<u>Sent by email to: lscrulemaking@lsc.gov</u>

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RE: Comments on Retrospective Review of Regulations
(87 Fed. Reg. 9088-9089 (February 17, 2022))

The National Legal Aid & Defender Association (NLADA) submits these comments, on behalf of itself and its members, in response to the Legal Services Corporation's (LSC) request for input on its regulatory priorities for 2022 and future years. The perspectives below represent the diverse views, thoughts, and concerns of the NLADA community, which encompasses the vast majority of LSC grantees, as well as representatives from the clients and communities served by those grantees. The comments herein were crafted in consultation with the Regulations and Policies Committee of NLADA's Civil Council and NLADA's Client Council, as well as conversations with compliance directors, staff, and client eligible board members from LSC recipients around the country.

NLADA is grateful to the Corporation for undertaking this effort to engage the legal aid community and the broader public to help determine regulatory priorities in ongoing work to update LSC regulations. This process is also a timely one. Over the past two years, the COVID-19 pandemic has forced courts and legal aid providers to reimagine how they deliver services. It is a testament to the field that we have seen such significant change and adaptation in the face of new challenges. These changes are also what makes the current moment such an appropriate time to take a careful look at the old ways of doing things and existing rules to see if they are need of changes and updates.

LSC's request sought comments specifically in the following three categories:

1. Regulations that require clarification, modification, or revision;
2. Regulations that are no longer needed and may be repealed; and
3. Areas or topics for which new regulations may be needed or desirable.

NLADA's comments herein focus on the first category. Most of the comments are focused on efforts that would reduce administrative burden and cut down on the time and resources LSC recipients spend on compliance while still allowing LSC to meet its regulatory and oversight goals and requirements. We hope that these comments can help spur further discussion on how

best to revise certain regulations, and we look forward to continuing to engage with the Corporation as changes are considered.

For clarity, the comments below make frequent reference to the

- Legal Services Corporation Act of 1974, 42 U.S.C. § 2996 et seq (hereinafter "The LSC Act"),
- Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. 104-134, 110 Stat. 1321, 1321-50 (April 26, 1996) (hereinafter "The Appropriations" or "The 1996 Appropriations"), and
- Regulations located at 45 C.F.R. 1600 – 1644 (hereinafter "the regulations" or referenced by their 16xx part number).

1600 Definitions

The Definition of Staff Attorney

Currently, Part 1600 includes the following definition of "staff attorney":

> Staff Attorney means an attorney more than one half of whose annual professional income is derived from the proceeds of a grant from the Legal Services Corporation or is received from a recipient, subrecipient, grantee, or contractor that limits its activities to providing legal assistance to clients eligible for assistance under the Act.

This definition includes any attorney who receives more than one-half of their income from an LSC recipient, regardless of their duties. For example, an employee who is licensed as an attorney will meet this definition even if they work as a grantee's chief financial officer, in development, as an executive director, or in some other non-legal role.

This sets up a system in which a small number of regulations would treat certain positions differently depending on whether the person filling the role happened to be a licensed attorney. It is also unclear as to licensure requirements. That is, whether "an attorney" as contained in the definition refers to an attorney licensed to practice within a recipient's service area or an attorney licensed to practice anywhere in the United States.

All of these ambiguities and inconsistencies could be addressed by a definition of "staff attorney" that included certain job duties. Such a definition could keep the old language, but add an additional requirement that, in order to meet the definition of "staff attorney," such an individual must be engaged in the provision or direct supervision of legal services to eligible clients.

1609 Fee Generating Cases

The Refusal Process

The authority for this regulation is located in § 1007(b)(1) of the LSC Act, which states that no LSC recipient shall be permitted:

> (1) to provide legal assistance (except in accordance with guidelines promulgated by the Corporation) with respect to any fee-generating case (which guidelines shall

not preclude the provision of legal assistance in cases in which a client seeks only statutory benefits and appropriate private representation is not available)

The authority granted to the Corporation to create guidelines here is extremely flexible. Our comments focus on the inefficiency of process and the burden required to secure the necessary approval to take on a fee-generating case.

