

ALIEN ELIGIBILITY FOR REPRESENTATION BY LSC PROGRAMS—Continued

Alien category	Immigration Act (INA)	LSC regs: 45 CFR §1626	Examples of acceptable documents
REFUGEE	INA § 207, 8 USC § 1157.	§ 1626.5(c)	or I-688B or I-766 (employment authorization document) coded 8 CFR § 274a.12(c)(9) (applicant for adjustment), (c)(10) (applicant for suspension or cancellation, (c)(16) (applicant for registry), (c)(21) (S-visa principal or dependent), (c)(20) or (22) (legalization applicant), (c)(24) (LIFE Act legalization applicant), (a)(9) (K-status), (a)(13)(Family Unity), (a)(14) (LIFE Act Family Unity), (a)(15) (V-status), (a)(16) or (c)(25) (T-status) or (c)(8) (asylum applicant). I-94 or passport stamped "refugee" or "§ 207" or I-688B or I-766 coded 8 CFR § 274a.12(a)(3)(refugee) or § 274a.12(a)(4)(paroled as refugee) or I-571 refugee travel document or any verification from INS or other authoritative document.
ASYLEE	INA § 208, 8 USC § 1158.	§ 1626.5(c)	I-94 or passport stamped "asylee" or "§ 208" or an order granting asylum from INS, immigration judge, BIA, or federal court or I-571 refugee travel document or I-688B coded 8 CFR § 274a.12(a)(5)(asylee) or any verification from INS or other authoritative document.
GRANTED WITHHOLDING OR DEFERRAL OF DEPORTATION OR REMOVAL.	INA § 241(b)(3) or former INA § 243(h), 8 USC § 1251(b)(3) or former 8 USC § 1253(H).	§ 1626.5(e)	I-94 stamped "§ 243(h)" or "241(b)(3)" or an order granting withholding or deferral of deportation or removal from INS, immigration judge, BIA, or federal court <i>Also acceptable</i> I-688B coded 8 CFR § 274a.12(a)(10)(granted withholding of deportation or removal) or any verification from INS or other authoritative document.
CONDITIONAL ENTRANT	INA § 203(a)(7), 8 USC § 1153(a)(7).	§ 1626.5(d)	I-94 or passport stamped "conditional entrant" or any verification from INS or other authoritative document.
H-2A AGRICULTURAL WORKER.	INA § 101 (a)(15)(H)(ii); 8 USC § 1101 (a)(15)(ii).	§ 1626.11	I-94 or passport stamped "H-2" or any verification from INS or other authoritative document.
SPECIAL AGRICULTURAL WORKER TEMPORARY RESIDENT.	INA § 210 8 USC § 1160.	§ 1626.10(d)	I-688, 688A, 688B, or 766 indicating issuance under § 210 (or under 8 CFR § 274a.12(a)(2), with other evidence indicating eligibility under INA § 210) or any verification from INS or other authoritative document.

[68 FR 55540, Sept. 26, 2003]

PART 1627—SUBGRANTS AND MEMBERSHIP FEES OR DUES

- Sec.
- 1627.1 Purpose.
- 1627.2 Definitions.
- 1627.3 Requirements for all subgrants.
- 1627.4 Membership fees or dues.
- 1627.5 Contributions.

- 1627.6 Transfers to other recipients.
- 1627.7 Tax sheltered annuities, retirement accounts and pensions.
- 1627.8 Recipient policies, procedures and recordkeeping.

AUTHORITY: 42 U.S.C. 2996e(b)(1), 2996f(a), and 2996g(e); Pub. L. 104-208, 110 Stat 3009; Pub. L. 104-134, 110 Stat 1321.

§ 1627.1

SOURCE: 48 FR 54209, Nov. 30, 1983, unless otherwise noted.

§ 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) *Subrecipient* shall mean any entity that accepts Corporation funds from a recipient under a grant contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient's programmatic activities. 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 or such activities 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.

45 CFR Ch. XVI (10-1-07 Edition)

(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) *Membership fees or dues* as used in this part means payments to an organization on behalf of a program or individual to be a member thereof, or to acquire voting or participatory rights therein.

[48 FR 54209, Nov. 30, 1983, as amended at 61 FR 45754, Aug. 29, 1996; 62 FR 19418, Apr. 21, 1997]

§ 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.

