have the obligation to establish that the Corporation lacked a substantial basis for denying refunding.

**§ 1625.10 Recommended decision.**

(a) As soon as practicable after the hearing is completed and after submission of post-hearing briefs or proposed findings and conclusions, if any, and normally within 10 days after conclusion of the hearing or final submissions, the presiding officer shall issue a written recommended decision:

- (1) Granting refunding; or
- (2) Granting refunding subject to any modification or condition that may appear necessary and appropriate on the basis of information disclosed at the hearing or adduced from the record; or
- (3) Denying refunding.

(b) The recommended decision shall contain findings of the significant and relevant facts and shall state the reasons for the recommended decision. Findings of fact shall be based solely on evidence disclosed at the hearing or adduced from the record or on matters of which official notice was taken.

**§ 1625.11 Final decision.**

(a) If neither the Corporation nor the recipient requests review by the President, a recommended decision shall become final 10 days after receipt by the recipient.

(b) The recipient or the Corporation may seek review by the President of a recommended decision. A request shall be made in writing within 5 days after receipt by the party of the recommended decision, and shall state in detail the reasons for seeking review.

(c) As soon as practicable after receipt of a request for review of a recommended decision, and normally within 10 days, the President shall adopt, modify, or reverse the recommended decision, or direct further consideration of the matter. In the event of modification or reversal, the President's decision shall conform to the requirements of § 1625.10(b).

(d) A decision by the President shall become final upon receipt by the recipient.

**§ 1625.12 Extension of time and waiver.**

(a) Any period of time provided in these rules may, upon good cause shown and determined, be extended:

(1) By the person making the preliminary determination, prior to the time the presiding officer is designated;

(2) By the presiding officer, prior to the issuance of a recommended decision; or

(3) By the President at any time.

(b) Requests for extension of time shall be considered in light of the overall objective that the procedures prescribed by this part ordinarily shall be concluded within 60 days of the preliminary determination.

(c) Any other provisions of these rules may be waived or modified:

(1) By the presiding officer with the assent of the recipient and counsel for the Corporation; or

(2) By the President upon good cause shown and determined.

**§ 1625.13 Right to counsel.**

At a hearing under § 1625.8, the Corporation and the recipient each shall be entitled to be represented by counsel, or by another person. The person designated to represent a party may be an employee, or may be outside counsel retained for the purpose. Unless prior written approval is received from the Corporation, the fee paid to outside counsel shall not exceed the hourly equivalent of the rate of level V of the executive schedule specified in section 5316 of title 5, United States Code.

**§ 1625.14 Reimbursement.**

If refunding is granted after a preliminary determination has been issued under § 1625.11, a recipient shall be entitled to receive reimbursement from the Corporation for reasonable and actual expenses that were required in connection with proceedings under this part, to the extent it has prevailed, and where the hearing officer finds the Corporation's position to have been substantially without merit.

**§ 1625.15 Interim funding.**

(a) Failure by the Corporation to meet a time requirement of this part shall not entitle a recipient to refunding of its grant or contract.

(b) Pending a final determination under this part, the Corporation shall provide the recipient with interim funding necessary to maintain its current level of legal assistance activities under the Act.

**§ 1625.16 Termination funding.**

After a final determination to deny refunding, and without regard to whether a hearing has occurred, the Corporation may authorize temporary funding if necessary to enable a recipient to close or transfer current matters in a manner consistent with the recipient's professional responsibility to its present clients.

**§ 1625.17 Notice.**

A notice required to be sent to a recipient under this part shall be sent to the director of the recipient and to the chairperson of its governing body.

Dated: August 10, 1983.

Alan R. Swendiman,  
*General Counsel.*

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BILLING CODE 6820-35-M

Recommended Final Regulation 1606 and 1625. Items in brackets are in proposed rule and deleted from recommended final rule; items underlined are new language in recommended final rule.

PART 1606 - [Amended]

1. Part 1606 - "Procedures Governing Termination of Financial Assistance and Denial of Refunding" is renamed "Procedures Governing Termination of Financial Assistance."

2. The authority citation for Part 1606 reads as follows:

Authority: Sec. 1006(b)(1) and (3), 1007(a)(1), 1007(a)(3), 1007(a)(9), 1007(d), 1008(e), 1011 (42 U.S.C. Sections 2996e(b)(1) and (3), 2996f(a)(1), 2996f(a)(3), 2996f(a)(9), 2996f(d), 2996g(e), 2996j.

Section 1606.1 - [Amended]

3. Section 1606.1 is amended by removing the phrase "or refunding denied."

Section 1606.2 - [Amended]

4. Section 1606.2 is amended by removing Section 1606.2(b) and redesignating Sections 1606.2(c) and 1606.2(d) as Sections 1606.2(b) and 1606.2(c).

5. Newly redesignated Section 1606.2(c) is further amended by removing the phrase "or that refunding should be granted or denied."

6. Section 1606.3 is removed in its entirety and Sections 1606.4 through 1606.20 are redesignated Sections 1606.3 through 1606.19.

7. The references to the following Sections are redesignated as indicated wherever they appear in Part 1606.

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Old Section	New Section
1606.5	1606.4
1606.5(b)	1606.4(b)
1606.6	1606.5
1606.7	1606.6
1606.8	1606.7
1606.9	1606.8
1606.9(c)	1606.8(c)
1606.10	1606.9
1606.13(b)	1606.12(b)
1606.15	1606.14
1606.18	1606.17
1606.19	1606.18

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8. Newly redesignated Section 1606.3 is revised to read as follows:

A grant or contract may be terminated when:

(a) Termination is required by, or will implement a provision of law, a Corporation rule, regulation, guideline, or instruction that is generally applicable to all recipients of the same class or a funding policy, standard, or criterion approved by the Board, except that termination shall not be based on a Corporation rule, regulation, guideline, or instruction that was not in

effect when the current grant was made or when the current contract was entered into; or

(b) There has been substantial failure by a recipient to comply with a provision of law, or a rule, regulation, or guideline issued by the Corporation, or a term or condition of a current or prior grant from or contract with the Corporation. In the absence of unusual circumstances, a grant or contract shall not be terminated for this cause unless the Corporation has given the recipient notice of such failure and an opportunity to take effective corrective action; or

(c) There has been substantial failure by a recipient to use its resources to provide economical and effective legal assistance of high quality as measured by generally accepted professional standards, the provisions of the Act, or a rule, regulation or guideline issued by the Corporation. In the absence of unusual circumstances, a grant or contract shall not be terminated for this cause unless the Corporation has given the recipient notice of such failure and an opportunity to take effective corrective action.

Section 1606.4 [Amended]

9. Newly redesignated Section 1606.4(a) is amended by removing the phrase "or that refunding should be denied."

Section 1606.10 [Amended]

10. Newly redesignated Section 1606.10(a) is amended by removing the words "or denial of refunding."

11. Newly redesignated Section 1606.10(b) is amended by removing the words "or denying refunding."

Section 1606.12 [Amended]

12. Newly redesignated Section 1606.12(a)(1) is amended by removing the words "or granting refunding."

13. Newly redesignated Section 1606.12(a)(2) is amended by removing the words "or denying refunding."

Section 1606.16 [Amended]

14. Newly redesignated Section 1606.16 is amended by removing the words "or refunding is granted."

Section 1606.17 [Amended]

15. Newly redesignated Section 1606.17 is amended by removing the phrase "or to refunding" in the first sentence.

Section 1606.18 [Amended]

16. Newly redesignated Section 1606.18 is amended by removing the phrase "or to deny refunding."

PART 1625 - DENIAL OF REFUNDING

Sec.

- 1625.1 Purpose.
- 1625.2 Definitions.
- 1625.3 Grounds for denial of refunding.
- 1625.4 Preliminary determination.
- 1625.5 Initiation of proceedings.
- 1625.6 Presiding officer.
- 1625.7 Pre-hearing procedures.
- 1625.8 Conduct of the hearing.
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- 1625.10 Recommended decision.
- 1625.11 Final decision.
- 1625.12 Extension of time and waiver.
- 1625.13 Right to counsel.
- 1625.14 Reimbursement.
- 1625.15 Interim funding.
- 1625.16 Termination funding.
- 1625.17 Notice.

Authority: Sec. 1006(b)(1) and (3), 1007(a)(1),  
1007(a)(3), 1007(a)(9), 1007(d), 1008(e), 1011 (42 U.S.C.  
2996e(b)(1) and (3), 2996f(a)(1), 2996f(a)(3), 2996f(a)(g),  
2996f(d), 2996g(e), 2996j.

Section 1625.1      Purpose.

This part is intended to provide a full, fair, impartial, timely and flexible process for reaching a final determination when there is reason to believe that refunding of a grant or contract should be denied. At the same time, this part seeks to avoid unnecessary and precipitous disruption in the delivery of legal assistance to eligible clients.

Section 1625.2      Definitions.

(a) "Denial of refunding" means a decision that after the expiration of a grant or contract a recipient:

- (1) Will not be provided financial assistance; or
- (2) Will have its annual level of financial support reduced to an extent that is not required either by a change of law, or a reduction in the Corporation's appropriation that is apportioned among all recipients of the class in proportion to their current level of funding, or by the uniform application of a statistical formula for the reallocation of funding among the members of [a] the same class, and is more than 10 percent below the recipient's annual level of financial assistance under its current grant or contract.

Section 1625.3            Grounds for denial of refunding.

Refunding may be denied when:

(a) Denial is required by, or will implement, a provision of law, a Corporation rule, regulation, guideline, or instruction that is generally applicable to all recipients of the same class, or a funding policy, standard, or criterion approved by the Board; or

(b) There has been significant failure by a recipient to comply with a provision of law, or a rule, regulation, or guideline issued by the Corporation, or a term or condition of a current or prior grant from or contract with the Corporation; or

(c) There has been significant failure by a recipient to use its resources to provide economical and effective legal assistance of high quality as measured by generally accepted professional standards, the provisions of the act, or a rule, regulation or guideline issued by the Corporation. In the absence of unusual circumstances, refunding shall not be denied for this cause unless the Corporation has given the recipient notice of such failure and an opportunity to take effective corrective action; or

(d) The Corporation finds that another organization, whether a current recipient or not, could better serve eligible clients in the recipient's service area.

Section 1625.4            Preliminary determination.

(a) When there is reason to believe that refunding should be denied, the Corporation shall serve a written preliminary

determination upon the recipient, which shall state the grounds for the proposed action, and shall identify, with reasonable specificity, any facts or documents relied upon as justification for that action.

(b) The preliminary determination shall advise the recipient that it may, within 10 days of receipt of the preliminary determination, make written request for a review of the preliminary determination in accordance with the procedures under this part.

(c) The preliminary determination shall also advise the recipient of its right to receive interim funding, and to request termination funding under Sections 1625.15 and 1625.16.

(d) If the recipient advises the Corporation it will not seek review, or if it fails to request review within the time prescribed in paragraph (b) of this section, the preliminary determination shall become final.

Section 1625.5            Initiation of proceedings.

Within 7 days after receipt of a request for continued review made under 1625.4(b), the Corporation will send the recipient an acknowledgment, enclose a copy of these procedures, and notify the recipient of the name of the presiding officer appointed by the President, of the attorney representing the Corporation, of the proposed date, time and place of the hearing, and of the next steps in the review process.

Section 1625.6            Presiding officer.

(a) The presiding officer shall be appointed by the President, and shall be a person who is familiar with legal services and supportive of the purposes of the Act, who is independent, and who is not an employee of the Corporation.

(b) Within 5 days of receipt of notice of the name of the presiding officer, the recipient may file a written notice that it objects to the presiding officer on the basis that this person does not fit the criteria of paragraph (a) of this section or has made statements or taken actions indicating personal bias against the recipient.

(c) Within 10 days thereafter, the President shall consider the recipient's objection(s) with any supporting documentation and either retain or replace the presiding officer, and shall promptly notify the recipient of the decision.

(d) No objection to the appointment of a presiding officer may be made unless presented in the manner specified in this section.

Section 1625.7            Pre-hearing procedures.

(a) A pre-hearing conference may be ordered by the presiding officer, and shall be ordered if requested by either the recipient or the Corporation. The matters to be considered at the conference shall include:

- (1) Proposals to define and narrow the issues;
- (2) Efforts to stipulate the facts, in whole or in part;

(3) The probable number, identity, and order of presentation of exhibits and witnesses;

(4) The possibility of presenting the case on written submission or oral argument;

(5) The advance submission of some or all of the direct testimony in writing;

(6) Any necessary variation in the date, time and place of the hearing;

(7) Discussion of settlement; and

(8) Such other matters as may be appropriate.

(b) With or without a pre-hearing conference, the presiding officer may establish specific procedures consistent with this part for conduct of the hearing. The presiding officer may require or permit written submission of statements discussing any matter described in paragraph (a) of this section as well as any other arguments and supporting material at any time prior to the hearing.

(c) The presiding officer may, at any time prior to the completion of the hearing, require either party, upon sufficient notice, to produce a relevant document in its possession; the presiding officer may require either party to produce a person in its employ to testify at the hearing. In proceedings under Section 1625.3(d), the presiding officer may likewise require the proposed new recipient of funding to produce a document in its possession or a person in its employ, subject to the sanctions set forth in Section 1625.8(f).

Section 1625.8            Conduct of the hearing.

(a) The hearing shall be scheduled to commence at the earliest appropriate date no less than 20 days after the date of the notice to the recipient required under Section 1625.5.

(b) The hearing shall be held at a place convenient to the recipient and the community it serves. A hearing affecting more than one community shall be held in a single centrally located place unless the presiding officer determines that additional hearing places are required.

(c) The presiding officer shall preside over the hearing, avoid delay, maintain order, conduct a fair hearing, and insure that an adequate record of the facts and issues is made.

