

with the attorney-client privilege and rules of professional responsibility, upon consideration, the Corporation has determined that inclusion of specific language in the rule is not necessary. In implementing the requirement, recipients should remain aware of the access provision and mindful of the ethical precepts governing client confidentiality.

#### List of Subjects in 45 CFR 1633

Legal services, Drugs, Public housing.

For the reasons set forth in the preamble, LSC amends 45 CFR chapter XVI by adding part 1633 as follows:

### **PART 1633—RESTRICTION ON REPRESENTATION IN CERTAIN EVICTION PROCEEDINGS**

Sec.

- 1633.1 Purpose.
- 1633.2 Definitions.
- 1633.3 Prohibition.
- 1633.4 Recordkeeping.

Authority: 42 U.S.C. §§ 2996e(a), (b)(1)(A), 2996f(a)(2)(C), 2996f(a)(3), 2996g(e).

#### **§ 1633.1 Purpose.**

This Part is designed to ensure that recipients do not use Corporation funds to provide representation in certain public housing eviction proceedings to persons charged with or convicted of illegal drug activities.

#### **§ 1633.2 Definitions.**

(a) "Controlled substance" has the meaning given that term in section 102 of the Controlled Substances Act (21 U.S.C. 802);

(b) "Public housing project" and "public housing agency" have the meanings given those terms in section 3 of the United States Housing Act of 1937 (42 U.S.C. 1437a);

(c) A person has been "charged with" engaging in illegal drug activities if a criminal proceeding has been instituted against such person by a governmental entity with authority to initiate such proceeding and such proceeding is pending.

#### **§ 1633.3 Prohibition.**

Corporation funds shall not be used to defend any person in a proceeding to evict that person from a public housing project if:

(a) The person has been charged with or, within one year of the date when services are requested from a legal services provider, has been convicted of the illegal sale or distribution of a controlled substance; and

(b) The eviction proceeding is brought by a public housing agency on the basis that such illegal drug activity for which the person has been charged or for

which the person has been convicted did or does now threaten the health or safety of other tenants residing in the public housing project or employees of the public housing agency.

#### **§ 1633.4 Recordkeeping.**

Recipients shall maintain a record of all instances in which representation is declined under this part. Records required by this section shall be available to the Corporation and to any other person or entity statutorily entitled to access to such records.

Dated: March 26, 1996.

Victor M. Fortuno,

General Counsel.

[FR Doc. 96-7823 Filed 3-29-96; 8:45 am]

BILLING CODE 7050-01-P

### **45 CFR Part 1634**

#### **Competitive Bidding for Grants and Contracts**

**AGENCY:** Legal Services Corporation.

**ACTION:** Final rule.

**SUMMARY:** Congress has adopted legislation requiring the Legal Services Corporation ("LSC" or "Corporation") to utilize a system of competitive bidding for the award of grants and contracts. Pursuant to that law, this rule is intended to implement a system of competitive bidding for the award of grants and contracts for the delivery of legal services to eligible clients. The competitive bidding system has been structured so as to meet the primary purposes of the LSC Act as amended, that is, to ensure the economical and effective delivery of high quality civil legal services to eligible clients and improve opportunities for low-income persons. Competitive bidding is also intended to encourage recipients to improve their performance in delivering legal services.

**EFFECTIVE DATE:** May 1, 1996.

#### **FOR FURTHER INFORMATION CONTACT:**

Victor M. Fortuno, General Counsel, Legal Services Corporation, 750 First Street NE., 11th Floor, Washington, DC 20002-4250, (202) 336-8800.

**SUPPLEMENTARY INFORMATION:** On June 25, 1995, the Corporation's Board of Directors ("Board") adopted a resolution requiring Corporation staff to prepare a regulation on competition in the delivery of legal services. On September 8 and 9, 1995, the Board's Operations and Regulations Committee and the Provisions for the Delivery of Legal Services Committee ("Committees") held public hearings on a draft proposed rule, 45 CFR Part 1634. After adopting

several changes to the draft proposed rule, the Committees voted to publish a proposed rule in the Federal Register for notice and comment. The proposed rule was published on September 21, 1995 (60 FR 48951), and eleven comments were received and reviewed by the Corporation. Seven comments came from LSC recipients; the rest were submitted by the State Bar of California, the Maryland Task Force on Statewide Planning for Essential Legal Services for the Indigent ("SPELSI"), the National Organization of Legal Services Workers ("NOLSW") and the Center for Law and Social Policy ("CLASP"). On February 23, 1996, the Committees met to consider written and oral comments to the proposed rule. Based on those comments, the Committees made several revisions. On February 24, 1996, the Board voted to adopt the rule as recommended by the Committees for publication as a final rule in the Federal Register.

Generally, this rule is intended to set out the framework for a system of competitive bidding that is structured to meet the primary purposes of the LSC Act, that is, to ensure the effective and economical delivery of high quality legal services to eligible clients.

Through the competitive bidding system, qualified attorneys and entities are to be provided an opportunity to compete for grants and contracts to participate in the delivery of a full range of high quality legal services in service areas determined by the Corporation. Competitive bidding is also intended to encourage recipients to improve their performance in delivering legal services.

The competitive system envisioned in this regulation is intended to encourage realistic and responsible bids aimed toward the provision of quality legal services. Proposals should favor cost-effectiveness, rather than simply cost, and favor delivery systems that provide a full range of legal assistance, rather than only some kinds of services in only some types of cases. Competitive bidding is also intended to ensure that recipients are those best able to provide high quality legal assistance to the poor.

Finally, the rule provides authority for the Corporation to modify the timetables and other provisions of the system to conform to requirements imposed by law.

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

#### **§ 1634.1 Purpose**

This section sets out the purpose of the rule, which is to encourage the economical and effective delivery of high quality legal services to eligible clients through an integrated system of

legal services providers by providing opportunities for qualified attorneys and entities to compete for grants and contracts and by encouraging recipients to improve their performance in delivering legal assistance. The section also states that the competitive system is intended to preserve local control over resource allocation and program priorities, and minimize disruptions when there is a change in providers in the delivery of legal services to eligible clients within a service area.

Comments on this section generally disagreed on the advisability of using a competitive process in the context of a delivery system for the provision of legal assistance. Concern was expressed that a competitive process would cause instability, discourage and reduce pro bono efforts by the private bar, fragment the delivery of legal services, and undermine the goal of an economical and effective system of legal assistance to the poor. It was also pointed out that competitive bidding has not worked in criminal defense or in civil legal aid where it has been tried. The Board made no changes to the rule in response to these comments. In addition to the fact that the Corporation anticipates the passage of legislation in the near future that will require the Corporation to implement a competitive process, the Board determined that the rule sets out a process that addresses many of these concerns and yet retains flexibility for the Corporation to shape the delivery system in a way that will make it more effective and economical.

