

about case acceptance, must sign a simple agreement developed by the recipient which indicates that the signatory:

- (a) Has read and is familiar with the priorities of the recipient;
- (b) Has read and is familiar with the definition of an emergency situation and the procedures for dealing with an emergency that have been adopted by the recipient; and
- (c) Will not undertake any case or matter for the recipient that is not a priority or an emergency.

#### § 1620.7 Reporting.

(a) The recipient shall report to the recipient's governing body on a quarterly basis information on all emergency cases or matters undertaken that were not within the recipient's priorities, and shall include a rationale for undertaking each such case or matter.

(b) The recipient shall report annually to the Corporation, on a form provided by the Corporation, information on all emergency cases or matters undertaken that were not within the recipient's priorities.

(c) The recipient shall submit to the Corporation and make available to the public an annual report summarizing the review of priorities; the date of the most recent appraisal; the timetable for the future appraisal of needs and evaluation of priorities; mechanisms which will be utilized to ensure effective client participation in priority-setting; and any changes in priorities.

Dated: August 20, 1996.

Suzanne B. Glasow,  
Senior Counsel for Operations and  
Regulations.

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## 45 CFR Part 1626

### Restrictions on Legal Assistance to Aliens

**AGENCY:** Legal Services Corporation.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This interim rule completely revises the Legal Services Corporation's ("LSC" or "Corporation") regulation on the provision of legal assistance to aliens. The revisions are intended to implement a new restriction contained in the Corporation's FY 1996 appropriations act prohibiting LSC-funded recipients from providing legal assistance to ineligible aliens, regardless of the source of funds used to finance the legal assistance. Although this rule

is effective upon publication, the Corporation solicits public comment on the interim rule in anticipation of adoption of a final rule at a later date.

**DATES:** The interim rule is effective on August 29, 1996. Comments must be submitted on or before October 28, 1996.

**ADDRESSES:** Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First Street, NE., 11th Floor, Washington, DC 20002-4250.

**FOR FURTHER INFORMATION CONTACT:** Victor M. Fortuno, General Counsel, at (202) 336-8910.

**SUPPLEMENTARY INFORMATION:** Section 504(a)(11) of the Legal Services Corporation's ("LSC" or "Corporation") appropriations act for Fiscal Year 1996, Pub. L. 104-134, 110 Stat. 1321 (1996), prohibits the Corporation from providing funds to any person or entity ("recipient") that provides legal assistance to ineligible aliens. The current rule, which expressly allows recipients to use their non-LSC funds to provide legal assistance to ineligible aliens, is inconsistent with § 504(a)(11), which effectively restricts a recipient's non-LSC funds to the same degree it restricts LSC funds.

On May 19, 1996, the Operations and Regulations Committee ("Committee") of the Corporation's Board of Directors ("Board") requested the LSC staff to prepare an interim rule to implement the new restriction. The Committee held public hearings on staff proposals on July 9 and 19, and the Board adopted this interim rule on July 20 for publication in the Federal Register. The Committee recommended and the Board agreed to publish this rule as an interim rule. An interim rule is necessary in order to provide prompt and critically necessary guidance to LSC recipients on legislation which is already effective and carries strong penalties for noncompliance. Because of the great need for guidance on how to comply with substantially revised legislative requirements, prior notice and public comment are impracticable, unnecessary, and contrary to the public interest. See 5 U.S.C. 553(b)(3)(B) and 553(d)(3). Accordingly, this rule is effective upon publication.

However, the Corporation solicits public comment on the interim rule for review and consideration by the Corporation. After receipt of written public comment, the Committee intends to hold public hearings to discuss the written comments and to hear oral comments. It is anticipated that a final rule will be issued that will supersede this interim rule.

This rule completely revises the prior rule. In general, the revisions implement section 504(a)(11) of the Corporation's FY 1996 appropriations act, which prohibits LSC-funded recipients from providing legal assistance to ineligible aliens.

A section-by-section discussion of this interim rule is provided below.

#### Section 1626.1 Purpose

This section is revised to ensure that recipients refrain from providing legal assistance to ineligible aliens. In addition, language has been deleted from the prior rule that limited the requirements of the rule to LSC funds. It continues to be a purpose of this rule to assist recipients in determining the eligibility of persons seeking legal assistance. This rule deletes reference to the confidentiality of client records. Confidentiality issues will be dealt with separately when the Corporation issues regulations generally dealing with access to client records.

