

LEGAL SERVICES CORPORATION**45 CFR Part 1630****Procedures for Resolving Questioned Costs****AGENCY:** Legal Services Corporation.**ACTION:** Proposed rule.

SUMMARY: On August 1, 1985, the Operations and Regulations Committee of the Board of Directors of the Legal Services Corporation began considering a proposed new rule setting forth revised procedures for resolving questioned costs. At the conclusion of the meeting the Committee voted that the proposed regulation be published for comment in the Federal Register with certain changes that had been dictated into the record during the Committee's discussion.

The resolution of questioned costs is currently governed by LSC Instruction 83-8, which became effective on November 23, 1983. The procedure set forth in Instruction 83-8 takes roughly nine months but the actual time that elapses in following through the procedure is frequently much longer because of some of the more cumbersome cases and because of the requirement that the Grants and Budget Unit (GBU) consult with the other offices at the Corporation headquarters before making its determinations.

The proposed Part 1630 is intended to streamline the procedure with regard to questioned costs and to set forth the criteria the Corporation will use in determining whether or not costs are ineligible. The process set forth in the regulation is designed to take a maximum of 210 days or about 7 months. The core of Part 1630 is § 1630.2, the definition section, which includes a definition of an "ineligible cost." The rest of the proposed regulation set forth the four stages at which the Corporation would take action on costs: (1) Determining whether a cost should be questioned (§ 1630.3); (2) determining whether a cost should be disallowed (§ 1630.4); (3) determining how to resolve the disallowed cost (§ 1630.5); and (4) deciding appeals of the resolution of the cost (§ 1630.6). After each but the fourth stage, a recipient would have 30 days to appeal the Corporation's decision. The Corporation would in turn have 45 days to respond to the recipient's appeal. The President would decide an appeal at the fourth stage within 30 days (§ 1630.6).

Currently the staff of the Corporation is working to refine the language in the proposed regulations, and drafts of the proposal will be considered at the September 6, 1985 and October 3, 1985

meetings of the Committee on Operations and Regulations.

DATE: Comments must be received on or before September 30, 1985.

ADDRESS: Comments may be submitted to Office of General Counsel, Legal Services Corporation, 733 Fifteenth Street NW., Room 601, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Acting General Counsel, (202) 272-4010.

SUPPLEMENTARY INFORMATION: On August 1, 1985 the Operations and Regulations Committee of the Board of Directors of the Legal Services Corporation began considering a proposed new rule setting forth revised procedures for resolving questioned costs. At the conclusion of the meeting the Committee voted that the proposed regulation be published for comment in the Federal Register with certain changes that had been dictated into the record during the Committee's discussion.

Resolving questioned costs incurred by recipients falls squarely within the mandate given the Legal Services Corporation to provide economical and effective legal assistance to eligible clients, and to insure compliance with the Legal Services Corporation Act, and the regulations, rules and guidelines promulgated by the Corporation.

The resolution of questioned costs is currently governed by LSC Instruction 83-8, which became effective on November 23, 1983. At present monitoring offices submit recommendations on questioned costs to the Grants and Budget Unit (GBU) of the Office of Field Services (OFS). The manager of GBU then makes a determination on whether or not to disallow the cost. If GBU disallows a cost, the monitoring office must then submit to GBU a recommendation on whether to recover funds from the recipient. GBU makes a decision on this recommendation after consultation with the Director of OFS, with the Audit Division, with the Office of the Comptroller, and with the Office of the General Counsel. The procedure set forth in Instruction 83-8 takes roughly nine months but the actual elapsed time is frequently much longer because of some of the more cumbersome cases and because of the requirement that GBU consult with the other offices at the Corporation headquarters before making its determinations.

The proposed Part 1630 is intended to streamline the procedure with regard to questioned costs and to set forth the criteria the Corporation will use in determining whether or not costs are

ineligible. The process set out in the regulation is designed to take a maximum of 210 days or about 7 months. The core of Part 1630 is § 1630.2, the definition section, which includes a definition of an "ineligible cost." The rest of the proposed regulation sets forth the four stages at which the Corporation would take action on costs: (1) Determining whether a cost should be questioned (§ 1630.3); (2) determining whether a cost should be disallowed (§ 1630.4); (3) determining how to resolve the disallowed cost (§ 1630.5); and (4) deciding appeals of the resolution of the cost (§ 1630.6). After each but the fourth stage, a recipient would have 30 days to appeal the Corporation's decision. The Corporation would in turn have 45 days to respond to the recipient's appeal. The President would decide an appeal at the fourth stage within 30 days (§ 1630.6).

