

particular legal area since priorities were last reviewed.

#### § 1620.6 Signed written agreement.

All staff who handle cases or matters, or are authorized to make decisions about case acceptance, must sign a simple agreement developed by the recipient which indicates that the signatory:

- (a) Has read and is familiar with the priorities of the recipient;
- (b) Has read and is familiar with the definition of an emergency situation and the procedures for dealing with an emergency that have been adopted by the recipient; and
- (c) Will not undertake any case or matter for the recipient that is not a priority or an emergency.

#### § 1620.7 Reporting.

(a) The recipient shall report to the recipient's governing body on a quarterly basis information on all emergency cases or matters undertaken that were not within the recipient's priorities, and shall include a rationale for undertaking each such case or matter.

(b) The recipient shall report annually to the Corporation, on a form provided by the Corporation, information on all emergency cases or matters undertaken that were not within the recipient's priorities.

(c) The recipient shall submit to the Corporation and make available to the public an annual report summarizing the review of priorities; the date of the most recent appraisal; the timetable for the future appraisal of needs and evaluation of priorities; mechanisms which will be utilized to ensure effective client participation in priority-setting; and any changes in priorities.

Dated: April 14, 1997.

**Victor M. Fortuno,**

*General Counsel.*

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## LEGAL SERVICES CORPORATION

### 45 CFR Part 1626

#### Restrictions on Legal Assistance to Aliens

**AGENCY:** Legal Services Corporation.

**ACTION:** Final rule and interim rule with request for comments.

**SUMMARY:** This final rule revises the Legal Services Corporation's ("Corporation" or "LSC") interim rule on legal representation of aliens. This rule is intended to implement the

restrictions on alien representation in the Corporation's Fiscal Year ("FY") 1996 appropriations act that are currently incorporated by reference into the Corporation's FY 1997 appropriations act. In general, these restrictions apply to a recipient's LSC and non-LSC funds where, under prior legislation and the prior rule, the restrictions applied only to a recipient's LSC funds. In addition, the final rule includes a number of technical and substantive revisions suggested by public comments, and substantially reorganizes portions of the rule to give it a more logical and coherent structure and to make it easier to understand and apply. Finally, this final rule incorporates provisions to implement the Kennedy Amendment, a new statutory provision permitting the use of a recipient's non-LSC funds for legal assistance to otherwise ineligible aliens who are the victims of domestic abuse. This provision was included in the Corporation's FY 1997 appropriations act, which was enacted after publication of the interim rule. Because these provisions were added after publication of the interim rule, the Corporation is publishing the Kennedy Amendment provisions as interim provisions and is requesting public comment on the manner in which the Corporation has implemented the Kennedy Amendment in this rule.

**DATES: Effective Dates:** The final rule is effective on May 21, 1997. The interim provisions, § 1612.2(f) and (g) and § 1612.4, are effective on April 21, 1997.

**Comments:** Comments on the interim provisions must be submitted on or before May 21, 1997.

**ADDRESSES:** Comments should be submitted to the Office of General Counsel, Legal Services Corporation, 750 First St., NE., 11th Floor, Washington, DC 20002-4250.

**FOR FURTHER INFORMATION CONTACT:** Victor Fortuno, General Counsel, (202) 336-8910.

**SUPPLEMENTARY INFORMATION:** Section 504(a)(11) of the LSC appropriations act for FY 1996, Pub. L. 104-134, 110 Stat. 1321 (1996), prohibits the Corporation from providing funding to any person or entity ("recipient") that provides legal assistance to ineligible aliens. This restriction effectively restricts a recipient's non-LSC funds for alien representation to the same degree as LSC funds. The prior rule, promulgated in 1983, expressly allowed recipients to use their non-LSC funds to provide legal assistance to ineligible aliens.

On May 19, 1996, the Operations and Regulations Committee ("Committee") of the LSC Board of Directors ("Board")

requested the LSC staff to prepare an interim rule to implement the restrictions in § 504(a)(11). The Committee held public hearings on staff proposals on July 9 and 10, 1996, and the Board adopted the interim rule on July 20 which was published in the **Federal Register** on August 29, 1996, at 61 FR 45750.

The interim regulation extended the restrictions on alien representation to recipients' non-LSC funds and made numerous other revisions to the prior rule to correct technical problems, to clarify several confusing provisions, and to remove outdated provisions. No other major structural revisions or substantive changes were made by the interim rule. This final rule includes changes made to the interim rule largely in response to public written and oral comments and recommendations made by the LSC staff. Public hearings were held on the rule by the Committee on December 14, 1996, and January 5, 1997, and by the LSC Board on January 6, 1997, when this final rule was adopted.

Subsequent to the publication of the interim rule, Congress passed the Corporation's 1997 appropriations act, Pub. L. 104-208, 110 Stat. 3009 (1996). That legislation amended the § 504(a)(11) restriction in the FY 1996 appropriations act to permit recipients to use non-LSC funds to serve indigent aliens who are victims of domestic abuse on matters directly related to the abuse ("Kennedy Amendment"). The Kennedy Amendment became effective on October 1, 1996, during the comment period for the interim rule. A number of comments urged incorporation of the Kennedy Amendment into the final regulations, even though the interim rule understandably made no mention of the Kennedy Amendment because the rule was published before its enactment. While the few comments the Corporation received made suggestions on how to include the Amendment into this rule, the general public was not provided notice of the Amendment. Accordingly, the Corporation requests comments on these provisions for its review and consideration. In addition, the Corporation has determined that it is necessary to publish the Kennedy Amendment provisions as interim rules, effective upon publication, in order to provide prompt and critically needed guidance to LSC recipients on the changed status of legislative requirements. LSC determined that because of the circumstances, prior notice and public comment were impracticable, unnecessary and contrary to the public interest. See 5 U.S.C. 553(b)(3)(B) and 553(d)(3). The Corporation intends to hold a public

hearing on the provisions and anticipates publishing a final version of the Kennedy Amendment provisions in a later rulemaking. With the exception of the Kennedy Amendment provisions, § 1626.2 (f) and (g) and § 1626.4, this rule is final.