(d) The hearing shall be open to the public, unless, in the interests of justice or maintaining order, the presiding officer shall determine otherwise.

(e) Unless the parties agree as a result of the pre-hearing conference to present all or part of the case on written submission or oral argument, the Corporation and the recipient each may present its case by written or oral documentary evidence, conduct examination and cross-examination of witnesses, examine any document submitted by another party, and submit rebuttal evidence.

(f) If a party fails, without good cause, to produce a person or document required under Section 1625.7(c), the presiding officer may make a finding adverse to the party, or any lesser determination may be made.

(g) Technical rules of evidence shall not apply. The presiding officer shall make any procedural or evidentiary ruling that may help to insure full disclosure of the facts, to maintain order, or to avoid delay. Irrelevant, immaterial, repetitious or unduly prejudicial matter may be excluded.

(h)(1) Official notice may be taken of published policies, rules, regulations, guidelines, and instructions of the Corporation, of any matter of which judicial notice may be taken in Federal court, or of any other matter whose existence, authenticity, or accuracy is not open to serious question.

(2) The validity of rules, regulations, guidelines and instructions duly published under Section 1008(e) of the Act shall not be challenged in a denial of refunding proceeding.

(i) The hearing will be recorded at Corporation expense. The Corporation will send one copy of the transcript to the recipient and the presiding officer as soon as it is received.

(j) At the discretion of the presiding officer, the parties may be required or allowed to submit post-hearing briefs or proposed findings and conclusions. A party should note any major judicial transcript errors in an addendum to its post-hearing brief (or if no brief will be submitted, in a letter submitted within a time limit set by the presiding officer.)

(k) The transcript and any post-hearing briefs or letters will become part of the record.

Section 1625.9            Burden of proof.

The Corporation shall have the obligation of proving, by a preponderance of the evidence contained in the record, any disputed fact relied upon by the Corporation as justification for denial of refunding; with respect to all other issues, the recipient shall have the obligation to establish that the Corporation lacked a substantial basis for denying refunding.

Section 1625.10        Recommended decision.

(a) As soon as practicable after the hearing is completed and after submission of post-hearing briefs or proposed findings and conclusions, if any, and normally within 10 days after conclusion of the hearing or final submissions, the presiding officer shall issue a written recommended decision:

(1) Granting refunding; or

(2) Granting refunding subject to any modification or condition that may appear necessary and appropriate on the basis of information disclosed at the hearing or adduced from the record; or

(3) Denying refunding.

(b) The recommended decision shall contain findings of the significant and relevant facts and shall state the reasons for the recommended decision. Findings of fact shall be based solely on evidence disclosed at the hearing or adduced from the record or on matters of which official notice [was] is taken.

Section 1625.11      Final decision.

(a) If neither the Corporation nor the recipient requests review by the President, a recommended decision shall become final 10 days after receipt by the recipient.

(b) The recipient or the Corporation may seek review by the President of a recommended decision. A request shall be made in writing within [5] 10 days after receipt by the party of the recommended decision, and shall state in detail the reasons for seeking review.

(c) As soon as practicable after receipt of a request for review of a recommended decision, and normally within 10 days, the President shall adopt, modify, or reverse the recommended decision, or direct further consideration of the matter. In the event of modification or reversal, the President's decision shall conform to the requirements of Section 1625.10(b).

(d) A decision by the President shall become final upon receipt by the recipient.

Section 1625.12      Extension of time and waiver.

(a) Any period of time provided in these rules may, upon good cause shown and determined, be extended:

(1) By the person making the preliminary determination, prior to the time the presiding officer is designated;

(2) By the presiding officer, prior to the issuance of a recommended decision; or

(3) By the President at any time.

(b) Requests for extension of time shall be considered in light of the overall objective that the procedures prescribed by this part ordinarily shall be concluded within 60 days of the preliminary determination.

(c) Any other provisions of these rules may be waived or modified:

(1) By the presiding officer with the assent of the recipient and counsel for the Corporation; or

(2) By the President upon good cause shown and determined.

Section 1625.13      Right to counsel.

At a hearing under Section 1625.8, the Corporation and the recipient each shall be entitled to be represented by counsel, or by another person. The person designated to represent a party may be an employee, or may be outside counsel retained for the purpose. Unless prior written approval is received from the Corporation, the fee paid to outside counsel shall not exceed the hourly equivalent of the rate of level V of the executive schedule specified in section 5316 of title 5, United States Code.

Section 1625.14      Reimbursement.

If refunding is granted after a preliminary determination has been issued under Section 1625.11, a recipient shall be entitled to receive reimbursement from the Corporation for reasonable and actual expenses that were required in connection with proceedings under this part, to the extent it has prevailed and where the hearing officer finds the Corporation's position to have been substantially without merit.

Section 1625.15      Interim funding.

(a) Failure by the Corporation to meet a time requirement of this part shall not entitle a recipient to refunding of its grant or contract.

(b) Pending a final determination under this part, the Corporation shall provide the recipient with interim funding necessary to maintain its current level of legal assistance activities under the Act.

Section 1625.16      Termination funding.

After a final determination to deny refunding, and without regard to whether a hearing has occurred, the Corporation may authorize temporary funding if necessary to enable a recipient to close or transfer current matters in a manner consistent with the recipient's professional responsibility to its present clients.

Section 1625.17      Notice.

A notice required to be sent to a recipient under this part shall be sent to the director of the recipient and to the chairperson of its governing body.

**§ 1611.1 Purpose.**

This part is designed to ensure that a recipient will determine eligibility according to criteria that give preference to the legal needs of those least able to obtain legal assistance, and afford sufficient latitude for a recipient to consider local circumstances and its own resource limitations. The part also seeks to ensure that eligibility is determined in a manner conducive to development of an effective attorney-client relationship.

**§ 1611.2 Definitions.**

"Governmental income maintenance program" means aid for dependent children, supplemental security income, unemployment compensation, and a State or county general assistance or home relief program.

"Governmental program for the poor" 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.

"Income" means actual current annual total cash receipts before taxes of all persons who are resident members of, and contribute to, the support of a family unit.

"Total cash receipts" include money wages and salaries before any deduction, but do not include food or rent in lieu of wages. They include income from self-employment after deductions for business or farm expenses; they include regular payments from public assistance, social security, unemployment and worker's compensation, strike benefits from union funds, veterans benefits, training stipends, alimony, child support and military family allotments or other regular support from an absent family member or someone not living in the household; public or private employee pensions, and regular insurance or annuity payments; income from dividends, interest, rents, royalties or from estates and trusts. They do not include money withdrawn from a bank, or received from sale of real or personal property, or from tax refunds, gifts, one-time insurance payments or compensation for injury; nor do they include non-cash benefits.

**PART 1611—ELIGIBILITY**

- Sec.
- 1611.1 Purpose.
- 1611.2 Definition.
- 1611.3 Maximum income level.
- 1611.4 Authorized exceptions.
- 1611.5 Determination of eligibility.
- 1611.6 Manner of determining eligibility.
- 1611.7 Change of circumstances.

**APPENDIX A—LEGAL SERVICES CORPORATION  
POVERTY GUIDELINES**

**AUTHORITY:** Sec. 1007(a)(2); (42 U.S.C. 2996(a)(2)).

**SOURCE:** 43 FR 32414, July 27, 1978, unless otherwise noted.

## § 1611.3 Maximum income level.

(a) Every recipient shall establish a maximum annual income level for persons to be eligible to receive legal assistance under the Act.

(b) Unless specifically authorized by the Corporation, a recipient shall not establish a maximum annual income level that exceeds one hundred and twenty-five percent (125 percent) of the official poverty threshold as defined by the Office of Management and Budget.

(c) Before establishing its maximum income level, a recipient shall consider relevant factors including:

- (1) Cost-of-living in the locality;
- (2) The number of clients who can be served by the resources of the recipient;
- (3) The population who would be eligible at and below alternative income levels; and
- (4) The availability and cost of legal services provided by the private bar in the area.

(d) 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 under the Act.

(e) This part does not prohibit a recipient from providing legal assistance to a client whose annual income exceeds the maximum income level established here, if the assistance provided the client is supported by funds from a source other than the Corporation.

## § 1611.4 Authorized exceptions.

A person whose income exceeds the maximum income level established by a recipient may be provided legal assistance under the Act if:

- (a) The person's circumstances require that eligibility should be allowed on the basis of one or more of the factors set forth in § 1611.5(b); or
- (b) The person is seeking legal assistance to secure benefits provided by a governmental program for the poor; or
- (c) The person would be eligible but for receipt of benefits from a governmental income maintenance program.

## § 1611.5 Determination of eligibility.

(a) The governing body of a recipient shall adopt guidelines, consistent

with these regulations, for determining the eligibility of persons seeking legal assistance under the Act. At least once a year, guidelines shall be reviewed and appropriate adjustments made.

(b) In addition to income, a recipient shall consider other relevant factors before determining whether a person is eligible to receive legal assistance. Factors considered shall include:

- (1) Current income prospects, taking into account seasonal variations in income;
- (2) Liquid net assets;
- (3) Fixed debts and obligations, including Federal and local taxes, and medical expenses;
- (4) Child care, transportation, and other expenses necessary for employment;
- (5) Age or physical infirmity of resident family members;
- (6) The cost of obtaining private legal representation with respect to the particular matter in which assistance is sought;
- (7) The consequences for the individual if legal assistance is denied; and
- (8) Other factors related to financial inability to afford legal assistance, which may include evidence of a prior administrative or judicial determination that the person's present lack of income results from refusal or unwillingness, without good cause, to seek or accept suitable employment.

(c) A recipient may provide legal assistance to a group, corporation, or association if it:

- (1) Is primarily composed of persons eligible for legal assistance under the act, or
- (2) Has as its primary purpose furtherance of the interests of persons in the community unable to afford legal assistance, and
- (3) Provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel.

## § 1611.6 Manner of determining eligibility.

(a) A recipient shall adopt a simple form and procedure to obtain information to determine eligibility in a manner that promotes the development of trust between attorney and client. The form and procedure adopt-

ed shall be subject to approval by the Corporation, and the information obtained shall be preserved, in a manner that protects the identity of the client, for audit by the Corporation.

(b) If there is substantial reason to doubt the accuracy of the information, a recipient shall make appropriate inquiry to verify it, in a manner consistent with an attorney-client relationship.

(c) Information furnished to a recipient by a client to establish financial eligibility shall not be disclosed to any person who is not employed by the recipient in a manner that permits identification of the client, without the express written consent of the client.

**§1611.7 Change in circumstances.**

If an eligible client becomes ineligible through a change in circumstances, a recipient shall discontinue representation if the change in circumstances is sufficiently likely to continue for the client to afford private legal assistance, and discontinuation is not inconsistent with the attorney's professional responsibilities.

**Legal Services; Eligibility**

**PART 1611 - ELIGIBILITY**

Appendix A of Part 1611 is revised to read as follows:

**LEGAL SERVICES CORPORATION POVERTY GUIDELINES  
APPENDIX A OF PART 1611**

	Maximum Income
<b>For all States Except Alaska and Hawaii:</b>	
<b>Size of family unit<sup>1</sup></b>	
1 .....	\$6,075
2 .....	8,175
3 .....	10,275
4 .....	12,375
5 .....	14,475
6 .....	16,575
7 .....	18,675
8 .....	20,775
<b>For Alaska:</b>	
<b>Size of family unit<sup>2</sup></b>	
1 .....	\$ 7,600
2 .....	10,225
3 .....	12,850
4 .....	15,475
5 .....	18,100
6 .....	20,725
7 .....	23,350
8 .....	25,975
<b>For Hawaii:</b>	
<b>Size of family unit<sup>3</sup></b>	
1 .....	\$7,000
2 .....	9,413
3 .....	11,825
4 .....	14,238
5 .....	16,650
6 .....	19,063
7 .....	21,475
8 .....	23,888

<sup>1</sup>For family units with more than eight members, add \$2,100 for each additional member in a family.

<sup>2</sup>For family units with more than eight members, add \$2,625 for each additional member in a family.

<sup>3</sup>For family units with more than eight members, add \$2,413 for each additional member in a family.

**EFFECTIVE DATE: May 27, 1983**

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**LEGAL SERVICES CORPORATION**
**45 CFR Part 1611****Eligibility****AGENCY:** Legal Services Corporation.**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule revises the Corporation's regulations governing determination of eligibility for legal services. This revision is needed to clarify the rule, strengthen enforcement procedures, and better focus resources on those in need of legal assistance. This proposed rule sets out more specific and detailed financial eligibility standards, provides for better documentation and verification of eligibility, and slightly narrows the categories of persons and organizations eligible.

**DATES:** Comments must be received on or before September 28, 1983.

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

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

**SUPPLEMENTARY INFORMATION:****General**

This regulation has given rise to repeated issues of interpretation, particularly in the areas of allowable group representation and whether the criteria other than income in § 1611.5 should operate to deny representation to persons within the income limits, as well as to allow representation of persons above the income limits. Furthermore, when complaints as to eligibility have been received, the Corporation has often had difficulty in obtaining the necessary information on which to make a determination. Finally, the lack of increase in Corporation appropriations has prompted a reexamination of eligibility criteria so as to focus resources on those in most need. The significant revisions prompted by these considerations are discussed below.

**Income Limitations**

The basic income limits remain the same. Two changes are proposed in the exceptions to these income limits in Sec. 1611.4. The first is to set an absolute ceiling of 150% of the maximum income level set by the local program. Irrespective of any of the other factors, such as debts or medical expenses, set forth in § 1611.5, no client may be served if that client's income level exceeds this limit. It is to be noted that local programs may set maximum income levels up to 125% of the Federal Poverty Income Guidelines, so the ceiling can be as high as 187.5% of the Federal Poverty Income Guidelines. Although a few people with higher incomes might reasonably be considered to have some legal need, based on unusual circumstances, none of them would be likely to have need comparable to that of an ordinary poverty income client. Consequently, this absolute ceiling will not work injustice and will serve as a safeguard against expenditure of funds for representation of persons who are not defined as poor.