Section 1630.1 states that the purpose of the regulation is to provide a full, fair, impartial, timely and flexible process for reviewing questioned costs. It also distinguishes recovery of questioned costs by the Corporation from termination of financial assistance.

Section 1630.2, the definition section, is the substantive provision of the regulation. It defines four kinds of costs: "questioned costs" (§ 1630.2(a)); "ineligible costs" (§ 1630.2(b)); "allowed costs" (§ 1630.2(c)); and "disallowed costs" (§ 1630.2(d)). "Ineligible costs" are essentially charges to a recipient's funds that the recipient should not have incurred. When the Corporation has reason to believe that a charge may be ineligible, it can be declared a "questioned cost". In resolving questioned costs, the Corporation either allows or disallows the charges to the recipients funds. The operative provision of § 1630.2 is the definition of ineligible costs in paragraph (b). Ineligible costs include charges to recipient's funds that violate the LSC Act or other provision of the law, LSC rules, regulations, or guidelines, or the terms of a recipient's grant or contract agreement; charges that are not adequately supported by documentation or other satisfactory evidence; charges that are unnecessary or unreasonable; consultant contracts in excess of certain amounts; certain large expenditures incurred without the prior written approval of the Corporation; and costs incurred pursuant to subgrants that have not been approved by the Corporation.

Section 1630.3 sets forth the procedure for notifying a recipient that a cost is questioned. The Corporation must notify the recipient in writing stating the dollar amount of the cost and the reasons for

questioning it, the recipient must respond, if it desires to do so, within 30 days and the response must be in writing. Should it fail to respond, the cost will be automatically disallowed. Section 1630.3 also provides that, to obtain relevant information while investigating a questioned cost, the Corporation may contact any party it deems necessary.

Section 1630.4 provides that the Corporation in turn has 45 days to respond after it receives a written response to its notice of questioned costs. It may either allow or disallow the cost or it may inform the recipient that additional time is needed before a decision can be made.

Section 1630.5 sets out the options available to the Corporation once it has disallowed a cost. The usual remedy is for the Corporation to recover the funds in the form either of a cash reimbursement or a reduction in future grant checks. Recovery of funds in these ways may not always be appropriate, however. Therefore the regulation gives a recipient thirty days from the time the Corporation sends it a notice that a cost has been disallowed to respond and show why the Corporation should not use the normal methods of recovering disallowed costs. If the recipient can make the necessary showing, two other options are available: The Corporation may recover less than the total amount of the disallowed cost or it may accept the recipient's demonstration that it has reimbursed its LSC fund from a funding source from which the original expenditure could have been made without violation of section 1010(c) of the Act. The Corporation has 45 days from the time of the recipient's response to determine how to resolve a disallowed cost under this section. Paragraph (c) provides that whenever the Corporation disallows a cost it shall also take steps to prevent the recurrence of such costs. As provided in paragraph (d), recipients will be held responsible for the actions of subrecipients when a disallowed cost arises from expenditures incurred under a subgrant of LSC funds.

Section 1630.6 sets out the process for appealing the resolution of a disallowed cost. Again the recipient has 30 days from the time it receives notice of the Corporation's decision in which to appeal. The President of the Corporation, in turn, has 30 days to issue a decision adopting, modifying or reversing the resolution of the disallowed questioned cost.

Section 1630.7 provides that, if warranted, the Corporation may extend any period of time provided in the regulation.

Section 1630.8 establishes that notice to a recipient means notice to the chairperson of its governing body and to its director.

Currently the staff of the Corporation is working to refine the language in the proposed regulation, and drafts of the proposal will be considered at the September 6, 1985, and October 3, 1985, meetings of the Committee on Operations and Regulations. The Committee has already directed that the staff consider making certain changes. Section 1630.2(b)(5)(i) of the proposal, for instance, requires written approval from the Corporation before a recipient may purchase equipment or non-expendable personal property having a single-item or combined purchase price in excess of \$5,000. At the August 1, 1985 meeting of the Committee, it was suggested that \$5,000 is too low of a ceiling and that staff should determine whether the bulk of the costs that Regional Offices are now questioning fall in the low dollar range, for example between \$5,000 and \$10,000. Should that prove to be the case, the Committee plans to raise the ceiling in order to avoid having a large number of reasonable investments questioned. It was also suggested that staff should delineate the criteria to be used under § 1630.5 in determining how to resolve disallowed costs.