#### Section 1626.2 Definitions

The definitions of "eligible alien" and "ineligible alien" have been changed but the changes do not alter the substantive meaning of the terms. They are intended to simplify the definitions and to delete references to outdated statutory authority.

#### Section 1626.3 Prohibition

This section sets out the rule's general prohibition against the provision of legal assistance to ineligible aliens. All references that limit the prohibition to LSC funds have been deleted. In addition, since the prior rule's language was confusing, the prohibition has been restated more directly and simply. Aside from expanding the prohibition to non-LSC funds, there is no substantive change of meaning intended. Accordingly, the definition of "prohibited legal assistance 'for' an ineligible alien" has been deleted, because it simply means legal assistance to an ineligible alien and that is now clear in the prohibition.

The definition of "prohibited legal assistance 'on behalf of' an ineligible alien" has not been deleted or revised. This definition clarifies that recipients may not become involved in the provision of legal services that would benefit an ineligible alien by naming as the client an eligible alien whose distinct legal rights or interest are not affected by the representation.

Finally, the title of the section has been shortened.

#### *Section 1626.4 Alien Status and Eligibility*

This section sets out the categories of aliens eligible for legal services. The paragraphs have been redesignated, and a new paragraph (e) has been added to cross-reference other sections of the rule which designate other categories or types of aliens eligible for legal assistance.

#### *Section 1626.5 Verification of Citizenship and Eligible Alien Status*

No revisions have been made to this section. However, if necessary, the Corporation will update this section to reflect the current documents used by the INS to verify categories of aliens. The Corporation requests comments on whether the types of documents listed in this section need revision or updating and whether there are other documents that should be included in the rule.

#### *Section 1626.6 Change in Circumstances*

The prior § 1626.6 has been deleted because it allowed the use of non-LSC funds for pending cases involving representation of ineligible aliens. Recipients may no longer use non-LSC funds for ineligible aliens, and the underlying statutory prohibition provides no basis for a waiver of the prohibition. The new § 1626.6 is a revised version of the prior § 1626.7. This new section reflects the new statutory restriction that recipients may not provide legal assistance to ineligible aliens with non-LSC funds. It provides that, if a recipient learns that an eligible alien client becomes ineligible through a change in circumstances, the recipient must discontinue representation of the client consistent with the attorney's professional responsibilities.

#### *Section 1626.7 Special Eligibility Questions*

This section was § 1626.10 in the prior rule. Only technical changes have been made to this section.

#### *Section 1626.8 H-2 Agricultural Workers*

This section was numbered § 1626.11 in the prior rule. Only technical changes have been made to this section.

#### *Section 1626.9 Replenishment Agricultural Workers*

This section was numbered § 1626.12 in the prior rule. It is redesignated as § 1626.9.

#### *Section 1626.10 Recipient Policies, Procedures and Recordkeeping*

This new section requires that recipient governing bodies establish

written policies and procedures that will guide recipient staff to ensure compliance with this rule. It also requires the recipient to maintain records sufficient to document compliance with this part.

#### List of Subjects in 45 CFR Part 1626

Aliens, Grant programs—law, Legal services, Migrant labor, Reporting and record keeping requirements.

For reasons set forth in the preamble, 45 CFR part 1626 is revised to read as follows:

### **PART 1626—RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS**

#### Sec.

- 1626.1 Purpose.
- 1626.2 Definitions.
- 1626.3 Prohibition.
- 1626.4 Alien status and eligibility.
- 1626.5 Verification of citizenship and eligible alien status.
- 1626.6 Change in circumstances.
- 1626.7 Special eligibility questions.
- 1626.8 H-2 agricultural workers.
- 1626.9 Replenishment agricultural workers.
- 1626.10 Recipient policies, procedures and recordkeeping.

Authority: Pub. L. 104-134, 110 Stat. 1321.

#### **§ 1626.1 Purpose.**

This part prohibits recipients from providing legal assistance for or on behalf of ineligible aliens. It is also designed to assist recipients in determining the eligibility and immigration status of persons who seek legal assistance and to provide guidelines for referral of ineligible persons.

#### **§ 1626.2 Definitions.**

(a) Eligible alien means a person who is not a U.S. citizen but who meets the requirements of § 1626.4.

(b) Ineligible alien means a person who is not a U.S. citizen and who does not meet the requirements of § 1626.4.

(c) Rejected refers to an application for adjustment of status that has been denied by the Immigration and Naturalization Service (INS) and is not subject to further administrative appeal.

(d) To provide legal assistance on behalf of an ineligible alien is to render legal assistance to an eligible client which benefits an ineligible alien and does not affect a specific legal right or interest of the eligible client.