A second change in the income criteria is the elimination of § 1611.4(c) which allows benefits received from a governmental income maintenance program to be disregarded in computing client income. As the purchasing power of dollars is the same whether derived from a government check or a paycheck, there is no apparent justification for this exception. All factors, such as age, which may be used by the government in granting such income maintenance are also available to the local program under § 1611.5 in deciding whether a client is eligible. Indeed, since the income considered is gross income, a person receiving governmental income maintenance payments may have more disposable income than one receiving income solely from employment and paying, at a minimum, social security taxes.

**Criteria Other Than Income**

These criteria are lumped together in one list in § 1611.5 of the current regulation. The proposed regulation splits them into two groups. Section 1611.5(b)(1) sets out factors which may be used in justifying serving persons over the recipient's maximum income level. Section 1611.5(b)(2) sets out factors which shall be considered in denying assistance to persons under the recipient's maximum income level. This division was implicit in the current list, as some factors, such as medical expenses, clearly could only favor eligibility, while other factors, such as

the existence of assets, could only disfavor eligibility. Some factors, such as current income prospects, could either favor or disfavor eligibility and are, consequently, found in both of the proposed sections.

The favorable factors "may" be considered, while the unfavorable factors "shall" be considered. This difference in terminology serves to allow a program whose resources are very scarce to use its maximum income level as a bar to eligibility without going through a futile process of considering additional factors when its resources are already committed to serving those who are clearly income-eligible. The use of "shall" with the unfavorable factors requires that inquiry be made as to those of the listed factors that might be relevant to the particular applicant.

There have been two substantive changes made in these factors. The first is that only unpaid taxes from prior years may be considered under the proposed regulation. This change is consistent with previous General Counsel's opinions confirming the general concept that gross income is the eligibility criterion. Prior year unpaid taxes are a special circumstance and are in addition to any current taxes. Furthermore, unpaid taxes are usually an indicator of financial distress.

The second change is that all assets above a "maximum allowable amount", and not just liquid net assets, are counted under the proposed rule.

#### Assets

A new § 1611.6 is added setting forth detailed rules for the computation of assets. In summary, it allows \$1,500 of assets per household (\$3,000 if a household member is age 60 or over) to be disregarded. The net value of any assets above this maximum allowable amount must be considered by the program in determining eligibility. Certain assets are exempted in determining the maximum allowable amount. The most important exceptions are equity up to \$15,000 in a house, \$4,500 in vehicles, \$30,000 in farmland used to produce income, and \$10,000 in work-related equipment is excluded. Household goods, personal effects, and the cash value of life insurance policies and pension funds (except Keough plans and IRA's) also are excluded. Certain governmental payments including home restoration and disaster loans and grants are excluded as are Indian lands held jointly with the tribe. Finally, trust funds and/or income are excluded if not available to the household under detailed criteria set forth in the regulation.

#### Group Representation

The present regulation, § 1611.5(c), allows representation of a group if it is either composed primarily of eligible clients or if it has as its primary purpose furtherance of the interests of eligible clients and provides information showing that it lacks the funds to obtain private legal counsel. The proposed regulation requires that a group be composed primarily of eligible clients and provide information showing that it lacks the funds to obtain private counsel.

There are two changes made in the proposed regulation. First, all groups must establish a lack of funds, since even a group composed primarily of eligible clients may have some rich members or may have significant sources of funds other than from its membership. Secondly, the regulation abolishes the category of groups whose primary purpose is furtherance of the interests of eligible clients. There are two interrelated reasons for this change. The first reason is that "furtherance of the interests of eligible clients" is a nebulous standard; the second is that representation of individual eligible clients is the purpose of the Corporation. This purpose can arguably be served by representing groups primarily composed of eligible clients because, presumably, these eligible clients will control the group. To extend this logic to groups not primarily composed of eligible clients is, at best, to allow someone else to use these resources for the benefit of eligible clients, rather than allowing the eligible clients to use these resources for their own benefit.

#### Disclosure of Financial Eligibility Information

The proposed regulation adds to § 1611.7(c) (formerly § 1611.6(c)) a provision for disclosure of financial eligibility information to the Corporation under carefully limited circumstances. The proposed regulation provides that the Corporation may obtain such information only when allegations questioning the eligibility of a previously identified client have been made. The Corporation may seek only information relating to the financial eligibility of that particular client and this information must be necessary to confirm or deny specific allegations as to the financial eligibility of that client and the recipient program's representation of that client. Information shall be denied to the Corporation if it is protected by the attorney-client privilege.

The recipient is required to notify the client before providing the information to the Corporation, thus allowing the

client to seek legal redress if in the client's opinion the information is privileged. Finally, the regulation prohibits disclosure of this information outside the Corporation.

#### Retainer Agreement

A new § 1611.8 has been added requiring that the recipient program execute a written retainer agreement with each client in a form approved by the Corporation. This is normal practice with many recipients and nearly all private law firms. As a matter of good legal practice and to protect both clients and recipients, it should be made universal practice as is proposed herein.

"Brief advice and consultation" is exempted from this requirement. This would include most telephone contacts, unless an action is commenced or continuing services are provided. As a general guideline matters requiring not more than an hour of staff time which are concluded in a day may be included in this category.

#### List of Subjects in 45 CFR Part 1611

##### Eligibility, Legal services.

For the reasons set out above, 45 CFR Part 1611 is proposed to be amended by revising §§ 1611.1 through 1611.9 as follows:

#### PART 1611—ELIGIBILITY

##### Sec.

- 1611.1 Purpose.
- 1611.2 Definitions.
- 1611.3 Maximum income level.
- 1611.4 Authorized exceptions.
- 1611.5 Determination of eligibility.
- 1611.6 Maximum allowable assets.
- 1611.7 Manner of determining eligibility.
- 1611.8 Retainer agreement.
- 1611.9 Change in circumstances.

##### Appendix A—Legal Services Corporation Poverty Guidelines

Authority: Section 1007(a)(2); 42 U.S.C. 2996(a)(2).

##### § 1611.1. Purpose.

This part is designed to ensure that a recipient will determine eligibility according to criteria that give preference to the legal needs of those least able to obtain legal assistance, and afford sufficient latitude for a recipient to consider local circumstances and its own resource limitations. The part also seeks to ensure that eligibility is determined in a manner conducive to development of an effective attorney-client relationship.

##### § 1611.2. Definitions.

"Governmental income maintenance program" means aid for dependent children, supplemental security income, unemployment compensation and a

State or county general assistance or home relief program.

"Governmental program for the poor" 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.

"Income" means actual current annual total cash receipts before taxes of all persons who are resident members of, and contribute to, the support of a family unit.

"Total cash receipts" include money wages and salaries before any deduction, but do not include food or rent in lieu of wages; income from self-employment after deductions for business or farm expenses; regular payments from public assistance; social security; unemployment and worker's compensation; strike benefits from union funds; veterans benefits; training stipends; alimony, child support and military family allotments or other regular support from an absent family member or someone not living in the household; public or private employee pensions, and regular insurance or annuity payments; and income from dividends, interest, rents, royalties or from estates and trusts. They do not include money withdrawn from a bank, tax refunds, gifts, compensation and/or one-time insurance payments for injuries sustained, and non-cash benefits.

#### § 1611.3 Maximum income level.

(a) Every recipient shall establish a maximum annual income level for persons to be eligible to receive legal assistance under the Act.

(b) Unless specifically authorized by the Corporation, a recipient shall not establish a maximum annual income level that exceeds one hundred and twenty-five percent (125 percent) of the current official Federal Poverty Income Guidelines. The maximum annual income levels are set forth in Appendix A.

(c) Before establishing its maximum income level, a recipient shall consider relevant factors including:

- (1) Cost-of-living in the locality;
- (2) The number of clients who can be served by the resources of the recipient;
- (3) The population who would be eligible at and below alternative income levels; and
- (4) The availability and cost of legal services provided by the private bar in the area.

(d) Unless authorized by Section 1611.4, no person whose income exceeds the maximum annual income level established by a recipient shall be

eligible for legal assistance under the Act.

(e) This part does not prohibit a recipient from providing legal assistance to a client whose annual income exceeds the maximum income level established here, if the assistance provided the client is supported by funds from a source other than the Corporation.

#### § 1611.4 Authorized exceptions.

A person whose gross income exceeds the maximum income level established by a recipient but does not exceed 150 percent of that level may be provided legal assistance under the Act if:

(a) The person's circumstances require that eligibility should be allowed on the basis of one or more of the factors set forth in § 1611.5(b)(1); or

(b) The person is seeking legal assistance to secure benefits provided by a governmental program for the poor.

#### § 1611.5. Determination of eligibility.

(a) The governing body of a recipient shall adopt guidelines, consistent with these regulations, for determining the eligibility of persons seeking legal assistance under the Act. At least once a year, guidelines shall be reviewed and appropriate adjustments made.

(b) In addition to gross income, a recipient shall consider the other relevant factors listed in paragraphs (b)(1) and (b)(2) of this section before determining whether a person is eligible to receive legal assistance.

(1) Factors which may be used to justify serving clients over the maximum income level shall include:

(A) Current income prospects, taking into account seasonal variations in income;

(B) Medical expenses;

(C) Fixed debts and obligations, including unpaid Federal, state and local taxes from prior years;

(D) Child care, transportation, and other expenses necessary for employment;

(E) Expenses associated with age or physical infirmity of resident family members; and

(F) Other significant factors related to financial inability to afford legal assistance.

(2) Factors which shall be considered in denying assistance to an otherwise eligible individual shall include:

(A) Current income prospects, taking into account seasonal variations in income;

(B) The availability of private legal representation at a low cost with respect to the particular matter in which assistance is sought;

(C) The consequences for the individual if legal assistance is denied;

(D) The existence of assets, including both liquid and nonliquid, which exceed the maximum amount allowable set forth in § 1611.6;

(E) Other factors related to financial inability to afford legal assistance, which may include evidence of a prior administrative or judicial determination that the person's present lack of income results from refusal or unwillingness, without good cause, to seek or accept suitable employment; and

(c) A recipient may provide legal assistance to a group, corporation, or association if it is primarily composed of persons eligible for legal assistance under the Act and if it provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel.

#### § 1611.6 Maximum allowable assets.

The maximum allowable assets, including both liquid and nonliquid assets, of all members of the applicant's household shall not exceed \$1,500 for the household, except that, for households of two or more members including a member or members age 60 or over, such assets shall not exceed \$3,000.

(a) In determining the assets of a household, the following shall be included and documented by the recipient in sufficient detail to permit verification:

(1) Liquid assets, such as cash on hand, money in checking or savings accounts, savings certificates, stocks or bonds, lump sum payments, funds held in individual retirement accounts (IRA's) and funds held in Keogh plans which do not involve the household member in a contractual relationship with individuals who are not household members. In counting assets of households with IRA's or includable Keogh plans, the recipient shall include the total cash value of the account or plan minus the amount of the penalty (if any) that would be exacted for the early withdrawal of the entire amount in the account or plan; and

(2) Nonliquid assets, personal property, licensed and unlicensed vehicles, buildings, land, recreational properties, and any other property, provided that these assets are not specifically excluded under paragraph (c) of this section. The value of nonexempt assets shall be their equity value. The equity value is the fair market value less encumbrances.

(b) Assets owned jointly by separate households shall be considered available in their entirety to each

household, unless it can be demonstrated by the applicant household that such resources are inaccessible to that household. If the household can demonstrate that it has access to only a portion of the asset, the value of that portion of the asset shall be counted toward the household's asset level. The asset shall be considered totally inaccessible to the household if the asset cannot practically be subdivided and the household's access to the value of the asset is dependent on the agreement of a joint owner who refuses to comply. For the purpose of this provision, ineligible aliens or ineligible individuals residing with the household shall be considered household members. Assets shall be considered inaccessible to persons residing in shelters for battered women and children, if

(1) The assets are jointly owned by such persons and by members of their former household; and

(2) The shelter resident's access to the value of the assets is dependent on the agreement of a joint owner who still resided in the former household.

(c) In determining the assets of a household, only the following shall be excluded:

(1) Equity not to exceed \$15,000, in a home and surrounding property which is not separated from the home by intervening property owned by others. Public rights of way, such as roads which run through the surrounding property and separate it from the home, shall not affect the exemption of the property. The home and surrounding property shall remain exempt when temporarily unoccupied for reasons of employment, training for future employment, illness, or uninhabitability caused by casualty or natural disaster, if the household intends to return.

Households that currently do not own a home, but are purchasing a lot on which they intend to build or are building a permanent home, shall receive an exclusion for the value of the lot and, if it is partially completed, for the home not to exceed an equity value of \$15,000.

(2) Household goods, personal effects, including one burial plot per household member, and the cash value of life insurance policies. The cash value of pension plans or funds shall be excluded, except that Keogh plans which involve no contractual relationship with individuals who are not household members and individual retirement accounts (IRA's) shall not be excluded under this paragraph.

(3) One or more licensed vehicles with a total equity value not exceeding \$4,500. The exclusion also includes an unlicensed vehicle on those Indian

reservations that do not require vehicles driven by tribal members to be licensed.

(4) Equity value in farmland not to exceed \$30,000 provided that the property is essential to the self-employment of a household member and that the owner is attempting to produce income consistent with its fair market value, even if only used on a seasonal basis.

(5) Equity value in work-related equipment not to exceed \$10,000.00 which is essential to the employment or self-employment of a household member, provided that the owner is attempting to produce income consistent with its fair market value.

