

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).	Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
Maps are available for inspection at the City of Bayard City Hall, 445 Main Street, Bayard, Nebraska.		Approximately 200 feet upstream of FM Road 3101	*1,460
NEW MEXICO			
Chama (Village), Rio Arriba County (FEMA Docket No. 7198)		<i>South Fork Leon River:</i> Approximately 100 feet downstream of Bassett Street	*1,442
<i>Rio Chama:</i> Approximately 5,000 feet downstream of State Highway 17	*7,717	Approximately 3,200 feet upstream of Bassett Street	*1,443
Approximately 700 feet upstream of Cumbers Toltec Railroad	*7,883	Maps are available for inspection at 416 South Seaman Street, Eastland, Texas.	
<i>Rio Chamita:</i> Approximately 2,200 feet downstream of State Highway 64	*7,764	(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance") Dated: April 23, 1997.	
Approximately 2,100 feet upstream of Escondido Road ..	*7,864	Richard W. Krimm, <i>Executive Associate Director, Mitigation Directorate.</i> [FR Doc. 97-12369 Filed 5-9-97; 8:45 am]	
Maps are available for inspection at the Village of Chama Village Hall, 299 Fourth Street, Chama, New Mexico.		BILLING CODE 6718-04-P	
LEGAL SERVICES CORPORATION			
45 CFR Part 1642			
Attorneys' Fees			
Rio Arriba County (Unincorporated Areas) (FEMA Docket No. 7198)		AGENCY: Legal Services Corporation. ACTION: Final rule.	
<i>Rio Chama:</i> Approximately 3,000 feet downstream of County Road 343	*7,640	SUMMARY: This final rule implements a restriction in the Legal Services Corporation's FY 1996 appropriations act that is currently incorporated by reference in the Corporation's FY 1997 appropriations act that prohibits LSC recipients from seeking attorneys' fees in cases filed on or after April 26, 1996. The rule clarifies the meaning of attorneys' fees and provides guidance on the scope of the restriction. DATES: This final rule is effective on June 11, 1997. FOR FURTHER INFORMATION CONTACT: Office of the General Counsel, (202) 336-8817. SUPPLEMENTARY INFORMATION: On May 19, 1996, the Operations and Regulations Committee ("Committee") of the Legal Services Corporation ("LSC" or "the Corporation") Board of Directors ("Board") requested the LSC staff to prepare an interim rule to implement section 504(a)(13) of the Corporation's FY 1996 appropriations act, Public Law 104-134, 110 Stat. 1321 (1996), prohibiting LSC recipients and their employees from claiming, or collecting and retaining attorneys' fees. The Committee held hearings on July 10 and 19, and the Board adopted an interim rule on July 20, which was published on August 29, 1996, in the	
Approximately 5,300 feet upstream of State Highway 17 ..	*7,925		
<i>Rio Chamita:</i> At confluence with Rio Chama Approximately 8,800 feet upstream of Escondido Road ..	*7,678		
Maps are available for inspection at 810 North Riverside Drive, Espanola, New Mexico.	*7,912		
TEXAS			
Eastland (City), Eastland County (FEMA Docket No. 7198)			
<i>North Fork Leon River:</i> At confluence with Tributary 1 Approximately 600 feet upstream of confluence with Tributary 3	*1,434		
<i>Tributary 1:</i> At confluence with North Fork Leon River	*1,440		
Approximately 1,400 feet upstream of U.S. Highway 80 ..	*1,434		
<i>Tributary 2:</i> At confluence with North Fork Leon River	*1,439		
Approximately 5,200 feet upstream of Missouri Pacific Railroad	*1,435		
<i>Tributary 3:</i> At confluence with North Fork Leon River	*1,461		
	*1,439		

Federal Register with a request for comments.

The interim rule was based, in part, on a prior version of 45 CFR part 1609, which included the Corporation's regulations dealing with attorneys' fees in relation to fee-generating cases. The Corporation decided to treat fee-generating cases and attorneys' fees in two separate rules. Revisions to the Corporation's fee-generating rule (part 1609) were published in a proposed rule and provisions implementing the new restriction on attorneys' fees (part 1642) were published as an interim rule on August 29, 1996. A final version of the fee-generating rule (part 1609) was published on April 21, 1997 (62 FR 19398).

