Accounting Guide for LSC Recipients. Subgranted funds may be separately disclosed and accounted for, and reported upon in the audited financial statements of a recipient; or such funds may be included in a separate audit report of the subrecipient. The relationship between the recipient and subrecipient will determine the proper method of financial reporting following generally accepted accounting principles.

(e) *Oversight.* To ensure subrecipient compliance with the LSC Act, LSC's appropriations statutes, Congressional restrictions having the force of law, and LSC's regulations, guidelines, and instructions, agreements between a recipient and a subrecipient must provide the same oversight rights for LSC with respect to subrecipients as apply to subrecipients.

§ 1627.5 Applicability of restrictions, timekeeping, and recipient priorities; private attorney involvement subgrants.

(a) *Applicability of restrictions.* The prohibitions and requirements set forth in 45 CFR part 1610 apply both to the subgrant and to the subrecipient's non-LSC funds, except as modified by paragraphs (b), (c), and (d) of this section.

(b) Priorities. Subrecipients must either:

(1) Use the subgrant consistent with the recipient's priorities; or

(2) Establish their own priorities for the use of the subgrant consistent with 45 CFR part 1620;

(c) *Timekeeping.* Subrecipients must comply with 45 CFR part 1635 regarding timekeeping for all LSC-funded subgrant activities.

(d) *PAI subgrant.* (1) The prohibitions and requirements set forth in 45 CFR part 1610 apply *only* to the subgrant, when the subrecipient is a bar association, *pro bono* program, private attorney or law firm, or other entity that receives a subgrant for the sole purpose of funding private attorney involvement activities (PAI) pursuant to 45 CFR part 1614.

(2) Any funds used by a recipient as payment for a PAI subgrant are deemed LSC funds for purposes of this paragraph.

§ 1627.6 Subgrants to other recipients.

(a) The requirements of § 1627.4 apply to all subgrants from one recipient to another recipient.

(b) The subrecipient must audit any funds provided by the recipient under a subgrant in its annual audit and supply a copy of this audit to the recipient. The recipient must either submit the relevant part of this audit with its next annual audit or, if an audit has been recently submitted, submit it as an addendum to that recently submitted audit.

(c) In addition to the provisions of § 1627.4(c)(3), LSC may hold the recipient responsible for any disallowed expenditures of subgrant funds. Thus, LSC may recover all of the disallowed costs from either the recipient or the subrecipient or may divide the recovery between the two. LSC's total recovery may not exceed the amount of expenditures disallowed.

(d) Funds received by a recipient from other recipients in the form of fees and dues shall be accounted for and included in the annual audit of the recipient receiving these funds as LSC funds.

§ 1627.7 Recipient policies, procedures and recordkeeping.

Each recipient must adopt written policies and procedures to guide its staff in complying with this part and must maintain records sufficient to document the recipient's compliance with this part.

PART 1630—COST STANDARDS AND PROCEDURES

■ 10. In newly transferred and redesignated § 1630.14, revise the section heading to read as follows:

§ 1630.14 Membership fees or dues.

■ 11. In newly transferred and redesignated § 1630.15, revise the section heading to read as follows:

§ 1630.15 Contributions.

■ 12. In newly transferred and redesignated § 1630.16, revise the section heading to read as follows:

§ 1630.16 Tax sheltered annuities, retirement accounts, and pensions.

Dated: April 14, 2015.

Stefanie K. Davis,

Assistant General Counsel.

[FR Doc. 2015–08951 Filed 4–17–15; 8:45 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

45 CFR Part 1628

Recipient Fund Balances

AGENCY: Legal Services Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would revise the Legal Services Corporation (LSC or Corporation) regulation on recipient fund balances to provide the Corporation with more discretion to grant a recipient's request for a waiver to retain a fund balance in excess of 25% of its annual LSC support. This proposed rule would also provide that recipients that face extraordinary and compelling circumstances may submit a waiver request to retain a fund balance in excess of 25% of their annual LSC support prior to the submission of their annual audited financial statements.