#### **§ 1626.3 Prohibition.**

Recipients may not provide legal services for or on behalf of an ineligible alien beyond normal intake and referral services.

#### **§ 1626.4 Alien status and eligibility.**

Subject to all other eligibility requirements and restrictions of the LSC

Act and regulations and other applicable law, a recipient may provide legal assistance to an alien who is present in the United States and who is within one of the following categories:

(a) An alien lawfully admitted for permanent residence as an immigrant as defined by section 1101(a)(20) of the Immigration and Nationality Act (INA) (8 U.S.C. 1101(a)(20));

(b) An alien who is either married to a United States citizen or is a parent or an unmarried child under the age of 21 of such a citizen and who has filed an application for adjustment of status to permanent resident under the Immigration and Nationality Act, and such application has not been rejected;

(c) An alien who is lawfully present in the United States pursuant to an admission under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157 relating to refugee admissions) or who has been granted asylum by the Attorney General under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), or who is lawfully present in the United States as a result of being granted conditional entry pursuant to section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic natural calamity;

(d) An alien who is lawfully present in the United States as a result of the Attorney General's withholding of deportation pursuant to section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)); or

(e) An alien who meets the requirements of § 1626.7, 1626.8 or 1626.9.

#### **§ 1626.5 Verification of citizenship and eligible alien status.**

(a) A citizen seeking representation shall attest in writing in a form approved by the Corporation to the fact of his or her United States citizenship. Verification of citizenship shall not be required unless a recipient has reason to doubt that a person is a United States citizen.

(1) If verification is required, a recipient shall accept the original or a certified copy of any of the following documents as evidence of citizenship:

- (i) United States passport;
- (ii) Birth certificate;
- (iii) Naturalization certificate;
- (iv) United States Citizenship Identification Card (INS Form 1-197); and

(v) Baptismal certificate showing place of birth within the United States

and date of baptism within two months after birth.

(2) If a person is unable to produce any of the documents in paragraph (a)(1) of this section, he or she may submit a notarized statement signed by a third party, who shall not be an employee of the recipient and who can produce proof of that party's own United States citizenship, that the person seeking legal assistance is a United States citizen.

(b) An alien seeking representation shall submit appropriate documents to verify eligibility. A recipient shall accept originals of any of the following documents as proof of eligibility:

(1) An alien in the category specified in § 1626.4(a) shall present an Alien Registration Receipt Card (INS Forms 1-151, or 1-551), a Temporary Evidence of Lawful Admission for Permanent Residence form (INS Form 1-181B), or a valid passport and immigration visa.

(2) An alien in the category specified in § 1626.4(b) shall present the following documents:

(i) The fee receipt issued to the alien by the Immigration and Naturalization Service (INS) at the time that the Application for Status as Permanent Resident (INS Form 1-485) was filed; a copy of the Application for Status as Permanent Resident accompanied by a notarized statement signed by the alien that such form was filed with INS; a copy of the Application for Immigrant Visa & Alien Registration (Department of State Form FS-510) accompanied by a notarized statement signed by the alien that such form was filed with a consulate office; or a copy of the Application for Suspension of Deportation (INS Form 1-256A) accompanied by a notarized statement signed by the alien that such form was filed with INS; and

(ii) A copy of the alien's marriage certificate accompanied by proof of the spouse's U.S. citizenship; a copy of the United States birth certificate, baptismal certificate, adoption decree or other documents demonstrating that the alien is the parent of a United States citizen under the age of 21; a copy of the alien's birth certificate, baptismal certificate, adoption decree, or other documents demonstrating that the alien is a child under the age of 21, accompanied by proof that the alien's parent is a United States citizen; or in lieu of the above, a copy of the Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa (INS Form 1-130) containing information that demonstrates that the alien is related to such a United States citizen spouse, parent, or child, accompanied by a notarized statement that such form was filed with INS.

(3) An alien in the category specified in § 1626.4(c) shall present an Arrival-Departure Record (INS Form 1-94) marked "section 207" or "Refugee" (if claiming refugee status), "section 208" or "Asylum" (if claiming asylum status), or "section 203(a)(7)" or "conditional entry" (if claiming conditional entrant status).

(4) An alien in the category specified in § 1626.4(d) shall present an Arrival-Departure Record (INS Form 1-94) marked "section 243(h)," or a court order or letter signed by an immigration judge stating that the Attorney General is withholding deportation of the alien.