The comment from the State Bar of California agreed with the statement in paragraph (a) that a purpose of the rule is to encourage a system for the delivery of legal services that is consistent with the American Bar Association's Standards for Providers of Civil Legal Services to the Poor, but suggested that some provision should be made for any congressional directive that would be inconsistent with the Standards. The Board decided that no revision to the rule was necessary. First, the purpose section merely sets out the reason for the rule and is not an express requirement. Second, the rule's section on selection criteria requires consideration of an applicant's compliance with both the Standards and any applicable law. See § 1634.9 (c) and (e). Because the law would always take precedence over the Standards, an applicant would not be penalized for noncompliance with a Standard when such noncompliance is required by law.

The meaning of an "integrated system of legal services providers" was also questioned in a comment that stated that the phrase lends itself to several

possible interpretations. Section 1634.1(a) of the proposed rule provided that:

The purpose of such a competitive system is to: (a) Encourage the effective and economical delivery of high quality legal services to eligible clients that is consistent with the Corporation's Performance Criteria and the American Bar Association's Standards for Providers of Civil Legal Services to the Poor *through an integrated system of legal services providers*.[.] [emphasis added].

Although the rule does not define an integrated system, the meaning of the phrase is made clear in § 1634.9(a)(6), which sets out a selection criterion that would require an applicant to demonstrate an ability to be part of an integrated system. According to this criterion, an integrated system is one where the various recipients in a State work in conjunction with the various components of the State's legal services delivery system in order to assure a full range of legal services. In addition, an integrated system facilitates the ability of recipients to develop and increase non-Corporation resources, enhances the efficient involvement of private attorneys in the delivery of legal assistance to eligible clients and improves a recipient's ability to serve their client's needs. Recipients should be better able to serve their clients if they know of and cooperate with other legal services providers, community groups and human services providers.

#### Section 1634.2 Definitions

This section defines key terms used in the regulation.

The definition of "qualified applicants" includes recipients and other entities or lawyers qualified to compete. The only comment on this definition disagreed with the inclusion of state and local governments or substate regional planning and coordination agencies due to the potential for conflicts of interest. However, these entities have been designated as qualified applicants by all versions of the competition provision included in Fiscal Year ("FY") 1996 legislation considered by Congress. Although such legislation has not yet been enacted as law, the Corporation anticipates that such legislation will be enacted in the near future that will include this type of entity. Therefore, the Board included the provision in this final rule.

The proposed rule defined "review panel" as including, at a minimum, lawyers experienced in and knowledgeable about the delivery of legal assistance to low-income persons and eligible clients or representatives of

low-income community groups. Comments pointed out that the provision did not go far enough because the provision's requirements would be met as long as there was one attorney knowledgeable about legal services and one eligible client or low-income representative. No requirements existed for other members of a review panel. Comments suggested that the criteria for membership on a review panel should be similar to that of a recipient's board of directors, because review panels, like governing bodies, are charged with important decision-making power in implementing the purposes of the LSC Act. Absent appropriate knowledge and qualifications, review panel members would be ill-equipped to make effective decisions regarding the use of Federal funds. Accordingly, the Board decided to amend the proposed definition to require that a majority of review panel members shall be eligible clients or representatives of low-income community groups and lawyers who are supportive of the purposes of the LSC Act and who are experienced in and knowledgeable about the delivery of legal assistance to low-income persons. In addition, the definition now requires that the remaining members of review panels be persons who are supportive of the purposes of the LSC Act and have an interest in and knowledge of the delivery of legal assistance to the poor.

The definition of a review panel also prohibits membership by any person with a financial interest or ethical conflict. Situations where there could be a conflict of interest would be where the person has been an adverse party in any case litigated by any applicant whose proposal the review panel member is to review, or has issued a complaint against any such applicant, or is disgruntled because any such applicant has denied the person's request for legal assistance. A financial conflict would arise if the person would benefit financially if an applicant is either awarded or denied a grant or contract.

The definition also excludes from membership anyone who, within the past five years, has been employed by or has been a board member of any applicant being reviewed. Comments approved of this requirement in general, but stated that it needed elaboration and clarification, either in the supplementary information or the rule itself. The Board decided to revise the rule to clarify that no person may be on a review panel for any applicant if, within the last five years, the person has been employed by any such applicant or has served on any such applicant's governing body. A person is not disqualified from serving as a review

panel member if he or she has been employed by or served on the governing body of another applicant. However, if any applicant being reviewed by the person consists of entities formed from mergers of prior recipients, and the reviewer has been associated with at least one of the former recipients, the person would be disqualified from sitting on that applicant's review panel.

Finally, it is intended that Corporation staff should not be part of review panels; however, they may facilitate the work of the panels by providing planning and administrative services.

"Service area" is defined as an area over which there is to be competition and could include all or part of a current recipient's service area or be larger than an area served by a current recipient. The rule provides that the particular service areas for any particular competitive process are to be determined by the Corporation. Concern was expressed in comments that giving the Corporation unlimited discretion in determining service areas, in conjunction with the discretion given in § 1634.3(d) to award more than one grant or contract within a service area, could result in the funding of a multitude of small, fragmented providers. The Corporation's discretion to determine service areas is not intended to result in fragmented delivery of legal services. Rather, it is intended to allow the Corporation to respond to a reduced budget and to make grants to applicants who submit creative solutions to such fiscal realities. However, it is also intended that all decisions on competitive grants and contracts will be made with the goal of ensuring, by establishing a strong preference for, full-service providers, so that clients will have access to a full range of permissible legal services. The definition should thus be interpreted in conjunction with § 1634.3(d), which has been revised from the proposed rule to state such a preference more clearly. See discussion of § 1634.3 below.

Finally, "subpopulation of eligible clients" is defined as population groups, such as Native Americans and migrant farm workers, who have historically been recognized as requiring a separate system of delivery in order to be provided legal assistance effectively.

#### *Section 1634.3 Competition for Grants and Contracts*

This section sets out the framework for competition for grants and contracts awarded under section 1006(a)(1)(A) of the LSC Act and is partly based on provisions in unenacted legislation for FY 1996 (H.R. 2076) that was passed by

Congress but was vetoed by the President. Provisions from H.R. 2076 have been included because the Corporation anticipates passage of legislation containing substantially similar language in the near future and H.R. 2076 is the best indication of Congressional intent regarding how the Corporation should conduct competition.

Paragraph (a) provides that, as of 30 days after the effective date of this part, all grants and contracts for the direct provision of legal assistance will be awarded by competition. Paragraph (b) provides that the Corporation will determine the service areas or the subpopulations of clients within service areas. Paragraph (c) states that the use of a competitive process for the awarding of a grant or contract for a particular service area will not constitute a termination or denial of refunding pursuant to parts 1606 and 1625 of the Corporation's regulations.

