

§ 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

of dues to a governmental body, and is not prohibited by this part.

Finally, this section expressly states that these new limitations on payment of dues apply only to the use of LSC funds.

Several provisions in the prior rule have been deleted because they are inconsistent with the new statutory prohibition. Thus, all references to the circumstances under which recipients could use LSC funds to pay for dues, and all references to procedures required of recipients before they could expend funds for certain payments of dues, are no longer applicable, because the new legislation prohibits the use of any LSC funds to pay dues. Thus, the provisions are no longer relevant.

Section 1627.7 Tax Sheltered Annuities, Retirement Accounts and Pensions

Section 1627.8 of the prior rule is now renumbered as § 1627.7.

Section 1627.8 Recipient Policies, Procedures and Recordkeeping

This new section requires recipients to establish policies and procedures and to maintain records to document compliance with the requirements of this part.

List of subjects in 45 CFR part 1627

Grant programs—law, Legal services.

For reasons set forth in the preamble, 45 CFR part 1627 is amended as follows:

PART 1627—SUBGRANTS AND DUES

1. The heading of part 1627 is revised to read as set forth above.

2. The authority citation for part 1627 is revised to read as follows:

Authority: Pub. L. 104–134, 110 Stat. 1321 42 U.S.C. 2996e(b)(1), 2996f(a), and 2996g(e).

3. Section 1627.2(c) is revised to read as follows:

§ 1627.2 Definitions.

* * * * *

(c) *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.

4. Section 1627.4 is revised to read as follows:

§ 1627.4 Dues.

(a) Corporation funds may not be used to pay 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 dues mandated as a requirement of practice by a governmental organization or to the payment of dues from non-LSC funds.

5. Section 1627.7 is revised to read as follows:

§ 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.

6. Section 1627.8 is revised to read as follows:

§ 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.

Dated: August 20, 1996.

Suzanne B. Glasow,
Senior Counsel for Operations & Regulations.
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45 CFR Part 1637

Representation of Prisoners

AGENCY: Legal Services Corporation.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements a restriction in the Legal Services Corporation's ("LSC" or "Corporation") FY 1996 appropriations act which prohibits recipients from participating in any litigation on behalf of prisoners. Although this interim rule is effective upon publication, the Corporation also solicits public comment on the interim rule in anticipation of adoption of a final rule at a later time.

DATES: This 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 St. 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 § 504(a)(15), a restriction in the Corporation's FY 1996 appropriations act, Public Law 104–134, 110 Stat. 1321 (1996), which

prohibits participation of LSC recipients in any litigation on behalf of a person incarcerated in a Federal, State or local prison. The Committee held 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 which 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 which will supersede this interim rule.

Generally, this rule prohibits any recipient involvement in litigation on behalf of persons who are incarcerated in a Federal, State or local prison.

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

Section 1637.1 Purpose

This rule is intended to ensure that LSC recipients do not litigate on behalf of any person who is incarcerated in a Federal, State or local prison.

Section 1637.2 Definitions

The statutory restriction prohibits LSC recipients from participating in any litigation on behalf of a person who is incarcerated in a Federal, State or local prison. To provide guidance regarding the reach of this restriction, the definition section defines the terms "incarcerated" and "Federal, State or local prison."

"Incarcerated" is defined as the involuntary physical restraint in a facility dedicated to such restraint of a person who has been arrested for or convicted of a crime. The term "Federal, State or local prison" refers to any facility maintained by a governmental authority for purposes of housing persons who are incarcerated.

The definition includes pre-trial detainees even though they are persons who have not been convicted of a crime.