data in AQS for 2015, that the Area continues to attain the 2008 lead NAAQS following EPA's determination of attainment.

Third, EPA proposing to approve the maintenance plan for the Area and to incorporate it into the SIP. As described above, the maintenance plan demonstrates that the Area will continue to maintain the 2008 lead NAAQS through 2026.

Fourth, EPA is proposing to approve Tennessee's request for redesignation of the Area from nonattainment to attainment for the 2008 lead NAAQS contingent upon final action approving the State's Subpart 1 RACM determination into the SIP. If finalized, approval of the redesignation request for the Bristol Area would change the official designation the portion of Sullivan County bounded by a 1.25 kilometer radius surrounding the UTM coordinates 4042923 meters E, 386267 meters N, Zone 17, which surrounds the Exide Facility, as found at 40 CFR part 81, from nonattainment to attainment for the 2008 lead NAAQS.

VII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these proposed actions merely approve state law as meeting federal requirements and do not impose additional requirements beyond those imposed by State law. For that reason, these proposed actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- will not have disproportionate human health or environmental effects under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 14, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–09600 Filed 4–25–16; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Part 1627

Subgrants and Membership Fees or Dues

AGENCY: Legal Services Corporation.

ACTION: Further notice of proposed rulemaking.

SUMMARY: The Legal Services Corporation (LSC or Corporation) proposes to revise its regulations governing subgrants to third parties. LSC published a Notice of Proposed Rulemaking (NPRM) on April 20, 2015, 80 FR 21692. In response to the NPRM, LSC received comments from five organizations. The commenters requested that LSC reconsider some of the proposed changes to the regulations. LSC has considered the comments and now proposes additional revisions to the rules. In this Further Notice of Proposed Rulemaking (FNPRM), LSC seeks comments on five proposed revisions to the NPRM.

DATES: Comments must be submitted by June 10, 2016.

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

Email: SubgrantRulemaking@lsc.gov. Include ''Part 1627 FNPRM'' in the subject line of the message.

Fax: (202) 337–6519, ATTN: Part 1627 FNPRM.

Mail: Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007, ATTN: Part 1627 FNPRM.

Hand Delivery/Courier: Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007, ATTN: Part 1627 FNPRM.

Instructions: Electronic submissions are preferred via email with attachments in Acrobat PDF format. LSC will not consider written comments received after the end of the comment period.

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), *sdavis@lsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

LSC provided a more complete history of this rulemaking in the April 20, 2015 NPRM. 80 FR 21692, Apr. 20, 2015. In brief, LSC initiated this rulemaking to address an issue identified by LSC's Office of Inspector General (OIG) through an audit of the Corporation's Technology Initiative

Grant (TIG) program. In its audit report, OIG disagreed with LSC management's (Management) interpretation and application of the rules governing subgrants and transfers of LSC funds because ''[t]he subgrant rule appears to have been written with the LSC's principal legal service grants in mind, such that ordinarily, programmatic activities consist of the provision of legal services, and business services can easily be classified as ancillary. This division is not as easy to make in the case of TIG grants, and the rule does not seem to have anticipated this problem.'' Audit of Legal Services Corporation's Technology Initiative Grant Program, Report No. AU–11–01, at 42, Dec. 2010.

LSC initiated this rulemaking in 2012 to resolve the conflict of opinions. In 2015, Management proposed expanding this rulemaking to update these rules more comprehensively. On April 12, 2015, the Operations and Regulations Committee (Committee) of the Board voted to recommend that the Board approve publication of an NPRM in the **Federal Register** for notice and comment. On April 14, 2015, the Board accepted the Committee's recommendation and approved publication of the NPRM. The NPRM was published in the **Federal Register** on April 20, 2015, with a comment closing date of May 20, 2015. 80 FR 21692, Apr. 20, 2015. After receiving a request to extend the comment period, LSC gave interested parties an additional 21 days to respond to the NPRM. 80 FR 29600, May 22, 2015.

II. Request for Comments

LSC received five comments during the comment period. One LSC-funding recipient, Northwest Justice Project (NJP), and one non-LSC recipient, Metro Volunteer Lawyers (MVL), each submitted comments. The other three comments came from OIG, the National Legal Aid and Defender Association, through its Civil Policy Group and its Regulations and Policy Committee (NLADA), and the American Bar Association's Standing Committee on Legal Aid and Indigent Defense (SCLAID). In response to the comments received, LSC is considering several revisions to the proposed rule, including the ones described in this FNPRM.

On April 18, 2016, the Committee authorized publication of this FNPRM in the **Federal Register**. This FNPRM is limited to soliciting additional comment on the proposed changes described herein. Commenters need not reiterate or resubmit comments in response to this supplemental notice that they previously submitted relating to these matters or other aspects of the proposed rule. LSC will consider all public comments submitted pursuant to the NPRM published on April 20, 2015, and in response to this FNPRM, when drafting the final rule.