The Corporation received 13 timely comments on the interim rule. The commenters raised a number of specific substantive issues and also suggested a need for numerous technical and structural changes to clarify or correct minor points addressed by the regulation. For the most part, the Corporation has included the suggested technical and structural revisions in this final regulation.

Most of the comments addressed four clusters of issues: (1) the need to incorporate the Kennedy Amendment into part 1626; (2) the need to provide a mechanism to update and expand the list of acceptable documents used to establish alien eligibility; (3) issues relating to verification of citizenship; and (4) the need to address the special confidentiality concerns of aliens. In addition, individual comments addressed a series of specific issues raised by the interim rule. The Corporation has addressed issues raised by the comments and includes its analysis of those issues in the section-by-section discussion of the final rule and the interim provisions provided below.

#### Section 1626.1 Purpose

The final rule revises the "Purpose" section of the interim rule, by stating affirmatively that the rule is intended to ensure that recipients provide legal assistance only to citizens and eligible aliens, rather than stating the purpose as a prohibition on the representation of certain aliens. It continues to be a purpose of this rule to assist recipients in determining eligibility and alien status.

#### Section 1626.2 Definitions

The final rule includes all of the definitions that were in the interim rule, but also incorporates several new definitions, including definitions of "citizen" and "United States" and terms used in the Kennedy Amendment. The definitions of "citizen" and "United States" reference the sections of the Immigration and Nationality Act ("INA") that define those terms or describe the individuals covered by those terms for purposes of the rule. As suggested by comments, this commentary notes that persons born in Puerto Rico and the U.S. Virgin Islands are U.S. citizens. Furthermore, an individual may be a U.S. citizen even

though born outside the U.S. and not naturalized. For example, persons born outside of the U.S. may have acquired U.S. citizenship at birth from their U.S. citizen parent or parents, or through naturalization of their parents.

#### Sections 1626.2 (f) and (g) and § 1626.4 Kennedy Amendment Provisions

Many of the comments specifically urged LSC to incorporate the "Kennedy Amendment" into the final version of Part 1626. The Amendment permits LSC recipients to use non-LSC funds to provide legal assistance to ineligible aliens who are the victims of domestic abuse when the legal assistance is "directly related to the prevention of, or obtaining relief from," the abuse. All of the Kennedy Amendment provisions are published as interim rules on which the Corporation seeks public comment.

To implement the Kennedy Amendment, this rule contains two new definitions in § 1626.2 and adds applicability provisions in § 1626.4. The first new definition is found in § 1626.2(f) which defines the phrase "battered or subjected to extreme cruelty," the term for domestic abuse used in the Kennedy Amendment. The Kennedy Amendment states that "battered or subjected to extreme cruelty has the meaning given such term under regulations issued pursuant to subtitle G of the Violence Against Women Act of 1994."

On March 26, 1996, the Immigration and Naturalization Service ("INS") of the Department of Justice issued an interim rule which contains the definition referred to in the Kennedy Amendment. See 61 FR 13074. The regulation provides the following definition:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence.

The INS definition is subject to change because the INS interim rule has not been finalized. Therefore, the Corporation has cited but has not included the language of the INS

definition in the text of this rule. Thus, if the INS definition changes, this rule would still be correct.

The second definition is of the phrase "legal assistance directly related to the prevention of, or obtaining relief from, the battery or cruelty" and is found at § 1626.2(g). The comments urged the Corporation to define "directly related" broadly, to permit representation on a wide range of legal issues that would permit the victim of abuse to escape from the abusive situation, ameliorate the effects of the abuse, and protect against future abuse. Some of the comments suggested specific areas of legal representation that should be permitted; others urged LSC to permit any legal representation that could arguably be described as related to the abuse.

The Corporation adopted a definition that it believes is consistent with the statutory intent. The definition would allow a broad area of representation that has the specific purpose of assisting the abused spouse or child to escape from the abusive relationship, to ameliorate the effects of the abuse or to protect against future abuse. The definition, however, would not permit a recipient to use non-LSC funds to provide an ineligible alien who has suffered domestic abuse with any and all legal assistance that would fall within the recipient's priorities. To do so would ignore congressional intent and would also ignore the specific language of the exception, which permits recipients to provide only assistance that is "directly related" to the abuse.

Although the question of whether a particular service is directly related to the abuse will need to be made on a case-by-case basis, the following provides some guidance. First, the definition would permit a recipient to use non-LSC funds to provide assistance on a broad range of family law issues, but would not permit assistance on matters that are not directly related to the abusive relationship. For example, a recipient could provide legal assistance to seek a civil protection order against the abuser and to terminate the marriage and the parental rights of the abuser, but could not provide adoption assistance if the client remarries and the new spouse, who is also an ineligible alien, wishes to adopt the children. Similarly, the definition would permit the recipient to use non-LSC funds to provide assistance to secure housing, medical or income assistance for the abused spouse and children, so they would no longer have to be dependent on the abuser. However, absent some evidence that subsequent events were the direct result of the abuse, it would not permit them

to challenge an eviction action by a landlord for non-payment of rent, sue the agency administering the medical assistance program for failure to pay for specific care, or to challenge a cutoff of public assistance for failure to meet work requirements. Finally, the definition would permit the recipient to use non-LSC funds to assist the abused spouse or child to seek suspension of deportation, or to self-petition for immigrant status, a procedure which avoids the necessity of relying on the citizen/legal permanent resident abusive spouse or parent's willingness to file or pursue the petition on their behalf. Both of these procedures are included in the Violence Against Women Act and the interim INS regulations which implement that act. See 8 CFR part 204.

