

appropriations rider has contained restrictions on recipient activities that exceeded those in the Legal Services Corporation (LSC) Act. Recipients could spend on newly prohibited activities money left over from prior years as long as that money came from a year in which Congress had not prohibited the activity. One result of this legal anomaly was that recipients commonly stockpiled funds from prior years. When Congress passed Pub. L. 99-180 last winter it gave clear indication that this practice was to cease. This rule, in conjunction with the provisions of the *Audit Guide for Recipients and Auditors*, is intended to carry out the intent of Congress. It amends LSC regulations in two respects.

First, part 1600 is amended by the addition of a definition of "control", a term that is used both in new part 1631 and in section 7 of Chapter 1 of the Audit Guide. In the past, certain recipients have sought to shield LSC funds from oversight by the Corporation and to evade the restrictions Congress imposed on such funds by awarding them to mirror corporations or other related organizations. The purpose of this definition is to ensure that recipients do not evade LSC oversight by shifting funds to other organizations over which recipients have substantial control. This definition recognizes that control can exist without being directly exercised. Control exists where arm's-length transactions between two organizations are impossible because of the ability of one organization to determine or influence the management or policies of the other. The definition thus focuses not only on evidence of technical relatedness, such as common directors, but on the real ability of one organization to influence another.

Second, a new Part 1631 entitled "Expenditure of Grant Funds" is created to implement the action of Congress. Section 1631.1, the operative provision, requires recipients to expend all LSC funds in accordance with the restrictions and provisions of Pub. L. 99-180. The term "LSC funds" covers all funds derived from the Corporation. It includes income from LSC funds as well as LSC funds held by mirror corporations or other controlled organizations. The only exception to § 1631.1 is that recipients may spend funds for the continued representation of aliens in cases where representation commenced prior to January 1, 1983, or where the Corporation approves the representation. Section 1631.2 sets up a procedure under which a recipient may apply for waiver of the restrictions contained in § 1630.1. Paragraph (a)

LEGAL SERVICES CORPORATION

45 CFR Parts 1600 and 1631

Expenditure of Grant Funds

AGENCY: Legal Services Corporation.

ACTION: Final rule; amendment.

SUMMARY: On February 20, 1986, the Corporation published in the Federal Register a proposed new rule on the expenditure of grant funds. After carefully considering comments received, the Board of Directors on May 23, 1986, approved an amended version of this proposal. Under the new rule recipients must expend all funds derived from the Corporation in accordance with the restrictions and provisions of Pub. L. 99-180 of December 13, 1985, unless they obtain a waiver from the Corporation.

EFFECTIVE DATE: August 8, 1986.

FOR FURTHER INFORMATION CONTACT: Michael J. Coster, Comptroller, 400 Virginia Avenue SW., Washington, DC 20024-2751, (202) 863-1820.

SUPPLEMENTARY INFORMATION: This rule responds to concerns that certain activities, such as grassroots lobbying, which Congress restricted in 1982, 1983, 1984, and 1985 appropriations measures would be continued into 1986 and beyond with pre-1982 carry-over funds. In the last few years each

provides for waivers in cases of alien representation. Paragraph (b) requires programs seeking waiver to document for the Corporation their efforts to dispose of cases involving ineligible aliens. Recipients may not spend restricted funds to complete alien cases until they shall have received waiver.

List of Subjects

45 CFR Part 1600

Legal Services.

45 CFR Part 1631

Aliens, Grant programs—Legal Services.

For the reasons stated in the preamble, 45 CFR Part 1600 is amended and new Part 1631 is added as follows:

PART 1600—[AMENDED]

1. The authority citation for Part 1600 is revised to read as follows:

(42 U.S.C. 2996)

2. Section 1600.1 is amended by inserting the following definition alphabetically as follows:

§ 1600.1 Definitions.

* * * * *

"Control" means the direct or indirect ability to determine the direction of management and policies or to influence the management or operating policies of another organization to the extent that an arm's-length transaction may not be achieved.

* * * * *

3. New Part 1631 is added as follows:

PART 1631—EXPENDITURE OF GRANT FUNDS

Sec.

1631.1 Policy.

1631.2 Application and waiver.

Authority: 42 U.S.C. 2996e(b)(1)(A), 2996f(a)(3); Pub. L. 99-190, 99 Stat. 1185; Pub. L. 99-180, 99 Stat. 1136.

§ 1631.1 Policy.

No Legal Services Corporation funds, including income derived therefrom and those LSC funds held by organizations which control, are controlled by, or are subject to common control with, a recipient or subrecipient, a group of recipients and/or subrecipients, or agents or employees of such organizations shall be expended, unless such funds are expended in accordance with all of the restrictions and provisions of Pub. L. 99-180 of December 13, 1985, except that such funds may be

expended for the continued representation of aliens prohibited by said Public Law where such representation commenced prior to January 1, 1983, or as approved by the Corporation.

§ 1631.2 Application and waiver.

(a) The Corporation may grant a waiver of the restrictions contained in this Part to enable a program to complete representation in cases which commenced prior to January 1, 1986.

(b) Programs seeking a waiver pursuant to paragraph (a) of this section must submit documentation to the Corporation detailing their efforts to dispose of such cases in accordance with the procedures required in § 1626.6(a) (1), (2) and (3), and receive Corporation approval to expend funds for completion of the affected cases.

Dated: July 3, 1986.

John H. Bayly, Jr.,

General Counsel.

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