Paragraph (d) authorizes the Corporation to award more than one grant or contract for all or part of a service area. As discussed above, comments expressed concern that giving the Corporation discretion to award more than one grant or contract within a service area could result in the funding of a multitude of small, fragmented providers. That is not the intent of this provision. Rather, it is merely intended to give the Corporation the ability to deal with fiscal realities and changes that will result from a competitive process and yet still preserve an integrated full service system of legal assistance. The rule has been revised to allow the Corporation to make more than one grant or contract for a particular service area only when the Corporation determines such action is necessary to ensure that eligible clients within the service area will have access to a full range of high quality legal services.

Another comment on § 1634.3(d) stated that the words "high quality" should be included in paragraph (d) so that the last phrase would read: "so as to ensure that all eligible clients within the service area will have access to a full range of high quality legal services in accordance with the LSC Act." The Board agreed and the words "high quality" are included in this final rule.

Paragraph (e) states that no grant or contract may be awarded for a term of more than five years. It also clarifies that, if the amount of funding during the period of the grant or contract is reduced as a result of changes in congressional appropriations, as opposed to a reduction of funding for a particular recipient for cause, such a

reduction will not be considered to be a termination or denial of refunding under Corporation regulations.

#### *Section 1634.4 Announcement of Competition*

Paragraph (a) of this section requires the Corporation to give public notice of a competition within a particular service area to current recipients, appropriate bar associations and other interested groups. The Corporation is also required to publish an announcement in periodicals of State and local bar associations and at least one daily newspaper of general circulation in the area to be served. The rule recognizes that LSC has no control over the scheduling and policies of bar journals, so the rule requires that LSC "take appropriate steps to announce" the competition in bar journals. The timing of the announcements may be affected by Congressional directions. Paragraph (b) sets out the minimal contents for the request for proposals ("RFP"), but leaves to the Corporation discretion to include the details of what the RFP will include. The Corporation is required by paragraph (c) to make a copy of the RFP available to any person or entity requesting one.

#### *Section 1634.5 Identification of Qualified Applicants for Grants and Contracts*

This section lists types of applicants that would qualify to compete for a grant or contract under this part. These include current recipients, other non-profit organizations that have as a purpose the furnishing of legal assistance to eligible clients, private attorneys, groups of private attorneys or law firms, State or local governments, and substate regional planning and coordination agencies which are composed of substate areas and whose governing boards are controlled by locally elected officials.

The rule proposes that in order to receive an award of a grant or contract, all of the above entities would be required to have, depending on the type of applicant, a governing or policy body that is consistent with the provisions of 45 CFR part 1607, the Corporation's regulations on governing bodies. Part 1607 requires all current LSC recipients to have governing bodies, unless a recipient is granted a waiver pursuant to § 1607.6. Recipients granted a waiver, however, are still required to have a policy body. Under part 1607, a governing body is defined as a recipient's governing board or body that has authority to govern the activities of the LSC recipient. A policy body, on the other hand, is a body formed pursuant

to the waiver provision of part 1607 that would formulate and enforce policy with respect to the services provided under a grant or contract made under the LSC Act. Policy bodies would be allowed only under unusual situations, such as when the recipient is not principally a legal assistance organization but gets an LSC grant for legal assistance activities. Because a governing board or policy body is not necessarily mandated under the LSC Act or the Corporation's appropriations act for entities or individuals listed in § 1634.5(a) (3), (4) and (5), the Corporation requested comments in the proposed rule on whether, as a matter of policy, some governing or policy body should be required for all types of grantees so that all grantees are accountable to and guided by the policy decisions of such bodies. All comments on this provision agreed on the advisability of having governing boards or bodies for all types of recipients. One current LSC recipient stated that its ability to enjoy significant community support and to receive State and local funding was largely due to the ties that the program's boards of directors have had with the community. Another stated that having some type of governing body helps ensure adequate input from the client community. Finally, one comment suggested that governing or policy bodies should be independent of any State or local government influence.

The Board agreed that it is advisable for every recipient to be accountable to a governing board or policy body for its activities under the LSC grant as long as the requirement is not inconsistent with other applicable law. When the Corporation was first created in 1974, Congress included a governing body requirement in the LSC Act and, starting in the early 1980's, has included additional requirements in the Corporation's annual appropriations acts in a proviso commonly called the McCollum Amendment. The McCollum Amendment mandates that attorney governing body members be appointed by appropriate local bar associations. The intent of this provision is to "increase local accountability of programs and to improve enforcement of the act and regulations." 127 Cong. Rec. 12550 (June 16, 1981). In accord with the consistent congressional view favoring governing bodies for LSC recipients, the Corporation believes that some sort of oversight body for each recipient is critical to the preservation of an accountable and high quality legal services system. In addition, the Corporation's experience with

governing bodies has been that they provide critical community connections and policy and oversight functions necessary for a recipient to operate a successful legal services program. Furthermore, to require such accountability by some recipients and not others would create an unlevel playing field in the competitive process and would risk the misuse of LSC funds by those recipients without local oversight bodies.

Section 1634.5(a)(3) identifies law firms as qualified applicants but parenthetically excludes from eligibility any "private law firm that expends 50 percent or more of its resources and time litigating issues in the broad interests of a majority of the public." The parenthetical language, which is found in Section 1007(b)(5) of the LSC Act, prohibits the Corporation from making grants or contracts with law firms that expend more than 50 percent or more of their resources and time litigating issues in the broad interests of a majority of the public, rather than the poor as a class of beneficiaries. Congress has chosen not to permit LSC to fund the activities of such law firms. Rather, under the LSC Act, Congress has indicated that LSC should fund programs focused primarily on the provision of legal assistance to the poor.

The proposed paragraph (c) authorized applicants to submit joint applications. The Board revised this section from the proposed rule to allow a joint application only when the application delineates the respective roles and responsibilities of each qualified applicant.

#### *Section 1634.6 Notice of Intent to Compete*

This section contemplates that all applicants, including current recipients, who intend to compete for a grant or contract for a particular service area will file a notice of intent to compete which shall include the information delineated in paragraph (b). Filing deadlines for the notices shall be specified in the RFP. The information requested will give the Corporation notice of the level of competition and some indication as to whether applicants may need assistance in order to complete a full application.

One comment suggested that the Corporation should not require current recipients to provide all the information listed in paragraph (b) unless there has been a change because it is not cost efficient for the Corporation to request information it already has. The Board noted that the proposed rule already stated that applicants who had provided the required information prior to filing a notice of intent to compete would not

need to resubmit such information. However, the Board revised the rule to require all applicants to submit the required information at the time of filing an intent to compete. The Board adopted the revision because all applicants should be treated equally and because it is administratively more efficient for the Corporation to receive all information relevant to the competitive grant process in the notice of intent to compete.

