



## LEGAL SERVICES CORPORATION

### 45 CFR Chapter XVI

#### Compliance Supplement for Audits of LSC Recipients

AGENCY: Legal Services Corporation.

ACTION: Notice of final changes to Compliance Supplement for Audits of LSC Recipients.

SUMMARY: The Legal Services Corporation (“LSC”) Office of Inspector General (“OIG”) is updating its Compliance Supplement for Audits of LSC Recipients for fiscal years ending April 30, 2016, and thereafter. The revisions primarily affect certain regulatory requirements to be audited pursuant to LSC regulations. In addition, the LSC OIG has included for audit certain regulatory requirements which impact recipient staff’s involvement in the outside practice of law. Finally, suggested audit procedures for several regulations have been updated and revised for clarification and simplification purposes.

**DATES:** The Compliance Supplement for Audits of LSC Recipients will be effective on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Anthony M. Ramirez, Director of Planning, Policy & Reporting, Legal Services Corporation Office of Inspector General, 3333 K Street NW, Washington, DC 20007; (202) 295-1668 (phone), (202) 337-6616 (fax), or [aramirez@oig.lsc.gov](mailto:aramirez@oig.lsc.gov)

#### **SUPPLEMENTARY INFORMATION:**

##### **I. History of this Action**

The purpose of the Compliance Supplement for Audits of LSC Recipients is to set forth the LSC regulatory requirements to be audited by the Independent Public Accountants (“IPA”) as part of the recipients’ annual financial statement audit and to provide suggested guidance to the IPAs in accomplishing this task. Pursuant to 45 CFR part 1641, IPAs are subject to suspension, removal, and/or debarment for not following OIG audit guidance as set out in the Compliance Supplement for Audits of LSC Recipients. Since the last revision of the LSC OIG’s Compliance Supplement for Audits of LSC Recipients, LSC has significantly revised and updated several regulations. By revising the Compliance Supplement for Audits of LSC Recipients, the LSC OIG intends that the Compliance Supplement accurately reflects these regulatory revisions and updates, including the corresponding changes to suggested audit guidance provided to the IPAs. A summary of the proposed changes follows.

The LSC OIG has included regulatory requirements under 45 CFR part 1604 in the Compliance Supplement for Audits of LSC Recipients. The inclusion sets forth the requirements dealing with the permissibility of recipient staff engaged in the outside practice of law along with suggested audit guidance for use by the IPAs.

The LSC OIG made major revisions to several regulatory summaries to reflect LSC’s revisions to its regulations. Revised summaries include those for 45 CFR parts 1609 (fee generating cases); 1611 (eligibility); 1614 (private attorney involvement); 1626 (restrictions on legal assistance to aliens); and to a lesser extent, 1635 (timekeeping requirement). The summaries now follow the existing law and LSC regulations. The suggested audit procedures for each of these sections have been revised and updated to incorporate and take into consideration the regulatory changes.

The LSC OIG revised the case sampling methodology by reducing criteria utilized in the case selection process to clarify and simplify the process.

The LSC OIG updated and revised suggested audit procedures for the regulations. The updates and revisions are intended for clarification and simplification purposes and to provide added emphasis on internal controls.

## **II. General Discussion of Comments**

The LSC OIG received ten comments during the public comment period. Four comments were submitted by LSC funded recipients: Prairie State Legal Services (PSLS), Colorado Legal Services (CLS), Land of Lincoln Legal Assistance Foundation, Inc. (LOLLAF) and Legal Assistance Foundation of Metropolitan Chicago (LAF). Three comments were submitted by IPAs. One comment was submitted by the Lawyers Trust Fund of Illinois (LTFI), separately joined by LAF. One comment was submitted by the Standing Committee on Legal Aid & Indigent Defendants (SCLAID) of the American Bar Association. One comment was submitted by the non-LSC funded non-profit National Legal Aid and Defender Association (NLADA) through its Civil Policy Group and its Regulations and Policy Committee, which was also separately joined by LAF. All commenters appeared generally supportive of the changes the LSC OIG proposed to the Compliance Supplement for Audits of LSC Recipients.

The LSC OIG proposed making the Compliance Supplement for Audits of LSC Recipients effective for audits of fiscal years ending on or after December 31, 2015. Four commenters (PSLS, NLADA, CLS, LTFI) expressed concern over retroactive application of the revised Compliance Supplement for Audits of LSC Recipients which they believed would result in additional audit costs, delays in submission and impact the

current audit process that may be underway. The LSC OIG will make the Compliance Supplement for Audits of LSC Recipients effective for audits of fiscal years ending on or after April 30, 2016.

As part of finalizing the Compliance Supplement for Audits of LSC Recipients, typos were corrected and formatting problems were resolved in both the regulatory summaries and in the suggested audit procedures. One commenter (SCLAID) identified a formatting issue and typos in separate regulatory summaries that were all corrected.

### **III. Section-by-Section Discussion of Comments**

#### **A. Proposed Inclusion of 45 CFR Part 1604 – Outside Practice of Law**

The LSC OIG proposed inclusion of 45 CFR part 1604 in the Compliance Supplement for Audits of LSC Recipients and provided a regulatory summary of the applicable compliance requirements.

*Comment* – Two commenters (NLADA, CLS) expressed concern that the regulatory summary did not fully list all the permissible circumstances for the outside practice of law, specifically those contained in 45 CFR 1604.4(c)(2) and (c)(3).