(5) A recipient may also accept any other authoritative document issued by INS that provides evidence of alien status for the categories of aliens listed in paragraph (b) of this section.

(c) A Temporary Resident Card (INS Form 1-688) shall be considered evidence of eligible alien status in the case of a Special Agricultural Worker. See § 1626.7(b). This form shall not be considered evidence of eligible alien status in the case of an alien who has obtained an adjustment in status under the General Amnesty provisions of Immigration Reform and Control Act (IRCA), 8 U.S.C. 1255a, unless the alien can qualify independently under another exception to the general restriction as stated in § 1624.4(a), (b), (c) or (d).

(d) A recipient shall upon request furnish each person seeking legal assistance with a list of the documents described in this section. Persons applying for legal assistance are responsible for producing the appropriate documents to verify eligibility.

(e) In an emergency, legal services may be provided prior to compliance with all the requirements of § 1626.5(a) through (d) if:

(1) It is not feasible for a citizen or an alien to come to the recipient's office or otherwise physically transmit documentation to the recipient before commencement of representation, such required information as can be obtained orally shall be recorded by the recipient and written documentation shall be submitted as soon as possible;

(2) An alien is physically present, but cannot produce required documentation, he or she shall make a written statement identifying the category listed in § 1626.4 under which he or she claims eligibility and the documents that will be produced to verify that status; this documentation shall be submitted as soon as possible;

(3) The recipient adheres strictly to the same criteria for emergency assistance used in their general

determination of priorities and uses the procedures of § 1626.5(e) only in cases meeting these criteria; and

(4) The recipient informs clients accepted under these procedures that only limited emergency legal assistance may be provided them without satisfactory documentation and that failure or inability to produce satisfactory documentation will compel the recipient to discontinue representation consistent with the recipient's professional responsibilities as soon as the emergency no longer exists.

(f) No written verification is required when the only service provided for an eligible alien or citizen is brief advice and consultation by telephone. The term "brief advice" is limited to advice provided by telephone and does not include a continuous representation of a client.

#### § 1626.6 Change in circumstances.

If, to the knowledge of the recipient, a client who was an eligible alien becomes ineligible through a change in circumstances, a recipient must discontinue representation of the client consistent with the applicable rules of professional responsibility.

#### § 1626.7 Special eligibility questions.

(a) The alien restriction in § 1626.3 is not applicable to the following:

(1) Citizens of the following Pacific Island entities:

- (i) Commonwealth of the Northern Marianas;
- (ii) Republic of Palau;
- (iii) Federated States of Micronesia;
- (iv) Republic of the Marshall Islands;
- (2) All Canadian-born American Indians at least 50% Indian by blood;
- (3) Members of the Texas Band of Kickapoo.

(b) An alien who qualified as a special agricultural worker and whose status is adjusted to that of temporary resident alien under the provisions of IRCA is considered a permanent resident alien for all purposes except immigration under the provisions of section 302 of Pub. L. 99-603, 100 Stat. 3422, 8 U.S.C. 1160(g). Since the status of these aliens is that of permanent resident alien under section 1101(a)(20) of Title 8, these workers may be provided legal assistance. These workers are ineligible for legal assistance in order to obtain the adjustment of status of temporary resident under IRCA, but are eligible for legal assistance after the application for adjustment of status to that of temporary resident has been filed, as long as such application has not been rejected and the applicant is eligible for services under § 1626.4(b).

**§ 1626.8 H-2 Agricultural workers.**

(a) Nonimmigrant agricultural workers admitted under the provisions of 8 U.S.C. 1101(a)(15)(h)(ii), commonly called H-2 workers, are considered to be aliens described in 8 U.S.C. 1101(a)(20) and thus, if otherwise eligible, may be provided legal assistance regarding the matters specified in section 305 of the Immigration Reform and Control Act of 1986, Pub. L. 99-603, Stat. 3434, 8 U.S.C. 1101 note.

(b) The following matters which arise under the provisions of the worker's specific employment contract may be the subject of legal assistance by an LSC-funded program:

- (1) Wages;
- (2) Housing;
- (3) Transportation; and
- (4) Other employment rights as

provided in the worker's specific contract under which the nonimmigrant worker was admitted.

**§ 1626.9 Replenishment agricultural workers.**

Aliens who acquire the status of aliens lawfully admitted for temporary residence as replenishment agricultural workers under section 210A(c) of the Immigration and Nationality Act, such status not having changed, are considered to be aliens described in 8 U.S.C. 1101(a)(20) and thus may receive legal assistance, if otherwise eligible.

