

**SUPPLEMENTARY INFORMATION:****Background**

Pursuant to a December 1982 resolution of the Corporation's Board of Directors, a condition was attached to all recipient's 1983 grants which reads:

None of the funds awarded hereunder may be utilized for the payment of program membership fees or dues to any organization unless prior written approval is obtained from the Corporation, except that no prior approval shall be necessary if the payment of such fees or dues is made in order to qualify for Professional Liability Insurance at reduced rates (for 1983 only), for the payment of any mandatory fees or dues to any bar association of fees to any health insurance provider.

On April 15, 1983, the Director of the Office of Field Services, sent a memorandum to the regional offices, one section of which gave detailed guidelines as to the interpretation and administration of this grant condition.

Objections to this section of the memorandum were immediately raised by concerned organizations. Consideration of these objections has convinced the Corporation that policy concerning fees and dues should be embodied in a regulation adopted through the full regulatory process of public discussion and comment.

Furthermore, discussion of the question of recipient transfers of Corporation funds among themselves and to other organizations has shown that there are other forms of transfer of Corporation funds, in particular subgrants, which are not addressed in the Corporation's regulations. Consequently, the Corporation has found it desirable to issue a comprehensive proposed regulation covering this entire area.

**Subgrants**

A subgrant is defined in Section 1627.2(b) as a transfer by grant or contract of funds received by a recipient from the Corporation to an organization for the purpose of carrying out a part of the recipient's program (a recipient is defined more broadly than in the Act to include also grantees or contractors under Sections 1006(a)(1)(B) and 1006(a)(3) of the Act). Excepted from this definition are contracts for services rendered directly to the recipient (i.e., accounting services, general counsel, management consultants, computer services, etc.) and all contracts with private attorneys and law firms for direct provision of legal services to eligible clients.

The regulation requires prior, written Corporation approval of all subgrants. The intent of the regulation is that

recipients be free to contract for services and that private bar involvement programs not be required to seek approval for their contracts with individual attorneys or law firms for provisions of legal services; however, transfers of Corporation funds to other organizations which then carry out a part of the recipient's program require Corporation approval.

In order to further promote accountability for Corporation funds, audit responsibilities are clearly defined and provision is made that any disallowed costs may be recovered from either the subgrantee or subgrantor. As most Corporation grants and contracts are for a period of one year, this is the maximum term allowed for a subgrant without renewed Corporation approval.

**Membership Fees and Dues**

All fees and dues except four specific categories require prior, written Corporation approval. The four excepted categories are: (1) Fees or dues paid to qualify for professional liability insurance at reduced rates, (2) mandatory bar association fees or dues, (3) fees or dues to a health insurance provider or paid to qualify for health insurance at reduced rates, and (4) any fees or dues of \$25 or less.

In order to concentrate Corporation resources on the direct delivery of legal services, the maximum annual expenditure of Corporation funds for all fees and dues, except for categories 1 and 3 discussed above and routine training and education activities, is set at \$750 or one-half of one percent of a recipient's funding, whichever is greater.

A recipient may not contribute Corporation funds to any other organization, because the Corporation does not consider such contributions, however worthy, a proper use of taxpayer funds.

**Categories of Disapproved Expenditures**

The regulation prohibits expenditures to accomplish or promote indirectly activities, such as voter registration, for which direct expenditures are prohibited. This prohibition applies to fees, dues, contributions, and training and educational activities.

**List of Subjects in 45 CFR Part 1627**

Legal Services, Grant programs.

For the reasons set out in the preamble, 45 CFR Chapter XVI is proposed to be amended by adding Part 1627 to read as follows:

**LEGAL SERVICES CORPORATION****45 CFR Part 1627****Limitations on Transfer of Corporation Funds by Recipients and on Certain Expenditures**

**AGENCY:** Legal Service Corporation.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule creates a new Part 1627 governing transfers of Corporation funds by recipients to other organizations. There are, at present, no Corporation regulations governing this area and, consequently, there is inadequate control over and accountability for such transfers. This proposed rule requires prior written Corporation approval for all subgrants and for most categories of payment of fees and dues and contributions of Corporation funds, but not for routine training expenditures.