(6) Any governmental payments which are designated for the restoration of a home damaged in a disaster, if the household is subject to a legal sanction if the funds are not used as intended; for example, payments made by the Department of Housing and Urban Development through the individual and family grant program or disaster loans or grants made by the Small Business Administration.

(7) Assets having a cash value which is not accessible to the household, such as but not limited to, irrevocable trust funds, security deposits on rental property or utilities, property in probate, and real property which the household is making a good faith effort to sell at a reasonable price and which has not been sold. The recipient shall verify that the property is for sale and that the household has not declined a reasonable offer. Verification may be obtained through a collateral contact or documentation, such as an advertisement for public sale in a newspaper or general circulation or a listing with a real estate broker. Any funds in a trust or transferred to a trust, and the income produced by that trust to the extent it is not available to the household, shall be considered inaccessible to the household if:

(i) The trust arrangement is not likely to cease during the certification period and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period;

(ii) The trustee administering the funds is either (A) a court, or an institution, corporation, or organization which is not under the direction or ownership of any household member or (B) an individual appointed by the court who has court imposed limitations placed on his/her use of the funds which meet the requirements of this paragraph;

(iii) Trust investments made on behalf of the trust do not directly involve or assist any business or corporation under

the control, direction, or influence of a household member.

(9) Indian lands held jointly with the Tribe, or land that can be sold only with the approval of the Department of the Interior's Bureau of Indian Affairs; and

(10) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Pub. L. 91-646, section 216).

#### § 1611.7 Manner of determining eligibility.

(a) A recipient shall adopt a simple form and procedure to obtain information to determine eligibility in a manner that promotes the development of trust between attorney and client.

The form and procedure adopted shall be subject to approval by the Corporation, and the information obtained shall be preserved, in a manner that protects the identity of the client, for audit by the Corporation.

(b) If there is substantial reason to doubt the accuracy of the information, a recipient shall make appropriate inquiry to verify it, in a manner consistent with an attorney-client relationship.

(c) Information furnished to a recipient by a client to establish financial eligibility shall not be disclosed to any person who is not employed by the recipient in a manner that permits identification of the client, without express written consent of the client, except that the recipient shall provide such information to the Corporation when:

(1) The Corporation is investigating allegations that question the financial eligibility of a previously identified client and the recipient's representation thereof;

(2) The information sought by the Corporation relates solely to the financial eligibility of that particular client;

(3) The information sought by the Corporation is necessary to confirm or deny specific allegations relating to that particular client's financial eligibility and the recipient's representation thereof; and

(4) The specific information sought by the Corporation is not protected by the attorney client privilege.

The information provided to the Corporation by the recipient shall not be disclosed to any person who is not employed by the Corporation. Prior to providing the information to the Corporation, the recipient shall notify the client that the recipient is required to provide to the Corporation the information sought.

**§ 1611.8 Retainer agreement.**

(a) A recipient shall execute a written retainer agreement, in a form approved by the Corporation, with each client who receives legal services from the recipient. The retainer agreement shall be executed when representation commences, and shall clearly identify the relationship between the client and the recipient, the matter in which representation is sought, the nature of the legal services to be provided, and the rights and responsibilities of the client. The recipient shall retain the executed retainer agreement as part of the client's file, and shall make the agreement available for review by the Corporation in a manner which protects the identity of the client.

(b) A recipient is not required to execute a written retainer agreement when the only service to be provided is brief advice and consultation.

**§ 1611.9 Change in circumstances.**

If an eligible client becomes ineligible through a change in circumstances, a recipient shall discontinue representation if the change in circumstances is sufficiently likely to continue for the client to afford private legal assistance, and discontinuation is not inconsistent with the attorney's professional responsibilities.

\* \* \* \* \*

Dated: August 25, 1983.

Donald P. Bogard,  
President.

[FR Doc. 83-23779 Filed 8-28-83; 8:45 am]

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also seeks to ensure that eligibility is determined in a manner conducive to development of an effective attorney-client relationship.

Section 1611.2            Definitions.

["Governmental income maintenance program" means aid for dependent children, supplemental security income, unemployment compensation and a State or county general assistance or home relief program.]

"Governmental program for the poor" 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.

"Income" means actual current annual total cash receipts before taxes of all persons who are resident members of, and contribute to, the support of a family unit.

"Total cash receipts" include money wages and salaries before any deduction, but do not include food or rent in lieu of wages; income from self-employment after deductions for business or farm expenses; regular payments from public assistance; social security; unemployment and worker's compensation; strike benefits from union funds; veterans benefits; training stipends; alimony, child support and military family allotments or other regular support from an absent family member or someone not living in the household; public or private employee pensions, and regular insurance or annuity payments; and income from dividends, interest, rents, royalties or from estates and

Recommended Final - New Language Underlined, Deleted Language  
from Proposed Rule in Brackets

PART 1611 - ELIGIBILITY

- Sec.
- 1611.1 Purpose.
  - 1611.2 Definitions.
  - 1611.3 Maximum Income Level.
  - 1611.4 Authorized Exceptions.
  - 1611.5 Determination of Eligibility.
  - 1611.6 [Maximum Allowable Assets.] Asset Ceilings.
  - 1611.7 Manner of Determining Eligibility.
  - 1611.8 Retainer Agreement.
  - 1611.9 Change in Circumstances.

APPENDIX A - LEGAL SERVICES CORPORATION POVERTY GUIDELINES

AUTHORITY: Sec. 1007(a)(2); 42 U.S.C. 2996f(a)(2).

Section 1611.1 Purpose.

This part is designed to ensure that a recipient will determine eligibility according to criteria that give preference to the legal needs of those least able to obtain legal assistance, and afford sufficient latitude for a recipient to consider local circumstances and its own resource limitations. The part

trusts. They do not include money withdrawn from a bank, tax refunds, gifts, compensation and/or one-time insurance payments for injuries sustained, and non-cash benefits.

Section 1611.3 Maximum income level.

(a) Every recipient shall establish a maximum annual income level for persons to be eligible to receive legal assistance under the Act.

(b) Unless specifically authorized by the Corporation, a recipient shall not establish a maximum annual income level that exceeds one hundred and twenty-five percent (125 percent) of the current official Federal Poverty Income Guidelines. The maximum annual income levels are set forth in Appendix A.

(c) Before establishing its maximum income level, a recipient shall consider relevant factors including:

- (1) Cost-of-living in the locality;
- (2) The number of clients who can be served by the resources of the recipient;
- (3) The population who would be eligible at and below alternative income levels; and
- (4) The availability and cost of legal services provided by the private bar in the area.

(d) Unless authorized by Section 1611.4, no person whose income exceeds the maximum annual income level established by a recipient shall be eligible for legal assistance under the Act.

(e) This part does not prohibit a recipient from providing legal assistance to a client whose annual income exceeds the maximum income level established here, if the assistance provided the client is supported by funds from a source other than the Corporation.

Section 1611.4 Authorized exceptions.

A person whose gross income exceeds the maximum income level established by a recipient but does not exceed 150 percent of [that] the national eligibility level (125% of poverty) may be provided legal assistance under the Act if:

(a) The person's circumstances require that eligibility should be allowed on the basis of one or more of the factors set forth in Section 1611.5(b)(1); or

(b) The person is seeking legal assistance to secure benefits provided by a governmental program for the poor.

Section 1611.5 Determination of eligibility.

(a) The governing body of a recipient shall adopt guidelines, consistent with these regulations, for determining the eligibility of persons seeking legal assistance under the Act. At least once a year, guidelines shall be reviewed and appropriate adjustments made.

(b) In addition to gross income, a recipient shall consider the other relevant factors listed in paragraphs (b)(1) and (b)(2) of this section before determining whether a person is eligible to receive legal assistance.

(1) Factors which [may] shall be used [to justify serving] in the determination of the eligibility of clients over the maximum income level shall include:

(A) Current income prospects, taking into account seasonal variations in income;

(B) Medical expenses;

(C) Fixed debts and obligations, including unpaid Federal, state and local taxes from prior years;

(D) Child care, transportation, and other expenses necessary for employment;

(E) Expenses associated with age or physical infirmity of resident family members; and

(F) Other significant factors related to financial inability to afford legal assistance.

(2) Factors which shall be [considered in denying assistance to an otherwise eligible individual] used in the determination of the eligibility of clients under the maximum income level shall include:

(A) Current income prospects, taking into account seasonal variations in income;

(B) The availability of private legal representation at a low cost with respect to the particular matter in which assistance is sought;

(C) The consequences for the individual if legal assistance is denied;

(D) The existence of assets, including both liquid and nonliquid, which [exceed the maximum amount allowable set forth in] are available to the applicant and are in excess of the asset ceiling set by the recipient pursuant to Section 1611.6;

(E) Other significant factors related to financial inability to afford legal assistance, which may include evidence of a prior administrative or judicial determination that the person's present lack of income results from refusal or unwillingness, without good cause, to seek or accept suitable employment

(3) (A) If a recipient tentatively determines to serve a client over the maximum income level on the basis of factors listed in Section 1611.5(b)(1), the factors listed in Section 1611.5(b)(2) shall also be used before reaching a final determination.

(B) If a recipient tentatively determines not to serve a client under the maximum income level on the basis of factors listed in Section 1611.5(b)(2), the factors listed in Section 1611.5(b)(1) must also be used before reaching a final determination.

(c) A recipient may provide legal assistance to a group, corporation, or association if it is primarily composed of persons eligible for legal assistance under the Act and if it provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel.

Section 1611.6 [Maximum Allowable Assets] Asset Ceilings

By January 30, 1984, and annually thereafter, the governing body of the recipient shall establish guidelines incorporating specific and reasonable asset ceilings, including both liquid and non-liquid assets, to be utilized in determining eligibility for services. The guidelines shall consider the economy of the service area and the relative cost-of-living of low-income persons so as to ensure the availability of services to those in the greatest economic and legal need.

The guidelines shall be consistent with the recipient's priorities established in accordance with 45 CFR 1620 and special consideration shall be given to the legal needs of the elderly, institutionalized, and handicapped.

Assets considered shall include all liquid and non-liquid assets of all persons who are resident members of a family unit, except that a recipient may exclude the principal residence of a client. The guidelines shall take into account impediments to an individual's access to assets of the family unit or household.

Reasonable equity value in work-related equipment which is essential to the employment or self-employment of an applicant or member of a family unit, shall not be utilized to disqualify an applicant, provided that the owner is attempting to produce income consistent with its fair market value.

The governing body may establish authority for the project director to waive the ceilings on maximum allowable assets in unusual or extremely meritorious situations.

[The maximum allowable assets, including both liquid and nonliquid assets, of all members of the applicant's household shall not exceed \$1,500 for the household, except that, for households of two or more members including a member or members age 60 or over, such assets shall not exceed \$3,000.

(a) In determining the assets of a household, the following shall be included and documented by the recipient in sufficient detail to permit verification:

- (1) Liquid assets, such as cash on hand, money in checking or savings accounts, savings certificates, stocks or bonds, lump sum payments, funds held in individual retirement accounts (IRA's) and funds held in Keogh plans which do not involve the household member in a contractual relationship with individuals who are not household members. In counting assets of households with IRA's or includable Keogh plans, the recipient shall include the total] [cash value of the account or plan minus the amount of the penalty (if any) that would be exacted for the early withdrawal of the entire amount in the account or plan; and
- (2) Nonliquid assets, personal property, licensed and unlicensed vehicles, buildings, land, recreational properties, and any other property, provided that these assets are not specifically excluded under paragraph (c) of this section.]

[The value of nonexempt assets shall be their equity value. The equity value is the fair market value less encumbrances.

- (b) Assets owned jointly by separate households shall be considered available in their entirety to each household, unless it can be demonstrated by the applicant household that such resources are inaccessible to that household. If the household can demonstrate that it has access to only a portion of the asset, the value of that portion of the asset shall be counted toward the household's asset level. The asset shall be considered totally inaccessible to the household if the asset cannot practically be subdivided and the household's access to the value of the asset is dependent on the agreement of a joint owner who refuses to comply. For the purpose of this provision, ineligible aliens or ineligible individuals residing with the household shall be considered household members. Assets shall be considered inaccessible to persons residing in shelters for battered women and children, if
- (1) The assets are jointly owned by such persons and by members of their former household; and
  - (2) The shelter resident's access to the value of the assets is dependent on the agreement of a joint owner who still resided in the former household.]

[(c) In determining the assets of a household, only the following shall be excluded:

- (1) Equity not to exceed \$15,000.00, in a home and surrounding property which is not separated from the home by intervening property owned by others. Public rights of way, such as roads which run through the surrounding property and separate it from the home, shall not affect the exemption of the property. The home and surrounding property shall remain exempt when temporarily unoccupied for reasons of employment, training for future employment, illness, or uninhabitability caused by casualty or natural disaster, if the household intends to return. Households that currently do not own a home, but are purchasing a lot on which they intend to build or are building a permanent home, shall receive an exclusion for the value of the lot and, if it is partially completed, for the home not to exceed an equity value of \$15,000.00.
- (2) Household goods, personal effects, including one burial plot per household member, and the cash value of life insurance policies. The cash value of pension plans or funds shall be excluded, except that Keogh plans which involve no contractual relationship with individuals who are not household members and individual retirement]

[accounts (IRA's) shall not be excluded under this paragraph.

- (3) One or more licensed vehicles with a total equity value not exceeding \$4,500. The exclusion also includes an unlicensed vehicle on those Indian reservations that do not require vehicles driven by tribal members to be licensed.
- (4) Equity value in farmland not to exceed \$30,000.00 provided that the property is essential to the self-employment of a household member and that the owner is attempting to produce income consistent with its fair market value, even if only used on a seasonal basis.
- (5) [Equity value in work-related equipment not to exceed \$10,000.00 which is essential to the employment or self-employment of a household member, provided that the owner is attempting to produce income consistent with its fair market value.
- (6) Any governmental payments which are designated for the restoration of a home damaged in a disaster, if the household is subject to a legal sanction if the funds are not used as intended; for example, payments made by the Department of Housing and Urban Development through the individual and family grant program or disaster loans or grants made by the Small Business Administration.]