Under the current regulation, section 1609.3(a) states that grantees may use LSC funds to support work on fee generating cases, but only after the case has been rejected either by a local lawyer referral services program or two private attorneys.[1] In the absence of a rejection, the regulation currently allows the acceptance of the case only in the following situations as outlined in 1609.3(b):

(1) An eligible client is seeking benefits under Subchapter II of the Social Security Act, 42 U.S.C. 401 et seq., as amended, Federal Old Age, Survivors, and Disability Insurance Benefits; or Subchapter XVI of the Social Security Act, 42 U.S.C. 1381 et seq., as amended, Supplemental Security Income for Aged, Blind, and Disabled;

(2) The recipient, after consultation with appropriate representatives of the private bar, has determined that the type of case is one that private attorneys in the area served by the recipient ordinarily do not accept, or do not accept without prepayment of a fee; or

(3) The director of the recipient, or the director's designee, has determined that referral of the case to the private bar is not possible because:

 (i) Documented attempts to refer similar cases in the past generally have been futile;

 (ii) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate, and consistent with professional responsibility, referral will be attempted at a later time; or

 (iii) Recovery of damages is not the principal object of the recipient's client's case and substantial statutory attorneys' fees are not likely to be available.

This process creates two significant challenges.

First, other than the narrow exception in 1609.3(b)(1), the focus is limited to the individual case and requires, at minimum, the involvement of the director or the director’s designee each and every time. A regulation that would allow exceptions for certain categories of cases and possibly even certain amounts of damages would provide welcomed flexibility and allow grantee staff to

[1] Rejection as we refer to it includes a refusal to consider the case without a consultation fee.

accept cases they categorically know will not be handled by private attorneys.[2] These types of cases could be outlined in a general policy so that grantee staff know that if it is an X type of case or they are seeking damages less than $Y, they can, in accordance with their grantee's policies, accept the case. This would streamline the process and reduce the level of training needed to make decisions, while continuing to ensure accountability and compliance. It also would free up staff time to focus on the case itself. One example would be an eviction case where statutory attorneys' fees may be available upon proof of certain acts of malfeasance on the part of the landlord. The recipient attorney may know full well that no private attorneys in the area ever consider taking these cases. The current regulation requires, at minimum, approval from the director to proceed. By revising the regulation as suggested, grantees could accept these cases swiftly, be confident that doing so is in compliance with the regulation, and be better situated to provide the delivery of critical services without delay.

Second, the regulation should be clear that the focus is on attorneys' fees envisioned at the start of the case, not the end. There are some cases that do not present the potential of a fee award at the outset of the case, but may result in fees being sent to the grantee because of sanctions or other unanticipated events. In such a situation, the Corporation should evaluate whether a grantee's acceptance procedure was in compliance based only on the expectation that reasonably existed when the case was initially accepted. The text of the regulation should make that standard clear.

1611 Financial Eligibility

Income Guidelines

In the LSC Act, §1007(a)(2)(A) requires LSC to:

> (2)(A) [E]stablish, in consultation with the Director of the Office of Management and Budget and with the Governors of the several states, maximum income levels (taking into account family size, urban and rural differences, and substantial cost-of-living variations) for individuals eligible for legal assistance under this title

LSC and the OMB have established a standard income level for eligibility at 125% of the federal poverty guidelines (FPG). The LSC Act also requires, among other things, that grantees take into account:

> (i) The liquid assets and income level of the client,
>
> (ii) The fixed debts, medical expenses, and other factors which affect the client's ability to pay,
>
> (ii) The cost of living in the locality

As a result, the LSC regulations, at 45 C.F.R. 1611, allow grantees to represent those with incomes between 125-200% of the FPG if the grantee determines the individual should be eligible based on one or more of the following factors:

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[2] This knowledge is not mere speculation, but based on decades of experience with the instant regulation and process it requires and tailored to the environment in each grantee's specific service area.

