environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This notice is not subject to E.O. 13045 because it presents options to implement a previously promulgated health or safety-based Federal standard, which in this case would be the accelerated phaseout schedule for HCFCs (58 FR 65018).

D. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (NTTAA), § 12(d), Pub. L. 104–113, requires federal agencies and departments to use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments. If use of such technical standards is inconsistent with applicable law or otherwise impractical, a federal agency or department may elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies if the head of the agency or department transmits to the Office of Management and Budget an explanation of the reasons for using such standards.

This advance notice does not mandate the use of any technical standards; accordingly, the NTTAA does not apply to this advance notice.

ANNEX A: OZONE DEPLETION POTENTIALS FOR CLASS II SUBSTANCES AS CURRENTLY LISTED UNDER THE MONTREAL PROTOCOL*

Dichlorofluoromethane (HCFC–21)	0.04
Monochlorodifluoromethane (HCFC–22)	0.055
Monochlorofluoromethane (HCFC–31)	0.02
Tetrachlorofluoroethane (HCFC–121)	0.01–0.04
Trichlorodifluoroethane (HCFC–122)	0.02–0.08
Dichlorotrifluoroethane (HCFC–123)	0.02
Monochlorotetrafluoroethane (HCFC–124)	0.022
Trichlorofluoroethane (HCFC–131)	0.007–0.05
Dichlorodifluoroethane (HCFC–132b)	[reserved]
Monochlorotrifluoroethane (HCFC–133a)	0.02–0.06
Dichlorofluoroethane (HCFC–141b)	0.11
Monochlorodifluoroethane (HCFC–142b)	0.065
Hexachlorofluoropropane (HCFC–221)	0.015–0.07
Pentachlorodifluoropropane (HCFC–222)	0.01–0.09
Tetrachlorotrifluoropropane (HCFC–223)	0.01–0.08
Trichlorotrifluoropropane (HCFC–224)	0.01–0.09
Dichloropentafluoropropane (HCFC–225ca)	0.025
Dichloropentafluoropropane (HCFC–225cb)	0.033
Monochlorohexafluoropropane (HCFC–226)	0.02–0.10
Pentachlorofluoropropane (HCFC–231)	0.05–0.09
Tetrachlorodifluoropropane (HCFC–232)	0.008–0.10
Trichlorotrifluoropropane (HCFC–233)	0.007–0.23
Dichlorotetrafluoropropane (HCFC–234)	0.01–0.28
Monochloropentafluoropropane (HCFC–235)	0.03–0.52
Tetrachlorofluoropropane (HCFC–241)	0.004–0.09
Trichlorodifluoropropane (HCFC–242)	0.005–0.13
Dichlorotrifluoropropane (HCFC–243)	0.007–0.12
Monochlorotetrafluoropropane (HCFC–244)	0.009–0.14
Trichlorofluoropropane (HCFC–251)	0.001–0.01
Dichlorodifluoropropane (HCFC–252)	0.005–0.04
Monochlorotrifluoropentane (HCFC–253)	0.003–0.03
Dichlorofluoropropane (HCFC–261)	0.002–0.02
Monochlorodifluoropropane (HCFC–262)	0.002–0.02
Monochlorofluoropropane (HCFC–271)	0.001–0.03

*According to Annex C of the Protocol, ''Where a range of ODPs is indicated, the highest value in that range shall be used for the purposes of the Protocol. The ODPs listed as a single value have been determined from calculations based on laboratory measurements. Those listed as a range are based on estimates and are less certain. The range pertains to an isomeric group. The upper value is the estimate of the ODP of the isomer with the highest ODP, and the lower value is the estimate of the ODP of the isomer with the lowest ODP.''

List of Subjects in 40 CFR Part 82

Environmental protection, Allowances, Administration practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Montreal Protocol, Production, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: March 29, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–8258 Filed 4–2–99; 8:45 am]

BILLING CODE 6506–50–P

LEGAL SERVICES CORPORATION

45 CFR Part 1635

Timekeeping Requirement

AGENCY: Legal Services Corporation.

ACTION: Proposed rule: Republication.

SUMMARY: This proposed rule would revise the Corporation's timekeeping rule to require recipient attorneys and paralegals to provide the date as well as

the time spent on each case, matter or supporting activity. In addition, the rule would require that recipient part-time attorneys and paralegals who work part-time for a recipient and part-time for an organization that engages in restricted activities certify that they did not engage in any restricted activities during any time period for which they were compensated by the recipient.