Proposed Change 1: Removing the Proposed Definition of ''Programmatic''

The main purpose of this rulemaking is to clarify that part 1627 applies only to third-party awards made by a recipient for the provision of legal assistance.[1] The current rule defines *subrecipient,* in relevant part, as an entity that accepts Corporation funds from a recipient under a grant contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient's programmatic activities. 45 CFR 1627.2(b)(1). LSC proposed simplifying the definition of *subrecipient* and adding a definition of the term *programmatic* that included an explicit reference to the LSC Act's definition of legal assistance:

> *Programmatic* means activities or functions carried out to provide legal assistance, as defined in § 1002 of the LSC Act, 42 U.S.C. 2996a(5). Programmatic activities do not include the provision of goods or services by vendors or consultants in the normal course of business that the recipient would not be expected to provide itself.

80 FR 21692, 21694, Apr. 20, 2015. LSC proposed this definition to clearly limit the term *programmatic* to those activities in which the subrecipient essentially stands in the recipient's shoes to provide legal assistance.

NLADA and NJP both objected to the proposed definition. NLADA called the definition:

> ambiguous as to what activities which involve the provision of legal services to eligible clients fall within LSC's definition of programmatic in order to be considered a subgrant rather than a procurement contract for goods or services. . . . The proposed definition is broad enough to encompass activities and services that do not involve the direct provision of legal services to eligible clients.

NJP similarly stated that it ''reads the definition of 'programmatic' in subsection (b) as too broad and inconsistent for the purposes it appears intended to achieve.'' Both organizations commented that the definition could be read to include transactions such as leasing office space. NJP further read the definition as potentially including the payment of bar dues or travel reimbursements to staff, and ''providing fee-for-service contracts to lawyers or legal organizations that provide ongoing expertise in support of recipients' delivery of legal assistance, none of which are 'vendors or consultants.'''

Both commenters recommended that LSC replace the phrase ''activities or functions carried out to provide legal assistance'' with ''the delivery of legal assistance to eligible clients.'' They both also recommended excluding ''activities conducted by entities not directly involved in the delivery of legal assistance to eligible clients'' from the definition. Finally, NLADA suggested that LSC expand the definition of *programmatic* to include ''the provision of services under a special LSC grant project.''

LSC agrees that its proposed definition of the term *programmatic* creates more problems than it solves. Commenters identified several ambiguities with the proposed definition and suggested solutions, but LSC determined that the potential solutions themselves created problems. For example, both NLADA and NJP stated that LSC's proposed definition was too broad and unclear, so both organizations offered language they believe would clarify that *programmatic* means only the delivery of legal assistance to eligible clients. Both NLADA's and NJP's suggested language, however, would narrow the definition beyond what LSC intended.

Additionally, both NLADA and NJP would exclude ''activities conducted by entities not directly involved in the delivery of legal assistance to eligible clients.'' It is unclear whether they meant entities not directly involved in the recipient's delivery of legal assistance to eligible clients or not directly involved in the delivery of legal assistance at all. LSC did not intend to limit the types of organizations with which recipients may contract. Rather, the changes to the rule focus on the nature of the work that is the subject of the third-party agreement.

NLADA's proposal to include ''provision of services under a special LSC grant project'' in the definition of *programmatic* also appears to be inconsistent with LSC's intent. The proposed rule emphasizes the nature of the activity funded, rather than the method of funding. For example, if

[1] The LSC Act defines ''legal assistance'' as ''the provision of any legal services consistent with the purposes and provisions of this subchapter.'' 42 U.S.C. 2996a(5). LSC incorporated that definition at 45 CFR 1600.1, and that definition applies to part 1627. In contrast, LSC has defined the term ''legal assistance'' more narrowly in other contexts to mean legal analysis tailored to a client's particular issue as opposed to ''legal information'' that does not involve the application of law to a person's specific problem. 45 CFR 1614.3(e) and (f); LSC Case Service Report Handbook, p. 3 (2008, as amended 2011).

''special LSC grant project'' includes TIG awards or disaster relief grants, then ''the provision of services under a special LSC grant project'' could include pure technology developments or construction activities paid for using those grant funds. LSC intends to exclude from the rule those types of activities when conducted by a third party using LSC funds. By contrast, awards to carry out legal services activities would still be included in the rule, even though the award is made through a TIG.

Finally, NJP's inclusion of payments to experts ''in support of recipients' delivery of legal assistance'' suggests that the changes to the scope of the rule may not have been clear. LSC intended to limit the application of the subgrant rule to only those situations in which recipients provide funds to third parties to carry out legal assistance activities that recipients would otherwise be expected to provide. This limitation necessarily excludes contracts with experts who provide a service to recipients, whether the service is preparing the organization's taxes, developing software for an online intake system, or providing a recipient with technical expertise on a case.