Section 1626.4 on applicability is a new section not found in either the interim or prior regulation. Paragraph (a) sets out the Kennedy Amendment, and paragraph (b) addresses the confidentiality concerns of otherwise ineligible aliens who may be served under the Kennedy Amendment.

As indicated above, numerous comments urged the Corporation to incorporate the Kennedy Amendment in the final rule as an exception to the restrictions on alien representation. The Kennedy Amendment is not stated as an exception. Rather, it clarifies that the restriction on alien representation in § 504(a)(11) shall not be construed to prohibit representation of persons who fall within the terms of the Kennedy Amendment. Accordingly, the Corporation decided to state that the prohibition in the rule does not apply to applicants for service who meet the criteria set out in the Kennedy Amendment. Thus, victims of abuse under the Kennedy Amendment may be represented by recipients with non-LSC funds, provided that the legal assistance is directly related to the abuse. Under this analysis, the immigration status of Kennedy Amendment clients is essentially irrelevant, because they may be served with non-LSC funds regardless of citizenship or alien status.

Section 1626.4(b) was included to address special confidentiality concerns raised by several of the comments. Those comments discussed the special needs of aliens with respect to confidentiality of information relating to immigration status. Comments particularly noted the need to protect from disclosure information provided to a recipient by (1) applicants for service who are rejected or referred to another legal services provider because they do not fall within one of the permitted categories of aliens who may be served or (2) clients who are represented using

non-LSC funds under the Kennedy Amendment. In both of these situations, the information on alien status contained in intake records, which records are accessible to Federal auditors, could potentially lead to loss of employment or educational opportunities, deportation, imprisonment or other serious consequences if disclosed. Fear that such information might be revealed to the INS or other law enforcement agencies, whether or not well-founded, could discourage those aliens uncertain of their eligibility for services from seeking legal assistance for critical legal needs. The Corporation decided that part 1626 should explicitly state that recipients are not required to maintain records regarding the immigration status of clients served under the Kennedy Amendment.

Recipients are also not required to maintain immigration records for applicants who are rejected or referred to other sources of legal assistance. Section 1626.3 clarifies that normal intake and referral services are not legal assistance for the purposes of this part. In addition, the documentation requirements in §§ 1626.6 and 1626.7 specifically do not apply to persons who receive only intake or referral services.

#### *Section 1626.3 Prohibition*

This section restates the general prohibition on providing legal assistance to ineligible aliens included in the interim regulation. It also revises the language of the interim regulation with respect to intake and referral, making it clear that normal intake and referral of ineligible aliens do not constitute the provision of legal assistance, and is not prohibited by this part. Thus, if an ineligible alien seeks legal assistance, a recipient may complete intake and either reject the applicant or refer the applicant to a private attorney, a non-LSC funded legal services provider or a non-legal organization that provides immigration assistance. In addition, since applicants who are either rejected or referred are not covered by the prohibition, recipients are not required to maintain records of alien status for those individuals, which was a concern raised by a number of the comments and is addressed in more detail in the discussion of § 1626.4(b) above.

#### *Section 1626.5 Alien Status and Eligibility*

This section sets out the categories of aliens eligible for legal services. It is essentially the same as § 1626.4 of the interim regulation except that the text of § 1626.4(c) of the interim regulation has

been divided into two subparagraphs in this rule for clarity. Other technical changes have also been made to the numbering and cross citations.

#### *Sections 1626.6, 1626.7 and 1626.8*

Section 1626.5 of the interim rule has been subdivided into §§ 1626.6, 1626.7 and 1628 in this final rule for clarity and ease of application. Section 1626.6 deals with verification of citizenship, § 1626.7 deals with eligible alien status and § 1626.8 deals with emergencies.

#### *Section 1626.6 Verification of Citizenship*

This section is based on § 1626.5(a) of the interim rule, but the language has been revised substantially and additional provisions have been added in response to numerous comments. This section requires applicants for service who claim to be citizens to attest in writing to the fact of their citizenship. Only when there is reason to doubt that the applicant is a citizen is the recipient required to seek documentation to verify the applicant's citizenship.

Under § 1626.5(f) of the interim regulation, no written verification of citizenship was required when only brief service and consultation by telephone, without continuing representation, was provided. This provision has been simplified and is incorporated into § 1626.6(a) of this rule with no substantive changes intended.

Several comments addressed the issue of when verification of citizenship should be required. All noted that under both the interim rule and the rule that preceded it, verification of citizenship was required only when the "recipient has reason to doubt that a person is a United States citizen." The comments also made the point that, while not explicitly stated in the regulation itself, recipients are not permitted to base a determination that there is reason to doubt a person's citizenship on personal characteristics, such as the person's accent, limited English-speaking ability, appearance or race, since to do so would constitute discrimination. Several of the comments suggested that recipients need additional guidance on this issue and recommended that the regulation explicitly include language prohibiting discrimination, rather than simply including it in the commentary, as was done when part 1626 was originally promulgated in 1983. A comment submitted by the LSC Office of Inspector General ("OIG"), suggested that inclusion of such a statement would be insufficient to cure the problem of potential discrimination. The Board agreed that the text of the regulation should include a provision explicitly

prohibiting discrimination, but disagreed that recipients must verify citizenship for all applicants who claim citizenship in order to prevent any discrimination. Accordingly, the Board added a non-discrimination provision to § 1626.6(b).

To guide recipients in this matter, this commentary provides several examples of legitimate, non-discriminatory reasons to doubt that a particular applicant for service is a citizen. For example, if, in the course of an interview, an applicant who claims to be a citizen mentions having difficulties with the INS or being denied certain benefits because of alien status, the recipient should seek verification of citizenship. Similarly, if an applicant claiming citizenship specifically seeks representation in an immigration matter, the recipient should seek citizenship verification. If an applicant for services makes statements relating to the applicant's citizenship that the recipient has reason to believe are false or misleading, the applicant should seek verification. Also, if an applicant who attests to citizenship seems to be confused or misinformed about whether the steps to become a citizen have been completed, the recipient should seek verification of status.