Another comment advised including a requirement that the Corporation inform all applicants of all notices of intent to compete that had been filed, so that applicants would be informed of the extent of competition for any particular service area. Another stated that applicants should be given the names, addresses and telephone numbers of potential competitors who had filed notices to compete and the state bar numbers of the potential applicant's executive, managing or senior attorneys. Finally, one comment suggested that a new provision be added to § 1634.7 to address the issue of whether applications are subject to disclosure under the Freedom of Information Act ("FOIA"). The Board did not revise the rule in response to these comments because any applicants interested in competition information may submit requests for such information pursuant to the Corporation's FOIA rule, 45 CFR part 1602, and the Board decided that it is better to deal with the release of competition information pursuant to the policies and safeguards in the FOIA rule.

Under FOIA, "agency records" must be released upon request unless the information is protected by one or more of nine FOIA exemptions. Within the context of federal grants, Exemptions 4 and 5 provide protection for certain grant or grant making documents. 5 U.S.C. §§ 552(b)(4) and 552(b)(5).

Exemption 4 protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential. Information that a person is required to provide in order to compete for a federal grant is considered to be confidential if disclosure would either impair the agency's ability to obtain necessary information in the future or cause substantial harm to the competitive position of the provider of the information. See *Critical Mass Energy Project v. Nuclear Regulatory Commission*, 975 F.2d 871 (D.C. Cir. 1992)(en banc); *National Parks and Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

Exemption 5 protects "inter-agency or intra-agency memoranda or letters which would not be available by law to

a party \* \* \* in litigation with the agency." This exemption protects materials reflecting an agency's predecisional deliberative or policy-making processes but does not protect purely factual information, *NLRB v. Sears, Roebuck & Company*, 421 U.S. 132, 151 (1975); *Russell v. Department of the Air Force*, 682 F.2d 1045, 1048 (D.C. Cir. 1982), unless it is so intertwined with protected information that its release would reveal the agency's deliberative process. *Wolfe v. HHS*, 839 F.2d 768, 774 (D.C. Cir. 1988) (en banc).

Pursuant to these exemptions, the Corporation intends to treat competition records in the following manner. Prior to making awards, the Corporation will not release any competitive grant applications and any other related documents that would cause competitive harm to applicants. Once grants are awarded, however, the Corporation intends to release any successful applications requested under FOIA except for any proprietary information contained therein. Proprietary information generally means information that is the product of a proprietor, to which the proprietor has an exclusive right in the competitive market, and the release of which would harm the competitive advantage of the proprietor. Prior to releasing successful applications, the Corporation will inform applicants of any FOIA requests for their applications. Applicants may then submit requests to the Corporation that their applications or other relevant documents not be disclosed. Such requests shall state all grounds upon which the disclosure is opposed. However, the Corporation will make the final decision as to whether information is protected from disclosure under FOIA and will inform the applicant if the material is to be released. The applicant will be given the opportunity to appeal that decision to the Corporation's President.

The Corporation will also protect from disclosure any competitive grant documents that are determined to be predecisional and deliberative, the release of which would reveal the Corporation's deliberative or policy-making processes. Finally, the Corporation will protect any other information protected under FOIA.

#### Section 1634.7 Application Process

This section sets out the application process and the basic requirements that applicants will have to meet in order to be entitled to compete for a grant or contract to deliver services in a particular service area. The Corporation is given broad discretion to determine

what information is needed to complete a particular application.

Paragraph (e) of the proposed rule provided that the Corporation may require each applicant to agree in writing that, if the applicant is not selected for the award of a grant or contract, the applicant would not institute a court action regarding the denial of an award until the applicant has participated in a mediation with the Corporation on the matter. The proposed rule also provided that mediation procedures would be designed by the Corporation and would provide for the convenience of the parties and encourage an expeditious resolution of issues. The provision was intended to avoid costly litigation by providing a relatively friendly forum for the parties to meet and resolve issues. The California State Bar expressed support for the provision with no explanation, but the CLASP disagreed and urged deletion of the provision. According to CLASP, regardless of the fact that the proposed rule stated that the provision was not intended to suggest that applicants have any property or hearing rights,<sup>1</sup> the very fact that the provision is in the rule is an invitation for applicants to use mediation as a forum to raise issues over the results of the competition process that otherwise would not have been raised. CLASP believes that this provision could embroil the Corporation in expensive, drawn-out mediation procedures and will actually precipitate litigation rather than head it off.

In determining whether to retain the proposed mediation provision, the Board considered comments made during its public hearings on the rule as well as the written public comments. One concern raised at the public hearings was whether the mediation provision is intended to delay making a grant to a successful applicant until the complaining applicant's issues are decided through mediation. It was pointed out that, if the grant award is not delayed, there would be no remedy for the complaining applicant and thus nothing of substance to mediate. Another issue raised was whether a standard should be established to determine whether a complaint had sufficient merit to warrant a mediation

procedure and who would decide whether the standard is met. One comment suggested that a way to avoid frivolous complaints would be to require that the applicant agree to pay half of the cost of mediation in order to discourage frivolous complaints.

The Board agreed to delete the mediation provision from the rule. In addition to the concerns raised in comments, the Board also noted that the provision is unnecessary. The Corporation already has authority to respond to complaints about its activities and to decide the appropriate type of forum to address and resolve such complaints.

#### Section 1634.8 Selection Process

This section sets out the selection process to be used by the Corporation when deciding what grants or contracts are to be made to service areas. The proposed rule required the Corporation to review all relevant information about each applicant that is no more than five years old, request any necessary additional information, conduct on-site visits if appropriate to fully evaluate an application, and summarize in writing any information not contained in an applicant's application. One comment suggested that there may be some instances where information about an applicant that is older than five years may have relevance to the competitive process and that the Corporation should not make a hard and fast rule against reviewing older documents.

The Board agreed that the cutoff time should be changed to six years. Because competitive grants may not be made for longer than a 5-year term, the extra year would allow the Corporation, for example, to review information about applicants during the last year of a prior 5-year competitive grant term. Information from a prior grant term would inform the Corporation of the status of grantees prior to a new competitive process and could, for example, provide information on any unresolved problems that arose during the immediately preceding grant period.

The proposed rule required the Corporation to convene a review panel if there is more than one applicant for a particular service area, although it could choose to convene a panel when there is only one applicant. Comments disagreed with the provision that would allow the Corporation to forego a review panel if there is only one applicant for a service area. They argued that an independent review panel is necessary for all applicants to ensure a fair and impartial process free of the vagaries of politics. Not having a review panel for

<sup>1</sup> It is well established that, absent express statutory language to the contrary or a showing that the applicant's statutory or constitutional rights have been violated, pre-award applicants for discretionary grants have no protected property interests in receiving a grant and thus have no standing to appeal the funding decision by the grantor. See Cappalli, *Federal Grants and Cooperative Agreements*, § 3.28 and *Legal Services Corporation v. Ehrlich*, 457 F. Supp. 1058, 1062-64 (D. Md. 1978).

a single applicant, according to the comments, risks a situation where a single applicant is given less scrutiny or is selected for a grant award simply because there are no competing applications. Although recognizing that the comments have merit, the Board decided to retain the Corporation's discretion to forego a review panel for single applicants. The Board is concerned that reductions in the Corporation's appropriations could make it difficult, if not impossible in any particular grant year, to fund review panels for single applicants.