LSC has found it difficult to redefine *programmatic* with a degree of precision sufficient to give grantees clear guidance about the term's meaning. LSC determined that the outer boundaries of the term were the restrictive concept of ''direct provision of legal assistance and legal information to clients'' and the comprehensive concept of ''anything that supports the delivery of legal assistance and legal information to clients,'' but could not develop a clear statement of where the line between programmatic and non-programmatic activities lay. LSC analyzed fact patterns using the five subgrant factors in the Uniform Guidance, 2 CFR 200.330. LSC intends to adopt this five-factor analysis in part 1627. LSC determined that the guidance provided by the factors is adequate to assess whether a particular arrangement with a third party should be considered a subgrant or a procurement contract. Including the term *programmatic* did not improve the factors' utility.

In this FNPRM, LSC proposes to remove the proposed definition of *programmatic* in § 1627.2 and to remove the term from the list of factors in proposed § 1627.3(b)(2). In its place, LSC proposes to define the term *procurement contract* in § 1627.2(b). LSC proposes to define and use this term for two reasons. The first is to highlight the distinction between subgrants, which involve provision of legal assistance, and procurement contracts, which are agreements to purchase goods or services that a recipient needs to carry out its LSC grant. The second is that LSC anticipates incorporating Uniform Guidance principles applicable to procurement contracts into part 1630 and the Property Acquisition and Management Manual (PAMM) through an ongoing rulemaking.

Proposed Change 2: Allowing Recipients To Use Property or Services Acquired in Whole or in Part With LSC Funds as Support for a Subgrant

In the NPRM, LSC proposed to require that recipients support subgrant activities only with funds, rather than allowing for in-kind provision of property and services. 80 FR 21692, 21696, Apr. 20, 2015. With the exception of OIG, all commenters opposed the proposal. NLADA, NJP, MVL, and SCLAID all expressed concern that adopting this change would jeopardize longstanding private attorney involvement (PAI) arrangements between LSC recipients and bar associations or other legal aid providers because it would impose additional and unnecessary administrative burdens on both parties. They also opined that the proposal conflicts with the PAI rule, which explicitly allows recipients to support private attorneys by providing them with training, technical assistance, access to recipient facilities, and use of recipient libraries and other resources. 45 CFR 1614.4(b)(3). Their observations differed in some respects, but they all contended that the proposal had significant flaws.

NLADA ''urge[d] LSC to carefully consider the possible adverse consequences the framework set out in [proposed § 1627.3(c)] may have on the ability of LSC funded programs to effectively carry out their mission to promote equal access to justice and provide high-quality civil legal assistance to low-income Americans.'' They viewed the proposed rule as placing a ''blanket prohibition on the provision of goods and services by recipients, that are in part or fully funded by LSC, to support an agreement with a third party to provide programmatic services.'' If this is LSC's intent, they continued,

> a number of LSC funded programs would be prevented from using one of their most valuable assets—property they have invested in to provide economical office space for their operations. In a time of severe fiscal constraints, this non-monetary asset could be used in innovative ways to partner with community organizations, particularly pro bono programs, to enhance the availability of legal services for people who are poor and in need of legal services.

They concluded their discussion of this issue by expressing their understanding that LSC must be able to ensure that recipients spend their LSC funding only on permissible activities. NLADA urged LSC to consider alternatives that ''will not sever existing relationships or stifle further development based on in kind exchanges of goods and services funded in part or wholly by LSC.''

MVL quoted NLADA's response at length in its letter objecting to this proposal. MVL provided a detailed description of their relationship with Colorado Legal Services (CLS):

> Colorado Legal Services provides support to MVL's mission through office space and intake personnel. CLS provides an in-kind donation of office space to house MVL's Executive Director, Family Law Court Program Coordinator, Legal Services Coordinator, Rovira Scholar (a fellowship position funded by a private benefactor), and the Program Assistant. Additionally, nearly all the cases that MVL handles are filtered first through CLS's intake team. CLS's intake team gathers essential information on the legal issues of prospective clients and passes that information to MVL to refer out to volunteer attorneys.

MVL stated that a ''major impact of the proposed rule would be increased costs of administration'' to both it and CLS. It also pointed out that the rule could impact organizations with similar arrangements by limiting or prohibiting the receipt of in-kind services to assist and alleviate costs for both organizations; maintaining proximity to and continuity with the referral source; maintaining flexibility to serve its community; and ''contending with LSC regulations contrary to organizational missions, objectives, and administration.'' MVL concluded by urging LSC to reject the proposed rule.