The OIG also commented that the lack of verification of citizenship of all applicants claiming citizenship makes compliance with the prohibition on providing legal assistance to ineligible aliens virtually impossible to assess. Thus, the OIG, now charged with assessing compliance through audits, recommended that the regulation be revised to require recipients to verify citizenship in all instances where an applicant for services claims to be a citizen. The Board disagreed, because such a requirement might result in denying services to poor citizens who do not have ready access to documents such as birth certificates or passports that are needed to verify citizenship. The Board also noted that the verification procedures in the interim rule have been in place with virtually no change since 1983, and there has never been any suggestion that ineligible aliens have inappropriately received services on the basis of false claims of citizenship.

The final rule contains two additional changes that will reduce the administrative burden on recipients and applicants for service while maintaining an appropriate verification procedure. Under the previous regulation and the interim rule, the attestation was to be "in a form approved by the Corporation." Section 1626.6(a) of the final rule now provides that citizenship

attestation will be "in a standard form provided by the Corporation" and LSC plans to issue such a standard form shortly. In the meantime, recipients should continue to use their current attestation forms. Although not explicitly stated as a requirement in the rule itself, the Corporation believes that when an applicant for service is not fluent in English, the attestation form should be translated, either orally or in writing, into a language that the applicant understands.

Section 1626.6(b)(1) of the final rule permits a recipient to accept, in addition to originals or certified copies of documents, "photocopies that appear to be complete, correct and authentic." Finally, subsection 1626.6(b)(2) now makes it clear that in addition to the specific documents listed, recipients "may also accept any other authoritative document such as a document issued by INS, by a court or by any other governmental agency, that provides evidence of citizenship."

Finally, the Corporation has long recognized that legal guardians often must act for clients who are incompetent. For example, Office of General Counsel opinions have approved such guardians acting on behalf of clients seeking assistance as eligible clients under the Corporation's poverty guidelines in 45 CFR Part 1611. Although not expressly provided for in the rule, for the purposes of this rule, an attestation of citizenship for applicants who are children and incompetent adults may be done, for example, by a parent, legal guardian, guardian ad litem, or other legal representative of the child or incompetent adult. Such attestation may not be done, however, by the recipient, even though the recipient may be the applicant's guardian for other purposes.

#### *Section 1626.7. Verification of Eligible Alien Status*

This section is based on §§ 1626.5(b)-(d) of the interim regulation, but it has been substantially revised in response to comments and recommendations from the LSC staff.

Under § 1626.5(f) of the interim regulation, no written verification was required when only brief service and consultation by telephone, without continuing representation, is provided. This provision has been simplified and included in § 1626.7(a) without substantive change.

Several of the comments addressed issues related to documentation of alien status for determining eligibility. The comments noted that the list of documents contained in § 1626.5(b) of the interim rule was outdated and did

not include a number of the common documents currently issued by INS. In addition, the comments noted that INS frequently changes the name, number or format of the documents that it issues, and, as a result, it is difficult to maintain a current list of acceptable documents. To deal with these realities, several of the comments suggested that the list of acceptable documents be removed from the regulation and placed, instead, in an Appendix to the regulation that could be updated by the LSC staff annually, or more frequently if needed, without Board action. There is precedent for use of such an Appendix in part 1611 of the LSC regulations. Appendix A to Part 1611 contains the LSC poverty guidelines, which are based on 125% of the poverty guidelines that are issued each year by the Department of Health and Human services. The LSC staff publishes the new poverty guidelines each year in the **Federal Register** without Board action. The Corporation agreed that this approach would be preferable to the current structure, and the final rule deletes the list of documents from the text of the interim rule. An Appendix of current acceptable documents is published with this final rule. The Appendix has been provided to the Corporation by the National Immigration Law Center, Los Angeles, California. Comments on recommended revisions or additions to the Appendix will be accepted at any time by the Corporation.

The comments raised several additional issues relating to documentation of alien status. First, several comments noted that § 1626.5(b)(5) of the interim rule permitted a recipient to accept other authoritative documents issued by the INS as evidence of alien status. Pointing out that there are situations where a court or other governmental agency (e.g. State Department) may also issue such authoritative documents, comments urged that recipients be permitted to accept these as well. The Corporation agreed and § 1626.7(a)(2) of the final rule includes language that permits recipients to accept other authoritative documents such as those issued by a court or government agency other than INS.

Several of the comments also noted that eligible aliens are often unable to produce original documents as required under § 1626.5(b) of the interim regulation. Documents may be lost, stolen or destroyed. INS has a procedure for applying for replacement documents, but there is a substantial fee that indigent applicants may not be able to afford. Also, INS officials often do not

know, or do not inform applicants, about the fee waiver procedure, and it may take months for substitute documents to be provided. Comments suggested that the final rule deal with the issue of missing documents in two ways. First, commenters recommended that recipients be permitted to accept certified copies of documents or photocopies that appear to be complete, correct and authentic. The Corporation agreed and § 1626.7(a)(1) provides that such copies are acceptable documentation.

Second, commenters recommended that where eligible aliens could not produce either the original or an acceptable copy of the appropriate documents, the final rule should include a provision that permits recipients to accept either a copy of an application for replacement of the documents or a notarized statement by a third party, similar to the statement permitted for establishing citizenship, stating that the applicant for service is eligible under one or more of the categories listed in § 1626.4. Comments raised the point that the regulation should not be designed in a way that forces recipients to turn away eligible aliens who do not have the appropriate paper work. The Corporation agreed that a copy of an application for replacement of documents, if it adequately described the document, would be acceptable and would be covered by § 1626.7(a)(2). However, the Corporation rejected the suggestion that a notarized statement by a third party should be adequate to establish eligibility, since an alien eligibility determination requires careful review of specific documents and most third parties would not be adequately informed about the intricacies of immigration law to make an authoritative judgment about immigration status.