- [(7) Assets having a cash value which is not accessible to the household, such as but not limited to, irrevocable trust funds, security deposits on rental property or utilities, property in probate, and real property which the household is making a good faith effort to sell at a reasonable price and which has not been sold. The recipient shall verify that the property is for sale and that the household has not declined a reasonable offer. Verification may be obtained through a collateral contact or documentation, such as an advertisement for public sale in a newspaper or general circulation or a listing with a real estate broker. Any funds in a trust or transferred to a trust, and the income produced by that trust to the extent it is not available to the household, shall be considered inaccessible to the household if:
- (i) The trust arrangement is not likely to cease during the certification period and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period;
  - (ii) The trustee administering the funds is either (A) a court, or an institution, corporation, or organization which is not]

[under the direction or ownership of any household member or (B) an individual appointed by the court who has court imposed limitations placed on his/her use of the funds which meet the requirements of this paragraph;

(iii) Trust investments made on behalf of the trust do not directly involve or assist any business or corporation under the control, direction, or influence of a household member.

(9) Indian lands held jointly with the Tribe, or land that can be sold only with the approval of the Department of the Interior's Bureau of Indian Affairs; and

(10) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Pub. L. 91-646, section 216).]

Section 1611.7 Manner of determining eligibility.

(a) A recipient shall adopt a simple form and procedure to obtain information to determine eligibility in a manner that promotes the development of trust between attorney and client. The form and procedure adopted shall be subject to approval by the Corporation, and the information obtained shall be preserved, in a manner that protects the identity of the client, for audit by the Corporation.

(b) If there is substantial reason to doubt the accuracy of the information, a recipient shall make appropriate inquiry to verify it, in a manner consistent with an attorney-client relationship.

(c) Information furnished to a recipient by a client to establish financial eligibility shall not be disclosed to any person who is not employed by the recipient in a manner that permits identification of the client, without express written consent of the client, except that the recipient shall provide such information to the Corporation when:

(1) The Corporation is investigating allegations that question the financial eligibility of a previously identified client and the recipient's representation thereof;

(2) The information sought by the Corporation relates solely to the financial eligibility of that particular client;

(3) The information sought by the Corporation is necessary to confirm or deny specific allegations relating to that particular client's financial eligibility and the recipient's representation thereof; and

(4) The specific information sought by the Corporation is not protected by the attorney-client privilege.

The information provided to the Corporation by the recipient shall not be disclosed to any person who is not employed by the Corporation. Prior to providing the information to the

Corporation, the recipient shall notify the client that the recipient is required to provide to the Corporation the information sought.

Section 1611.8 Retainer agreement.

(a) A recipient shall execute a written retainer agreement, in a form approved by the Corporation, with each client who receives legal services from the recipient. The retainer agreement shall be executed when representation commences, and shall clearly identify the relationship between the client and the recipient, the matter in which representation is sought, the nature of the legal services to be provided, and the rights and responsibilities of the client. The recipient shall retain the executed retainer agreement as part of the client's file, and shall make the agreement available for review by the Corporation in a manner which protects the identity of the client.

(b) A recipient is not required to execute a written retainer agreement when the only service to be provided is brief advice and consultation.

Section 1611.9 Change in circumstances.

If an eligible client becomes ineligible through a change in circumstances, a recipient shall discontinue representation if the change in circumstances is sufficiently likely to continue for the client to afford private legal assistance, and discontinuation is not inconsistent with the attorney's professional responsibilities.

## PART 1609—FEE-GENERATING CASES

### Sec.

- 1609.1 Purpose.
- 1609.2 Definition.
- 1609.3 Prohibition.
- 1609.4 Authorized representation in a fee-generating case.
- 1609.5 Acceptance of fees.
- 1609.6 Acceptance of reimbursement.
- 1609.7 Application.

**AUTHORITY:** Sec. 1007(b)(1), (42 U.S.C. 2996f(b)(1)).

**SOURCE:** 41 FR 38505, Sept. 10, 1976, unless otherwise noted.

### § 1609.1 Purpose.

This part is designed to insure that recipients do not compete with private attorneys and, at the same time, to guarantee that eligible clients are able to obtain appropriate and effective legal assistance.

### § 1609.2 Definition.

"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.

### § 1609.3 Prohibition.

No recipient shall use funds received from the Corporation to provide legal assistance in a fee-generating case unless other adequate representation is unavailable. All recipients shall establish procedures for the referral of fee-generating cases.

### § 1609.4 Authorized representation in a fee-generating case.

Other adequate representation is deemed to be unavailable when: (a) The recipient has determined that free referral is not possible because:

- (1) The case has been rejected by the local lawyer referral service, or by two private attorneys; or
- (2) Neither the referral service nor any lawyer will consider the case without payment of a consultation fee; or
- (3) The case is of the type that private attorneys in the area ordinarily do not accept, or do not accept without prepayment of a fee; or

(4) 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

(b) Recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other non-pecuniary relief; or inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims; or

(c) A court appoints a recipient or an employee of a recipient pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction.

(d) An eligible client is seeking benefits under Title II of the Social Security Act, 42 U.S.C. 401, *et seq.*, Federal Old Age, Survivors, and Disability Insurance Benefits; or Title XVI of the Social Security Act, 42 U.S.C. 1381, *et seq.*, Supplemental Security Income for Aged, Blind, and Disabled.

[41 FR 38505, Sept. 10, 1976, as amended at 43 FR 51789, Nov. 7, 1978]

### § 1609.5 Acceptance of fees.

(a) A recipient may seek and accept a fee awarded or approved by a court or administrative body, or included in a settlement, if

(1) The requirements of § 1609.4 are met, and

(2) Funds received are not used for purposes prohibited by the Act, and are accounted for in the manner directed by the Corporation.

(b) If a legal fee is awarded or approved by a court or administrative body, it shall be remitted promptly to the recipient.

### § 1609.6 Acceptance of reimbursement.

When a case or matter subject to this part results in a recovery of damages, other than statutory benefits, a recipient may accept reimbursement from the client for out-of-pocket costs and expenses incurred in connection with the case or matter, if

(a) The requirements of § 1609.4 are met, and

**Title 45—Public Welfare**

(b) The client has agreed in writing to reimburse the recipient for such costs and expenses.

**§ 1609.7 Application.**

Nothing in this part shall prevent a recipient from:

(a) Requiring a client to pay court fees when the client does not qualify to proceed in forma pauperis under the rules of the jurisdiction; or

(b) Accepting a fee in a case that was initiated prior to adoption of this part; or

(c) Acting as co-counsel with a private attorney when appropriate, and accepting part of any fee that may result from a shared case.

Items in brackets are in current rule and deleted from proposed rule; items underlined are the proposed new language.

### Fee-Generating Cases

#### 1609.1 Purpose.

This part is designed to insure that recipients do not compete with private attorneys and, at the same time, to guarantee that eligible clients are able to obtain appropriate and effective legal assistance.

#### 1609.2 Definition.

"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.

#### 1609.3 Prohibition.

No recipient shall use funds received from the Corporation to provide legal assistance in a fee-generating case unless other adequate representation is unavailable. All recipients shall establish procedures for the referral of fee-generating cases.

#### 1609.4 Authorized representation in a fee-generating case.

Other adequate representation is deemed to be unavailable when:

(a) The recipient has determined that free referral is not possible because:

(1) The case has been rejected by the local lawyer referral service, or by two private attorneys; or

(2) Neither the referral service nor any lawyer will consider the case without payment of a consultation fee; or

[(3) The case is of the type that private attorneys in the area ordinarily do not accept, or do not accept without prepayment of a fee; or]

(3) [(4)] 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

(b) Recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other non-pecuniary relief, or inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims; or

(c) A court appoints a recipient or an employee of a recipient pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction; or

(d) 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.

1609.5 Acceptance of fees.

A recipient may seek and accept a fee awarded or approved by a court or administrative body, or included in a settlement, if:

- (a) The requirements of 1609.4 are met, and
- (b) Funds received are not used for purposes prohibited by the Act, and are accounted for in the manner directed by the Corporation.

1609.6 Accounting for Attorneys' Fees. (New)

Fees awarded to a recipient represent compensation to the recipient for resources expended in litigating a particular matter. The revenue from such fees should be recorded in the same fund to which the related expenses have been charged. The revenue should be recorded during the accounting period in which the right to receive the award is established and there is a reasonable and measurable basis for recording the amount.

[1609.6] 1609.7 Acceptance of reimbursement.

When a case or matter subject to this part results in a recovery of damages, other than statutory benefits, a recipient may accept reimbursement from the client for out-of-pocket costs and expenses incurred in connection with the case or matter, if

- (a) The requirements of 1609.4 are met, and
- (b) The client has agreed in writing to reimburse the recipient for such costs and expenses.

1609.8 Applicability.

Nothing in this part shall prevent a recipient from:

(a) Requiring a client to pay court fees when the client does not qualify to proceed in forma pauperis under the rules of the jurisdiction; or

[(b) Accepting a fee in a case that was initiated prior to adoption of this part;]

[(c)](b) Acting as co-counsel with a private attorney when the case meets the standards set forth in Section 1609.5, and accepting part of any fee that may result from a shared case.

## PART 1620—PRIORITIES IN ALLOCATION OF RESOURCES

Sec.

1620.1 Purpose.

1620.2 Procedure.

1620.3 Review.

**AUTHORITY:** Sec. 1007(a)(2); 42 U.S.C. 2996(a)(2).

**SOURCE:** 43 FR 51789, Nov. 7, 1978, unless otherwise noted.

### § 1620.1 Purpose.

This part is designed to insure that a recipient, through policies and plans adopted by its governing body, takes into account the views of eligible clients, staff and other interested persons in establishing priorities for allocating its resources in an economical and effective manner, consistent with the purposes and requirements of the Act and other provisions of federal law.

### § 1620.2 Procedure.

(a) A recipient shall adopt procedures for establishing priorities in the allocation of its resources. The procedure adopted shall:

(1) Include an appraisal of the needs of eligible clients in the geographic areas served by the recipient, and their relative importance, based on comments from eligible clients solicited in a manner reasonably calculated to obtain the attitudes of all significant segments of the client population, as well as comments from the recipient's employees, governing body members, and other interested persons. In addition to substantive legal problems, the appraisal shall address the need for outreach, training of the recipient's employees, and support services;

(2) Insure an opportunity for participation by all significant segments of the client community and the recipient's employees in the setting of priorities, in the development of the report required by paragraph (c), and in the review required by § 1620.3, and provide an opportunity for comment by interested members of the public.

(b) The following factors shall be among those considered by the recipient in establishing priorities:

(1) The appraisal described in paragraph (a)(1) of this section;

(2) The population of eligible clients in the geographic area served by the recipient, including all significant segments of that population with special legal problems or special difficulties of access to legal services;

(3) The resources of the recipient;

(4) The availability of another source of free or low-cost legal assistance in a particular category of cases or matters;

(5) The availability of other sources of training, support, and outreach services;

(6) The relative importance of particular legal problems of the clients of the recipient;

(7) The general effect of the resolution of a particular category of cases or matters on eligible clients in the area served;

(8) The susceptibility of particular problems to solution through legal processes; and

(9) Whether legal efforts by the recipient will complement other efforts to solve particular problems in the area served.

(c) The recipient shall prepare a brief written report describing its priorities, how they were developed, and the implications of those priorities for the allocation of its resources. The report shall be available to the public.

### § 1620.3 Review.

Priorities shall be reviewed at least annually. The following factors shall be among those considered in determining whether the recipient's priorities should be changed:

(a) The extent to which the objectives of the recipient's priorities have been accomplished;

(b) Changes in the resources of the recipient; and,

(c) Changes in the size or needs of the eligible client population.

Items in brackets are in current rule and deleted from proposed rule; items underlined are the proposed new language.

### Priorities in Allocation of Resources

#### 1620.1 Purpose.

This part is designed to insure that a recipient, through policies and plans adopted by its governing body, takes into account the view of eligible clients, staff, the private bar and other interested persons in establishing priorities for allocating its resources in an economical and effective manner, consistent with the purposes and requirements of the Act and other provisions of federal law; it is further designed to ensure that all potential eligible clients are provided substantially equal access to the same types of services and level of representation, unless differences are based on differences in financial resources.

#### 1620.2 Procedure.

(a) A recipient shall adopt procedures for establishing priorities in the allocation of its resources. The procedures adopted shall:

(1) Include an [appraisal] effective assessment, conducted at least once every two years, of the needs of eligible clients in the geographic areas served by the recipient, and their relative importance, based on [comments] information received from potential or current eligible clients solicited in a manner reasonably calculated to obtain the attitudes of all significant segments of the client population, as well as [comments] input from the recipient's employees,

governing body members, the private bar, and other interested persons. In addition to substantive legal problems, the [appraisal] assessment shall address the need for outreach, training of the recipient's employees, and support services;

(2) Insure an opportunity for participation by all significant segments of the client community and the recipient's employees in the setting of priorities, in the development of the report required by Paragraph (c), and in the review required by Section [1602.3] 1602.4, and provide an opportunity for comment by interested members of the public.

(b) The following factors shall be among those considered by the recipient in establishing priorities:

(1) The [appraisal] assessment described in paragraph (a)(1) of this section;

(2) The population of eligible clients in the geographic areas served by the recipient, including all significant segments of that population with special legal problems or special difficulties of access to legal services;

(3) The resources of the recipient;

(4) The availability of another source of free or low-cost legal assistance in a particular category of cases or matters;

(5) The availability of other sources of training, support, and outreach services;

(6) The relative importance of particular legal problems of the clients of the recipient;

[(7) The general effect of the resolution of a particular category of cases or matters on eligible clients in the area served;]

[8] (7) The susceptibility of particular problems to solution through legal processes; and

[9] (8) Whether legal efforts by the recipient will complement other efforts to solve particular problems in the area served.