The Corporation received 37 timely comments on the interim attorneys' fees rule and the Committee held public hearings on the rule on December 13, 1996, and March 7, 1997. The Committee made several revisions to the interim rule before recommending the final rule to the Board. The Board adopted the Committee's recommended version on March 8, 1997.

The Corporation's FY 1997 appropriations act became effective on October 1, 1996, see Public Law 104-208, 110 Stat. 3009. It incorporated by reference the § 504 condition on LSC grants included in the FY 1996 appropriations act 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.

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

Section 1642.1 Purpose

The purpose of this rule is to ensure that LSC recipients and their employees do not seek or retain attorneys' fees awarded pursuant to Federal or State law, including common law, permitting or requiring such fees.

Section 1642.2 Definitions

This section first defines what is and what is not included in the term "attorneys' fees." The definition of attorneys' fees elicited much public comment, mostly on the issue of whether Social Security fees should be included. Strongly divergent views were held by the commenters and there was no consistent pattern among types of commenters, which generally included private attorneys, legal services programs and bar associations. Some argued that the statutory restriction was not intended to apply to attorneys' fees in Social Security cases, because such fees are paid pursuant to an agreement by the client to pay the fees out of the

client's back benefits and are not awarded by a court or administrative agency. They also stated that allowing recipients to take such fees would provide additional funding for financially strapped programs to provide more representation to the poor. Commenters who opposed allowing recipients to take Social Security fees stated that legal services clients should never have to pay any fee for their legal representation, especially out of their back benefits. Others claimed that private attorneys would be unwilling or reluctant to be part of a recipient's Private Attorney Involvement ("PAI") project for little or no fee if the program started taking fees from their client's back benefits.

The Corporation did not include Social Security fees in the interim rule's definition because it was not clear to the Corporation whether Congress intended such fees to be included. However, the Corporation did seek comment on the issue and warned recipients in the preamble to the interim rule that such fees might be included in the final rule. After holding public hearings on both the legal and policy implications of including Social Security fees within the definition, a reconsideration of the legal arguments convinced the Board that Section 504(a)(13) was intended to include Social Security fees.

The statutory restriction is on "attorneys' fees pursuant to any Federal or State law permitting or requiring the awarding of such fees." Payment to an attorney from back Social Security benefits is expressly permitted by Federal statute. Comments argued that such fees do not fall within the term, because they are not "awarded" to the attorney; rather, they are paid pursuant to an agreement between the attorney and client. This is true in part. Such fees are usually the result of a contingency fee agreement between the client and the attorney. However, courts often oversee the agreement and sometimes are involved in determining whether to allow such fees to go to the attorney in a particular situation. The Social Security Act in section 406(b)(1) provides in part that:

Whenever a court renders a judgment favorable to a claimant under this subchapter who was represented before the Court by an attorney, the Court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment * * *

42 U.S.C. 406(b)(1). This provision clearly envisions court involvement. Thus, although the norm is for the client to enter into a contingency fee

agreement with the attorney, there is often oversight by the courts. For example, in one Social Security case, a court found that "the Court is not required to give 'blind deference' to a contractual fee agreement and must ultimately be responsible for fixing a reasonable fee for the judicial phase of the proceedings." *Kimball v. Shalala*, 826 F. Supp. 573 (D. Maine 1993). Other courts have determined that attorneys would not be permitted to receive the full 25 percent contingency fee allowed under the Social Security Act if the attorney engaged in improper conduct or was ineffective or the attorney would enjoy an undeserved windfall due to the client's large back pay award or the attorney's relatively minimal effort. *Hayes v. HHS*, 916 F.2d 351 (6th Cir. 1990). Regardless of the scope of Court involvement in any particular agreement between a client and the attorney, the Corporation is persuaded that it is reasonable to interpret the statutory language as including social security fees and that is what Congress intended.

The final definition also continues to include fee-shifting fees, which are fees paid by the losing party to compensate the attorney of the prevailing party. Such fees are generally awarded pursuant to a fee-shifting statute or under common law. The accompanying definition of "award" in this section is intended to underscore this meaning.

The Board also decided to define in a new paragraph (c) what is not included in the definition of attorneys' fees. Paragraph (c)(1) includes a provision that was moved from the prohibition section in the interim rule (§ 1642.3(c)(2)), which clarifies that compensation pursuant to court appointments, as authorized by 42 U.S.C. 2996e(d)(6) of the LSC Act, does not constitute attorneys' fees.