#### *Section 1626.8 Emergencies*

This section is based on the substantive requirements of § 1626.5(e) of the interim rule, but in response to comments, the language has been substantially revised and simplified to eliminate unnecessary complexity and confusion and to state the principles more directly. This rule now states more clearly and affirmatively that a recipient may provide emergency legal assistance without written verification of alien status, but that further representation is not permitted without appropriate documentation. The Corporation also eliminated the reference in § 1626.5(e)(3) of the interim rule to the recipients' "criteria for emergency assistance as used in their general determination of priorities," because the

reference no longer makes sense in light of the recent revisions made to 45 CFR Part 1620.

Although the final rule does not define "emergency," in the legal services context, an emergency would be a situation where immediate action is necessary to preserve significant legal rights or prevent significant harm to a person's family, property, or other legal interests.

#### *Section 1626.9 Change in Circumstances*

This section is based on § 1626.6 of the interim regulation, but the language has been revised to make it clear that if the recipient learns that a client is no longer eligible for legal assistance under the rule, further representation is prohibited and the recipient must discontinue representation, although it must do so in a manner consistent with professional responsibilities.

#### *Section 1626.10 Special Eligibility Questions*

This section is based on the provisions of § 1626.7 of the interim regulation, but a number of revisions and additions have been made in response to comments received by the Corporation.

The comment of the Office of Inspector General stated that the interim rule had revised the provisions on special eligibility in a way that had unintended consequences. Under the prior version of part 1626, the rule stated that the restrictions on alien representation were not applicable to the legal services programs serving the listed geographic area and that citizens of those areas were eligible to receive legal assistance provided they were otherwise eligible. The rule did not explicitly state whether the legal assistance had to be provided only by recipients providing service in those areas or could be provided by other recipients as well. Under the interim rule, the restrictions on alien representation were explicitly made inapplicable to citizens of the listed geographic areas, but there was no mention of applicability to the recipients providing services in those entities. The OIG suggested that both the prior rule and the interim rule dealt with the question of special eligibility incorrectly, and urged that the final rule refer only to the legal services programs serving people who were citizens of those jurisdictions. The effect of this change would be to make financially eligible citizens of the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau only eligible for legal services

from the recipients serving those areas and the Commonwealth of the Northern Marianas. They would not be eligible for services from any other recipients unless they also came within one of the categories of eligible aliens listed in § 1626.5. Citizens of the Commonwealth of the Northern Mariana Islands, however, are U.S. Citizens and could be eligible for services from any LSC recipient. The Board agreed with the OIG analysis and revised § 1626.10(a) accordingly.

Another comment raised the issue of eligibility for LSC-funded services of indigent foreign nationals who seek legal assistance to obtain the return of children who were abducted from their country of residence and were brought to the U.S. for adoption. The comment noted that under the Hague Convention on the Civil Aspects of International Child Abduction ("Treaty") and the Federal implementing statute, the International Child Abduction Remedies Act ("ICARA") foreign nationals who reside in countries that have ratified the Treaty are eligible for Federally funded legal services as if they were U.S. nationals. This issue was addressed by the Corporation in a 1994 Office of General Counsel's opinion that concluded that part 1626 should be interpreted to permit representation of indigent persons abroad who seek to invoke the protection of the Treaty, so long as they are otherwise financially eligible. The rule has incorporated that interpretation in § 1626.10(e).

#### *Section 1626.11 H-2 Agricultural Workers*

This section is based on § 1626.8 of the interim regulation. The language has been revised and simplified, but no substantive changes have been made. This section sets out the eligibility requirements for H-2 workers.

#### *Replenishment Agricultural Workers*

One comment suggested that the provisions in § 1626.9 of the interim regulation relating to Replenishment Agricultural Workers (RAWs) should be deleted since the program was never implemented and INA § 210A(c) was repealed by § 219(ee)(1) of the Immigration and Technical Corrections Act of 1994 (Pub. L. 103-416). Accordingly, the Corporation removed the references to RAWs and deleted § 1626.9 from the interim rule.

#### *Section 1626.12 Recipient Policies, Procedures and Recordkeeping*

This section in the final rule is identical to § 1626.10 of the interim rule. It requires a recipient to adopt written policies and procedures to guide

its staff in complying with this part and to maintain documentation sufficient to document compliance.

#### List of Subjects in 45 CFR Part 1626

Grant programs, Legal services.

For the reasons set forth in the preamble, LSC revises 45 CFR part 1626 to read as follows:

### PART 1626—RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS

Sec.

- 1626.1 Purpose.
- 1626.2 Definitions.
- 1626.3 Prohibition.
- 1626.4 Applicability.
- 1626.5 Alien status and eligibility.
- 1626.6 Verification of citizenship.
- 1626.7 Verification of eligible alien status.
- 1626.8 Emergencies.
- 1626.9 Change in circumstances.
- 1626.10 Special eligibility questions.
- 1626.11 H-2 agricultural workers.
- 1626.12 Recipient policies, procedures and recordkeeping.

**Authority:** Pub. L. 104-208, 110 Stat. 1321; Pub. L. 104-134, 110 Stat. 3009.

#### § 1626.1 Purpose.

This part is designed to ensure that recipients provide legal assistance only to citizens of the United States and eligible aliens. It is also designed to assist recipients in determining the eligibility and immigration status of persons who seek legal assistance.

#### § 1626.2 Definitions.

(a) *Citizen* includes persons described or defined as citizens or nationals of the United States in 8 U.S.C. 1101(a)(22) and Title III of the Immigration and Nationality Act (INA), Chapter 1 (8 U.S.C. 1401 *et seq.*) (citizens by birth) and Chapter 2 (8 U.S.C. 1421 *et seq.*) (citizens by naturalization) or antecedent citizen statutes.