*Response* – The LSC OIG has revised the regulatory summary to include the language contained in 45 CFR 1604.4(c)(2), (c)(3) and (c)(4).

#### **B. Proposed Regulatory Summary for 45 CFR Part 1611 – Financial Eligibility**

The LSC OIG proposed revisions to update the regulatory summary for 45 CFR part 1611 in order to follow the current LSC regulation. The LSC OIG also proposed what it believed to be clarifying language relating to Older Americans Act (OAA) funds.

*Comment 1* – Six commenters (including NLADA, PSLs, CLS, LOLLAF, LTFI, LAF) expressed significant concern on the inclusion of the language relating to the OAA funds, arguing that it changed longstanding LSC policy and would have a detrimental impact on providing services to the elderly. NLADA stated “This section significantly changes longstanding guidance regarding eligibility determinations for senior citizens that would result in a reduction of services available to individuals age 60 and over.” This was mirrored by several other LSC funded commenters.

*Response* – To avoid confusion and unintended consequences, the LSC OIG has removed the language referring to OAA funds from this section.

*Comment 2* – NLADA also expressed concern relating to a suggested audit procedure for assessing the waiver of eligibility requirements. NLADA believed that the language needed revision “so that an auditor does not waste time looking for evidence of a waiver determination, but rather reviews whether the appropriate factors allowing income eligibility have been identified for households with income between 125% and 200% of the Federal Poverty Level.”

*Response* – The LSC OIG has modified the suggested audit procedure to provide better clarity by including the following language at the end of the suggested audit procedure : “or the recipient determined the client was eligible based on the factors set forth in 45 C.F.R. 1611.5(a)(3) or (4).”

### **C. Regulatory Summary Adjustment for part 1612 – Restrictions on Lobbying and Certain Other Activities**

*Comment* – Two commenters (NLADA, CLS) expressed concern over the regulatory summary language regarding the prohibitions contained in 45 CFR 1612.6(c),

describing it as “overly broad and/or confusing.” NLADA stated “The regulation does not contain a general prohibition on providing information in connection with legislation or rulemaking.” CLS stated “This sentence omits key elements in the actual Regulation that employees are only prohibited from soliciting or arranging for a request from any official to testify or otherwise provide information in connection with legislation or rulemaking.”

*Response* – The LSC OIG has revised the regulatory summary language pertaining to 45 CFR 1612.6(c) to more accurately reflect the prohibitions. Also, a technical correction was made to the 45 CFR 1612.3 language contained in the regulatory summary in order to include phraseology that had been inadvertently omitted from the initial draft publication. The language added is as follows (with emphasis placed on the additions and corrections):

(5) the issuance, amendment or revocation of any executive order. Recipients shall not use any funds to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, administrative expense, or related expense, associated with an activity prohibited in (1)--(5) detailed above (45 CFR 1612.3).

#### **D. Proposed Regulatory Summary for part 1614 – Private Attorney**

##### **Involvement**

The LSC OIG proposed revisions to update the regulatory summary for 45 CFR part 1614 in order to follow the current LSC regulation.

*Comment* – Two commenters (NLADA, CLS) expressed concern that the revised regulatory summary discussing § 1614.4(b)(1) omitted an important clause. NLADA

stated that “The sentence in the Draft Supplement currently only references including support provided by private attorneys to the recipient” and does not mention subrecipient, an entire category of organizations that may receive private attorney support.

*Response* – The LSC OIG has revised the regulatory summary language as follows:

Activities undertaken by the recipient to meet the requirements of this Part may also include, but are not limited to: (1) support provided by private attorneys to the recipient or a subrecipient as part of its delivery of legal assistance. . . .

#### **E. Audit Considerations and Proposed Suggested Audit Procedures**

Comment 1 – Two commenters (NLADA, CLS) expressed concern over the LSC OIG policy on high risk designation for LSC grantees, stating that it is unwarranted, could be confusing to stakeholders and be a misnomer to a specific auditee. NLADA recommended the elimination of this blanket designation by the LSC OIG.

Response – The LSC OIG will retain the policy of high risk designation at this time. If the LSC OIG accepted the requested modification to this section, it could allow IPAs to designate LSC grantees as low risk. Such a designation would result in audits not in compliance with statutory requirements.

Comment 2 – NLADA also expressed concern relating to the suggested audit procedure on obtaining an understanding of internal controls in place associated with specific regulations. NLADA recommended that the LSC OIG include clarification that “...understanding internal controls means that the auditor has identified that there are systems in place to assure compliance.”

Response – The LSC OIG believes that the current language is sufficiently clear to the IPA that the internal controls relate to compliance with the applicable LSC regulatory requirement. No additional changes were made.

Comments provided by all three IPAs related to non-audit questions, satisfaction with improved procedures and commentary on utilizing the suggested audit procedures. No additional changes were made.

For the reasons stated above, the Legal Services Corporation Office of Inspector General revises the Compliance Supplement for Audits of LSC Recipients. The Revised Compliance Supplement for Audits of LSC Recipients is available on the LSC OIG website at:

[https://www.oig.lsc.gov/images/pdfs/ipa\\_resources/April\\_2016\\_Compliance\\_Supplement.pdf](https://www.oig.lsc.gov/images/pdfs/ipa_resources/April_2016_Compliance_Supplement.pdf)

Dated: March 17, 2016.

Stefanie K. Davis

Assistant General Counsel

[FR Doc. 2016-06451 Filed: 3/23/2016 8:45 am; Publication Date: 3/24/2016]