SCLAID expressed its opinion that the proposal is inconsistent with the PAI rule. More specifically, SCLAID was concerned that ''collaborative relationships that have been established with bar associations whose pro bono programs have been housed at a recipient's office for years could be greatly harmed by requiring that the pro bono program now enter into a subgrant arrangement.'' SCLAID stated that requiring bar-sponsored pro bono programs to enter into a subgrant and return some of the subgrant funds to the recipient for rent would be ''overly burdensome and unnecessary.''

NJP criticized LSC's proposal as ''seem[ing] to confuse cost allocation to PAI with the notion of a subgrant'' and as creating ''gross ambiguity'' about

whether recipients may provide in-kind support to private attorneys under § 1614.4(b)(3). Additionally, NJP noted that the language requiring subgrants to be supported with LSC funds is inconsistent with the PAI rule, which directs recipients to spend ''an amount equal to at least twelve and one-half percent (12.5%) of the recipient's annualized Basic Field-General award'' to PAI activities. 45 CFR 1614.2(a). NJP stated: ''If the goal is to ensure that subgrants mean the payment of LSC funds to a third party to carry out legal assistance activities, the definition of 'subgrants' in proposed § 1627.2(d)(1) is adequate to accomplish this purpose. . . . Moreover, accounting for the use of LSC funds through auditing both subgrants and PAI cost allocations is adequate to ensure that LSC funds are spent consistent with governing statutes and regulations.'' NJP suggested that LSC could revise the definition of *subgrant* to more specifically reference the use of LSC funds and requested that LSC not adopt proposed § 1627.3(c), which limits subgrant funding to LSC funds.

Upon consideration of the comments received, LSC agrees that requiring recipients to support subgrant activities only with funds is burdensome and inefficient. LSC understands that many recipients' most valuable assets may be property and did not intend to disrupt longstanding relationships with bar associations and other organizations that rely on exchanges of property for services to carry out their legal services programs. LSC remains concerned, however, about accountability for LSC-funded resources and ensuring that recipients are not using LSC-funded property or services to support organizations that engage in restricted activities. LSC proposes several revisions to part 1627 designed to allow recipients to continue providing other organizations LSC-funded office space and other property and services to carry out legal assistance activities consistent with the requirements of the LSC Act, LSC appropriations statutes, LSC's other governing statutes, and LSC's regulations.

First, LSC proposes to add a definition for the term property, which will encompass both real and personal property. Second, LSC proposes to remove proposed § 1627.3(c), which required recipients to support all subgrants with funds, rather than goods or services. Third, LSC proposes to redesignate the definition of the term *subgrant* as § 1627.2(e) and revise it to make clear that LSC funds and property or services acquired in whole or in part with LSC funds may be used to support a subgrant to a third party. Fourth, LSC proposes a new § 1627.4(a)(2), which explains how recipients are to assess the value of the goods or services to be awarded to a third party to carry out a subgrant. Fifth, LSC proposes to add language reflecting the decision to permit in-kind subgrants in paragraph (d)(2), which pertains to a recipient's responsibility to ensure its subrecipient's proper use of, accounting for, and auditing of LSC resources. Lastly, LSC proposes to add a new paragraph (f) setting forth the requirements for accounting for in-kind subgrants.

Proposed Change 3: Establishing a $15,000 Threshold at Which Recipients Must Seek LSC's Written Approval Before Awarding a Subgrant

While considering whether to allow recipients to use goods and services purchased in whole or in part with LSC funds as the basis for subgrants, LSC also considered whether recipients should be required to seek prior approval of all such subgrants or only when the value of the goods or services supporting the subgrant exceeded a certain threshold. LSC understands that recipients have a wide range of arrangements with other organizations that assist in the recipients' delivery of legal assistance to eligible clients. Arrangements on one end of the spectrum could be quite limited and informal—for example, giving office space on a one-time basis to another legal aid provider to hold a legal information session on applying for public benefits. An example of an arrangement involving a greater investment of recipient resources would be one in which the recipient provides office space and administrative support to a bar association conducting a debt collection clinic for four hours every other Saturday. An arrangement representing a significantly greater investment of recipient resources would be housing another non-profit organization that takes referrals from the recipient and places the referrals with the organization's own roster of volunteers. While LSC must ensure accountability for the use of property or services acquired in whole or in part with LSC funds in all of these arrangements, the oversight tools that LSC uses may vary based on the amount of LSC-funded resources involved.

