




OFFICE OF LEGAL AFFAIRS

Legal Services Corporation
America's Partner For Equal Justice

RULEMAKING OPTIONS PAPER

TO: Helaine M. Barnett
President

FROM: Victor M. Fortuno 
Vice President & General Counsel

DATE: October 11, 2005

SUBJ: Removal of 45 CFR Part 1631 – Expenditure of Grant Funds

The Operations & Regulations Committee of LSC's Board of Directors determined to initiate a rulemaking to consider removal of Part 1631. This Rulemaking Options Paper (ROP) has been prepared in accordance with the LSC Rulemaking Protocol to assist you in responding to the Committee on this issue.¹

¹ Under the Rulemaking Protocol:

In most instances, prior to undertaking a rulemaking LSC's Office of Legal Affairs ("OLA"), in close consultation with appropriate Corporation staff, will develop a *Rulemaking Options Paper* ("ROP"). The ROP will contain a discussion of the subject for the potential rulemaking, and will include an outline of the policy and legal issues involved. The ROP shall also recommend whether the potential rulemaking should be accomplished by *Notice and Comment Rulemaking*, including whether holding a Rulemaking Workshop would be appropriate, or whether it should be *Negotiated*.

Once the ROP is developed and approved by the LSC President, it will be submitted to the Committee. The Committee will have the opportunity to deliberate and determine whether to recommend to the Board that the Board initiate a rulemaking. If the Committee recommends that the Board initiate a rulemaking, the Committee deliberations will also provide an opportunity for the Committee to recommend policy direction on the scope and issues expected to be involved in the rulemaking. As noted above, the Board will make decisions regarding whether to undertake a rulemaking, the method to be used for the rulemaking, and any policy

Background

Part 1631 was promulgated in 1986 in response to Congressional concerns that pre-1982 funds were being held by recipients and spent on activities which were not prohibited at the time the funds were appropriated, but which were later prohibited (and on which recipients could not spend currently appropriated funds). Part 1631 requires that no LSC funds may be expended, except as in accordance with the restrictions contained in the Corporation's FY 1985 appropriations measure (P.L. 99-180, 99 Stat. 1136). The staff consensus is that Part 1631 no longer has any continuing viability and should be eliminated.

Summary of Major Issues

Part 1631 is Obsolete

There are no pre-1982 funds available to grantees today. As such, the original aim of Part 1631 has been long fulfilled. There is also no continuing purpose being served by Part 1631. In 1996, Congress adopted new restrictions and provisions applicable to recipients of LSC funds which supersede the restrictions in Pub. L. 99-180. Pub. L. 104-134, 110 Stat. 1321. These restrictions have been incorporated by reference in each subsequent appropriation, including the current appropriation. Pub. L. 108-447, 118 Stat. 2809. These restrictions have been separately incorporated into LSC's regulations and Part 1631 has no practical effect on grantees.

Streamlining of LSC Regulations

It is appropriate for LSC to review its statutory and regulatory compliance requirements for efficiency, unnecessary duplication and implications for the delivery of high quality, appropriate legal services. To

direction to be given to staff at the outset. The appropriate rulemaking process shall be selected on a case-by-case basis consistent with the objectives of this Protocol.

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the extent that Part 1631 is now obsolete, eliminating it will streamline LSC regulations and help avoid any potential confusion that the continued existence of Part 1631 might cause.

Recommendation for Action

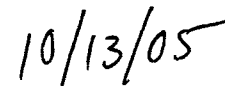
Accordingly, I recommend that LSC undertake a rulemaking to remove the current 45 CFR Part 1631, entitled "Expenditure of Grant Funds," and to reserve Part 1631 for future rulemaking by LSC. I further recommend that this rulemaking be undertaken through Notice and Comment Rulemaking only. We believe that convening a Regulatory Workshop or conducting a Negotiated Rulemaking is neither appropriate nor necessary in this instance. As discussed above, removal of Part 1631 will not impact grantee activities or the LSC-grantee relationship. In light of these circumstances, neither convening a Regulatory Workshop nor conducting a Negotiated Rulemaking would represent an effective or efficient use of resources. Rather, Notice and Comment Rulemaking will provide sufficient opportunity for all interested parties to comment on LSC's proposed course of action.

Furthermore, due to the straightforward and simple nature of the rulemaking we are recommending, we are taking the additional step of providing a Draft Notice of Proposed Rulemaking for your review and approval.

RECOMMENDATION APPROVED:



Helaine M. Barnett, President



Date

Attachment