The rule provides that the Corporation staff shall conduct one or more on-site visits to an applicant if necessary and appropriate to evaluate the application fully. One comment stated that review panels should also have the option for a site visit. The Board opted against this proposal, both because of the financial and administrative burden and because site visits are intended to allow Corporation staff to compile all pertinent information regarding a particular grantee for the use of the review panels.

The process set out in this section provides that review panels would review the applications and any summaries prepared by the Corporation and would make recommendations to the Corporation regarding awards for particular service areas. The Corporation staff would then consider the review panel's recommendation and forward a staff recommendation to the Corporation President for a final decision. The staff's written recommendation must include the recommendations of the review panel and, if the staff recommendation differs from that of the review panel, the staff recommendation shall include an explanation of why the recommendations differ. The requirement that the review panel's recommendation be included in all staff recommendations to the President was made in response to comments suggesting such a requirement. The Board decided that the President would be better able to make grant decisions if provided with review panel recommendations.

One comment suggested that the rule specify a time frame for review panels to either meet or render recommendations. The Board determined that establishing a time frame should be an internal administrative decision based on the Corporation's needs in any given year and that no time frame should be included in the rule.

Under the proposed rule, the Corporation staff could recommend that

the President make an award up to five years or, if there is no applicant for a service area or no applicant meets the criteria to receive a grant, paragraph (c) made it clear that the Corporation had discretion to determine how to provide for legal assistance in the service area. Among other choices, the Corporation could put a current grantee on month-to-month funding in order to conduct a new competition or enlarge the service area of a neighboring grantee.

One comment suggested that paragraph (c) should state more affirmatively that LSC must make some provision to ensure that service is continued in an area where there were no acceptable applicants. The Board revised the rule to require the Corporation to take all practical steps to ensure the continued provision of legal assistance in a particular service area.

Finally, paragraph (b) provides that the President is to make final decisions regarding the awarding of grants and contracts. It also requires the Corporation to notify all applicants in writing of the President's decisions.

#### *Section 1634.9 Selection Criteria*

This section sets out the selection criteria that the Corporation will use in selecting recipients for the service areas subject to competition. The criteria include those specified in unenacted FY 1996 legislation (H.R. 2076) that was passed by Congress but vetoed by the President, as well as additional criteria taken from the provisions of the LSC Act and regulations and from the Performance Measures which the Corporation has developed to measure the performance of recipients. Criteria from H.R. 2076 have been included because it is the best indication of congressional intent on the Corporation's competitive process and the Corporation anticipates that legislation that is substantially similar to H.R. 2076 will be enacted in the near future.

This section received the most comments. Paragraph (a)(1) requires each applicant to demonstrate an understanding of the basic legal needs of the eligible clients in the area served. There were no comments and no changes made to this subsection.

Two comments on paragraph (a)(2) stated that the focus should be on the quality of an applicant's actual services as well as on the quality of the applicant's approach to the provision of legal services as provided in the proposed subsection (b). The Board agreed and revised paragraph (a)(2) to require applicants to demonstrate the quality of their legal services as well as their delivery approach.

Paragraph (a)(2) also requires each applicant to demonstrate the quality, feasibility and cost-effectiveness of its delivery approach in relation to the Corporation's Performance Criteria and the American Bar Association's Standards for Providers of Civil Legal Services to the Poor. Among other things, an applicant's ability to meet this criterion could be demonstrated by information regarding the applicant's experience with the delivery of the type of legal assistance contemplated under the grants or contracts. For applicants who are not current recipients, such experience could include, for example, experience in a legal clinic for the poor, the provision of legal assistance on a pre-paid basis to low-income clients, experience on a pro bono or judicare panel, the provision of legal assistance as a private attorney in a low-income neighborhood, experience as a public defender, or other experience in the public sector.

Paragraph (a)(3) requires that the applicant's governing board or policy body meets or will meet all applicable statutory, regulatory or other legal requirements in accordance with the time schedules set out by the Corporation. This requirement would not apply to an entity if it is inconsistent with applicable law.

Paragraph (a)(4) requires that the applicant demonstrate how it will comply with applicable provisions of the law and LSC regulations. Among other things, the applicant's past experience of compliance with the Corporation or other funding sources or regulatory agencies would be evidence of the applicant's ability to comply with this criterion.

Paragraph (a)(5), which reflects congressional desire expressed in unenacted FY 1996 legislation that was passed by Congress but vetoed by the President, requires the Corporation to consider the reputations of the applicant's principals and key staff.

Paragraph (a)(6) requires applicants to demonstrate their capacity to provide high quality, economical and efficient legal services through an integrated delivery system, such as a capacity of the applicant to engage in collaborative efforts with other organizations involved in serving or assisting eligible clients. One comment stated that it is not clear in this provision whether an applicant should coordinate with State and local legal services programs in order to ensure a full range of legal assistance within the applicant's service area or in other service areas of the state. The intent of this provision is that the applicant seek to develop a legal assistance delivery approach that will

help ensure that a full range of legal assistance will be provided within the applicant's service area, even if the applicant does not itself provide a full range of legal assistance. It is expected that coordination with other legal services systems throughout the State will enable the recipient to provide a higher quality of legal assistance in the applicant's area.

Paragraph (a)(7) requires applicants to demonstrate a capacity to develop and increase non-Corporation resources. This requirement was part of paragraph (f) in the proposed rule, but the Board decided that it should be stated in a separate provision.

Paragraph (a)(8) requires that applicants who are not current recipients demonstrate a capacity to take over pending cases from current recipients and to provide for service to such clients.

Paragraph (a)(9) focuses on institutional conflicts of interest of the applicant with the client community. Institutional conflicts could prevent applicants from being able to deliver the full range of legal services necessary to address the basic legal needs of clients. Applicants must show that they do not have any conflicts that would require them to refuse to provide representation on particular cases that are of high priority to the client community because the applicant is not permitted by a funding source independent of LSC to provide such assistance.

Paragraph (b) provides that the Corporation shall not give any preference to current or previous recipients of funds when awarding grants and contracts under the competitive bidding system. One comment stated that, absent legislation to the contrary, "no rational basis exists not to grant a preference to current or previous grantees," and any such preference would be overcome by less than favorable monitoring and compliance reports. The Board did not agree. Rather, the Board believes that grant decisions pursuant to a fair competitive process should be determined on the selection criteria and not on a prior status of an applicant as an LSC recipient. The Board also noted that all versions of unenacted FY 1996 legislation dealing with competition expressly provided that no preference be given to current or previous recipients.