Under existing part 1627, all subgrants are subject to the prior approval requirement, regardless of cost. In calendar year 2015, recipients entered into 77 subgrants. Fifteen of the subgrants were for less than $10,000, with the smallest being for $2,000. Ten of the 77 subgrants originating in calendar year 2015 exceeded $100,000. LSC understands that recipients spend significant amounts of time and resources preparing subgrant applications for LSC's approval. LSC estimates that LSC itself spends between 10 and 20 work hours reviewing each subgrant application, with the time spent on the application varying based on the quality and complexity of the application and the necessity of involving several LSC offices in the review. LSC determined that, on balance, the burdens of prior approval on both sides do not outweigh the benefits of the increased oversight for subgrants costing $15,000 or more. Consequently, LSC proposes to redesignate paragraph (a) from the NPRM as paragraph (b) and introduce a new paragraph (a) establishing the thresholds for prior approval of subgrants.

LSC wishes to emphasize two points about the proposed prior approval threshold. The first is that all awards qualifying as subgrants under § 1627.3 are subject to 45 CFR part 1630 and the restrictions set forth at proposed § 1627.5. Although subgrants for less than $15,000 will no longer be subject to the prior approval requirement, they continue to be governed by part 1630 and § 1627.5. The second point is that judicare arrangements and contracts with private attorneys to provide legal assistance to recipients' clients are not subject to the proposed prior approval threshold in § 1627.4(a). LSC's longstanding policy, reflected in the NPRM, has been to consider such awards subgrants only when the cost of such awards exceeds $25,000. 80 FR 21692, 21695, Apr. 20, 2015. Although LSC sought comment in the NPRM about whether the threshold should be changed, LSC did not intend to change its policy toward these awards. Consequently, LSC will continue to consider judicare arrangements and contracts with private attorneys to provide legal assistance to a recipient's clients as subgrants only when such arrangements exceed the threshold stated in § 1627.2(e)(2) for such awards, which LSC proposed in the NPRM to set at $60,000. All subgrants defined in § 1627.2(e)(2) will require prior approval, consistent with LSC's longstanding policy.

In paragraph (a), LSC proposes to set the prior approval threshold at $15,000 for both cash and in-kind subgrants. LSC believes this amount represents a significant enough investment of LSC funding or LSC-funded property or services that LSC should have increased oversight over the award. In paragraph

(a)(2)(i), LSC proposes to require recipients to seek prior approval for subgrants when either the fair market value or the actual cost to the recipient of the property or service that supports the subgrant exceeds $15,000. LSC also proposes to require recipients to obtain independent property appraisals to assess the fair market value of real property that it contributes to a subgrant. Because LSC believes that $15,000 represents the amount at which it should have increased oversight of subgrants, LSC wants recipients to evaluate the value of the asset being exchanged based on both the fair market value and their internal cost to determine whether an amount that represents $15,000 or more of LSC funds is being given to a third party to carry out legal assistance activities. In paragraph (a)(2)(ii), LSC proposes to adopt language from the Uniform Guidance that requires recipients to document and support the valuation of property or services acquired in whole or in part with LSC funds by the same methods used internally for its other in-kind valuations.

LSC proposes a technical changes to § 1627.4(b) to reflect its decision to allow in-kind subgrants. In paragraph (b), LSC proposes to insert language stating that for all subgrants exceeding the $15,000 threshold, recipients must submit applications to LSC for prior written approval.

Proposed Change 4: Notifying Recipients of Decisions on Requests for Prior Approval of Subgrants

In the NPRM, LSC proposed to revise the rules governing the subgrant approval process. In paragraph (a), LSC proposed to link the subgrant approval process for Basic Field Grants more closely to the annual grant competition process. LSC also proposed to formalize the procedures for recipients seeking to make subgrants under LSC's special grant programs and those who need to make subgrants in the middle of a funding year. LSC also proposed to eliminate the provision deeming subgrants approved if LSC does not respond within the 45-day period [2] because LSC believed that the provision was both unnecessary to ensure timely responses from LSC and reflective of poor grants management policy.

[2] Existing § 1627.3(a)(2) states that if LSC fails to act on the subgrant proposal within 45 days of submission, the recipient ''shall notify the Corporation of this failure'' and gives LSC seven additional days to respond to the proposal. The subgrant is deemed approved if LSC fails to respond within the additional seven days. For ease of reference, we refer to the entire § 1627.3(a)(2) period as ''the 45-day period.''

NLADA objected to LSC's proposal. NLADA stated that the proposal ''leaves programs in a state of fiscal uncertainty as to subgrant agreements,'' and recommended leaving the provision in the rule to ''preserve[] an important backstop for recipients and subrecipients who depend on LSC-funding and who, without hearing in a timely fashion from LSC, may plan a budget as if the funding has been approved.'' NLADA further argued that ''it is important in keeping with LSC's focus on uniformity and consistent application of rules and regulations that all parties bear equitable burdens with regard to meeting LSC statutory and regulatory requirements.''