DATE: Comments must be submitted by May 20, 2015.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 1628rulemaking@lsc.gov.* Include ''Comments on Revisions to Part 1628'' in the subject line of the message.
- *Fax:* (202) 337–6519, ATTN: Part 1628 Rulemaking.
- *Mail:* Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007, ATTN: Part 1628 Rulemaking.
- *Hand Delivery/Courier:* Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007, ATTN: Part 1628 Rulemaking.

Instructions: Electronic submissions are preferred via email with attachments in Acrobat PDF format. Written comments sent to any other address or received after the end of the comment period may not be considered by LSC.

FOR FURTHER INFORMATION CONTACT: Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007; (202) 295–1563 (phone), (202) 337–6519 (fax), or *sdavis@lsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Regulatory Background

LSC issued its first instruction on recipient fund balances in 1983 to implement what is now the Corporation's longstanding objective of ensuring the timely expenditure of LSC funds for the effective and economical provision of high quality legal assistance to eligible clients. 48 FR 560, 561, Jan. 5, 1983. Later that year, LSC published a redrafted version titled Instruction 83–4, Recipient Fund Balances (''Instruction''). 48 FR 49710, 49711, Oct. 27, 1983. The Instruction limited the ability of recipients to carry over LSC funds that remained unused at the end of the fiscal year. *Id.* Specifically, the Instruction provided that, in the absence of a waiver granted by the Corporation, a recipient's end-of-year fund balance in excess of 10% of its total annual LSC support must be repaid to LSC. *Id.* The Instruction also

prohibited a recipient from ever retaining a fund balance in excess of 25% of its annual support, thereby limiting the Corporation's waiver granting authority to fund balance amounts of 25% or less of a recipient's annual support. *Id.*

In 1984, LSC substantially adopted the Instruction in a regulation published at 45 CFR part 1628. 49 FR 21331, May 21, 1984. Part 1628 remained unchanged until 2000, when LSC promulgated revisions in response to public comments and staff advice indicating that the rule was ''more strict'' than the fund balance requirements of most federal agencies. 65 FR 66637, 66638, Nov. 7, 2000. The revisions provided the Corporation with more discretion to grant a recipient's request for a waiver to retain a fund balance of up to 25% of its annual support. *Id.* at 66637. In addition, for the first time, the rule authorized the Corporation to exercise its discretion to grant a recipient's request for a waiver to retain a fund balance in excess of 25% of its annual support. *Id.* The Corporation reasoned that, by allowing for waivers to retain that amount, ''[t]he recipient can better plan and find the best use for the funds, rather than being forced into a hasty expenditure simply to avoid the limitation on the carryover of fund balances.'' *Id.* at 66640. The rule, however, limited the situations justifying a recipient's request to retain more than 25% of its annual support to ''three specific circumstances when extraordinary and compelling reasons exist for such a waiver,'' currently listed in § 1628.3(c). *Id.* at 66638. These extraordinary and compelling circumstances were restricted to the following situations when a recipient received income derived from its use of LSC funds: ''(1) An insurance reimbursement; (2) the sale of real property; and (3) the receipt of monies from a lawsuit in which the recipient was a party.'' *Id.* at 66639. Although the Operations and Regulations Committee (Committee) ''considered using a standard of 'extraordinary and compelling' for these waivers with the three specific circumstances discussed as examples,'' it ultimately decided ''that more guidance was required to avoid erosion of the standard,'' and the three circumstances became exclusive limitations, not mere examples. *Id.* at 66640. The LSC Board of Directors (Board) adopted the revisions to part 1628 on November 20, 1999, and the revised rule has been in effect since December 7, 2000. *Id.* at 66637–38.

On April 12, 2015, the Committee voted to recommend that the Board publish this NPRM in the **Federal Register** for notice and comment. On April 14, 2015, the Board accepted the Committee's recommendation and voted to approve publication of this NPRM.