#### *Section 1634.10 Transition Provisions*

This section provides for transition steps that the Corporation may take when a current recipient is replaced by another applicant. Under paragraph (a) (1), funding can be provided to enable

a current recipient to complete cases, or withdraw or transfer such cases to the new recipient or other appropriate legal services provider. Paragraph (a)(2) requires the Corporation to ensure the appropriate disposition of real and personal property of the current recipient which was purchased in whole or in part with Corporation funds in accordance with Corporation policies. The proposed rule did not require the Corporation to ensure the appropriate disposition of property but merely authorized the Corporation to do so. One comment suggested that this activity should be mandatory and the Board agreed.

Another comment suggested that the rule should state that continued funding for a recipient should be for "a reasonable period of time" and at a "reasonable" level to be determined by the Corporation. The Board decided against adding the "reasonable" language. It is already implicit in the rule because the Corporation should always act in a reasonable manner, as opposed to an arbitrary or capricious manner. In addition, the term "reasonable," standing alone, is too vague to be helpful.

Paragraph (b) provides that the Corporation can fund new recipients at less than their full grant initially with incremental increases to the full amount of their grant award, if necessary, to ensure effective and economical use of Corporation funds during the early months of a grant to a new recipient. Such funding was used effectively in past years when new grantees were funded and helped prevent the accumulation of excessive fund balances. Other transition issues may arise that are not expressly addressed in this rule. The Corporation intends to address such issues as they arise in a consistent and fair manner and will clearly communicate any transition policies or procedures to affected recipients in a timely manner.

#### *Section 1634.11 Replacement of Recipient That Does Not Complete Grant Term*

This section was not in the proposed rule but was addressed by the Board in its consideration of § 1634.8(c), which deals with the Corporation's discretion to deal with a situation where, pursuant to a competition, there are no applicants for a service area or no applicant meets the grant criteria. This section addresses a different situation where a recipient, during the term of a grant, is unable or unwilling to continue to perform the duties required under the terms of its grant. According to this section, under such circumstances, the Corporation

shall take all practical steps to ensure continued legal assistance in the service area and shall have discretion to determine the appropriate means to do so. Alternatives would include enlarging the service area of a neighboring recipient, putting a current recipient on month-to-month funding or entering into a short term grant with another qualified provider until the Corporation is able to complete another competition.

#### *Section 1634.12 Emergency Procedures and Waivers*

This section, which was designated as § 1634.11 in the proposed rule, provides that the President may waive or amend certain parts of the regulations, including the timetables established thereunder when necessary to comply with requirements imposed by law. This is necessary, for example, because Congress has not yet enacted legislation providing the Corporation with specific timetables or full fiscal year funding. Because of the uncertainty of when such legislation will be enacted or what the exact terms of such legislation will be, the Corporation may need flexibility in order to issue its competitive grants in a manner consistent with such law when finally enacted. Only one comment was received on this section and it stated that no other provisions of this rule should be waiveable except for those cited in the section and that the rule should expressly say so. The Board determined that the waiver provision already applies only to those provisions cited and that no clarification was necessary.

#### List of Subjects in 45 CFR Part 1634

Contracts, grants, legal services.

For the reasons set out in the preamble, LSC proposes to amend 45 CFR chapter XVI by adding part 1634.

#### **PART 1634—COMPETITIVE BIDDING FOR GRANTS AND CONTRACTS**

- |         |  |
|---------|--|
| Sec.    |  |
| 1634.1  | Purpose.   |
| 1634.2  | Definitions.   |
| 1634.3  | Competition for grants and contracts.                            |
| 1634.4  | Announcement of competition.                                     |
| 1634.5  | Identification of qualified applicants for grants and contracts. |
| 1634.6  | Notice of intent to compete.                                     |
| 1634.7  | Application process.   |
| 1634.8  | Selection process.   |
| 1634.9  | Selection criteria.  |
| 1634.10 | Transition provisions.   |
| 1634.11 | Replacement of recipient that does not complete grant term.      |
| 1634.12 | Emergency procedures and waivers.                                |

Authority: 42 U.S.C. 2996e(a)(1)(A); 2996f(a)(3).

**§ 1634.1 Purpose.**

This part is designed to improve the delivery of legal assistance to eligible clients through the use of a competitive system to award grants and contracts for the delivery of legal services. The purposes of such a competitive system are to:

- (a) Encourage the effective and economical delivery of high quality legal services to eligible clients that is consistent with the Corporation's Performance Criteria and the American Bar Association's Standards for Providers of Civil Legal Services to the Poor through an integrated system of legal services providers;
- (b) Provide opportunities for qualified attorneys and entities to compete for grants and contracts to deliver high quality legal services to eligible clients;
- (c) Encourage ongoing improvement of performance by recipients in providing high quality legal services to eligible clients;
- (d) Preserve local control over resource allocation and program priorities; and
- (e) Minimize disruptions in the delivery of legal services to eligible clients within a service area during a transition to a new provider.

**§ 1634.2 Definitions.**

(a) *Qualified applicants* are those persons, groups or entities described in section 1634.5(a) of this part who are eligible to submit notices of intent to compete and applications to participate in a competitive bidding process as described in this part.

(b) *Review panel* means a group of individuals who are not Corporation staff but who are engaged by the Corporation to review applications and make recommendations regarding awards of grants or contracts for the delivery of legal assistance to eligible clients. A majority of review panel members shall be lawyers who are supportive of the purposes of the LSC Act and experienced in and knowledgeable about the delivery of legal assistance to low-income persons, and eligible clients or representatives of low-income community groups. The remaining members of the review panel shall be persons who are supportive of the purposes of the LSC Act and have an interest in and knowledge of the delivery of quality legal services to the poor. No person may serve on a review panel for an applicant with whom the person has a financial interest or ethical conflict; nor may the person have been a board member of or employed by that applicant in the past five years.

(c) *Service area* is the area defined by the Corporation to be served by grants

or contracts to be awarded on the basis of a competitive bidding process. A service area is defined geographically and may consist of all or part of the area served by a current recipient, or it may include an area larger than the area served by a current recipient.

(d) *Subpopulation of eligible clients* includes Native Americans and migrant farm workers and may include other groups of eligible clients that, because they have special legal problems or face special difficulties of access to legal services, might better be addressed by a separate delivery system to serve that client group effectively.