Paragraph (c)(2) is a new provision which states that a payment by a governmental agency or other third party to a recipient to represent clients is not an attorneys' fee. Such payments are generally made under a grant or contract and do not consist of an award ordered by a court or administrative party that the unsuccessful party pay attorneys' fees to the prevailing party. Nor do they constitute fees from a client's back statutory benefits.

Paragraph (c)(3) has been revised and moved from § 1642.3(c)(3) of the interim rule. In response to comments, it now provides that attorneys' fees do not include sanctions imposed by court practices as well as court rules, and also do not include sanctions authorized by statute.

Finally, paragraph (c)(4) clarifies that reimbursement of costs and expenses from an opposing party or from a client as permitted under § 1642.6 of this part does not constitute attorneys' fees. This provision was removed from § 1642.3(c)(4) of the interim rule and revised to cite § 1642.6. Fees are compensation for an attorney's time, while costs and expenses are compensation for necessary outlays made in the course of preparation for and/or litigation of a case. Some common types of costs and expenses are: document copying costs, travel expenses such as airline tickets, court reporter fees and other costs of depositions, expert witness fees, filing fees and other court costs charged litigants by the courts.

Based on experience in implementing the interim rule, Corporation staff recommended including in the final rule guidance on what it means to "claim" attorneys' fees. The Board agreed and added a definition to clarify that to "claim" attorneys' fees means to include a request for attorneys' fees in any pleading.

Section 1642.3 Prohibition

This section states the restriction on attorneys' fees contained in Section 504(a)(13), which prohibits LSC recipients from claiming, or collecting and retaining attorneys' fees in any cases. This rule uses the term "cases" and does not refer to "matters," as does the underlying statute, because attorneys' fees may only be derived from cases. The interim rule included additional provisions in this section which provided exceptions and provisions explaining situations where the prohibition does not apply. All of those provisions have been moved to either § 1642.2 or § 1642.4 of this part.

Section 1642.4 Applicability of Restriction on Attorneys' Fees

Paragraph (a) provides that this part's prohibition does not apply to cases filed prior to April 26, 1996. For such cases, recipients may file claims for attorneys' fees but are not allowed to accept fees for work done in connection with any new claims filed in pre-existing cases after April 26, 1996. This paragraph is authorized by the appropriations statute, which expressly allows programs to seek and retain attorneys' fees for cases filed prior to April 26, 1996, including Social Security cases.

Paragraph (b) provides that unless the case was filed prior to April 26, 1996, private attorneys who are paid by LSC recipients to handle cases for eligible clients as part of a recipient's PAI program, under a contract or judicare

arrangement, may not seek attorneys' fees in those cases. The prohibition does not include *pro bono* attorneys who receive no compensation from a recipient to handle cases, because they are not receiving financial assistance from the recipient to provide the services. Thus, attorneys who are handling cases on behalf of eligible clients on a *pro bono* bases may seek and collect attorneys' fees. It is the Corporation's judgment that the restrictions of this part would be a substantial impediment to the recruitment of *pro bono* lawyers.

Section 1642.5 Accounting For and Use of Attorneys' Fees

This section includes an accounting requirement for attorneys' fees that are permitted under § 1642.4(a) of this part that are received by a recipient. Recipients are required to allocate such fees that are received from cases supported in whole or in part with LSC funds to the LSC fund in the same proportion that the case or matter was funded with LSC funds. Thus, if a particular case was funded 60 percent by LSC funds and 40 percent from non-LSC funds, a recipient would be required to allocate 60 percent of the fees received to the LSC account. There is no requirement that the program allocate the remaining 40 percent to any particular account. This is a change from current law that requires allocation to the same fund to which expenses had been charged. The change is based on a policy that, if a non-LSC funder does not require that its fund be reimbursed from attorneys' fees awarded in litigation supported with its funds, LSC should not dictate how those funds are to be allocated.

Section 1642.6 Acceptance of Reimbursement From a Client

This section allows recipients to accept reimbursement from clients for out-of-pocket costs and expenses incurred in connection with cases where the client recovers damages or statutory benefits, provided that the client has agreed in writing to reimburse the recipient for such costs and expenses out of any recovery. This section also authorizes recipients to require clients who do not qualify for *in forma pauperis* to pay court costs.

Section 1642.7 Recipient Policies, Procedures and Recordkeeping

This section requires the recipient to establish written policies and procedures to guide the recipient's staff to ensure compliance with this rule. Recipients are also required to maintain

sufficient documentation to demonstrate compliance with this part.