(b) *Eligible alien* means a person who is not a citizen but who meets the requirements of § 1626.5.

(c) *Ineligible alien* means a person who is not a citizen and who does not meet the requirements of § 1626.5.

(d) *Rejected* refers to an application for adjustment of status that has been denied by the Immigration and Naturalization Service (INS) and is not subject to further administrative appeal.

(e) To provide legal assistance *on behalf of* an ineligible alien is to render legal assistance to an eligible client which benefits an ineligible alien and does not affect a specific legal right or interest of the eligible client.

(f) *Battered or subjected to extreme cruelty* has the meaning given that phrase under 8 CFR part 204, the regulations issued pursuant to subtitle G

of the Violence against Women Act of 1994, 108 Stat. 1953.

(g) *Legal assistance directly related to the prevention of, or obtaining relief from, the battery or cruelty* means any legal assistance that will assist victims of abuse in their escape from the abusive situation, ameliorate the current effects of the abuse, or protect against future abuse.

(h) *United States*, for purposes of this part, has the same meaning given that term in 8 U.S.C. 1101(a)(38) of the INA.

#### § 1626.3 Prohibition.

Except as provided in § 1626.4, recipients may not provide legal assistance for or on behalf of an ineligible alien. For purposes of this part, legal assistance does not include normal intake and referral services.

#### § 1626.4 Applicability.

(a) Except for § 1626.12, the requirements of this part do not apply to the use of non-LSC funds by a recipient to provide legal assistance to an alien:

(1) Who has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty; or

(2) Whose child has been battered or subjected to extreme cruelty in the United States by a spouse or parent of the alien (without the active participation of the alien in the battery or extreme cruelty), or by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, and the alien did not actively participate in such battery or cruelty; provided that the legal assistance is directly related to the prevention of, or obtaining relief from, the battery or cruelty.

(b) Recipients are not required by § 1626.12 to maintain records regarding the immigration status of clients represented pursuant to paragraph (a) of this section.

#### § 1626.5 Alien status and eligibility.

Subject to all other eligibility requirements and restrictions of the LSC Act and regulations and other applicable law, a recipient may provide legal assistance to an alien who is present in the United States and who is within one of the following categories:

(a) An alien lawfully admitted for permanent residence as an immigrant as defined by section 1101(a)(20) of the INA (8 U.S.C. 1101(a)(20));

(b) An alien who is either married to a United States citizen or is a parent or an unmarried child under the age of 21 of such a citizen and who has filed an application for adjustment of status to permanent resident under the INA, and such application has not been rejected;

(c) An alien who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) (relating to refugee admissions) or who has been granted asylum by the Attorney General under section 208 of the INA (8 U.S.C. 1158).

(d) An alien who is lawfully present in the United States as a result of being granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)), as in effect on March 31, 1980) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic natural calamity;

(e) An alien who is lawfully present in the United States as a result of the Attorney General's withholding of deportation pursuant to section 243(h) of the INA (8 U.S.C. 1253(h)); or

(f) An alien who meets the requirements of § 1626.10 or 1626.11.

#### § 1626.6 Verification of citizenship.

(a) A recipient shall require all applicants for legal assistance who claim to be citizens to attest in writing in a standard form provided by the Corporation that they are citizens, unless the only service provided for a citizen is brief advice and consultation by telephone which does not include continuous representation.

(b) When a recipient has reason to doubt that an applicant is a citizen, the recipient shall require verification of citizenship. A recipient shall not consider factors such as a person's accent, limited English-speaking ability, appearance, race or national origin as a reason to doubt that the person is a citizen.

(1) If verification is required, a recipient may accept originals, certified copies, or photocopies that appear to be complete, correct and authentic of any of the following documents as evidence of citizenship:

- (i) United States passport;
- (ii) Birth certificate;
- (iii) Naturalization certificate;
- (iv) United States Citizenship Identification Card (INS Form 1-197 or I-197); or

(v) Baptismal certificate showing place of birth within the United States and date of baptism within two months after birth.

(2) A recipient may also accept any other authoritative document such as a

document issued by INS, by a court or by another governmental agency, that provides evidence of citizenship.

(3) If a person is unable to produce any of the above documents, the person may submit a notarized statement signed by a third party, who shall not be an employee of the recipient and who can produce proof of that party's own United States citizenship, that the person seeking legal assistance is a United States citizen.

**§ 1626.7 Verification of eligible alien status.**

(a) An alien seeking representation shall submit appropriate documents to verify eligibility, unless the only service provided for an eligible alien is brief advice and consultation by telephone which does not include continuous representation of a client.

(1) As proof of eligibility, a recipient may accept originals, certified copies, or photocopies that appear to be complete, correct and authentic, of any of the documents found in the appendix to this part.

(2) A recipient may also accept any other authoritative document issued by the INS, by a court or by another governmental agency, that provides evidence of alien status.

(b) A recipient shall upon request furnish each person seeking legal assistance with a list of the documents in the appendix to this part.

**§ 1626.8 Emergencies.**

In an emergency, legal services may be provided prior to compliance with §§ 1626.6 and § 1626.7 if:

(a) An applicant cannot feasibly come to the recipient's office or otherwise transmit written documentation to the recipient before commencement of the representation required by the emergency, and the applicant provides oral information to establish eligibility which the recipient records, and the applicant submits the necessary documentation as soon as possible; or

(b) An applicant is able to come to the recipient's office but cannot produce the required documentation before commencement of the representation, and the applicant signs a statement of eligibility and submits the necessary documentation as soon as possible; and

(c) The recipient informs clients accepted under paragraph (a) or (b) of this section that only limited emergency legal assistance may be provided without satisfactory documentation and that, if the client fails to produce timely and satisfactory written documentation, the recipient will be required to discontinue representation consistent with the recipient's professional responsibilities.

