

## ALIEN ELIGIBILITY FOR REPRESENTATION BY LSC PROGRAMS—Continued

Alien category	Immigration Act (INA)	LSC Regs 45 CFR § 1626	Examples of acceptable documents
GRANTING WITH-HOLDING OF DEPORTATION.	INA § 243(h) 8 USC § 1253(h) (as of 4/1/97, repealed and redesignated INA § 241(b)(3), "Restriction on Removal").	§ 1626.5(e)	I-94 stamped "§243(h)" or order granting withholding of deportation from INS, immigration court, BIA, or federal court or I-688B or I-766 coded 8 CFR § 274a.12(a)(10)(withholding of deportation) or I-571 refugee travel document; or any computerized verification from INS or other authoritative document.
CONDITIONAL ENTRANT.	INA § 203(a)(7) (prior to 4/1/80), 8 USC § 1153(a)(7).	§ 1626.5(d)	I-94 or passport stamped "conditional entrant" or any computerized verification from INS or other authoritative document.
AGRICULTURAL WORKER.	INA § 101(a)(15)(H)(II), 8 USC § 1101(a)(15)(H)(II).	§ 1626.11	I-94 or passport stamped "H-2A" or any computerized verification from INS or other authoritative document.
SPECIAL AGRICULTURAL WORKER TEMPORARY RESIDENT.	INA § 210, 8 USC § 1160.	§ 1626.10(d)	I-688, 688A, 688 or 766 indicating issuance under § 210 (or under 8 CFR § 274a.12 (a)(2), with other evidence indicating eligibility under INA § 210). or any computerized verification from INS or other authoritative document.

National Immigration Law Center 3/7/97.

Dated: April 14, 1997.

**Victor M. Fortuno,**

*General Counsel.*

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## LEGAL SERVICES CORPORATION

### 45 CFR Part 1627

#### Subgrants and Membership Fees or Dues

**AGENCY:** Legal Services Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends only 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.

**DATES:** Effective May 21, 1997.

**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 an interim rule

on July 20 for publication in the **Federal Register**. The interim rule was published on Aug. 29, 1996 (61 FR 45753), and the Corporation received 4 timely comments.

After receipt of written public comment, the Committee held public hearings on the interim rule on December 13, 1996, and January 5, 1997. The Committee made a few revisions to the rule and recommended a revised version to the Board for final adoption on January 6, 1997. The Board made additional revisions and adopted this final rule for publication in the **Federal Register**.

The Corporation's FY 1997 appropriations act became effective on October 1, 1996, see Pub. L. 104-208, 110 Stat. 3009. It incorporated by reference the § 505 condition on LSC grants included in the FY 1996 appropriations act that is implemented by this rule. Accordingly, the preamble and text of this rule continue to refer to the applicable section number of the FY 1996 appropriations act.

This final rule revises §§ 1627.2, 1627.4, 1627.7, and 1627.8 of the rule in effect prior to the interim rule ("prior rule"). In § 1627.2, the definition of "fees and dues" has been replaced by a definition of "membership fees or dues." Section 1627.4 has been completely revised. Section 1627.7 has been deleted, because it duplicates the training provisions in 45 CFR § 1612. Section 1627.8 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 membership fees or dues."

Generally, the revisions prohibit any use of LSC funds to pay membership

dues to any private or nonprofit organization. The prior rule 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. Some of the comments urged the Corporation to revise these sections, especially in light of the recent revisions made to 45 CFR Part 1610 on transfers of funds. See § 1610.7, 61 FR 63749 (Dec. 2, 1996). LSC will consider revisions to the rule's subgrant provisions in the near future.

A section-by-section discussion of the revisions is provided below.

#### Section 1627.2 Definitions

The term "Fees and dues" in § 1627.2(c) has been redesignated as "membership fees or dues." The prior rule used the term "fees and dues." The interim rule changed the term to "dues" because the statutory provision in § 505 refers only to "dues" and there is no statutory restriction on "fees" as previously defined in this part. Also, the definition of "fees and dues" was essentially a definition of "dues." Deletion of the word "fees" in the interim rule, however, created the impression that a substantive change was intended. Because no change in meaning was intended, the Board changed the term to "membership fees and dues," a term which the Board believes better illustrates the meaning of the terms used in the prior and interim rule.

The term "membership fees and dues" is 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 Membership Fees or Dues*

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

The prohibition in this final rule, as in the interim rule, does not apply to non-LSC funds and does not extend to the payment of dues to governmental bodies. The comments on these provisions were generally favorable, especially in regard to the provisions allowing payment of dues with LSC funds to bar associations acting in a governmental capacity. Under this rule, 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 membership fees or dues that are a requirement for an attorney to practice in that State, is deemed to be payment of membership fees or dues to a governmental body, and is not prohibited by this part. A few changes have been made to add clarity. Finally, although not included in the text of the rule, the Board has directed that the prohibition not be applied to FY 1995 carryover funds that were used to pay dues prior to the August 29, 1996 publication of the interim rule.

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 fees or dues, and all references to procedures required of recipients before they could expend funds for certain payments of fees or 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, Legal services.

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

**PART 1627—SUBGRANTS AND MEMBERSHIP FEES OR 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:** 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.

- 3.-4. Section 1627.2 is amended by revising paragraph (c) to read as follows:

**§ 1627.2 Definitions.**

\* \* \* \* \*

(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.

5. Section 1627.4 is revised to read as follows:

**§ 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.

6. 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.

7. 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: April 14, 1997.

**Victor M. Fortuno,**  
General Counsel.

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**LEGAL SERVICES CORPORATION**

**45 CFR Part 1636**

**Client Identity and Statement of Facts**

**AGENCY:** Legal Services Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements a restriction contained in the Legal Services Corporation's ("LSC" or "Corporation") FY 1996 appropriations act that is currently incorporated by reference in the Corporation's FY 1997 appropriations act. The rule requires LSC recipients to identify by name each plaintiff they represent in any litigation. In the case of pre-litigation negotiation, the regulation requires recipients to notify potential defendants of the names of plaintiffs represented by the recipient. The rule also requires that a plaintiff sign a written statement of facts on which the plaintiff's complaint is based before the recipient engages in litigation or before it undertakes pre-litigation negotiations on the plaintiff's behalf.

**DATES:** Effective May 21, 1997.

**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)(8), a restriction in the Corporation's FY 1996 appropriations act which requires LSC recipients to identify the plaintiffs they represent and have the plaintiffs sign written statements of the facts underlying their claims. The Committee held hearings on staff proposals on July 8 and 19, 1996. An interim rule was adopted by the Board on July 20 and was published in the **Federal Register** on August 29, 1996 (61 FR 45740), to be effective immediately. The Corporation received 9 timely comments on the interim rule. The Committee held public hearings to discuss the written comments and to hear oral comments on December 13, 1996, and January 5, 1997, and made revisions to the interim rule. The Board adopted the Committee's recommended version as a final rule on January 6, 1997.