(c) [The recipient shall prepare a] By June 30, 1984, each recipient shall prepare an initial written report describing its priorities, how they were developed, a resultant case acceptance schedule, the implications of those priorities for the allocation of its resources and the composition, training, and support of its personnel. This report shall be submitted to the Corporation for approval and [The report] shall be available to the public.

(d) Any recipient which has not conducted a substantial needs assessment as a part of its priority-setting process since January 1, 1982, shall do so prior to December 31, 1984.

1620.3      Access.      (New Section)

A recipient shall adopt priorities in the allocation of resources, consistent with the purposes and requirements of the Act, regulations, guidelines and instructions, which substantially provide that all potential eligible clients in the recipient's service area have equal access to the same types of services and level of representation. Availability of services should be reasonably proportional to the distribution of eligible clients by county or parish within the recipient's service area. Where a recipient serves an area that is not

easily defined by parish or county jurisdictions, other units of political subdivision should be utilized.

[1620.3] 1620.4 Review.

Priorities shall be reviewed at least annually. After the initial report described in Section 1620.2(c) each recipient shall submit to the Corporation an annual report summarizing the review of priorities, the date of the most recent needs assessment, the timetable for the future assessment of needs and evaluation of priorities, and mechanisms which will be utilized to ensure effective client participation in priority-setting, and any changes in priorities. The report shall also include a copy of a case acceptance plan or schedule adopted as a result of the priority review and an assessment of the changes made in current operations of the recipient as a result of the priority review.

The following factors shall be among those considered in determining whether the recipient's priorities should be changed:

(a) the extent to which the objectives of the recipient's priorities have been accomplished; (b) changes in the resources of the recipient; (c) changes in the size or needs of the eligible client population; and (d) implementation of Section 1620.3.

1620.5 Case Acceptance. (New Section)

The governing body of a recipient shall establish policies and procedures that assure clients and the Corporation that cases which are accepted for representation of eligible clients substantially comply with the priorities adopted by the recipient.

Proposed Amendment to 45 CFR 1606.2  
Concerning Definition of Termination

(New Language Underlined)

1606.2 Definitions.

(a) "Termination" means a decision that financial assistance to a recipient will be permanently terminated in whole or in part prior to expiration of the recipient's current grant or contract; an offset against one or more of a recipient's payments from the Corporation for the purpose of recovering disallowed costs or carryover fund balances from previous grants or contracts shall not constitute a termination.



**LEGAL SERVICES CORPORATION**

MEMORANDUM

September 26, 1983

TO: Donald P. Bogard  
FROM: Charles E. Ritter *CER*  
SUBJECT: THIRD QUARTER BUDGET REVIEW FOR FY 1983

Pursuant to our standard operating procedures for budget review and modification, this memorandum presents the staff's report on the Third Quarter Budget Review. The staff Budget Review Committee has examined the current and projected expenditures of each of the Corporation's cost centers. Attached to this report are the usual statements documenting our review.

- Attachment I: Statement of Funds Available (6/30/83)
- Attachment II: Consolidated Operating Budget (6/30/83)
- Attachment III: Consolidated Operating Budget Worksheet (6/30/83)
- Attachment IV: Consolidated Operating Budget Projection Worksheet (6/30/83)
- Attachment V: Summary of Investment Income and Related Allocations (6/30/83)

Attachment I (Statement of Funds Available) shows funds currently allocated to the FY 1983 budget and funds which have not yet been allocated to the budget. The unallocated funds total \$602,506 and reflect projected interest income through September 30, 1983. Investment Income of \$426,471 represents seventy-one (71) percent of the unallocated funds. The Board's approval of the modification proposed by staff would result in the movement of funds from the unallocated to the allocated section of the Statement of Funds Available (Attachment I). Attachment I.A. is the Proposed Statement of Funds Available and reflects the allocation of an additional \$113,564 to the budget in accordance with the modification proposed to the Consolidated Operating Budget (see Attachments II and III, column six).

Memorandum  
September 26, 1983  
Page Two

Attachment II is the Consolidated Operating Budget (C.O.B.) for FY 1983. Attachment III (the C.O.B. Worksheet) is an expanded version of the C.O.B. and presents a more detailed view of the Corporation's budget activities. In the Worksheet, each C.O.B. line item is divided into its major components using the same column headings found in the C.O.B. This detail displays proposed internal shifts (see C.O.B. Worksheet column number six).

Shifts related to the direct expense, as opposed to grant expense, portion of the budget are addressed later in this memorandum, in that they are best described as they relate to our projections and can more easily be seen on the C.O.B. Projection Worksheet (Attachment IV).

There are two modifications proposed in the grants area of the budget. The first modification allocates \$113,564 to the budget in order to make funds available for expenditure from fund balances which have been recovered from programs through the Corporation's policy pertaining to excess fund balances. While the full amount currently available (\$113,564) has been allocated to the Basic Field Program line of the budget (C.O.B. line I.A.1), grants may also be awarded to Migrant and Native American programs (C.O.B. lines I.A. 2 and 3). Once the distribution of funds is known, the funds will be moved to the appropriate lines within C.O.B. line I.A. Further, grants will be awarded and distributed, as funds are recovered. As additional funds are recaptured, the C.O.B. will be modified to reflect their availability. These one-time supplemental grants will be used to increase the delivery of basic legal assistance to eligible clients. Priority will be given to recipients who have open cases involving "ineligible aliens" and to those programs funded at or below \$6 per poor person. This modification to the Corporation's budget requires approval by the Board of Directors.

The second modification reflects the Board's approval to make funds available to National and State Support Centers (C.O.B. lines I.B. 1 and 2, respectively) and to the National Clients Council (C.O.B. line I.C.1) for the final quarter of the grant year (October 1 through December 31). The shift is from the reserve line to the budget line. As you can see on Attachment II (C.O.B.) no shift in major C.O.B. categories is involved consequently, no further Board action is required.

Attachment IV (the C.O.B. Projection Worksheet) presents the staff's projections for expenditures for the fiscal year. The Projection Worksheet includes all the detailed line-items from the C.O.B. Worksheet and adds information on projected year-end variances between budget and projected expenditures for the direct expense budget (C.O.B. categories I.D., I.E., and II). Column eight (8) displays the budget modifications that the staff will implement unless otherwise directed by the Board. These modifications are discussed below:

NEW DIRECTIONS FOR THE PRIVATE BAR/OFFICE OF FIELD SERVICES

The staff proposes the transfer of the remaining unspent funds for staff and staff-related costs, originally budgeted in the Office of Field Services - Headquarters (C.O.B. line II.A.1), to the Office of Program Development (New Directions for the Private Bar - C.O.B. line I.E.2). Funds which were unspent at the time of the transfer were \$47,366. This transfer is between major C.O.B. categories and requires formal action by the Board.

TECHNICAL ASSISTANCE GRANT SUPPLEMENT

Consolidated Operating Budget lines II.A.3 and 4 reflect the staff's proposal to allocate an additional \$25,000 in Management and Technical Assistance grants. Of the original \$250,000 available for technical assistance, the Office of Field Services has awarded \$198,262 to 77 recipients. The remaining \$51,738, plus the supplemental \$25,000 will be awarded for special projects in the near future. The additional \$25,000 allocation will be transferred from unused Training Delivery funds (line II.A.4). This modification does not require Board approval because the transfer is within major C.O.B. categories.

Budget modifications are not reflected for several lines within major C.O.B. categories that project some significant surpluses and some small deficits. The staff felt that the deficits were not significant enough to warrant a transfer this late in the fiscal year. With respect to surpluses, transfers would only be appropriate if the funds were needed elsewhere in the budget. With one exception, no other categories were projected to be in need of any additional funds, so no transfers were made. The exception relates to the Office of General Counsel (C.O.B. line II.B.3) wherein funds required for litigation costs for fiscal year 1983 could not accurately be projected. The staff does not recommend any specific allocation of funds since expenses are not readily determinable. We also feel that a specific allocation is not necessary because the surplus available in the overall Management and Administration category (C.O.B. category II.A.), we believe, will be more than sufficient to cover any deficit incurred for litigation.

Memorandum  
September 26, 1983  
Page Four

The staff previously proposed the allocation of monies needed for the National and State Support Centers and National Clients Council studies from surpluses arising from any third quarter projected savings from operations. As you can see, our projected savings in the Support category (C.O.B. II) of the budget are \$1,276,352. However, in addition to those savings the Program Development and Experimentation budget (C.O.B. line I.E.1) would expect to have a surplus of more than \$190,000. Consequently, the staff proposes that the cost of the studies be paid out of uncommitted funds remaining in the Program Development and Experimentation budget. The actual and projected fiscal year 1983 expenses (estimated at \$134,844) for the studies have been reflected in the Program Development and Experimentation category. Reflecting the costs against Program Development seems appropriate since the studies are similar in nature to the work previously assigned to this function.

All final year-end balances will become a part of the fiscal year 1983 fund balance. The fund balance will be available to the Corporation for allocation and expenditure in fiscal year 1984.

Attachment V (the Summary of Investment Income and Related Allocations), summarizes the accumulation and allocation of Investment Income. This amount of unallocated income is included in the Statement of Funds Available (Attachment I).

AH:yr

Attachments

Legal Services Corporation  
STATEMENT OF FUNDS AVAILABLE

June 30, 1983

ALLOCATED:

FY 1983 Appropriation		\$ 241,000,000
FY 1982 Fund Balance		2,180,577
Investment Income		<u>65,000</u>
		243,245,577

NOT ALLOCATED:

Appropriated (Returns & Recoveries):

Earned	\$148,600	
Projected	<u>27,435</u>	176,035
Investment Income:		
Earned	418,651	
Projected	<u>7,820</u>	<u>426,471</u>

TOTAL FUNDS AVAILABLE \$243,848,083

Legal Services Corporation

PROPOSED STATEMENT OF FUNDS AVAILABLE

June 30, 1983

ALLOCATED:

FY 1983 Appropriation		\$ 241,000,000
FY 1982 Fund Balance		2,180,577
Program Fund Balance Recoveries (FY 1983)		113,564
Investment Income		<u>65,000</u>
		243,359,141

NOT ALLOCATED:

Appropriated (Returns & Recoveries):

Earned	\$ 35,036	
Projected	<u>27,435</u>	62,471
Investment Income:		
Earned	418,651	
Projected	<u>7,820</u>	<u>426,471</u>

TOTAL FUNDS AVAILABLE

\$243,848,083

Legal Services Corporation

CONSOLIDATED OPERATING BUDGET

June 30, 1983

	[1] <u>Budget 10/1/82</u>	[2] <u>Budget 12/31/82</u>	[3] <u>Budget 3/31/83</u>	[4] <u>Expenses 6/30/83</u>	[5] <u>Unexpended Balances 6/30/83</u>	[6] <u>Proposed Modifications 6/30/83</u>	[7] <u>Proposed Budget 6/30/83</u>
I. <u>PROVISION OF LEGAL ASSISTANCE</u>	<u>\$232,793,185</u>	<u>\$232,793,185</u>	<u>\$232,793,185</u>	<u>\$220,872,886</u>	<u>\$ 11,920,299</u>	<u>\$ 160,930<sup>1/2/</sup></u>	<u>\$232,954,115</u>
A. Field Programs	210,932,339	210,998,349	210,998,349	209,817,636	1,180,713	113,564 <sup>1/</sup>	211,111,913
B. National and State Support	13,084,927	13,085,917	13,085,917	10,004,438	3,081,479	---	13,085,917
C. Special Programs	4,733,699	4,733,699	4,733,699	468,525	4,265,174	---	4,733,699
D. Program Maintenance and Improvement	686,000	686,000	686,000	324,104	361,896	---	686,000
E. Demonstration Projects, Program Development and Experimentation	<u>3,356,220</u>	<u>3,289,220</u>	<u>3,289,220</u>	<u>258,183</u>	<u>3,031,037</u>	<u>47,366<sup>2/</sup></u>	<u>3,336,586</u>
1. Program Development and Experimentation	232,740	232,740	232,740	32,317	200,423	---	232,740
2. New Directions for the Private Bar	3,123,480	3,056,480	3,056,480	225,866	2,830,614	47,366	3,103,846

	[1] Budget 10/1/82	[2] Budget 12/31/82	[3] Budget 3/31/83	[4] Expenses 6/30/83	[5] Unexpended Balances 6/30/83	[6] Proposed Modifications 6/30/83	[7] Proposed Budget 6/30/83
II. SUPPORT FOR THE PROVISION OF LEGAL ASSISTANCE	\$ 10,387,392	\$ 10,452,392	\$ 10,452,392	\$ 6,027,514	\$ 4,424,878	\$ (47,366) <sup>2/</sup>	\$ 10,405,026
A. Office of Field Services	5,247,720	5,271,220	5,271,220	2,886,038	2,385,182	(47,366) <sup>2/</sup>	5,223,854
B. Management and Administration	4,989,672	5,031,172	5,031,172	3,141,476	1,889,696	---	5,031,172
C. Unallocated	150,000	150,000	150,000	---	150,000	---	150,000
TOTAL	\$243,180,577	\$243,245,577	\$243,245,577	\$226,900,400	\$16,345,177	\$ 113,564 <sup>1/</sup>	\$243,359,141

NOTE:

- 1/ To allocate funds available from excess fund balance recoveries for one-time supplemental grants.
- 2/ To transfer the remaining unspent staff and staff-related budget from the Office of Field Services to the Office of Program Development (New Directions for the Private Bar).