List of Subjects in 45 CFR Part 1630

Legal services, Questioned costs.

For the reasons stated in the preamble, notice is given of consideration by the Committee on Operations and Regulations to propose to add 45 CFR Part 1630 as follows:

PART 1630—PROCEDURES FOR RESOLVING QUESTIONED COSTS

Sec.	Purpose.
1630.1	Definitions.
1630.2	Investigation of questioned costs.
1630.3	Decision process.
1630.4	Resolution of disallowed questioned costs.
1630.5	Appeal process.
1630.6	Time extension.
1630.7	Notice.

Authority: Secs. 1006(b) (1), (2), (3), and (5), 1007(a)(1), 1007(a)(3), 1007(a)(9), 1007(d), 1008(e), 1010(c), 1011 Legal Services Corporation Act of 1974, as amended (42 U.S.C. 2996e(b) (1), (2), (3), and (5), 2996f(a) (1), (3), and (9), 996f(d), 2996g(e), 2996i(c), 2996j).

§ 1630.1 Purpose.

This part is intended to provide a full, fair, impartial, timely and flexible process for the review of questioned costs incurred by recipients of Legal Services Corporation (LSC) grant or

contract funds and to delineate options for the resolution of any costs that may be disallowed as a result of the review. Recovery of questioned costs under this section is not to be construed as a termination of financial assistance under Part 1606 of these regulations or a denial of refunding under Part 1625 of these regulations.

§ 1630.2 Definitions.

(a) A "questioned cost" is a charge to a recipient's funds which has been identified by the Corporation as requiring further inspection and, which after an investigation, could be determined to be ineligible.

(b) An "ineligible cost" is any of the following:

- (1) A cost specifically prohibited by the Act or other provision of law, by LSC rules, regulations, or guidelines, or by the terms of a recipient's grant or contract agreement;
- (2) A cost which is not adequately supported by vendor's invoices, payroll records, or other documents and for the propriety of which the Corporation finds no other satisfactory evidence;
- (3) A cost that is unnecessary for the effective operation of a recipient's program or that is unreasonable in that it does not reflect the actions of a prudent person after considering the circumstances at the time the cost was incurred.

(4) A consultant contract in excess of \$2,500.00 or consultant fee in excess of \$261.00 per eight-hour day or \$35.00 per hour.

(5) The following costs if incurred without the prior written approval of the Corporation:

(i) A purchase of equipment or non-expendable personal property having a single-item or combined purchase price in excess of \$5,000.00 "Combined purchase price" means the total cost of all the components of a system, such as a computer or telephone system, in which each component is an integral part;

(ii) A purchase of real property;

(iii) A lease of equipment or non-expendable personal property in cases where the single-item or combined purchase price would exceed \$5,000.00;

(6) Costs charged to funds covered by provisions of the LSC Act or other acts of Congress and incurred pursuant to a subgrant that has not been approved by the Corporation in accordance with Part 1627 of these regulations.

(c) An "allowed cost" is a questioned cost that, after investigation, the Corporation has determined to be an eligible charge to a recipient's funds.

(d) A "disallowed cost" is a questioned cost that the Corporation has determined to be ineligible.

§ 1630.3 Investigation of questioned costs.

(a) When it questions a cost incurred by a recipient, the Corporation shall notify the recipient in writing stating the dollar amount of the cost and the reasons for questioning it.

(b) Within thirty days (30) after a recipient has received notice from the Corporation that a cost has been questioned, it may respond in writing to show why the cost should be allowed. If the recipient fails to respond within the time prescribed by this section, the cost shall be disallowed.

(c) To obtain relevant information while investigating a questioned cost, the Corporation may contact any party it deems necessary.

§ 1630.4 Decision process.

Within forty five (45) days of receiving the recipient's written response to the notice of questioned costs, the Corporation shall issue a determination that the cost has been allowed or disallowed or inform the recipient that additional time is needed before a decision can be made.