List of Subjects in 45 CFR Part 1642

Attorneys' fees; Grant programs; Legal services.

For reasons set forth in the preamble, 45 CFR part 1642 is revised to read as follows:

PART 1642—ATTORNEYS' FEES

Sec.

1642.1 Purpose.

1642.2 Definitions.

1642.3 Prohibition.

1642.4 Applicability of restriction on attorneys' fees.

1642.5 Accounting for and use of attorneys' fees.

1642.6 Acceptance of reimbursement from a client.

1642.7 Recipient policies, procedures and recordkeeping.

Authority: 42 U.S.C. 2996e(d)(6); Pub. L. 104-208, 110 Stat. 3009; Pub. L. 104-134, 110 Stat 1321, section 504(a)(13).

§ 1642.1 Purpose.

This part is designed to insure that recipients or employees of recipients do not claim, or collect and retain attorneys' fees available under any Federal or State law permitting or requiring the awarding of attorneys' fees.

§ 1642.2 Definitions.

(a) *Attorneys' fees* means an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the awarding of such fees or a payment to an attorney from a client's retroactive statutory benefits.

(b) *Attorneys' fees* do not include the following:

(1) Payments made to a recipient or an employee of a recipient for a case in which a court appoints the recipient employee to provide representation pursuant to a statute or court rule or practice equally applicable to all attorneys in the jurisdiction, and in which the recipient or employee receives compensation under the same terms and conditions as are applied generally to attorneys practicing in the court in which the appointment is made;

(2) Payments made to a recipient or an employee of a recipient pursuant to a grant, contract or other agreement by a governmental agency or other third party for representation of clients;

(3) Payments received as a result of sanctions imposed by a court for violations of court rules or practices, or statutes relating to court practice, including Rule 11 or discovery rules of

the Federal Rules of Civil Procedure, or similar State court rules or practices, or statutes; and

(4) Reimbursement of costs and expenses from an opposing party or from a client pursuant to § 1642.6.

(c) An *award* is an order by a court or an administrative agency that the unsuccessful party pay the attorneys' fees of the prevailing party or an order by a court or administrative agency approving a settlement agreement of the parties which provides for payment of attorneys' fees by an adversarial party.

(d) To *claim* attorneys' fees means to include a request for attorneys' fees in any pleading.

§ 1642.3 Prohibition.

Except as permitted by § 1642.4, no recipient or employee of a recipient may claim, or collect and retain attorneys' fees in any case undertaken on behalf of a client of the recipient.

§ 1642.4 Applicability of restriction on attorneys' fees.

(a) The prohibition contained in § 1642.3 shall not apply to cases filed prior to April 26, 1996, except that the prohibition shall apply to any additional related claim for the client made in such a case on or subsequent to April 26, 1996.

(b) Except as permitted in paragraph (a) of this section, the prohibition contained in § 1642.3 shall apply to any case undertaken by a private attorney on behalf of an eligible client when the attorney receives compensation from a recipient to provide legal assistance to such client under the recipient's private attorney involvement (PAI) program, judicare program, contract or other financial arrangement.

§ 1642.5 Accounting for and use of attorneys' fees.

(a) Attorneys' fees received by a recipient pursuant to § 1642.4(a) for representation supported in whole or in part with funds provided by the Corporation shall be allocated to the fund in which the recipient's LSC grant is recorded in the same proportion that the amount of Corporation funds expended bears to the total amount expended by the recipient to support the representation.

(b) Attorneys' fees received pursuant to § 1642.4(a) shall be recorded during the accounting period in which the money from the fee award is actually received by the recipient and may be expended for any purpose permitted by the LSC Act, regulations and other law applicable at the time the money is received.

§ 1642.6 Acceptance of reimbursement from a client.

(a) When a case results in a recovery of damages or statutory benefits, a recipient may accept reimbursement from the client for out-of-pocket costs and expenses incurred in connection with the case, if the client has agreed in writing to reimburse the recipient for such costs and expenses out of any such recovery.

(b) A recipient may require a client to pay court costs when the client does not qualify to proceed *in forma pauperis* under the rules of the jurisdiction.

§ 1642.7 Recipient policies, procedures and recordkeeping.

The 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: May 7, 1997.

Victor M. Fortuno,

General Counsel.