**§ 1634.3 Competition for grants and contracts.**

(a) After the effective date of this part, all grants and contracts for legal assistance awarded by the Corporation under Section 1006(a)(1)(A) of the LSC Act shall be subject to the competitive bidding process described in this part. No grant or contract for the delivery of legal assistance shall be awarded by the Corporation for any period after the effective date of this part, unless the recipient of that grant has been selected on the basis of the competitive bidding process described in this part.

(b) The Corporation shall determine the service areas to be covered by grants or contracts and shall determine whether the population to be served will consist of all eligible clients within the service area or a specific subpopulation of eligible clients within one or more service areas.

(c) The use of the competitive bidding process to award grant(s) or contract(s) shall not constitute a termination or denial of refunding of financial assistance to a current recipient pursuant to parts 1606 and 1625 of this chapter.

(d) Wherever possible, the Corporation shall award no more than one grant or contract to provide legal assistance to eligible clients or a subpopulation of eligible clients within a service area. The Corporation may award more than one grant or contract to provide legal assistance to eligible clients or a subpopulation of eligible clients within a service area only when the Corporation determines that it is necessary to award more than one such grant or contract in order to ensure that all eligible clients within the service area will have access to a full range of high quality legal services in accordance with the LSC Act or other applicable law.

(e) In no event may the Corporation award a grant or contract for a term longer than five years. The amount of funding provided annually under each

such grant or contract is subject to changes in congressional appropriations or restrictions on the use of those funds by the Corporation. A reduction in a recipient's annual funding required as a result of a change in the law or a reduction in funding appropriated to the Corporation shall not be considered a termination or denial of refunding under parts 1606 or 1625 of this chapter.

**§ 1634.4 Announcement of competition.**

(a) The Corporation shall give public notice that it intends to award a grant or contract for a service area on the basis of a competitive bidding process, shall take appropriate steps to announce the availability of such a grant or contract in the periodicals of State and local bar associations, and shall publish a notice of the Request For Proposals (RFP) in at least one daily newspaper of general circulation in the area to be served under the grant or contract. In addition, the Corporation shall notify current recipients, other bar associations, and other interested groups within the service area of the availability of the grant or contract and shall conduct such other outreach as the Corporation determines to be appropriate to ensure that interested parties are given an opportunity to participate in the competitive bidding process.

(b) The Corporation shall issue an RFP which shall include information regarding: who may apply, application procedures, the selection process, selection criteria, the service areas that will be the subject of the competitive bidding process, the amount of funding available for the service area, if known, applicable timetables and deadlines, and the LSC Act, regulations, guidelines and instructions and any other applicable federal law. The RFP may also include any other information that the Corporation determines to be appropriate.

(c) The Corporation shall make a copy of the RFP available to any person, group or entity that requests a copy in accordance with procedures established by the Corporation.

**§ 1634.5 Identification of qualified applicants for grants and contracts.**

(a) The following persons, groups and entities are qualified applicants who may submit a notice of intent to compete and an application to participate in the competitive bidding process:

- (1) Current recipients;
- (2) Other non-profit organizations that have as a purpose the furnishing of legal assistance to eligible clients;
- (3) Private attorneys, groups of attorneys or law firms (except that no



private law firm that expends 50 percent or more of its resources and time litigating issues in the broad interests of a majority of the public may be awarded a grant or contract under the LSC Act);

(4) State or local governments;

(5) Substate regional planning and coordination agencies which are composed of substate areas and whose governing boards are controlled by locally elected officials.

(b) All persons, groups and entities listed in paragraph (a) of this section must have a governing or policy body consistent with the requirements of part 1607 of this chapter or other law that sets out requirements for recipients' governing bodies, unless such governing body requirements are inconsistent with applicable law.

(c) Applications may be submitted jointly by more than one qualified applicant so long as the application delineates the respective roles and responsibilities of each qualified applicant.

#### § 1634.6 Notice of intent to compete.

(a) In order to participate in the competitive bidding process, an applicant must submit a notice of intent to compete on or before the date designated by the Corporation in the RFP. The Corporation may extend the date if necessary to take account of special circumstances or to permit the Corporation to solicit additional notices of intent to compete.

(b) At the time of the filing of the notice of intent to compete, each applicant must provide the Corporation with the following information as well as any additional information that the Corporation determines is appropriate:

(1) Names and resumes of principals and key staff;

(2) Names and resumes of current and proposed governing board or policy body members and their appointing organizations;

(3) Initial description of area proposed to be served by the applicant and the services to be provided.

#### § 1634.7 Application process.

(a) The Corporation shall set a date for receipt of applications and shall announce the date in the RFP. The date shall afford applicants adequate opportunity, after filing the notice of intent to compete, to complete the application process. The Corporation may extend the application date if necessary to take account of special circumstances.

(b) The application shall be submitted in a form to be determined by the Corporation.

(c) A completed application shall include all of the information requested

by the RFP. It may also include any additional information needed to fully address the selection criteria, and any other information requested by the Corporation. Incomplete applications will not be considered for awards by the Corporation.

(d) The Corporation shall establish a procedure to provide notification to applicants of receipt of the application.

#### § 1634.8 Selection process.

(a) After receipt of all applications for a particular service area, Corporation staff shall:

(1) Review each application and any additional information that the Corporation has regarding each applicant, including for any applicant that is or includes a current or former recipient, past monitoring and compliance reports, performance evaluations and other pertinent records for the past six years;

(2) Request from an applicant and review any additional information that the Corporation determines is appropriate to evaluate the application fully;

(3) Conduct one or more on-site visits to an applicant if the Corporation determines that such visits are appropriate to evaluate the application fully;

(4) Summarize in writing information regarding the applicant that is not contained in the application if appropriate for the review process; and

(5) Convene a review panel unless there is only one applicant for a particular service area and the Corporation determines that use of a review panel is not appropriate. The review panel shall:

(i) Review the applications and the summaries prepared by the Corporation staff. The review panel may request other information identified by the Corporation as necessary to evaluate the applications fully; and

(ii) Make a written recommendation to the Corporation regarding the award of grants or contracts from the Corporation for a particular service area.

(6) After considering the recommendation made by the review panel, if a review panel was convened, make a staff recommendation to the President. The staff recommendation shall include the recommendation of the review panel and, if the staff recommendation differs from that of the review panel, an explanation of the basis for the difference in the recommendations.

(b) After reviewing the written recommendations, the President shall select the applicants to be awarded grants or contracts from the Corporation

and the Corporation shall notify each applicant in writing of the President's decision regarding each applicant's application.

(c) In the event that there are no applicants for a service area or that the Corporation determines that no applicant meets the criteria and therefore determines not to award a grant or contract for a particular service area, the Corporation shall take all practical steps to ensure the continued provision of legal assistance in that service area. The Corporation shall have discretion to determine how legal assistance is to be provided to the service area, including, but not limited to, enlarging the service area of a neighboring recipient, putting a current recipient on month-to-month funding or entering into a short term, interim grant or contract with another qualified provider for the provision of legal assistance in the service area until the completion of a competitive bidding process within a reasonable period of time.