(i) Current income prospects, taking into account seasonal variations in income;

(ii) Unreimbursed medical expenses and medical insurance premiums;

(iii) Fixed debts and obligations;

(iv) Expenses such as dependent care, transportation, clothing and equipment expenses necessary for employment, job training, or educational activities in preparation for employment;

(v) Non-medical expenses associated with age or disability;

(vi) Current taxes; or

(vii) Other significant factors that the recipient has determined affect the applicant's ability to afford legal assistance.

This regulation requires grantees to find the above special circumstances to represent individuals between 125% and 200% of the FPG. In reality, those with incomes below 200% of the FPG almost always are facing financial difficulties generally, and the factors listed in 1611.5(4), specifically. They are still uniformly unable to hire an attorney and in a challenging financial situation. As a result, grantees have found that these individuals are, depending on the service area, eligible for LSC services 100% or nearly 100% of the time with very few exceptions.

Thus, the rule operates to make all, or nearly all, individuals with an income below 200% of the FPG eligible. The rule also requires, however, a significant administrative burden on grantees to have attorneys inquire in detail about a client's financial situation, document it, and then present such documentation to (and sometimes argue about it with) LSC during oversight visits. The end result is an increase in paperwork and oversight activity without any substantive effect (again, because individuals at this income level categorically meet the rule's requirements), imposing significant burdens on both grantees and the Corporation as it undertakes compliance review.

NLADA recommends the Corporation consider revising the documentation required to justify eligibility under 1611.5(4).[3] For example, the Corporation could require that an attorney certify that the attorney concluded that one or more of those factors were present, without the need to collect and retain layers of documentation. This would keep the same rule in place, but would lighten the administrative burden without changing at all who is eligible. Because attorneys are bound by ethical obligations and have various levels of accountability to the bar, such a certification should suffice.

[3] The instant comment addresses only the unnecessary and undue burden imposed by the current regulation. NLADA's conversations and analyses of current societal benchmarks also revealed that it may perhaps be appropriate to revisit the 125% limit set by the Corporation and OMB. While not encompassed in this filing, we welcome the opportunity discuss this with the Corporation further.

Retainer Agreements
In 1611.9, LSC requires that "[w]hen a recipient provides extended service to a client, the recipient shall execute a written retainer agreement with the client." The LSC Act makes no mention of retainer agreements and the 1996 appropriation riders also have no requirement of retainer agreements, mentioning them only to include them as the types of documents that must be shared in certain circumstances. Furthermore, Section 2.1 of LSC's Case Service Report (CSR) Handbook notes that eligible cases should be included in the CSR, "regardless of compliance with the requirements of 45 CFR § 1611.9—Retainer Agreements." In most, if not all, jurisdictions, retainer agreements are not required for cases in which no fee will be collected from the client.

Signed retainer agreements are thus not required under rules of professional responsibility for most or all grantees. They are not required by the Act nor are they required for cases to be counted per the CSR. In the past, issues would arise after the fact, in part because retainer agreements previously obtained had been misplaced or gone missing. Now, in addition to those few cases, there are also struggles with some clients who did not properly sign and return a retainer agreement the grantee sent to them electronically when providing remote services. Regardless of how the problem arises, grantees spend a considerable amount of time trying to hunt down clients to ensure that they sign this document and, if that fails, they then spend considerable time during LSC oversight visits discussing why certain cases might be missing a signed retainer agreement or how the omission occurred. This requirement was starting to become an issue with the increased use of technology, but it has ballooned during the COVID-19 pandemic as courts, recipients, and other service providers moved considerable amounts of services online. When providing remote services to clients, it can be difficult, even in cases of extended service, to receive signed documents from clients. LSC has done an admirable job of being flexible during the pandemic and encouraged grantees to use e-signatures, but even e-signatures can be a challenge depending on a client's access to and familiarity with the required technology. Grantees generally do not, and should not, refuse services to individuals because they are struggling to figure out how to correctly provide an e-signature.