**DATE:** Comments must be received on or before July 22, 1983.

**ADDRESS:** Comments may be addressed to Office of General Counsel, Legal Service Corporation, 733 Fifteenth Street, NW., Room 620, Washington, D.C. 20005.

**FOR FURTHER INFORMATION CONTACT:** John Meyer, Deputy General Counsel, (202) 272-4010.

**PART 1627—LIMITATIONS ON  
TRANSFER OF CORPORATION FUNDS  
BY RECIPIENTS AND ON CERTAIN  
EXPENDITURES**

**Sec.**

1627.1 Purpose.

1627.2 Definitions.

1627.3 Requirements for all subgrants.

1627.4 Membership fees and dues.

1627.5 Contributions.

1627.6 Transfers to other recipients.

1627.7 Training and education activities.

1627.8 Tax sheltered annuities, retirement accounts and pensions

Authority: Sec. 1006(e) Pub. L. 93-355, 88 Stat. 378 (42 U.S.C. 29969g(e)).

**§ 1627.1 Purpose.**

In order to promote accountability for Corporation funds and the observance of the provisions of the Legal Services Corporation Act and the Corporation's regulations adopted pursuant thereto, it is necessary to set out the rules under which Corporation funds may be transferred by recipients to other organizations (including other recipients).

**§ 1627.2 Definitions.**

(a) "Recipient" as used in this part means any recipient as defined in Section 1002(6) of the Act and any grantee or contractor receiving funds from the Corporation under Section 1006(a)(1)(B) or 1006(a)(3) of the Act.

(b)(1) "Subgrant" as used in this Part shall mean any transfer of funds received from the Corporation by a recipient to any organization for the purpose of carrying out a portion of the recipient's program under a grant or contract from the Corporation; it shall not include a contract for services to be rendered directly to the recipient, nor shall it include any contract with private attorneys or law firms for the direct provision of legal services to eligible clients.

(2) "Subgrantee" as used in this Part shall mean any organization receiving a subgrant.

(c) "Membership fees and dues" as used in this Part shall mean fees or dues paid to an organization on behalf of a program or individual to be a member thereof, or to acquire voting or participatory rights therein; it shall also include fees and dues required by a professional licensing body. The term "membership fees and dues" shall not include one-time fees or expenses for programs or individuals to participate in routine training and education activities.

**§ 1627.3 Requirements for all subgrants.**

(1) All subgrants must be submitted *IN writing* to the Corporation for prior, written approval. The submission shall include the terms and conditions of the

subgrant and the amount of funds intended to be transferred.

(2) The Corporation shall have 45 days to approve, disapprove, or suggest modifications to the subgrant. A subgrant which is disapproved or to which modifications are suggested may be resubmitted for approval. Should the Corporation fail to take action within 45 days, the recipient shall notify the Corporation of this failure and, unless the Corporation responds within 7 days of the receipt of such notification, the subgrant shall be deemed to have been approved.

(3) Any subgrant not approved according to the procedures of paragraph (a)(2) of this section shall be subject to audit disallowance and recovery of all the funds expended pursuant thereto.

(b)(1) A subgrant may not be for a period longer than one year.

(2) All subgrants shall contain a provision providing for their orderly termination in the event that the recipient's funding is terminated or the recipient is not refunded and for suspension of activities if the recipient's funding is suspended.

(3) A substantial change in the work program of a subgrant or an increase or decrease in funding of more than 10% shall require Corporation approval pursuant to the provisions of § 1627.3(a). Minor changes of work program or changes in funding of less than 10% shall not require prior Corporation approval, but the Corporation shall be informed in writing thereof.

(c) The responsibility for assuring the proper expenditure of funds by the subgrantee rests with the recipient. The recipient is also responsible for auditing the subgrantee's expenditure of funds. The recipient may either: (1) Include a subgrantee's audit in its annual audit or (2) audit the subgrantee as a part of its annual audit. A subgrant agreement may provide for alternate means of assuring the propriety of subgrantee expenditures, especially in instances where a large organization receives a small subgrant. In such alternate means are approved by the Audit Division of the Corporation, the information provided thereby shall satisfy the recipient's annual audit requirement with regard to the subgrant funds.