[FR Doc. 97-12404 Filed 5-9-97; 8:45 am]

BILLING CODE 7050-01-P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 76**

[CS Docket No. 96-60; FCC 97-27]

Cable Television Leased Commercial Access

AGENCY: Federal Communications Commission.

ACTION: Final rule; establishment of effective date.

SUMMARY: The Commission's amendments to 47 CFR 76.970 (c), (d), (e), (f), (g), (h), 76.971(f)(1), 76.975 (b) and (c), which contained information collection requirements, shall become effective May 12, 1997. These amendments, which were published in the **Federal Register** of March 12, 1997, relate to implementation of the leased commercial access provisions of the 1992 Cable Act.

EFFECTIVE DATE: The amendments to 47 CFR 76.970 (c), (d), (e), (f), (g), (h), 76.971(f)(1), 76.975 (b) and (c) published at 62 FR 11364 shall become effective May 12, 1997.

FOR FURTHER INFORMATION CONTACT: Julie Buchanan, Cable Services Bureau, (202) 418-7200.

SUPPLEMENTARY INFORMATION:

1. On January 31, 1997, the Commission adopted an order revising

its leased commercial access rules, a summary of which was published in the **Federal Register**. See 62 FR 11364, March 12, 1997. The Commission's rule changes that did not impose new or modified information collection requirements became effective April 11, 1997. However, because they imposed new or modified information collection requirements, the amendments to 47 CFR 76.970 (c), (d), (e), (f), (g), (h), 76.971(f)(1), 76.975 (b) and (c) could not become effective until approved by the Office of Management and Budget ("OMB"), and no sooner than April 11, 1997. OMB approved these rule changes on April 17, 1997.

2. The **Federal Register** summary stated that the Commission would publish a document establishing the effective date of the rule changes requiring OMB approval. This statement suggests that further action by the Commission is necessary to establish the effective date, notwithstanding the preceding statement in the summary that the rule changes imposing new or modified information collection requirements would become effective upon OMB approval. See 62 FR 11365, March 12, 1997. In order to resolve this matter in a manner that most appropriately provides interested parties with proper notice, the amendments to 47 CFR 76.970 (c), (d), (e), (f), (g), (h), 76.971(f)(1), 76.975 (b) and (c) shall become effective May 12, 1997. This publication satisfies the statement that the Commission would publish a document establishing the effective date of the rule changes requiring OMB approval.

List of Subjects in 47 CFR Part 76

Administrative practice and procedure, Cable television, Reporting and recordkeeping requirements.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 97-12279 Filed 5-9-97; 8:45 am]

BILLING CODE 6712-01-U

GENERAL SERVICES ADMINISTRATION**48 CFR Part 6103**

RIN Number 3090-AG05

Board of Contract Appeals; Rules of Procedure for Transportation Rate Cases

AGENCY: Board of Contract Appeals, General Services Administration.

ACTION: Final rule.

SUMMARY: This document specifies the rules of procedure of the GSA Board of Contract Appeals applicable to the Board's review of claims made by a carrier or freight forwarder pursuant to 31 U.S.C. 3726(g)(1). The rules are intended to implement section 201(o) of the General Accounting Office Act of 1996 (Pub. L. 104-316), which transferred the authority to resolve these claims to the Administrator of General Services, who has redelegated that function to the Board.

EFFECTIVE DATE: This regulation is effective May 12, 1997.

FOR FURTHER INFORMATION CONTACT: Margaret S. Pfunder, Deputy Chief Counsel, GSA Board of Contract Appeals, telephone (202) 501-0272, Internet address: Margaret.Pfunder@gsa.gov.

SUPPLEMENTARY INFORMATION:**A. Regulatory Flexibility Act**

The General Services Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

C. Effective Dates

These rules are applicable to all transportation rate cases filed on or after May 12, 1997.

D. Background

On July 26, 1996, the Board published in the **Federal Register** (61 FR 39096) an interim rule specifying the rules of procedure the Board would apply to its review of claims made by a carrier or freight forwarder pursuant to 31 U.S.C. 3726(g)(1). The Board invited written comments on the interim rules. The rules were intended to implement section 211 of the Legislative Branch Appropriations Act, 1996 (Pub. L. 104-53), which, effective June 30, 1996, transferred certain functions of the Comptroller General to the Director of the Office of Management and Budget (OMB), and authorized the Director to delegate any of those functions to another agency or agencies. Effective the same date, the Director delegated the function contained in 31 U.S.C. 3726(g)(1)—the authority to review rate