DATES: Comments should be received on or before June 4, 1999.

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: Suzanne B. Glasow, 202–336–8817.

SUPPLEMENTARY INFORMATION:

Background

The Operations and Regulations Committee (Committee) of the Legal Services Corporation's (LSC) Board of Directors (Board) met on September 11, 1998, in Chicago, Illinois, to consider proposed revisions to § 1635.3(b)(1) of the Corporation's timekeeping rule. The revisions were intended to require records that would more clearly demonstrate that part-time employees do not engage in restricted activities during the time for which they are compensated by the recipient. A proposed rule was published on October 22, 1998 (63 FR 56594), for public comment. The rule was a response to the Corporation's Office of Inspector General's (OIG) Summary Report on Audits of Selected Grantees for Compliance with Selected Regulations (February 1998) which found that timekeeping records could not demonstrate that part-time employees of recipients do not work on restricted activities during any time for which they are compensated by the recipient for their services. In order to address this finding, the OIG recommended revising the Corporation's timekeeping rule to require that part-time attorneys and paralegals account for all hours worked for the recipient by date and time of day in their timekeeping records. In subsequent discussions, the OIG stated that it would consider its recommendation implemented if LSC placed such a requirement only on part-time attorneys and paralegals who also work part-time for an organization that engages in restricted activities (hereinafter referred to as ''part-time attorneys'').

Accordingly, the proposed rule required part-time attorneys to provide the date and exact time of day for time spent on each case, matter or supporting activity. In addition, the rule required that the timekeeping records for such attorneys be consistent with their time and attendance records maintained by the recipient for payroll purposes (hereinafter referred to as ''payroll records'').

During the September meeting, the Committee questioned whether a certification requirement would constitute a better alternative to the timekeeping proposal and requested that the proposed rule include discussion of a certification alternative and requested comments on both proposals and any other alternatives that might better address the OIG's concerns.

The Corporation received 19 comments on the rule. Although a few comments expressed agreement with certain of the proposed timekeeping requirements, most comments opposed the proposal and stated a preference for the certification alternative. Opposing comments argued that the timekeeping proposal would impose a substantial administrative burden on recipients, without any meaningful remedy to the problem identified by the OIG. They also alleged that the proposal would place recipients in jeopardy of being in non-compliance with the Fair Labor Standards Act (FLSA).

The Committee met in Miami, Florida on February 21, 1999, to consider comments on the rule and, for the reasons set out below, determined that the certification alternative was the better remedy. The Committee also decided to retain the requirement that all attorneys and paralegals provide the date for each timekeeping entry and included a definition of *restricted activities.* Finally, the Committee decided to republish the rule for comment as revised at the Committee meeting because specific language on certification had not been included in the proposed rule.

Analysis of Comments

1. Exact Time of Day

The proposed rule required that timekeeping records for part-time attorneys provide the exact time of day spent on each case, matter or supporting activity. Several comments stated that the exact time of day requirement does not reflect the reality of time spent by an attorney in a law office. According to the comments, attorneys rarely spend significant blocks of time on a specific task. Work is often done on multiple cases at the same time and is often interrupted by phone calls, clients, and other staff needing advice or assistance in a matter. In order to keep time for each such occurrence, an attorney would be constantly taking time to keep time. As one comment pointed out, it would be impossible ''for most attorneys to credibly recreate the exact time of day'' in which each activity took place. One comment pointed out that its program is already diverting significant time, staff positions and funds to timekeeping. It now uses an equivalent to 6.78% of its LSC grant for timekeeping, even though its timekeeping system is fully computerized. Several recipients were concerned that they would need to buy new software and possibly hire new staff.

Comments also stated a concern that the additional timekeeping requirements would not provide sufficiently useful information to justify their imposition. This is due in part, according to several comments, because the requirement is an attempt to prove a negative.

In light of the comments and with the recommendation of the OIG, the Committee determined that the certification requirement, which is discussed below, would provide a better remedy than the timekeeping proposal.

2. Consistency Requirement

The proposed rule also required that timekeeping records be consistent with payroll records. Comments were especially concerned about the administrative burden of implementing the proposed rule's directive that timekeeping records be consistent with the recipient's payroll records (consistency requirement). On this point, one comment stated that it would force them ''to combine two functions that are quite different.''