II. LSC Consideration of Potential Revisions to Part 1628

During the nearly 15-year period since part 1628 was last revised, LSC grantees have experienced various unexpected occurrences outside of those listed in § 1628.3(c) that caused them to accrue fund balances in excess of 25% of their annual support. These occurrences have included an end-of-year transfer of assets from a former grantee to a current grantee, a natural disaster that resulted in a significant infusion of use-or-lose disaster relief funds from non-LSC sources, and receipt of a large attorneys' fees award in an LSC-funded case near the end of the fiscal year. In each of these situations, LSC determined that part 1628 currently prevents some recipients with legitimate reasons for having fund balances exceeding 25% of their annual LSC support from seeking and obtaining needed waivers.

On January 22, 2015, LSC staff presented the Committee with a proposal to consider revising part 1628 to address the difficulties faced by recipients that encounter these types of occurrences, yet are unable to justify a waiver request to retain a balance in excess of 25% of their annual support under the current standards. The Committee authorized LSC management to add the matter to the Committee's rulemaking agenda so that it may address this issue. In addition, the Committee requested that LSC consider whether the rule's 10% and 25% caps on fund balance carryovers are still appropriate in light of the most recently available data on recipient waiver requests.

LSC first considered revising part 1628 to allow recipients to request, and the Corporation to grant, waivers to retain fund balances in excess of 25% of annual support in extraordinary and compelling circumstances not covered by the current rule. Current § 1628.3(c) is limited to three circumstances where a recipient receives an infusion of derivative income, or income derived from the recipient's use of LSC funds. As discussed above, however, recent situations have included the sudden infusion of non-derivative, use-or-lose income under other circumstances that significantly disrupted grantee expenditure plans. As a result, LSC staff determined that the list of extraordinary and compelling circumstances in § 1628.3(c) should be illustrative, rather than limited, so that recipients that encounter truly unforeseeable scenarios can avoid having to make the difficult choice between returning large portions of unused balances and hurriedly spending funds before the end of the fiscal year. LSC staff similarly determined that such circumstances should include situations where a grantee is incapable of expending its existing LSC funds as originally planned due to a natural disaster or other catastrophic event, as opposed to only situations where new income is received. Therefore, the Corporation proposes providing an illustrative list of extraordinary and compelling circumstances justifying waivers to retain a fund balance in excess of 25% of a recipient's annual support. LSC believes that this proposed revision will allow grantees to devise more organized and efficient spending plans when faced with unexpected events that are not listed in current § 1628.3(c). Providing recipients with sufficient time to plan for the expenditure of unused funds in excess of 25% of their annual support would also advance the Corporation's policy of ensuring effective and economical provision of high quality legal assistance to eligible clients.

LSC next considered revising part 1628 to provide that a recipient may submit a waiver request prior to submitting its annual audited financial statements. Section 1628.4(a) currently provides that a recipient may request a waiver within 30 days of the submission of its annual audited financial statements. The preamble to the 2000 rule, however, states that ''[t]his rule does not preclude the recipient's request for a Corporation action on a waiver prior to the close of the fiscal year, it simply does not require the Corporation to provide for advance approval.'' 65 FR 66637, 66640, Nov. 7, 2000. LSC staff determined that incorporating the current preamble language on permitting waiver requests prior to the close of the fiscal year into the regulatory text of part 1628 would benefit grantees by allowing them to seek assurance that they will not have to return or spend a large portion of excess LSC funds by the end of the fiscal year, thereby enabling them to plan for the following fiscal year with greater certainty.

