



Sent by email to: lscrulemaking@lsc.gov

March 5, 2015

Stefanie K. Davis
Assistant General Counsel
Legal Services Corporation
3333 K Street NW
Washington, D.C. 20007

**RE: Comments Concerning Proposed Revisions to 45 CFR Part
 1640, Application of Federal Laws to LSC Recipients (80 FR
 5716, February 3, 2015)**

Dear Ms. Davis:

These comments are submitted in response to LSC's request for comments on proposed revisions to the Legal Services Corporation (LSC) regulation, the Application of Federal Law to LSC Recipients, 45 C.F.R. § 1640, on behalf of NLADA by its Civil Policy Group, the elected representative body that establishes policy for the NLADA Civil Division, and its Regulations and Policy Committee.

We strongly concur with LSC that grantees should have clear notice of the specific federal laws that apply to them as part of their required agreement for LSC's annual grant assurances. Therefore, we firmly believe that the list of applicable federal laws should be exhaustive. Grantees need sufficient notice of their obligations to comply with LSC's requirements.

Clear notice of the specific federal laws that apply to recipients pursuant to 45 C.F.R. § 1640 is particularly important. This regulation requires recipients to agree that they have informed all of their employees and board members of the federal laws that apply to them, as well as the consequences for a violation. The consequences of a violation of this part are particularly severe, as it could result in

a termination of funding without a hearing. A specific, unambiguous list of federal laws is thus essential for recipients to comply with their obligations.

The regulation should clearly reflect LSC's intent that the list be exhaustive. LSC explicitly expressed this intent in its Office of Legal Affairs January 6, 2015 memorandum submitted to LSC's Board Operations and Regulations Committee at LSC's Board meeting in January and again in the Supplementary Information published with LSC's recent proposed revision to 45 C.F.R. § 1640. Explicit language indicating that the list is exhaustive, which includes the word exhaustive, should be included in the text of the regulation.

LSC also proposes, for purposes of administrative ease, removing the list of applicable federal laws from the text of the regulation and the rulemaking process; instead, making the list publicly available on LSC's website. The proposed regulation provides that the list may be modified with the approval of the Corporation's Board and that LSC will notify recipients whenever the list is modified. The removal of the list from the regulation does not appear to be problematic, as long as these provisions remain in the regulation and a thirty-day period for recipients to comment on any proposed modification, prior to LSC submitting a modified list to LSC's board, is included in the final regulation.

Recipients should have the opportunity to comment on whether their employees and board members must be required to agree to comply with a particular federal law before the law becomes applicable to their grant conditions. Advance notice and a reasonable opportunity for comment benefits LSC as well as the recipients.

Under the current proposed regulation recipients would not be notified of a modification to the list until the modification becomes effective. If LSC agrees with concerns that recipients are only able to raise after a modification becomes effective, the list would need to be revised and resubmitted to the board. Including a comment period in advance of finalizing a modification is also in line with LSC's policy and practice of maintaining "a cooperative dialog with recipients" (67 FR 69763). Furthermore, given the serious penalties for non-compliance, in the interests of fairness, grantees should have advance notice and the opportunity to raise concerns prior to a federal law becoming applicable to a recipient's contractual agreement.

NLADA notes that this is the second proposal in the past year by LSC to remove a section of a regulation from the usual rulemaking process. While we understand and support LSC's desire in this instance to avoid an unnecessary, time-consuming regulatory process, we want to confirm NLADA's very strong support for LSC's rulemaking protocol as set out in the Federal Register in 2002. In the 2002 publication of its protocol, LSC indicated that "Throughout its history, LSC has conducted its rulemaking in compliance with the statutory requirements..." of providing notice and reasonable opportunity for comment to interested parties in the Federal Register prior to issuing regulations and notice of final publication at least 30 days in advance. (67 FR 69762) "LSC's Rulemaking Protocol is intended to reflect the policy of LSC to conduct its rulemaking activities in a spirit of cooperative dialog with our recipients and other interested parties." The protocol was adopted with six objectives, including following the best practices in rulemaking found in the Administrative Procedures Act and the Negotiated Rulemaking Act of 1990 and increasing public participation in the manner and method that LSC promulgates rules. (67 FR 69763)

The importance of considering the input of grantees, interested parties and the public when revising regulations and policies was evident in the thorough, thoughtful, inclusive process LSC recently employed prior to revising the regulation regarding Private Attorney Involvement, 45 C.F.R. 1614. We want to insure that, generally, the removal of a portion of a regulatory provision from a regulation to LSC's website will only be done in very limited circumstances and that LSC will continue to adhere to the best practices in its rulemaking protocol formally set out in the Federal Register in 2002.

Thank you for the opportunity to present comments regarding the changes to the Application of Federal Law to LSC Recipients, 45 C.F.R. § 1640. Please contact Robin C. Murphy if you have any questions or concerns.

Sincerely,

Steve D. Eppler-Epstein, Chair, Civil Policy Group (CPG)
Silvia Argueta, Chair, CPG Regulations and Policies Committee
Robin C. Murphy, Chief Counsel, Civil Programs
National Legal Aid and Defender Association