Based on the comments received and the change in circumstances since the original recommendation was made, the Committee decided to take out the requirement that timekeeping records be consistent with time and attendance records used for payroll purposes. According to the OIG, the recommendation to include this provision was made as a result of the OIG audits which followed the 1996 appropriation act's implementation of additional restrictions and prohibitions on recipients. At that time, the prohibitions were new and required recipients to divest themselves from ongoing matters, and the OIG was receiving more complaints. Therefore, the risk of non-compliance was deemed to be relatively high. Subsequently, experience in OIG from audits and a significant reduction in complaints

suggests otherwise. The current view is that the risk of non-compliance is not high and, thus, the necessity for a regulatory requirement that timekeeping and payroll records be consistent is no longer deemed necessary.

The Committee's decision was also based on the concern raised in comments about the burden the consistency requirement would impose on recipients. Comments suggested that current systems may not provide the type of determinative information envisioned in the rule, although they would provide some information that, in particular cases, would be helpful. Recognizing this, the Committee decided to remove the requirement from the rule. Recipients should recognize, however, that auditors, in the normal course of auditing, will certainly note inconsistencies in records. Thus, while there would be no requirement that timekeeping and payroll records be consistent, if a clear inconsistency appears, auditors will raise questions and may ask to review other records or otherwise request an explanation of the inconsistency. Recipients should be prepared to explain such inconsistencies. For example, if (as described in some of the comments) a recipient allows an employee to work less than a full day (determined from the timekeeping records) although paid for a full day (determined from the payroll records) because the employee had worked long hours the previous day, the timekeeping records should confirm that the employee worked long hours the previous day.

3. Fair Labor Standards Act

Many comments were concerned that the requirement that timekeeping records be consistent with payroll records would place recipients in jeopardy of being in violation of the Fair Labor Standards Act (FLSA). Under the FLSA, exempt employees, in order to maintain their status, must be paid on a salary rather than on an hourly basis. Comments were concerned that a timekeeping proposal that focuses on time periods and requires consistency between time and payroll records would threaten the exempt status of recipient employees.

For the reasons set out below, the Committee determined that it is unlikely that recipients would be in violation of the FLSA as to their exempt employees simply because they require set working hours, require their employees to keep timekeeping records or require that such records be consistent with payroll records, unless they also dock their employees' pay based on the quality or quantity of their work. *See Hurley v. State of Oregon*, 27 F.3d 392, 395 (9th Cir. 1994)(It is either the actual docking of pay or an express policy that pay for a class of employees would be docked that violates the FLSA.). Nothing in the timekeeping proposal is intended to affect the pay of recipient employees. Rather, the purpose of the requirement is to ensure compliance with LSC restrictions. As long as recipients do not use the timekeeping information to inappropriately dock the pay of exempt employees, there should be no violation of the FLSA.

The FLSA, 29 U.S.C. 201, *et seq.*, sets out Federal minimum wage and overtime requirements for public and private sector employees. However, employees employed in a bona fide executive, administrative, or professional capacity are exempt from these requirements. 29 U.S.C. 213(a)(1). The United States Department of Labor (''DOL'') is the Executive agency designated to implement the FLSA and it has issued regulations which define whether an employee is exempt under section 213(a)(1).

One criterion to determine whether an employee is exempt is whether the employee is compensated on a salary basis. 29 CFR 541.118. According to DOL regulations, an employee will not be considered to be on a salary basis if the employee is subject to a salary reduction because of variations in quantity or quality of work performed. 29 U.S.C. 541.118(a). Thus, an employee will not be found to be exempt if the employee's pay is docked for a pay period for absences from work for less than a day. § 541.118(a)(2). (Although this anti-docking requirement was recently revised for public employees, it remains a determinate factor for private sector employees. *See* 57 FR 37666 (August 19, 1992). Failure to pay non-exempt employees a fair hourly wage and overtime subjects an employer to financial sanctions.

Various practices of employers have been called into question by the courts as violative of the salary basis test and there has been disagreement over time and among courts regarding certain of these practices. However, certain common practices of employers are permissible because of Wage & Hour opinions issued by DOL may be relied upon by employers. 29 U.S.C. 258. Under the Portal-to-Portal Act, employers have an absolute defense against FLSA actions if the employer's actions are done in good faith and the employer relies on an administrative regulation, order, ruling, approval, or interpretation of the Wage & Hour Administrator, or any administrative practice of enforcement policy of the Administrator with respect to the class of employers to which the employer belongs. *Id.*

Existing Wage and Hour Opinion letters provide that the following practices are consistent with the ''salary basis test.''