Prepared by

*Alfreda Harvey*  
Alfreda Harvey  
Budget Director

Approved by

*Charles E. Ritter*  
Charles E. Ritter  
Vice President for Finance

Legal Services Corporation

CONSOLIDATED OPERATING BUDGET WORKSHEET

June 30, 1983

	[1] Budget 10/1/82	[2] Budget 12/31/82	[3] Budget 3/31/83	[4] Expenses 6/30/83	[5] Unexpended Balances 6/30/83	[6] Proposed Modifications 6/30/83	[7] Proposed Budget 6/30/83
I. <u>PROVISION OF LEGAL ASSISTANCE</u>	<u>\$232,793,185</u>	<u>\$232,793,185</u>	<u>\$232,793,185</u>	<u>\$220,872,886</u>	<u>\$11,920,299</u>	<u>\$ 160,930<sup>1/3/</sup></u>	<u>\$232,954,115</u>
A. <u>FIELD PROGRAMS</u>	<u>210,932,339</u>	<u>210,998,349</u>	<u>210,998,349</u>	<u>209,817,636</u>	<u>1,180,713</u>	<u>113,564<sup>1/</sup></u>	<u>211,111,913</u>
1. Basic Field Programs	197,260,353	197,309,363	197,565,723	196,537,464	1,028,259	113,564 <sup>1/</sup>	197,679,287
2. Native American Programs and Components	5,496,944	5,496,944	5,496,944	5,480,944	16,000	---	5,496,944
3. Migrant Programs and Components	7,834,042	7,834,042	7,577,682	7,492,228	85,454	---	7,577,682
4. Client Training and Involvement	291,000	308,000	308,000	307,000	1,000	---	308,000
5. Reserve for Special Adjustments	50,000	50,000	50,000	---	50,000	---	50,000
B. <u>NATIONAL AND STATE SUPPORT</u>	<u>13,084,927</u>	<u>13,085,917</u>	<u>13,085,917</u>	<u>10,004,438</u>	<u>3,081,479</u>	<u>---</u>	<u>13,085,917</u>
1. National Support	2,904,726	4,394,590	4,394,590	4,394,590	---	1,464,863 <sup>2/</sup>	5,859,453
-- Reserve	2,904,727	1,464,863	1,464,863	---	1,464,863	(1,464,863) <sup>2/</sup>	---
2. State Support	3,257,737	4,849,848	4,849,848	4,849,848	---	1,616,616 <sup>2/</sup>	6,466,464
-- Reserve	3,257,737	1,616,616	1,616,616	---	1,616,616	(1,616,616) <sup>2/</sup>	---
3. Clearinghouse	760,000	760,000	760,000	760,000	---	---	760,000
C. <u>SPECIAL PROGRAMS</u>	<u>4,733,699</u>	<u>4,733,699</u>	<u>4,733,699</u>	<u>468,525</u>	<u>4,265,174</u>	<u>---</u>	<u>4,733,699</u>
1. National Clients Council	262,350	393,525	393,525	393,525	---	131,175 <sup>2/</sup>	524,700
-- Reserve	262,350	131,175	131,175	---	131,175	(131,175) <sup>2/</sup>	---
2. R. H. Smith Fellowships	4,133,999	4,133,999	4,133,999	---	4,133,999	---	4,133,999
3. Summer Internships	75,000	75,000	75,000	75,000	---	---	75,000

	[1] Budget 10/1/82	[2] Budget 12/31/82	[3] Budget 3/31/83	[4] Expenses 6/30/83	[5] Unexpended Balances 6/30/83	[6] Proposed Modifications 6/30/83	[7] Proposed Budget 6/30/83
D. PROGRAM MAINTENANCE AND IMPROVEMENT	\$ 686,000	\$ 686,000	\$ 686,000	\$ 324,104	\$ 361,896	\$ ---	\$ 686,000
E. DEMONSTRATION PROJECTS, PROGRAM DEVELOPMENT AND EXPERIMENTATION	3,356,220	3,289,220	3,289,220	258,183	3,031,037	47,366 <sup>3/</sup>	3,336,586
1. Program Development and Experimentation	232,740	232,740	232,740	32,317	200,423	---	232,740
2. New Directions for the Private Bar	3,123,480	3,056,480	3,056,480	225,866	2,830,614	47,366 <sup>3/</sup>	3,103,846
II. SUPPORT FOR THE PROVISION OF LEGAL ASSISTANCE	10,387,392	10,452,392	10,452,392	6,027,514	4,424,878	(47,366) <sup>3/</sup>	10,405,026
A. OFFICE OF FIELD SERVICES	5,247,720	5,271,220	5,271,220	2,886,038	2,385,182	(47,366) <sup>3/</sup>	5,223,854
1. Headquarters	1,586,503	1,610,003	1,610,003	761,015	848,988	(47,366) <sup>3/</sup>	1,562,637
2. Regional Offices and Evaluations	3,286,217	3,286,217	3,286,217	2,125,023	1,161,194	---	3,286,217
3. Management and Technical Assistance	250,000	250,000	250,000	---	250,000	25,000 <sup>4/</sup>	275,000
4. Training Development	125,000	125,000	125,000	---	125,000	(25,000) <sup>4/</sup>	100,000

	[1] Budget 10/1/82	[2] Budget 12/31/82	[3] Budget 3/31/83	[4] Expenses 6/30/83	[5] Unexpended Balances 6/30/83	[6] Proposed Modifications 6/30/83	[7] Proposed Budget 6/30/83
B. MANAGEMENT AND ADMINISTRATION	\$ 4,989,672	\$ 5,031,172	\$ 5,031,172	\$ 3,141,476	\$ 1,188,696	\$ ---	\$ 5,031,172
1. Board of Directors	243,721	255,221	226,368	115,067	111,301	---	226,368
2. Executive Offices	466,043	496,043	610,278	348,552	261,726	---	610,278
3. General Counsel	432,171	432,171	460,244	339,154	121,090	---	460,244
4. Equal Opportunity	153,036	153,036	149,590	76,893	72,697	---	149,590
5. Comptroller	466,800	466,800	445,270	289,207	156,063	---	445,270
6. Audit Division	322,487	322,487	281,950	134,994	146,956	---	281,950
7. Division of Administration	1,788,877	1,788,877	1,892,149	1,340,380	551,769	---	1,892,149
8. Government Relations	125,486	125,486	123,335	80,391	42,944	---	123,335
9. Public Affairs	184,111	184,111	153,942	77,517	76,425	---	153,942
10. Office of Information Management	606,940	606,940	565,019	339,321	225,698	---	565,019
11. Office of Inspector General	200,000	200,000	123,027	---	123,027	---	123,027
C. Unallocated	150,000	150,000	150,000	---	150,000	---	150,000
TOTAL	\$243,180,577	\$243,245,577	\$243,245,577	\$226,900,400	\$16,345,177	\$ 113,564 <sup>1/</sup>	\$243,359,141

NOTES:

- 1/ To allocate funds available from excess fund balance recoveries for one-time supplemental grants.
- 2/ To transfer final three month funding allocation (October through December, 1983).
- 3/ To transfer the remaining unspent staff and staff-related budget from the Office of Field Services to the Office of Program Development (New Directions for the Private Bar).
- 4/ To transfer supplemental funds for Technical Assistance grants.

## Legal Services Corporation

CONSOLIDATED OPERATING BUDGET PROJECTION WORKSHEET

June 30, 1983

[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]	[9]
<u>Budget</u> <u>10/1/82</u>	<u>Budget</u> <u>12/31/82</u>	<u>Budget</u> <u>3/31/83</u>	<u>Expenses</u> <u>6/30/83</u>	<u>Fourth</u> <u>Quarter</u> <u>Projections</u>	<u>Total</u> <u>Projected</u> <u>Expenses</u>	<u>Projected</u> <u>Year-End</u> <u>Variance</u>	<u>Proposed</u> <u>Modifi-</u> <u>cations</u>	<u>Projected</u> <u>Year-End</u> <u>Variance</u>

I. PROVISION OF LEGAL ASSISTANCE

## A. FIELD PROGRAMS

1. Basic Field Programs
2. Native American Programs and Components
3. Migrant Programs and Components
4. Client Training and Involvement
5. Reserve for Special Adjustments

## B. NATIONAL AND STATE SUPPORT

1. National Support  
-- Reserve
2. State Support  
-- Reserve
3. Clearinghouse

## C. SPECIAL PROGRAMS

1. National Clients Council  
-- Reserve
2. R. H. Smith Fellowships
3. Summer Internships

	[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]	[9]
	Budget 10/1/82	Budget 12/31/82	Budget 3/31/83	Expenses 6/30/83	Fourth Quarter Projections	Total Projected Expenses	Projected Year-End Variance	Proposed Modifi- cations	Projected Year-End Variance
D. PROGRAM MAINTENANCE AND IMPROVEMENT	\$ 686,000	\$ 686,000	\$ 686,000	\$ 324,104	\$ 365,510	\$ 689,614	\$ (3,614)	\$ ---	\$ (3,614)
E. DEMONSTRATION PROJECTS, PROGRAM DEVELOPMENT AND EXPERIMENTATION	<u>3,356,220</u>	<u>3,289,220</u>	<u>3,289,220</u>	<u>258,184</u>	<u>2,822,297</u>	<u>3,080,481</u>	<u>208,739</u>	<u>47,366</u>	<u>256,105</u>
1. Program Development and Experimentation	232,740	232,740	232,740	43,335	125,906	169,241	63,499	---	63,499
2. New Directions for the Private Bar	3,123,480	3,056,480	3,056,480	214,849	2,696,391	2,911,240	145,240	47,366 <sup>1/</sup>	192,606
II. SUPPORT FOR THE PROVISION OF LEGAL ASSISTANCE	<u>10,387,392</u>	<u>10,452,392</u>	<u>10,452,392</u>	<u>6,027,514</u>	<u>3,148,526</u>	<u>9,176,040</u>	<u>1,276,352</u>	<u>(47,366)<sup>1/</sup></u>	<u>1,228,986</u>
A. OFFICE OF FIELD SERVICES	<u>5,247,720</u>	<u>5,271,220</u>	<u>5,271,220</u>	<u>2,886,038</u>	<u>1,759,780</u>	<u>4,645,818</u>	<u>625,402</u>	<u>(47,366)</u>	<u>578,036</u>
1. Headquarters	1,586,503	1,610,003	1,610,003	761,015	549,184	1,310,199	299,804	(47,366)	252,438
2. Regional Offices and Evaluations	3,286,217	3,286,217	3,286,217	2,125,023	930,596	3,055,619	230,598	---	230,598
3. Management and Technical Assistance	250,000	250,000	250,000	---	275,000	275,000	(25,000)	25,000 <sup>2/</sup>	---
4. Training Development	125,000	125,000	125,000	---	5,000	5,000	120,000	(25,000) <sup>2/</sup>	95,000

	[1] Budget 10/1/82	[2] Budget 12/31/82	[3] Budget 3/31/83	[4] Expenses 6/30/83	[5] Fourth Quarter Projections	[6] Total Projected Expenses	[7] Projected Year-End Variance	[8] Proposed Modifi- cations	[9] Projected Year-End Variance
B. MANAGEMENT AND ADMINISTRATION	\$ 4,989,672	\$ 5,031,172	\$ 5,031,172	\$3,141,476	\$1,388,746	\$ 4,530,222	\$ 500,950	\$ ---	\$ 500,950
1. Board of Directors	243,721	255,221	226,368	115,067	29,830	144,897	81,471	---	81,471
2. Executive Offices	466,043	496,043	610,278	348,552	194,920	543,472	66,806	---	66,806
3. General Counsel	432,171	432,171	460,244	339,154	121,090	460,244	---	---	---
4. Equal Opportunity	153,036	153,036	149,590	76,893	52,017	128,910	20,680	---	20,680
5. Comptroller	466,800	466,800	445,270	289,207	108,033	397,240	48,030	---	48,030
6. Audit Division	322,487	322,487	281,950	134,994	55,893	190,887	91,063	---	91,063
7. Division of Administration	1,788,877	1,788,877	1,892,149	1,340,380	502,065	1,842,445	49,704	---	49,704
8. Government Relations	125,486	125,486	123,335	80,391	46,302	126,693	(3,358)	---	(3,358)
9. Public Affairs	184,111	184,111	153,942	77,517	79,981	157,498	(3,556)	---	(3,556)
10. Office of Information Management	606,940	606,940	565,019	339,321	198,615	537,936	27,083	---	27,083
11. Office of Inspector General	200,000	200,000	123,027	---	---	---	123,027	---	123,027
C. Unallocated	150,000	150,000	150,000	---	---	---	150,000	---	150,000
TOTAL	\$14,429,612	\$14,427,612	\$14,427,612	\$6,609,802	\$6,336,333	\$12,946,135	\$1,481,477	\$ ---	\$1,481,477

NOTES: 1/ To transfer the remaining unspent staff and staff-related budget from the Office of Field Services to the Office of Program Development (New Directions for the Private Bar).

2/ To transfer supplemental funds for Technical Assistance grants.

Legal Services Corporation

SUMMARY OF INVESTMENT INCOME AND RELATED ALLOCATIONS

for the Period Ended June 30, 1983

TOTAL INVESTMENT INCOME AVAILABLE

Since Inception to June 30, 1983 \$6,997,627

LESS AUTHORIZED ALLOCATIONS

(6,578,976)<sup>1/</sup>

UNALLOCATED INVESTMENT INCOME

June 30, 1983 (Actual) 418,651

PROJECTED INVESTMENT INCOME

July 1 to September 30, 1983 6,512<sup>2/</sup>

PROJECTED INCOME FROM SAVINGS ACCOUNTS

July 1 to September 30, 1983 1,308<sup>3/</sup>

TOTAL PROJECTED UNALLOCATED INVESTMENT INCOME

To September 30, 1983 \$ 426,471

- <sup>1/</sup> Allocations for programs which have been completed have been adjusted to actual expenses.
- <sup>2/</sup> This projection is based on investing \$322,613 in Treasury Bills at an estimated rate of 9.6%, through September 30, 1983. The projected income includes the interest that will be received when the Treasury Bills mature.
- <sup>3/</sup> Assumes approximately a 5.5% annual return on \$95,126 in savings accounts at June 30, 1983.