NLADA recommends eliminating the retainer requirement. Grantees will still include a scope of services document and may even ask clients to sign a retainer agreement as a matter of general policy. But given that neither the LSC Act nor standards of professional responsibility require these agreements in the context in which grantees operate, this is an opportunity to remove a burden that takes up considerable LSC staff time and grantee staff time. Moreover, it would accomplish this without changing which cases can be counted or who is represented. To the extent that there may be jurisdictions that do require a retainer agreement as a matter of professional responsibility, grantees will comply with local rules regardless of LSC regulations. This regulation is one that is not needed or required.

<u>1614 PAI</u>
The Private Attorney Involvement (PAI) requirement poses various challenges to grantees, but all seem to run along the same theme: the regulation makes it too hard to count certain private attorney involvement toward the required spending.

Blackout Period
Grantees face challenges with the blackout period in 1614.5(c). There, the regulation states:

> (c) No costs may be allocated to the PAI requirement for direct payment to any individual who for any portion of the current year or the previous year was employed more than 1,000 hours per calendar year by an LSC recipient or subrecipient, except for employment as a law student

NLADA recommends eliminating this blackout period and allowing recently departed staff to fully participate in PAI activities. The first iteration of this general rule appeared in 1986, where LSC noted a concern of grantees that "had laid off staff attorneys and then contracted to pay them for services relating to the same matters they were involved with while on staff." (Fed Reg 51, pg 21559, June 13, 1986). This is not a realistic concern in 2022.[4] There are no grantees that would lay off competent staff attorneys so they can pay them with fees and fulfill the PAI requirement. Such fears significantly underestimate the current challenge of retaining high quality staff attorneys. Meanwhile, a former staff attorney who is now in private practice might be the most passionate and most qualified option for a PAI case. Their prior legal services experience does not negate the fact that they are now private attorneys, and it often means they are among the most qualified private attorneys to take these cases. They should be permitted to participate in the same way that other private attorneys would.

In-Kind Donations
Additionally, the current regulation does not allow for "in-kind" donations of legal expertise to the grantee to count toward the PAI requirements. Grantees sometimes will have relationships with private attorneys who may be interested in offering their expertise in real estate law, contract law, employment law, or some other area instead of, or in addition to representing eligible clients. The time spent facilitating this donation of time and expertise and the staff time working with the private attorney, however, cannot currently count toward the PAI requirements. In keeping with the spirit of the PAI regulation, NLADA would urge LSC to take a broader view of what constitutes "private attorney involvement" so these efforts can be counted.

Case Monitoring
Finally, requirements in the regulation and the CSR handbook make it difficult for many LSC recipients to report cases or other efforts; they are in fact undertaking much more eligible PAI work than they are able to report. One issue is the requirement for case follow-up and the overlay with the CSR handbook. In many cases, PAI activities involve referring cases to private attorneys who, on a reduced fee basis, take the case as their own, meaning the client is their client and they take the file from the LSC grantee. At that point, it becomes challenging for the grantee to get case closure codes for each and every one of these cases, leading some grantees to just accept that much of their referrals to private attorneys will not count toward the PAI requirement. We encourage LSC to look at the case oversight and reporting requirements in 1614.4(3) and Chapter X of the CSR to identify ways to create more flexibility and realistic expectations in this area.

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[4] We do not debate here whether this was a realistic concern in 1986.

1617 Class Actions

The Definition of "Initiating or Participating in"

The LSC restriction on class action lawsuits comes from §504(a)(7) of the 1996 LSC appropriations. There, the brief section notes that no LSC funds should be given to an organization "that initiates or participates in a class action suit." Here, the term "participates" is undefined, but in the regulation, LSC took a broad approach. In 1617.2, "participates," is defined as follows:

> Initiating or participating in any class action means any involvement at any stage of a class action prior to or after an order granting relief. "Involvement" includes acting as amicus curiae, co-counsel or otherwise providing representation relating to a class action.

The statement, "any involvement at any stage", is overly broad and in need of modification.

First, it should be made clear that the grantees are not only allowed but may be required under rules of professional responsibility to inform their clients of pending class action litigation in which the client may be eligible to participate. Second, legal services organizations sometimes have factual information that those who are litigating a class action may want to use at trial. The regulation should make clear that serving as a fact or even an expert witness is neither initiating or participating in a class action. In such a role, the grantee is not participating as legal counsel or offering any legal advocacy.