An exempt employee can be required to work specific hours, fill out time cards or time sheets and to obtain permission before taking time off from work. W.H. OP. Ltr. (July 1, 1993).

An exempt employee can be paid overtime—on any basis the employer wishes. W.H. Op. Ltr. (April 13, 1967); W.H. Op. Ltr. (March 3, 1970; and W.H. Op. Ltr. (March 16, 1984).

An exempt employee can be docked leave by the hour, i.e., for absences of less than a day, as long as there are no cash deductions from the weekly salary for such absences. W.H. OP. Ltr. (April 9, 1993); W.H. Op. Ltr. (July 17, 1987); and W.H. Op. Ltr. (Marcy 30, 1994).

The Supreme Court in *Auer v. Robbins*, 117 S. Ct. 905, 911 (1997), has held that the DOL Secretary's interpretations of FLSA are controlling, unless clearly erroneous or inconsistent with the law. In *Graziano v. The Society of the New York Hospital*,[1] a Federal District Court vacated its earlier holding in the case based on W&H Opinion letters that were brought to the Court's attention in a motion to reconsider. The Court based its order to vacate on *Auer's* finding that DOL interpretations of FLSA are controlling. Because the opinion letters brought to the Court's attention were controlling decisions to which the Court was bound, the Court vacated its earlier decision which was inconsistent with the opinions.

A few comments cited case law that suggests that requiring employees to keep time is inconsistent with the exempt status of an employee. Although some courts have found that ''rigid attendance and time keeping requirements are not consistent with salaried status,'' *Service Employees International Union, Local 102, v. County of San Diego*, 784 F. Supp. 1503, 1510 (S.D. Ca. 1992), the findings in these cases were not based on that factor alone, and, as noted above, Wage & Hour opinions approve of the practice. *See also Martin v. Malcolm*, 949 F.2d 611 (2d Cir. 1991).

[1] 1997 WL 639026 (S.D.N.Y. Oct. 15, 1997). This opinion was not reported in the Federal Supplement. It is also cited as a W&H Opinion at 4 Wage & Hour Cas.2d (BNA) 286. The underlying opinion that was vacated was also not reported, *see* 4 Wage & Hour Cas.2d (BNA) 12.

4. Certification requirement

The certification requirement in § 1635.3(e) of this proposed rule would require part-time attorneys or paralegals who also work for an organization that engages in restricted activities to certify on a quarterly basis that they were not compensated by the recipient for any restricted activities. The Committee favors this alternative to the timekeeping proposal because it does not create any undue administrative burden, is consistent with the Corporation's program integrity certification requirement, is more likely to achieve the intended goal, and would not implicate the FLSA.

Comments generally favored the certification alternative over the timekeeping proposal. One comment stated that certification would act as a true deterrent because violations would be subject to the sanctions under part 1640. Another recognized that ''the consequences of a false certification will encourage honest and careful attention by staff.''

Several suggestions and reservations were expressed about certification. A few comments expressed concern that the certification requirement creates a presumption that attorneys have violated the rules. This is not the intent of the requirement. The Corporation is aware that program attorneys generally provide high quality legal assistance and make every effort to comply with their LSC grant requirements. The certification requirement is no different than other LSC recordkeeping or certification requirements. The Corporation is required by statute to ensure that LSC funds are appropriately used. Tools such as records and certifications must be available to Corporation auditors to enable them to document that programs are in compliance.

Because of the seriousness of the sanctions for a false certification, one comment encouraged the Corporation to include an exception for *de minimis* involvement in restricted activities. The Committee agreed to add *de minimis* langauge to the certification requirement and requests comments on the exception. *De minimis* activity would include actions related to restricted activities that fall short of actually working on a restricted activity. Examples include such unavoidable actions as answering the phone and establishing another time to discuss a restricted case with the caller, or opening and screening mail.

Another comment questioned the necessity of the certification requirement when recipients are already subject to part 1640 and the certification requirement in part 1610 on program integrity. The certification in part 1610 is required of the program, not individuals. Certification by individual attorneys and paralegals would serve as a notice to such individuals of the seriousness with which the Corporation views the use of recipient funds and resources for involvement in restricted activities. It would also help provide documentation to auditors necessary to ensure compliance by part-time attorneys and would provide information to the recipient for use in its annual part 1610 program integrity certification. Part 1640 would not be implicated unless an attorney made a false certification about involvement in restricted activities or violated other laws listed in part 1640.