**§ 1626.9 Change in circumstances.**

If, to the knowledge of the recipient, a client who was an eligible alien becomes ineligible through a change in circumstances, continued representation is prohibited by this part and a recipient must discontinue representation consistent with applicable rules of professional responsibility.

**§ 1626.10 Special eligibility questions.**

(a) This part is not applicable to recipients providing services in the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, or the Republic of the Marshall Islands.

(b) All Canadian-born American Indians at least 50% Indian by blood are eligible to receive legal assistance provided they are otherwise eligible under the Act.

(c) Members of the Texas Band of Kickapoo are eligible to receive legal assistance provided they are otherwise eligible under the Act.

(d) An alien who qualified as a special agricultural worker and whose status is adjusted to that of temporary resident alien under the provisions of the Immigration Reform and Control Act ("IRCA") is considered a permanent resident alien for all purposes except immigration under the provisions of

section 302 of 100 Stat. 3422, 8 U.S.C. 1160(g). Since the status of these aliens is that of permanent resident alien under section 1101(a)(20) of Title 8, these workers may be provided legal assistance. These workers are ineligible for legal assistance in order to obtain the adjustment of status of temporary resident under IRCA, but are eligible for legal assistance after the application for adjustment of status to that of temporary resident has been filed, and the application has not been rejected.

(e) A recipient may provide legal assistance to indigent foreign nationals who seek assistance pursuant the Hague Convention on the Civil Aspects of International Child abduction and the Federal implementing statute, the International Child Abduction Remedies Act, 42 U.S.C. 11607(b), provided that they are otherwise financially eligible.

**§ 1626.11 H-2 Agricultural workers.**

(a) Nonimmigrant agricultural workers admitted under the provisions of 8 U.S.C. 1101(a)(15)(h)(ii), commonly called H-2 workers, may be provided legal assistance regarding the matters specified in paragraph (b) of this section.

(b) The following matters which arise under the provisions of the worker's specific employment contract may be the subject of legal assistance by an LSC-funded program:

- (1) Wages;
- (2) Housing;
- (3) Transportation; and

(4) Other employment rights as provided in the worker's specific contract under which the nonimmigrant worker was admitted.

**§ 1626.12 Recipient policies, procedures and recordkeeping.**

Each 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.

Appendix To Part 1626

ALIEN ELIGIBILITY FOR REPRESENTATION BY LSC PROGRAMS

Alien category	Immigration Act (INA)	LSC Regs 45 CFR § 1626	Examples of acceptable documents
LAWFUL PERMANENT RESIDENT.	INA § 101(a)(20) 8 USC, § 1101(a)(20).	§ 1626.5(a)	I-551 or I-151 or I-181 (Memorandum of Creation of Record of Lawful Permanent Residence), with approval stamp; or passport bearing immigrant visa or stamp indicating admission for lawful permanent residence or order granting residency or suspension or adjustment of status or I-327 Reentry Permit or I-94, with stamp indicating admission for lawful permanent residence or any computerized verification from INS or other authoritative document.
ALIEN WHO IS —married to U.S. citizen, —parent of U.S. citizen, or —unmarried child under 21 of U.S. citizen and —has filed an application for adjustment of status to permanent residency.	INA §§ 209, 210, 244, (replaced by INA § 240A(b) for aliens in proceedings initiated after 4/1/97), 245, 245A, 249 8 USC §§ 1159, 1160, 1259, 1254, 1255, 1255a, 1259.	§ 1626.5(b)	Proof of relationship to U.S. citizen* and I-485 (application for adjustment of status on the basis of a family based visa, registry, Cuban Adjustment, Cuban-Haitian Adjustment, or spouses and children eligible for Violence Against Women Act relief) and proof of filing** or I-256A or EOIR-40 (application for suspension of deportation)*** and proof of filing** or EOIR-42 (application for cancellation of removal) and proof of filing** or OF-230 (application at consulate for visa) and proof of filing with consulate** or I-360 (application to qualify as abused spouse or child under the Violence Against Women Act) or I-688B or I-766 (employment authorization document) coded 8 CFR § 274a.12(c)(9)(applicant for adjustment) or (c)(16)(registry applicant) or (c)(10)(suspension applicant) or letter or Form I-797 from INS acknowledging receipt of I-485; or I-94, with stamp indicated entry pursuant to advance parole (INA § 212(d)(5)) for pending § 245; or I-512 (advance parole), indicating entry to pursue pending § 245 application or passport, with stamp or writing by INS officer, indicating pending § 245 application or I-130 (visa petition) and proof of filing** or any computerized verification from INS or other authoritative document *Proof of relationship may include a copy of the alien's marriage certificate accompanied by proof of the spouse's U.S. citizenship; a copy of the birth certificate, baptismal certificate, adoption decree or other documents demonstrating that the alien is the parent of a U.S. citizen under the age of 21; a copy of the alien's birth certificate, baptismal certificate, adoption decree, or other documents demonstrating that the alien is a child under the age of 21, accompanied by proof that the alien's parent is a U.S. citizen; or in lieu of the above, a copy of INS Form I-130 (visa petition) containing information that demonstrates that the alien is related to such a U.S. citizen, accompanied by proof of filing. **Proof of filing may include a fee receipt showing that the application was filed with the INS or the immigration court; a filing stamp showing that the application was filed; or a copy of the application accompanied by a notarized statement signed by the alien that such form was filed. ***Note: "cancellation of removal and adjustment of status" replaces "suspension of deportation" for aliens in proceedings initiated on or after April 1, 1997.
REFUGEE .....	INA § 207, 8 USC § 1157.	§ 1626.5(c)	I-94 or passport stamped "refugee" or "§ 207" or I-688B or I-766 coded 8 CFR § 274a.12(a)(3)(Refugee) or (a)(4)(paroled asylees) or I-571 refugee travel document, or any computerized verification from INS or other authoritative document.
ASYLSEEINA .....	§ 208 8 USC § 1158 .....	§ 1626.5 (c)	I-94 or passport stamped "asylee" on "§ 208" or order granting asylum from INS, immigration judge, BIA, or federal court or I-571 refugee travel document or I-688B or I-766 coded 8 CFR § 274a.12(a) (5)(asylee) or other computerized verification from INS or other authoritative document.