**LEGAL SERVICES CORPORATION**

MEMORANDUM

September 26, 1983

TO: Donald P. Bogard  
FROM: Charles E. Ritter *CR*  
SUBJECT: FISCAL YEAR 1984 BUDGET

As you know, the Corporation does not currently have an appropriation from Congress for fiscal year 1984. Consequently, it is not possible to make definitive budget allocations for the upcoming fiscal year. However, we can, using the assumption that we will receive at least \$241M, present some options for the Board's consideration at appropriation levels of \$241M and \$257M.

I. Fiscal Year 1983 Base

If the appropriation for fiscal year 1984 is \$241M, we already have base figures from which we can start. The 1983 base figures come from the Consolidated Operating Budget and exclude any one-time (carryover) and investment income funds. The figures presented in Attachment A total \$241M, the amount of our fiscal year 1983 appropriation.

The vast majority of the funds are currently allocated to the Provision of Legal Assistance. According to Attachment A that would be \$231.1M or 95.9%. A further breakdown of the \$231M figure reflects that \$210.7M (87.4% of the base) is allocated to field programs. Another \$13.1M (5.4%) is allocated to the National and State Support category of the budget. There is \$4.6M (1.9%) allocated for special programs (National Clients Council and R.H. Smith Fellowship). The base also includes \$.6M (.3%) for Program Maintenance and Improvement (Technological Improvements). Finally, there is \$2.1M (.9%) for Demonstration Projects, Program Development and Experimentation (primarily New Directions for the Private Bar).

The remainder of the base (\$9.9M or 4.1%) is currently allocated for Support for the Provision of Legal Assistance. A further breakdown of that figure discloses that \$5M (2.1%) is allocated to the Office of Field Services. The Management and Administration and the Unallocated budget total \$4.9M (2%) of the base.

## II. Developing a Fiscal Year 1984 Budget from the 1983 Base

For the purpose of discussing how funds should be allocated in fiscal year 1984, I will use \$241M, which assumes no increase in the amount appropriated, and \$257M, which is the amount in the Fiscal Year 1984 Budget Request.

Beginning with the 1983 base, and assuming that there will be no programmatic changes, the only area where any substantial shifts of funds could be made is in the Demonstration Projects line on the C.O.B. (line I.E.). A smaller amount of funds might be available in Program Maintenance (line I.D.).

The Management and Administration budget will be tight if the Corporation moves quickly towards hiring a full staff, and activities are carried out as planned. Realistically, if anything near a full staff and new activities that are planned are carried out, serious thought will have to be given to reducing activities in other areas. The staff is working on the FY 1984 budget submissions from the Divisions in Management and Administration and the Office of Field Services. We are attempting to bring the proposals in line with what the Corporation can afford in the various areas. The analysis of these areas will be completed shortly.

If the appropriation is \$241M, the Provision of Legal Assistance portion of the budget is the area that staff will need guidance to begin developing budget options for final consideration.

As I indicated earlier, the Provision of Legal Assistance base budget is \$231.1M. Of that amount, \$228.4M represents allocations to the field programs, national and state support programs, National Clients Council, and R.H. Smith Fellowship program. These programs have been the core of the national legal services program. If the Corporation is appropriated \$241M, there appears to be little or no flexibility to provide more money to the core programs unless programmatic changes are instituted. The result of the study on support centers and the National Clients Council may cause a programmatic change. However, until a decision is made relative to the results of the study, additional funds, at \$241M, for the core programs appear to be scarce.

If the Corporation receives a \$257M appropriation, the 6.7% increase could be allotted so as to give field activities an inflation adjustment. In light of the significant shift in the location of the nation's poor, the Corporation might well wish to target much of the increase on those service providers which are now most underfunded in relation to the number of eligible clients in their service areas.

Memorandum  
September 26, 1983  
Page Three

In any event, it appears that further discussions between the staff, Board, and the programs might be useful before a final decision is made. A final decision should be made once the appropriation is known. Hopefully, we will know what the appropriation is before the programs are funded in December for the new grant year beginning January 1.

### III. Carryover Funds from Fiscal Year 1983

This discussion has been limited to the allocation of appropriated funds. There will be surplus (carryover) funds from our fiscal year 1983 budget. These funds will be available for allocation on a one-time basis. At this point in time, the total carryover balance is difficult to determine. The carryover figure will be available after the Corporation's books are closed for this year and the audit has been completed. The Board will be advised of the amount so that allocation of the carryover funds can be made.

CER:yr

Attachment

Legal Services CorporationFY 1984 CONSOLIDATED OPERATING BUDGET WORKSHEET

	(1)	(2)	(3)
	<u>Original FY 1983 Base</u>	<u>FY 1983 Revisions</u>	<u>Revised FY 1983 Base</u>
I. <u>PROVISION OF LEGAL ASSISTANCE</u>	<u>\$231,014,385</u>	<u>\$ 113,069</u>	<u>\$231,127,454</u>
A. Field Programs	<u>210,604,380</u>	<u>66,010</u>	<u>210,670,390</u>
1. Basic Field Programs	197,103,301	49,010	197,152,311
2. Native American Programs and Components	5,496,944	---	5,496,944
3. Migrant Programs and Components	7,663,135	---	7,663,135
4. Client Training and Involvement	291,000	17,000	308,000
5. Reserve for Special Adjustments	50,000	---	50,000
B. National and State Support	<u>13,084,927</u>	<u>990</u>	<u>13,085,917</u>
1. National Support	2,904,726 <u>1</u> /	2,954,727	5,859,453
-- Reserve	2,904,727 <u>1</u> /	[2,904,727]	---
2. State Support	3,257,737 <u>1</u> /	3,208,727	6,466,464
-- Reserve	3,257,737 <u>1</u> /	[3,257,737]	---
3. Clearinghouse	760,000	---	760,000
C. Special Programs	<u>4,658,699</u>	<u>---</u>	<u>4,658,699</u>
1. National Clients Council	262,350 <u>1</u> /	262,350	524,700
-- Reserve	262,350 <u>1</u> /	[262,350]	---
2. R. H. Smith Fellowships	4,133,999	---	4,133,999
3. Summer Internships	---	---	---

Legal Services Corporation

FY 1984 CONSOLIDATED OPERATING BUDGET WORKSHEET

	(1)	(2)	(3)
	<u>Original FY 1983 Base</u>	<u>FY 1983 Revisions</u>	<u>Revised FY 1983 Base</u>
D. Program Maintenance and Improvement	\$ <u>640,000</u>	\$ <u>---</u>	\$ <u>640,000</u>
E. Demonstration Projects, Program Development and Experimentation	<u>2,026,379</u>	<u>46,069</u>	<u>2,072,448</u>
1. Program Development and Experimentation	200,000	---	200,000
2. New Directions for the Private Bar	1,826,379	46,069	1,872,448
II. <u>SUPPORT FOR THE PROVISION OF LEGAL ASSISTANCE</u>	<u>9,985,615</u>	<u>[113,069]</u>	<u>9,872,546</u>
A. Office of Field Services	<u>5,104,647</u>	<u>[113,069]</u>	<u>4,991,578</u>
1. Headquarters	1,479,647	[113,069]	1,366,578
2. Regional Offices and Evaluations	3,250,000	---	3,250,000
3. Management and Technical Assistance	250,000	---	250,000
4. Training Development	125,000	---	125,000

Legal Services Corporation

FY 1984 CONSOLIDATED OPERATING BUDGET WORKSHEET

	(1)	(2)	(3)
	<u>Original FY 1983 Base</u>	<u>FY 1983 Revisions</u>	<u>Revised FY 1983 Base</u>
B. Management and Administration	\$ 4,730,968	\$ ---	\$ 4,730,968
1. Board of Directors	213,721	---	213,721
2. Executive Offices	396,043	---	396,043
3. General Counsel	432,171	---	432,171
4. Equal Opportunity	149,172	---	149,172
5. Comptroller	463,200	---	463,200
6. Audit Division	300,407	---	300,407
7. Division of Administration	1,672,877	---	1,672,877
8. Government Relations	125,486	---	125,486
9. Public Affairs	184,111	---	184,111
10. Office of Information Management	593,780	---	593,780
11. Office of Inspector General	200,000	---	200,000
C. Unallocated	<u>150,000</u>	<u>---</u>	<u>150,000</u>
TOTAL	<u>\$241,000,000</u>	<u>\$ ---</u>	<u>\$241,000,000</u>

1/ Six months of funding



**LEGAL SERVICES CORPORATION**

MEMORANDUM

September 23, 1983

TO: Donald P. Bogard, President

FROM: Charles E. Ritter, <sup>CR</sup> Vice President-Finance

SUBJECT: Setting a "Budget Mark" for Fiscal Year 1985

The enabling legislation of the Legal Services Corporation (LSC) provides the authority for LSC to submit an annual budget request to the Congress of the United States. In that same legislation, it is provided that the Office of Management and Budget (OMB) has the authority to comment on LSC's budget request. This budget request is developed by the staff with direction from the Board, and is submitted to the Congress and OMB in December or January.

It is time to begin to think about the budget request for fiscal year 1985. One of the steps, though not an obligatory one, is for LSC to provide OMB with a "budget mark" (the anticipated appropriation request) by October 15. The budget mark is used by OMB to develop the overall budget for the entire Government.

As stated earlier, the development of the budget request begins with the budget mark. The development of a budget mark usually begins with the amount appropriated by Congress for the immediately preceding fiscal year. For example, the budget mark for 1985 would be built on the 1984 appropriation. Of course, the 1984 appropriation is unknown at this time. However, three figures have been discussed most often by Congress, \$241M, \$257M and \$296M. For purposes of this discussion, I will use the \$257M figure which represents what LSC requested for fiscal year 1984.

In past years, LSC has requested funds for expansion of service to uncovered areas, cost-of-service adjustments to field programs, discretionary funds for field programs, Congressionally mandated initiatives, and funds to increase the general operating activities of the Corporation. Attachment A will provide more detail concerning specific areas focused on in earlier budget requests.

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September 23, 1983

Having presented some background information, I am prepared to make some recommendations for fiscal year 1985. I would propose that LSC request an inflation adjustment of 4.4%. According to OMB's 1983 mid-session review, the 4.4% represents the estimated calendar year 1984 increase in the consumer price index for urban wage earners and clerical workers. This is the same source and economic indicator that was used for the increase requested in our Fiscal Year 1984 Budget. I would also propose that specific sums be requested to accomplish any new initiatives that the Board proposes to fund. If \$257M is appropriated to LSC in 1984, we are talking about an increase of \$11.3M (for a total of \$268.3M) in 1985 plus additional funds for new initiatives.

As I indicated earlier, LSC is under no obligation to provide OMB with a budget mark by October 15. In fact, LSC has not met the October 15 date for the past two years. So, if the Board prefers to wait until after we receive notice of the fiscal year 1984 appropriation before making a decision on fiscal year 1985, I can advise OMB accordingly.

CER:yr

Attachments

(dollars in thousands)

Attachment A  
AH/8-17-82  
updated 9-23-83

Legal Services Corporation

SUMMARY OF BUDGET REQUESTS

Fiscal Years 1976 -- 1984

	<u>FY 1976</u>	<u>FY 1977</u>	<u>FY 1978</u>	<u>FY 1979</u>	<u>FY 1980</u>	<u>FY 1981</u>	<u>FY 1982</u>	<u>FY 1983</u>	<u>FY 1984</u>
TOTAL AMOUNT REQUESTED	\$ 96,466	\$140,300	\$217,053	\$304,032	\$337,500	\$353,000	\$399,637	\$265,000	\$257,000
AMOUNT OF INCREASE REQUESTED	<u>5,300*</u>	<u>48,000</u>	<u>92,053</u>	<u>99,032</u>	<u>67,500</u>	<u>53,000</u>	<u>78,337</u>	<u>24,000</u>	<u>16,000</u>
Purposes:									
Expansion	---	30,900	78,845	58,322	24,555	---	---	---	---
Cost of Service (Inflation) Adjustment (Field Programs)	---	7,180 [10%]	---	9,971 [5.5%]	14,413 [6%]	25,211 [9%]	31,564 [10.5%]	23,068 [10%]	15,475 [6.7%]
Discretionary Funds (Field Programs)	---	1,800	---	15,250	14,650	---	---	---	---
Support	---	750	5,460	8,720	8,687	13,664	11,600	---	---
New Initiatives	<u>1,500</u>	<u>1,900</u>	<u>1,800</u>	---	---	<u>12,103</u>	<u>33,000</u>	---	---
Delivery Systems Study	1,500	1,900	1,800	---	---	---	---	---	---
Institutionalized	---	---	---	---	---	9,453	---	---	---
Technological Improvements	---	---	---	---	---	2,650	2,000	---	---
Private Attorney Involvement	---	---	---	---	---	---	30,000	---	---
Client Advocacy	---	---	---	---	---	---	1,000	---	---
Other	---	5,470	5,948	6,769	5,195	2,022	2,173	932	525
AMOUNT APPROPRIATED	\$ 92,300	\$125,000	\$205,000	\$270,000	\$300,000	\$321,300	\$241,000	\$241,000	?

\* \$3.8 million of the supplemental request was to continue funding of existing programs that were previously supported by the Department of Labor and the Community Services Administration.