LSC disagrees with NLADA's recommendation to leave the existing rule in place. NLADA's comments do not reflect the greater assurance of a timely response provided by the consolidation of the Basic Field Grant competition and subgrant approval processes. Nor do they acknowledge that responsible grants management practices do not permit expending or allowing the expenditure of funds without the approval of the funding agency.

Although it is not binding on LSC, we look to the prior approval provisions of 2 CFR part 200 for guidance. The Uniform Guidance describes certain types of costs for which agencies may require prior written approval. 2 CFR 200.308. Grantees must obtain prior approval before incurring any of the listed costs, unless the awarding agency waives the requirement. *Id.* 200.308(d). Section 200.308(i) of the Uniform Guidance requires Federal agencies to respond to a request for prior approval within 30 days of receipt. *Id.* 200.308(i). If a decision is still pending at the end of the 30-day period, the agency must advise the requester in writing of the date by which the requester can expect a decision. *Id.* The Uniform Guidance does not include a provision deeming a request approved based on agency inaction.

LSC considered four options for responding to NLADA's comments. The first was to retain the language proposed in the NPRM. The second was to reinstate the existing rule in its entirety. The third was to reinstate the 45-day limit, but include a provision stating that if LSC does not respond, the subgrant is deemed denied. The last option was to include either a waiver provision or a notice provision similar to the ones provided in the Uniform Guidance.

LSC determined that waiving approval for subgrants was not an appropriate solution. LSC must exercise appropriate oversight over recipients' use of its funds, particularly when the recipient proposes to give a significant amount of funds to a third party to carry out legal assistance activities. LSC did not believe that it would be acting as a responsible steward of appropriated funds if it allowed recipients to make subgrants above the proposed $15,000 threshold amount without LSC's having approved the proposal. Nor did LSC believe that retaining the current rule demonstrates appropriate grants management policy because it would allow a recipient to devote a significant amount of LSC-funded resources to a subgrant absent LSC's explicit approval. LSC also did not think that restoring the 45-day time frame for approving subgrants with a provision deeming the subgrant denied, rather than approved, was a proper solution. This solution seemed unnecessarily negative and uninformative because it would leave a recipient wondering if its proposal was flawed and LSC simply had not told the recipient what it needed to do to fix the proposal or if LSC had reviewed the proposal at all.

LSC proposes to respond to NLADA's comments by adopting a notice provision similar to the one used by OMB in the Uniform Guidance. LSC proposes to include in the notice described in paragraph (b) a statement that if LSC has not responded to a recipient's request for approval of a subgrant under paragraph (b)(2) or (b)(3) within the number of days specified in the notice, LSC will inform the recipient in writing of the date when the recipient may expect the decision. The notice will be given only for subgrant approvals requested as part of a special grant or during the mid-year grant process. LSC does not propose to include a similar provision for subgrant approvals requested during the Basic Field Grant competition process because the regulation already includes notification deadlines. According to proposed § 1627.4(a)(1)(ii), LSC will inform a recipient whether LSC has approved, denied, or is suggesting modifications to the subgrant at or about the same time as LSC informs the recipient of its decision on the recipient's application for Basic Field Grant funding. 80 FR 21692, 21699, Apr. 20, 2015.

Proposed Change 5: Adopting a Flexible Timekeeping Requirement

In the NPRM, LSC proposed to transfer existing 45 CFR 1610.7, which contains the requirements applicable to transfers of LSC funds, to part 1627 and redesignate it as § 1627.5. LSC also proposed to revise the existing timekeeping requirement in § 1610.7(c)

to adopt the timekeeping standards applicable to recipients in part 1635. LSC proposed this requirement to provide a consistent standard for recipients and subrecipients alike. LSC specifically sought comment on this proposal because LSC understood that some subrecipients, particularly smaller legal services programs, may have difficulty complying with the requirement. NJP and NLADA both objected to LSC's proposal to require all subrecipients to comply with part 1635's timekeeping requirements. OIG supported the proposal.

NJP opposed the proposal for two reasons. First, NJP argued that ''private attorney subrecipients must sufficiently document their time spent on recipient client activities to justify billings and payment under a fee-for-service contract.'' NJP opined that because private attorney subrecipients have their own timekeeping systems, there is no need for them to develop a timekeeping system that complies with part 1635. Second, NJP argued that private attorneys would likely be both unwilling to allocate time to LSC-defined categories of cases, matters, and supporting activities and unwilling to agree to make their personal time records and timekeeping systems subject to examination by auditors and LSC representatives. NJP asserted that requiring private attorneys to make their private records available to LSC auditors and reviewers would ''create a significant disincentive'' for private attorneys to participate in judicare or other fee-for-service arrangements.