Finally, NLADA urges LSC to relax its standard of "any involvement at any stage." At the time the restriction was passed in 1996, many LSC funded grantees did in fact file and litigate class action lawsuits. The clear goal of Congress was to put a stop to that practice. After a class action has been litigated and the court has ordered judgment or approved a settlement, however, an LSC grantee may be the most appropriate organization to serve as a post-judgment monitor. If a class action settlement relates to how low income individuals are treated by certain systems, it may be legal services organizations that see better and earlier than anyone else whether or not anyone has violated those settlement terms. By the text, of 504(a)(7), it is unclear that such a post-relief activity was prohibited, and it is only the regulation itself that adds in such an explicit limitation. NLADA urges LSC to remove that limit, which will allow LSC recipients to more effectively monitor the effects of Class Action settlements on their clients without directly participating in the initial litigation.

1618 Enforcement Procedures

No Timeline for LSC Review

NLADA has only a minor suggestion for this part. In 1618.4, LSC requires recipients to consult with LSC before suspending or terminating any employee for a violation of LSC requirements. This is done to ensure that the recipient's "interpretation of these requirements is consistent with Corporation policy." This requirement makes sense to NLADA members, but there is no timeline for how long LSC will take to review such matters. Adding a time limit would add clarity and predictability to this regulation.

1626 Immigration

Citizenship Attestation

The citizenship attestation is a requirement born out of 1626.6, but it is not required under the LSC Act or the 1996 Appropriations. Instead, 504(a)(11) of the 1996 Appropriations simply states that no LSC funding can go to any organization "that provides legal assistance for or on behalf of any alien, unless…" and then lists the exceptions. It is from that requirement that LSC decided to implement a requirement that all clients who purport to be U.S. citizens must sign an attestation. Of course, if there is any reason to doubt an individual's citizenship status, there is a further requirement that attorneys get external verification in the form of specific documents.

NLADA does not propose to change any of the verification requirements when citizenship is in doubt. When it is not, however, the value of the initial attestation is questionable. And as is the case with the retainer requirement in 1611.9, a basic written form, signed by the client has become harder to get as more and more services are performed remotely. Even before that, however, providing these attestations and having LSC review them and identify any files with a missing citizenship attestation or one where the client printed their name but forgot to sign took significant time during oversight visits. To be clear, this oversight was not necessarily calling into question whether or not further verification should have been undertaken or if there was reason to question the citizenship of the client. In fact, many cases involve benefits only available to U.S. citizens.

Given the current environment with remote services, NLADA urges LSC to adopt a rule that replaces the written attestation with an oral one. As part of the intake process, attorneys, who have an ethical duty to be honest in the forms they fill out, would mark that they had received such an oral attestation. The verification requirements would remain the same when applicable. Changing this requirement would not change who could or could not be represented nor would it change the requirement that potential clients have to attest to being a citizen. Nevertheless, it could save hours and hours of work on behalf of the grantees and LSC staff, significantly reducing the administrative burden these regulations put on LSC recipients.

1628 Fund Balance

Requirement for Waivers for Fund Balances Between 10 and 25%

The current rule on fund balances requires grantees to submit a waiver for any LSC fund balances over 10% but under 25% of their LSC grant for that year. In this waiver, they should include the "special circumstances" that required such a fund balance. For any fund balances over 25%, recipients may request a waiver "only for extraordinary and compelling circumstances" and the regulation goes on to list possible examples such as a natural disaster or "other catastrophic event," or a large payment from the sale of property, insurance payment, or payment from a lawsuit.

To start, 10% is a very small threshold. Most sources recommend a 3-6 month reserve for non-profit organizations. For LSC recipients, a healthy fund balance is simply good management. Whether it is a surge in evictions, a natural disaster, or simply an increase in poverty within the service area, the legal needs of the poor can change and change quickly. It is prudent for LSC

recipients to keep a fund balance of more than 10%. Recognizing that, LSC has historically been permissive when it comes to waivers for fund balances between 10 and 25%.