(4) Any subgrant which is a continuation of a previous subgrant and which expires before March 1, 1984 may be extended until March 1, 1984, if a new subgrant agreement is submitted for approval to the Corporation by January 15, 1984. In the event the Corporation refuses to allow the renewal of any such submitted agreement, the recipient shall be permitted to allow the subrecipient 60 days' funding to close out the subgrant activities.

(b)(1) A subgrant may not be for a period longer than one year, and all funds

Legal Services Corporation

§ 1627.6

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.

(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 subrecipient 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.

[48 FR 54209, Nov. 30, 1983, as amended at 49 FR 1703, Jan. 13, 1984]

§ 1627.4 Membership fees or dues.

(a) LSC funds may not be used to pay membership fees or dues to any private or nonprofit organization, whether on behalf of a recipient or an individual.

(b) Paragraph (a) of this section does not apply to the payment of membership fees or dues mandated by a governmental organization to engage in a profession, or to the payment of membership fees or dues from non-LSC funds.

[62 FR 19418, Apr. 21, 1997]

§ 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 §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 recipient. The recipient shall either submit the relevant part of this audit with its next annual audit or, if an audit has been 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 subrecipient directly responsible for any disallowed expenditures of subgrant funds. Thus, the Corporation may recover all of the disallowed costs from either recipient 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

§ 1627.7

fees and dues shall be accounted for and included in the annual audit of the recipient receiving these funds as Corporation funds.

§ 1627.7 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.

[62 FR 19418, Apr. 21, 1997]

§ 1627.8 Recipient policies, procedures and recordkeeping.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

[62 FR 19418, Apr. 21, 1997]

PART 1628—RECIPIENT FUND BALANCES

Sec.
1628.1 Purpose.
1628.2 Definitions.
1628.3 Policy.
1628.4 Procedures.
1628.5 Fund balance deficits.

AUTHORITY: 42 U.S.C. 2996e(b)(1)(A), 2996f (a)(3).

SOURCE: 65 FR 66642, Nov. 7, 2000, unless otherwise noted.

§ 1628.1 Purpose

The purpose of this part is to set out the Corporation's policies and procedures applicable to recipient fund balances. The Corporation's fund balance policies are intended to ensure the timely expenditure of LSC funds for the effective and economical provision of high quality legal assistance to eligible clients.

§ 1628.2 Definitions.

(a) *Excess fund balance* means a recipient's LSC fund balance that exceeds the amount a recipient is permitted to retain under this part.

(b) *LSC support* means the sum of:

(1) The amount of financial assistance awarded by the Corporation to the

45 CFR Ch. XVI (10–1–07 Edition)

recipient for the fiscal year included in the recipient's annual audited financial statement, not including one-time and special purpose grants; and

(2) Any LSC derivative income, as defined in § 1630.2(c), earned by the recipient for the fiscal year included in the recipient's annual audited financial statement, not including derivative income from one-time and special purpose grants.

(c) The *LSC fund balance* is the excess of LSC support plus the prior year carryover amount over expenditures of LSC funds (including capital acquisitions), as each is reported in the recipient's annual financial statements.

(d) The *fund balance percentage* is the amount of the LSC fund balance expressed as a percentage of the recipient's LSC support.

(e) *Recipient*, as used in this part, means any grantee or contractor receiving financial assistance from the Corporation under section 1006(a)(1)(A) of the LSC Act.

§ 1628.3 Policy.

(a) Recipients are permitted to retain from one fiscal year to the next LSC fund balances up to 10% of their LSC support.

(b) Recipients may request a waiver to retain a fund balance up to a maximum of 25% of their LSC support for special circumstances.

(c) Recipients may request a waiver to retain a fund balance in excess of 25% of a recipient's LSC support only for the following extraordinary and compelling circumstances when the recipient receives an insurance reimbursement, the proceeds from the sale of real property, or a payment from a lawsuit in which the recipient was a party.

(d) A waiver pursuant to paragraph (b) or (c) of this section may be granted at the discretion of the Corporation pursuant to the criteria set out in § 1628.4(d).

(e) In the absence of a waiver, a fund balance in excess of 10% of LSC support shall be repaid to the Corporation. If a waiver of the 10% ceiling is granted, any fund balance in excess of the amount permitted to be retained shall be repaid to the Corporation.