The proposed certification language requires quarterly certification on dates established by the Corporation. This language would allow the Corporation to establish the date for the initial certification at an appropriate time so that subsequent certification dates would coincide with the dates normally attributed to the end of each of a year's quarters. Certifications would be for a period of time that has already occurred. Thus, the first certification would most likely occur approximately three months after the effective date of the final rule.

A false certification, depending on the applicable law or circumstances, may constitute a violation of civil or criminal law. For LSC purposes, a false certification by a recipient employee would implicate certain Federal laws related to the use of Federal funds that are currently applicable to LSC recipients pursuant to 45 CFR part 1640. Violations of certain laws listed in part 1640 carry severe sanctions for false statements or claims to the Federal government regarding the use of Federal funds. *See for example*, 18 U.S.C. 287, 371, 1001 and 31 U.S.C. 3729; *United States v. Columbia/HCA Healthcare Corporation*, 125 F.3d 899 (5th Cir. 1997) (''false certifications of compliance create liability under the (False Claims Act) when certification is a prerequisite to obtaining a government benefit.''); *United States v Burns*, 104 F.3d 529 (2nd Cir. 1997) (falsified time sheets submitted for pay under government-funded program found to be violation of 18 U.S.C. 1001).

Under part 1640, whether or not a recipient or an employee of a recipient has violated any of the applicable Federal laws is determined by the Federal court having jurisdiction of the matter. The Corporation does not prosecute or make judgments under the applicable Federal laws but it has authority to terminate funding under the conditions set out in § 1640.4. In addition, the Corporation's Inspector General has statutory authority to refer unlawful activity to the proper authorities. Several of the laws included in part 1640 prohibit making false claims to the government regarding the use of Federal funds. LSC funds are Federal funds for the purposes of the laws included in part 1640. Thus, a false certification regarding activities for which the applicable employee is compensated by the recipient, in certain circumstances, may put the employee at risk of prosecution for violation of such laws. Employees who sign such certifications should be fully informed of the implications and sign forms that, to the best of their knowledge, are true and accurate. Comments on the effects of requiring certification on program attorneys and paralegals are specifically requested by the Committee.

5. Date for Each Timekeeping Entry

The proposed rule also required both full-time and part-time attorneys and paralegals to provide the date as well as the amount of time spent on each case, matter or supporting activity. Comments generally opposed the requirement to include the date on the grounds that it is not required by the statutory timekeeping provision and because it does not address any specific concern. A few comments also alleged that it would impose an undue administrative burden on recipients to revise their current timekeeping systems.

The Committee did not agree that providing the date is unreasonable or would put an undue burden on recipients. Timekeeping records have little significance unless put into the context of a particular timeframe. 63 FR 56595 (Oct. 22, 1998). The current rule already implies a connection between timekeeping records and a particular date because it requires that timekeeping records be made contemporaneously. The preamble to the current rule explains that, in most cases, contemporaneous timekeeping means ''records should be created no later than the end of the day.'' 61 FR 14262 (April 1, 1996). This makes sense because identifying a record with a particular time is the way to determine whether it is a contemporaneous record. It is also consistent with the Corporation's 1996 Timekeeping Guide for recipients which includes sample timekeeping forms, all of which require a date. In addition, according to the

OIG, most recipients already provide the date in their timekeeping records. Therefore, the Committee was not convinced that this requirement would impose additional burdens on most recipients. However, comments are requested in this proposed rule from those recipients who do not currently provide the date to explain how the requirement will affect their programs. Finally, the language setting out the date requirement has been moved and simplified from the proposed rule and is found in § 1635.3(b)(1).

6. Definition of Restricted Activities

A definition is added to this proposed rule in § 1635.2(c) in order to clarify the meaning of the term as used in the certification requirement. *Restricted activities* has been used as an umbrella term to refer to the restrictions listed in the definitions of purpose prohibited by the LSC Act and activity prohibited by or inconsistent with section 504 in 45 CFR 1610.2 (a) and (b). See preamble to 45 CFR part 1610, 62 FR 27695 (May 21, 1997). The restrictions therein apply variously to a recipient's LSC, private and public funds. A particular activity is restricted only to the extent it is limited pursuant to statutory or regulatory law. Thus, if the law permits an activity that is funded with non-LSC public funds, the activity is not restricted if it is funded with non-LSC public funds. Nothing in the proposed rule is intended to expand on the scope of any restriction or the type of recipient funds implicated by a particular restriction.