§ 1630.5 Resolution of disallowed questioned costs.

(a) Within thirty (30) days after receipt of notice from the Corporation that a questioned cost has been disallowed, the recipient may respond in writing to show why the Corporation should not recover, in the form of either a cash reimbursement to the Corporation or a reduction in future grant checks, the amount of the disallowed cost, including additional income derived from activities supported or assets purchased by means of the disallowed cost such as interest income, attorneys fees, and proceeds from the sale of property. If the recipient fails to respond within the time prescribed by this section, the Corporation shall recover an amount not to exceed the total disallowed cost and any additional income in one of the forms described above.

(b) In the event that the recipient has demonstrated pursuant to paragraph (a) of this section that resolution in the form of cash reimbursement or reduction in future grant checks is inappropriate, the Corporation, within forty five (45) days after it receives the recipient's written response, may resolve the disallowed cost by—

(1) Recovering less than the total amount of the disallowed cost through

cash reimbursement or reduction of the amount of monthly grant checks; or

(2) Accepting the recipient's demonstration that it has reimbursed its LSC fund from a funding source from which the original expenditure could have been made without a violation of sec. 1010(c) of the Act (42 U.S.C. 2090i(c)).

(c) In all cases in which a cost has been disallowed by the Corporation, the Corporation shall require that the recipient take the action needed to prevent the recurrence of ineligible costs including, if necessary, the implementation of organizational or personnel changes or the development and implementation of a plan, approved by the recipient's governing body, to prevent a recurrence of the activity that gave rise to such disallowed costs. In cases of serious financial mismanagement, fraud, or defalcation of funds, the Corporation shall take action to terminate financial assistance under Part 1606 of these regulations or to deny refunding under Part 1625 of these regulations.

(d) When a disallowed cost arises from expenditures incurred under a subgrant of LSC funds, the recipient will be held responsible for the actions of the subrecipient and be subject to all remedies available under this Part.

§ 1630.6 Appeal process.

(a) Within thirty (30) days after it receives notice that the Corporation has determined to resolve the disallowed cost as described under § 1630.5, a recipient may file a written notice of appeal with the President of the Corporation stating in detail the reasons for which it requests review.

(b) Within thirty (30) after receipt of the written notice of appeal, the President shall either adopt, modify, or reverse the resolution of the disallowed questioned cost.

(c) The decision of the President with respect to the disallowed questioned cost shall become final upon receipt by the recipient of written notice of the decision.

§ 1630.7 Time extension.

Any period of time provided in this Part may be extended by the Corporation if warranted.

§ 1630.8 Notice.

A notice required to be sent to a recipient under this Part shall be sent to the chairperson of its governing body and to its director.

Dated: August 28, 1985.

Richard N. Bagenstos,
Acting General Counsel.

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**INTERSTATE COMMERCE
COMMISSION**

49 CFR Part 1152

[Ex Parte No. 274 (Sub-15)]

Revision of Abandonment Regulations

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Under 49 U.S.C. 10904(c)(3), an initial decision in an investigated railroad abandonment proceeding becomes the final decision of the Commission 30 days after it is issued unless, during the interim, the Commission decides to hear appeals. Under current regulations, any appeal from an initial decision in an investigated proceeding must be filed no later than 20 days after the date the initial decision is served. This gives the Commission at least 10 days to decide whether to exercise its discretion and hear the appeal.

On its own motion, the Commission proposes to amend its rules to require that parties exhaust their administrative remedies in investigated abandonment proceedings by filing appeals to initial decisions within the specified time before taking the decision to court. This requirement would allow the agency to correct any errors prior to the initial decision becoming final by operation of law.

DATES: Comments are due by September 30, 1985.

FOR FURTHER INFORMATION CONTACT:
Wayne A. Michel, 202-275-7657;

or

Louis E. Gitomer, 202-275-7245.

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 10904(c)(3), an initial decision in an investigated abandonment proceeding becomes the final decision of the Commission 30 days after it is issued unless, during the interim, the Commission decides to hear appeals. Under the Commission's regulations at 49 CFR. 1152.25(e)(3)(i), any appeal from an initial decision in an investigated proceeding must be filed no later than 20 days after the date the initial decision is served. This gives the Commission at least 10 days to decide whether to exercise its discretion and hear the appeal. See 49 CFR 1152.25(e)(3)(ii).