**§ 1626.10 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.

Dated: August 20, 1996.

Suzanne B. Glasow,  
Senior Counsel for Operations & Regulations.  
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**45 CFR Part 1627****Subgrants and Dues**

**AGENCY:** Legal Services Corporation.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This interim rule amends the fees and dues provisions of the Legal Services Corporation's ("Corporation" or "LSC") regulation concerning subgrants, fees and dues. The revisions are intended to implement a restriction contained in the Corporation's FY 1996 appropriations act which prohibits the use of LSC funds to pay membership

dues to any private or nonprofit organization. Although this rule is effective upon publication, the Corporation also solicits public comment in anticipation of adoption of a final rule at a later time. The provisions of the rule regarding subgrants have not been revised.

**DATES:** This interim rule is effective August 29, 1996. Comments must be submitted on or before October 28, 1996.

**ADDRESSES:** Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First Street NE., 11th Floor, Washington, DC 20002-4250.

**FOR FURTHER INFORMATION CONTACT:** Victor M. Fortuno, General Counsel, (202) 336-8910.

**SUPPLEMENTARY INFORMATION:** On May 19, 1996, the Operations and Regulations Committee ("Committee") of the LSC Board of Directors ("Board") requested the LSC staff to prepare an interim rule to implement § 505, a restriction in the Corporation's FY1996 appropriations act, Pub. L. 104-134, 110 Stat. 1321 (1996), which prohibits use of LSC funds to pay dues to any private or nonprofit organization. The Committee held public hearings on July 9 and 19, and the Board adopted this interim rule on July 20 for publication in the Federal Register. The Committee recommended and the Board agreed to publish this rule as an interim rule. An interim rule is necessary in order to provide prompt and critically necessary guidance to LSC recipients on legislation which is already effective and carries strong penalties for noncompliance. Because of the great need for guidance on how to comply with substantially revised legislative requirements, prior notice and public comment are impracticable, unnecessary, and contrary to the public interest. See 5 U.S.C. 553(b)(3)(B) and 553(d)(3). Accordingly, this rule is effective upon publication.

However, the Corporation also solicits public comment on the interim rule for review and consideration by the Committee. After receipt of public comment, the Committee intends to hold public hearings to discuss the written comments and to hear oral comments. It is anticipated that a final rule will be issued that will supersede this interim rule.

This interim rule revises only provisions relating to "fees and dues": §§ 1627.2, 1627.4, 1627.7, and 1627.8. In § 1627.2, the definition of "fees and dues" has been replaced by a definition of "dues." Section 1627.4 has been completely revised. Section 1627.7 has been deleted, because it duplicates 45

CFR § 1612.9. Section 1627.8 of the prior rule has been renumbered as § 1627.7, and a new § 1627.8 is added regarding policies, procedures and recordkeeping. Also, the title of this rule has been revised to "Subgrants and dues."

Generally, the revisions prohibit any use of LSC funds to pay membership dues to any private or nonprofit organization. The prior provisions allowed recipients to pay such dues, subject to certain limitations as to type of organization and amount of dues. Payment of dues with non-LSC funds continues to be permitted.

Finally, §§ 1627.1, 1627.3, 1627.5 and 1627.6 are not revised or reprinted here, because they deal exclusively with subgrants.

A section-by-section discussion of this interim rule is provided below.

**Section 1627.2 Definitions**

The definition of "Fees and dues" in § 1627.2(c) is revised and retitled "Dues." Only "dues" is defined. "Fees" is not separately defined, because the statutory provision in § 505 of the Corporation's appropriations act refers only to "dues" and there is no statutory restriction on "fees." Moreover, even though the prior rule defined "fees and dues" together, the definition only related to "dues." Consequently, although the definition in the revised rule is basically the same as in the prior rule, it omits the term "fees."

Dues are defined as payments for membership or to acquire voting or participatory rights in an organization. This definition does not include payments for training sessions, goods, research materials and other such services. LSC funds may be expended for such services, provided the expenditures are made in accordance with applicable regulations, including 45 CFR part 1630.

**Section 1627.4 Dues**

This section is entirely revised to prohibit any use of LSC funds for payment of dues to private or nonprofit organizations. This prohibition includes payment of dues for employees and volunteer attorneys to voluntary bar associations that are private or nonprofit organizations.

The prohibition does not extend to the payment of dues to governmental bodies. Thus, payment of dues to a State Supreme Court or to a bar association acting as an administrative arm of the court or in some other governmental capacity in collecting dues that are a requirement for an attorney to practice in that State is deemed to be payment