List of Subjects in 45 CFR Part 1635

Legal services, Reporting and recordkeeping requirements.

For reasons set out in the preamble, LSC proposes to revise 45 CFR part 1635 to read as follows:

PART 1635—TIMEKEEPING REQUIREMENT

Sec.
1635.1 Purpose.
1635.2 Definitions.
1635.3 Timekeeping requirement.
1635.4 Administrative provisions.

Authority: 42 U.S.C. 2996e(b)(1)(A), 2996g(a), 2996g(b), 2996g(e).

§ 1635.1 Purpose.

This part is intended to improve accountability for the use of all funds of a recipient by:

(a) Assuring that allocations of expenditures of Corporation funds pursuant to 45 CFR part 1630 are supported by accurate and contemporaneous records of the cases, matters, and supporting activities for which the funds have been expended;

(b) Enhancing the ability of the recipient to determine the cost of specific functions; and

(c) Increasing the information available to the Corporation for assuring recipient compliance with Federal law and corporation rules and regulations.

§ 1635.2 Definitions.

As used in this part—

(a) A *case* is a form of program service in which an attorney or paralegal of a recipient provides legal services to one or more specific clients, including, without limitation, providing representation in litigation, administrative proceedings, and negotiations, and such actions as advice, providing brief services and transactional assistance, and assistance with individual PAI cases.

(b) A *matter* is an action which contributes to the overall delivery of program services but does not involve direct legal advice to or legal representation of one or more specific clients. Examples of matters include both direct services, such as community education presentations, operating pro se clinics, providing information about the availability of legal assistance, and developing written materials explaining legal rights and responsibilities; and indirect services, such as training, continuing legal education, general supervision of program services, preparing and disseminating desk manuals, PAI recruitment, intake when no case is undertaken, and tracking substantive law developments.

(c) *Restricted activities* means the restrictions listed in the definitions of purpose prohibited by the LSC Act and activity prohibited by or inconsistent with section 504 in 45 CFR 1610.2(a) & (b).

(d) A *supporting activity* is any action that is not a case or matter, including management and general, and fundraising.

§ 1635.3 Timekeeping requirement.

(a) All expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities. The allocation of all expenditures must be carried out in accordance with 45 CFR part 1630.

(b) Time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter, or supporting activity.

(1) Time records must be created contemporaneously and account for time by date and in increments not greater than one-quarter of an hour which comprise all of the efforts of the attorneys and paralegals for which compensation is paid by the recipient.

(2) Each record of time spent must contain: For a case, a unique client name or case number; for matters or supporting activities, an identification of the category of action on which the time was spent.

(c) The timekeeping system must be implemented within 30 days of the effective date of this regulation or within 30 days of the effective date of a grant or contract, whichever is later.

(d) The timekeeping system must be able to aggregate time record information from the time of implementation on both closed and pending cases by legal problem type.

(e) Recipients shall require any attorney or paralegal who works part-time for the recipient and part-time for an organization that engages in restricted activities to certify in writing that the attorney or paralegal has not engaged in restricted activity during any time period for which the attorney or paralegal was compensated by the recipient or has not used recipient resources for restricted activities. The certification requirement does not apply to a *de minimis* action related to a restricted activity that does not involve working on the restricted activity. Such *de minimis* actions would include activities such as answering the phone and establishing another non-program time with the caller to discuss the restricted activity, or opening and briefly screening mail. Certifications shall be made on a quarterly basis on dates established by the Corporation and shall be made on a form determined by the Corporation.

§ 1635.4 Administrative provisions.

Time records required by this section shall be available for examination by auditors and representatives of the Corporation, and by any other person or entity statutorily entitled to access to such records. The Corporation shall not disclose any time record except to a Federal, State or local law enforcement official or to an official of an appropriate bar association for the purpose of enabling such bar association official to conduct an investigation of an alleged violation of the rules of professional conduct.

March 30, 1999.

Suzanne B. Glasow,

Senior Assistant General Counsel.

[FR Doc. 99–8223 Filed 4–2–99; 8:45 am]

BILLING CODE 7050–01–P