LSC staff also found that limiting early approvals to requests for waivers to retain balances in excess of 25% of annual support would be proper in light of the unique and significant burdens on financial planning faced by recipients that experience extraordinary and compelling circumstances. In addition, because a recipient's estimate of the fund balance it anticipates accruing by the end of the fiscal year may end up

being higher or lower than the recipient's actual fund balance at the time it submits its audited financial statements, LSC staff determined that recipients that receive approval of a waiver request prior to submitting their audited financial statements must submit updated information consistent with the requirements of § 1628.4(a) after the submission of their audited financial statements. Accordingly, an advance approval would be, in effect, an approval of the reasons for a waiver and of the proposed amount to be retained, but the recipient must later provide confirmation of the actual amount of excess funds it has accrued. LSC therefore proposes revising the rule to provide that recipients that face extraordinary and compelling circumstances may submit a waiver request to retain a fund balance in excess of 25% of their annual support prior to the submission of their annual audited financial statements, and that the Corporation may, in its discretion, grant approval of such requests pending confirmation of the actual amount to be retained once the audited financial statements are finalized.

The Corporation also considered revising part 1628 to require LSC management to provide notice to the Board of any decision to grant a waiver in excess of 25% of a recipient's annual support. LSC is retaining the ''extraordinary and compelling circumstances'' standard for granting such waivers, and anticipates that recipients will continue to seek such waivers only in circumstances where they experience extreme events that prevent them from expending more than 25% of their annual LSC support. Furthermore, the granting of LSC funding and exercising discretion with regard to carryover, suspension or termination of such funding has been and should remain a management, not a Board, function. The Corporation will continue to exercise its discretion with the same good faith and fidelity to the objective of ensuring the timely expenditure of LSC funds as it has done since part 1628 was last revised in 2000. Therefore, LSC proposes to retain its current policy of leaving discretion to grant waivers to retain excess recipient fund balances with LSC management.

Finally, pursuant to the Committee's request, LSC considered whether the rule's 10% and 25% caps on fund balance carryover amounts should be adjusted in accordance with recent trends in waiver requests. LSC's Office of Compliance and Enforcement (OCE) provided LSC staff with statistics on all waiver requests that have been submitted to the Corporation over the last six years. After analyzing the data, LSC decided as a policy matter that the respective percentage caps are set at the appropriate levels. According to the statistics, the average annual number of waiver requests to retain a fund balance that exceeds 10% of a recipient's LSC support is easily manageable by OCE. Furthermore, waiver requests to retain a balance in excess of 25% of LSC support are exceedingly rare, and the Corporation does not expect a significantly greater number of such requests if the proposed revisions to part 1628 are adopted. LSC believes that the current percentage caps on carryover amounts are necessary to ensure that recipients are spending their grants on providing legal services, while offering an appropriate amount of flexibility to retain unused fund balances. The Corporation therefore proposes retaining the current percentage cap amounts, but requests comments on whether to change them.

III. Discussion of the Proposed Changes

§ 1628.3 Policy

LSC proposes to revise § 1628.3(c) to eliminate the language limiting the extraordinary and compelling circumstances in which LSC may grant a recipient's request for a waiver to retain a fund balance that exceeds 25% of its annual LSC support. Whereas existing § 1628.3(c) is limited to three circumstances where a recipient receives a sudden infusion of income, the proposed section expands the types of situations that the Corporation, in its discretion, may consider to be extraordinary and compelling circumstances. The proposed section adds the example of a natural disaster to illustrate a situation where a recipient would be unable to expend its current LSC grant for reasons other than the receipt of new funds. The proposed section also adds the example of ''a payment from an LSC-funded lawsuit, regardless of whether the recipient was a party to the lawsuit.'' This revision makes clear that a recipient may request a waiver to retain a fund balance in excess of 25% of its annual support when it receives an award as the result of a court decision in an LSC-funded case, even if the recipient was not named as a party to the action.

LSC also proposes to make a minor revision to § 1628.3(d) to reflect the proposed redesignation of certain paragraphs in § 1628.4.