Given the need for healthy fund balances and LSC's appropriate acceptance of this fact, this policy is due for an update. LSC should trust its grantees to keep appropriate fund balances between 0 and 25% without a waiver. This amount is not excessive and is in fact on the low end of recommended best practices for non-profits. There is no need to increase the 25% threshold or to change the more concrete "extraordinary and compelling circumstances standard." The 10% threshold, along with its more ambiguous "special circumstances" is unnecessary. It serves only to create more work for LSC staff and grantee directors who have to approve or fill out waiver applications when applicable.

1630 Cost Standards and Procedures

Indirect Cost Refusal Standard

The LSC regulations, at 1630.5(f), require an indirect cost allocation be distributed in the following manner:

> The distribution base may be total direct costs, direct salaries and wages, attorney hours, numbers of cases, numbers of employees, or another base which results in an equitable distribution of indirect costs among funding sources.

The very next subsection lays out when circumstances allow for exceptions to indirect cost calculations. In 1630.5(g), the regulation states:

> (g) Some funding sources may refuse to allow the allocation of certain indirect costs to an award. In such instances, a recipient may allocate a proportional share of another funding source's share of an indirect cost to LSC funds, provided that the activity associated with the indirect cost is permissible under the LSC Act, LSC appropriations statutes, and regulations.

In Program Letter 18-2, LSC interpreted these sections, stating in one section:

> [A]nother funding source must refuse to pay all or some of its share of indirect costs before a recipient may charge any portion of those costs to its Basic Field Grant. It is not sufficient for purposes of § 1630.5(g) for a recipient to submit an application for a grant that fails to include a budget amount for indirect costs without first asking the funder whether it will pay for indirect costs. Rather, the rulerequires a non-LSC funder to affirmatively refuse to pay the costs.

We urge LSC to adopt a more flexible approach and allow grantees to submit lower indirect costs on grant applications where the director or their designee can document a good-faith belief that doing so will make their grant more competitive. Requiring an explicit refusal puts grantees in a difficult position and some grantors will not give such a refusal while still giving preference to applications with low or no indirect costs. LSC should want its grantees to be in the most competitive position whenever they apply for another grant.

As LSC stated in Program Letter 18-2, Uniform Guidance 2 C.F.R. Part 200.405(a)(2) allows most recipients of federal funds to charge to those grants only indirect costs that are "proportion[ate] to the benefits received." And as LSC correctly notes right after that:

> LSC is not bound to follow the Uniform Guidance and permits recipients to charge more indirect costs to their Basic Field Grants than normally is permissible under Federal grant rules.

In that way, LSC appears to already be more flexible on the issue of indirect costs. However, this comparison misses the mark. LSC is indeed a unique federal funder. While many federal agencies issue grants to organizations to assist in fulfilling the agency's mission, LSC's grantees are not grantees carrying out a specific agency goal, *they are its central purpose* and are the vehicle through which the Corporation and federal government ensure that there is a legal services organization able to operate and provide services in every county in the United States. . Over the years, LSC grantees have diversified their portfolio of funding – a sign of a healthy non-profit. They have been able to do so while sustaining the core services underwritten by the Corporation, and it remains true that part of the Corporation's purpose to ensure that grantees have the necessary operating support to carry out this mission.

Given this obligation, we urge the Corporation to consider the critical role its funds play in providing indirect costs even when other funders refuse or prefer not to absorb such costs, and to modify 1630.5(g) in a way that allows grantees to seek reduced, or even no, indirect costs on other grants when doing so would make LSC recipients more competitive applicants.

Reasonable and Necessary Standard
In 1630.5(a) and 1630.5(b), the LSC regulations lay out the standards for what constitutes allowable costs. Specifically, 1630.5(b)(2) includes the requirement that costs be:

> (2) generally recognized as ordinary and necessary for the operation of the recipient or the performance of the grant or contract

Here, NLADA finds the term "necessary" to be overly restrictive, not reasonable, and not how LSC has interpreted spending requirements. Many innovative projects or long-term planning processes could be deemed not "necessary" for the performance of the grant. In fact, many grantees choose to spend their funds differently with different priorities. "Ordinary" or "typical" are fine limits to put on grant spending, but "necessary" invokes a kind of one-size-fits-all right or wrong answer to all spending.