NLADA objected to the proposal as a burdensome, one-size-fits-all approach contrary to LSC's interests in maximizing grantees' efficiency and effectiveness and encouraging collaborations with other organizations. NLADA asserted that ''[i]mposing one standard time keeping requirement for all subrecipients, who maintain accountability with their own timekeeping system, is counter-productive and will harm recipient's [sic] ability to maintain relationships with subrecipients who are unable or unwilling to conform their own timekeeping system to LSC requirements.'' NLADA urged LSC to adopt a ''flexible option'' that would ensure accountability for the use of LSC funds without imposing burdensome requirements on subrecipients of LSC funds.

LSC understands NLADA's and NJP's concerns about the impact of the proposed rule on subrecipients that have their own timekeeping systems in place. LSC agrees that requiring such subrecipients to comply with LSC's particular timekeeping requirements may not be necessary to ensure that time subrecipients spend providing legal assistance and legal information is accounted for appropriately. Regardless of whether a subrecipient already has a timekeeping system in place, LSC believes that some level of timekeeping by either the subrecipient or the recipient is needed.

LSC considered three options for responding to the comments. The first was to keep the proposed language without change. The second was to draft a rule providing minimum standards for timekeeping that LSC believes would provide it with the information it needs to ensure that subgrant funds are properly accounted for, but that does not prescribe how the recipient or subrecipient keeps time. The third option was to adopt part 1635-compliant timekeeping as the default, but to allow recipients to seek approval from LSC for an alternate timekeeping method that will ensure accountability for the use of subgrant funds. This option was similar to language LSC proposed deleting from existing § 1627.3(c) that authorized recipients and subrecipients to propose alternative auditing methods. LSC proposed deleting that language simply because it had never been used, rather than because it was ineffective.

LSC proposes adopting the second option. In paragraph (c), LSC proposes requiring that recipients be able to show how much time subrecipient attorneys and paralegals spent on cases and matters and aggregate information on pending and closed cases by legal problem type. LSC does not propose to require, however, that the subrecipient collect the information or otherwise dictate how the recipient and subrecipient collect and maintain the information. LSC proposes to leave those decisions to the recipient and subrecipient to negotiate as part of the subgrant agreement.

LSC proposes one technical change to § 1627.5(d) as proposed in the NPRM. To reflect LSC's decision to allow in-kind subgrants, LSC proposes to include language stating that the prohibitions and requirements of part 1610 apply only to the subgranted funds, goods, or services when the subgrant is for the sole purpose of funding private attorney involvement activities.

List of Subjects in 45 CFR Part 1627

Grant programs, Legal services.

For the reasons stated in the preamble, the Legal Services Corporation proposes to amend 45 CFR part 1627, as proposed to be amended at 80 FR 21692, April 20, 2015, as follows:

PART 1627—SUBGRANTS AND MEMBERSHIP FEES OR DUES

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

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

■ 2. Amend § 1627.2 as proposed to be amended at 80 FR 21692, April 20, 2015 by:
■ a. Revising paragraph (b);
■ b. Redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively, and revising them;
■ c. Adding a new paragraph (c); and
■ d. Designating the undesignated paragraph captioned ''Subrecipient'' as paragraph (f).

The revisions and additions read as follows:

§ 1627.2 Definitions.

* * * * *

(b) *Procurement contract* means an agreement between a recipient and a third party under which the recipient purchases property or services for the benefit of the recipient that does not qualify as a subgrant as defined in paragraph (d)(1) of this section.

(c) *Property* means real property or personal property.

(d) *Recipient* as used in this part means any recipient as defined in section 1002(6) of the Act and any grantee or contractor receiving funds from LSC under section 1006(a)(1)(B) of the Act.

(e)(1) *Subgrant* means an award of LSC funds or property or services purchased in whole or in part with LSC funds, from a recipient to a subrecipient for the subrecipient to carry out part of the recipient's legal assistance activities under the LSC grant, that has the characteristics set forth in § 1627.3(b).

(2) *Subgrant* includes judicare arrangements and contracts with private attorneys for the direct delivery of legal assistance under 45 CFR part 1614 only when the cost of the arrangement or contract exceeds $60,000.

* * * * *

■ 3. Amend § 1627.3 as proposed to be amended at 80 FR 21692, April 20, 2015 by revising paragraphs (a) and (b)(2), (3), and (5) to read as follows:

§ 1627.3 Characteristics of subgrants.

(a) In determining whether an agreement between a recipient and another entity should be considered a subgrant or a procurement contract, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed in paragraph (b) of this section

may not be present in all cases, and the recipient must use judgment in classifying each agreement as a subgrant or a procurement contract. The recipient must make case-by-case determinations whether each agreement that it makes with another entity constitutes a subgrant or a procurement contract.