#### § 1634.9 Selection criteria.

(a) The criteria to be used to select among qualified applicants shall include the following:

(1) Whether the applicant has a full understanding of the basic legal needs of the eligible clients in the area to be served;

(2) The quality, feasibility and cost-effectiveness of the applicant's legal services delivery and delivery approach in relation to the Corporation's Performance Criteria and the American Bar Association's Standards for Providers of Civil Legal Services to the Poor, as evidenced by, among other things, the applicant's experience with the delivery of the type of legal assistance contemplated under the proposal;

(3) Whether the applicant's governing or policy body meets or will meet all applicable requirements of the LSC Act, regulations, guidelines, instructions and any other requirements of law in accordance with a time schedule set out by the Corporation;

(4) The applicant's capacity to comply with all other applicable provisions of the LSC Act, rules, regulations, guidelines and instructions, as well as with ethical requirements and any other requirements imposed by law. Evidence of the applicant's capacity to comply with this criterion may include, among other things, the applicant's compliance experience with the Corporation or other funding sources or regulatory agencies, including but not limited to Federal or State agencies, bar associations or foundations, courts,

IOLTA programs, and private foundations;

(5) The reputations of the applicant's principals and key staff;

(6) The applicant's knowledge of the various components of the legal services delivery system in the State and its willingness to coordinate with the various components as appropriate to assure the availability of a full range of legal assistance, including:

(i) its capacity to cooperate with State and local bar associations, private attorneys and pro bono programs to increase the involvement of private attorneys in the delivery of legal assistance and the availability of pro bono legal services to eligible clients; and

(ii) its knowledge of and willingness to cooperate with other legal services providers, community groups, public interest organizations and human services providers in the service area;

(7) The applicant's capacity to develop and increase non-Corporation resources;

(8) The applicant's capacity to ensure continuity in client services and representation of eligible clients with pending matters; and

(9) The applicant does not have known or potential conflicts of interest, institutional or otherwise, with the client community and demonstrates a capacity to protect against such conflicts.

(b) In selecting recipients of awards for grants or contracts under this part, the Corporation shall not grant any preference to current or previous recipients of funds from the Corporation.

#### **§ 1634.10 Transition provisions.**

(a) When the competitive bidding process results in the award of a grant or contract to an applicant, other than the current recipient, to serve the area currently served by that recipient, the Corporation—

(1) may provide, if the law permits, continued funding to the current recipient, for a period of time and at a level to be determined by the Corporation after consultation with the recipient, to ensure the prompt and orderly completion of or withdrawal from pending cases or matters or the transfer of such cases or matters to the new recipient or to other appropriate legal service providers in a manner consistent with the rules of ethics or professional responsibility for the jurisdiction in which those services are being provided; and

(2) shall ensure, after consultation with the recipient, the appropriate disposition of real and personal

property purchased by the current recipient in whole or in part with Corporation funds consistent with the Corporation's policies.

(b) Awards of grants or contracts for legal assistance to any applicant that is not a current recipient may, in the Corporation's discretion, provide for incremental increases in funding up to the annualized level of the grant or contract award in order to ensure that the applicant has the capacity to utilize Corporation funds in an effective and economical manner.

#### **§ 1634.11 Replacement of recipient that does not complete grant term.**

In the event that a recipient is unable or unwilling to continue to perform the duties required under the terms of its grant or contract, the Corporation shall take all practical steps to ensure the continued provision of legal assistance in that service area. The Corporation shall have discretion to determine how legal assistance is to be provided to the service area, including, but not limited to, enlarging the service area of a neighboring recipient, putting a current recipient on month-to-month funding or entering into a short term, interim grant or contract with another qualified provider for the provision of legal assistance in the service area until the completion of a competitive bidding process within a reasonable period of time.

#### **§ 1634.12 Emergency procedures and waivers.**

The President of the Corporation may waive the requirements of §§ 1634.6 and 1634.8(a) (3) and (5) when necessary to comply with requirements imposed by law on the awards of grants and contracts for a particular fiscal year.

Dated: March 26, 1996.  
Victor M. Fortuno,  
General Counsel.  
[FR Doc. 96-7824 Filed 3-29-96; 8:45 am]  
BILLING CODE 7050-01-P

### **45 CFR Part 1635**

#### **Timekeeping Requirement**

**AGENCY:** Legal Services Corporation.

**ACTION:** Final rule.

**SUMMARY:** This rule requires all recipients of Legal Services Corporation ("LSC" or "Corporation") funds to account for the time spent on all cases, matters, and supporting activities by their attorneys and paralegals, whether funded by the Corporation or by other sources.

**EFFECTIVE DATE:** May 1, 1996.

**FOR FURTHER INFORMATION CONTACT:** Victor M. Fortuno, General Counsel, Legal Services Corporation, 750 First Street NE., 11th Floor, Washington, D.C. 20002-4250. (202) 336-8800.

**SUPPLEMENTARY INFORMATION:** On June 25, 1995, in order to improve the accountability of recipients for their funds (both Corporation and all other funds), and in response to concerns expressed by members of Congress in proposed reauthorization legislation, proposed appropriations legislation, and in congressional hearings, the LSC Board of Directors ("Board") adopted a resolution requiring Corporation staff to prepare a regulation specifying a time and recordkeeping system for implementation by LSC recipients. On September 8, 1995, the Board's Operations and Regulations Committee ("Committee") held public hearings on proposed 45 CFR part 1635. After adopting several changes to the proposed rule, the Committee voted to publish the proposed rule in the Federal Register for notice and comment.

The proposed rule was published in the Federal Register on September 21, 1995 (60 FR 48956). Six comments were submitted during the allotted time and three arrived after the deadline, but all nine were fully considered. The Committee met on December 17, 1995, to consider the written and oral comments to the proposed rule. Based on the comments, the Committee revised the proposed rule. On December 18, 1995, the Board voted to adopt the rule as recommended by the Committee and directed publication of the rule in the Federal Register as a final rule.

This rule requires recipients to account for the time spent on all cases, matters, and supporting activities by their attorneys and paralegals. These requirements apply whether the case, matter, or supporting activity is funded by the Corporation or by other sources, as provided in H.R. 2076, the appropriations bill which included funds for LSC for fiscal year ("FY") 1996. (H.R. 2076 was passed by Congress but vetoed by the President; however, the Corporation anticipates passage of legislation containing substantially similar language in the near future.) Such timekeeping is not now required under 45 CFR Part 1630, Costs Standards and Procedures.

Several comments objected to the proposed rule as time-consuming, costly and burdensome. The Corporation is mindful of the costs which this regulation will impose on its recipients. Nevertheless, despite the possibility that implementation of this rule will reduce a recipient's LSC-funded capacity for