## ALIEN ELIGIBILITY FOR REPRESENTATION BY LSC PROGRAMS—Continued

Alien category	Immigration Act (INA)	LSC Regs 45 CFR § 1626	Examples of acceptable documents
GRANTING WITHHOLDING OF DEPORTATION.	INA § 243(h) 8 USC § 1253(h) (as of 4/1/97, repealed and redesignated INA § 241(b)(3), "Restriction on Removal").	§ 1626.5(e)	I-94 stamped "§243(h)" or order granting withholding of deportation from INS, immigration court, BIA, or federal court or I-688B or I-766 coded 8 CFR § 274a.12(a)(10)(withholding of deportation) or I-571 refugee travel document; or any computerized verification from INS or other authoritative document.
CONDITIONAL ENTRANT.	INA § 203(a)(7) (prior to 4/1/80), 8 USC § 1153(a)(7).	§ 1626.5(d)	I-94 or passport stamped "conditional entrant" or any computerized verification from INS or other authoritative document.
AGRICULTURAL WORKER.	INA § 101(a)(15)(H)(II), 8 USC § 1101(a)(15)(H)(II).	§ 1626.11	I-94 or passport stamped "H-2A" or any computerized verification from INS or other authoritative document.
SPECIAL AGRICULTURAL WORKER TEMPORARY RESIDENT.	INA § 210, 8 USC § 1160.	§ 1626.10(d)	I-688, 688A, 688 or 766 indicating issuance under § 210 (or under 8 CFR § 274a.12 (a)(2), with other evidence indicating eligibility under INA § 210). or any computerized verification from INS or other authoritative document.

National Immigration Law Center 3/7/97.

Dated: April 14, 1997.

**Victor M. Fortuno,**

*General Counsel.*

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BILLING CODE 7050-01-P

## LEGAL SERVICES CORPORATION

### 45 CFR Part 1627

#### Subgrants and Membership Fees or Dues

**AGENCY:** Legal Services Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends only the fees and dues provisions of the Legal Services Corporation's ("Corporation" or "LSC") regulation concerning subgrants, fees and dues. The revisions are intended to implement a restriction contained in the Corporation's FY 1996 appropriations act which prohibits the use of LSC funds to pay membership dues to any private or nonprofit organization.

**DATES:** Effective May 21, 1997.

**FOR FURTHER INFORMATION CONTACT:**

Victor M. Fortuno, General Counsel, (202) 336-8910.

**SUPPLEMENTARY INFORMATION:** On May 19, 1996, the Operations and Regulations Committee ("Committee") of the LSC Board of Directors ("Board") requested the LSC staff to prepare an interim rule to implement § 505, a restriction in the Corporation's FY1996 appropriations act, Pub. L. 104-134, 110 Stat. 1321 (1996), which prohibits use of LSC funds to pay dues to any private or nonprofit organization. The Committee held public hearings on July 9 and 19, and the Board adopted an interim rule

on July 20 for publication in the **Federal Register**. The interim rule was published on Aug. 29, 1996 (61 FR 45753), and the Corporation received 4 timely comments.

After receipt of written public comment, the Committee held public hearings on the interim rule on December 13, 1996, and January 5, 1997. The Committee made a few revisions to the rule and recommended a revised version to the Board for final adoption on January 6, 1997. The Board made additional revisions and adopted this final rule for publication in the **Federal Register**.

The Corporation's FY 1997 appropriations act became effective on October 1, 1996, see Pub. L. 104-208, 110 Stat. 3009. It incorporated by reference the § 505 condition on LSC grants included in the FY 1996 appropriations act that is 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.

This final rule revises §§ 1627.2, 1627.4, 1627.7, and 1627.8 of the rule in effect prior to the interim rule ("prior rule"). In § 1627.2, the definition of "fees and dues" has been replaced by a definition of "membership fees or dues." Section 1627.4 has been completely revised. Section 1627.7 has been deleted, because it duplicates the training provisions in 45 CFR § 1612. Section 1627.8 has been renumbered as § 1627.7, and a new § 1627.8 is added regarding policies, procedures and recordkeeping. Also, the title of this rule has been revised to "Subgrants and membership fees or dues."

Generally, the revisions prohibit any use of LSC funds to pay membership

dues to any private or nonprofit organization. The prior rule allowed recipients to pay such dues, subject to certain limitations as to type of organization and amount of dues. Payment of dues with non-LSC funds continues to be permitted.

Finally, §§ 1627.1, 1627.3, 1627.5 and 1627.6 are not revised or reprinted here, because they deal exclusively with subgrants. Some of the comments urged the Corporation to revise these sections, especially in light of the recent revisions made to 45 CFR Part 1610 on transfers of funds. See § 1610.7, 61 FR 63749 (Dec. 2, 1996). LSC will consider revisions to the rule's subgrant provisions in the near future.

A section-by-section discussion of the revisions is provided below.

#### Section 1627.2 Definitions

The term "Fees and dues" in § 1627.2(c) has been redesignated as "membership fees or dues." The prior rule used the term "fees and dues." The interim rule changed the term to "dues" because the statutory provision in § 505 refers only to "dues" and there is no statutory restriction on "fees" as previously defined in this part. Also, the definition of "fees and dues" was essentially a definition of "dues." Deletion of the word "fees" in the interim rule, however, created the impression that a substantive change was intended. Because no change in meaning was intended, the Board changed the term to "membership fees and dues," a term which the Board believes better illustrates the meaning of the terms used in the prior and interim rule.

The term "membership fees and dues" is defined as payments for