(b) Characteristics that support the classification of the agreement as a subgrant include when the other entity:

* * * * *

(2) Has its performance measured in relation to whether objectives of the LSC grant were met;

(3) Has responsibility for programmatic decision-making regarding the delivery of legal assistance under the recipient's LSC grant;

* * * * *

(5) In accordance with its agreement, uses LSC funds or property or services acquired in whole or in part with LSC funds, to carry out a program for a public purpose specified in LSC's governing statutes and regulations, as opposed to providing goods or services for the benefit of the recipient.

* * * * *

■ 4. Amend § 1627.4 as proposed to be amended at 80 FR 21692, April 20, 2015 by:

■ a. Redesignating paragraphs (a) through (e) as paragraphs (b) through (f), respectively;

■ b. Adding a new paragraph (a);

■ c. Revising the introductory text of newly redesignated paragraph (b);

■ b. Redesignating the newly redesignated paragraph (b)(5) as (b)(5)(i) and adding paragraph (b)(5)(ii);

■ c. Revising the newly redesignated paragraph (d)(2); and

■ d. Adding paragraph (g).

The revisions and additions read as follows:

§ 1627.4 Requirements for all subgrants.

(a) *Threshold.* (1) A recipient must obtain LSC's written approval prior to making a subgrant when the cost of the award is $15,000 or greater.

(2) *Valuation of in-kind subgrants.* (i) If either the actual cost to the recipient of the transferred property or service or the fair market value of the transferred property or service exceeds $15,000, the recipient must seek written approval from LSC prior to making a subgrant. If the asset transferred involves leased space, the fair market value of the office space must be determined by an independent property appraisal.

(ii) The valuation of the subgrant, either by fair market value or actual cost to the recipient of property or services, must be documented and to the extent feasible supported by the same methods used internally by the grantee.

(b) *Corporation approval of subgrants.* Recipients must submit all applications for subgrants exceeding the $15,000 threshold to LSC in writing for prior written approval. LSC will publish notice of the requirements concerning the format and contents of the application annually in the **Federal Register** and on LSC's Web site.

* * * * *

(5)

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(ii) If a subgrant did not require prior approval, and the recipient proposes a change that will cause the total value of the subgrant to exceed the threshold for prior approval, the recipient must obtain LSC's prior written approval before making the change.

* * * * *

(d) * * *

* * * * *

(2) The recipient must ensure that the subrecipient properly spends, accounts for, and audits funds or property or services acquired in whole or in part with LSC funds received through the subgrant.

* * * * *

(g) *Accounting for in-kind subgrants.* (1) The value of property or services provided by a recipient to a subrecipient through a subgrant is subject to the audit and financial requirements of the Audit Guide for Recipients and Auditors and the Accounting Guide for LSC Recipients. Subgrants involving in-kind exchanges of property or services may be separately disclosed and accounted for, and reported upon in the audited financial statements of a recipient. The relationship between the recipient and subrecipient will determine the proper method of financial reporting following generally accepted accounting principles.

(2) If accounting for in-kind subgrants is not practicable, a recipient may convert the subgrant to a cash payment and follow the accounting procedures in paragraph (d) of this section.

■ 5. Amend § 1627.5 as proposed to be amended at 80 FR 21692, April 20, 2015 by revising paragraphs (c) and (d) to read as follows:

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

* * * * *

(c) *Timekeeping.* A recipient must account for how its subgrantees spend LSC funds. Accurate and contemporaneous time records must identify for each attorney and paralegal:

(1) Time spent on each case or matter by date and in increments not greater than one-quarter of an hour;

(2) The unique case name or identifier for each case;

(3) The category of action on which time was spent for each matter; and

(4) The legal problem type for each case or matter with a timekeeping system able to aggregate time record information on both closed and pending cases by legal problem type.

(d) *PAI subgrant.* (1) The prohibitions and requirements set forth in 45 CFR part 1610 apply *only* to the subgranted funds or property or services acquired in whole or in part with LSC funds 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 or property or services acquired in whole or in part with LSC funds and used by a recipient as payment for a PAI subgrant are deemed LSC funds for purposes of this paragraph.

■ 6. Amend § 1627.6 as proposed to be amended at 80 FR 21692, April 20, 2015 by revising paragraph (b) to read as follows:

§ 1627.6 Subgrants to other recipients.

* * * * *

(b) The subrecipient must audit any funds or property or services acquired in whole or in part with LSC 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.

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Dated: April 19, 2016.

Stefanie K. Davis,

Assistant General Counsel.

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DEPARTMENT OF ENERGY

48 CFR Part 970

RIN 1991–AC03

Acquisition Regulation: Nondisplacement of Qualified Workers Under Service Contracts and Other Changes to the Contractor Purchasing System Clause

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and opportunity for comment.