NLADA urges LSC to remove the term necessary and instead rely on the other language of 1630.5(b), which includes terms and clauses such as "generally accepted sound business practices," "prudence under the circumstances," and "significant deviations from… established practices."

In keeping with the spirit of such a change, NLADA urges LSC to explicitly allow typical minor costs incurred by similarly situated organizations. This would include small awards or reasonable food expenditures for staff, or cards and flowers to donors or to a partner organization in the

event that they have experienced a death or illness. Some of these small costs have been expressly disallowed by LSC in the past, and it suggests that LSC recipients cannot use their funds in accordance with typical business practices. NLADA encourages LSC to adjust this policy.

Prior Approval for Expenditures of over $25,000 of LSC funds
Currently, 1630.6 requires that LSC recipients receive prior written approval from LSC before spending over $25,000 in LSC funds. While NLADA appreciates LSC's increases of that amount in years past, our members repeatedly conveyed that this process serves only to create additional paperwork, cause delay, and increase administrative costs related to such purchases.

One could imagine appreciating assets, such as real estate, as reasonably requiring a sign-off from LSC, as the corporation would have a unique interest in such a purchase. Conversely, it is inefficient and unnecessary for LSC to require prior approval when, for example, a grantee updates office technology and purchases new laptops for a large staff. Given the already existing oversight infrastructure, LSC has to trust that their grantees can perform certain basic functions. We urge LSC to review their own records on prior approval requests and to do away with the requirement or reimagine it for only truly extraordinary costs.

1641 Debarment, Suspension, and Removal of Auditors
"Adequate Evidence" Standard
In reviewing this regulation, NLADA has one minor suggestion. It uses the term "adequate evidence," which it defines in 1641.2 as "information sufficient to support the reasonable belief that a particular act or omission has occurred." This is not an evidentiary standard with which many grantees are familiar, and we urge LSC to adopt a preponderance of the evidence or clear and convincing standard or some other standard that is more commonly used in a legal setting.

1644 Disclosure of Case Information
Remove Requirement for Address and Disclosure to "Any Person"
In §504(a)(8) of the 1996 Appropriations, Congress added a requirement that whenever an LSC recipient files a complaint or initiates litigation, they must Identify each plaintiff by name and also craft a written statement of facts in English and, if necessary, a language the plaintiff understands. This document then must be signed by the plaintiff.

Further, the legislation requires that this be kept on file by LSC recipients and be made available to:

> (B) … [A]ny Federal department or agency that is auditing or monitoring the activities of the Corporation or of the recipient, and to any auditor or monitor receiving Federal funds to conduct such auditing or monitoring, including any auditor or monitor of the Corporation

To enforce these requirements, LSC drafted 45 C.F.R. 1636 - Client identity and Statement of Facts and 45 C.F.R. - 1644 Disclosure of case information. In 1644, however, LSC included requirements that went beyond the legislation.

In 1644.4(a), LSC lists the information required to be disclosed as including not just the name or information related to the case, but also the address of the client. Then, in 1644.4(c), LSC requires recipients to provide this information not to the individuals enumerated in 504(8) or any other section of legislation, but to “any person.”

In both instances, NLADA urges LSC to withdraw those requirements. There should not be a presumption that client addresses should be disclosed to “any person.” The regulation includes an exception, allowing grantees not to disclose such information when blocked by a court order or when the attorney reasonably believes disclosure could put the client at risk of physical harm. Nevertheless, it is inappropriate to have the default setting be disclosure of such information with a required showing by the attorney to prevent such.

We greatly appreciate the Corporation’s consideration of the comments herein. As always, we remain available to discuss further or provide any additional information that may be helpful to your iterative process, with regard to the regulations mentioned herein or any additional considerations you may be undertaking.

Respectfully submitted,

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