§ 1628.4 Procedures

LSC proposes to add a new § 1628.4(d) to expressly allow recipients that face extraordinary and compelling circumstances to submit a waiver request to retain a fund balance in excess of 25% of their annual support prior to the submission of their annual audited financial statements. This addition will require existing § 1628.4(d), (e), (f), and (g) to be redesignated to § 1628.4(e), (f), (g), and (h).

The proposed new § 1628.4(d) will list the written requirements for a waiver request to retain a fund balance in excess of 25% of annual support. These requirements vary from the ones listed in § 1628.4(a), which apply only to requests made within 30 days after the submission of a recipient's annual audited financial statements. There are two reasons for the variation. First, because the annual audited financial statement of a recipient requesting an early waiver approval would not yet be available to the Corporation, recipients can provide only an estimate of the fund balance they anticipate to accrue by the time their statements are submitted. Second, because a recipient may submit a waiver request either before or after the close of the fiscal year, the proposed section will require recipients to provide a ''plan for disposing of the excess fund balance,'' as opposed to a plan for the ''current fiscal year'' as required by § 1628.4(a). Additionally, proposed § 1628.4(d) requires recipients receiving approval to later submit updated information consistent with the requirements of paragraph (a) to confirm the actual fund balance amount to be retained by the recipient, as determined by reference to its annual audited financial statements.

Finally, LSC proposes to revise the introductory text of paragraph (a), as well as paragraphs (a)(2) and (3), for clarity and readability.

List of Subjects in 45 CFR Part 1628

Administrative practice and procedure, Grant programs—law, Legal services.

For the reasons set forth in the preamble, the Legal Services Corporation proposes to revise 45 CFR part 1628 as follows:

PART 1628—RECIPIENT FUND BALANCES

■ 1. The authority citation for part 1628 is revised to read as follows:

Authority: 42 U.S.C. 2996g(e).

■ 2. Revise paragraphs (c) and (d) of § 1628.3 to read as follows:

§ 1628.3 Policy

* * * * *

(c) Recipients may request a waiver to retain a fund balance in excess of 25%

of a recipient's LSC support only for extraordinary and compelling circumstances, such as when a natural disaster or other catastrophic event prevents the timely expenditure of LSC funds, or when the recipient receives an insurance reimbursement, the proceeds from the sale of real property, a payment from a lawsuit in which the recipient was a party, or a payment from an LSC-funded lawsuit, regardless of whether the recipient was a party to the lawsuit.

(d) A waiver pursuant to paragraph (b) or (c) of this section may be granted at the discretion of the Corporation pursuant to the criteria set out in § 1628.4(e).

* * * * *

■ 3. Amend § 1628.4 as follows:

■ a. Revise paragraph (a) introductory text and paragraphs (a)(2) and (3);

■ b. Redesignate paragraphs (d) through (g) as paragraphs (e) through (h); and

■ c. Add new paragraph (d).

The revisions and additions read as follows:

§ 1628.4 Procedures

(a) A recipient may request a waiver of the 10% ceiling on LSC fund balances within 30 days after the submission to LSC of its annual audited financial statements. The request shall specify:

* * * * *

(2) The reason(s) for the excess fund balance;

(3) The recipient's plan for disposing of the excess fund balance during the current fiscal year;\

* * * * *

(d) A recipient may submit a waiver request to retain a fund balance in excess of 25% of its LSC support prior to the submission of its audited financial statements. The Corporation may, at its discretion, provide approval in writing. The request shall specify the extraordinary and compelling circumstances justifying the fund balance in excess of 25%; the estimated fund balance that the recipient anticipates it will accrue by the time of the submission of its audited financial statements; and the recipient's plan for disposing of the excess fund balance. Upon the submission of its annual audited financial statements, the recipient must submit updated information consistent with the requirements of paragraph (a) of this section to confirm the actual fund balance to be retained.

* * * * *

Dated: April 14, 2015.

Stefanie K. Davis,

Assistant General Counsel.

[FR Doc. 2015–08948 Filed 4–17–15; 8:45 am]

BILLING CODE 7050–01–P