(d) The recipient shall be responsible for repaying the Corporation for any disallowed expenditures by a subgrantee, irrespective of whether the recipient is able to recover such expenditures from the subgrantee.

**§ 1627.4 Membership fees and dues.**

(a) No Corporation funds may be used for membership fees or dues to any

organization, whether on behalf of a recipient or an individual, without prior written approval by the Corporation, except that the following payments may be made without such approval:

(1) Fees or dues paid to an organization in order to qualify for professional liability insurance at reduced rates, provided the reduction in rates is reasonably comparable to the amount of the payment;

(2) Mandatory fees or dues to a bar association, Supreme Court or professional licensing body;

(3) Fees or dues paid to a health insurance provider or to an organization in order to qualify for health insurance at reduced rates, provided the reduction in rates is reasonably comparable to the amount of the payment; and

(4) Any fees or dues of \$25 or less, provided they do not fall under the prohibitions set forth in § 1627.4(d).

(b) In order to prevent a significant diversion of funds from the direct provision of legal services to eligible clients, the Corporation has determined that the total of any one recipient's annual expenditure on membership fees and dues should be strictly limited. With the exception of categories (1) and (3) listed in § 1627.4(a), that total shall not exceed one-half of one per cent of the recipient's annualized funding level or \$750, whichever is greater.

(c) In determining whether to grant a specific request to use funds for fees or dues, preference will be given to such uses as: (1) Payment of voluntary bar association dues and similar dues for paralegal and legal service or law office administrator organizations; and (2) the provision of special training related to activities designed to enhance the skill of program staff in provision of legal services to clients. Training relating to skills the use of which is often not permissible if supported with Corporation funds (e.g. lobbying) shall not be approved.

(d) No request for payment of fees or dues shall be approved if the effect of that payment would be allowed recipients to use Corporation funds indirectly in areas (such as lobbying, political activities, voter registration) for which direct expenditures by recipients are prohibited or severely restricted under the Act, Corporation regulations (45 CFR Chapter XVI), or Corporation Guidelines or Instructions. Consequently, the Corporation will deny permission for payment of fees or dues to organizations whose activities would violate the Act, or Corporation Regulations, Guidelines or Instructions.

**§ 1627.5 Contributions.**

Any contributions of Corporation funds to another organization or to an individual are prohibited.

**§ 1627.6 Transfers to other recipients.**

(a) The requirements of § 1627.3 shall apply to all subgrants by one recipient to another recipient.

(b) The subgrantee shall audit any funds subgranted to it in its annual audit and supply a copy of this audit to the subgrantor. The subgrantor shall either make the relevant part of this audit a part of its next annual audit or, if it applies to an audit recently submitted, submit it as an addendum to that recently submitted audit.

(c) In addition to the provisions of § 1627.3(d), the Corporation may hold the subgrantee directly responsible for any disallowed expenditures of subgrant funds. Thus, the Corporation may recover all of the disallowed costs from either subgrantor or subgrantee or may divide the recovery between the two; the Corporation's total recovery may not exceed the amount of expenditures disallowed.

(d) Funds received by a recipient from other recipients in the form of fees and dues shall be accounted for and included in the annual audit of the recipient receiving these funds as Corporation funds.

**§ 1627.7 Training and education activities.**

(a) Corporation funds may be utilized to pay for participation of programs and individuals in routine training and educational activities.

(b) No recipient shall expend Corporation funds for training or educational activities or utilize Corporation funds to pay for programs or individuals to participate in outside training or educational activities if the effect of such payment would be to allow the use of these program funds:

(1) For purposes for which direct expenditures are prohibited under the Act, Corporation regulations (45 CFR Chapter XVI), or Corporation Guidelines of Instructions; or

(2) For training or educational activities in areas in which program involvement is prohibited (such as political activities or voter registration, etc.) or in areas wherein only limited and incidental activities are allowed (such as lobbying).

**§ 1627.8 Tax sheltered annuities, retirement accounts and pensions.**

No provision contained in this Part shall be construed to prohibit or restrict 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.

Dated: June 16, 1983.

Alan R. Swendiman,

General Counsel.

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